

What Should Businesses Do About The Recommendation To Wear Masks In Indoor Public Spaces Until Fully Vaccinated?

written by Tina Tsonis | September 28, 2021



B.C.'s Provincial Health Officer, Dr. Bonnie Henry,¹ and the Public Health Agency of Canada,² have recommended that individuals who are not fully vaccinated³ continue wearing masks in indoor public spaces.

At the same time, public authorities are providing little to no guidance on how or when businesses can continue mask requirements. They are also not providing any guidance on whether or how businesses can ask an individual about their vaccination status or otherwise be able to enforce the recommendations against those who are not fully vaccinated.

This is very confusing for businesses.

For the time being, most Canadians are still not fully vaccinated. While those who are vaccinated will want to enjoy the benefits of vaccine protection, those who are not (as well as some of those who are) may want the lower risk of transmission afforded by mandatory masking to continue. Given this, many businesses and employers are pondering whether a masking requirement for those who do not produce proof of vaccination is advisable.

Dr. Henry has recognized that, "masks may be required in many facilities and many stores, for example. On transit, in the short-term. We know that only 30 per cent of adults in B.C. have received two doses of vaccine. So as that goes up over the next few weeks, we may be seeing less people wearing masks. But right now, we still will expect most people to be wearing masks in those indoor settings when we're around other people."⁴ Dr. Henry's comments are a clear indicator that while mandatory masking under public provincial health laws has ended, businesses or employers may still require it. Further, even in the absence of a requirement to do so, individuals may still prefer to wear a mask.

Businesses and employers contemplating how to deal with masking going forward should tread carefully. The creation of policies that require proof of vaccination will probably not be compliant with privacy law in most cases. Dr. Henry addressed this: "The face coverings order under the *Emergency Programs Act* will be lifted, and ... there's no need for people to provide proof of vaccination." The Privacy Commissioners across Canada issued a joint statement about it. Read our blog on it [here](#).

The [new guidelines for Step 3](#) in B.C. around health and safety in the workplace do

not differentiate between vaccinated and unvaccinated individuals, and they do not require masks as part of a disease prevention plan except as required to manage communicable disease transmission in the workplace or as advised by Public Health.

While Step 3 provides flexibility for businesses and employers to choose, it may present challenges for customers and employees as organizations will move at different paces. From an occupational health and safety perspective, employers, particularly those that operate in an indoor public space, are likely to be hesitant in removing the mandatory masking requirement. Moving too quickly could be risky. Absent a higher full vaccination rate there remains a reasonable risk of workplace transmission(s) leading to workers' compensation claims, investigations, and potential closures. Similarly, a lack of consensus amongst workers on whether masking at the workplace should end could result in unsafe work refusals. It may be an option to have a "please wear a mask if you are not fully vaccinated" policy, however, such a policy would likely have to be voluntary as enforcement raises privacy, human rights and employment law risks.

In the absence of clearer guidance, businesses and the public will have to be kind and patient in the transition. As with other aspects of the pandemic, this stage is complex and confusing. We recognize these challenges for businesses and would be happy to discuss your unique circumstances. Please reach out to a member of our [Privacy & Data Management Group](#) or our [Labour, Employment & Human Rights Group](#) with any questions you may have.

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Footnotes

¹ <https://www.citynews1130.com/2021/06/29/bc-masks-covid-restrictions-stage-3/>

² <https://www.canada.ca/content/dam/phac-aspc/documents/services/diseases/2019-novel-coronavirus-infection/awareness-resources/vaccinated-against-covid-19-public-health-measures/vaccinated-against-covid-19-public-health-measures.pdf>

³ A fully vaccinated person is one that for at least 14 days has received the requisite dose(s) of a Health Canada approved COVID-19 vaccine.

⁴ <https://www.citynews1130.com/2021/06/29/bc-masks-covid-restrictions-stage-3/>