



Understanding COVID-19 Mask Mandates & Disability Rights

Disability Rights Mississippi (DRMS) recognizes the importance of wearing face masks or coverings to slow the spread of COVID-19, and urges all who are able to comply with CDC and MSDH recommendations, as well as any recommendations, orders, or mandates from local and state governments. However, **wearing face masks may not be possible for some people with a disability.** Those persons with a disability, as well as private businesses, may have questions or concerns about these orders and their enforcement in regard to those who are unable to wear a mask due to a disability.

We wish to provide guidance for both persons with a disability and businesses on understanding the legal rights a person has under the Americans with Disabilities Act (ADA) and compliance with mask policies. COVID-19 has presented our communities with a myriad of new challenges. As scientific knowledge of the virus increases and legal mandates regarding COVID-19 mask policies continue to evolve, DRMS advises government agencies and businesses to keep the safety, well-being, and civil and human rights of all, including people with disabilities, at the forefront of policy development. DRMS also encourages individuals with disabilities and businesses alike to continue to be understanding and flexible as we navigate COVID-19's many challenges. Both safety and accessibility can coexist during the pandemic. If you feel your rights have been violated because of your disability, please contact DRMS.

WHY MIGHT A PERSON BE UNABLE TO WEAR A MASK?

A variety of physical and/or behavioral conditions may limit a person's ability to wear a certain kind of mask or any face covering. For example, persons with post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), speech or hearing impairments, limited mobility impairments that limit dexterity or create sensory sensitivities, or respiratory conditions may be unable to wear a face covering. Those using certain types of assistive technology (AT) or alternative communication methods due to a disability also may be unable to wear a mask.



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WHERE ARE MASKS REQUIRED IN MISSISSIPPI?

As of March 3, 2021, by executive order of the Governor, all mask mandates that were statewide or dictated to specific counties by the state are no longer in effect. Cities may still have their own mandates; private businesses may also have their own rules regarding masks and/or face coverings. Additionally, masks are still required in K-12 schools when social distancing is not possible, per the Governor. The CDC and state health officials still encourage individuals to still wear a mask whenever possible and to avoid crowds to reduce transmission of the virus.

ARE THERE EXCEPTIONS TO CURRENT MASK REQUIREMENTS?

Yes. For the current Executive Order pertaining to masks/face coverings in K-12 schools, there are some exemptions. In addition to exemptions for various activities like exercising, broadcasts, eating, and rendering or obtaining services in which it is impractical or not feasible to wear a face covering, face coverings/masks are not required for the following:

- (1) Persons who cannot wear a face covering due to a medical or behavior condition, who have trouble breathing or are incapacitated, or whose healthcare professional has recommended that a face covering not be worn.
- (2) Persons seeking to communicate with someone who is hearing-impaired in a way that requires the mouth be visible.

DOES A BUSINESS DENYING ENTRY TO A PERSON WHOSE DISABILITY LIMITS THEIR ABILITY TO WEAR A FACE COVERING VIOLATE NON-DISCRIMINATION LAWS?

In certain situations, yes. Title III of the ADA and Section 504 of the Rehabilitation Act (RA) protect persons with disabilities against discrimination. These laws require businesses to make reasonable modifications to policies, practices, or procedures to allow persons with disabilities to access its goods and services. Additionally, while not mentioning nondiscriminatory practices specifically, the aforementioned Executive Order does provide exemptions to some individuals, such as a person with a disability, from mask mandates.

Any business policy that prohibits, specifically, persons with disabilities from entering the business without a mask and without consideration of a reasonable modification is likely illegal with regard to disability-based discrimination.

However, it is important to note that, according to the Department of Justice, "the ADA does not provide a blanket exemption to people with disabilities from complying with legitimate safety requirements necessary for safe operations." If no reasonable modifications can be made and a person poses a direct threat—based on individualized assessment with medical knowledge or objective evidence—to the health and safety of others, a business may be able to deny entry to a person who cannot wear a mask.



WHAT ARE REASONABLE MODIFICATIONS A BUSINESS CAN MAKE FOR PEOPLE WITH DISABILITIES WHO CANNOT WEAR A FACE COVERING?

Offering appropriate alternatives is an important way for a business to comply with the ADA and to protect their employees and customers. Examples of reasonable modifications include:

- allowing a person to wear a scarf, loose face covering or face shield instead of a mask
- offer customers to order online or via phone with curbside pick-up or no contact delivery in a timely manner
- allow a person to wait in a car for appointments and enter the building when called/texted
- offer appointments by telephone or video calls.

DO I HAVE TO DISCLOSE MY DISABILITY IF I CAN'T WEAR A MASK?

No. Non-discrimination laws do not permit a business to ask a person about the nature of their disability or to require a person to show documentation of a disability. However, if a person is in need of a reasonable modification and no apparent alternative is available, they may need to advise the business that they cannot wear a mask due to a disability

WHAT SHOULD I DO IF I HAVE A DISABILITY THAT LIMITS MY ABILITY TO WEAR A MASK AND WISH TO VISIT A BUSINESS?

While the current Executive Order does not place restrictions on masks for entrance to a business, it is wise to contact a business in advance to ask about their specific mask policy. If you are told that, due to COVID-19, you are unable to enter the business without a mask, you should ask for a reasonable modification (examples above). If no acceptable reasonable modification is offered, you can explain you have a disability that limits your ability to wear a face covering.

K-12 SCHOOLS IN MISSISSIPPI CURRENTLY REQUIRE MASKS. WHAT IF MY CHILD'S DISABILITY PROHIBITS THEM FROM WEARING A MASK AT SCHOOL?

Under Executive Order from Gov. Reeves, teachers and students are currently required to wear a face covering/mask in K-12 schools. **However, there are exemptions to this order for those who cannot wear a mask due to a medical or behavioral disorder, as well as for those who seek to communicate with those who are hearing impaired.**

WHAT IF I NEED MORE INFORMATION?

For more information or assistance, please contact Disability Rights Mississippi at 601-968-0600. We welcome questions from businesses on how to develop reasonable modifications for persons with disabilities.

The mission of Disability Rights Mississippi is to promote, protect and advocate for the legal and human rights of all people with disabilities, and to assist them with full inclusion in home, community, education and employment.

DISCLAIMER: *This publication is for informational purposes only. It is not intended, nor should be construed, to create an attorney-client relationship between Disability Rights Mississippi and any person. Nothing in this publication should be considered legal advice.*

