

New Virginia Executive Order Expands Face Covering Requirements, Restricts Gatherings

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Virginia Governor Ralph Northam has issued [Executive Order Number Seventy-Two](#), expanding face covering requirements, reducing allowable social gatherings, and directing Virginians to remain at home after midnight. The Order also states that individuals who decline to wear a face covering due to a medical condition are not required to produce medical documentation verifying their stated condition(s) or identify their precise underlying medical condition(s). The Order took effect at 12:01 a.m. on December 14, 2020.

Face Coverings

The Order requires all Virginians aged five or older to wear face coverings when in an indoor area shared by others, with the exception of personal residences.

The face covering requirement does not apply:

- While eating, drinking, or exercising;
- While playing a musical instrument if a face covering would interfere;
- If a person is having trouble breathing or is unconscious, incapacitated, or unable to remove a face covering without assistance;
- While communicating with the hearing impaired if lip reading is necessary;
- If needed for medical services; or
- If health conditions or disabilities prohibit wearing a face covering.

Requirements for Businesses

Governor Northam's Order also includes face covering and physical distancing mandates and other limitations for certain businesses, including:

- Restaurants, food courts, tasting rooms, and others dining or drinking establishments;
- Farmer's markets;
- Retail stores;
- Fitness and exercise facilities;
- Personal care and grooming service providers;
- Campgrounds;
- Indoor shooting ranges;
- Public beaches;
- Racetracks and speedways;
- Amusement parks and zoos;
- Entertainment and amusement venues; and
- Recreational sports venues.

Employees at the listed businesses must wear face coverings while working or they may be subject to punishment as a Class 1 misdemeanor, including up to one year in jail or a fine not more than \$2,500. Va. Code §§ 32.1-27 and 18.2-11. In addition, the Virginia Department of Labor and Industry, the Virginia Department of Professional and Occupational Regulation, and the Virginia Department of Agricultural and Consumer Services are authorized to enforce its provisions under their regulatory authority.

Any business *not* listed specifically in the Order is required to adhere to the [Guidelines for All Business Sectors](#), which are incorporated into the Order as "best practices." Those guidelines state, among other things, that "individuals must wear face coverings over their nose and mouth in accordance with Section III of [Executive Order 72](#)."

In addition, the [Virginia Emergency Temporary Standard for COVID-19, promulgated in July](#), still governs those workplaces. The Standard applies to all state and local employers and to all private sector employers

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under the jurisdiction of Virginia Occupational Safety and Health. While the Standard does not include a broad face covering mandate, it requires, among other provisions, that employers assess job hazard levels and implement protective measures, such as social distancing, sanitization, and the provision of face coverings, depending on hazards associated with job tasks.

Curfew

The Order requires Virginians to remain at home between midnight and 5:00 a.m., unless they need to leave their homes for the following reasons:

- To obtain food, beverages, goods, or services;
- To seek medical, emergency, or essential social services;
- To travel to comply with a court order or to facilitate child custody, visitation, or child care;
- To exercise;
- To worship or work;
- To travel to an educational institution;
- To volunteer for charitable or social services; or
- To safeguard health or safety or at the direction of law enforcement or a governmental agency.

Large Gatherings

The Order further reduces the authorized size of public and private in-person gatherings from 25 individuals to 10. The gathering restriction does not apply to places of employment, family members who live in the same residence, educational institutions, or religious services, although the Order includes certain social distancing and other restrictions for the latter two categories.

Medical Documentation

The Order states that “any person who declines to wear a face covering because of a medical condition shall not be required to produce or carry medical documentation verifying the stated condition nor shall the person be required to identify the precise underlying medical condition.” This appears to bar employers from requiring medical documentation verifying or identifying a medical condition that prevents employees from wearing masks.

Under the Americans with Disabilities Act and the Rehabilitation Act, employers may require medical examinations in certain circumstances as a precondition to beginning or continuing to work. Such examinations generally are carried out by medical providers apart from the workplace, and employees produce or direct examiners to produce results to their employers. In addition, employers may require medical documentation in support of an employee's request for reasonable accommodation. However, if an employer requires face coverings as a business necessity (*e.g.*, employee health or risk mitigation) and an employee declares an undisclosed disability prevents compliance, the Order appears to prohibit an employers' right under these federal laws to obtain information needed to discern legitimate refusals to wear face coverings.

Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance and are available to help employers weed through the complexities involved with [state-specific or multistate-compliant plans](#).

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 team](#).

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