



## **Governors New Executive Order**

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The Governor issued a new [Executive Order](#) yesterday in response to the new CDC guidelines issued last week. The Executive order essentially mirrors the CDC guidance announcing that fully vaccinated persons do not need to wear masks except in limited circumstances; those persons who are not fully vaccinated must continue to comply with prior guidelines, including wearing masks, social distancing and limiting gatherings.

However, the Governor's Order requires all businesses to follow public health measures to protect their employees, customers and others who come into physical contact with their operations. This includes ensuring all employees who are not fully vaccinated continue to wear face coverings, social distance and frequently disinfect. In addition, those spaces where employees may gather, including locker rooms and lunchrooms, should provide for social distancing. If they do not, then employers should consider limiting capacity in these areas or require face coverings in the area. All businesses that interface with the public need to follow [DCEO guidance](#), which includes implementation of capacity limits, posting plans and signage to ensure that social distancing in shared spaces, such as at service counters, can be maintained and all visitors who are not fully vaccinated wear face coverings if a six foot social distance is not possible.

### **IRMA's Recommendation for the Workforce:**

Based on the guidance from the CDC and the current Executive Order, vaccinated employees no longer need to wear face coverings or social distance. Vaccinated persons may also elect to continue to mask due for personal reasons. However, nothing prevents businesses from undertaking stricter or additional public health measures. Both the CDC and Executive Order allow for businesses including municipalities to revise policies and practices if there is an increased infection rate or COVID-19 outbreak within your organization.

Given these new guidelines, it is important that members require employees to report their vaccination status. As we advised last [December](#) and again last week, vaccination information should be obtained, tracked, and maintained by HR in a confidential manner. Each employee who has not provided proof of vaccination to the employer should receive a confidential memo directing that they are required to comply with policies that require face coverings, social distancing and frequent disinfecting until they provide proof of vaccination. If remote work is possible for unvaccinated employees, it should be strongly encouraged. Additional measures, like employee screens, should still be practiced for all employees regardless of vaccination status. All of the IRMA Covid Czars should continue to be ready to engage [in contact tracing](#) if an outbreak occurs.

### **Circumstances where Vaccinated Employees must wear face coverings:**

The Governor's Order requires that all individuals, including those who are fully vaccinated, continue to wear face coverings in "healthcare settings" and "correctional facilities." The CDC refers to "[healthcare settings](#)" as "places where healthcare is delivered and includes, but is not limited to... vehicles where healthcare is delivered," which could be an ambulance. This also includes hospitals, nursing homes, and other care facilities. We also believe that a "correctional facility" could be construed as holding cells and booking rooms in police departments. It should

be noted that both the CDC and the Governor's Order require that all persons in these settings comply with PPE standards regardless of their vaccination status.

For these reasons, all employees, including those who are fully vaccinated, should wear face coverings when providing service in the healthcare setting or correctional facility setting. In other words, when first responders, including paramedics and police officers, are rendering patient care, they should be wearing face coverings and the appropriate PPE regardless of their vaccination status. Similarly, law enforcement employees should do the same when engaged in law enforcement activities that involve direct contact with the public.

### **IRMA's Recommendation for Public Visitors and Business Inquiries:**

We recommend that IRMA members maintain mask requirements in their facilities unless the member has established a process to verify that visitors are fully vaccinated in order to follow the new mask guidance. This is likely unmanageable for most members to check vaccination status, which is why we continue to strongly recommend masking policies for all indoor settings open to the public until capacity limits are lifted and/or the state reaches Phase 5. However, members may elect to allow unmasking for vaccinated persons and rely on the honor system. Members should revise signs and continue to follow DCEO guidelines as referenced above. We also recommend that all members maintain engineering controls like plexi-glass barriers, screening measures and hand sanitizing stations until capacity limits are lifted and/or the state reaches Phase 5. IRMA members should refer local business questions to the Governor's office and the new Executive Order, rather than providing advice and guidance to local businesses about operations.

### **What about the Exemptions?**

The Governor's Order provides two relevant exemptions for IRMA members.

First, all first responders, emergency management personnel, emergency dispatchers, law enforcement and employees working for, or support the emergency response are exempt from the order, "but encouraged to follow recommended public health measures." We do not recommend that IRMA members consider any unvaccinated employee to be exempt from the CDC guidelines and the Governor's directive that unvaccinated persons continue to wear face coverings, social distance and frequently disinfect.

It should be noted that the Governor's Executive Order does not change liability laws. While the emergency responder exemption would appear to allow all first responders, regardless of vaccination status, to ignore public health guidance, such ignorance would unnecessarily increase potential liability exposure for both general liability and workers compensation. If a municipality chooses to allow unvaccinated first responders to go maskless to a call and a resident is infected with COVID, there is a potential state law cause of action that would allege such a practice or policy is willful and wanton as it is contrary to sound public health policy and in conscious disregard for the safety of others. In addition to general liability, we are not confident that reliance on this exemption would be applicable in workers compensation claims since the Governor's Order does not amend the Rebuttable Presumption law.

The second exemption refers to "services provided by ... any municipal government services needed to ensure the continuing operation of the government agencies and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public." Similar to the emergency responder exemption, this exemption does not amend any statutes or change the common law. There is no explanation for why the Governor provided these exemptions, but we surmise these exemptions are provided in order to give the City of Chicago discretion and perhaps to afford local municipalities with local authority and control. However, the public health guidance is clear and should be followed.

IRMA recommends that members comply with the Governor's order, despite the exemptions.

**The Rebuttable Presumption Law:**

In light of the above discussion related to the Exemptions provided in the Governor's Order, members who require unvaccinated employees to continue to wear face coverings, social distance and engage in frequent disinfecting should be able to rebut the presumption if a claim is made. We recommend IRMA members require unvaccinated employees to do so and to revise applicable policies to reflect this mandate for unvaccinated employees.

**Anticipated Additional Guidance:**

We are waiting for OSHA and the EEOC to issue updated guidance soon and will keep IRMA members informed in this regard. We also recommend that IRMA members keep in touch with local public health officials and comply with whatever guidance is provided.