

CLIENT ALERT: MHRC Issues Q&A on COVID-19 Issues
August 19, 2020

The Maine Human Rights Commission (“MHRC”) recently released a Q&A addressing COVID-19 issues. This information is particularly helpful to employers grappling with re-opening plans, as well as organizations operating places of public accommodation (for example restaurants and stores). We’ve summarized the guidance the Commission offers below. For more information, please contact Peter Lowe at plowe@brannlaw.com or 207-754-5672, Dan Stockford at dstockford@brannlaw.com or 207-607-3290, or Hannah Wurgaft at hwurgaft@brannlaw.com or 207-713-0118.

- **Complaints regarding National Origin, Age, and Sex:** the Commission recognizes that, in light of the pandemic, employees may face discrimination in the workplace due to their national origin, age, and/or sex. For example, the Commission states that employees of Asian descent may be “treated poorly related to the pandemic’s physical origin in China or an assumption that the person is infected because of their proximity to other Asian people.” Similarly, employees may be treated adversely due to age if their employer assumes they are at high risk for COVID-19 and thus unable to work, or due to sex if their employer perceives them to be unable to work due to childcare needs. Employers should be mindful of these potential issues, educate their workforces, and respond to complaints appropriately.
- **Disabled employees and face coverings:** if an employee asks to be excused from wearing a face covering or face mask in the workplace, employers should engage in interactive dialogue with the employee. It is appropriate to ask for written confirmation of the need for accommodation from the employee’s healthcare provider.

Excusing an employee from wearing a face covering or face mask at work could be considered a reasonable accommodation for their disability. For example the job may allow for social distancing. Other reasonable accommodations may include moving the employee’s workstation away from co-workers, assigning the employee different job tasks, allowing the employee to wear a face shield, allowing the employee to work from home, or requiring the employee to take leave from work. IF there are no accommodations available to keep the employee working and maintaining safety for others around them, the employer could require the employee to take leave.

- **Disabled customers and face coverings:** For public accommodations such as stores, customers who state they cannot wear a face covering due to their disability do not need to be let inside the store without a face covering. However, the customer must be given an alternative accommodation, such as wearing a face shield, ordering online for curbside

pickup or no-contact delivery, utilizing a personal shopper, or providing an individual appointment for the customer to enter the establishment without other customers present.

Businesses may generally inquire about the nature of the customer's disability and how that disability is related to their request to enter without a face covering, but cannot demand paperwork, medical information, or details. The MHRC warns that some individuals may provide "official-looking papers to support their positions," such as from "ada.gov," but these flyers are not issued or endorsed by the department.

- **Coronavirus Whistleblowers:** under the Maine Whistleblower Protections Act ("MWPA"), employers cannot retaliate against employees who complain about or report unsafe or illegal work practices, including "deviation from the standard of care in healthcare settings." In the era of COVID-19, workers raising concerns about PPE, for example, may be protected under the MWPA.
- **MHRC and EEOC:** the MHRC generally follows guidance issued by the Equal Employment Opportunity Commission ("EEOC"), and acknowledges that much of the EEOC's COVID-19 guidance is applicable in Maine.
- **MHRC Procedures:** the Commission continues to process complaints, interview witnesses, hold investigative conferences, mediate cases and the like, albeit remotely. Additional information is available on their website.