

November 13, 2020

VIA EMAIL

Informed Consent Action Network
Mr. Del Bigtree
2025 Guadalupe Street
Suite 260
Austin, Texas 78705

Re: *Laws Regarding Face Masks and Medical Exemptions to Same*

Dear Mr. Bigtree,

You requested we review certain information regarding medical exemptions to wearing a face mask. As detailed below, businesses are legally required to accept a medical exemption to any requirement to wear a mask and are prohibited from requesting or requiring information or support for the medical exemption. Businesses that fail to abide by these requirements may be violating applicable federal and state laws, including those detailed below.

A. Business Required to Accept Medical Exemption to Mask Requirement

According to the Centers for Disease Control & Prevention (“**CDC**”), “masks should NOT be worn by ... anyone who has trouble breathing.”¹ Most states with mask requirements have a similar medical exemption with regard to wearing a face mask. For example:

- **New York**’s mask mandate provides that his mask requirement only applies to those that are “able to medically tolerate a face-covering.”²
- **California**’s mask mandate states: “The following individuals are exempt from wearing a face covering: Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance...”³

¹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>.

² <https://www.governor.ny.gov/news/no-20217-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

³ https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf.

- **Texas**'s mask mandate exempts "Any person with a medical condition or disability that prevents wearing a face covering."⁴
- **New Jersey**'s mask mandate exempts required face coverings "where doing so would inhibit that individual's health."⁵
- **Michigan**'s face covering requirements do not apply to those who "Cannot medically tolerate a face covering."⁶

B. Business Prohibited from Requesting or Requiring Support for Medical Exemptions

Businesses and institutions are also generally legally prohibited from requesting or requiring medical or other documentation from an individual related to their medical exemption to wearing a mask. "Generally, guidance from the U.S. Department of Justice has not allowed asking for documentation for accommodations at businesses where interactions are brief, such as grocery stores or pharmacies."⁷ Many states have even incorporated the prohibition on requesting support for a medical exemption to a mask mandate into their mask requirement:

- In **New York**, "...essential business operators and enforcement authorities are prohibited from requesting or requiring medical or other documentation from an individual who declines to wear a face covering due to a medical or other health condition that prevents such usage."⁸ New York also provides that "[e]mployers are prohibited from requesting or requiring medical or other documentation from an employee who declines to wear a face covering due to a medical or other health condition that prevents such usage."⁹
- In **New Jersey**, the mask order states: "Where an individual declines to wear a face covering on store premises due to a medical condition that inhibits such usage, neither the essential retail business nor its staff shall require the individual to produce medical documentation verifying the stated condition."¹⁰
- In **Texas**, the official guidance for its mask requirement states: "businesses may ask customers whether the reason the customer is not able to comply with a mask policy is because of a disability. However, they caution businesses 'not to ask questions about the nature or severity of the disability.'"¹¹
- In **Michigan**, "A person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, may not

⁴ Executive Order GA-29 at <https://guides.sll.texas.gov/covid-19/mask-laws#s-lg-box-wrapper-28569276>.

⁵ Executive Order No. 122 at <https://www.nj.gov/governor/news/news/562020/20200408e.shtml>.

⁶ Executive Order dated Oct. 29, 2020 at https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-543708--,00.html.

⁷ <https://www.adasoutheast.org/ada/publications/legal/ada-and-face-mask-policies.php>

⁸ <https://ocfs.ny.gov/main/news/2020/DOH-COVID-2020Apr17-Masks-EO20217.pdf>.

⁹ https://coronavirus.health.ny.gov/system/files/documents/2020/04/doh_covid19_eo20216employeefacecovering_041420.pdf.

¹⁰ Executive Order No. 122 at <https://www.nj.gov/governor/news/news/562020/20200408e.shtml>.

¹¹ <https://faq.sll.texas.gov/questions/42856>.

assume that someone who enters the facility without a face mask falls within one of the exceptions specified in section 7 of this order, including the exception for individuals who cannot medically tolerate a face mask. An individual's verbal representation that they are not wearing a face mask because they fall within a specified exception, however, may be accepted."¹² Further, "schools are permitted (and in fact recommended) to require a doctor's note for persons seeking an exemption from the face masks requirement."¹³

- In **California**, there is no clear guidance at the state level, however, residents are encouraged to refer to the local county rules. Some counties require that persons who are medically exempted from wearing a mask get that exemption in writing but do not need to disclose the medical reason for having one. For Example, in San Francisco: "If you have signed documentation showing a medical professional has told you not to wear a face covering of any kind, you do not have to wear one. The document *does not need to explain your medical condition*. The documentation should include the contact and license information of the medical professional."¹⁴

In sum, businesses are legally required to accept a medical exemption to any requirement to wear a mask and are prohibited from requesting or requiring information or support for the medical exemption. Business that fail to abide by these requirements may be violating applicable federal and state laws, including those detailed above.¹⁵

Very truly yours,



Aaron Siri, Esq.

¹² https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-543708--,00.html.

¹³ https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-543915--,00.html.

¹⁴ City and County of San Francisco Local Guidance at <https://sf.gov/information/masks-and-face-coverings-coronavirus-pandemic>.

¹⁵ The above discussion was prepared in response to your request and is intended for ICAN and your use only. Every situation is unique and the general statements of the law referenced above may not apply in every situation, The law in this area is still emerging and is subject to change at any time. While we undertook a wide review of the law, this memo does not necessarily cover all 50 states' laws and each state may have different rules on this topic that are not covered by this letter.