

## Conn. Employers' Attys Face Queries On Masks, Vax Rules

By **Sameer Rao**

Law360 (May 21, 2021, 4:57 PM EDT) -- Connecticut's recent easing of COVID-19-related rules on masking and business protocols was welcome news for many, but it has many local employers wondering what they actually should tell their staffs about returning to the office.

Their concerns have inevitably been routed to the employment attorneys who represent them. Domenico "Nick" Zaino, who co-leads Carmody Torrance Sandak & Hennessey LLP's business services practice group, said that numerous clients reached out to him soon after the state lifted mask mandates for fully vaccinated people along with other restrictions on Wednesday.

"There are emails in my inbox right now, and there are phone calls that I've already returned on questions related to Connecticut's easing, specifically, of the mask restriction," the Waterbury-based attorney told Law360 Pulse on Thursday.

Gov. Ned Lamont issued an executive order Thursday that amended Tuesday's earlier order and authorized the state public health commissioner to designate which locations require continued mask mandates.

Connecticut, like many states, updated its guidelines in concert with new recommendations by the federal Centers for Disease Control and Prevention on May 13. The CDC's data shows that just over 60% of Connecticut residents have received at least one vaccine dose as of Wednesday.

Here, Law360 Pulse highlights what Zaino and three other local management- and business-side attorneys said are the main questions and concerns that their clients across industries still have.



Domenico "Nick" Zaino

Carmody Torrance Sandak & Hennessey LLP

Waterbury, Conn.

Zaino noted that his clients are principally concerned about how to implement local and national directives requiring nonvaccinated employees to wear masks while not requiring fully vaccinated workers to do the same. He said that they also wonder whether they should have employees prove their vaccination status or rely on an "honor system."

"There are some employers who have opted to still require employees to wear a mask, at least for a little bit longer," Zaino said. "I think the CDC sort of provided little advance notice that they were going to drop the recommendation that folks wear a mask in the workplace, and so it caught some businesses, I think, kind of off guard. And they weren't quite ready to drop the mask requirement altogether. So they're taking more of a wait-and-see [approach by] continuing to require their employees to wear a mask."

Zaino added that the frequently changing requirements make it difficult for many businesses to give their employees firm instructions about returning to in-person work. Each employer has different considerations, especially when some industries like manufacturing and health care cannot conduct all their work remotely, which the attorney said arises "a lot with respect to mandating the vaccine."

"I think they are more seriously considering mandating vaccines where individuals need to perform work on-site, especially if the workplace is more concentrated," he explained, citing examples like educational institutions and medical facilities.

Overall, he said that managers who are flexible and regularly communicative with employees "have done a good job" handling the pandemic, while those who aren't typically face more pushback from workers.

Zaino mentioned that his own firm, which has five offices throughout Connecticut, has had workers come in on a rotating basis where "half the employees come in on one day, and the other half are scheduled to come in the alternate day" for nearly a year.

"We intend to continue to do that until ... July 6," he said. "Then we intend to return to 100% in the office."



Sarah R. Skubas

Jackson Lewis PC

Hartford, Conn.

Skubas, a principal in Jackson Lewis' Connecticut office, said that both her public and private industry clients struggle with questions about enforcing what she called "a patchwork of laws," both state and federal, that guide pandemic protocol.

"There are still questions for employers surrounding the workplace standard on enforcement, meaning: Do employers need to ask for vaccination status? Do they not need to? What's the standard in order to meet this type of language, at least in Connecticut, from [the Department of Public Health] that suggests there should be some monitoring and enforcement?" she told Law360 Pulse on Friday.

Part of Skubas' practice focuses on labor relations, and she pointed out that many employers must take "union considerations" into account when making any decision that could impact unionized workers. She cited mask mandates as an example.

"Not everyone is comfortable returning to the office, especially with an unmasking policy or a policy that permits individuals who are vaccinated to unmask in the workplace inside," she said. "It may deter employees from returning to the office. There's a real employee relations component ... There

are also discussions about ensuring there's no stigmatization of the unvaccinated individuals because, certainly, [they] may fall within various protected status groups."

Although Connecticut has a higher percentage of people with at least one vaccine dose than most states, vaccination status issues may still impact workplaces, Skubas noted.

"Maybe someone's unvaccinated because of a medical reason or other protected status," she said. "There are also discussions about health equity and access to vaccines, depending on the group. ... Those are complicated discussions, but they're important discussions to have."

Skubas declined to discuss return-to-office policies at Jackson Lewis, which operates throughout the continental U.S. and Puerto Rico.



Andrew L. Houlding

Updike Kelly & Spellacy PC

New Haven, Conn.

The concerns that Houlding, a principal in Updike Kelly's New Haven office, hears from clients largely revolve around what they can actually make their employees do.

"Can we really require people to get vaccinated? Can we now require those who are not vaccinated to wear their masks? Can we require everybody to get back to the office? Do we want to continue to allow people to work remotely?" he recounted to Law360 Pulse on Thursday. Houlding added that the remote work question, in particular, has been complicated by over a year's worth of evidence that a lot of business can be done virtually.

How clients have handled some of the virus-related policy concerns has varied, in part by their particular business needs and in part by their employee vaccination status, Houlding said. For instance, a "large employer in the hospitality industry" has allowed employees who can prove their

vaccination status to stop wearing masks.

"Then they can get, visually, something on their ID badge that would offer support or backup for their maskless appearance," he said. With the business estimating that about 70% of employees have been vaccinated, Houlding said that this practice may implicitly pressure the remaining 30% to obtain vaccinations.

As co-chair of Connecticut Bar Association's Indian law section, Houlding boasts unique insight into how Connecticut's Indigenous tribes — some of which operate famous casinos — have handled the pandemic. For instance, the Mohegan Tribe opened vaccination clinics on its reservation for both employees and patrons of the Mohegan Sun Casino and Resort.

"I think the tribal employers have a greater latitude in terms of, they're not required to comply with state employment laws, but they're extremely attentive to the standards that would be applicable outside the reservation," he said. "I think they probably, in general, go beyond what nontribal employers might do."

Houlding said that his office has been very sparsely populated during the pandemic. Now, he said, there is "mask freedom" for vaccinated staffers in New Haven.



Patricia E. Reilly

Murtha Cullina LLP

New Haven, Conn.

As chair of her management-side firm's labor and employment practice group, Reilly said that the governor's latest executive order places disproportionate onus on employers to find out whether people are vaccinated. These businesses, she said, do not know whether to use an honor system, continue having everybody mask up or have employees provide vaccination evidence before they can unmask. Reilly said that such ambiguity can foment issues between workers.

"Think of the potential employee conflict with: I'm vaccinated [and] not wearing a mask. The person in the cubicle next to me is wearing a mask. Might I, as an employee, say, 'Gee, why aren't you vaccinated?'" she said to Law360 Pulse on Friday. "I just see a lot of potential tension created among co-workers with this masked-versus-maskless situation."

Reilly added, however, that she "can understand why employers don't want to burden vaccinated people with masks."

"The whole point is they don't have to wear masks under Connecticut law," she said. "So those are the kinds of considerations that I'm discussing with my clients."

Reilly added that some employers, for whom the pandemic offered more latitude to collect employees' health data, can issue anonymous surveys to "assess risk" for employees. But even such surveys can encounter pushback or avoidance, she said. How an employer handles acquiring this information depends on its own workplace culture, size and other individual factors.

Her own firm plans to fully open its three Connecticut offices on June 14 and its Boston location on Aug. 22, she said.

"The bigger question, right now, for my office, is: What are we going to do about the mask mandate?" she said. "So we have to go through that whole analysis to figure out what we're going to do."

--Additional reporting by Kevin Stawicki. Editing by Jill Coffey.

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