

Face Coverings Required for Employees With Direct Customer Contact

The Governor has issued [Executive Order 202.16](#), which requires all businesses or entities to provide “face coverings” to employees when those employees are “in direct contact with customers and members of the public.” Employees, like store clerks, gas station attendants and receptionists must wear face coverings when in direct contact with the public.

The Department of Health [issued guidance](#) on April 14, 2020 about the Executive Order (the Guidance). Importantly, the Department of Health asserts in the Guidance that this Executive Order applies to state and local governments.

Otherwise, the Guidance helps answers some common questions we have received about the Executive Order:

What constitutes a “face covering?”

Face coverings include, but are not limited to, cloth (e.g., homemade sewn, quick cut, bandana), surgical masks, N-95 respirators and face shields. Based on the Guidance, face coverings are something worn by the employee. Fixtures and installations are not “face coverings.” For more information on face coverings, see [this CDC guidance](#).

Who must pay for the face coverings?

Employers must pay for face coverings for their employees. Employees, however, may use their own face coverings, but **cannot** be mandated to do so by their employer.

What does it mean to be in direct contact with members of the public?

According to the Guidance, direct interaction with the public is to be determined by **each employer**. At a minimum, direct contact with the public includes any employee who is routinely within close contact (i.e., six feet or less) with members of the public, including but not limited to customers or clients. Interaction between co-workers is not considered direct contact with the public.

What if an employer cannot procure face coverings?

Unfortunately, the Guidance is not very helpful in this regard. “Not being able to source face coverings does not relieve an employer’s obligation to provide such face coverings to their employees.” The Guidance suggests consulting with the local office of emergency management to determine if extra supplies exist within the municipality. If they do, the Guidance suggests submitting a request for face coverings.

What if the employee refuses to wear the face covering?

Unlike a similar order in New Jersey, the New York order does not include an exception for employees with health concerns that would prevent them from wearing a face covering. If an employee advises that he or she has a medical condition that prevents the employee from wearing a face covering, employers should remember that they may well have a duty to determine whether the employee’s condition could be reasonably accommodated. In certain circumstances this might include reassigning the employee to duties that do not include contact with the public.

When does this Executive Order go into effect?

This Executive Order goes into effect on Wednesday, April 15 at 8 p.m.

What are the penalties?

This Executive Order may be enforced by local governments or local law enforcement as if it were an order under Public Health Law §§ 12 or 12-b. [Public Health Law § 12](#) permits fines up to \$2,000, with subsequent violations leading to higher fines. [Public Health Law § 12-b](#) provides fines and makes violations punishable as a misdemeanor. By its terms, an employer that does not provide the required face coverings could be prosecuted for a misdemeanor.

Importantly, the above standard is New York State specific. OSHA guidance regarding safe workplace regulations continues to evolve, a subject addressed in [this information memo](#).

The attorneys at Bond, Schoeneck and King are here for you during these unprecedented times. If you have questions, please contact [Hermes Fernandez](#), [Caitlin Anderson](#), or the attorney at the firm with whom you are regularly in contact.



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