

Navigating Employer Obligations to Provide Employees with Masks, Face Coverings

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As the Centers for Disease Control and Prevention (CDC) continues to study COVID-19, the agency is regularly updating guidance on precautionary measures to further prevent the spread of COVID-19 across the United States. The agency has [expanded its recommended precautions](#) to include “wearing cloth face coverings in public settings where social distancing measures are difficult to maintain” in response to new information showing that COVID-19 can spread from asymptomatic people in close proximity interactions (*e.g.*, individuals standing directly next to each other and talking).

The cloth face coverings recommended are not surgical masks or N95 respirators. Those are critical supplies that must continue to be reserved for healthcare workers and other medical first responders, as recommended by current CDC guidance. A helpful [comparison of the differences between masks and respirators](#) is available from Colden Corporation.

Soon after CDC’s new guidance went into effect, some states and local jurisdictions began imposing additional obligations on both businesses and individuals with respect to mask use. In New York, for example, the Governor issued an [executive order](#) requiring “all essential businesses or entities” to provide “any employees who are present in the workplace” with face coverings to wear “when in direct contact with customers or members of the public,” and stating that businesses, at their own expense, must provide employees with face coverings.

Rhode Island on April 14, 2020, issued an [order](#) along similar lines, requiring all employees of “customer/client facing businesses” and any other business still in operation to wear cloth face coverings, unless the employee can maintain at least a six-foot distance from other employees or wearing the mask would damage the employee’s health.

On April 24, 2020, [Michigan issued Executive Order 2020-59](#), requiring “all businesses and operations whose workers perform in person work must provide non-medical grade face coverings to their workers at a minimum” effective April 27, 2020. Additionally, the Order states, “Supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (*e.g.*, police officers, fire fighters, paramedics), and other critical workers who interact with the public.”

Other state and local jurisdictions, including Colorado, Illinois, Nebraska, New Jersey, several cities in California (*e.g.*, Beverly Hills, Burbank, Glendale, Redondo Beach, and San Bernadino), New Haven, Connecticut, Osceola, Florida, Honolulu, Hawaii, and several Maryland counties (*e.g.*, Frederick, Montgomery, and Charles) also have implemented requirements for use of masks or other face coverings for certain workplaces or while individuals are in public.

Are Employers Required to Provide Face Coverings to Employees?

In addition to a patchwork of state and local orders requiring masks or face coverings, employers have some uncertainty over the extent to which required masks or face coverings must be provided for employees. While Michigan, New Jersey, New York, and Rhode Island

have issued executive orders that state covered businesses (such as restaurants, dining establishments, and food service providers), at their own expense, must offer their employees face coverings, not all jurisdictions have addressed the issue.

Employers should consider the extent to which face coverings or masks are required under state laws or needed to limit transmission of COVID-19 exposures.

Must Employers Modify Face Covering Requirements as a Reasonable Accommodation?

Some employees may have medical conditions that limit their ability to wear a certain face mask or all face coverings. In its latest [COVID-19 Guidance](#), the Equal Employment Opportunity Commission (EEOC) reminds employers that when an employee with a disability needs an accommodation related to PPE (such as modified face masks for interpreters) or an employee needs a religious accommodation under Title VII of the Civil Rights Act (such as modified equipment due to religious garb), the employer “should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII.”

Employers also should carefully review any applicable state and local face-covering orders to determine the legal requirements for face coverings, whether any exceptions to those requirements are permitted, and whether employers are *required* to make exceptions for employees with medical restrictions that prevent the employee from wearing a face covering.

Like other reasonable accommodation analyses, this will require an individual assessment of the facts, including the employee's limitations, the work environment, and the applicable state and local orders.

Jackson Lewis attorneys and the dedicated [COVID-19 Task Force](#) are tracking the rapidly evolving federal, state, and local mandates. Please contact a Jackson Lewis attorney with any questions.

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