



BRUBAKER CONNAUGHTON
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GOVERNOR ISSUES NEW COVID-19 MITIGATION, ENFORCEMENT AND IMMUNITY ORDER

November 24, 2020

On Monday, November 23, 2020, Governor Wolf issued a new COVID-19-related Order outlining additional targeted mitigation requirements for businesses in the Commonwealth of Pennsylvania. The Order rescinds and supersedes the Governor's prior Orders concerning COVID-19, and imposes several new requirements on businesses with the goal of reducing the spread of COVID-19. The requirements imposed by the Order include (items in red are new requirements applicable to all businesses):

Teleworking

Unless impossible, all businesses must conduct their operations remotely through teleworking. Where telework is impossible, employees may conduct in-person business operations, provided the business fully complies with the requirements of the Order and all existing and future guidance issued by the Wolf Administration, Department of Health and CDC.

Cleaning Measures

The cleaning measures previously required under the Department of Health's Worker Safety Order remain in place. Businesses must:

- Alter hours of service to provide sufficient time to clean;
- Close off areas visited by a person who has a case of COVID-19; open windows and doors and provide ventilation; wait 24 hours before beginning cleaning and disinfection; and
- Wipe down carts and handbaskets; stagger checkout lanes and clean check out areas.

Mitigation Measures

Businesses are now required to conduct temperature checks before employees enter the business.

The mitigation measures previously required under the Department of Health's Worker Safety Order remain in place. Businesses must:

- Stagger work start and stop times and break times;
- Provide sufficient space for employees to maintain social distancing of 6 feet while on break;
- Limit persons in common areas;
- Conduct meetings and trainings virtually and, if meetings must be held in person, limit the number of individuals in accordance with the limitations outlined in the Order;
- Provide employees access to regular handwashing with soap, hand sanitizer and disinfectant wipes;
- Provide and require that employees wear face coverings during their time at the business, except while on break, in accordance with the Department of Health's November 17 Updated Order Requiring Universal Face Coverings ("Universal Masking Order");

- Have a sufficient number of employees to perform all mitigation measures and to enforce social distancing;
- Prohibit non-essential visitors from entering the business; and
- Make employees aware of these required procedures, in English and their native or preferred language.

Contact Tracing

To the extent possible, businesses are required to identify employees and customers who were in close contact with a person with COVID-19 from the period 48-hours before symptom onset (or 48 hours prior to test if asymptomatic), to the time the person isolated. *Under the Order, the updated CDC definition of “close contact” means that an individual was within 6 feet of a person with COVID-19 for about 15 minutes.* Upon request, businesses must provide the names and contact information for those individuals to the Department of Health or local health department.

Businesses must promptly notify employees who were close contacts of any known COVID-19 exposure *at the business premises.*

Employee Isolation or Quarantine

The Order requires that any employee who becomes sick during the work day be sent home *immediately.* Employees that are diagnosed with or test positive for COVID-19 may no longer work at an in-person business, even if asymptomatic, and must isolate in accordance with the direction of the Department of Health or local health department.

Under the Department of Health’s previous Worker Safety Order, employees who were in close contact with another person that was diagnosed with or tested positive for COVID, were permitted to continue working as long as they remained asymptomatic. *Under the new Order, employees in close contact may not continue to work at the in-person business and must quarantine in accordance with the direction of the Department of Health or local health department.*

Requirements for Businesses Serving the Public

The Order sets forth a number of requirements for businesses serving the public, including:

- Require social distancing and provide markings and/or signage showing six foot distances;
- Post signage mandating face coverings and distancing;
- Post maximum capacity for facility;
- Arrange aisles to be directionally one-way;
- Place hand sanitizer at high contact locations;
- Designate a COVID-19 compliance officer;
- Install plexiglass shields at registers and check-out areas and close check-out lines as needed to maintain distancing;
- Provide for curbside pick-up and delivery options;
- Designate a specific time for high-risk and elderly persons to use the business at least once per week; and
- Require individuals entering the business to wear face coverings in accordance with the Universal Masking Order.

All in-person businesses serving the public within a building may operate at up to 75% of the maximum capacity state on the applicable certificate of occupancy.

The Order contains a number of specific guidelines for the following businesses:

- Entertainment industry
- Gyms and fitness facilities
- Personal care services
- Bars
- Restaurants and private catered events
- Nightclubs
- Venues hosting events and gatherings
- Prisons and hospitals (visitation requirements only)
- Religious gatherings

Enforcement

The Order is effective November 27, 2020 at 12:01 a.m. Law enforcement agencies have been directed to ramp up enforcement efforts through the issuance of citations and fines (\$25-\$300) to businesses that do not comply with the Order. The Department of Health has also created an online complaint process to enable employees and members of the public to submit concerns about possible violations. The submission of a complaint will result in a warning letter to the business of potential consequences for violating the Order.

The Order creates a specific enforcement process for retail businesses and restaurants. Retail businesses include establishments that sell goods or services to the public or are open to the public. The new enforcement process is as follows:

- **First Violation:** The business will receive a warning letter and be required to engage in rigorous cleaning and other mitigation measures as are necessary.
- **Second Violation:** The business will immediately correct the violation and may receive a citation or fine. The business will be required to close for a period of up to 24 hours, during which time the business shall engage in rigorous cleaning and other mitigation measures as are necessary.
- **Subsequent Violations:** The business will be required to close for at least 24 hours, fines and penalties may be imposed, and the business may be referred for criminal prosecution. Prior to reopening, the business shall correct all cited violations. Failure to correct cited violations shall result in increased penalties.

Limited Immunity Related to Universal Face Coverings

Finally, the Order contains a limited immunity protection with respect to the Universal Masking Order. Except in cases of willful misconduct, gross negligence, recklessness or bad faith, businesses shall be immune from civil liability tied to the Universal Masking Order.

The immunity protections under the Order appear to be limited to situations in which a member of the public refuses to wear a mask while patronizing a retail or service establishment. The Order does not protect employers from civil liability in connection with their employees. Employers are reminded that, under the Universal Masking Order, face coverings *are required unless an employee is “working alone.”* An employee is considered to be “working alone” if the employee is isolated from interaction with other people with little or no expectation of in-person interruption. Examples of working alone include:

- A lone worker inside the enclosed cab of a crane or construction equipment.
- A person by themselves inside an office with four walls and a door.
- A lone worker inside a cubicle with 3 walls and a door or entryway, with walls high enough to block the breathing zone of all people walking by, and the worker’s activity will not require anyone to come inside of the worker’s workspace.
- An employee who is alone in an agricultural field or other open area with no anticipated contact with others.

Other situations in which a mask is not required include:

- If wearing a face covering while working would create an unsafe condition in which to operate equipment or execute a task as determined by local, state, or federal regulators or workplace safety guidelines.
- If wearing a face covering would either cause a medical condition, or exacerbate an existing one, including respiratory issues that impede breathing, a mental health condition or a disability.
- When necessary to confirm the individual's identity.
- While obtaining a service that requires the temporary removal of the face covering, such as dental services.
- If an individual is communicating or seeking to communicate with someone who is hearing-impaired or has another disability, where the ability to see the mouth is essential for communication.

Additional Resources

Copies of the current COVID mitigation Orders are accessible here:

- [Governor's Mitigation, Enforcement and Immunity Protections Order](#)
- [Secretary of Health Order for Mitigation and Enforcement](#)
- [Updated Universal Masking Order](#)
- [Universal Masking Order FAQ](#)

On Friday, December 4, 2020, BCGL's Employment Team of Theresa Mongiovi and Angela Sanders will present a webinar titled "COVID Employer Update: Preparing for the Winter Surge." The webinar will address the Governor's new Mitigation, Enforcement and Immunity Protections Order, as well as other COVID-related regulations, guidance and issues facing employers.

Webinar Information

Date: December 4, 2020*

Time: 9:00 – 10:00 a.m.

**This webinar was originally advertised for December 11, 2020. In light of the Governor's new Order, it has been moved to December 4, 2020.*

[REGISTER](#)

If you have questions about your obligations under the Governor's new Order, [Theresa](#) and [Angela](#) are available to assist you.