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Question of the Day: What do I need to know about the Minnesota Governor's Mandatory Face Covering Order?

Legal Update

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Question**What do I need to know about the Minnesota Governor's Mandatory Face Covering Order?****Answer**

On July 22, 2020, Governor Tim Walz issued Executive Order 20-81 (Order) regarding face coverings which will go into effect at 11:59 p.m. on July 24, 2020.

Minnesotans need to know:

Except for individuals who are exempt under the Order and for circumstances specified in the Order, face coverings are **mandatory**:

- In indoor businesses or public indoor spaces including when waiting outdoors to enter an indoor business or public outdoor space.
- Coverings are not required in living units except that (1) workers entering living units for business purpose are required to wear a face covering when doing so; and (2) visitors, patients, residents or inmates of hospitals, shelters, drop-in centers, long-term care facilities, residential treatment facilities, residential programs licensed under Minn. Stat 2019, Chapter 245D or correctional facilities must wear a face covering even when in a living unit if required by the facility.
- Coverings are not required in private vehicles used for private purposes.
- When riding on public transportation, in a taxi, in a ride-sharing vehicle or in a vehicle used for a business purpose.
- In any other business, venue or public space which has opted to require face coverings even though not required by the Order.
- For workers only when working outdoors in situations where social distancing cannot be maintained.

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- When applicable industry guidance on the Stay Safe Minnesota website specifically requires face coverings. In some instances, face shields may be required in addition to or instead of face coverings or may be allowed as an alternative to face coverings.
- Unless there is a specific exemption under the Order.
- Until the peacetime state of Emergency in Minnesota is lifted or unless the Order is otherwise rescinded.

All businesses must:

- Update their COVID-19 Preparedness Plans (Plans) to include the face covering requirements set forth in the Order and including those that have been incorporated into the Industry Guidance applicable to their businesses available on the Stay Safe Minnesota
- Inform workers how their Plan has been updated and make the revised Plan available to their workers.
- Post one or more signs that are visible to all persons (including workers, customers and visitors) instructing them to wear face coverings as required by the Order.
- Require that all persons, including their workers, (defined to include "vendors"), customers and visitors wear face coverings.
- "When possible" provide accommodations to persons including their workers and customers who state they have a medical condition, mental health condition or disability that makes it unreasonable for the person to maintain a face covering such as:
 - Permitting use of an alternate form of face covering (e.g. face shield); or
 - Providing service options that do not require a customer to enter the business.
- Businesses may not require customers to provide proof of a medical condition, mental health condition, or disability or require customers to explain the nature of their condition or disability.
- Businesses must follow the requirements of other applicable laws with respect to requiring a worker to provide documentation of medical condition, mental health condition or disability related to their inability to wear a face covering and what the business may ask regarding the condition or disability.
- Businesses are not required to enforce the Order or require their workers to enforce the order when it is unsafe to do so. Nothing authorizes businesses to restrain, assault or physically remove workers or customers for refusal to comply with the Order.
- The Order does not authorize businesses or their workers to violate other laws including laws against discrimination.

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Acceptable face coverings:

- Must be worn to cover the nose and mouth completely and can include a paper or disposable face mask, a cloth face mask, a scarf, a bandanna, a neck gaiter or a religious face covering.
- Medical grade masks and respirators are sufficient face coverings, but to preserve adequate supplies, their purchase and use is “discouraged” for Minnesotans who do not work in a health care setting or in other occupations that require medical grade protective equipment.
- Masks that incorporate a valve designed to facilitate easy exhaling, mesh masks or masks with openings, holes, visible gaps in the design or material or vents **are not** sufficient because they allow exhaled droplets to be released into the air.

When leaving home, Minnesotans are “strongly encouraged” to have a face covering with them all times to be prepared to comply with the Order.

Temporary Removal of Mandatory Face Coverings

Face coverings may be temporarily removed under the following circumstances:

- When participating in organized sports in an indoor business or indoor public space while the level of exertion makes it difficult to wear a face covering.
- When exercising in an indoor business or public indoor space such as a fitness center when the level of exertion makes it difficult to wear a face covering provided social distancing is maintained.
- When testifying or speaking or performing in an indoor business or public indoor space, provided that social distancing is always maintained. Face shields should be considered as an alternative.
- During practices or performances in an indoor business or indoor public space when a face covering cannot be used while playing a musical instrument so long as social distancing is maintained.
- During activities such as swimming or showering and the face covering will get wet.
- While eating or drinking in an indoor business or indoor public space provided that at least 6 feet of physical distance is maintained between persons who are not members of the same party.
- When asked to remove a face covering to verify an identity for lawful purposes.
- While communicating with an individual who is deaf, hard of hearing or has a disability medical condition or mental health condition that makes communication with that individual while wearing a face covering difficult so long as social distancing is maintained to the extent possible for persons who are not members of the same household.

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- While receiving a service including a dental examination or procedure medical examination or procedure or person care service that cannot be performed or would be difficult to perform if the individual receiving the service is wearing a face covering. But the worker performing the services must comply with face covering requirements in the applicable industry guidance available at the Stay Safe Minnesota website.
- When an individual is alone, including in an office, a room, a cubicle with walls higher than face level when social distancing is maintained, a vehicle or cab or heavy equipment or machinery or an enclosed work area. Masks should still be carried to be prepared for person-to-person interaction.
- When a public safety worker is actively engaging in a public safety role such as law enforcement, firefighters or emergency personnel in situations where wearing a face covering would “seriously interfere” with the performance of their public safety responsibilities.

Special Rules for Childcare, Preschool and Pre-K Settings, Kindergarten through Age 12 and for Institutions of Higher Learning

The Order notes that child care settings and educational institutions have “unique needs” that do not always permit universal face coverings when indoors. The Order summarizes requirements for childcare, preschool, pre-kindergarten and school aged children and institutions of higher learning but states that Minnesotans should refer to the detailed guidance for these settings. The Order states that the requirements, recommendations and exceptions applicable in these settings should be “clearly documented” in Preparedness Plans and made available to families and staff.

Exemptions from Order

The Mandatory Mask Order does not apply to:

- Individuals with a medical condition, mental health condition or disability that makes it unreasonable for the individual to maintain a face covering. That includes, but is not limited to, individuals who have a medical condition that compromises their ability to breathe, and individuals who are unconscious, incapacitated or otherwise unable to remove a face covering without assistance. These individuals should consider using alternatives to face coverings including face shields or staying home as much as possible.
- Children who are five years old or under. However, those older than two are encouraged to wear a face covering if they can do so in compliance with CDC guidance. Those under two years of age should never wear a face covering due to risk of suffocation.
- Individuals at work when wearing a face covering would create a job hazard for the individual or others as determined by local state or federal regulators or workplace safety and health standards and guidelines.

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- Federal government including federal judicial, legislative and executive staff and personnel.
- Legislative proceedings and meetings.
- The Minnesota Judicial Branch which is subject to Orders of the Chief Justice for judicial branch facilities and proceedings.
- Activities by tribal members within the boundaries of tribal reservations (but they may be subject to orders of tribal authorities) and activities within the boundaries of federal land held in trust for Minnesota Tribal Nations (but they may be subject to restrictions from tribal authorities.)

Mask Use “Strongly Encouraged”

The Order strongly encourages mask use in the following settings:

- During indoor or outdoor private social gatherings with those who do not reside in the same household, particularly where it is difficult or impossible to maintain social distancing.
- When riding in a private vehicle with a person or persons who don't reside in the same household.
- Inside your home if you are infected with COVID-19 or experiencing symptoms of COVID-19 and you reside with others who could be infected.
- While participating as an athlete in indoor or outdoor organized sporting events to the extent possible where social distancing is not being maintained.
- In an outdoor business or public outdoor space when it is not possible to maintain social distancing (such as when entering or existing a business, being seated, moving around in a space with others present, using the restroom, ordering food or waiting in line). This does not apply to workers who must wear face coverings.

Safe Work

The Order reinforces that businesses should remain vigilant in enforcing workplace safety by stating:

- The protections in Executive Order 20-54 (Protecting Workers from Unsafe Working Conditions and Retaliation) remain in full force and effect.
- Businesses are responsible for the safety and health of their workplaces and must conduct work in a manner that adheres to requirements set forth in industry guidance applicable to the business on the Stay Safe Minnesota website, Minnesota OSHA Standards and MDH and CDC Guidelines, including the face covering requirements of the Order.
- Under existing law and authority, the Department of Labor and Industry (DLI) may issue citations, civil penalties or closure orders to places of employment with

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unsafe or unhealthy conditions, and DLI may penalize businesses that retaliate against employees who raise safety and health concerns.

Violations and Enforcement

The Order encourages voluntary compliance but references the following penalties for non-compliance:

Business violations

A business owner, manager or supervisor who fails to comply with the Order is guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed \$1,000 or by imprisonment for not more than 90 days. The Attorney General and city and county attorneys also may seek civil relief under state law up to \$25,000 per occurrence from businesses and injunctive relief.

Individual violations

A willful violation of the order is a petty misdemeanor which upon conviction must be punished by a fine not to exceed \$100. (This does not apply to children younger than 14 years old or students 14 or older who are in enrolled in school or a higher education institution and on the premises of the school or educational institution).

The Order encourages state and local licensing and regulatory entities to assess regulated businesses' compliance with the Order and to bring businesses into compliance.

Enhanced Local Measures

Political subdivisions may implement requirements beyond those in the Order to take more protective actions for public health but not less protective.

Resources

<https://staysafe.mn.gov>

<https://www.health.state.mn.us/diseases/coronavirus/prevention.html#masks>

Face Cover Guidance

For Businesses

Clients who have questions about preparing or updating a COVID-19 Preparedness Plan or a COVID-19 incident response plan for their business or any other employment law issue related to COVID-19 should contact their Fredrikson Employment and Labor attorney.

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If you have questions regarding these obligations or others related to COVID-19, contact your Fredrikson & Byron Employment & Labor attorney.

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