



## Civil Rights Guidance for Employers and Places of Public Accommodation

### Background:

Effective October 13, 2020, Governor Jared Polis issued [Executive Order D 2020 235](#), establishing directives for the COVID-19 Dial Framework due to the increased presence of COVID-19 in Colorado. The Executive Order combined Protect Our Neighbors, Safer at Home and in the Vast, Great Outdoors, and Stay at Home orders into [this dial framework](#), which recognizes unique local circumstances and visualizes a community's success in containing the spread of COVID-19. Each county or region is subject to corresponding directives based on its level on the dial.

Additionally, a statewide mask ordinance remains in place [via Executive Order D 2020 245](#).

Sector-specific resources, guidance for non-healthcare employers, and safety information also has been made available via CDPHE's [public health guidance & resources](#) website.

**DORA recognizes that these orders, while detailed, do not necessarily reach the level of specificity many of our regulated professions desire during this unprecedented period. Additionally, we know that businesses and professionals are being asked to absorb information from a wide variety of sources. In an effort to provide not only additional clarity on industry and business-specific safety measures, but also to synthesize information from many state of Colorado sources, we have compiled the following guidance. Please note that while these orders do not come directly from DORA, we are endeavoring to provide them as a further resource to you, our regulated professions.**

## Specific “Do’s and Don’ts” for Businesses and Places of Public Accommodation Under *Safer at Home and in the Vast, Great Outdoors*:

Please note: This matrix was adapted from [the guidance](#) issued by Governor Polis on May 21, 2020. Please review the full guidance for more detail.

Guidance for Employers	Guidance for Places of Public Accommodation
<ul style="list-style-type: none"><li>• As of July 16, 2020, <b>Must</b> require that all employees wear masks under the conditions of <a href="#">Executive Order D 2020 138</a>, most recently extended on November 9, 2020 by <a href="#">Executive Order D2020 245</a>. (<a href="#">Additional information</a>).</li><li>• <b>Must</b> make reasonable accommodations requested by employees with disabilities (absent undue hardship) to allow them to continue working.</li><li>• <b>Should</b> make reasonable accommodations to offer protection to those at <i>greater risk of severe illness due to COVID-19</i>, absent undue hardship, meaning significant difficulty or expense.</li><li>• <b>Should</b> consider accommodations for those who request reduced contact due to a disability, e.g. one way aisles, plexiglass or other barriers, etc.</li><li>• <b>Should</b> implement temporary job restructuring, temporary transfers, or modifying a work schedule to accommodate individuals with a disability who have requested reduced contact with others.</li><li>• <b>May</b> consider whether any restructure or accommodations present undue hardship to the employer, and should work with individuals with a disability to determine alternative solutions.</li><li>• <b>May</b> require employees to wear protective gear, e.g. facial coverings and/ or gloves, and observe infection control practices. However, if a disability under the Americans with Disabilities Act (ADA) or religious accommodation under Title VII is requested and needed, employers <b>should</b> provide the necessary modification or alternative, absent undue hardship.</li><li>• <b>May</b> ask employees if they are experiencing symptoms consistent with COVID-19, but must maintain all information as a confidential medical record under the ADA.</li><li>• <b>May</b> require a note from a health care provider, but under current circumstances may accept a form, stamp, or email from a doctor or local clinic.</li></ul>	<ul style="list-style-type: none"><li>• Effective July 16, 2020, <b>must</b> post signs at entrances that instruct customers that they must wear a mask when entering and moving around inside the business.</li><li>• <b>Must not</b> post or allow to be posted any signage that states or implies “We reserve the right to refuse service to anyone” as such signage that implies that unlawful discriminatory practices may be employed. Such signage is prohibited per Colorado Civil Rights Commission Rule 20.4.</li><li>• Effective July 16, 2020, <b>must</b> refuse service to people who are not wearing masks and who do not qualify for an age or disability-related exemption. (<a href="#">Additional Information</a>)</li><li>• <b>Should</b> make reasonable efforts to allow individuals with a disability that prevents the wearing of a mask or facial covering (such as breathing issues or facial disfigurement) to enter or use a place of public accommodation, absent undue hardship.</li><li>• <b>Should</b> make reasonable efforts to grant access and services to all customers such as a change in policy, procedure, or practice, for example, curbside delivery or pickup.</li><li>• <b>May</b> exclude an individual with a disability from entering an establishment or participating in an activity or service if that individual’s presence would result in a direct threat to the health and safety of others. This determination must not be based on generalizations or stereotypes, and must be based on an individual assessment.<ul style="list-style-type: none"><li>○ This does not apply to health care related places of public accommodation.</li></ul></li></ul> <p>Employees or Applicants:</p> <ul style="list-style-type: none"><li>• <b>May</b> file a complaint of discrimination with the <a href="#">Colorado Civil Rights Division</a>.</li></ul>

- **May** screen job applicants for COVID-19 symptoms only *after* making a conditional offer, but must apply rules consistently across all employees entering the same type of job.
- **May** withdraw a job offer if a prospective employee has COVID-19 symptoms *only* if the employer needs the applicant to start immediately.
- **May not** postpone or withdraw a job offer if an individual is at higher risk of contracting COVID-19, such as being 65 years or older or pregnant. Telework may be offered as an alternative.

Employees (or a third party such as a doctor):

- **Must** let an employer know that an accommodation is needed due to a medical condition. This request for accommodation may be made in conversation or in writing, and may reference the ADA in doing so.

## Frequently Asked Questions From Employers and Operators of Places of Public Accommodation

### Regarding the July 16, 2020 Statewide Mask Ordinance

#### **Question: What does the Governor's new mask ordinance mean for my place of business?**

Answer: As of July 16, 2020, [Executive Order D 2020 038](#) mandates that every Coloradan older than 10 wear a mask or a face covering in all indoor public spaces, unless that individual has a medical condition where wearing a mask would put them at risk. Also exempt are hearing-impaired or otherwise disabled individuals, or individuals communicating with someone who is hearing impaired or otherwise disabled and where the ability to see the mouth is essential to communication. It is important to note that wearing a mask properly means that it covers *both* your nose and mouth. Wearing a mask under your nose or chin is ineffective.

The Executive Order states indoor businesses *must* post signs at entrances that instruct customers that they must wear a mask when entering and moving around inside the business, and *must* refuse service to people who are not wearing masks. If a business or professional does not comply with the order, they are at risk of losing their license. Customers who do not comply with the order are violating a Colorado law and are subject to civil and/or criminal penalties. Customers who try to enter an indoor business without a mask may be prosecuted for trespassing.

More information can be found in the [COVID-19 Questions and Answers about the Statewide Mask Order](#) document issued by the Colorado Department of Public Health and Environment.

**Question: What does it mean to be unable to medically tolerate a face covering?**

Answer: Essentially, this means a person who has trouble breathing or anyone who is unconscious, incapacitated, or otherwise unable to remove the cloth face-covering without assistance, according to the Centers for Disease Control and Prevention. [Read more from the CDC](#) about other reasons face coverings may not be possible in every situation or for some people.

**Question: What if my county has requirements that are different from the rest of the state? Which requirements do I have to follow?**

Answer: Under the July 16, 2020 mask ordinance, *only* counties that are certified for [Protect Our Neighbors](#) status may choose to be exempt from the statewide mask order. Your [local public health agency](#) is a good source of information for orders and variances within your county.

In general, a good rule to follow is that the most restrictive terms of either the state or local orders apply, since local governments are allowed to implement stricter rules without state approval. So if the city or county's order is more restrictive than the state order, follow the city or county order.

The exception is if your county has been granted a variance or has qualified to enter the above-mentioned Protect Our Neighbors phase, meaning that the local government has both submitted an application and been approved by the Colorado Department of Public Health and Environment which demonstrates that they are able to relax some restrictions. Please visit [this site](#) for information on which counties have approved variances.

**Regarding Accommodations for Disabled Employees in the Workplace**

**Question: What is a “reasonable accommodation?”**

Answer: A reasonable accommodation is any change to the application or hiring process, to the job, to the way the job is done, or to the work environment that allows a person with a disability who is qualified for the job to perform the essential functions of the job and enjoy equal employment opportunities. (Americans with Disabilities National Network [www.adata.org](http://www.adata.org)). An employer shall provide “reasonable accommodation” to the known disabilities of an otherwise qualified applicant or employee with a disability that are requested, unless the employer can demonstrate

the accommodation would impose an undue hardship or that it would require any additional expense that would not otherwise be incurred. (3 CCR 708-1, Rule 60.6 (A))

Reasonable accommodation may include:

- (a) Making facilities used by employees readily accessible to and useable by individuals with disabilities; and
- (b) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

**Question: What constitutes “undue hardship” for a business?**

Answer: In determining whether an accommodation would impose an undue hardship on an employer’s operation, factors to be considered include: the overall size of the employer’s operation with respect to the number of employees, number and type of facilities, and size of budget; the type of the employer’s operation, including the composition and structure of the employer’s workforce; and the nature, cost, and funding for the accommodation needed. (3 CCR 708-1, Rule 60.6 (A))

**Question: What types of reasonable accommodations are suggested for individuals who cannot have any contact with others due to increased risk of contracting COVID-19?**

Per current Equal Employment Opportunity Commission (EEOC) Guidance, low-cost solutions achieved with materials already on hand or easily obtained may be effective. If not already implemented for all employees, accommodations for those who request reduced contact with others due to a disability may include changes to the work environment such as designating one-way aisles, using plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers whenever feasible per CDC guidance, or other accommodations that reduce chances of exposure.

Flexibility by employers and employees is important in determining if some accommodation is possible under the circumstances. Temporary job restructuring of marginal job duties, temporary transfers to a different position, or modifying a work schedule or shift assignment may also permit an individual with a disability to perform safely the essential functions of the job while reducing exposure to others in the workplace or while commuting.

## **Regarding the Wearing of Facial Coverings**

**Question: Which disabilities or conditions allow an individual to lawfully abstain from wearing a mask or facial covering?**

Answer: According to the Centers for Disease Control (CDC), the following people **should not** wear masks or facial coverings:

- Children younger than 2 years of age;
- Anyone who has trouble breathing;
- Anyone who is unconscious, incapacitated or otherwise unable to remove the cover without assistance.

Further, individuals with a facial or cranial disfigurement may be unable to wear a mask or face covering, and should be exempt.

**Question: Can I post a sign that states that patrons of my business must wear a facial covering, or else they will be asked to leave?**

Answer: Yes, in fact such signage is now mandated under Executive Order D 2020 138. However, the sign must explicitly state that a facial covering is required. Signs stating or implying that service may be refused to anyone at the discretion of the business owner are not lawful; the requirement must be applied equally to all customers, and cannot be selectively used, particularly with members of a protected class (i.e. members of a certain race, gender, sexual orientation, etc., who are protected under the Colorado Anti-Discrimination Act).

**Question: What can I do if a patron of my business refuses to wear a facial covering?**

Answer: If an individual wants to enter your establishment without a facial covering, you may ask, “Do you have a face covering?” If the answer is “no,” you must state that they can return when they have one, or provide one for them to wear if your business is offering facial coverings to customers.

If the customer refuses to wear a face covering, pursuant to Executive Order D 2020 038, the establishment must deny admission or services and require the removal of the individual from the establishment. Customers who do not comply with the order are violating a Colorado law and are subject to civil or criminal penalties. Customers who try to enter an indoor business without a mask may be prosecuted for trespassing. If the customer indicates that they are unable to wear a mask or face covering due to a facial disfigurement or disability, the establishment must [consider other reasonable accommodations](#).

In order to avoid situations in which a customer may become upset by the requirement to wear a facial covering while in your establishment, businesses should make customers and clients aware of the ordinance prior to their visit, where possible. For example, if your establishment or business schedules appointments or reservations with customers and clients, you can inform them of the policy at the time the reservation or appointment is made. You may also add the policy to the website of your business and advertise other options for receiving service such as curbside pick up, no contact delivery, or online services.

**Question: If I choose to provide protective gear to employees or customers, how and where can I obtain facial coverings and gloves?**

Answer: Public Health Order 20-28 requires a cloth face covering or a medical grade mask at all times for employees and customers of personal services ([page 12, Section L, Personal Services](#)). Guidance for creating a non-medical grade mask or facial covering can be accessed [here](#), and should be reviewed to ensure homemade facial coverings are as safe as possible. It is important to note that generally personal protective equipment (PPE), and especially equipment like N95 masks, gowns, face shields, and bonnets, will continue to be prioritized for healthcare professionals who are on the front lines fighting the virus. However, resources for acquiring PPE can be found via <https://energizecolorado.com/>.

City and county requirements for face mask/covering use around the State of Colorado are below. If you do not see your city or county listed below, please [contact your local public health agency](#) for further guidance.

- [City of Aspen](#)
- [City of Boulder](#)
- [Boulder County](#)
- [City of Denver](#)
- [City of Estes Park](#)
- [City of Glenwood Springs](#)
- [City of Lafayette](#)
- [Larimer County](#)
- [City of Lone Tree](#)
- [City of Louisville](#)
- [City of Loveland](#)
- [City of Northglenn](#)
- [Routt County](#)
- [Summit County](#)

- [City of Superior](#)
- [City of Wheat Ridge](#)