

June 25, 2020

# North Carolina Addresses Rising COVID-19 Cases with Statewide Face Mask Mandate

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Starting Friday, June 26, 2020 at 5:00 p.m., North Carolina businesses and customers will be sporting a new accessory: face masks. On Wednesday, June 24, 2020, Governor Roy Cooper issued Executive Order 147, which extends the State's former Phase 2 "Safer-at-Home" order until July 17, 2020 and adds a statewide face mask mandate. Here is what North Carolina employers need to know.

### **1. Face Masks Will be Required for Employees and Customers of Most Businesses.**

Gov. Cooper's face mask mandate requires employees, workers (including contractors), and customers to wear a face mask inside or outside of the following businesses:

- Retail Businesses;
- Restaurants (except when eating or drinking);
- Personal Care, Grooming, and Tattoo Businesses;
- Childcare Facilities, Day Camps, and Overnight Camps;
- State Government Agencies;
- Public or Private Transportation Regulated by North Carolina (including ride-shares and cabs);
- High-Density Occupational Settings Where Social Distancing is Difficult;
- Meat or Poultry Processing Plants;
- Long Term Care Facilities; and
- Healthcare.

As you may recall from Executive Order 141, “Retail Business” includes any business in which customers enter a space to purchase goods or services, including without limitation grocery stores, convenience stores, large-format retail stores, pharmacies, banks, and ABC stores. “High Density Occupational Settings” is referring to manufacturing and industrial facilities, as well as certain construction projects.

## **2. Certain Exceptions Apply to the Face Mask Mandate.**

People with medical conditions that make it unsafe to wear a face mask are not included in this statewide mandate, nor are people who are incapacitated or who cannot put on a face mask without assistance. Children under 11 years of age are also not included in this mandate. Other exceptions apply including:

- People who are actively eating or drinking;
- People who are strenuously exercising;
- People seeking to communicate with someone who is hearing-impaired;
- People giving a speech or broadcast to a large audience;
- People working from home or in a personal vehicle; and
- People who find the face mask impairs their ability to see while operating equipment or vehicles.

If a business asks a customer to wear a face mask and the customer cites one of the above exceptions, the business can take the customer at his or her word that a valid exception to the mandate applies. However, a private business can ask noncompliant customers to refrain from entry or to leave the establishment if they refuse to wear a face mask. For businesses that want to accommodate the above-referenced exceptions, they may do so with curbside services, home delivery, or another reasonable measure to deliver goods and services. Businesses should work within leadership to develop their own rules regarding how exceptions to the face mask mandate will be handled.

## **3. Enforcement of Face Mask Mandate.**

Law enforcement have the authority to cite any **business** for not complying with this mandate. If a customer is not wearing a mask due to one of the above-referenced exceptions, then no citation will apply. However, a blatant disregard for this mandate will be enforced against businesses as opposed to customers. If a business asks a noncompliant customer to leave and the customer refuses, this will be treated as trespass.

## **4. Next Steps for North Carolina Businesses.**

Many businesses have already adopted a mandatory face mask policy. For those that have not, you have until Friday, June 26 to put a policy in place and train workers accordingly. Businesses should consider adopting an internal face mask policy that will be enforced against employees like any other employment policy. Employees should also be trained on the proper use of face masks, particularly cloth face coverings, as well as other related CDC guidance. Businesses should also post signs on all public entrances requiring the use of face masks upon entry. If someone enters without a face mask, have a protocol for questioning the customer regarding whether or not any exception applies – do not simply assume. This can be a general question of “do you have a recognized exception for not wearing a face



mask?” Businesses should also consider signage outlining the recognized exceptions so customers and employees are aware of what may qualify as such under the new Executive Order. Businesses should also keep in mind that all the other Phase 2 requirements apply, including employee health screens for certain industries.

Michael Best has an entire team dedicated to navigating the “new normal” of business operations in North Carolina and beyond. If you are a business with questions or concerns about navigating the extended Phase 2 guidance, please reach out to Ashley L. Felton or your Michael Best attorney.

### **Related People**

#### **Ashley Felton**

Senior Counsel

[alfelton@michaelbest.com](mailto:alfelton@michaelbest.com)

T 984.220.8764