

## **Masks and Human Rights** **FAQs for Business Owners and Staff**

On November 24, 2020, BC's Minister of Public Safety and Solicitor General [ordered](#) that all individuals must wear a face mask in all indoor public spaces, including in retail stores and in workplaces (in shared common areas of office buildings).

The order includes exemptions for:

- children under 12 years old;
- anyone who is unable to wear a mask because of a health condition or impairment;
- anyone who is unable to put on or remove a mask without help from another person.

The order's medical exemption reflects the provisions of the [BC Human Rights Code](#). When a person cannot wear a mask for medical reasons, but still wants to access a service normally available to the public, the service provider has a duty to accommodate that person to the point of undue hardship.

These FAQs have been created to help service providers and people seeking services understand their rights and responsibilities around the requirement to wear a mask. It is for general informational purposes only and does not constitute legal advice.

The law can change. As human rights tribunals and courts make decisions on these issues, we will do our best to update the information we provide. However, we cannot guarantee that these FAQs reflect the current state of the law.

- Last Revised March 3, 2021

### **Q: Do I have to serve someone who is not wearing a mask?**

A: You must make your services reasonably available to people who cannot wear a mask due to a disability.

A customer may be exempt from the requirement to wear a mask if they have a health condition that prevents them from wearing a mask safely. Under human rights law, you have a duty to accommodate that person to the point of undue hardship. We recommend that you work with the customer to try to find a way to safely offer them your services.

The exemption does not cover a person who refuses to wear a mask simply because they do not want to or because they forgot to bring one.

If a person tries to enter your business without a mask, it would be a good idea to ask them whether they have a medical condition that prevents them from safely wearing a mask. This opens a dialogue and allows you to work with them to try to reach an accommodation if they have a disability.

**Q: Should I ask for medical proof that somebody cannot wear a mask?**

A: In a service provision context, typically no. For one-off or short-term interactions, the best approach is usually to trust the person who is claiming a medical exemption. This is the approach supported by the [BC Human Rights Commissioner](#).

In the case of longer term relationships, where a person is a regular user of the service you provide, you may want to ask them for medical information to help you reach an appropriate accommodation. In these cases, you may want to seek some independent legal advice to help you navigate what is appropriate to ask for. Medical information is highly private and sensitive material.

If a dispute arises and a person files a complaint with the BC Human Rights Tribunal, the person will have to satisfy the Tribunal that they have a disability that prevents them from safely wearing a mask. This process may involve the disclosure of medical records and any other information that is relevant.

**Q: Can I offer a different or limited service to people who cannot wear a mask?**

A: Maybe. Service providers have a duty to accommodate people with disabilities to the point of undue hardship. Whether a service provider has met the point of undue hardship will depend on the facts of each case. It is not likely that service providers will be expected to provide services in a way that puts them or others at undue risk of infection. In some cases it may be unduly risky to offer services in a normal way to someone who is unable to wear a mask.

Accommodation is often an exercise in compromise. The person requesting accommodation is not entitled to a *perfect* accommodation, and should be prepared to accept a reasonable solution. A reasonable solution might mean providing services in a different way than usual.

**Q: What about my responsibility to keep my staff and other customers safe?**

A: As above, meeting your duty to accommodate is often an exercise in finding a reasonable compromise. A good solution will take into account your duty to accommodate the person with the disability, as well as your duties towards your staff and other customers.

**Q: What are some ways I can accommodate people who cannot wear a mask?**

A: There is no one-size-fits-all approach to what an appropriate accommodation looks like. Human rights law requires you to take reasonable and practical steps to remove barriers people with disabilities may face in trying to access your services.

Some options you can explore with the customer may include serving them outside or in a better ventilated space, asking them to come back at a less busy time, or offering telephone or online services and curbside pick-up.

It may be the case that accommodating someone would cost you more money or be less convenient than normal. Unless it amounts to an *undue* hardship, moderate increased cost or inconvenience are not valid reasons for refusing to accommodate a person with a disability.

**Q: What if I cannot offer any services safely to someone who is not wearing a mask, or we cannot reach a reasonable compromise?**

A: In some cases you might feel that, despite your best efforts, there is no way to safely accommodate a person who cannot wear a mask. This may mean that you cannot agree on an accommodation plan that suits the person seeking an accommodation, or cannot safely offer any services at all.

It is always possible that the person who was seeking an accommodation will file a complaint with the BC Human Rights Tribunal. At a Tribunal hearing, you will need to prove you took reasonable and practical steps to accommodate the person with the disability. You will need to show why doing anything more would have been an undue hardship for your business.

If you are named as a respondent to a complaint, we recommend you seek independent legal advice. The Law Centre at the University of Victoria may be able to offer you some free legal advice.

**Q: What if one of my staff refuses to accommodate someone with a disability who cannot wear a mask?**

Employers are responsible for the conduct of their employees. If one of your staff does something that discriminates against a customer with a disability, the company will be held liable for their actions.

We recommend that you develop a clear policy on accommodating people who cannot wear masks for medical reasons. Decide how you can accommodate people seeking your services who cannot wear masks. See our suggestions above. Train your staff on the policy, and make sure they understand what to do if someone seeks service while not wearing a mask. Equip them with tips and strategies to de-escalate a challenging situation, where necessary. Consider having a supervisor or manager deal with all accommodation requests, if you can, rather than leaving it to less senior staff.