

Ohio Mandates Masks in the Workplace - What You Need to Know

By: Catherine Gorman on July 9, 2020 on graydon.law

On July 8, 2020, the Interim Director of the Ohio Department of Health, Lance D. Himes, issued a new Director's Order (the "Order") that mandates the mandatory use of facial coverings (masks) throughout various counties in Ohio.

The Order, which is in effect beginning July 8, 2020 at 6:00 p.m., mandates that all individuals in Butler, Cuyahoga, Franklin, Hamilton, Huron, Montgomery and Trumbull Counties (counties that are currently at a Level 4 in the Public Health Advisory System as set forth in the Order) must wear facial coverings (masks) at all times when in designated locations, subject to various exceptions.

The Order remains in full force and effect until the sooner of the following: (a) until each of the Counties set forth in the Order are no longer designated as red or purple pursuant to the Public Health Advisory System; (b) the State of Emergency declared by Governor DeWine no longer exists; or (c) the Order is rescinded or modified.

So, when exactly is a mask required? The Order mandates that all individuals in the above-referenced counties must wear facial coverings at all times when:

- In any indoor location that is not a residence.
- Outdoors and unable to consistently maintain a distance of 6 feet or more from individuals who are not members of their household.
- Waiting for, riding, driving, or operating public transportation, a taxi, a private car service, or a ride sharing vehicle (this does not apply to private or rental vehicles where members of a family are sharing a vehicle or to vehicles engaged in direct travel through a county that does not stop in that county).

However, the Order sets forth many exceptions. As such, individuals in the aforementioned counties are not required to wear a mask when:

- The individual is under 10 years of age.
- A medical condition, including those with respiratory conditions that restrict breathing, mental health conditions, or disability contraindicates the wearing of a

facial covering.

- The individual is 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 individual is alone in an enclosed space, such as an office, and which space is not intended for use or access by the public.
- The individual is actively engaged in an exercise in a gym or indoor facility so long as 6 or more feet of separation between individuals exists.
- The individual is actively participating in athletic practice, scrimmage, or competition that is permitted under a separate Department of Health order.
- The individual is actively engaged in a public safety capacity, including but not limited to law enforcement, firefighters or emergency medical personnel.
- The individual is seated and actively consuming food or beverage in a restaurant or bar.
- Facial coverings are prohibited by law or regulation.
- Facial coverings are in violation of documented industry standards.
- Facial coverings are in violation of a business's documented safety policies.
- Individual is actively participating in broadcast communications.
- Individual is an officiant of a religious service.

So, as a business, how does this mandate apply to your employees? In other words, when are employees required to wear a mask in the workplace?

One of the exceptions above provides that a mask is not mandatory when an individual is alone in an enclosed space, such as an office, and which space is not intended for use or access by the public.

Thus, according to the Order, it is clear that an employee is not required to wear a mask when working alone in an office with the door closed. However, what about a cubicle or a shared desk?

Unfortunately, the guidance is vague and the answer remains unclear. It is doubtful that a shared desk would constitute an "enclosed" space that is not intended for use or access by the public. However, it could be argued that a cubicle is indeed an enclosed space not intended for use or access by the public, and as a result, wearing a mask in such a cubicle would not be mandatory.

Regardless of interpretation - the safest practice is to require employees, who are physically able to do so, to wear masks and maintain a distance of at least 6 feet from others at all

times.

Guidance on this topic is constantly evolving. Please don't hesitate to reach out to a Graydon attorney with questions, as we are constantly monitoring this issue.