



New York Issues Guidance On Face Masks For Essential Business Employees

Insights

4.23.20

Governor Cuomo recently issued an Executive Order directing essential businesses to provide face coverings to their employees when in direct contact with customers or members of the public, at the expense of the employer. The New York State Department of Health (NYSDOH) just issued guidance for such essential businesses to comply with the order. What do New York employers need to know?

Which Businesses Are Impacted By This Order?

As part of the state's "New York on PAUSE" program, Governor Cuomo issued an Executive Order mandating that 100% of the workforce of non-essential businesses stay at home, effective March 22. After several extensions, the order is currently in effect through May 15, subject to additional extensions.

Essential services are excluded from the mandate to reduce in-person personnel, including essential health care operations; essential infrastructure, including utilities, telecommunication, airports, and transportation infrastructure; essential manufacturing, including food processing and pharmaceuticals; essential retail, including grocery stores and pharmacies; essential services, including trash collection, mail, and shipping services; news media; banks and related financial institutions; providers of basic necessities to economically disadvantaged populations; construction; vendors of essential services necessary to maintain the safety, sanitation, and essential operations of residences or other essential businesses; and vendors that provide other essential services or products.

It is these "essential businesses" that are required to provide their in-person workforce with face coverings.

What Constitutes A Face Covering?

The guidance from the NYSDOH provides that a face covering includes surgical masks, N-95 respirators, face shields, and cloth coverings, such as bandanas and homemade sewn coverings. The guidance references CDC guidelines on the use of cloth face covers.

Which Employees Need To Be Provided With A Face Mask?

The Executive Order requires face coverings to be provided to employees who are in "direct contact" with customers or members the public. Per the NYSDOH, at a minimum, face coverings must be

provided to any employee who is routinely within close contact (i.e., six feet or less) with members of the public.

Can Employees Use Their Own Face Coverings?

The NYSDOH guidance states that employees are allowed to use their own face coverings but cannot be required to do so by their employer. Moreover, employees can wear more protective face coverings (surgical masks, N-95 respirators, or face shields) if the employee already possesses such protective equipment, or the employer otherwise requires employees to wear more protective equipment due to the nature of their work.

Are There Any Exceptions?

Per the NYSDOH guidance, employees are required to wear the face covering when in direct contact with members of the public, except where doing so would inhibit or otherwise impair the employee's health. In such circumstances, employers are prohibited from requesting or requiring medical or other documentation from the employee who declines to wear a face covering.

Additionally, any employees who are unable to wear face coverings and are susceptible to COVID-19 (i.e., individuals who are 70 years of age or older, individuals with compromised immune systems, and individuals with underlying illnesses) are encouraged to work with their employer regarding potential reasonable accommodations, such as different protective equipment, alternate work location, or alternate work assignment with fewer interactions with the public.

What If Our Business Cannot Obtain Face Coverings?

The NYSDOH guidance makes clear that inability to obtain face coverings ***does not relieve you from your obligation to provide such face coverings to your employees***. The guidance directs employees to consult with their local office of emergency management in the event they cannot procure face coverings, but cautions that those supplies are extremely limited and are prioritized for health care workers and first responders.

Conclusion

For now, 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, any attorney in our [New York City office](#), 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](#).

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