

Minnesota Businesses Must Require Workers, Customers, and Visitors to Wear Masks

by RJ Zayed, Marcus A. Mollison, and Kirk Schuler

On Wednesday, July 22, Minnesota Governor Tim Walz issued Emergency Executive Order 20-81, “Requiring Minnesotans to Wear a Face Covering in Certain Settings to Prevent the Spread of COVID-19.” As the title foretells, EO 20-81 requires all individuals in Minnesota to wear “face coverings” when in an indoor business or public indoor space and when waiting to enter such a place. The order also applies to those working outdoors where social distancing cannot be maintained. The Order will have a direct impact on businesses because it mandates that “[b]usinesses must require that all persons, including their workers, customers, and visitors, wear face coverings as required by this Executive Order.”

To help keep your business in the know and in compliance, we highlight the top ten takeaways for businesses as a result of this latest Order:

1. **Your business is most likely covered by this Order.** EO 20-81 defines businesses “broadly to include entities that employ or engage workers, including private-sector entities, public-sector entities, non-profit entities, and state, county, and local governments.”
2. **The requirements for face coverings are effective July 25 until rescinded.** The new requirements go into effect on July 25 (technically “[b]eginning on Friday, July 24, 2020 at 11:59pm) and they remain in effect until rescinded.
3. **Face coverings span a person’s nose and mouth.** “Face Coverings” are defined by the Order as masks covering “the nose and mouth completely,” and may include “a paper or disposable face mask, a cloth face mask, a scarf, a bandana, a neck gaiter, or a religious face covering.” Coverings that include valves, openings, holes, vents, or visible gaps in the design or the material, however, are *not* sufficient.
4. **Face coverings are generally mandatory for anyone at a business indoors, and even sometimes outdoors.** Individuals—whether a worker, customer, or visitor—are required to wear a face covering when in “an indoor business or public indoor space, including when waiting outdoors to enter an indoor business or public indoor space.” Workers must also wear face coverings “when working outdoors in situations where social distancing cannot be maintained.”
5. **Some individuals are exempt.** Children five years old and under or individuals with medical, mental, or physical conditions that make it unreasonable to wear a face

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covering are exempt from the Order. So, too, are “[i]ndividuals at their workplace when wearing a face covering would create a job hazard for themselves or others.” Notably, business cannot require proof from customers that they are exempt, but may require proof that their workers are exempt in accordance with applicable laws (such as the Americans with Disabilities Act and the Minnesota Human Rights Act).

6. **For those not exempt, mandatory face coverings may be temporarily removed at a business only when an individual is “alone.”** Mandatory face coverings may be removed under the Order “[w]hen an individual is alone, including when alone in an office, a room, a cubicle with walls that are higher than face level when social distancing is maintained, a vehicle, or the cab of heavy equipment or machinery, or an enclosed work area.”
7. **Your business must include the Order’s face covering requirements in its COVID-19 Preparedness Plans.** As reported earlier, Minnesota required newly re-opening businesses to implement COVID-19 Preparedness Plans in May, and critical sector businesses to do so by June 29. With this Order, those plans must now be updated to reflect the face covering requirements. In addition, businesses must “inform their workers how their plan has been updated, and make the revised plan available to their workers.”
8. **Your business must provide notice of the face covering requirements.** Businesses must post at least one sign that is visible to all persons—workers, customers, and visitors—that instructs them to wear face coverings as required by the Order. Businesses may visit the State of Minnesota’s COVID-19 website for related digital and print “no mask, no service” signage for businesses.
9. **Business owners, managers, and supervisors can be prosecuted criminally for noncompliance.** The Order targets “[a]ny business owner, manager, or supervisor who fails to comply” for potential criminal penalties, including up to a \$1,000 fine and up to 90 days in jail. In addition to the criminal penalties, authorities may seek any civil relief against the business for violations of the Order, including civil penalties up to \$25,000 per occurrence and injunctive relief.
10. **Businesses must complete four steps to demonstrate compliance with the Order.** The Order provides somewhat of a “safe harbor” from prosecution and penalties by recognizing that a business is in compliance with the Order if:
 - (1) their workers are wearing face coverings as required by this Executive Order;
 - (2) the business has updated their COVID-19 Preparedness Plan to address the face covering requirements of this Executive Order;
 - (3) the business has posted one or more signs that are visible to all persons—including workers, customers, and visitors—instructing them to wear face coverings as required by this Executive Order; and
 - (4) the business makes reasonable efforts to enforce this order with respect to customers and visitors.

With this Order, Minnesota joins approximately 30 states to date that have imposed some form of face covering requirements. Minnesota’s requirements include many other exceptions related to specific businesses and individuals—such as those involved in federal activities, legislative and judicial proceedings, fitness and organized sports, public safety, and education. As a result, businesses are encouraged to review the entire order for its specific application to its industry.

Throughout the COVID-19 pandemic, Dorsey & Whitney attorneys have been helping companies comply with COVID-19 regulations across the country, including by

developing and implementing Minnesota-specific COVID-19 Preparedness Plans. Please contact us if we can assist you.