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Update on earlier mask-wearing guidance from B.C.'s Human Rights Commissioner

The earlier guidance document, [A human rights approach to mask-wearing during the COVID-19 pandemic](#), can be found via: bchumanrights.ca/mask

British Columbia moved into Step 3 of its [COVID-19 Restart Plan](#) on July 1st, 2021. In this new phase, expected to last until early September, the [mask mandate order](#) has been lifted.¹ However, the Provincial Health Officer has offered additional guidance indicating “masks are [recommended in indoor public settings for all people 12 and older who are not yet fully vaccinated](#).”²

Mask-wearing to protect those at risk

Throughout the pandemic, my Office has evaluated [COVID-19 policies through a human rights lens](#) and advocated for the continued protection of marginalized and vulnerable populations. Mask-wearing has been an important way for us to do this as it protects others from transmission, in addition to providing a layer of protection for ourselves. Thankfully, increasing vaccination rates have led to a [substantial drop in COVID-19 transmission](#), lower hospitalization rates and fewer deaths in our province.

Unfortunately, some people in our community still face an elevated risk of COVID-19 infection, even when vaccinated. This includes, for example, seniors, people who are immunocompromised and front-line workers. In some cases this could lead to serious illness. In others it could cause difficult disruptions to employment or caregiving responsibilities when someone is required to quarantine. Young children are not currently eligible for the vaccine and parents and caregivers of young children—especially those who are particularly medically vulnerable—may be extra cautious about

¹ Regional or updated orders may, however, be introduced and should be followed where applicable.

² BC's Office of the Human Rights Commissioner has also published [guidance related to proof-of-vaccination policies](#).

transmission given their children's ongoing risk. Many others are waiting for their second shot or for their immunity to increase in the two weeks following their vaccination.

As detailed in my broader [proof-of-vaccination guidance document](#), there are also systemic reasons individuals cannot or have not been immunized against COVID-19. They too remain vulnerable to transmission and could benefit from the added layer of protection afforded by mask-wearing.

In light of this, I encourage everyone to remain mindful of the disproportionate risk faced by the most vulnerable members of our communities and to continue to take precautions. This could include wearing masks in certain settings even though it is no longer mandated.

Mask-wearing exemptions and accommodations

Throughout Step 3 some businesses, employers and service providers will request that people continue to wear masks in public indoor spaces. They may be entitled to do so, but they must also accommodate those who cannot wear a mask on the basis of a protected ground under B.C.'s [Human Rights Code](#).

For example, mask policies should not apply—or should apply differently—to people with a chronic health condition or a disability that inhibits their ability to wear a mask, such as being unable to remove a mask without assistance.

If someone identifies a reason they are unable to wear a mask that is based on a protected ground under B.C.'s *Human Rights Code* (such as disability or medical condition), duty bearers—that is, those who have a legal obligation or responsibility to respect, protect and fulfil human rights, including employers, housing providers and other service providers—should accommodate their needs to the greatest extent possible. For shorter-term interactions or where accommodations are relatively easy to implement, duty-bearers should not require medical information to do so. If it is necessary to request medical information, it should only be sought to the extent necessary to determine the limitations and restrictions an individual has in relation to mask-wearing and how they can be accommodated.

Before refusing service or imposing consequences on an employee who cannot wear a mask, duty bearers should first work with the individual to come up with an accommodation that respects their human rights as well as addresses actual transmission risks in their setting. Keeping up to date with information and recommendations from [public health officials](#) and [WorkSafeBC](#) can help with assessing these risks.

This duty to accommodate does not apply if someone is able to wear a mask and to get vaccinated but has chosen not to as a matter of personal preference.

Collective responsibility

While many of us are beginning to feel hopeful about the COVID-19 situation in British Columbia, the global pandemic is not over. COVID-19 vaccines have had a significant impact on infection rates



in the province, but we are still waiting for additional clinical evidence about the risk of secondary transmission from vaccinated individuals³ and tracking the emergence of variants of concerns. As we navigate this interim period of careful optimism, I suggest we centre human rights and side with caution to keep each other safe.

I encourage individuals and organizations to take precautions based on the most current advice from public health officials and seek legal advice if necessary. For up-to-date information on COVID-19 in B.C., please visit the [BC Centre for Disease Control website](#).

³ See, for example, [Public Health Ontario's recent evidence brief](#) on the state of vaccine research as it relates to secondary transmission risks.

