



# Major businesses hit new bum with vaccine rules

BY ALEX GANGITANO - 05/19/21 06:00 AM EDT

4 SHARES

SHARE

TW



© Getty Images

Major companies are shedding their mask requirements for fully vaccinated employees, but with no clear policies on how to determine if a worker has received the COVID-19 vaccine.

Business groups have voiced support for vaccination requirements as a term of employment, despite the legal pitfalls that come with enforcement.

Companies now face the challenge of setting rules for workplace settings that may include vaccinated and unvaccinated employers working side by side.

Retail giants like Walmart and Target are using the honor system in letting vaccinated workers remove their masks.

In a memo to all U.S.-based associates, Walmart executives said employees need only answer “yes” to a vaccination question in a daily health assessment to be eligible to work without a mask.

“If you are not vaccinated, we expect you to answer ‘no’ and to continue to wear a face covering. Integrity is one of our core values, and we trust that associates will respect that principle when answering,” the memo said.

The new company policy came in response to guidance issued last week by the Centers for Disease Control and Prevention (CDC) saying fully

vaccinated people can remove their masks indoors.

According to the agency, 157 million people in the U.S. have received at least one dose of a COVID-19 vaccine, with 123 million of them fully vaccinated. But vaccination rates are uneven across the country.

Businesses that decide to enforce mask mandates for unvaccinated workers have some rights, experts say, but some might decide it's not worth a confrontation.

"The issue there is you're really on the honor system. You can ask to see the COVID vaccination card, that's completely within the employers' rights. Outside of that, you're taking the employees' words," said Rob Wilson, president of Employco USA and a human resources expert.

Some companies have offered perks for getting the vaccine, like cash bonuses, though most have stopped short of mandating employees get the vaccine.

Delta Air Lines announced last week that all new hires will be required to get vaccinated against COVID-19, with some exceptions, and it won't require current employees to be vaccinated.

Target on Monday said face coverings will continue to be strongly recommended for guests and team members who are not fully vaccinated. The company does not require employees to be vaccinated to come to work.

Many companies during the pandemic have asked workers to fill out a health screening before starting work, with questions like whether they've been exposed to COVID-19 or don't feel well. In many ways, that's laid the foundation for questionnaires like Walmart's that has employees say if they've been vaccinated.

"As an employee, there is generally some obligation through the employee handbook or elsewhere that you can't make misrepresentations to the employer, that's kind of a baseline," said Brian Dodge, president of the Retail Industry Leaders Association (RILA). "There are limitations to the kinds of questions employers can ask. Businesses are looking at ways to balance those considerations."

The AFL-CIO said unvaccinated workers should still be protected but did not specify its preferred method for an employer to verify an employee's vaccination status.

"Workplace mitigation measures (ventilation, distancing, occupancy, notification of exposures, etc.) should still be in place to prevent exposures and protect unvaccinated workers," an AFL-CIO spokesperson said in an email.

Wilson, of Employco USA, said legal issues will "absolutely" arise when some workers are allowed to take their masks off and others are required to keep them on.

"Do those employees then feel that they're being discriminated against or pressured? Out of 100 people, you have 70 people not wearing masks; 30 people, for whatever reason, didn't get vaccinated. What kind of pressure are you putting on them?" he said. "Someone's going to challenge that and say you're discriminating against me because you're making me wear a mask."

States also vary on their mask mandates, which stores and restaurants will have to follow. California has an indoor mask mandate in place until June 15, while Florida stopped fines and penalties for not adhering to any COVID-19 restrictions in September.

Some multistate businesses are keeping their mask mandates in place, a move that Anthony Fauci, the nation's top infectious diseases expert, said Tuesday is "perfectly reasonable and understandable." He also acknowledged that the CDC guidance poses a challenge for businesses because there's no way of knowing whether someone is vaccinated.

Dodge added that "the refined guidance last week does create a considerable amount of ambiguity and confusion right now for customers and employers, primarily around the risk of employers being enforcers."

RILA on Tuesday called for the National Governors Association and U.S. Conference of Mayors to reconsider state and local orders in the wake of federal guidance on masks. It also said that if localities choose to keep their mask requirements for unvaccinated Americans, the administration of these requirements should not be the responsibility of retail employees.

Another issue at play is that employers across industries are struggling to hire for open positions as the economy reopens. Major retailers are seeing a shortage of workers, with applications on the decline and millions of Americans still receiving unemployment checks.

"If you don't want to get vaccinated and you don't want to go to work, the system works for you right now," Wilson said.

But, when asked if requiring unvaccinated workers to still wear masks could deter people from applying to your company, Wilson said that's likely not the case if the company stops short of mandating the vaccine.

"I don't know if it's deterring ... I think a lot of companies have just said, 'We would like you to get vaccinated,' " he said.

**TAGS ANTHONY FAUCI**

SHARE

TWEET



**THE HILL 1625 K STREET, NW SUITE 900 WASHINGTON DC 20006 | 202-628-8500 TEL | 202-628-8503 FAX  
THE CONTENTS OF THIS SITE ARE ©2021 CAPITOL HILL PUBLISHING CORP., A SUBSIDIARY OF NEWS COMMUNICATIONS, INC.**