

ALERTS

New York State Lifts Indoor Mask Mandate for Most Locations

February 11, 2022

On Feb. 9, 2022, New York State Governor Kathy C. Hochul issued a press release announcing that New York State's Determination on Indoor Masking ("Mask Mandate") was lifted effective Feb. 10, 2022. The Governor explained that the Mask Mandate was intended to be only a temporary measure to combat the winter surge in COVID-19 cases and the rise of the Omicron variant. With COVID-19 cases and hospitalizations plummeting in New York State, the Governor determined that the Mask Mandate is no longer necessary at this time.

Pursuant to the Mask Mandate, which was detailed in a previous *SRZ Alert*, masks were required to be worn in all indoor public places, including business and office spaces, unless all individuals, including visitors, were required to provide proof of vaccination as a condition of entry. Beginning on Feb. 10, indoor public places covered by the Mask Mandate are no longer required to enforce the mask requirement, though they may choose to continue to do so. All schools and all health care settings regulated by the New York State Department of Health and other related state agencies, however, must continue to require masks.[1]

Mask Requirements for Schools

Governor Hochul also announced plans to reevaluate the mask requirement in schools in the first week of March. Currently, all schools, including public, nonpublic and charter schools, must require any person over the age of two (including all students, teachers, administrators, other staff, contractors and visitors) to wear a well-fitting mask over their nose

and mouth at all times when indoors in school buildings, regardless of vaccination status, except while actively eating or drinking. The Governor plans to distribute two at-home COVID-19 test kits to every K-12 student in the coming weeks. These test results, along with a variety of public health data, including cases per 100,000 residents, hospital admission rates, vaccination rates, global trends and pediatric hospitalizations, will be reviewed to determine whether to lift the mask requirement for schools. The New York State Department of Health will develop preliminary guidance with input from educators and parents.

Other COVID-19 Prevention Measures

While New York City employers will no longer be required to enforce the Mask Mandate, they continue to be bound by New York City's COVID-19 vaccine mandate for private-sector workers (the "NYC Vaccine Mandate"). The NYC Vaccine Mandate requires employers to: (i) prohibit unvaccinated workers from entering their workspaces, with limited exceptions, and (ii) obtain and confidentially maintain records of COVID-19 vaccinations for each of their workers. New York City's newly-inaugurated Mayor, Eric Adams, has expressed his intent to keep the NYC Vaccine Mandate in place. More information on the NYC Vaccine Mandate can be found in a previous *SRZ Alert*.

Additionally on Feb. 10, 2022, the New York State Department of Labor updated its Model Airborne Infectious Disease Exposure Prevention Plan under the New York State Health and Essential Rights Act ("HERO Act"). This model plan was adopted by most employers to comply with the HERO Act's requirements. The updated model plan relaxed its masking requirements, providing that: "Employees will wear appropriate face coverings in accordance with guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable. Consistent with the guidance from the State Department of Health, if indoor areas do not have a mask or vaccine requirement as a condition of entry, appropriate face coverings are recommended, but not required. It is also recommended that face coverings be worn by unvaccinated individuals, including those with medical exemptions, in accordance with federal CDC guidance."

The New York State Commissioner of Health has designated COVID-19 as a "highly contagious communicable disease" under the HERO Act, triggering the HERO Act's requirement that each employer implement

and enforce its airborne infectious disease exposure prevention plan. On or before Feb. 15, 2022, the Commissioner will extend or rescind this designation. If the designation is not renewed, employers will no longer be required to implement and enforce their prevention plans. As discussed in a previous *SRZ Alert*, certain of the HERO Act's requirements will continue even when there is no designation by the Commissioner of Health. Employers, for example, will still need to routinely review and update their prevention plans as necessary, distribute their prevention plans to each of their employees, including newly hired employees, post their plans in a visible and prominent location within their work sites, and include the plans in their employee handbooks. The designation of COVID-19 under the HERO Act does not affect the HERO Act's workplace safety committee provision, which is currently in effect and discussed here.

Please contact *Mark E. Brossman, Ronald E. Richman, Max Garfield, Scott A. Gold, Donna K. Lazarus* or *Abdulrahman Alwattar* if you have any questions about these orders.

[1] Masks will continue to be required in public transit and transportation hubs, nursing homes, adult care facilities, correctional facilities, detention centers, homeless shelters, and domestic violence shelters.

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