

HR Heads-up

PERIODIC UPDATES ON IMPORTANT HR LEGAL ISSUES

JULY 8, 2020

Dane County Requires Face Coverings Indoors Beginning July 13, 2020

On Tuesday, July 7, 2020 Madison Public Health Dane County (MPHDC) issued [Emergency Order #8](#), which requires every individual age 5 or older to wear a face covering that covers their nose and mouth while indoors in most situations. The order takes effect on Monday, July 13, 2020 at 8:00 a.m.

Individuals in Dane County must wear a face covering when they are:

1. In any enclosed building where other people, except for members of the person's own household or living unit, could be present.
2. In line to enter any indoor space.
3. Driving or riding on public transportation or in a paratransit vehicle, a taxi, a private car service vehicle, a ride-sharing vehicle, or any other for hire vehicle.

Individuals are permitted to remove their face coverings under the following circumstances:

1. While they are eating or drinking.
2. When communicating with an individual who is deaf or hard of hearing and communication cannot be achieved through other means.
3. While obtaining a service that requires the temporary removal of the face covering.
4. When necessary to confirm the individual's identity.
5. When federal or state law prohibits wearing a face covering.

The following individuals are not required to wear a face mask under the order:

1. Individuals for whom wearing a face covering would create a risk to the person related to their work, as determined by governmental safety guidelines.
2. Individuals with a medical condition, mental health condition, or disability that prevents them from wearing face coverings.

What does this mean for employers?

Starting July 13th, all employees located in Dane County will be required to wear a face covering at work if they are in an enclosed building where others could be present. Employees may remove their face coverings under the limited circumstances listed above, but should otherwise wear a face covering at all times.

Businesses must comply with MPHDC's facial covering requirement and take steps to ensure that all employees, customers, guests, vendors, and others present inside the employer's building are wearing a face covering. Under the order, businesses are required to ensure that "employees are provided with and wear face coverings at all times when indoors." Employers should be prepared to provide face coverings to employees who do not have their own.

If a customer or guest is unable to wear a face covering in a business due a medical condition or disability, MPHDC advises that individuals "should ask that business for reasonable accommodation, like a curbside pickup or delivery option." State and local law prohibit places of public accommodation (which include businesses) from discriminating against individuals with disabilities, among other protected characteristics. Businesses may need to provide accommodations to customers who are unable to wear face coverings due to a medical condition or disability.

What does this mean for employees with disabilities?

Employees with certain medical conditions and disabilities may be exempt from wearing a face covering indoors. If an employee informs an employer that they are unable to wear a face covering due to a medical condition or disability, the employer should treat that as a request for a reasonable accommodation under the Americans with Disability Act (ADA) and engage in the interactive process. As part of this process, an employer may require an employee provide documentation from the employee's medical provider that they have a medical condition that prohibits them from wearing a face covering. Employers who are unsure about an employee's request to not wear a face covering due to a medical condition or disability are strongly advised to consult with legal counsel.

MPHDC advises that the order "... should not be used as justification to harass or harm another person who is either wearing or not wearing a face covering. People should assume others have valid reasons for wearing or not wearing a face covering." Dismissive treatment, harassment, or taking an adverse employment action against an employee who is unable to wear a face covering due to a disability may be a form of disability discrimination under the ADA and state law. Employers should take steps to ensure that employees with disabilities who are unable to wear face coverings are not harassed or otherwise discriminated against in the workplace.

Employers should also ensure that employees' medical information is kept private. Both the ADA and state law prohibit employers from disclosing that an employee has a disability or the nature the employee's disability to others. If an individual asks an employer why a certain employee is not wearing a facial covering, the employer may not disclose or discuss the employee's disability or medical information. Employers with questions or concerns about how to respond to such inquiries are encouraged to consult with legal counsel.

Local public health restrictions are changing rapidly as cases of COVID-19 continue to increase around the country. Boardman Clark's Labor & Employment team will continue to monitor local and statewide regulations as they develop. Please contact any Boardman Clark attorney if you have any questions.

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