

## Updates

April 17, 2020

### Essential Businesses in Several States Now Must Provide Face Masks to Employees

On April 3, 2020, the U.S. Centers for Disease Control and Prevention (CDC) issued an updated recommendation that all workers and members of the general public should consider using non-medical face masks or face coverings to prevent the spread of COVID-19 transmission and infection. The CDC does not **require** individuals to wear face masks; however, businesses should be aware of increased local legislation that may affect their workforce. Many states now mandate the use of face masks and may even require businesses to bear the cost in providing them.

### States With Face Covering Mandates

**Maryland:** Effective April 18, staff of all retail and food service establishments must wear face coverings while working in areas open to the general public and areas in which interactions with other staff are likely. Note that all members of the public over the age of nine also must wear face coverings while inside any retail or food-service establishment.

*What type of "face covering" complies with the order?* Face coverings must fully cover a person's nose and mouth and can include scarves and bandanas, according to the order.

*Must employers bear the cost of face coverings?* Unclear.

See [Maryland's Order](#)

**New Jersey:** Effective April 10, workers at essential retail businesses with in-person operations, and visitors to such establishments, must wear cloth face coverings while on the premises unless doing so would inhibit the individual's health or if the individual is under two years of age. Workers also must wear gloves when in contact with customers or goods. If a visitor refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by the business at the point of entry, then the business must not allow that individual on the premises (unless the business provides medication, medical supplies, or food, although business policy should provide alternate methods for pickup and delivery of these items). If an individual declines to wear a face covering on the premises due to a medical condition, neither the business nor its staff can require medical documentation verifying the stated condition.

*What type of "face covering" complies with the order?* [Follow CDC guidelines](#).

*Must employers bear the cost of face coverings?* Yes, however, the order does not prohibit workers or visitors from using their own protective face covering (e.g., a surgical grade mask).

See [New Jersey's Order](#)

**New York:** Effective April 15, employees of essential businesses must wear face coverings when in direct contact with customers or members of the public. The order does not define "members of the public" (e., if employees must wear face coverings around one another because they are "members of the public"). However, Governor Andrew Cuomo has stated that New York's order is "similar" to New Jersey's order, so employers

could look to New Jersey's order for additional guidance.

*What type of "face covering" complies with the order?* Face coverings can include surgical or cloth masks.

*Must employers bear the cost of face coverings?* Yes.

See [New York's Order](#)

**Pennsylvania:** Effective April 19, any employee of a business that is authorized to maintain in-person operations must wear a mask while on the work site, except to the extent an employee is using break time to eat or drink, in accordance with the guidance from the Department of Health and the CDC. The Order Directing Public Health Safety Measures for Businesses Permitted to Maintain In-person Operations also requires all customers to wear masks and instructs businesses to deny entry to individuals not wearing masks, unless the business is providing medication, medical supplies, or food, in which case the business must provide alternative methods of pickup or delivery of such goods. Individuals who cannot wear a mask due to a medical condition (including children under the age of two years per CDC guidance) may enter the premises and are not required to provide documentation of such medical condition.

*What type of "face covering" complies with the order?* [Follow CDC guidelines.](#)

*Must employers bear the cost of face coverings?* Yes, but employees also may obtain and wear their own masks, so long as the employer approves such masks in accordance with Department of Health guidelines.

See [Pennsylvania's Order](#)

**Rhode Island:** Effective April 18, all employees of Rhode Island's customer/client-facing businesses and nonprofit organizations, office-based businesses and nonprofit organizations, and any other such business category as determined by the Department of Business Regulation (DBR) that are still in operation shall wear cloth face coverings unless an employee can easily, continuously, and measurably maintain at least six feet of distance from other employees for the duration of his or her work (e.g., solo office) or unless doing so would damage the employee's health. (Note that even if the employee has a separate office, they must wear face coverings in any entry, exit, and common areas of the business, including, but not limited to: check-in, registration, reception, hallways, bathrooms, time-clock areas, elevators, stairways, etc.) The order does not prevent employees from fashioning their own cloth face masks. All customer-facing businesses also must take steps to require customers to wear face coverings, including the posting of such requirement at the entrance of the business.

*What type of "face covering" complies with the order?* Follow CDC guidelines.

*Must employers bear the cost of face coverings?* Yes. Businesses must provide, at their expense, face coverings or materials for the making of such face coverings for their employees (staffwide or upon individual request).

See [Rhode Island Order](#)

**Local Orders:** In addition to the state-wide orders described above, several counties and cities have enacted similar face mask requirements that may be applicable to employers.

## General Guidance

In general, many of these orders appear to be directed towards businesses with employees that regularly interact and come into contact with the general public. However, employers should closely evaluate the extent conditions also require close contact with other employees, and whether this also might trigger any obligations under the applicable state order.

## **Takeaways**

Given how other COVID-19-related trends have developed, we anticipate orders mandating the use of face masks may become a growing trend, particularly as the country attempts to reopen and employees return to work. Employers should be on the lookout for additional orders that place the burden on businesses to provide its workforce with face masks.

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