

## Biden's new Covid workplace rules set to collide with reopenings

BY SUSANNAH LUTHI, REBECCA RAINEY | 03/11/2021 06:49 PM EST



Face masks are stacked before getting technical information printed on them at a factory. | Fernando Llano/AP Photo

The Biden administration is expected to issue new temporary rules next week to curb Covid-19 spread in the workplace, setting a collision course with the growing number of states loosening restrictions on businesses to aid their reopening.

The mandates — which would add enforcement powers to guidelines that are now just optional — threaten to further roil the politics around President Joe Biden's cautious reopening strategy and ramp up tensions between the administration and the business community, particularly with industries hard-hit by closures like restaurants and entertainment and hospitality venues.

Businesses warn the policy could create confusion and bring hefty new costs for employers, while worker advocates say the rules are needed to protect the largely unvaccinated labor force.

“Retailers are concerned about the [possibility] of ... a rigid, one-size-fits-all emergency regulation, particularly during a global pandemic that has already imposed substantial economic hardship,” the National Retail Federation said in a letter to House labor committee leaders Thursday.

Kevin Kuhlman, a lobbyist for the National Federation of Independent Business, added that the dichotomy could be seen as “the states are opening up while the federal government is putting more restrictions on — a complete reversal from last spring.”

The rules in question will come from the federal Occupational Safety and Health Administration in the form of a six-month emergency temporary coronavirus standard that unions and Democrats have sought since the pandemic began. Biden, in a January executive order, gave the agency a March 15 deadline to decide whether mandatory safety rules were necessary to protect workers from Covid-19.

The agency “has been working diligently, as appropriate, to consider what standards may be necessary, and is taking the time to get this right,” a Department of Labor spokesperson said in a statement.

OSHA hasn’t issued an emergency temporary standard since 1983.

Businesses likely to face the biggest disruptions are in deep-red states like Texas and Mississippi, where the governors have jettisoned mask mandates and are following the lead of Florida, where rules have always been loose — although other GOP-led states like West Virginia and Ohio are keeping their mask requirements in place. But New York and some other blue states are also starting to widely relax rules.

The emergency regulation is expected to mandate at least the CDC and OSHA guidelines — which recommend that workers wear masks and maintain six feet of distance, even after vaccination — as well as other specific steps employers must take to protect their workers from coronavirus exposure.

Democrats also dedicated \$75 million for OSHA in their stimulus that Biden signed into law on Thursday — a provision that observers expect will boost auditing and enforcement.

Currently, 16 states have no mask mandates in place, and the CDC and OSHA’s guidelines are now optional recommendations. But, if OSHA were to issue a Covid-19 specific standard, it would empower the agency to more easily levy fines against employers that don’t follow the CDC’s safety precautions.

“Without an [emergency temporary standard], it is very difficult for OSHA to require employers to implement preventive measures,” David Michaels, the former OSHA chief during the Obama administration, told lawmakers on Thursday. “If workplace exposures are not controlled, more workers — along with members of their families and communities — will be infected, causing more illness and death, and threatening the ability of the nation to resume economic growth.”

Additional mandates beyond the current recommendations may be in the offing: At the hearing where Michaels appeared, health and safety experts urged the CDC to recognize in guidance that the virus can be spread through aerosols, as opposed to larger droplets.

Pascaline Muhindura, a registered nurse affiliated with the National Nurses United union, advocated for this during the hearing Thursday, telling lawmakers that the hospital where she worked failed to provide her and her coworkers with appropriate protective equipment, which “led to many Covid-19 infections and ultimately the death of one of my coworkers.”

This push could lay the groundwork for government requirements for more workers — from health care to transportation to factories — to wear higher-grade protective gear like N95 masks and overhauling their ventilation systems.

“I think that’s gonna be the big concern,” said Larry Lynch, senior vice president of science and industry at the National Restaurant Association. “Cost there is going to be a significant factor.”

The new administration strategy represents an almost direct reversal of the state and federal relationship under former President Donald Trump; companies and governors alike implored the Trump administration for uniform policies as the pandemic spiraled out of control.

But, the tighter standards may be coming too late for buy-in among employers or even the general public, as states like New York, Maryland and Ohio move swiftly to reopen now that vaccinations are well underway and beleaguered businesses are begging to get back to normal.

The rules would also be enforceable into September, when Biden’s coronavirus adviser, Anthony Fauci, predicted the nation may be back to pre-pandemic normal.

Still, public health experts say they’re important, regardless of timing.

“It would have been better if it had come half a year ago,” said Lawrence Gostin, a public health professor at Georgetown Law, who told POLITICO that the coming regulations are “ethically essential.” “We could have saved tens of thousands of lives of vulnerable workers, but even now there are many lives we can save through sound regulation of workplace environments”

In Maryland, GOP Gov. Larry Hogan lifted all restrictions on dining, bars and gyms, effective on Thursday. In New York, Democratic Gov. Andrew Cuomo said that New York City restaurants — which have tighter limits than those in the rest of the state — can start operating at half capacity next week to coincide with New Jersey’s similar relaxations. He has also cleared arts and events venues to reopen at one-third capacity in early April, following last week’s soft relaunch for movie theaters and billiard halls.

Moving in the same direction are Connecticut, which will lift all restrictions next week, and Massachusetts, which is relaxing all capacity limits at restaurants, reopening concert halls, theaters and indoor rec centers at half-capacity, and expanding the numbers allowed in gyms and offices. Even California, where a strict infection rate-tiering system decides which counties can relax their rules for indoor dining and the like, has eased up restrictions on outdoor venues like baseball stadiums and theme parks.

Meanwhile the CDC is maintaining strict caution about post-vaccine activity — releasing guidance just this week recommending that people continue to avoid crowds after the shot and restrict unmasked mingling to the home. The agency said studies are still underway to understand “a small risk” that people once vaccinated could still contract mild Covid-19 and potentially pass it along to those who aren’t immunized yet.

The mismatch between federal recommendations and state rules has some business groups taking a cautious approach as well. The National Restaurant Association says it’s not quite ready to roll back its recommendations on masks.

“As we look across the spectrum of the U.S. and not really knowing exactly when things are going to change state by state, we’re still going to recommend that restaurants require face masks for employees and require them for guests except for the guests who are eating,” said Lynch of the NRA.

Businesses are also in a bind on the vaccine front, as many employees who interact with customers still don’t qualify for early vaccines unless they have a special health condition. Since less than 10 percent of Americans are fully vaccinated, policies to create virus-free atmospheres — like vaccine mandates for employees or vaccine “passports” for customers — have only reached the conceptual stages. More widespread vaccinations may make these ideas more practical, but lawyers caution that they could pose legal landmines.

“There’s a lot of frustration,” said Andrew Rigie, executive director of the New York City Hospitality Alliance representing the city’s restaurants, bars and nightlife venues — which have seen some of the strictest rules in the nation. “The government mandated that we shut down and severely limit operations, and now we need the same government to provide adequate support to survive. But we haven’t got that — we’ve gotten different information, unclear information and misinformation.”

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