



Disability Law Center's Self-Advocacy Materials

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COVID-19

This document is designed for people with disabilities.

The information is about your legal rights and how to advocate for yourself as a resident in Massachusetts.

Contact us to request this information in an alternative format.

617-723-8455

800-872-9992

mail@dlc-ma.org

Funding

DLC receives funding from government grants, private foundations, and individual contributions. For details about our funding and programs, please visit our website:

<https://dlc-ma.org>



COVID-19: Masks and Places of Public Accommodation

You Will Learn About:

- Introduction - CDC Recommendation on Face Coverings and Exceptions
- Massachusetts Revised Order Requiring Face Coverings
- Reasonable Modification
- More Information

This document includes general information about legal issues and is intended to be used for informational purposes only. These informational materials should not be taken as legal advice, and do not create an attorney-client relationship. The outcome of any particular matter will depend on a variety of factors. For specific legal problems you would need to contact an attorney.

Introduction

What is the CDC Recommendation on Face Coverings and Are There Exceptions?

COVID-19 has been declared a pandemic. Wearing a face mask is one important way to slow the spread of COVID-19, especially because studies have shown that many people who do not have symptoms of COVID-19 can spread the virus to other people. In fact, it takes about four to fourteen days for someone to show symptoms, so they may be infecting others during that time period without knowing it if they are not wearing a mask.

The CDC recommends that people over age two wear a face mask in public where it can be hard to stay six feet apart from others. But, wearing a face mask may be difficult or unsafe for some people with a disability. For example,

- Individuals with respiratory disabilities such as asthma or chronic obstructive pulmonary disease (COPD);
- People with anxiety, post-traumatic stress disorder (PTSD), or claustrophobia who may feel an exacerbation of their condition when wearing a face mask;
- Some people with autism who are sensitive to touch and texture or who may have feelings of sensory overload;
- A person who has cerebral palsy may have difficulty moving the small muscles in the hands, wrists, or fingers. Due to their limited mobility, they may not be able to tie the strings or put the elastic loops of a face mask over the ears. This means that the individual may not be able to put on or remove a face mask without assistance.
- A person who uses mouth control devices such as a sip and puff to operate a wheelchair or assistive technology, or uses their mouth or tongue to use assistive ventilators may be hindered in their ability to do so because of a face mask.

Massachusetts Revised Order Requiring Face Coverings

On November 2, 2020, Governor Baker issued a revised mask order, which went into effect on November 6, 2020. The revised order requires all persons in Massachusetts over the age of 5 to wear a mask or cloth face covering over their mouth and nose when in a public location, whether indoors or outdoors. Masks or face coverings are encouraged but not required for children between the ages of 2 and 5. 'Public locations' is defined broadly in the order.

The order permits the operator of a facility or business to decline entry to any individual who refuses to wear a mask or cloth face covering **for non-medical reasons**.

Can A Business Turn Away A Customer Who Cannot Wear A Mask for Medical or Disability-Related Reasons?

The mask order's face coverings requirement does not apply where a person is unable to wear a mask or cloth face covering due to a medical or disabling condition (the individual cannot be required to produce documentation verifying the condition), or where a face covering would impede communication by or with a person who has a hearing impairment or other disability. If a business violates the mask order, you should contact the Department of Public Health, or your local Board of Health to make a complaint.

But, to fully answer this question, in addition to the mask order, we also have to look to a federal law, the Americans with Disabilities Act. It is important to look to the ADA for guidance, because under the Governor's mask order, the only consequence for a violation is a potential fine of up to \$300 per violation.

Title III of the ADA is a federal law which **forbids discrimination by places of public accommodation** based on disability. Title III prohibits discrimination and seeks to **ensure equal access** to the goods and services offered by places of public accommodation.

- **'Places of public accommodation'** are any places that provide goods, services or entertainment. It is a broad term. It can apply to almost any place that is open to the public, including "public locations" that are included in the Massachusetts mask order.
- **Discrimination** can include not allowing a person with a disability to enter a place of public accommodation. It can also mean providing goods or services to a person with a disability in a place of public accommodation that are **not equal** to the goods or level of service that is provided to individuals without disabilities.
- **Equal access** means that a person with a disability should have the same opportunity to participate, or receive a benefit or service, in a place of public accommodation as a person without a disability. People with disabilities cannot be given **different or separate** benefits or services, unless the difference is necessary to give them an effective service.

In general, a person must be **qualified**, which means that they meet the basic eligibility requirements for the receipt of services or for participation in the particular program or activity, either with or without **reasonable accommodation**. Currently, wearing a mask, or cloth face covering in public locations would likely be considered a basic legitimate safety requirement for eligibility of services. Reasonable accommodation (also referred to as "Reasonable Modification") can include modification of a rule or policy, like waiving a policy requiring all customers to wear masks, unless doing so would result in a direct threat or fundamental alteration, as discussed below. In lieu of waiving a mask policy, reasonable modifications can also include -

- Allowing a person to wear a scarf, loose face covering, or full face shield instead of a face mask;
- Allowing customers to order online or by phone with curbside pick-up or no- contact delivery in a timely manner;
- Allowing a person to enter the business at a time when social distancing is possible; or
- Allowing a person to wait in a car for an appointment and enter the building when called or texted.

What is Considered Reasonable?

There is no single answer to this question because circumstances will be different in various settings. Title III of the ADA requires 'reasonable modifications' in a policies, practices or procedures if they are necessary for a person with a disability to have equal access to goods and services. It would **not** be a reasonable modification for a public entity to **fundamentally alter** their program or activity for a person with a disability, or to allow something that would be a **direct threat** to the health or safety of others.

A business may not have to provide a reasonable modification if the modification would change the nature of the service, program, activity, goods, services, or facilities. A fundamental alteration is a change to such a degree that the original program, service, or activity is no longer the same.

- **Example of a fundamental alteration:** A customer requests that a store deliver items to her home as a reasonable modification so that she does not have to enter the store. The store does not offer home delivery. Therefore, the store would not have to grant the request for home delivery since it would be a fundamental alteration of their services.

A business also may not have to provide a reasonable modification to the face mask policy if doing so poses a **direct threat** to the health or safety of others. A direct threat is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services. The Centers for Disease Control and Prevention (CDC), the U.S. Department of Labor Occupational Safety and Health Administration (OSHA), as well as state and local public health agencies all provide current information regarding the threat to the public that COVID-19 poses, and should be consulted regularly to ensure that businesses are imposing up-to-date legitimate safety requirements which are actually necessary for safe operation and not based on speculation, stereotypes, or generalizations about individuals with disabilities.

Reasonable Modification

How Do I Get A Reasonable Modification If I Need One?

You must make a request. If your need for a modification is obvious, then your request should be simple. **But**, if the need is not obvious, then make the request in writing and provide medical documentation of your need for the modification.

Does a Public Accommodation Have To Provide The Exact Modification That I Asked For?

No. Businesses only need to provide a modification that is **reasonable and effective**. This means that the modification gives a qualified person with a disability **meaningful access** to the benefit or service being provided.

More Information

Anything Else?

For additional information, see:

- Face Coverings and Businesses: Balancing the ADA with Public Health During COVID-19
 - <http://nwadacenter.org/factsheet/face-coverings-and-businesses-balancing-ada-public-health-during-covid-19-0>
- FAQs: The ADA, Small Business and Face Masks
 - <https://www.gpadacenter.org/faqs-ada-small-business-and-face-mask-policies>
- The ADA and Face Mask Policies
 - <http://www.adasoutheast.org/ada/publications/legal/ada-and-face-mask-policies.php>