

## How Should Your Business Handle Anti-Mask Guests? A 5-Step Action Plan

7.16.20

As an increasing number of businesses begin to require face coverings in their facilities – whether as a result of a local legal mandate or in the interest of public safety – there has been a corresponding increase in the number of well-publicized reports of customers and guests reacting in a belligerent, hostile, or even violent manner after being asked to comply with mask rules. What should your business do to minimize the chances of such an incident occurring in your workplace, and what should you do if an anti-mask guest disrupts your business? Here is a five-step plan to address this unfortunate part of our new reality.

### **Step One: Understand That You Are Permitted To Require Employees And Visitors To Wear Cloth Face Coverings Or Masks**

While many jurisdictions already require that businesses have their employees and any members of the public who enter their facilities wear masks, you may be wondering whether you can require masks if your jurisdiction does not have such a mandate in place. The answer is simple. As a private business, you can decide whether you allow customers or visitors onto your property if they are not wearing a mask. This is similar to the “no shirt, no shoes, no service” policy that you commonly see at businesses.

The Centers for Disease Control and Prevention (CDC) and World Health Organization (WHO) recommend the use of face masks or cloth face coverings as part of a comprehensive plan to help slow the spread of COVID-19. Face masks should be worn when employees or visitors will interact with other people. They are not the only method, but they are one of the strategies recommended by experts to slow

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the spread of COVID-19.

CDC guidance provides several exemptions indicating who should not wear masks: “Cloth face coverings should not be placed on young children younger than two years of age, anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the cover without assistance.” And although you may have a policy or be subject to a state or local obligation to require facemasks, you may also have an obligation to accommodate the individual if doing so is possible. Taking a few precautions as outlined below will allow you to refuse entry to customers without masks.

### **Step Two: Be Proactive With Your Mask Policy**

Providing notice to customers, visitors, and guests of your mask requirement prior to their arrival at your business can help reduce confusion and prevent an uncomfortable situation. Personal service providers (such as spas and salons) and hospitality businesses (such as hotels and restaurants) should provide notice of your policy when confirming reservations. A simple message to visitors and guests is best, not only confirming the reservation but highlighting your efforts to keep them and your staff safe by sharing your social distancing and masks requirements. Posting notices on your public facing website, apps, and social media platforms to notify visitors of your policy is recommended; you can also use emails or texts as additional communication tools.

You should post conspicuous signs in prominent places at your entrances. The notices should include a statement that you have the right to refuse entry or service to anyone not complying with the requirement, particularly where required by local law. Many jurisdictions, in fact, already require such signage.

Consider having a staff member stationed at the entrance to remind guests of your requirement. Many businesses, such as retailers, hotels, and restaurants, have taken their policy a step further to offer masks to visitors when they enter. For hotel guests who will be staying for extended periods, have guests sign an acknowledgement of the policy with an agreement to adhere to it. Be specific about consequences – tell guests that they will be asked to put a mask on if they are discovered without one and asked to leave the property if they refuse to comply.

### **Step Three: Train Your Staff**

Your staff will be more likely to effectively enforce your requirement for masks if they understand why you have the requirement. Train your employees on all health and safety measures you are implementing, including the face mask requirement, and the reasons why you are implementing these measures. You should emphasize that these measures are for their protection as well as the protection of others that they interact with.



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Educate your employees about your state or local government requirements so they understand what is required and what is not. Additionally, because both OSHA and the CDC have included masks in their respective recommendations and guidance, requiring masks for both employees and visitors could help avoid an OSHA General Duty Citation or similar challenge by local health and safety authorities.

It is also crucial to train your visitor and customer-facing employees on how to politely request them to wear a mask. For example, consider something like “Our policy is to require all visitors to wear a mask. Can I provide one to you?” If the guest refuses, communicate a clear procedure to your employees for how to address this unfortunate situation (Step Five provides suggestions).

### **Step Four: Reasonably Accommodate Visitors If They Have A Medical Condition**

Visitors may refuse to wear a mask claiming they have an underlying health condition that prevents them from doing so. Although an individual may have a condition that makes it difficult to wear a mask (e.g., a pulmonary condition), it is highly unlikely the person is carrying a doctor’s note to that effect. Further, some state public health orders prohibit you from requiring medical documentation when this type of exemption is claimed. For these reasons, it is best not to require documentation from a visitor to support their request.

Even though you may have a policy or are subject to a state-ordered obligation to require facemasks, you may also have an obligation to accommodate the individual if doing so is possible. Instead of engaging in a discussion with the customer or guest about whether they are exempt from your rule, consider whether you can offer an accommodation that would allow them to either access your business or your products/services. Some examples could include curbside service, online shopping for products, or by letting them know they can enter your business at another time. You could also look into other alternatives that would not inhibit breathing, such as requiring your guests to wear a full clear face shield.

However, it is important to recognize that accommodation recommendations are based on highly fact-specific analyses that need to take into account the medical condition of the guest, the type of business you are conducting, and any specific state or local laws that present additional requirements (or punish offending businesses with stiff monetary penalties). You will want to coordinate with legal counsel for clarity regarding general or specific situations that may arise at your place of business.

What if a visitor doesn’t say they have a medical issue but instead presents a card or literature indicating that masks are unsafe? Social or political objections do not allow customers to refuse to wear masks. However, rather than engage in confrontations, it is best to remind a visitor of your rule and offer alternatives for how to access your business.



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### **Step Five: Delicately Deal With Visitors Who Refuse To Comply**

If you've taken all of the steps above and you still have a visitor who refuses to comply, what do you do? A clear policy and training is key. Share the exact phrase you want your employees to use when dealing with an anti-mask guest, such as "If you will not wear the mask per our policy, I have been instructed to contact my manager who will need to discuss this with you." If your front-line employee is unable to coax your guests or customers to comply, you should have a designated manager to handle the removal of a visitor. Do not ask or expect a non-management employee to handle removal of a non-compliant visitor, guest, or customer. Instead, encourage them to immediately involve a manager.

That manager will need guidance on what your business wants to do if a guest or visitor becomes belligerent. The first step in such an unfortunate situation should be for the manager to meet the guest in a private location, share your policy, and, if applicable, the local/state ordinance or any acknowledgement the guest may have signed upon arrival or at the time of reservation.

The manager should inform your visitor that they will be asked to leave if they continue to refuse to comply. If the guest does not cooperate, your manager should escort the individual to the exit and inform them that they are welcome to return if they comply with the policy or when the need for a mask is gone. Where applicable, your manager should offer to reschedule an appointment or reservation.

It is always wise for your manager to avoid raising their voice and to refrain from physical contact. If the situation escalates, your manager should know to call on your own security personnel or local authorities in the same manner you would handle a trespassing situation. Regardless of how the situation concludes, your manager should immediately document the incident in objective, non-emotional terms. They should be instructed to provide the documentation to key personnel (human resources, legal, etc.) as soon as possible, and your business should retain the report in the event you are required to later demonstrate what happened.

### **Conclusion**

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any member of our Post-Pandemic Strategy Group Roster. You can also review our FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers and our FP Resource Center For Employers.

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*This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*