



Employers Face New Obligations As Memphis Imposes Mandatory Face Covering Ordinance

Insights

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On the heels of Shelby County’s decision to remain in Phase 2 of its [Back to Business Plan](#), the Memphis City Council just approved a new [Ordinance](#) requiring individuals within the City of Memphis to wear a face covering or mask while present in businesses and public indoor spaces. Described as a “remedial” measure to “mitigate the spread of infectious disease,” the Ordinance gives the mayor the authority to penalize violators of any public health directive, including the failure to use face coverings. The Ordinance was officially approved by the City Council on June 18 and was signed by Mayor Strickland on June 25. The Ordinance will remain in effect until there is no longer a declared public health emergency or the Ordinance is lifted by the mayor. What do employers need to know about this new ordinance?

New Employer Obligations

While all members of the public, except those specifically exempted, are required to wear a face covering when they are inside any business or government building, receiving healthcare services, riding on public transportation, or driving or riding in any ride-sharing service, employers now are obligated to implement the following requirements:

1. **Signage Required.** All businesses, entities, or organizations with workers engaged in essential infrastructure work or essential government functions must take reasonable measures to post signs reminding members of the public of the requirement to wear face coverings.
2. **Internally Enforce Ordinance.** Such employers must require all employees, contractors, owners, and volunteers to wear a face covering while at the workplace or performing work if they interact with members of the public or work in spaces that are visited by members of the public, where other workers are present, or where food is prepared or packaged.
3. **Enforce Ordinance Among Guests, Patrons, or Other Members of Public Who Enter Premises.** Essential businesses and entities or organizations that engage in essential infrastructure work must also take reasonable measures to prohibit any member of the public who is not wearing a face covering from entering the premises and refuse services if efforts to prohibit entry are unsuccessful. The full list of requirements may be found in the [Ordinance](#).

What Are the Exceptions to the Mask Requirement?

The Ordinance specifically exempts individuals from the face covering requirement when they are alone in personal offices.

Additional exemptions are made for children and individuals with medical conditions. The Ordinance specifically states that children age two or younger must not wear face coverings due to the risk of suffocation, and children between the ages of three and 12 are not required to wear a face covering. Additionally, a face covering is not required to be worn by any individuals who can show they have been advised by a medical professional that wearing a mask may pose a health-related risk, a medical condition prevents them from wearing a face covering, or wearing a face covering creates a risk related to their work (as determined by local, state, or federal regulators or workplace safety guidelines).

Further, face coverings are not required for, and should not be worn by, any individual who has trouble breathing or is incapacitated, unconscious, or is otherwise unable to remove a face covering without assistance. Full details of the exemptions and additional guidance may be found in the [Ordinance](#).

What Are the Penalties for Non-Compliance?

The Ordinance declares that failure to comply with any provision of the Ordinance poses an imminent threat and immediate menace to public health, and therefore constitutes a public nuisance (a Class C Misdemeanor). Any individual in violation of the Ordinance, will receive a warning for the first offense. Subsequent violations are subject to court fees not to exceed \$20 per violation, which may be waived in lieu of community service. However, businesses or entities that have received three warnings for violations of the Ordinance or other public health directives are subject to \$100 civil penalties per subsequent violation, restraining orders, and/or other court injunctions.

What Should Employers Do?

- **Create a Policy.** You should create and distribute a mask/face covering policy applicable to all employees. The policy should be specific as to which employees are required to wear masks, when employees are required to wear masks, and proper mask usage.
- **Train Your Employees On Your Policy and Other COVID-19 Related Concerns.** If you have not already, you should train your employees regarding COVID-19, preventive measures you are taking regarding COVID-19, how to respond to a positive case, and other safety measures. You should also educate your employees on proper protocol for prohibiting members of the public from entering the building and refusing service to customers who are not wearing a face covering.
- **Put Up Signs.** If you are an essential business, entity, or organization that engages in essential infrastructure work, you should post signage at the entrance of your business reminding members of the public of the requirement to wear a mask while inside or waiting in line to enter the business. The signage should also provide notice that they will be prohibited from entering the building and will be refused service if they are not wearing a face covering.

Conclusion

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [Memphis](#) office, or any member of [our Post-Pandemic Strategy Group Roster](#).

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