

COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

What Massachusetts Businesses Need to Know about Masks in the Workplace

BY CESIRA NEWCOMB • MAY 7, 2020

WHO MUST WEAR A MASK AND WHERE?

The newest Massachusetts COVID-19 Executive Order requires all individuals over the age of 2 to wear a mask or cloth face covering in places that are open to the public, effective May 6, 2020. The order applies to "all workers and customers of businesses and other organizations open to the public that are permitted to operate as COVID-19 Essential Businesses." Inside grocery stores, pharmacies, and other retail stores, individuals must wear masks at all times. However, for most essential businesses, masks are only required when individuals are unable to maintain a distance of approximately six feet from every other person. Businesses that are categorized separately from grocery stores, pharmacies and "other retail stores" including banks are likely not subject to the more stringent requirement.

There are a variety of individuals exempt from the mask-wearing requirement including but not limited to:

- Those who cannot breathe safely;
- Those who, due to a behavioral health diagnosis, are unable to do so;
- Those communicating with people who rely upon lip-reading; and
- Those who require supplemental oxygen to breathe.

If an individual does not wear a mask for medical reasons, a business may not require the individual to provide documentation of the medical condition. However, a business may decline entry to a customer who refuses to wear a mask for non-medical reasons.

MUST AN EMPLOYER PROVIDE MASKS?

Whether an employer is required to provide Personal Protective Equipment (PPE) to its employees varies by industry.

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While employers are obligated to comply with existing industry-based standards and provide their workers with industry-specific PPE, there is no new obligation created by the Occupational Health and Safety Act (OSHA) guidelines for an employer to provide masks in low-risk industries. A simple face mask or cloth covering is not the same as PPE for a healthcare worker. Employers are not obligated to provide non-specialty equipment that is "often used outside the workplace and taken by workers from jobsite to jobsite and employer to employer," such as non-specialty safety-toe protective footwear or ordinary clothing such as winter coats. In most business settings, non-medical cloth masks or face coverings would seem to fall squarely into this category as the risks associated with COVID-19 are not limited to the workplace.

If a business chooses to provide masks for its employees, it is not likely to be liable for the quality of the mask. The Massachusetts Department of Public Health (DPH) and the Center for Disease Control (CDC) both discourage the use of medical masks in nonmedical settings, and encourage businesses to follow CDC instructions for creating homemade masks. Neither the DPH nor the CDC provides any standards that homemade masks or face coverings must meet. While not required, if a business does provide masks, it should also provide training and post signage about how to properly use and wash masks and face coverings.

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