

Insights, News & Events

CONFLICT BETWEEN STATE AND CITY ORDERS RESOLVED: GEORGIA BUSINESSES MAY OPT IN OR OUT OF LOCAL MASK ORDERS

Insights
Aug 17, 2020

[Ed. Note: The [December 8 Executive Order](#), effective through December 31, keeps in place the provisions from the September, October, and November Executive Orders.]

[Ed. Note: The [September 15 Executive Order](#), effective through September 31, keeps in place the provisions from the August 15 and August 31 Orders and adds a section of requirements for Long-Term Care Facilities. Under the [September 15 Executive Order](#), "Long-Term Care Facility" includes intermediate care facilities, personal care homes, skilled nursing facilities, nursing homes, inpatient hospice, assisted living communicates, community living arrangements, and community integration homes, as defined by Georgia law.

The [September 15 Executive Order](#) mandates that Long-Term Care Facilities implement certain protocols, the most notable include a requirement that these facilities:

- **Actively screen residents and workers for COVID-19;**
- **Adhere to Centers for Disease Control and Prevention, Centers for Medicare & Medicaid Services, and Georgia Department of Public Health guidance;**
- **Adopt an infectious disease transfer communication protocol with local hospitals. The protocol should use the Centers for Disease Control and Prevention transfer tool and should be developed in collaboration with hospital infection prevention employees; and**

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- **Prohibit all visitors and non-essential personnel, except as permitted by Section III of the [September 15 Executive Order](#), titled “Sheltering in Place,” and as permitted by the State of Georgia Department of Public Health’s Long-Term Care Facilities Reopening Guidance Administrative Order for Long-Term Care Facilities other than community living arrangements or community integration homes, [which can be accessed here](#).**

Visitor policies in these facilities will depend on what Phase the facility is in, as defined in the [Georgia Department of Public Health’s Order](#). As of September 15, most facilities will be in Phase 1, which calls for a general prohibition on non-essential staff at these facilities and limiting visitation to certain exceptions such as end of life, outdoor, or window visitation.]

Georgia Governor Brian Kemp issued an [August 15 Executive Order](#) — effective through August 31 — that allows local governments to require individuals to wear face coverings, masks, face shields, or personal protective equipment if certain conditions are met. The [August 15 Executive Order](#) protects businesses from liability from any local mask order, and gives businesses the option to choose not to permit enforcement of a local mask order against individuals on their property. Otherwise, the [August 15 Executive Order](#) is nearly identical to the [prior Orders released in July](#) that replaced the [initial guidelines and requirements for businesses to reopen](#). What do you need to know about this order, and what should you do as you continue to reopen and operate your business?

DIFFERENCES BETWEEN LATEST ORDER AND JULY ORDERS

The [August 15 Executive Order](#) allows local governments under a “Local Option Face Covering Requirement” to require individuals wear face masks or face coverings when not able to maintain Social Distancing from non-cohabitating persons if a local government entity meets the “Threshold Requirement.” “Threshold Requirement” is defined as “the prevalence in a county of confirmed cases of COVID-19 over the previous 14 days is equal to or greater than 100 cases per 100,000 people according to the Georgia Department of Public Health.” For Georgia Department of Public Health statistics, [check here](#).

Notably, under the [August 15 Executive Order](#), businesses and organizations may be required by local orders to post reasonable public notice of these local orders and to indicate to the public whether such business or organization consents or does not consent to enforcement of these orders on its property. These local mask orders are limited further as follows:

- Local orders can only be enforced against individuals on private property where the owner or occupant of the property consents to enforcement;
- Local orders can only be enforced against individuals, not businesses or organizations;
- Local orders cannot give rise to any civil or criminal liability for any business or organization;
- Local orders cannot apply to individuals who are eating or drinking, those who have difficulty donning or removing a face covering without assistance, those who have a bona fide religious objection to wearing a face covering, or those who have a bona fide medical reason not to wear a face covering;
- Local orders cannot result in fines, fees, or penalties in excess of \$50.00 against any person per offense and cannot be punishable by imprisonment for any term;
- Local orders cannot be enforced at any Polling Place, as defined under O.C.G.A. § 21-2-2(27), and no individual shall be denied ingress or egress to or from a Polling Place for failure to wear a face covering or face mask; and
- Local orders cannot be enforced against individuals on residential property.

The [August 15 Executive Order](#) allows local governments to issue face covering requirements on local government property without regard to the limitations discussed above. But the [August 15 Executive Order](#) also specifically suspends the enforcement of any city or county order, rule, ordinance, or regulation that requires persons in Georgia to wear face coverings, masks, face shields, or personal protective equipment unless the above criteria are met.

WHAT SHOULD EMPLOYERS DO?

While the [guidelines published by the City of Atlanta](#) and [Atlanta's return to Phase One are still only advisory](#), and while employers may now opt out of city and county orders requiring individuals to wear masks [like the one currently in effect in Atlanta](#), employers should follow all applicable local orders requiring individuals to wear masks.

Also, in addition to [these signs all Georgia businesses should have already posted](#), businesses must now look to local governments to see if face covering orders have been issued. If a local order covers your business, you should post signs at the entrance to their premises with the following sample language:

NOTICE

[City or County or "The local government"] has issued a requirement for individuals to wear face coverings. Pursuant to Georgia Executive Order, [business or organization name] [does or does not] consent to the enforcement on its property of this face covering requirement. Check your local government website for updates to this order.

As you continue the process of reopening, you should familiarize yourself with our alert: [5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance](#). You should also keep handy our [7-Step Plan For Handling Confirmed COVID-19 Cases](#) in the event you learn of a positive case at your workplace. 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](#).

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 [Atlanta](#) office, or any member of [our Post-Pandemic Strategy Group Roster](#).

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.