

EMPLOYMENT LAW ALERT: FACE COVERING MANDATE AND DISABILITIES
December 14, 2020

On Friday December 11th, 2020 Governor Mills issued [Executive Order 19 \(FY20/21\)](#) tightening the face covering requirement for all indoor public spaces in Maine. The Governor's office issued a statement stating that "[m]oving forward, owners and operators of all indoor public spaces - regardless of the type of entity or size - must not allow those who refuse to wear a face covering to enter or remain in their venue."

One important question is how to handle persons whom claim a medical exemption from wearing a face covering. The Executive Order states "[n]othing in this Order should be interpreted as prohibiting a reasonable accommodation for those with a disability, but due to the direct threat to public health and safety, no such accommodation may make it permissible for any person to enter or remain in any indoor public setting without a face covering."

Stated simply, a medical reason is no longer a viable excuse to enter or remain in an indoor public space without a face covering. The choice of the term "direct threat" in the Executive Order is deliberate. It echoes the standard used in the ADA and the Maine Human Rights Act for denial of an accommodation when it would pose a direct threat to safety. The Governor's statement noted that retailers reported that individuals were abusing the medical exemption, and quoted the Executive Director of Disability Rights Maine as expressing concern about "recent attempts to misappropriate our identities and misuse our vitally important and hard-fought civil rights protections, as a form of misguided civil disobedience."

Where does this leave organizations with respect to face coverings and those who claim a disability prevents them from wearing one? It seems clear you may deny the person access to your indoor public space. However, you should explore alternative means to provide services to the person. This could be online, curbside or some other means to deliver your goods or services. The ADA and MHRA remain in effect and don't overlook their fundamental principles of engaging in the interactive dialogue and offering reasonable accommodation. Also, the Governor's Executive Order does not change the general direction that a place of public accommodation should not request medical paperwork from a person seeking an accommodation for a disability. Note that in most circumstances an employer may request medical certification from an employee. Finally, a good resource for organizations is the MHRC's guidance "[COVID-19 Issues - Some Discrimination Basics](#)." The MHRC shares the position that a person without a face covering poses a direct threat in an indoor public space, and should not be admitted even if they have a disability.

As a final note, the EO applies also to your employees who work in an indoor public space. You must ensure that they are wearing face coverings.

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