

HR Heads-up

PERIODIC UPDATES ON IMPORTANT HR LEGAL ISSUES

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Madison Public Health Answers Common Questions on Dane County Mask Order

Madison Public Health Dane County (MPHDC) and the Madison Department for Civil Rights recently issued guidance for businesses on implementing MPHDC's recent order requiring most individuals to wear a face covering indoors. Our previous article on the face mask order can be found [here](#).

The following are answers to common questions regarding the mask order according to MPHDC and the Department for Civil Rights. Guidance surrounding Dane County's face mask order continues to evolve and employers are encouraged to regularly check MPHDC's [mask website](#) and the Department of Civil Rights mask [FAQ](#) for the latest information.

Do individuals working alone in an enclosed office need to wear a mask?

No. If an individual is alone in an enclosed office space with the door closed, they are not required to wear a mask. If someone enters the individual's office or the individual leaves their office, a mask is then required. Businesses are advised to implement a "knock and announce" policy so individuals have time to put on a mask before someone enters their office.

Masks are required whenever an individual could come into contact with others. Individuals working in open environments, such as cubicles, work stations, shared offices, factories, stores, etc., must wear a mask at all times while indoors.

If individuals are six feet apart or more, do they still need to wear a mask indoors?

Yes. The order requires individuals to wear a mask indoors whenever they could come into contact with someone else. If the individual is not alone in an enclosed space with a closed door, they must wear a mask. According to MPHDC, face masks must be worn regardless of how far apart open work areas may be or if plexiglass or other barriers are used.

Are face shields an acceptable alternative to wearing a cloth face covering?

No. The Center for Disease Control and Prevention does not recommend the use of face shields as a substitute for cloth face coverings as they are not known to protect others from the spray of respiratory particles that could transmit COVID-19.

Do employers need to provide employees with masks?

Yes. Employers are required to ensure that employees are provided with and wear face coverings. Employees may bring and use their own cloth face coverings at work. If employees do not have their own face coverings, the employer must provide one to the employee. Employers may charge employees for the cost of providing face coverings and/or replacement of face coverings.

What if wearing a mask creates a workplace safety risk?

The face mask order exempts individuals from wearing a face covering indoors if “wearing a face covering would create a risk to the person related to their work, as determined by government safety guidelines.” If an employer is concerned that a face mask poses a safety risk to workers (such as a mask getting caught in equipment or during extreme heat conditions), MPHDC advises employers to consult with the Occupational Health and Safety Administration (OSHA) and potentially work with an OSHA specialist to implement measures that mitigate the spread of COVID-19 while ensuring OSHA safety standards are followed.

What should an employer do if an employee refuses to wear a mask?

Employers are required to ensure that employees follow the order and wear a face covering at all times. If an employee refuses to wear a mask, employers should follow their internal disciplinary procedures for noncompliant employees. Employees may be disciplined, up to and including termination, for refusal to comply with MPHDC’s face mask order. Exceptions should be made for employees who are unable to wear a face covering due to a medical condition or disability.

What should an employer do if an employee cannot wear a mask due to a disability?

Employees with certain medical conditions and disabilities may be exempt from wearing a face covering indoors. If an employee informs the employer they are unable to wear a face covering due to a medical condition or disability, the employer should interpret this as a request for a reasonable accommodation under the Americans with Disabilities Act (ADA) and Wisconsin Fair Employment Act (WFEA) and enter into the “interactive process” with the employee. As part of this process, the employer may require the employee to provide information and documentation from their medical provider that they have a medical condition that prevents them from wearing a facial covering.

If it is determined that the employee is unable to wear a facial covering due to a medical condition or disability, the employer and employee should take steps to find a reasonable accommodation that allows the employee to perform their job while promoting public safety. Such accommodations could include remote work, temporarily moving the employee to an enclosed office, schedule modifications, adjustments to job duties, a temporary leave of absence under the ADA/WFEA or the Families First Coronavirus Response Act (FFCRA), or other workplace changes. Whether an accommodation is “reasonable” depends on the individual circumstances of both the employer and employee. Businesses are encouraged to consult legal counsel if they have questions or concerns about navigating a disability accommodation request.

What should a business do if a customer refuses to wear a mask?

Businesses are required to comply with Dane County’s face mask order and should take steps to ensure

that customers wear a face covering that covers their nose and mouth while indoors. If a business owner or employee observes a customer not wearing a facial covering, the customer should be reminded of the face mask requirement. If the customer refuses to wear a mask (and does not qualify for an exemption), the business may refuse the customer service and ask them to leave.

What should a business do if a customer cannot wear a mask due to a disability? May a business ask a customer for documentation or information regarding their disability?

If a business owner or employee notices a customer is not wearing a face mask, they may conduct a “limited inquiry” and ask the customer if they are not wearing a face mask due to a disability or medical condition. If the customer responds “yes,” or otherwise informs the business owner or employee that they have a medical condition or disability that prevents them from wearing a facial covering, the business should accept the customer’s response at face value. **Unlike the situation where an employee requests to not wear a mask, businesses are not permitted to ask customers for documentation or further information regarding their disability or medical condition.** Any further inquiry into the nature of a customer’s disability or medical condition could potentially violate the law.

Once informed that a customer has a disability that prevents them from wearing a face covering, the business may offer the customer alternative measures to accessing the goods and services. Such alternatives could include curbside pickup, home delivery, having an employee retrieve the requested item(s) from the store, or accessing the goods and services online.

If such alternatives are available, the business does not have to allow the customer to enter the business without a face mask. If the customer declines the reasonable alternatives offered by the business, the business may refuse the customer service and entry. Once the alternative services are offered, the business has done its part under the ADA to provide an accommodation. If the customer declines the offered accommodations, the business is at liberty to decline the customer entry if they so choose.

If the business’s goods and services cannot be accessed through alternative manners (such as a gym, salon, spa, dental and vision care, etc.), the business should grant the customer access so long as the customer adheres to other guidelines within the order, such as social distancing.

Are businesses required to post signs or have other policies in place?

Yes. Businesses and workplaces are required to place [this poster](#) about the mask requirement that is visible to customers and employees upon entry. Businesses are also encouraged to post other signage on the business’s website and entries to clearly indicate the business is requiring masks.

Businesses and workplaces are also required to create written hygiene, cleaning, and protective measures policies and procedures under the order. Further information and example policies can be found [here](#). Businesses and workplaces must have a system for documenting that employees have received training on these policies and procedures.

Under what circumstances will MPHDC enforce the mask order?

MPHDC has indicated they are seeking voluntary compliance from employers and businesses. MPHDC will evaluate non-compliance complaints “and determine the best way to provide education to individuals and businesses that are noncompliant . . . The goal of this team is to ensure that face coverings are worn

when required by providing education first before looking towards enforcement. When necessary, enforcement will generally focus on businesses or individuals that despite attempts to educate continue to violate the Order, such as businesses who do not require customers and/or staff to wear masks at large indoor events or gatherings. If a citation is issued within the City of Madison the ticket amount would be \$376, if it is issued outside of the City under the County ordinance the ticket amount is \$263.50.”

As the COVID-19 public health crisis continues to evolve, businesses are encouraged to check MPHDC and the CDC’s website for the latest guidance and information. MPHDC will continually update its website to provide new information and guidance to questions arising under Dane County’s face mask order. Boardman Clark’s Labor & Employment team will continue to provide information and updates and is available to assist employers on these complex issues.

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