1. As a business/employer, can I still require my employees and/or customers to wear a mask after the Governor drops the mask mandate?
   a. Yes, and you likely should.
   c. These guidelines include continuing to wear masks in public spaces, including the workplace.
   d. The CDC guidance also says that employees should continue to follow the protocols of their individual employers.
   e. CDC guidelines still include social distancing, wearing masks (even when social distancing), separating sick employees, disinfecting properly, informing employees of close contact to an infected employee, correct quarantine procedures, and providing PPE for your employees.
   f. Note that vaccinated employees no longer need to quarantine if they are not experiencing symptoms.
   g. Additionally, new OSHA workplace guidance gives many suggestions, many of them mirroring the CDC’s guidance. https://www.osha.gov/coronavirus/safework
   h. The new OSHA guidance emphasizes the use of masks and recommends that employers provide all workers with face coverings.
   i. The OSHA guidance is advisory in nature but comes with a warning that employers have a general duty to keep their workplace free from recognized harms that cause death or serious physical harm. The guidance aims to abate the risk of these harms.

2. What if an employee refuses to wear a mask citing Constitutional grounds, no directive in place, disability, etc.?
   a. Employers generally may require employees to wear masks while at the workplace even if there is no state mandate.
   b. If an employee claims a medical condition or disability, the employer should engage in the interactive process to determine if there is a reasonable accommodation under the ADA. The most common accommodations including working from home, moving the employee to a location where he/she does not interact with other individuals, or offering wearing a face shield.
3. **What are the legal ramifications of NOT requiring masks?**
   a. Importantly, in order to receive immunity under the Governor’s AR Executive Order, an employer must follow CDC and OSHA guidelines. Thus, not requiring masks may strip you of immunity.
   b. Not requiring masks may make you susceptible to an OSHA investigation
      1. The OSHA General Duty Clause requires employers to provide their workers with a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm. COVID-19 and risk of exposure to COVID-19 are considered recognized hazards. An employer could be subject to an OSHA investigation if accused of violating this general duty.
   c. Not requiring masks may make you liable for unemployment claims
      1. The Arkansas Court of Appeals recently ruled that quitting a job where the employer failed to undertake COVID-related precautions was not considered unreasonable. Thus, employees may be entitled to unemployment benefits if they quit because of the risk of exposure to COVID-19 at the workplace. Keener v. Dir., Dep’t of Workforce Servs., 2021 Ark. App. 88 (2021).
      2. Additionally, on February 25, 2021, the U.S. Department of Labor released guidance that expands workers’ eligibility for federal unemployment insurance. This means that workers will be eligible for Pandemic Unemployment Assistance if their regular unemployment benefits were denied because the employee refused to work or accept an offer of work at a worksite because they were not in compliance with coronavirus health and safety standards. In some cases, workers may be retroactively paid from the beginning of the PUA program.
   d. If employees are operating under a collective bargaining agreement, there may be a clause that could be triggered if the union believes they are working unsafely.

4. **If all employees have been vaccinated, do they have to wear a mask?**
   a. As an initial matter, we will not be in a place where all employees are vaccinated any time soon.
   b. The current CDC guidance requires vaccinated individuals to wear masks in public places, including the workplace. This may change as vaccines become more common place, but this is the guidance today.

5. **If the statewide mask ordinance goes away, are local ordinances still in effect and have to be followed?**
   a. The most recent indication from the Governor’s March 23, 2021 press conference is that the mask mandate will be lifted statewide at the end of March, and cities and localities will not be permitted to implement their own mask mandates.
   b. Businesses, however, may institute or maintain a mask requirement for employees and customers while on their property. As discussed above, we encourage businesses to maintain a mask requirement consistent with current CDC and OSHA guidance to limit any potential liability.
   c. We expect more guidance from the State on the lifting of the mask mandate before the end of the month.

6. **Any recommended signage for businesses that will still require masks?**
   a. Signage that communicates that masks are required for entry may help combat any claims of discrimination or arbitrary enforcement. Signage should be visible at each entrance, and ideally, readable from a distance of several feet to help prevent congregating at entrances.