LEGAL UPDATES

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Best Practices for Businesses Implementing Mask Requirements

Service

Labor & Employment

Professionals

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In late February and early March 2020, public health authorities recommended against requiring the general public to wear masks to prevent the spread of COVID-19. That initial directive may have been based on a lack of knowledge about viral transmission rates and recognition that the supply of protective face masks and respirators was inadequate, with not enough available for healthcare providers and the general public during the pandemic. Over time, public health officials have realized that the directive was misguided and now the Centers for Disease Control and Prevention (CDC) recommends that individuals wear masks in public and at the workplace to control and reduce transmission of SARS-CoV-2, the virus that causes COVID-19.

The CDC reports that the virus is spread between people who are in close contact, currently defined as within 6 feet of each other, via respiratory droplets expelled from an infected person that "land in the mouths or noses of people" nearby and travel to the lungs. Epidemiologists agree that viral transmission is dependent on the viral dose and the duration of exposure. A July 29, 2020 report by Johns Hopkins University found that despite the decline in COVID-19 cases in May 2020, cases in many states are resurging with the "number of hospitalizations and deaths meeting or exceeding the numbers seen in New York in March and April."

To reduce exposure to viral dose caused by respiratory droplets expelled by individuals, the CDC recommends the use of face coverings or masks by the public – including workers and customers – to reduce transmission of the virus, especially if there is "significant community transmission." As cases accelerate around the country, more state and local governments have begun to issue mask mandates.

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The evolving government recommendations, the novelty of the virus and the lack of uniformity among states in mandating masks have caused uncertainty about masks and difficulties with enforcement. Employers, which find themselves on the front lines of implementing mask mandates as a control measure to protect the health and well-being of their employees and community, have experienced conflicts in the workplace resulting in violence, threats and lawsuits.

In an effort to provide uniform information to the most frequently asked questions raised by employers about wearing masks in the workplace, our attorneys have developed the following Q&A as guidance for employers that also can be shared with employees.

1. What is the difference among respirators, surgical masks, and non-surgical masks or face coverings?

Respirators, surgical masks, and non-surgical masks or face coverings refer to different types of facial barriers used to prevent the spread of infection. This Alert will designate respirators and surgical masks as such; all other "masks" will indicate non-surgical masks and face coverings.

Respirators are classified as personal protective equipment (PPE) and designed to protect users from becoming exposed to hazardous airborne particles. N95 respirators are National Institute for Occupational Safety and Health–approved respirators that filter 95 percent of small and large airborne particles, including viruses and bacteria. To be effective, N95 respirators must be fitted to the face and form a tight seal around the edges. Occupational Safety and Health Administration (OSHA) regulations require that workers undergo an annual fit test and conduct a seal check each time the respirator is used so that minimal leakage occurs around the edges when the user inhales. Even with N95 respirators, OSHA recognizes that additional administrative and engineering controls may be necessary to protect against the transmission of hazardous airborne particles.

Surgical masks are designated by the Food and Drug Administration as medical devices; considered PPE; and physical barriers to protect both users from large splashes and droplets as well as protecting others from exhalations by the user that may contain viruses or bacteria. Surgical masks are not designed or certified to protect the user from inhalation of small airborne particles. The loose fit around the face allows air to pass through the gaps between the face and the surgical mask rather than being pulled through the filtering material.

Respirators and surgical masks are currently designated as critical supplies reserved for healthcare providers.

Non-surgical masks and cloth face coverings (masks) are not PPE and are made either commercially or improvised by individuals to wear over the mouth and nose to protect others from potentially infectious droplets expelled into the air by the user. They lack the required tight seal around the face

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and the filtering material to protect the user from small airborne viral particles when the user inhales. The role of masks is for source control: masks prevent contamination of the surrounding area by trapping respiratory droplets emitted when the user coughs, sneezes, talks or sings. Masks provide only some degree of barrier protection against respiratory droplets and should be used with a combination of other engineering, administrative or workplace controls, including physical distancing.

2. If surgical masks (PPE) are provided to employees only as source control and not to protect from splashes or sprays, are employers required to provide them to workers?

No. While OSHA's PPE standards do not require employers to provide them to workers if they are used only as source control, the General Duty Clause requires employers to provide employees a workplace that is free from recognizable hazards that may cause serious injury or death. Control measures to provide a safe workplace during the pandemic may need to include a combination of engineering, administrative and workplace controls, including providing some type of mask. If OSHA does not require PPE for the industry or job task of the employee and because of the shortage of surgical masks, employers may need to provide non-surgical masks as part of the control measures needed to reduce the virus exposure risk in the workplace.

3. Do masks help reduce the transmission of SARS-CoV-2, the virus that causes COVID-19?

Yes. According to the World Health Organization and CDC, exposure can occur through a number of different modes, including contact with infected respiratory droplets expelled into the air by infected persons. In addition, COVID-19 is known to be spread by asymptomatic and pre-symptomatic individuals. The CDC recommends that masks be worn to trap viral particles expelled into the air by the user at the *source*. Each individual who wears a mask protects other individuals around them from exposure and infection. The CDC recommends that individuals wear masks when around the public, around persons not in the same household and when physical distancing is difficult to maintain.

4. Is it necessary to physically distance when wearing a mask?

Yes. COVID-19 spreads among people in close contact. Close contact is currently defined by OSHA and the CDC as within 6 feet. Because masks are not guaranteed to prevent transmission of the virus, the CDC states that masks should be worn in addition to physically distancing from others.

5. Is there a proper way to wear a mask so that it prevents transmission of viral particles contained in respiratory droplets?

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Yes. To reduce the risk of transmission of the virus, the user must wear the mask so that it completely covers the user's mouth and nostrils.

6. Are certain employees or employees in certain work settings exempt from wearing a mask?

Yes. The CDC recognizes that certain work settings may present safety hazards that prevent employees from wearing masks, such as work environments that expose workers to heat-related illnesses when wearing a mask or to safety hazards caused by masks becoming contaminated or caught in equipment. The CDC also advises that employees should not wear a mask if they have trouble breathing, cannot tolerate wearing it or can't remove it without help. Outdoor workers can limit donning masks to circumstances when physical distancing is not possible.

In addition, the Americans with Disabilities Act requires employers to provide an accommodation to employees who have disabilities that prevent them from wearing a mask. The Equal Employment Opportunity Commission (EEOC) has addressed accommodation requests regarding the inability to wear face masks due to a disability during the pandemic. Employers should engage in the same process for evaluating requests for accommodations arising from disabilities or religious objections that prevent mask usage as they do with other accommodation requests. If an employee advises the employer that they cannot wear a mask, the employer must treat such information as a request for accommodation and should engage in the following interactive process:

If the disability is not evident, the employer may ask questions to determine if the disability necessitates an accommodation, such as: 1) how the disability creates a limitation, 2) how the accommodation addressees the limitation, 3) whether another form of accommodation could effectively address the issue, and 4) how the accommodation will allow the employee to continue to perform the essential functions of the position.

In the event of a disability or religious objection, as opposed to merely a social objection, the employer must provide a reasonable accommodation unless the accommodation presents an undue hardship, which is defined as a significant difficulty or expense. Undue hardship encompasses not only financial hardships, but also hardships on co-workers or business operations.

Finally, many state orders and local ordinances contain specific exemptions related to mask mandates. The types of circumstances that may result in an exemption to a mask requirement include the following conditions:

Medical or mental conditions that prevent wearing a mask;

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Hearing impairments that requires the ability to see the mouth to communicate;

Job tasks or workplace conditions that preclude wearing a mask because such usage would present a hazard to the employee, as determined by local, state, or federal regulators or workplace safety guidelines.

7. If employees wear masks, are employers still obligated to adopt additional infection controls?

It depends on the level of the hazardous risk that workers encounter as they perform their different job functions. Different levels of risk may be associated with different job functions and work environments. According to the CDC, the optimal way to prevent transmission of infectious respiratory droplets is to use a combination of interventions from across the hierarchy of engineering controls, administrative controls, safe workplace practices and physical distancing. Employers are required to conduct an assessment of the hazards in the workplace and for each job task, identify sources of exposure and implement controls necessary to mitigate exposure to the virus.

8. Does OSHA or the CDC obligate businesses to require their employees, customers or third-party visitors to wear masks on the business premises?

No. OSHA and the CDC charge businesses with the responsibility of identifying and assessing COVID-19-related hazards, including modes of transmission, sources of exposure and exposure levels as well as implementing control measures based on recommendations to protect their workplace and mitigate the spread of the virus. OSHA "generally recommends that employers encourage employees to wear face coverings at work" as a means of source control to prevent the transmission of COVID-19 by employees who may be pre-symptomatic or asymptomatic. The CDC also recommends that all people wear face coverings when in public, around other people and in the workplace if the face covering doesn't present or exacerbate a hazard.

9. Does a policy that requires employees and third parties to wear masks on the business premises protect the business from liability?

Yes. While a business cannot control whether an individual brings a lawsuit against it, it can reduce the likelihood that a suit will be filed and reduce the likelihood that liability will be imposed by following the most up-to-date mask guidelines published by the CDC and OSHA and by following the mask orders of state and local governments for the jurisdictions in which the business is located. Many claims, including class actions and unfair labor practices, are related to workplace safety claims that allege the employer failed to provide a safe workplace. Adopting a mask policy is one element of a safety policy that can be adopted – in combination with other safety control measures – which demonstrate to employees that the employer is prioritizing worker safety.

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10. Do states have the authority to mandate that masks be worn within the jurisdiction of the state?

Yes. Governors are given broad authority during public health emergencies to protect the health and welfare of the public, which includes the authority to issue executive orders (EO) requiring individuals to wear masks to mitigate the spread of COVID-19 during the pandemic.

The 10th Amendment of the U.S. Constitution, which gives states' those rights and powers not specifically delegated to the federal government, includes the power to enact and enforce laws to secure the health, welfare and safety of the public. Under states' police power, states have the right to protect and provide for public health and safety. In the Supreme Court decision, *Jacobsen v. Massachusetts*, the Supreme Court affirmed the concept that individuals' constitutional rights are not absolute when it held that states have the right to mandate smallpox vaccinations. The Court noted that individuals may be required to give up some rights for the greater benefit of the larger community.

More recently, on May 29, 2020, in *South Bay United Pentecostal Church v. California Governor Gavin Newsom*, the Supreme Court rejected a petition to enjoin enforcement of California Governor Newsom's EO that temporarily placed occupancy restrictions on places of worship due to the COVID-19 pandemic. The majority of the Court recognized that Governors, as elected state officials accountable to the people of the state, must be given "especially broad" authority to impose restrictions and to take actions to protect the health and welfare of the people during the pandemic, especially "in areas fraught with medical and scientific uncertainty."

11. Can businesses require employees to wear masks on the business premises?

Yes. OSHA and the CDC recommend that all individuals wear masks outside of the home, the EEOC permits employers to mandate masks, and many state and local governments either require or encourage the use of masks.

According to the EEOC, because the COVID-19 pandemic poses a direct threat, employers may require employees to wear masks, gloves and PPE, with an exception for individuals with a disability or a religious objection that prevents them from wearing a mask. See the answer to question 6 regarding exemptions based on protected characteristics.

OSHA has also issued guidance on masks. OSHA standards do not require employees to provide masks that are not classified as PPE. OSHA's General Duty Clause, however, requires employers to provide a workplace free from hazards that are causing or likely to cause death or serious physical harm. As such, employers are directed to implement a combination of control measures to abate the risk of transmission, exposure and infection of COVID-19 in the workplace. Employers have an

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obligation or the discretion, depending on state and local law, to include masks as a source control to prevent transmission of the virus at the source which other "engineering and administrative controls, including social distancing, cannot prevent."

12. Is an employer required to provide or pay for masks?

It depends. Governors of some states have issued mask mandates specifying that all or some businesses provide and pay for masks for their employees. In addition, some local ordinances may require businesses to provide or pay for masks for their employees. The number of additional state and local governments requiring workers to wear masks continues to increase. Employers should continue to monitor state and local laws and ordinances regarding their obligations to provide and pay for masks.

As stated above, OSHA standards do not require employers to pay for or provide masks. The General Duty Clause, however, also may impose an obligation on employees to provide masks to employees depending on the risk and circumstances presented in the workplace. Nothing prohibits employers from voluntarily providing or paying for their employees' masks during this unprecedented time of medical and scientific uncertainty.

13. How do employers respond to employees who refuse to wear a mask even though the employer has a mask requirement and the employee's objection does not arise from a protected characteristic, such as a disability or religious objection?

Employers have the right – and in jurisdictions mandating masks, the obligation – to require that masks be worn in the workplace. If an employee's refusal to wear a mask is not related to a protected characteristic for which they could request an accommodation, the employer has the right to bar the employee from the workplace. Similar to employees who refuse to have their temperature taken at the workplace, employees who refuse to wear a mask pose a direct threat to others in the workplace. Masks are worn to prevent the contagion from spreading from pre-symptomatic and asymptomatic individuals through infected respiratory droplets. Before barring employees from the workplace, employers should inquire as to the nature of the employee's objection to wearing a mask, then reassure and explain the rationale for wearing a mask.

14. Can businesses require customers or third parties to wear face masks on the business premises?

Businesses must require customers to wear masks if their state or locality has issued a mask mandate. Businesses also can require customers to wear masks even if the state has not issued a mask mandate as part of the employer's obligation under OSHA or their state OSHA plan to provide a safe workplace for their employees. Some jurisdictions permit businesses to deny entry to customers or visitors who

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refuse to wear a mask. Very few jurisdictions, however, have adopted enforcement provisions. Problems have arisen for businesses when customers and visitors refuse to wear a mask and become aggressive or violent after being asked to wear a mask or denied entry.

To address issues of liability, enforcement and potentially violent encounters, we recommend that businesses requiring masks to be worn by customers and visitors on their premises take the following actions:

Post signage outside the premises at all entrances and online, on social media, in apps and in texts to notify customers of the mask requirement.

Cite CDC recommendations and state or local law requirements including enforcement penalties, if applicable.

Post signage regarding management's right to deny entry to customers and visitors not wearing a mask.

Consider gently offering masks to customers who arrive without masks at the entrance to the premises.

Train managers on the reasons the business is requiring masks to be worn, and train designated employees on how to address situations in which a customer refuses to wear a mask. Explain to employees that the mask requirement is similar to a no smoking requirement or a "no shirt, no shoes, no service" requirement.

For customers not willing or able to wear masks, offer accommodations such as curbside service, online ordering, personal shoppers or a face shield.

Employees should be trained to not escalate a non-compliant customer by arguing, blocking entry into the premises, following or attempting to remove non-compliant customers. We recommend that businesses either permit the non-compliant customers to enter the premises or call local law enforcement to handle the situation. The potential for harm is too great to require employees to enforce the business' mask mandate when customers refuse to comply.

Consider adopting a workplace violence policy or adding provisions to a workplace violence policy to address violent behavior arising from mask requirements and to educate all employees about the policy's provisions.

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15. Does wearing a mask cause unsafe levels of carbon dioxide to build up in the mask?

No. OSHA states that masks are loose fitting, lack a seal, are designed to allow air to pass through the fabric and can easily be removed. In addition, the Respiratory Protection, Permit Required Confined Space, and Air Contaminants Standards do not apply to the use of masks in work settings with normal ambient air.

16. How should multi-state employers comply with the varying mask requirements in different jurisdictions?

The CDC recommends that all individuals wear masks while in public, and OSHA recommends that employers encourage employees to wear masks at work. To comply with the CDC and OSHA guidelines and various state and local government mandates, multi-state employers can adopt mandatory mask policies for all locations and jobs, excluding those jobs for which an exemption applies, as discussed in the answer to question 6.

17. Are those employers subject to collective bargaining agreements required to give notice and bargain with unions regarding implementation of mask mandates in the workplace?

Perhaps. The terms of the collective bargaining agreement dictate whether employers must notify the union and bargain over changes related to wearing masks in the workplace. Employers should review the collective bargaining agreement provisions relating to protection of the work environment, consultation with union or union committee regarding safety issues, and communication with employees in the bargaining unit regarding wearing masks as a control measure to mitigate the spread of COVID-19. Employers may make unilateral changes to the terms of a collective bargaining agreement, where the plain language of the collective bargaining agreement broadly grants the employer the right to adopt new policies or change existing ones, provided that no other provision limits that right. Even if the employer has the right to make the change, it still may have a duty to bargain over the effects of the change.

If the collective bargaining agreement does not permit the employer to make unilateral changes, given the increase in community spread and infection rates, as well as evolving state and local mask mandates, employers may give unions notice of the mask policy, the reason for the change in the policy, and the need to act quickly. If an impasse is reached, the employer may implement the changes.

18. Which states have mask mandates?

The following provides information about and links to mask orders or recommendations issued in 50 states and Washington, DC as of August 2020. All mask mandates and rules provide for certain

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exemptions. References to physical distancing refer to the 6-foot physical distance as recommended by the CDC.

Please click on the state you are interested in to view state-specific information:

Alabama	Illinois	Montana	Rhode Island
Alaska	Indiana	Nebraska	South Carolina
Arizona	Iowa	Nevada	South Dakota
Arkansas	Kansas	New Hampshire	Tennessee
California	Kentucky	New Jersey	Texas
Colorado	Louisiana	New Mexico	Utah
Connecticut	Maine	New York	Vermont
Delaware	Maryland	North Carolina	Virginia
Dist. of Col.	Massachusetts	North Dakota	Washington
Florida	Michigan	Ohio	West Virginia
Georgia	Minnesota	Oklahoma	Wisconsin
Hawaii	Mississippi	Oregon	Wyoming
Idaho	Missouri	Pennsylvania	

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Alabama

Mask order, individuals: Required when within 6 feet of another person in a different household when in an indoor space open to the general public, in a vehicle operated by a transportation service, or in an outdoor space where 10 or more people are gathered, subject to exemptions.

Mask order, employers:

All employers are required to encourage employees and customers to wear masks.

See EO for specific industries in which employees are required to wear face masks.

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Strongly recommended to follow additional guidelines.

Enforcement: Counties are authorized to implement more stringent measures if needed.

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Alaska

Mask order, individuals: Encouraged.

Mask order, employers: References CDC guidance for businesses and employers.

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Arizona

Mask order, individuals: Encouraged.

Mask order, employers: Required for some businesses.

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Arkansas

Mask order, individuals: Required.

Mask order, employers: No specific provision other than statewide mandate.

Enforcement:

Law enforcement and local authorities authorized to enforce EO.

Violations constitute a misdemeanor offense punishable by a fine of from $100 up to $500. First violation will receive only a warning.

Trespass laws may be enforced against violators.

Cities may issue local ordinances consistent with EO.

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California

Mask order, individuals: Required.

Required in indoor spaces and while waiting in line.

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Required if waiting for, riding in or driving specified transportation services.

Required in outdoor public spaces when maintaining physical distance is not feasible.

Required while receiving services from the healthcare sector.

Mask order, employers: Required in the workplace under specified conditions.

Enforcement: Numerous cities have imposed fines for failure to wear a mask ranging from $100-$2000 per violation.

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Colorado

Mask order, individuals: Required unless specifically exempted for all individuals older than 10 years entering a public indoor space and while waiting for specified transportation services.

Mask order, employers:

Public indoor space is broadly defined and includes place of employment.

Requires that owners, and operators and managers, deny service or entry to anyone who is not wearing a mask.

Enforcement:

Imposes criminal or civil penalties, including prosecution [for trespass].

Business licensees may face summary, temporary suspension of license to operate.

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Connecticut

Mask order, individuals: Required.

Mask order, employers: No specific provision other than statewide mandate.

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Delaware

Mask order, individuals: Required.

Mask order, employers:

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Required for all employees working in public spaces or within 6 feet of others.

Employers must provide masks to employees.

Must deny entry to customers who don't wear mask.

Businesses providing food, medicine or medical supplies must provide alternative options for pickup.

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District of Columbia

Mask order, individuals: Required.

Mask order, employers:

Businesses open to the public may exclude or evict all persons who refuse to wear a mask.

Employers must provide masks to employees.

Enforcement: Permits numerous government agencies to implement rules and enforce order. Fines for violations may be up to $1000 per violation.

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Florida

Mask order, individuals: Encouraged.

Mask order, employers: No specific provision.

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Georgia

Mask order, individuals:

Encouraged when in public and cannot maintain 6-foot distance.

Prohibits county and local governments from making orders more or less restrictive than the Governor's EO.

Some cities and counties have adopted a mask mandate.

Mask order, employers:

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Requires face mask to be worn by workers in following businesses: restaurants, dining rooms, bars, operators of amusement rides, traveling carnivals, water parks and circuses; estheticians; hair designers, massage therapists, tanning facilities, body art studios.

All businesses that continue in person operations should provide PPE appropriate to the function and location of the worker.

Required to provide workers at summer camps with masks and PPE as appropriate.

School districts may require workers and students to wear face masks.

Some businesses may encourage patrons to wear masks.

Governor may continue to issue guidance through other forms of communication including social media without issuing EO. See EO 7-31-20.01.

Enforcement:

Law enforcement and agencies with primary regulatory authority over entities specified have enforcement authority.

Violation constitutes a misdemeanor under Code §38-3-7.

Businesses that receive 3 violations may be subject to closure for a period not exceeding the term of the EO.

Suspends local ordinances more or less restrictive than EO.

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Hawaii

Mask order, individuals: Encouraged when in public and cannot maintain physical distance.

Mask order, employers:

All employees of businesses or operations shall wear the cloth face coverings as recommended by the CDC while at their place of employment.

All customers required to wear masks while waiting to enter and while at a business.

Businesses must post signage regarding mask requirement.

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Enforcement: Individuals who violate EO and convicted face a fine of up to $5000 and/or imprisonment of up to 1 year.

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Idaho

Mask order, individuals: Encouraged.

Mask order, employers: Allows businesses to require employees, customers and patrons to wear masks.

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Illinois

Mask order, individuals: Required in a public place when unable to maintain 6-foot distance.

Mask order, employers: Required when interacting with customers, clients or co-workers at essential businesses.

Enforcement:

Enforcement by local health and law enforcement agencies.

Penalties only imposed on businesses which must require masks to be worn by patrons.

After two warnings, Class A misdemeanor and fine from $75 to $2500 may be imposed.

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Indiana

Mask order, individuals:

Required.

Allows local governments to impose more stringent requirements.

Mask order, employers: Order does not extend to private offices, workspaces and meetings where physical distancing can be maintained.

Enforcement: State and local health departments through education measures.

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Iowa

Mask order, individuals:

Encouraged.

Some local governments mandate masks.

Mask order, employers: No specific provision.

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Kansas

Mask order, individuals:

Required under EO.

State law allows counties to adopt rules less stringent than the EO.

Mask order, employers: Requires employers to require all employees and visitors to wear masks when in a space where they potentially could be present with others, where food is packaged or prepared for sale or distribution, in common areas, in rooms where others are present and are unable to maintain a 6-foot distance.

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Kentucky

Mask order, individuals: Required for specified high-risk activities.

Mask order, employers: Required. Guidance is industry-specific.

Enforcement:

For individuals: loss of access to business services.

Violation of EO is a violation under KRS 39A under which penalties may be imposed.

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Louisiana

Mask order, individuals: Required.

Mask order, employers: Required unless decrease in new positive cases is less than stated threshold in the parish.

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Enforcement:

Governor's office of Homeland Security and Emergency Preparedness and State Fire Marshall authorized to enforce.

Other agencies, boards, departments, officers directed to cooperate.

Citations given for failure to enforce mask mandate to businesses and organizations only, unless exempted.

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Maine

Mask order, individuals: Required.

Mask order, employers: Discretionary for employers not typically accessible by public.

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Maryland

Mask order, individuals:

Required in public areas of businesses and buildings and outdoor public areas when unable to physically distance.

Local governments may adopt more stringent regulations.

Mask order, employers:

Required in any work area where interaction with others is likely.

Required where food is prepared or packaged.

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Massachusetts

Mask order, individuals: Required.

Mask order, employers:

Required by all workers and customers of businesses and organizations open to the public and permitted to operate as essential businesses during pandemic.

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Business may decline entry to customers who refuse to wear a mask.

Enforcement: Enforced by state and local police; individuals subject to fines who host events that exceed gathering limits on public or private property.

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Michigan

Mask order, individuals: Required in indoor public space, outdoor public space when unable to physically distance, when waiting for or riding on public transportation or using private car service.

Mask order, employers:

Required to provide non-medical-grade masks to employees.

Require masks to be worn in common areas and meetings.

Require masks to be worn when cannot maintain 6 feet of physical distance and consider face shields if cannot maintain a 3-foot physical distance.

Require customers to wear face mask and post signage for customers.

See EO for sector-specific requirements.

Enforcement:

Enforced by Department of Labor and Economic Opportunity, other departments or licensing agencies.

May include summary, temporary suspension of business' license to operate.

Willful violations are a misdemeanor – penalty does not include imprisonment.

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Minnesota

Mask order, individuals: Depending on circumstances either required or strongly encouraged.

Mask order, employers:

Businesses must mandate that workers, customers and visitors wear masks.

Does not authorize businesses to enforce mask rule against non-compliant individuals.

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Mississippi
See EO numbers: 1515, 1512, 1509, 1507.

Mask order, individuals:

Required when in businesses except when eating or if a special medical condition exists.

At indoor and outdoor public events, must physically distance or wear a face covering.

Mask order, employers:

All employees are required to physically distance from other employees or wear a face mask.

All employees must be screened at beginning of the shift.

Employees in contact with public must wear face covering.

Employees must wear mask when in contact with public.

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Missouri

Mask order, individuals: Recommended.

Mask order, employers: Recommended in conjunction with other control measures.

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Montana

Mask order, individuals:

Mandatory in counties with 4 or more confirmed cases.

Required at indoor spaces open to the public.

Mask order, employers:

Required for employees, volunteers and contractors in public-facing workspaces.

Employers to provide masks to employees and volunteers.

Enforcement:

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Enforced by Attorney General, Department of Health and Human Services, county attorney and local authorities.

Enforceable only against businesses and sponsors of organized outdoor activities.

Enforcement focuses on education and warnings except for repeat egregious offenders.

Business may deny entry and refuse service to those who violate.

Peace officer may enforce laws, including trespass laws.

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Nebraska

Mask order, individuals: Encouraged when around other people or at healthcare provider's office.

Mask order, employers: No specific provision.

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Nevada

Mask order, individuals: Required in public spaces.

Mask order, employers: May adopt more stringent mask rules than EO.

Enforcement:

Enforced by state OSHA and state licensing boards, law enforcement, local city and county governments and state agencies.

Businesses subject to suspension or revocation of license or penalties.

Individuals may be subject to criminal prosecution and civil penalties under any applicable law.

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New Hampshire

Mask order, individuals: Recommended.

Mask order, employers: Recommended.

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New Jersey

Mask order, individuals: Required at indoor spaces accessible to public and in outdoor public spaces when unable to physically distance.

Mask order, employers: Requires masks in indoor commercial spaces not open to public when in close proximity to others.

Enforcement: Penalties may be imposed.

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New Mexico

Mask order, individuals: Required in public spaces.

Mask order, employers: Ensure employees have and wear masks when in presence of others in workplace.

Enforcement:

State and local governments formed partnership to educate residents.

Complaints about violations can be made to local police.

No specific enforcement or penalty provisions indicated.

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New York

Mask order, individuals: Required when in public space and cannot maintain social distance.

Mask order, employers:

Provide masks to employees, and require employees to wear masks, when employees in direct contact with public or unable to maintain physical distance.

Shall deny entry to those not wearing a mask and shall require their removal.

Enforcement: Violations are subject to all civil and criminal penalties.

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North Carolina

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Mask order, individuals:

Strongly recommended.

Required at specific premises in public.

Mask order, employers:

Required for most businesses.

Business can be cited for failure to require customers to wear masks.

Enforcement:

Citations imposed only on businesses that fail to enforce mask order.

Law enforcement may enforce against any individual who refuses to abide by businesses mask policy.

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North Dakota

Mask order, individuals: Recommended when physical distancing cannot be maintained.

Mask order, employers:

Encourage masks use by employees and contractors in close contact with others.

Instruct visitors to wear mask.

See color-coded health guidance.

Increase availability of masks and PPE for employees.

Instruct employees to wear mask at workplace.

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Ohio

Mask order, individuals:

Required at indoor locations that are not a residence.

Required outdoors when unable to physically distance.

Required when using public transportation or private car for ridesharing.

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Mask order, employers: No specific provision.

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Oklahoma

Mask order, individuals: Recommended.

Mask order, employers: No specific provision.

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Oregon

Mask order, individuals: Required at indoor spaces open to public, outdoor spaces when unable to physically distance.

Mask order, employers:

Employees, contractors, customers, visitors and volunteers required to wear with exceptions.

Must provide face shields, masks or face coverings to employees.

Required to post signage.

Should provide at no cost disposable mask to customer and visitors who don't have mask if open to public.

See sector guidance.

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Pennsylvania

Mask order, individuals:

Required in any public indoor location, any outdoor location if unable to physically distance.

Required when using public transportation, private car service or ridesharing.

Required when obtaining services in healthcare setting.

Mask order, employers: Required to be worn by workers at workplace or worksite when interacting with public, working in place visited by public or where food is prepared or packaged for

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sale or distribution, or in common areas or in any room or enclosed space with others and not able to physically distance.

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Rhode Island

Mask order, individuals:

Required in spaces open to the public unless able to physically distance.

Required if using public transportation, private car service or ridesharing.

Mask order, employers: No specific provision.

Enforcement:

Enforced by Director of Rhode Island Department of Health.

Authorized to assess civil penalties and adopt related regulations.

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South Carolina

Mask order, individuals:

Some local governments mandate masks.

No statewide mandate.

Mask order, employers: Encouraged when unable to physically distance.

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South Dakota

Mask order, individuals: Encouraged when physical distancing is difficult to maintain.

Mask order, employers: Recommended.

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Tennessee

Mask order, individuals:

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Encouraged when around others in public settings, unable to physically distance.

Permits mayors of counties that do not have locally run health department to issue mask order.

Mask order, employers:

Strongly urges employees and customers of business to wear face masks in public settings when unable to physically distance.

Counties with local health department may issue orders regarding face masks.

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Texas

Mask order, individuals:

Required. Counties with confirmed cases under threshold can receive exemption.

Required for all persons located in indoor commercial entity or other building open to public and outdoor spaces when unable to physically distance from others.

Mask order, employers: No specific provision.

Enforcement:

Enforced by local law enforcement.

First violation receives a verbal warning. Second and each additional violation results in fine not to exceed $250.

May enforce trespassing laws to remove violators at request of business establishment or property owner.

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Utah

Mask order, individuals:

Encouraged.

Mandated in some counties.

Mask order, employers:

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Recommended.

Essential workers must wear a face mask for 14 days after exposure.

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Vermont

Mask order, individuals: Required in indoor and outdoor settings when close contact is unavoidable and where not possible to physically distance.

Mask order, employers: Businesses must notify customers of mask mandate and deny entry for service to customers who are non-compliant.

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Virginia

Mask order, individuals: Required in indoor settings with groups of people in close proximity not of the same household and in all specified business establishments.

Mask order, employers:

Required for employees of customer-facing essential businesses.

Required in all workplace if unable to maintain physical distancing for more than 10 minutes.

Encourage a no-service policy for customers not wearing mask.

See FAQs.

Enforcement:

Enforcement by Virginia Department of Health and other agencies.

For egregious violations may seek court-issued warrant and summons for Class 1 misdemeanor under health code.

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Washington

Mask order, individuals: Required at indoor public spaces and outdoors when unable to physically distance.

Mask order, employers: No specific provision.

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West Virginia

Mask order, individuals: Required in confined indoor spaces or dining in public space and unable to physically distance.

Mask order, employers: No specific provision.

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Wisconsin

Mask order, individuals:

Required in all public settings and enclosed spaces and when others are present in the same room or enclosed space.

Required outdoors when unable to physically distance.

Local counties have issued own mask order.

Mask order, employers: No specific provision.

Enforcement: Civil fine of not more than $200.

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Wyoming

Mask order, individuals: Encouraged in public settings and when unable to physically distance.

Mask order, employers: No specific provision.

Contact us

If you have questions regarding this update, contact Erik Eisenmann, Anne Mayette or your Husch Blackwell attorney.

Tracey Oakes O'Brien, Knowledge Manager, is a co-author of this article.

Comprehensive CARES Act and COVID-19 guidance

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with

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an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.

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