

## **Disability Issues Brief**

A project of the Southeast ADA Center and Burton Blatt Institute (BBI) at Syracuse University

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# **The ADA and Face Mask Policies**

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### **Introduction**

The COVID-19 pandemic has changed our world in many ways. People with disabilities, people with chronic health conditions such as heart disease, lung disease, and diabetes, and people over the age 60, are at a higher risk of becoming infected and most likely to become seriously ill. Safety measures such as social distancing, stay at home orders, and the wearing of face masks or cloth face coverings are now part of our daily lives. For the purposes of this document, the term “face mask” will be used for both face masks and cloth face coverings.

Wearing a face mask is one important way to slow the spread of COVID-19. The Centers for Disease Control and Prevention (CDC) recommends wearing a face mask in public places like grocery stores and pharmacies, where it is hard to stay six feet apart from other people. [\[1\]](#) Several state and local governments are **requiring** the use of a face mask when in public spaces.

Wearing a face mask may be difficult for some people with a disability. State and local government agencies or private businesses that want customers to use a face mask may have questions and concerns. This fact sheet offers answers to questions about the issue

of face mask policies, wearing face masks, reasons why a person with a disability might not be able to wear a face mask, and the legal rights a person has under the Americans with Disabilities Act (ADA).

### **May a state or local government agency or business require customers to wear a face mask?**

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On March 11, 2020, the World Health Organization (WHO) declared COVID-19 as a pandemic.<sup>[2]</sup> The Centers for Disease Control and Prevention (CDC) notes that studies have shown that many people who do not have symptoms of COVID-19 can spread the virus to other people. Because it takes four to fourteen days for someone to show symptoms, they also may infect others without knowing it.<sup>[3]</sup> This means that the virus can be shared between people who are close to each other. For example, people who are speaking, coughing, or sneezing may spread the virus even if they do not have symptoms.<sup>[4]</sup> Therefore, the CDC recommends that people over age two wear a face mask in public where it can be hard to stay six feet apart from others.<sup>[5]</sup> Based upon the CDC's guidance, a business or government agency **may require customers to wear a face mask to limit the spread of COVID-19.**

### **Is there a reason a person might not be able to wear a face mask?**

The CDC states that a person who has trouble breathing, is unconscious, incapacitated, or otherwise unable to remove the face mask without assistance should not wear a face mask or cloth face covering.<sup>[6]</sup>

## Examples of a person with a disability who might not be able to wear a face mask

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- Individuals with respiratory disabilities such as asthma, chronic obstructive pulmonary disease (COPD), or cystic fibrosis may not be able to wear a face mask because of difficulty in or impaired breathing. People with respiratory disabilities should consult their own medical professional for advice about using face masks. The CDC also states that anyone who has trouble breathing should not wear a face mask. [\[7\]](#)
- People with post-traumatic stress disorder (PTSD), severe anxiety, or claustrophobia (an abnormal fear of being in enclosed or narrow places). [\[8\]](#) may feel afraid or terrified when wearing a face mask. These individuals may not be able to stay calm or function when wearing a face mask.
- Some people with autism are sensitive to touch and texture. [\[9\]](#) Covering the nose and mouth with fabric can cause sensory overload, feelings of panic, and extreme anxiety.
- A person who has cerebral palsy may have difficulty moving the small muscles in the hands, wrists, or fingers. Due to her limited mobility, she may not be able to tie the strings or put the elastic loops of a face mask over the ears. This means that the individual may not be able to put on or remove a face mask without assistance.

**If a person with a disability is unable to wear a face mask, do I still have to allow them in my business or government agency?**

Most states have either recommended or issued executive orders requiring the public to use face masks in public. Private businesses have also developed policies requiring the use of face masks. The ADA does not have any rules that address the required use of face masks by state and local governments or private business owners.

If a person with a disability is not able to wear a face mask, state and local government agencies and private businesses must consider **reasonable modifications** to a face mask policy so that the person with the disability can participate in, or benefit from, the programs offered or goods and services that are provided. A reasonable modification means changing policies, practices, and procedures, if needed, to provide goods, services, facilities, privileges, advantages, or accommodations to an individual with a disability. [\[10\]](#) **The requirement to modify a policy, practice, or procedure does not include individuals without disabilities, as they are not protected under the ADA.**

### **Examples of reasonable modifications to a face mask policy**

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- Allow a person to wear a scarf, loose face covering, or full face shield instead of a face mask;
- Allow customers to order online with curbside pick-up or no contact delivery in a timely manner;
- Allow customers to order by phone with curb-side pick-up or no contact delivery in a timely manner;
- Allow a person to wait in a car for an appointment and enter the building when called or texted; or
- Offer appointments by telephone or video calls.

## **Are there any situations when an agency or business does not have to provide a reasonable modification to the face mask policy?**

There are three reasons under the ADA that a state or local government agency or private business may not have to provide a reasonable modification.

### **Fundamental Alteration**

The modification would change the nature of the service, program, activity, goods, services, or facilities. [\[11\]](#)[\[12\]](#) A fundamental alteration is a change to such a degree that the original program, service, or activity is no longer the same. [\[13\]](#)

### **Undue Burden**

A state and local government agency or private business is not required to take any action that it can demonstrate would result in an undue financial or administrative burden. An undue burden is a significant difficulty or expense. [\[14\]](#)[\[15\]](#)

### **Direct Threat**

The individual with a disability poses a direct threat to the health or safety of others. A direct threat is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services. [\[16\]](#)[\[17\]](#) The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. It must be based on an individual assessment

that considers the particular activity and the actual abilities and disabilities of the individual. [\[18\]](#)[\[19\]](#)

During a pandemic, state and local government agencies and businesses should use the most up to date information from the Centers for Disease Control and Prevention (CDC), the U.S. Department of Labor Occupational Safety and Health Administration (OSHA), and the state public health agencies. Because the pandemic threat to health and safety will be at different levels across the nation, you should consult your local public health agency for guidance. [\[20\]](#)

In order to limit a direct threat from the COVID-19 pandemic, a state or local government agency or private business may impose legitimate safety requirements necessary for safe operation. However, these groups must ensure that their safety requirements are based on real, specific risks, not on speculation, stereotypes, or generalizations about individuals with disabilities. [\[21\]](#)[\[22\]](#) As long as any screening that is implemented is consistent with advice from the CDC and public health authorities, state or local government agencies or private businesses are acting consistently with the ADA regulations on direct threat and legitimate safety requirements. In order to limit a direct threat and have safety requirements in place to address the COVID-19 pandemic, state and local government agencies and businesses may:

- Develop policies and procedures for prompt identification and isolation of people with symptoms of COVID-19, including employees and customers;
- Offer face masks to employees and customers who are ill to contain respiratory secretions until they are able to leave the business;

- Inform customers about symptoms of COVID-19 and ask sick customers to minimize contact with workers until they are healthy again;
- Post signs with COVID-19 information in places that sick customers may visit (e.g., pharmacies, hospitals, public health agencies, grocery stores);
- Include COVID-19 information in automated messages sent when messages are sent to customers via phone messages, text, or email; and/or
- Limit customers' in-person access to the buildings operated by a state or local government agency or private business, as appropriate, in order to lessen the possibility of a direct threat.

## **How should I respond to a request for a reasonable modification to the face mask policy?**

The U.S. Department of Justice issued two settlement agreements that provide guidance on the reasonable modification decision-making process. [\[23\]](#)[\[24\]](#)

1. Choose at least one person, and a back-up, who are authorized to receive and review requests for reasonable modifications. The decision-maker for a state or local government agency is the head of the public agency or his/her designee. [\[25\]](#)
2. After receiving a request for a reasonable modification, talk with the individual with a disability to learn why the person needs to modify the face mask policy and to find a solution that meets ADA requirements. Decisions about reasonable modifications should be made in a timely manner.
3. After the discussion, the government agency or private business may:

- a. Agree to the request.
- b. Ask for medical documentation about the person's disability that is necessary to:
  - i. Verify that the individual meets the ADA definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities); or
  - ii. Describe the needed modification; or
  - iii. Show the relationship between the individual's disability and the need for the requested modification.

It is important to remember that if a person's disability is obvious, information about the disability should not be requested unless it is necessary to evaluate the disability-related need for the modification. In most cases, an individual's medical records or detailed information about the nature of an individual's disability are not necessary for this inquiry.

- c. Deny the request. If a request for modification is denied, a state or local government agency must provide a written statement as to why the request was denied. Private businesses are also encouraged to document the reason for denying a request for reasonable modification, provide a copy to the person with a disability, and keep a copy on file.

## **Best Practice Tip**



Prepare a list of possible alternatives to a face mask/cloth face covering policy that you can share with people with disabilities who request a reasonable modification to your policy. (See: [Examples of reasonable modifications to a face mask policy](#) for examples of policy modifications.)

## Summary

As the COVID-19 pandemic continues, state and local government agencies and private businesses must make reasonable modifications to allow people with disabilities to access the goods and services they offer. Following ADA requirements for reasonable modifications within federal, state, and local health and safety guidelines will allow you to keep employees and customers safe, reduce new infections, and still provide goods and services to everyone.

For more information about rights under the Americans with Disabilities Act (ADA) and how they apply to the coronavirus (COVID-19) pandemic, visit [ADA, Disability & COVID-19 Resources](#) (adacovid19.org). For questions and training on the ADA, contact your regional center in the [ADA National Network](#) at 1-800-949-4232 or visit [adata.org](#). All calls are confidential. We do not give medical or legal advice. [Refer to: [Disclaimer](#)]

## Endnotes

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[11] U.S. Department of Justice. Americans with Disabilities Act Title II regulations: nondiscrimination on the basis of disability in state and local government services, (2010). Washington, D.C.: Dept. of Justice. Retrieved from [https://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm).

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[13] U.S. Department of Justice. (2008, October 9). ADA Best Practices Tool Kit for State and Local Governments - Chapter 1 ADA Basics: Statute and Regulations. Retrieved June 3, 2020, from <https://www.ada.gov/pcatoolkit/chap1toolkit.htm>.

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**These materials do not constitute legal advice and should not be relied upon in any individual case.**

**Please consult an attorney licensed in your state for legal advice and/or representation.** These materials were prepared by the legal research staff of the Burton Blatt Institute (BBI) at Syracuse University in partnership with the Southeast ADA Center to highlight legal and policy developments relevant to civil rights protections and the impact of court decisions in the Southeast Region under the Americans with Disabilities Act (ADA). These materials are based on federal disability rights laws and court decisions in effect at the time of publication. Federal and state disability rights law can change at any time. In addition, state and local laws

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