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What Does the End of the COVID-19 Public Health Emergency Mean for Your Workplace?

BY TIMOTHY P. VAN DYCK • MAY 15, 2023

The COVID-19 Public Health Emergency (PHE) issued by the U.S. Department of Health and Human Services (HHS) was rescinded effective May 11, 2023, and the National Emergency (NE) Declaration ended April 10, 2023. Massachusetts Governor Maura Healey repealed a COVID-19 Executive Order regarding certain government employees effective May 11, 2023, and on May 5, 2023, the Massachusetts Department of Public Health (DPH) issued new guidance on masking in health care settings. What do these developments mean for your workplace?

With the recission of the PHE, federal employees and contractors, head start educators, and CMS-certified facilities are no longer subject to COVID-19 vaccine requirements. As noted in the End of the COVID-19 Public Health Emergency Fact Sheet issued by the HHS, private insurance companies are no longer required to cover the costs of laboratory or over-the-counter COVID-19 testing without cost-sharing. However, the Biden Administration is encouraging private insurers to continue to do so voluntarily. Most private insurers are required to provide COVID-19 vaccinations when such services are provided by in-network (but not out-of-network) providers, as they are considered a preventive health service.

The lifting of the NE Declaration impacts certain employee benefit plan timeframes, including deadlines for special enrollment periods, election of COBRA continuation coverage, the payment of COBRA premiums, and the submission of health plan claims and appeals. These changes will go into effect July 10, 2023, (60 days after the lifting of the NE Declaration). FAQs issued by the U.S. Department of Labor provide additional guidance on both the lifting of the NE Declaration and the recission of the PHE.

Massachusetts Executive Order 595 (EO 595) and the Commonwealth's vaccine verification policy have been rescinded, effective May 11, 2023. As noted in the Revocation of Executive Order #595 FAQs, by this executive action, most new hires by the Commonwealth of Massachusetts are not required to provide proof of COVID-19 vaccination. Employees of certain hospitals and state-operated congregate care facilities are still subject to vaccine mandates (unless exempted), in accordance with state and/or federal regulations. Additionally, barring any site-specific requirements, employees of

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the Commonwealth are no longer required to mask in the workplace. In the FAQs, the Commonwealth indicates that employees who resigned in response to EO 595 will be contacted by the Commonwealth's Human Resources Division to determine their interest in reapplying for employment.

On May 5, 2023, the Massachusetts DPH, Bureau of Health Care Safety and Quality issued a memorandum to health care facilities noting that, effective May 11, 2023, the Commonwealth's universal mask mandates for hospitals and health care settings was being lifted. DPH did state, however, that health care facilities "are expected to develop and update their infection prevention and control policies" to prevent the transmission of respiratory illness (including, but not limited to, COVID-19 and influenza). Read the COVID-19 Public Health Guidance and Directives.

PRACTICE TIPS

With the end of these COVID-19 related orders, there are a number of steps that employers can—and should—take:

- Review employee handbooks and standalone policies to assess whether COVID-19 related policies and procedures (including testing and vaccine requirements for employees and visitors, leave policies, etc.) need to be revised or eliminated.
- Anticipate that employees who separated in connection with COVID-19 requirements may reapply for positions within your organization. Evaluate such applicants on a case-by-case basis, consistent with company policies regarding re-hires.
- Continue to comply with the COVID-19 recordkeeping requirements of the U.S. Occupational Safety and Health Administration (OSHA). As of the date of this alert, OSHA has indicated that updated guidance is forthcoming.
- Review health insurance plans and consider voluntarily covering COVID-19 testing and/or test kits without cost-sharing.
- Be mindful of the impact to employee benefit plan deadlines and coordinate with plan vendors regarding the language of plan documents and summary plan descriptions and be prepared to communicate with plan participants.
- Be mindful of state and local laws to the extent that they may not be impacted by the withdrawal of some of the mandates.

This alert aims to provide an overview of the end of various COVID-19 related orders. Employers with questions should consult their Bowditch attorney.

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