



Columbia and Other South Carolina Cities Pass Face Mask Ordinances

Insights

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On the heels of a recent spike in new COVID-19 cases, at least six South Carolina cities, including the state's two largest in Charleston and Columbia, have passed emergency face-covering ordinances. Both were enacted shortly after Greenville implemented the Palmetto State's first face mask ordinance on June 23. All told, roughly 1 in 10 South Carolinians are now under a face mask order with more expected in the coming days and weeks. While cities in other parts of the United States have passed similar face mask orders backed by criminal penalties, violators in most South Carolina cities would receive civil fines up to \$25. Businesses can expect more substantial penalties for non-compliance. Columbia's ordinance took effect on Friday, June 26 at 6 a.m. and Charleston's ordinance is soon to follow, beginning at midnight on Wednesday, July 1. With no sign of the current pandemic slowing down, Columbia's ordinance is set to remain in effect for 60 days, unless otherwise lifted. What do employers in the state capital need to know?

New Legal Obligations for Employers in Columbia

By way of Ordinance 2020-059, the City of Columbia is now requiring all individuals to wear masks when they are in public places within the city to prevent the spread of coronavirus. Columbia's new emergency ordinance specifically requires customers and employees in commercial businesses to wear masks, although some health and situational exceptions may apply. Employers in Columbia now must:

- 1. Enforce the Use of Face Masks Among Guests, Customers, or other Members of the Public Who Enter Their Premises:** The new ordinance provides that all persons entering a "commercial establishment" in the City of Columbia are required to wear a face mask while inside it. There is an exception for religious establishments due to federal protections, although the City of Columbia is nevertheless recommending the use of face masks during religious activities. You should interpret what qualifies as a commercial establishment broadly. Through a recent FAQ, the City of Columbia has stated that this face mask requirement applies to individuals entering, exiting, waiting in line to enter, and while inside places of business including, *but not limited to*, grocery stores, retail stores, pharmacies, health care facilities, restaurants and bars (including outdoor seating for such facilities unless seated at a table), hotels, motels (excluding the rented room or suite), gyms and similar facilities. As applied to restaurants and bars, face masks are also required for individuals waiting for a table or ordering. Restaurants and bars should be aware that if a patron is not seated at their table or at the bar, a face mask is required. Under the ordinance, face masks can be removed while eating

the bar, a face mask is required. Under the ordinance, face masks can be removed while eating, drinking, or smoking but must be worn otherwise. Subject to exemptions discussed below, the ordinance applies to any person entering a business who is 11 years of age or older.

- 2. Enforce the Use of Face Masks by Employees:** All restaurants, retail stores, salons, grocery stores, and pharmacies in the city must require their employees to wear a face mask at all times while having face-to-face interaction with the public. Any business owner, manager, or supervisor who fails to ensure that this requirement is met could be fined up to \$100 for each day of offense. Significantly, repeated violations could also result in the suspension or revocation of one's occupancy permit or business license. The City of Columbia has clarified that employees who do not interact with the public at work do not need to wear a mask, such as employees who work in a traditional office setting. However, the City of Columbia still recommends physical distancing from co-workers of at least six feet in such cases.

Columbia's face mask ordinance was largely modeled after that in Greenville. A major difference is that, as applied to customers and other members of the public, Greenville's ordinance only requires a mask to be worn when entering a grocery store or a pharmacy inside city limits. As to employees, the requirements are largely the same, with Greenville's face mask requirements applying to employees working in restaurants, retail shops, salons, barber shops, grocery stores, and pharmacies at all times while having face-to-face interaction with the public. Greenville businesses are also now required to post conspicuous signage at all entrances informing patrons of the requirement to wear masks in grocery stores and pharmacies.

Exemptions in Columbia

There are several circumstances under which customers and employees in Columbia are not required to wear face masks.

Employees Without Public Interaction. As mentioned above, the ordinance exempts employees from the face mask requirement when they do not interact with the public at work. It would also exempt those who are otherwise alone in personal offices. There is also an exemption for any person who is unable to safely wear a face mask due to age or an underlying health condition, or who is unable to safely remove the face mask without the assistance of others.

Health Conditions Exemption. The ordinance specifically states that a face mask is not required if wearing one would cause or aggravate a health condition. According to the City of Columbia, this includes mental health and developmental conditions. However, this exemption is evidently not as straightforward as one might believe; although not mentioned in the ordinance or FAQ, we are aware of recent reports that the City of Columbia is not extending the health exemption to restaurant employees who have face-to-face interaction with the public. Further guidance has not yet been issued as to whether the exemption would not apply to other face-to-face businesses also covered under the ordinance. Employers should exercise caution in this regard and must remain mindful of any requirements under the Americans with Disabilities Act (ADA) that may arise in such cases. If you have any questions regarding your obligation to engage in the interactive process to determine

any reasonable accommodations under the ADA, you should contact your Fisher Phillips attorney for further guidance.

Full details of the exemptions and additional guidance may be found in the [ordinance](#) and [FAQ](#).

The Columbia emergency ordinance is only applicable for businesses within city limits. It will not impact the rest of Richland County, although a similar measure is currently being considered by the Richland County Council pending input from the public. Unless rescinded, Columbia's ordinance expires on August 26, 2020.

What Actions Should Employers Take?

- **Implement a Face Mask Policy:** You should create and distribute a face mask 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. Employers should also ensure that proper social distancing measures have been put in place.
- **Train Employees on Your Policy and Other COVID-19-Related Concerns:** If you have not already done so, you should train your employees with regard to COVID-19, preventive measures you are taking in response to COVID-19, how to respond to a positive case, and other associated safety measures. You should also take steps to 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. Notably, individuals who refuse to wear a mask solely because they socially object to the requirement to do so (as opposed to having a medical condition or other qualifying exception) *are* subject to the ordinance.
- **Remember Your ADA Obligations:** Businesses should not require customers to provide doctor's notes if they claim that they cannot wear a mask due to a medical condition. Individuals will likely not be carrying a doctor's note with them, and the City of Columbia has made clear that individuals are not required to produce one under the ordinance. Further, although the ADA does not specifically address face masks, the Department of Justice (DOJ) previously provided guidance on this issue in the context of requiring medical documentation for individuals with service animals entering places of public accommodation. The DOJ concluded that requiring "persons with disabilities to obtain medical documentation and carry it with them any time they seek to engage in ordinary activities of daily life in their communities" would be "unnecessary, burdensome, and contrary to the spirit, intent, and mandates of the ADA." It is likely the DOJ would interpret the ADA similarly in the context of requiring medical documentation as related to face masks.
- **Use Proper Signage:** You should post signs at the entrance of your business reminding members of the public of these new face mask requirements. You can post notifications at all entrances stating that customers must wear masks, and that the business reserves the right to refuse entry if this requirement is not followed. Any signage should also contain a statement about requests for accommodation to avoid ADA-related violations. Your Fisher Phillips attorney can help you tailor these notices.

Conclusion

Once these emergency ordinances are enacted in cities across the state, Governor Henry McMaster indicated that he does not currently plan to implement a state-wide mask mandate due to constitutional and enforcement concerns. With that said, South Carolina Attorney General Alan Wilson has also weighed in, determining that South Carolina's state constitution and state laws give cities the authority to pass these measures under the doctrine of Home Rule. As businesses have quickly learned during the ongoing pandemic, this area of law is constantly evolving, and we expect these measures to continue to be implemented, even if only on a piecemeal basis. 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 [Columbia](#) office, or any member of our [Post-Pandemic Strategy Group Roster](#).

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