



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

August 6, 2021

**To:** Superintendents/Presidents/Chancellors, Member Community College Districts

**From:** Jennifer Henry, Associate General Counsel *J.H.*

**Subject:** CDPH Increases its Masking Requirements for All Californians  
Memo No. 13-2021(CC)

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In response to the Center for Disease Control’s (“CDC”) July 27, 2021 updated masking recommendations, which generally recommend wearing a mask indoors in public areas,<sup>1</sup> and the surge in Delta variant cases, the California Department of Public Health (“CDPH”) issued updated “Guidance for the Use of Face Coverings” on July 28, 2021.<sup>2</sup> The primary updates were to require or recommend “universal” masking indoors statewide, regardless of vaccination status, and to reference new requirements for unvaccinated workers in high-risk settings, in the State Health Officer Order dated July 26, 2021.

The new requirements, for all Californians:

- Unvaccinated persons are **required** to wear masks in all indoor public settings and businesses, including restaurants, governing board meetings, and state and local government offices serving the public. In such places, the venue host has the option to:
  1. Allow individuals to self-attest to being vaccinated;
  2. Implement vaccine verification; or
  3. Require all individuals to wear masks, regardless of vaccination status.
- All individuals are **required** to wear masks (regardless of vaccination status) on public transit (including buses) and in transportation hubs; indoors in childcare settings; in cooling centers; and in healthcare settings.
- Fully vaccinated people are recommended to wear masks in other indoor public settings.
- Follow local health jurisdiction’s orders if they are more restrictive than this

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<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>.

<sup>2</sup> <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>.



guidance. For example, Bay Area counties jointly announced on August 2 that they are requiring face coverings to be worn, regardless of vaccination status, in all indoor public settings, venues, gatherings, and workplaces.<sup>3</sup>

CDPH updated its “Face Coverings Q&A” on July 28, 2021, which states:

**Does this guidance apply to colleges and universities?**

Yes, all unvaccinated students, staff and faculty are required to wear a mask in all indoor settings. The University of California and the California State University systems have chosen to require vaccinations for students and faculty on campus. Institutions of Higher Education may use the same options as businesses to verify that someone is vaccinated.<sup>4</sup>

In workplaces, employees are subject to the Cal/OSHA COVID-19 Emergency Temporary Standards, which generally require unvaccinated employees to wear face coverings at work when indoors or in vehicles with others.<sup>5</sup> In addition, employees in the health care and “congregate settings” (such as correctional facilities and homeless shelters), must wear masks and either confirm vaccination status or undergo weekly or bi-weekly testing.<sup>6</sup>

Exemptions: Children younger than two years old, persons with a medical condition that prevents them from wearing a mask, persons who are communicating with the hearing impaired, and persons for whom wearing a mask would create a work risk, as determined by workplace safety regulations, are exempt from the masking requirements.

The CDPH Guidance “COVID-19 Industry Guidance: Institutions of Higher Education” dated September 30, 2020 still bears the disclaimer that it is no longer in effect and has been replaced by the Cal/OSHA COVID-19 Emergency Temporary Standards referenced above, which only apply to employees and not to students.<sup>7</sup> However, the link to the same CDPH Guidance from the California Community Colleges Chancellor’s Office website has not been updated with this disclaimer.<sup>8</sup>

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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<sup>3</sup> <https://sonomacounty.ca.gov/CAO/Press-Releases/Officials-Urge-Immediate-Vaccination-Require-Face-Coverings-Indoors/>; <https://socoemergency.org/order-of-the-health-officer-of-the-county-of-sonoma-c19-25/> .

<sup>4</sup> <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Face-Coverings-QA.aspx> .

<sup>5</sup> <https://www.dir.ca.gov/oshsb/documents/Jun172021-COVID-19-Prevention-Emergency-apprvdtx-Readoption.pdf> ; See our June 25, 2021 Legal Update regarding Cal/OSHA Regulations; <https://sclscal.org/legal-update-memo-no-12-2021cc-cal-osh-guidance-harmonized-with-other-state-laws-orders-and-regulations-ccd/>.)

<sup>6</sup> State Public Health Officer Order of July 26, 2021: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Unvaccinated-Workers-In-High-Risk-Settings.aspx>.

<sup>7</sup> <https://files.covid19.ca.gov/pdf/guidance-higher-education--en.pdf>

<sup>8</sup> See link to “New State Guidance for Reopening Colleges and Universities” under “Guidance Memos” at <https://www.cccco.edu/About-Us/Chancellors-Office/Divisions/Communications-and-Marketing/Novel-Coronavirus/communications-to-colleges>.