



What Ohio Employers Need To Know About New Mask Mandate And Travel Advisory

Insights

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In response to the rise and spread of newly reported COVID-19 cases, Ohio's Department of Health issued an order this week mandating the use of face coverings in public. In addition to the mask mandate, the agency issued a new travel advisory for Ohioans. What do Ohio employers need to know about these developments?

Face Coverings Required

Effective immediately, and unless an exception applies, all individuals within Ohio must wear a face covering when:

- in any indoor location that is not a residence;
- outdoors and unable to consistently maintain six feet of distance between themselves and individuals that are not members of the same household; and
- waiting for, riding in, driving, or operating public transportation, taxis, private car services or ride-sharing vehicles.

Notably, "facial covering (mask)" is broadly defined to include *any material* (not just cloth/fabric coverings as required in previous orders for employers) that covers the nose, mouth, and chin.

Exceptions To The Mask Mandate

The mask mandate contains numerous exceptions, including many that are likely to apply to most Ohio workplaces. For example, the requirement to wear a face covering does not apply when:

- A medical condition including those with respiratory conditions that restrict breathing, mental health conditions, or disability contraindicates the wearing of a facial covering;
- The individual is alone in an enclosed space, such as an office, or in lieu of an enclosed space, the individual is separated by at least six feet in all directions from all other individuals, and in either case the space is not intended for use or access by the public;
- Facial coverings are in violation of documented industry standards;
- Facial coverings are in violation of a business' documented safety policies; or,
- In an industrial or manufacturing facility, employees are separated by at least six feet in all directions, or by a barrier in a manufacturing line or work area.

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Mask Mandate Takeaways For Employers

The requirement to wear facial coverings in the workplace is not new for Ohioans, as Ohio employees have been required to wear facial coverings in the workplace since April of this year. Other than expanding upon and clarifying some of the exceptions, perhaps the most significant change for businesses is that customers and visitors are now required, not just encouraged, to wear masks unless an exception applies.

Given the number of well-publicized reports of customers and visitors reacting in a belligerent and sometimes violent manner after being asked to comply with mask mandates, it is understandable that many businesses are left asking how to enforce this new rule. You can find a five-step plan for handling anti-mask guests here.

If an employee claims they have a medical condition that prevents them from wearing a face covering, you should engage in the “interactive process” under the Americans with Disabilities Act (ADA). This process includes a carefully tailored medical questionnaire for the employee’s treating physician to verify the employee’s work restrictions if they are not obvious and to ask about other options such as face shields. Although the CDC endorses face shields only when masks are unavailable, it advises that face shields should wrap around the sides of the wearer’s face and extend to below the chin.

If a visitor or customer claims to have a medical condition that prevents them from wearing a mask, it would not be practical or advisable to engage in the interactive process. Recommendations for addressing this and other similar situations involving business visitors is provided in the five-step plan.

Updated Symptom-Based Return-To-Work Strategy

Consistent with updated guidance from the CDC, ODH’s order also contains revised guidance on when employees can return to work after being sick. Previously, ODH advised Ohio employers to encourage sick employees to stay home until (i) they were fever-free (without the use of medications) for 72 hours (three full days), and (ii) at least seven days had passed since symptoms first began.

ODH’s updated symptom-based strategy now advises employers to encourage sick employees to stay home until (i) they are fever-free (without the use of medications) for just 24 hours, (ii) symptoms have improved, and (iii) at least 10 days have passed since symptoms first began.

Given the current strain on the healthcare system, you are encouraged to be flexible when requesting documentation from healthcare providers, whether as part of the interactive process under the ADA, or to validate an employee’s illness or ability to return to work.

Ohio’s Travel Advisory

In addition to the mask mandate, ODH is recommending against travel to states with a high positivity rate (the positivity rate is an indicator of how much COVID-19 there is in a given community). Those

entering Ohio after travel to states reporting positive testing rates of 15% or higher (aka “hot spots”) for COVID-19 are advised to self-quarantine for 14 days. The advisory applies to both personal and business travel by Ohioans and out-of-state travelers. Because this is an advisory and not an order, the 14-day self-quarantine is recommended but not required.

Given the current ODH travel advisory and CDC guidance regarding international travel, you may ask employees to share where they plan to travel, even if the travel is for personal reasons. Additionally, although not a requirement, after traveling to a designated “hot spot,” you should ask employees to self-quarantine for 14 days before returning to work if at all possible in order to protect other employees and reduce the employer’s potential liabilities. Finally, given the current travel advisory, you should not ask your employees to travel to designated hot spots for business unless absolutely necessary.

Whether a particular location is a designated hot spot is fluid, with ODH’s [list of states with a positivity rate of 15% or higher](#) being updated every Wednesday. If you encourage or require employees to self-quarantine after traveling to a hot spot, you should develop a written policy advising employees on what to expect upon returning from travel, including whether employees who are unable to telework during the quarantine period will be eligible to use other forms of paid leave or if the time off will be unpaid. Because this is an advisory and not an order, employees are ineligible for paid sick leave under the Families First Coronavirus Response Act when self-quarantining.

Conclusion

Fisher Phillips 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, any attorney in our [Cleveland](#) or [Columbus](#) offices, or any member of our [Post-Pandemic Strategy Group Roster](#). You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#) for further information.

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

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