



# San Franciscans Ordered to Wear Face Masks – Who Pays For Them While At Work?

Insights

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San Francisco has ordered individuals to wear face coverings when they are shopping, taking transit, getting healthcare, or ***working in a job that interacts with the public***. This rule became effective on April 17, 2020, but it will not be enforced until 8:00AM on April 22, 2020. Other Bay Area Counties are following suit. Many employers are now faced with a crucial question: who should pay for these mandatory face coverings?

## The Basics

San Francisco recently issued a new rule requiring the use of face coverings where other social distancing measures are difficult to maintain. Individuals now must wear a face covering when they are:

- Waiting in line to go inside a store;
- Shopping at a store;
- On public transportation (or waiting for it);
- In a taxi or rideshare vehicle;
- Seeking healthcare;
- Going into facilities allowed to stay open, like government buildings; and
- **Working an essential job that interacts with the public**

The rule defines “Face Covering” as a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers only the nose and mouth and surrounding areas of the lower face. A covering that hides or obscures the wearer’s eyes or forehead is not a “Face Covering.” Additionally, masks that incorporate a one-way valve that are designed to facilitate easy exhaling is not a Face Covering (as those valves permit droplets to release from the mask, putting others nearby at risk).

## Exceptions

A Face Covering is also not required to be worn by a particular individual if the person can show either:

1. A medical professional has advised that wearing a Face Covering may pose a risk to the person wearing the mask for health-related reasons; or
2. Wearing a Face Covering would create a risk to the person related to their work as determined by local, state, or federal regulators or workplace safety guidelines. A Face Covering should also not be used by anyone who has trouble breathing or is unconscious, incapacitated, or otherwise unable to remove the Face Covering without assistance.

### **What Does This Mean For Employers?**

First, you must ensure that workers covered under the new rule are wearing Face Coverings while at work. This means:

- Employees, contractors, owners and volunteers of all Essential Businesses must wear Face Coverings when at work.
- Workers engaged in Minimum Basic Operations, Essential Infrastructure Work, and Essential Government Functions must wear a Face Covering in areas where the public is presently or likely to be and at any time when others are nearby.
- Workers working in any space where food is prepared or packaged for sale or distribution for sale or distribution to others must wear Face Coverings.
- Workers working in any space visited by members of public or in common areas such as reception areas, public restrooms or waiting areas, regardless of whether anyone from the public is present, must wear Face Coverings.

Second, Essential Businesses, businesses engaged in Essential Infrastructure work, or Minimum Basic Operations must also:

- Take reasonable steps to prohibit any member of public who is not wearing a Face Covering from entering. This includes posting signs to remind their customers and the public of the requirement to wear a Face Covering while inside or waiting in line to enter; and
- Not serve persons if those efforts to prevent them from entering are unsuccessful and seek to remove that person.

### **Are Employers Responsible For Paying For The Face Coverings?**

At this time, there is no definitive answer or guidance from the Occupational Safety and Health Administration (OSHA) as to whether cloth face masks are considered Personal Protective Equipment (PPE). This is a critical answer, as it would open up a whole host of additional obligations for employer – because OSHA requires employers provide employees PPE free of charge, with some exceptions.

However, what we do know is if an employer requires employees to wear them, rather than simply allowing them to be worn on a voluntary basis, then employers are likely required to provide them

and/or pay for them. Therefore, the most risk-averse position and safest course of action for San Francisco employers is to treat Face Coverings as if they are PPE and pay for them.

Also, the PPE standard provides that employers cannot require employees to provide their own PPE and an employee's use of PPE they already own (e.g., homemade cloth masks) must be voluntary. So, if employees voluntarily bring in their own cloth Face Coverings to work, you do not have to reimburse the employees for the cost.

## **Conclusion**

The CDC has made clear in its recommendations that cloth Face Coverings do not replace its prior advice about social distancing and handwashing. Therefore, cloth Face Coverings – whether mandated or simply permitted – should be part of an overall safety plan that incorporates OSHA's guidance and updated CDC guidance.

This a constantly evolving area, with new guidance being issued nearly every day. 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 San Francisco office](#), or any member of [our Post-Pandemic Strategy Group Roster](#). You can also review the [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

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