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DEPARTMENT OF JUSTICE**

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January 8, 2021

To: Retail and Grocery Establishments

Re: Guidance on Complying with Emergency Order 74 Requiring Masks in Public Spaces and Emergency Order 52 Guidance

Thank you all for your continued service to the people of New Hampshire! By keeping your establishments open for business, sometimes at risk to yourselves, you provide vital services to the public – and that service is very much appreciated. This letter provides guidance information on how to comply with Emergency Order 74, the order requiring people to wear masks when in public spaces without physical distancing, and the Emergency Order 52 Retail Establishment Guidance, which requires that all staff and customers inside a retail establishment must wear masks. Your business or organization may also need to comply with the Food Services Industry Guidance depending on the services you provide.

Attached to this letter is a document that briefly explains Emergency Order 74 and Emergency Order 52. Most of the industry-specific guidance documents and many of the Emergency Orders have requirements that businesses and organizations must enforce with their customers. For example, under the Retail Guidance, there are limitations on the number of people who are allowed in retail establishments; there are requirements to maintain physical distancing between customers; and there are requirements that all customers must wear masks when inside the establishment.

Many businesses and organizations report that their employees are uncomfortable enforcing the guidance and Emergency Order requirements, particularly the mask wearing requirement. As a result, we are providing the following recommendations that businesses and organizations can consider implementing to make enforcing that guidance and those orders easier:

-Place signs on the doors to your establishment stating that masks are required. You can use one that says that "Masks are required by state law or local ordinance" or just one that says "Masks are required."

-If possible, have a person or a station with spare masks and hand sanitizer available at each door.

-Ask customers as they enter your establishment to wear masks. It is easier to have that discussion at the door as a customer enters than further inside your establishment.

-If a customer states that they cannot wear a mask due to a health issue, accept that explanation without asking for documentation of the health issue.

-Be prepared to respond to other customers' questions about why some customers are not wearing masks. Simple explanations such as "We have checked with each customer about wearing a mask and some customers are not able to do so."

-If a customer disagrees with your decision to allow another customer to not wear a mask, provide them with the Attorney General's COVID Compliance phone number or email and recommend they call that number to raise their concern. 603-271-1225 and EO52issues@doj.nh.gov

-Have a plan in place for how to handle issues when a customer just refuses to wear a mask, such as having the staff call a manager for assistance.

-If a customer refuses to wear a mask without a reason that fits within one of the exceptions in Emergency Order 74, do not have your staff engage further with the customer after the refusal. Instead, call local law enforcement for assistance.

-As soon as possible, preferably before your business or organization has an issue with a customer who simply refuses to wear a mask, contact your local law enforcement department to have a discussion about establishing a plan for how to deal with such a customer. Having this discussion before a situation occurs will provide your staff with a sense of security as a plan will be in place.

If you have a specific questions about compliance with Emergency Order 74 or Emergency Order 52 and its guidance, please do not hesitate to contact the Attorney General's Office.

Sincerely,



Anne M. Edwards
Associate Attorney General

Information on Emergency Order 74

On November 19, 2020, Governor Sununu issued Emergency Order 74, an order requiring people to wear masks or cloth face coverings when in public spaces without physical distancing. Emergency Order 74 requires that everyone:

over the age of 5 within the State of New Hampshire shall wear a mask or cloth face covering over their noses and mouths any time they are in public spaces, indoors or outdoors, where they are unable to do or do not consistently maintain a physical distance of at least six feet from persons outside their own households.

A “public space includes any part of a private or public property that is generally open or accessible to members of the general public.”

There are many exceptions for different individuals who may not be able to wear masks. Some of the exceptions that may apply to your establishments include:

- A person with a medical condition or disability that prevents them from wearing a mask;
- A person consuming food or drink or sitting at a table to eat or drink;
- A person who is deaf, hard of hearing, or has a disability that makes communicating with a mask difficult and any person communicating with them; or
- A person whose identity must be confirmed.

Any person, other than an employee of the establishment, who declines to wear a mask by stating that they have a medical or developmental issue, or difficulty breathing, is not required to show documentation of their condition and the business or organization should not ask for such documentation.

The full text of the Governor’s Emergency Orders can be found at [Emergency Orders - 2020 | Governor Christopher T. Sununu \(nh.gov\)](#)

Information on Emergency Order 52

Under Emergency Order 52, the Safer at Home Order, issued by Governor Sununu on June 15, 2020, businesses and other organizations were allowed to open on June 16, 2020, if they followed the Universal Guidelines, applicable industry-specific guidance, and any applicable Emergency Orders. This Emergency Order has been extended several times, most recently through Emergency Order 72. Despite the use of the words “guidelines” and “guidance” in the titles, business and organizations are required to comply with the mandatory provisions of the documents if they want to be open.

Every business or organization must follow the Universal Guidelines. For many of your establishments, the Retail Establishment Guidance and the Food Service Industry Guidance will specifically apply to you. The full text of the Emergency Order 52 guidance and guidelines can be found at [SAFER AT HOME \(nh.gov\)](#)

Under the Retail Guidance, Employee Protection section, Paragraph 1, you and your staff or volunteers are “direct customer service employees” and are required to wear masks. The exceptions for wearing masks in Emergency Order 74 do not apply to employees of retail establishments.

If your staff or volunteers cannot wear masks due to health issues, those health issues need to be documented in each person’s personnel file. That documentation must be available for review by local public health officials.

Additionally, under the Universal Guidelines, Section C, Paragraph 4, if you have staff or volunteers who cannot wear masks, then you need to use rigid plastic dividers between those staff and customers and those staff must wear face shields as possible alternatives. Staff and customers must maintain 6 feet of distance, especially with staff who cannot wear masks.