



### Key Takeaways:

- Shoppers continue to challenge mandatory mask policies under the Americans with Disabilities Act (ADA).
- In one of the first decisions on the merits of these challenges, a court in the Western District of Pennsylvania held that the plaintiff did not present sufficient evidence for his claim that he should not have to wear a mask, and that, regardless, his request to shop without a mask was not reasonable when he also did not show that he could not wear a face shield or use alternative methods of shopping. The court declined to evaluate the store's defense that its face covering policy is a legitimate safety requirement during the COVID-19 pandemic and that the plaintiff posed a direct threat to the health and safety of others.

- The court's decision in this case may prove to be a boon for retailers, as it demonstrates that plaintiffs seeking to challenge mandatory mask policies on ADA grounds may face hurdles where they lack documentation to substantiate disability claims or where they are given reasonable alternatives to the in-store shopping experience.

On October 23, 2020, a court in the Western District of Pennsylvania issued a decision refusing to enjoin a grocery store chain's mandatory mask policy on disability discrimination grounds. In May, the plaintiff, one of dozens of plaintiffs consolidated in the case, attempted to shop at a Giant Eagle grocery store twice without wearing a mask or other face covering, in violation of the store's mandatory face covering policy. Following the first visit, the plaintiff was arrested for causing a noise disturbance. After causing a similar disturbance on his second visit, the plaintiff was banned from further entry. In his motion for preliminary injunction, the plaintiff argued that the store's mandatory mask policy violates Title III of the Americans with Disabilities Act (ADA) and asked that the policy be modified to allow individuals to shop without a mask, arguing that medical conditions prevented him from being able to wear a mask. In response, the store argued that it did not need to modify its policy because it allowed for other types of face coverings such as full-face shields and provided access to groceries through alternative means, including curbside service, home delivery, and personal shoppers. The court sided with the store after finding the plaintiff's evidence deficient for three reasons. First, the plaintiff had not shown that he had a disability preventing him from complying with the face covering policy. The plaintiff failed to provide any medical records showing that he was unable to wear a mask or a face shield that satisfied the store's policy. The court also considered the plaintiff's social media posts stating that he could wear a mask but chose not to. Second, the plaintiff failed to show that shopping without a mask was reasonable or necessary since he could shop with a face shield or use alternative means of shopping. Third, the plaintiff failed to prove that the store banned him in violation of the ADA or in retaliation for exercising his rights because the evidence (including a video of his second visit) showed that he was banned due to his misconduct during these visits, not as a result of any disability. Since the plaintiff did not present sufficient evidence for his discrimination claim, the court declined to evaluate the store's defense that its face covering policy is a legitimate safety requirement during COVID-19 and that the plaintiff posed a direct threat to the health and safety of others.

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