



ACCNJ LEGAL & INSURANCE UPDATE

What Does The CDC'S Mask Guidance For Fully Vaccinated People Mean For NJ Employers

Last week, the CDC updated [guidance for fully vaccinated people](#). Chief among the changes was the relaxation of masking and social distancing requirements in both indoor and outdoor settings. With respect to indoor settings, fully vaccinated people can be indoors without wearing masks or physical distancing so long as everyone is fully vaccinated. The relaxed indoor guidelines also apply if there is an unvaccinated person from a single household. However, multiple unvaccinated persons from multiple households will require everyone to wear a mask and social distance. With respect to outdoor settings, the new guidance allows fully vaccinated people to no longer wear a mask outdoors, except in certain crowded settings and venues with limited ability to physically distance.

The question becomes, what does this mean for your construction site or office? From a practical perspective, it's likely your workforce still has multiple unvaccinated persons from multiple households. In that case, you should still be following the stricter guidelines for masking and social distancing. Even if your workforce is fully vaccinated, you must remember New Jersey has its own workplace requirements. For example, Governor Murphy's [Executive Order 192](#) and [142](#) are still in effect. EO 142 established mitigation requirements specific to construction and EO 192 established minimum protocols applicable to all businesses that required all employees to wear a face covering while at work (both indoors and outdoors). EO 192 permits employees to remove face coverings when they are at workstations at least six feet apart or alone in a walled off space. Masks can also be removed when they would create an unsafe condition in which to operate equipment or execute a task. Until these workplace requirements are relaxed, employers should continue to follow the executive orders applicable to offices and construction sites in New Jersey. New Jersey's next wave of relaxed restrictions is expected on May 19 and it's possible the Murphy Administration will address masking requirements.

Finally, OSHA will also play a role. On April 26, 2021, OSHA sent emergency workplace safety rules to the Office of Management and Budget for review. The content of the emergency rules is unknown, as is the timeframe in which OMB will complete its review. When the review is complete, employers should be ready to quickly comply with new regulations on masks, social distancing and other safety measures.

NJ Supreme Court Holds Contractor Responsible For Medical Marijuana Costs

On April 13, the [New Jersey Supreme Court ruled](#) that a contractor must pay for an

employee's medical marijuana under New Jersey's workers' compensation law and that doing so will not violate federal law. The case involved M&K Construction and stemmed from an accident in 2001 involving an employee who suffered injuries when cement was dumped on him, resulting in a herniated disc and multiple surgeries. The employee was prescribed opioids and eventually became dependent. In 2016, a doctor prescribed medical marijuana to help wean the employee off opioids. The issue became whether the marijuana bill (roughly \$616 per month) was reimbursable by the employer.

M&K Construction argued the treatment was not covered because New Jersey's Compassionate Use Act, which legalized medical marijuana in 2010, does not require private health insurers or government medical assistance programs to cover the costs of medical marijuana. The Court was not persuaded and determined the statutory exception only applies to health insurers and government medical assistance programs. It does not apply to an employer's workers' compensation obligations.

M&K Construction also challenged whether the medical marijuana was "reasonable and necessary," which is a legal requirement for workers' compensation coverage. The Court held that medical marijuana can meet the reasonable and necessary standard if there is competent evidence. Mainly, one must show its ability to restore functions or relieve the effects of an injury. The Court felt that was accomplished in the case at hand.

Of additional significance, the Court addressed an important federal conflict that often pops up with marijuana. Notably, the Court held the Controlled Substances Act (which still lists marijuana as a Schedule I drug) does not prohibit an employer from covering these costs and an employer will not face criminal liability for doing so.

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