

# Insights

## COVID-19 Safety Plan Compliance Alert: Indiana's Face Covering Mandate

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On Friday, July 24, 2020, Indiana Governor Eric Holcomb issued **Executive Order 20-37**, entitled Face Covering Requirement (the "Executive Order"). The Executive Order implements a state-wide face covering mandate, adding to multiple local mandates already in place and existing industry-specific standards. Localities may enact provisions that are stricter than the Executive Order; however, they cannot enact provisions to nullify the Executive Order.

### SUMMARY

All Indiana organizations should carefully evaluate their existing COVID-19 safety plans (or create one if they have not already done so) to ensure compliance with this Executive Order and previous ones issued by the Governor, any local provisions regarding mandatory face coverings, and any existing industry-specific standards. Individuals are now required to wear face coverings over the nose and mouth in most indoor and many outdoor spaces open to the public. With respect to indoor spaces, private offices, workspaces, and meetings with an ability to maintain social distancing requirements for people not of the same household are exempt. With respect to outdoor spaces, face coverings are required when six feet of social distancing cannot be maintained with individuals outside one's household. Given the rapidly changing COVID-19 compliance environment, organizations should continue to regularly review applicable local, state, and federal requirements and guidance and update their COVID-19 safety plans accordingly.

Section 6 of the Executive Order detailed guidelines for K-12 educational institutions. On Thursday, July 30, 2020, Governor Holcomb issued Executive Order 20-39 rescinding Section 6 and providing additional requirements and exemptions. Please visit our most recent client alert **K-12 Educational Institutions and Indiana's Face Covering Mandate** for more information.

### Q & A REGARDING INDIANA'S FACE COVERING MANDATE

#### **When does the Executive Order become effective?**

The Order became effective at 12:01 a.m. on Monday, July 27. It will remain in effect for 30 days, expiring at 11:59 p.m. on August 26 unless otherwise modified or extended.

#### **Who is subject to the Executive Order?**

"Every individual within the State of Indiana" is subject to the Executive Order. There are, however, numerous exemptions to the face covering requirement. Section 4 of the Executive Order exempts the following individuals from the directive to wear a face covering but strongly encourages wearing a face covering when practicable and without undue risk or a face shield:

- children under two (2) years of age should not wear a face covering because of the risk of suffocation;

- children who are over the age of two (2) years and under the age of eight (8) years unless otherwise required by a directive in this Executive Order;
- any person with a medical condition, mental health condition or disability which prevents wearing a face covering;
- any person who is deaf or hard of hearing, or communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication;
- any person for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators, or workplace safety guidelines;
- any person while consuming food or drink, or is seated at a restaurant or other food establishment to eat or drink;
- any person while exercising or engaging in sports activity and who can maintain six feet of social distancing from other people not in the same household;
- any person who is in a swimming pool, lake, or similar body of water and who can maintain six feet of social distancing from another person not in the same household;
- any person while driving alone or with passengers who are part of the same household as the driver;
- any person obtaining a service which requires temporary removal of the face covering for security surveillance, screening, or a need for specific access to the face, such as while visiting a bank or while obtaining a health-related or personal care service involving the face, however, the removal of the face coverings must be temporary and limited only to the extent necessary to obtain the service;
- any person, upon request, as part of a law enforcement investigatory stop or investigation or court-related proceeding;
- any person who is incarcerated;
- any person who is experiencing homelessness;
- any person while giving a speech for a broadcast or to an audience if the person can maintain six feet of social distancing from another person not in the same household; or
- any person attending or engaged in a religious service as he or she must already maintain six feet of social distancing from another person not in the same household.

### **Where must individuals wear face coverings?**

Section 1 provides that “every individual within the State of Indiana shall wear a face covering over the nose and mouth when:

- Inside a business, public building, or other indoor place open to the public. This does not extend, however, to private offices, private workspaces or meetings in which six feet of social distancing can be achieved and maintained between people not in the same household;
- in an outdoor public space wherever it is not feasible to maintain six feet of social distancing from another person not in the same household; or

- using public transportation or while in a taxi, private car service, or ride-sharing vehicle.”

*(Emphasis added.)*

The Executive Order does not remove or “modify any prior directives requiring employees and staff at restaurants, bars, taverns, wineries, breweries, gyms, exercise and fitness centers and personal service businesses to wear face coverings.” Such directives will remain in place until the end of the public health emergency unless specifically rescinded.

### **What does this mean for employers?**

The Executive Order will apply differently to each employer. Most employees will likely need to wear a face covering for a part, or all, of the workday. The specific requirements for employees will depend on numerous factors, including the following:

- the location of the workspace;
- the nature of the work performed;
- the industry-specific guidelines on social distancing and face coverings; and
- the ability to maintain social distancing while working.

### **What qualifies as a “face covering” or a “face shield”?**

The Executive Order defines a face covering as “a cloth which covers the nose and mouth and is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face.” The Executive Order defines a face shield as “a mask, typically made of plastic, which covers the nose and mouth.”

### **What is the penalty for non-compliance?**

The Executive Order states that its purpose is “to protect the health and lives of Hoosiers, to ensure businesses will remain open, to allow schools to reopen and operate safely, and to allow Hoosiers to continue to participate in their chosen activities.” State and local health departments are responsible for enforcing compliance through “education about the importance of wearing face coverings and dispelling myths and misconceptions about the use and/or the benefits of the requirement.” Despite Governor Holcomb’s initial statement that failure to comply would constitute a Class B Misdemeanor, there is currently no civil or criminal penalty for non-compliance. Nonetheless, it is a binding Executive Order directed toward public health and safety. Vigilance in following the Executive Order’s directives could also assist organizations in avoiding potential liability arising from claims that may be asserted by employees, visitors, customers, and other third parties. Likewise, organizations should continue monitoring state and local health departments’ requirements.

If your organization needs assistance reviewing and updating your COVID-19 safety plan, please contact **Shelley M. Jackson** Krieg DeVault LLP’s Labor and Employment practice group.

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