



No Mask, No Service:

What are my rights to enter a business during the COVID-19 pandemic if I can't wear a mask due to disability?

The Pennsylvania Department of Health (DOH) issued an order on April 15, 2020, setting forth various required measures to protect the public from the spread of the novel coronavirus that causes COVID-19. Among the required measures, businesses that serve the public inside a building or closed area generally must require employees and customers to wear masks to prevent the spread of COVID-19. A July 1, 2020 DOH Order expanded circumstances in which individuals are required to wear a mask, expanded the types of acceptable face coverings, and expanded exceptions to the mask requirement. Counties and other local governments may also have mask requirements. A wide variety of disabilities, such as post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), speech or hearing impairments, impairments that limit dexterity, skin conditions, and respiratory conditions, may limit a person's ability to wear a certain kind of face mask or all face coverings. This Fact Sheet addresses the rights of people with disabilities to enter places of business without a mask.

Why is there a mask requirement?

COVID-19 is a coronavirus that has been rapidly spreading from person to person in the United States. Masks are an important public health tool to help prevent the spread of COVID-19. According to the Centers for Disease Control and Prevention (CDC), a significant portion of individuals with coronavirus lack symptoms, but can still transmit the virus to others by interacting in close proximity – for example, through speaking, coughing, or sneezing. To slow the spread of COVID-19, the CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies).

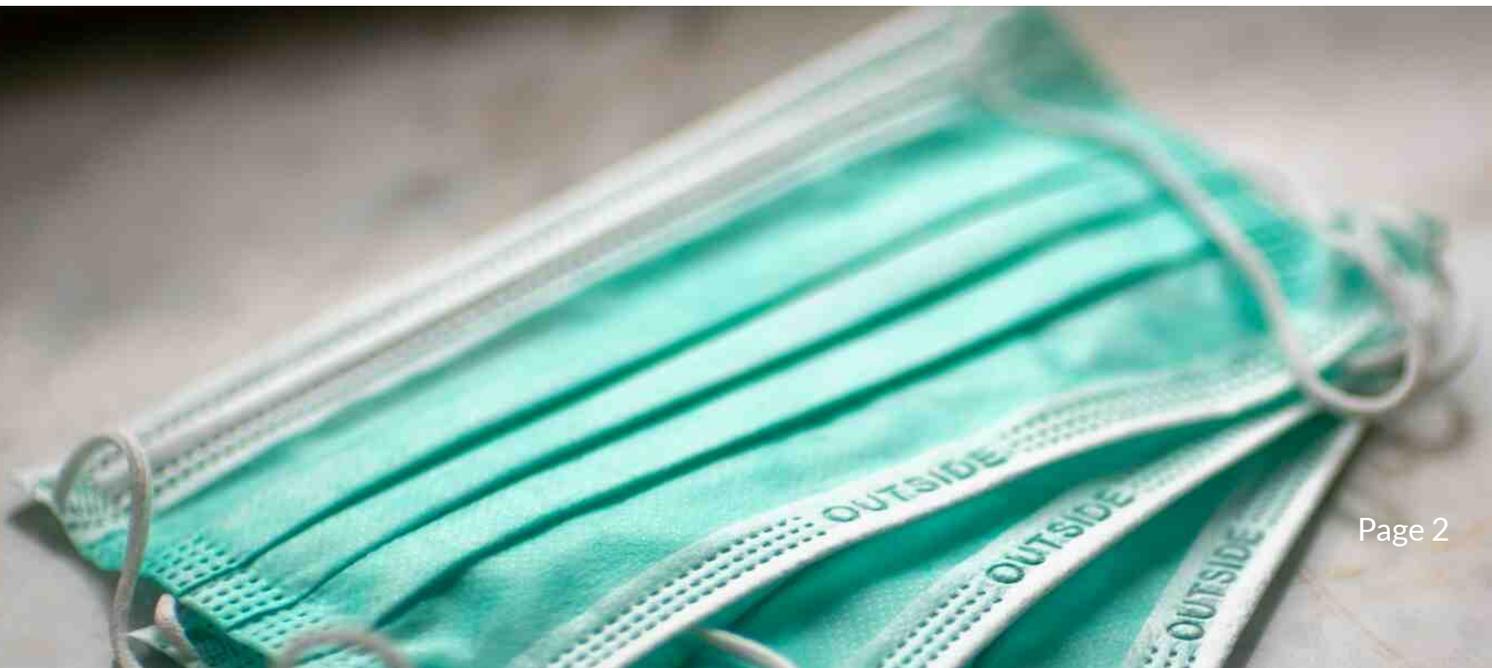
What types of masks comply with the DOH Orders?

The July 1, 2020 DOH Order expanded the mask requirement to include any “face covering” that covers the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is wrapped around the lower face, such as a mask, scarf, bandana, or plastic face shield that covers the nose and mouth. DOH encourages individuals unable to wear a mask to try wearing a plastic face shield.

Where are masks required?

Under the July 1, 2020 DOH Order, face coverings are required for individuals if they are:

1. Outdoors and unable to consistently maintain a distance of six feet from individuals who are not members of their household;
2. In any indoor location where members of the public are generally permitted;
3. Waiting for, riding on, driving, or operating public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle;
4. Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank; or
5. Engaged in work, whether at the workplace or performing work off-site, when interacting in-person with any member of the public, working in any space visited by members of the public, working in any space where food is prepared or packaged for sale or distribution to others, working in or walking through common areas, or in any room or enclosed area where other people, except for members of the person’s own household or residence, are present when unable to physically distance.





Are there exceptions to the DOH Orders' mask requirement?

Yes. The July 1, 2020 DOH Order provides the following exceptions to the face covering requirement:

1. Individuals who cannot wear a mask due to a medical condition, including respiratory issues that impede breathing, mental health conditions, or disabilities;
2. Individuals for whom wearing a mask while working would create an unsafe condition in which to operate equipment or execute a task as determined by local, state, or federal regulators or workplace safety guidelines;
3. Individuals who would be unable to remove a mask without assistance;
4. Individuals under two years of age;
5. Individuals who are communicating or seeking to communicate with someone who is hearing-impaired or has another disability, where the ability to see the mouth is essential for communication.

The April 15, 2020 and July 1, 2020 DOH Orders both state that individuals are not required to show documentation that an exception to the face covering requirement applies. Additionally, under the April 15, 2020 DOH Order, "businesses that provide medication, medical supplies or groceries must provide an alternate, no contact, means of delivering goods for customers who cannot wear a mask." Despite the exceptions, some businesses may nonetheless adopt their own, stricter policies regarding masks for legitimate safety reasons.

Does it violate non-discrimination laws for a business to deny entry to a person whose disability limits their ability to wear a mask?

Under certain circumstances, yes. Several disability civil rights laws can apply to places of public accommodation (like a store, doctor's office, or other place of business) -- Title III of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (RA), and the Pennsylvania Human Relations Act (PHRA). All of these laws protect people with disabilities against discrimination. The ADA, RA, and PHRA are not suspended during the COVID-19 pandemic, and these laws require businesses to make reasonable modifications to policies, practices, or procedures to allow persons with disabilities to access its goods and services. Reasonable modifications could include such things as taking an order over the phone or online and bringing goods outside so an individual who cannot wear a mask does not have to enter the business (e.g., curbside pick-up), or offering an alternative type of face covering, such as a disposable face shield.



A reasonable modification could also potentially include permitting a person with a disability who cannot wear a mask to enter the business, depending on that person's individual circumstances and the availability of appropriate alternatives to enable the person to access the desired goods and services. Any "blanket policy" that prohibits individuals with disabilities from entering the business without a mask and without consideration of reasonable and appropriate alternatives will likely amount to illegal disability-based discrimination.

Despite anti-discrimination laws, a business may be able to deny entry of a person who cannot wear a mask if the business determines, based on an individualized assessment relying on medical knowledge or objective evidence, that the person poses a direct threat to the health or safety of others, and no reasonable modifications can be made to mitigate the threat.

Because COVID-19 is a new disease, both scientific knowledge and the law regarding COVID-19 continue to develop. Legal assessments regarding mask requirements likely will change as the COVID-19 pandemic evolves and scientific knowledge increases. As individuals with disabilities have already begun to file lawsuits in Pennsylvania, the courts will soon weigh-in on if and when a business may require customers to wear masks.

Do I have to disclose my disability if I can't wear a mask?

No. Non-discrimination laws do not permit businesses to ask someone about the nature of their disability or to show documentation of disability. Additionally, the April 15, 2020 and July 1, 2020 DOH Orders both state that individuals are not required to show documentation that an exception to the face covering requirement applies. A disability that limits someone's ability to wear a mask may not be readily apparent by looking at them. Even then, a business cannot ask someone about their disability or require documentation. However, a person may need to advise that they cannot wear a mask due to a disability and state that the business must make a reasonable modification to its policy requiring masks, unless they can agree on an available and appropriate alternative way to access the goods and services.

What should I do if I have a disability that limits my ability to wear a mask and want to visit a business?

If a disability limits your ability to wear a mask, you should contact a business in advance to ask about their policy regarding masks. If you are told that you are not allowed to enter the business without a mask due to COVID-19, you should ask for a reasonable modification of the business's policy that will allow you to access the business's goods or services.

If the business does not provide any reasonable modifications that are acceptable to you, you should explain that you have a disability that limits your ability to wear a face covering, and that the Pennsylvania DOH Orders and the Governor's COVID-19 business guidance provide an exemption to allow you to access the business without wearing a face covering. If you are at the business, you can also show the manager or other employee in charge of the business the Pennsylvania DOH Orders and the Governor's COVID-19 Business Guidance. The April 15, 2020 DOH Order can be found [here](#). The July 1, 2020 DOH Order can be found [here](#). The Governor's guidance for business operations during the COVID-19 disaster emergency can be found [here](#).

If those attempts to access a business with reasonable modification fail, you can call the DOH at 1-877-PA-HEALTH (877-724-3258) to report violation of the DOH Orders, or submit an online complaint to DOH [here](#).

If you believe the business has not complied with its obligations under the ADA, you may file a complaint with the United States Department of Justice (DOJ), Civil Rights Division, 950 Pennsylvania Avenue, N.W., Disability Rights Section - NYAV, Washington, D.C. 20530. Information about filing a complaint with DOJ is available [here](#) or you can call DOJ's ADA Information Hotline at 800-514-0301 (voice) or 800-514-0383 (TTY). Alternatively, you may file a lawsuit to challenge the failure of a public accommodation or commercial facility to comply with Title III of the ADA. You cannot recover money damages in such a lawsuit. You should consult with a civil rights attorney if you are considering filing a lawsuit.

You can also file a complaint with the Pennsylvania Human Relations Commission (PHRC). You can call PHRC at 717-787-4410 (voice) or 717-787-7279 (TTY). Information on filing a complaint with PHRC is available [here](#).



Where can you get further information?

If you need more information or need help, please contact Disability Rights Pennsylvania (DRP) at 800-692-7443 (voice) or 877-375-7139 (TDD). The email address is: intake@disabilityrightspa.org.

The mission of Disability Rights Pennsylvania is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, Disability Rights Pennsylvania cannot provide individual services to every person with advocacy and legal issues. Disability Rights Pennsylvania prioritizes cases that have the potential to result in widespread, systemic changes to benefit persons with disabilities. While we cannot provide assistance to everyone, we do seek to provide every individual with information and referral options.

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