

TO MASK OR NOT TO MASK: SHOULD OUR DEALERSHIP REQUIRE FACE COVERINGS?

Insights
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Should your dealership require face coverings for workers and customers? In general, yes. [According to most recent studies](#), COVID-19 spreads mainly from person-to-person through respiratory droplets produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Accordingly, many [states and municipalities](#) have begun requiring the use of masks while the [CDC recommends](#) wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain, and *especially* in areas or regions where positive cases are rising.

WHAT ABOUT THOSE WHO DON'T WANT TO WEAR MASKS?

Still, many are reluctant to wear masks, often for medical reasons. If an employee refuses to wear a mask because of an underlying medical condition, dealers should engage in the required interactive process under the American with Disabilities Act. This may require a medical questionnaire to the employee's treating physician asking about other options or whether the condition precludes the employee from wearing any kind of face covering that would otherwise achieve the underlying goal of slowing the spread of the virus.

Of course, this is likely not possible with customers. Although a customer may have an underlying medical condition that makes it difficult to wear a mask (e.g., a pulmonary condition), it is highly unlikely the person is

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Matthew R. Simpson

Partner

404.240.4221

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carrying a doctor's note to that effect. Further, some state public health orders prohibit dealers from requiring medical documentation when this type of exemption is claimed. For these reasons, it is probably not best to require documentation from a customer to support their request.

This isn't to say that you need to let them into your dealership, however. Instead of engaging in a discussion with the customer about whether they are exempt from wearing a mask, consider whether an accommodation is available that would allow them to access the dealership. This could include online sales, remote pick-up and delivery, or expanded hours for the customer to gain access when the dealership is less crowded. Remember, although you may have a policy or be subject to a state-ordered obligation to require facemasks, you may also have an obligation to accommodate the customer if doing so is possible.

WHAT SHOULD YOUR DEALERSHIP DO?

Dealerships must comply with state and local guidance regarding the use of masks, and make decisions based on applicable laws and what is best for the health of their employees and customers. If your dealership decides to require masks, you should post a notice at your entrance and on your website that you require customers to wear a facemask to enter your place of business, and reserve the right to refuse service to anyone not complying with the requirement. Moreover, if you require employees to wear face coverings, you should pay for them.

We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. 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 or any member of the [Automobile Dealership Practice Group](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.