

Insights, News & Events

# WHAT EMPLOYERS NEED TO KNOW ABOUT VIRGINIA'S PUBLIC MASK REQUIREMENT

Insights  
May 28, 2020

Effective Friday, May 29, Virginians aged 10 and older must wear cloth face coverings in public, and employees of essential retail businesses must wear face coverings when working in customer-facing areas. Though many questions remain, you should review your current policies and practices to ensure that both employees and clientele can comply with the new requirements. You should also be cognizant of privacy and discrimination considerations before questioning either employees or customers about mask use.

## WHERE DO YOU HAVE TO WEAR FACE COVERINGS?

[Executive Order 63](#) requires patrons to wear face coverings when entering, exiting, traveling through, and spending time in the following locations:

- Personal care and grooming businesses, including beauty salons, barbershops, spas, massage centers, tanning salons, tattoo shops, and similar businesses;
- All brick-and-mortar retail businesses;
- Food and beverage establishments, including restaurants, food courts, breweries, distilleries,

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wineries, farmers markets, and similar establishments when they can reopen;

- Entertainment and recreation businesses, including racetracks, theaters, performing arts centers, concert venues, museums, and indoor entertainment facilities, including bowling alleys, aquariums, zoos, escape rooms, social clubs, and similar establishments when they can reopen;
- Train stations, bus stations, public transportation, buses, rideshares, trains, taxis, and cars for hire, as well as waiting areas for boarding public transportation (other than federally controlled areas);
- Any other indoor spaces shared by groups of people near each other; and
- State and local government buildings when accessed to obtain public services.

## **ANY EXCEPTIONS?**

Virginians need not wear face coverings while:

- In residences;
- Participating in religious rituals;
- Eating or drinking; and
- Exercising or using exercise equipment.

Students in daycare centers, and those participating in in-person K-12 or higher education, are also not required to wear face coverings. Additionally, face coverings are not required for anyone who has difficulty breathing, is unconscious, incapacitated, or unable to remove a mask without assistance; anyone who communicates with the hearing impaired and whose mouth needs to be visible; anyone who needs to temporarily remove a mask to seek government or healthcare services; or anyone who cannot wear a mask because of health conditions.

## **WHAT ABOUT EMPLOYEES?**

The Order mandates that employees of essential retail businesses wear face coverings, but it does not address employees of other essential or non-essential businesses. The Order directs the Commissioner of the Virginia Department of Labor and Industry to issue emergency regulations and standards to prevent and mitigate the spread of COVID-19 in the workplace. The regulations and standards will address personal protective equipment (PPE), respiratory protective equipment, sanitization, and access to employee exposure, medical records, and hazard communication.

## **ARE EMPLOYERS REQUIRED TO ENSURE COMPLIANCE?**

Currently, Virginia does not require employers to provide face coverings to employees or customers. Similarly, the Order does not penalize employers for employees who refuse to comply or for customers refusing to wear face coverings. Nevertheless, you should tread lightly when an employee or customer refuses to wear a mask. Because exceptions to the Order exist for health-related conditions, you should ensure compliance with all privacy obligations and be careful to avoid claims of discrimination based on disabilities or perceived disabilities.

Though more guidance for employers should be forthcoming from the Department of Labor and Industry, employers must remain vigilant of the swiftly changing requirements and regulations.

## **DO PENALTIES EXIST FOR FAILING TO COMPLY?**

The Virginia Department of Health has the authority to enforce the new requirements, and failure to comply is punishable as a Class 1 misdemeanor.

## **CONCLUSION**

We will continue to monitor this rapidly developing situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. For further information or advice on how to satisfy notice requirements as an employer, contact your Fisher Phillips attorney, 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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*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.*