

July 31, 2020

Wisconsin Issues State-Wide Emergency Face Covering Order

On July 30, 2020, Wisconsin Governor Tony Evers issued an Executive Order declaring a Public Health Emergency to combat the “uncontrolled spread of COVID-19 infections statewide.” That same day, the Governor issued an Emergency Order requiring all individuals in the State of Wisconsin, age 5 years or older, to wear face coverings (i.e. “masks”) at all times while inside buildings, or in “enclosed spaces” open to the public.

Effective August 1, 2020, face coverings are required indoors (except in personal residences) *even if* one can physically distance six feet from others. Notably, “face shields” and “mesh masks” do not satisfy the definition of a “face covering.”

The Order lasts until September 28, 2020, unless otherwise extended or amended. As noted, the Order does not extend to “private residences” or outside generally. That said, certain “enclosed spaces” are covered by the Order, including “space open to the public where individuals congregate, including ... outdoor bars, outdoor restaurants, taxis, public transit, ride share vehicles, and outdoor park structures.”

The Order does contain certain exceptions that may be applicable to employees in the workplace. For example, face coverings are not required and may be removed in the following circumstances:

- When eating or drinking
- When communicating with an individual who is deaf or hard of hearing and communication cannot be achieved through other means
- When engaging in work where wearing a face covering would create a risk to the individual as determined by government safety guidelines
- When federal or state law or regulations prohibit wearing a face covering

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- If you are inside and the only one in a room
- While obtaining a service that requires the temporary removal of the face covering (i.e. dental services)
- When necessary to confirm an individual's identity (i.e. entering a bank, credit union, etc.)

The Order also exempts certain individuals from wearing face coverings at all. Those most applicable in the work environment are:

- Individuals with medical conditions, intellectual or developmental disabilities, mental health conditions, or other sensory sensitivity that prevent the individual from wearing a face covering.
- Individuals who have trouble breathing.

In the above two scenarios we recommend employers engage in the interactive accommodation process and request competent medical evidence from a healthcare provider; do not just take the employee's word in order to exempt them from permanently wearing face coverings. But do not throw common sense out - if it appears to be an emergent health situation you can certainly permit the employee not to wear the mask temporarily, and consider sending the employee home and/or keeping them off work while you await medical confirmation

There is a distinct possibility that someone or some organization will challenge the Order in court. There is also a possibility of legislative action by the Wisconsin Legislature. It is unclear whether the Order will survive a challenge in part or in total. Employers should plan to comply with the Order until otherwise directed by a court, as it provides that a violation can result in a civil fine of up to \$200.00

By its terms, "state or local officials" are to enforce the Order. Given the controversy that face masks have sometimes engendered, employers should take their compliance obligations seriously - one could easily foresee that some employees in the workplace may complain if certain individuals are not wearing face coverings, and either attempt to contact local authorities or OSHA, post negative comments or photos on social media, and/or refuse to work. Fortunately, accompanying the Order is a set of frequently asked questions that can assist employers with particular scenarios

This new development, like many others in the new COVID-19 world, are subject to change and/or further guidance. Accordingly, we will continue to monitor them. In the meantime, if you have any questions regarding this, please contact your Michael Best attorney.

Related People

Scott Beightol

Partner

scbeightol@michaelbest.com

T 414.225.4994

Elizabeth Odian

Senior Counsel

eaodian@michaelbest.com

T 414.347.4770



Mitchell Quick

Partner

mwquick@michaelbest.com

T 414.225.2755