

In Brief

Masks, No Masks and Other Things: *You've Got Questions, We've Got Answers*

Governor Pritzker's [announcement](#) yesterday that Illinois has aligned its mask guidance with the Centers for Disease Control and Prevention (CDC) has raised many questions, including what authority controls (federal, state, local), what phase Illinois is in, and whether Illinois is operating under a disaster proclamation. This publication will answer some of the more pressing questions for the educational, municipal, and private sector entities.

1. *Is Illinois Operating Under A Gubernatorial Disaster Proclamation?*

Yes – the 16th disaster proclamation was issued on [April 30, 2021](#) and remains in effect for a period of 30 days for all regions in Illinois. We expect that the Governor's Office will issue another disaster proclamation on May 29, 2021, as Illinois will still be in the Bridge Phase of the Restore Illinois Plan. Additional disaster proclamations may follow even when Illinois enters Phase 5.

2. *Has Illinois Entered the Bridge Phase of the Restore Illinois Plan?*

Yes, pursuant to [Executive Order 2021-10](#) (COVID-19 Executive Order No. 79) issued on May 17, 2021, Illinois has entered the [Bridge Phase](#). "The intent of the Executive Order is to safely, and in a manner consistent with CDC guidance, expand activities that were limited during prior mitigation Phases of the State's Response to the COVID-19 pandemic." The Governor's Office has indicated that Illinois may enter Phase 5 as early as June 5, 2021. Executive Order 2021-10 also addresses donning of a mask on and after May 17th.

Note that like all the Governor's Executive Orders, Executive Order 2021-10 does not affect services provided by the State or any municipal, township, county, subdivision, or agency of government need to ensure the continuing operation of the government agencies or to provide for or support the health, safety, and welfare of the public.

3. *Can Fully Vaccinated Individuals Stop Wearing a Mask in Illinois?*

That depends. In accordance with CDC guidance, fully vaccinated individuals are still required to wear a face covering (1) on planes, buses, trains, and other forms of public transportation and in transportation hubs such as airports and train and bus stations; (2) in congregate facilities such as correctional facilities and homeless shelters; (3) in healthcare settings; and (4) daycare providers.

Also, in accordance with CDC guidance, the Illinois State Board of Education and the Illinois Department of Public Health still require face coverings in K-12 schools for all individuals (vaccinated or unvaccinated). While the CDC has indicated that it plans to update its guidance for K-12 schools in the coming weeks, *the face covering requirement will not change for the current (2020-2021) school year.* K-12 schools should continue to refer to the [IDPH FAQ for Schools](#).

While Executive Order 2021-10 does not specifically mention higher education institutions, as of April 27, 2021, the CDC still recommends use of face coverings among students, faculty, and staff on campus. In addition, the ICCB's July 28, 2020 [Guidance for the Return to Campus for Illinois Community Colleges in Response to the COVID-19 Pandemic](#), which only addresses instruction through Phase 4, states that "in-person instruction may resume, provided appropriate safety protocols are in place and institutions do the following, including...provide employees with appropriate face coverings and require students to wear appropriate face coverings...". For now, and pending further guidance from the CDC and ICCB, we recommend that higher education institutions continue to require face coverings on campus.

Finally, local governmental bodies and individual businesses may impose greater restrictions than the federal and state government. This means, for example, that a county, city, township, employer, big box store or mom and pop shop can continue to require face coverings.

Other than as noted above, fully vaccinated individuals do not need to wear face coverings or adhere to social distancing.

4. What Does it Mean to be "Fully Vaccinated"?

Individuals are considered fully vaccinated 2 weeks after their second dose of the vaccine, in a 2-dose series (Pfizer and Moderna), or 2 weeks after a single dose vaccine (Johnson & Johnson).

5. What Else Can Fully Vaccinated People Do?

According to the CDC, fully vaccinated individuals may also: (1) resume domestic travel and refrain from testing before/after travel and self-quarantine after travel; (2) refrain from testing before leaving the United States for international travel (unless required by the destination) and refrain from self-quarantine after arriving back in the United States; (3) refrain from testing following a known exposure to a COVID-19 case, if asymptomatic, in most cases; (4) refrain from quarantine following a known exposure to a COVID-19 case if asymptomatic; and (5) refrain from routine screening testing, if feasible.

For all the above, entities should defer to their local health department's designated protocols, which may differ from the CDC and state protocols.

6. Who Will Check that Mask-less Individuals are Fully Vaccinated?

Governor Pritzker describes this as the "honor system" for now. However, Executive Order 2021-10 states that all business, non-profits and other organizations must ensure that: (1) employees who are not fully vaccinated practice social distancing and wear face coverings; (2) gathering spaces for employees, such as locker rooms and lunchrooms, allow for social distancing; and (3) all visitors who are not fully vaccinated can practice social distancing and encourage visitors to wear face coverings. In addition, they must continue to take all necessary steps to protect employees and customers by ensuring that any return-to-work plans adhere to all applicable public health guidance. This language suggests that employers and other businesses should do more than just follow the "honor system" when it comes to vaccination status. This may include proof of receipt of a COVID-19 vaccine for employees, students, enrolled participants, clients and visitors (if feasible), and/or appropriate policies, notices, signage, and screening forms, etc.

Notably, the Equal Employment Opportunity Commission (EEOC) updated guidance confirms that "[s]imply requesting proof of receipt of a COVID-19 vaccination is not likely to elicit information

about a disability and, therefore, is not a disability-related inquiry.” As such, employers may ask employees to provide proof of receipt of a COVID-19 vaccination for any *applicable* relaxed COVID-19 protocols in the workplace (i.e., no mask requirement, no quarantine following close contact with a COVID-19 case, no quarantine following travel, etc.).

7. Can a Public Body Continue to Hold Remote Meetings at this Time?

Yes – provided a public-health related disaster proclamation issued by the Governor or IDPH is in place for an area covered by the public body and the public body complies with the requirements of Open Meetings Act (OMA) Section 7(e) (5 ILCS 120/7(e)), it may continue to hold meetings without a quorum of board members physically present at the meeting location. See OMA Section 7(e) requirements [here](#).¹

Despite the expansion of activities and gatherings under Phase 4 and the Bridge Phase, the Governor still finds in the latest disaster proclamation that the public health concerns render in-person attendance of more than 10 people at the regular meeting location not feasible. As such, this same rationale can be cited by other public bodies as the reason to conduct remote meetings under OMA Section 7(e).

Notwithstanding the above, many public bodies have recently returned or are contemplating return to in-person meetings with more than 10 people in attendance. We believe that a public body retains the discretion to convene an in-person meeting as meetings of a public body are necessary to ensure the continuing operation of the public body. In-person meetings should comply with social distancing requirements and other guidance in effect on the date of the meeting.

8. Will K-12 Schools be Required to Resume Fully In-Person Learning for 2021-2022 School Year?

Per a *draft* [Resolution Supporting In-Person Learning](#) released by ISBE on May 17, 2021, schools may wish to begin planning to resume fully in-person learning for all student attendance days in the 2021-2022 school year. If the resolution is passed, this will be a requirement for the 2021-2022 school year, with the only exception being that remote instruction be made available for students who are not eligible for a COVID-19 vaccine and are under a quarantine order by a local health department or the Illinois Department of Public Health.

¹ When holding a remote meeting, the public body must still comply with all other applicable provisions of the OMA (i.e., prepare and maintain minutes of open and closed session, maintain a verbatim recording of closed session, allow for public comment, etc.).
