

**CLIENT ALERT: Face Covering Executive Order
November 9, 2020**

On November 4th (last Wednesday), there was a lot going on, and while many of us may have been refreshing our phones and looking at vote tallies, Governor Mills signed Executive Order 16 (FY 20/21), an Order to Revise Indoor Gathering Limits and Strengthen Face Covering Requirements. Citing the significant increase in COVID-19 cases, the Governor decided that additional measures were necessary. We have summarized the key issues for employers. For more information, please contact Peter Lowe at plowe@brannlaw.com.

1. What changes has the Executive Order made to face mask requirements?

The Executive Order stipulates that face covering requirements apply in “public settings” even when people are able to maintain physical distance. The face covering requirements in prior Executive Order 49 (FY 19/20), 2 (FY 20/21) and 14 (FY 20/21) continue in effect – with this important change.

2. How does the Executive Order define “public settings?”

The Executive Order lays out a broad definition for “public settings.” The definition, under Section I (B) of the order, reads as follows:

- a. “Indoor spaces that are accessible to the public, including but not limited to restaurants, grocery stores, retail stores, pharmacies, health care facilities social clubs, auditoriums, theaters, stadiums, arenas, concert halls, convention centers, meeting halls, gymnasiums, rinks, fitness centers, houses of worship, transportation centers, indoor parking garages as well as other public accommodations
- b. Outdoor spaces including but not limited to playgrounds, parking lots, sidewalks, athletic and sports venues, and other areas such as lines for takeout service where the public typically gathers in a smaller area;
- c. Public transportation such as a taxi, Uber, Lyft, ride-sharing or similar service; ferry, bus, or train; and any semi-enclosed transit stop or waiting area;
- d. Portions of municipal, county, state, and private buildings and grounds that are typically accessible to the public, including parking lots, walkways, lobbies, waiting areas, elevators, service desks, and related hallways. For the purpose of this section, government buildings and grounds include those privately owned and leased for government use; and

November 19, 2020

Page 2

e. Other locations that the Commissioner of the Department of Economic and Community Development (DECD) and the Commissioner of the Department of Health and Human Services (DHHS) identify as presenting a risk of transmission of the virus pursuant to Section III, below.”

3. Does the term “public settings” apply to an office, factory or other workplace?

The Executive Order does not explicitly address the workplace. However, we believe that the term applies to the public-facing areas of the workplace. The order’s definition of “public settings” where individuals must wear a face covering includes portions of public and private buildings that are open to the public, such as waiting rooms, service desks and hallways. Physically distant office spaces/work stations that experience no public foot traffic and are occupied by one worker appear not to fall in this category. We expect that state agencies may provide more clarification soon.

4. Does this Executive Order have any other implications for employers?

Yes. The order states that all owners and operators of indoor public settings are required to clearly post notices informing entrants of the requirement to wear a cloth face covering as soon as practicable. Owners and operators are permitted to deny people that are in violation of the Governor’s face covering mandate from entry or service.

5. Has the order changed the indoor gathering limit?

Yes. The order repeals part of the previous Executive Order 14 FY 20/21, which provided that establishments with designated seating areas, such as restaurants and cafeterias have a gathering limit of 50% of the premises capacity or 100 people, whichever is less. This new Executive Order returns the indoor gathering limit to 50 people in one venue, regardless of any seating arrangement.