



BLOGS
COVID-19

Minnesota Joins the Growing List of Locations with Mask Orders

Across the country, state and local mask orders are becoming more common. For those employers located in Minnesota, for example, a new mask order went into effect on July 25, 2020, pursuant to Minnesota Governor Tim Walz's Executive Order on masks. Under the Order, Minnesotans over the age of five must wear a face covering in indoor businesses and indoor public settings, unless alone. The Executive Order contains specific requirements for businesses, including provisions generally requiring workers to wear a face covering at all times when working indoors, outdoors in situations where six feet of social distancing cannot be maintained or when specific industry guidance imposes stricter requirements.

The Minnesota Executive Order specifies some situations in which workers may temporarily remove a face covering. These situations include when the individual is alone in an office, a cubicle with walls higher than face level while maintaining social distancing, a vehicle, the cab of heavy equipment or machinery, or an otherwise enclosed work area. Workers are exempt from wearing a face covering where doing so 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. In addition, workers are exempt from wearing a face covering if they have a medical condition incompatible with wearing a mask. Where a worker is exempt, an employer still has an obligation to provide a safe workplace for other workers and, as such, should consider what alternative measures can be taken to promote workplace safety.

Provided that social distancing can be maintained, the Minnesota executive order permits face coverings to be removed for communication with an individual who is deaf or hard of hearing or has a disability, medical condition or mental health condition that makes communication difficult while wearing a face covering. The Order also provides specific guidance for removal of face coverings during medical or dental procedures, while receiving personal care, when eating and drinking or in certain industries, such as K-12 or higher education, child care, public safety.

Businesses must take a number of steps to be in compliance with the Executive Order, including:

- **Requiring Workers, Customers, and Visitors to Wear Face Coverings, and Making Reasonable Efforts to Enforce the Executive Order**: Businesses must require their workers, customers and visitors to wear face coverings consistent with the Executive Order, as well as take reasonable steps to enforce face covering requirements. The Order states that businesses and their workers are not required to enforce the face covering requirement where it is unsafe to do so, and businesses and their workers are not authorized to restrain, assault or physically remove workers or customers who refuse to comply with the order. The Minnesota Department of Health has identified some best practices to mitigate or eliminate the risks posed by a person who refuses to wear a face covering, such as informing customers or visitors that face coverings are required, declining service or requesting the customer not enter the premises if the customer continues to wear a face covering, offering alternatives (such as curbside pick-up, home delivery or retrieving merchandise for the customer), or involving law enforcement if the business determines that there is a need to do so.

- **Making Accommodations for Workers, Customers and Visitors Unable to Wear Face Coverings:** There is no defined list in the Minnesota Executive Order of recognized medical, mental health conditions or disabilities that would exempt someone from wearing a face covering. Businesses must provide accommodations to persons, including workers and customers, who state that they have a medical condition, mental health condition or disability that makes it unreasonable to wear a face covering. For customers or visitors to a business, this may include permitting an alternate face covering (such as a face shield) or providing service options that do not require the individual to enter the business (such as curbside pick-up, virtual meetings or online orders). Businesses *may not* require proof of a customer or visitors condition or disability or require the customer or visitor to explain the nature of their condition or disability. When an employee claims an exemption from the face covering requirement, businesses may follow other applicable laws that permit verification of the workers condition or disability through medical provider documentation. The Minnesota Department of Health has indicated, in its FAQ about the Executive Order, businesses should provide reasonable accommodations to employees when they dont pose an undue hardship.
- **Updating COVID-19 Preparedness Plans:** All businesses are required to update their COVID-19 Business Preparedness Plans to include the Executive Orders face covering requirements, including the requirements incorporated into the industry-specific guidance published by the State of Minnesota on the Stay Safe Minnesota webpage (<https://staysafe.mn.gov>).
- **Informing Workers of Updates to the Plan:** Businesses must inform all workers how the COVID-19 Preparedness Plan has been updated in response to the Executive Order and make the revised plan available to workers.
- **Posting Signage Visible to Workers, Customers and Visitors:** Businesses must post one or more signs visible to all workers, customers and visitors instructing them to wear face coverings as required by the Executive Order. The Minnesota Department of Health's FAQ recommends that a best practice is for businesses to notify customers of face covering requirements through communication while making reservations, appointments or placing orders for pickup. Through the Stay Safe MN webpage, the State has provided #MaskUpMN Materials for businesses to comply with the Executive Orders signage mandate, including signage and social media graphics.

Because the Minnesota Executive Order states that local government authority (such as a city or county) may establish more protective face covering requirements, businesses should also ensure that their face covering policies and practices also comply with local mandates. The Executive Order will remain in effect until the peacetime emergency declared by Governor Walz on March 13, 2020, ends or until otherwise canceled. Businesses (including owners and managers) may be subject to criminal charges and fines, as well as regulatory enforcement, for failing to comply with the Executive Order.