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Re: "Statewide Face Covering" Know Your Rights

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SENT VIA E-MAIL

Face Covering – Know Your Rights

1. Under Governor Evers' Order, do I have to wear a face covering?
 - a. The short answer is "no." The order states "Wisconsinites should show patience and compassion for those who are unable to wear a face covering safely." In the set of answers to frequently asked questions released by the Governor's office, it states that the public should do nothing when see someone not wearing a mask, even though they should be because "some people have conditions or circumstances that would make wearing a cloth face covering difficult or dangerous.
 - b. These statements imply that, should you not be wearing a mask, there is a valid reason for it. There are legal protections that prevent others from requiring you to disclose your reason or reporting you to the law enforcement.
2. Are there any exceptions to Governor Evers' Order?
 - a. Individuals who are otherwise required to wear a face covering may remove the face covering in the following situations:
 - i. While eating or drinking.
 - ii. When communicating with an individual who is deaf or hard of hearing and communication cannot be achieved through other means.

- iii.** While obtaining a service that requires the temporary removal of the face covering, such as dental services.
- iv.** While sleeping.
- v.** While swimming or on duty as a lifeguard.
- vi.** While a single individual is giving a religious, political, media, educational, artistic, cultural, musical, or theatrical presentation for an audience, the single speaker may remove the face covering when actively speaking. While the face covering is removed, the speaker must remain at least 6 feet away from all other individuals at all times.
- vii.** When engaging in work where wearing a face covering would create a risk to the individual, as determined by government safety guidelines.
- viii.** When necessary to confirm the individual's identity, including when entering a bank, credit union, or other financial institution.
- ix.** When federal or state law or regulations prohibit wearing a face covering.

3. Are there any exemptions to Governor Evers' Order?

- a.** In accordance with CDC guidance, the following individuals are exempt from the face covering requirement in Section 2 of the face covering order:
 - i.** Children between the ages of 2 and 5 are encouraged to wear a mask when physical distancing is not possible. The CDC does not recommend masks for children under the age of 2.
 - ii.** Individuals who have trouble breathing.
 - iii.** Individuals who are unconscious, incapacitated, or otherwise unable to remove the face covering without assistance.
 - iv.** Individuals with medical conditions, intellectual or developmental disabilities, mental health conditions, or other sensory sensitivities that prevent the individual from wearing a face covering.
 - v.** Incarcerated individuals. The Wisconsin Department of Corrections shall continue to comply with COVID-19 protocols to ensure the health and safety of its staff and individuals in its care. Local governments are strongly encouraged to continue or create COVID-19 protocols to ensure the health and safety of their staff and individuals in their care.

4. Do I have to disclose why I am not wearing a face covering?

- a.** No. State and Federal laws prohibit businesses or individuals from requiring disclosure of disabilities. Some examples of disabilities that would prohibit the wearing of a face covering are: post-traumatic stress, claustrophobia, anxiety, COPD, and physical injuries.
- 5.** Can I be denied services if I do not wear a face cover?
 - a.** Generally, no. The Americans with Disabilities Act (ADA) is an expansive law that governs employment, government agencies, and public accommodations.
 - b.** Wisconsin Statutes also provide requirements on employers and places of public accommodation.
 - c.** If the ADA applies, a “reasonable accommodation” must be provided to allow you to participate in employment/services, etc.
 - d.** Reasonable accommodations are not “black and white.” A reasonable accommodation is an adjustment made in a system to accommodate or make fair the same system for an individual based on a proven need. That need can vary. Accommodations can be religious, physical, mental or emotional, academic, or employment related and are often mandated by law. Unfortunately, for courts to determine whether or not an accommodation is “reasonable” under the ADA, a lot of factors are considered.
- 6.** Are the “face covering” Orders enforceable?
 - a.** It would seem unlikely. It is likely that the Supreme Court of Wisconsin will have to decide these issues. However, numerous counties’ police departments have already stated they will not enforce any “face covering” mandates¹. The public is directed to not report cases if non-compliance.
 - b.** The order is likely going to be challenged in the Supreme Court of Wisconsin and there are questions surrounding the metrics and constitutionality of this mandate.
- 7.** Can my employer force me to wear a “face covering?”
 - a.** Generally, if you have a qualifying disability, no. The employer must make a reasonable accommodation.
- 8.** Can my employer ask me for proof for reasonable accommodations?
 - a.** If you have an obvious disability, no. Most employers will accommodate your needs without requiring further documentation.

¹ There are only a few counties where law enforcement said they would enforce. Dane and Milwaukee Counties are the largest.

