Guide to Customers Refusing Face Coverings
For every viral video of a customer refusing to wear a face covering, there are many more customers not on video that employees have to deal with. Sometimes these interactions become extremely confrontational. Whether you are creating a new procedure or refreshing an old one, this Guide will help you to help your employees respond to a customer who refuses to wear a face covering.

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Guide to Customers Refusing Face Coverings

State and County Orders

According to the State’s Twelfth Proclamation, dated August 20, 2020, “All persons must wear face coverings in compliance with the county orders, rules and directives.” The county orders generally say that customers must wear face coverings in public spaces with certain specified exceptions.¹ The City & County of Honolulu and County of Hawaii Orders say businesses may, while the Maui Rules say businesses shall, refuse entry or service to individuals refusing to wear a face covering. That does not mean, however, that businesses can automatically turn away customers who refuse to wear a face covering.

What Should I Do?

If someone enters your place of business without a face covering, the first step should be to ask the customer if they can wear a face covering. It’s possible the person forgot to wear it, in which case you can offer them a face covering, ask them to come back with a face covering, or propose one of the modifications suggested below. If the customer says they cannot wear a face covering, politely ask if they fall under one of the exceptions set forth by the applicable county’s order. Each county has its own list of exceptions to the face covering requirement. Ensure the person assigned to talk to customers has the most updated version of the applicable list. (See Exhibit A.)

Americans with Disabilities Act

The exception most commonly referenced by customers is that they have a medical condition or disability preventing them from wearing a face covering. Note, however, that asking a person for proof of the person’s disability may put you on shaky ground under the Americans with Disabilities

¹ For more details on county orders and rules related to face covering requirements for customers, current as of August 30, 2020, see Exhibit A. As the situation is constantly evolving, it is important to keep up to date on the latest requirements applicable to your business.
best practice would be to take customers at their word and offer reasonable alternatives

Reasonable Modifications and Alternatives

Title III of the ADA requires a place of public accommodation to reasonably modify its policies, practices, or procedures to avoid denying a person with a disability full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations. In other words, businesses should consider how to accommodate customers who cannot (or will not) wear face coverings. Any modification would depend on many factors including the type of goods or services the business sells. The following are some suggested modifications:

2 Note that the County of Kauai’s Rule states that “individuals who can prove by a preponderance of evidence that they are . . . . [i]ncapable of wearing a face covering due to a medical condition or disability” may be exempted from the face covering requirement, but it further states that “Medical exemptions must be issued by a licensed medical doctor (MD), doctor of osteopathy (DO), or advanced practice registered nurse (APRN). Medical exceptions should not specify the medical condition."

3 It bears mentioning that fake “medical exemptions” have been floating around the internet. The U.S. Department of Justice (“DOJ”) issued a COVID-19 Alert indicating that businesses should be aware of fraudulent flyers individuals are using to advise businesses that they are exempt from wearing a face covering because of their disability. Although the flyers bear the DOJ’s seal, they were not issued or endorsed by the DOJ.

4 Some customers refusing to wear face coverings cite the Health Insurance Portability and Accountability Act (“HIPAA”) or the Fourth Amendment to the U.S. Constitution. HIPAA sets forth rules preventing covered entities from disclosing individually identifiable health information. The Fourth Amendment protects people from unreasonable searches and seizures by the government. Neither HIPAA nor the Fourth Amendment would apply to a customer’s refusal to wear a face covering.
1. **Post Policies:** Post face covering requirements and any other COVID-19-related policies on the company’s website and on signs outside the store so customers will know your policies before entering the store.

2. **Encourage Online/Phone Orders:** Advertise and encourage online and phone orders with contactless delivery (e.g., deliver the goods to the person’s residence and drop them off at the front door or garage) or contactless pick-up (i.e., the customer stays in the car while an employee places purchased items in the trunk).

3. **Phone or Video conferencing:** If possible, offer service appointments by telephone or video conferencing.

4. **In-Person Refusals:** Implement a procedure for what to do if a person shows up at your place of business and refuses to wear a face covering. First, ask the individual to remain outside in a designated area or in the person’s vehicle. Then:
   a. **Online or Phone Order:** Ask the individual to place an online or phone order, which can be brought out to the person or delivered to the individuals’ house later.
   b. **Personal Shopper:** If an online or phone order is not possible, consider having an employee (wearing a face covering and any other protective gear) take the order of the customer, shop for the person, and then allow the customer to purchase the goods at a designated register, bring the purchased goods out to the customer, or deliver the goods to the customer’s house later.
   c. **Friend/Family:** Suggest that the person have a friend or family member shop for them.
   d. **Discuss Alternatives:** Discuss with the individual other possible alternatives that would allow the person to purchase the goods or services needed while also ensuring the safety of employees and other customers.
Exceptions to the Reasonable Modification Requirement

There are a few circumstances under which an establishment does not have to provide a modification:

1. **Direct Threat**: A business does not have to provide a modification to the face covering requirement if the customer poses a direct threat to the health or safety of others.

   For example, a customer who is coughing, gasping for breath, or exhibiting other specific COVID-19 symptoms may pose a direct threat. This is an individualized, fact-sensitive inquiry, and an employee's reasoning that a customer poses a direct threat (based on facts and not opinions and stereotypes) should be documented.

2. **Undue Burden**: A business is also not required to implement a modification if it would constitute an undue burden, which is determined by looking at various considerations such as the nature and cost of the modification and overall financial resources of the business.\(^5\)

   For example, a customer asks a small store to open 30 minutes early so the customer can shop without a face covering and without other customers. Depending on the store's finances and staffing, this may be an undue burden.

3. **Fundamental Alteration**: If the public accommodation can demonstrate that a requested modification would fundamentally alter

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\(^5\) Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include –

(1) The nature and cost of the action needed under this part;
(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

28 CFR § 36.104.
the nature of the goods, services, facilities, privileges, advantages, or accommodations it provides, it is not required to make the modification. A fundamental alteration is a change to such a degree that the original program, service, or activity is no longer the same.

For example, a customer asks a grocery store for a personal shopper to video conference with them while shopping so the customer can pick out the specific produce to purchase. This may be a fundamental alteration (and undue burden) to a store that does not have personal shoppers.

If you intend to rely on one of these exceptions, you may want to consult knowledgeable legal counsel or your HEC HR Consultant.

**If the Situation Escalates – Dealing with Belligerent Customers**

These are difficult and stressful times, and you may come across a customer who acts unreasonably and becomes threatening or violent. The Centers for Disease Control & Prevention (“CDC”) recently issued guidance “Limit Workplace Violence Associated with COVID-19,” which suggests remaining calm, giving the person space, making sure other people are in the area, and not touching the person or trying to forcibly remove them. The CDC Guidance suggests multiple resources and trainings on preventing and dealing with workplace violence, including this one-page Basic Dos and Don’ts for Employees to Prevent Workplace Violence. If a customer situation begins escalating out of control, call the police.

**Training**

Finally, be sure to train your employees on your policies, procedures, and best practices in handling a customer or visitor who refuses to wear a face covering, including who to contact if a situation begins to escalate. This may include workplace violence training.
Guide to Customers Refusing Face Coverings
August 31, 2020

Exhibit A – County Orders and Rules
(as of August 30, 2020)

City & County of Honolulu: Order 5 of Mayor Caldwell’s Emergency Order 2020-25, effective August 27, 2020, provides, in relevant part:

All customers and visitors of . . . Essential Businesses . . . shall wear non-medical grade face coverings over their noses and mouths to provide additional protection for employees and customers of Essential Businesses . . . .

All passengers and users of public modes of transportation (TheBus and TheHandi-Van) shall wear non-medical grade face coverings over their noses and mouths when on board.

An owner or operator of an Essential Business . . . may refuse admission or service to any individual who fails to wear face coverings.

(Emphases added.)

City & County of Honolulu Exceptions

Face coverings under this Order may not be worn only under the following circumstances:

- Within banks, financial institutions, or using automated teller machines where the inability to verify the identity of the customer or visitor of the bank, financial institution or automated teller machine poses a security risk;
- By individuals with medical conditions or disabilities where the wearing of a face covering may pose a health or safety risk to the individual;
- By individuals engaging in physical activity outdoors where physical distancing can be maintained (e.g., walking, jogging, hiking, etc.);
- By children under the age of 5;
- By first responders (Honolulu Police Department, Honolulu Fire Department, Honolulu Emergency Services Department) to the extent that wearing nonmedical grade face coverings may impair or impede the safety of the first responder in the performance of his/her duty;
• By children in childcare, educational, and similar facilities consistent with the latest guidance from the Centers for Disease Control and Prevention ("CDC") for such facilities;
• As allowed by another provision of this Order.

**County of Hawaii:** Mayor Kim’s [Emergency Rule No. 11](#), Section B.1, provides that “All persons within the County shall wear non-medical grade face coverings, over their nose and mouth, while in public settings. . . . A business or organization may refuse to allow entry or service to a worker, customer, or patron that refuses to wear a face covering.” (Emphases added.)

The Rule Further provides in Section B.11. that “Businesses or operations shall post a sign at the entrance of the facility informing all employees and customers that they shall, at a minimum: wear face coverings while at the business or operation[.]” (Emphasis added.)

The Rules also set out face covering rules specific to certain operations. For example:
• **Restaurants:** “customers must wear face coverings when entering and leaving the restaurant facility, but may remove the face coverings while seated.” Exhibit 1, Section B.i.2.
• **Bars:** “Ensure all customers wear face coverings when entering and leaving the bar, but allow customers to remove the face covering while in the bar.” Exhibit 1, Section G.vi.

**County of Hawaii Exceptions**

Face coverings are not required in the following circumstances, unless specifically indicated otherwise in this rule:

1. Persons five (5) years of age or younger;
2. Persons with health or medical conditions that prevents them from wearing a face covering;
3. Persons actively communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication;
4. Persons obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service;
5. Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines;
6. Persons actively engaged in work-related activities and able to maintain a physical distance of at least six (6) feet from others;  
7. Persons actively engaged in exercise activity so long as physical distancing requirements are maintained;  
8. Persons who are engaged in outdoor activities when alone, with members of their household, or when able to maintain a distance of at least six (6) feet from others.

**County of Kauai:** Mayor Kawamai’s [Re-Instated Emergency Rule #6 Amendment #1](#), effective July 22, 2020, provides:

> [A]ll persons five (5) years of age or older are **required** to wear some form of face covering over their nose and mouth, whether indoors or outdoors, in any setting in which they are in close contact (within 6 feet) of people who don’t live in their immediate household. Face coverings **must** be worn by employees, customers, and visitors at all times inside any establishment in which close contact may occur.

(Emphases added.)

**County of Kauai Exceptions**

The only exceptions to this rule are individuals who can prove by a preponderance of evidence that they are:

1. Engaging in the consumption of a food or beverage;  
2. Entering into banks, other financial institution, or where the inability to verify the identity of the person may pose a security risk;  
3. Interacting with a person who is hearing impaired that may rely on lip-reading to communicate;  
4. Engaged in outdoor exercise where physical distancing can be maintained; or  
5. Incapable of wearing a face covering due to a medical condition or disability. Medical exemptions must be issued by a licensed medical doctor (MD), doctor of osteopathy (DO), or advanced practice registered nurse (APRN). Medical exceptions should not specify the medical condition that precludes wearing of face coverings.

(Emphases added.)
County of Maui: Mayor Victorino’s Public Health Emergency Rules, Amended August 5, provides in Rule 5.A.: “Persons over the age of 5 years old must wear a face mask or cloth covering the nose and mouth while in all public spaces, including on public or shared transportation, unless specifically provided for otherwise in these rules. . . . A mask or other facial covering must comply with the recommendations of the CDC, as such recommendations may change from time to time.”

The Rules also set out face covering rules specific to certain operations. For example:

- **Restaurants**: “Customers must wear face coverings when entering and leaving the restaurant facility, but may remove the face coverings while seated.” Exhibit A, Section 16.b.i.2.
- **Bars**: “Ensure all customers wear face coverings when entering and leaving the bar, but allow customers to remove the face covering while in the bar.” Exhibit A, Section 16.f.viii.

Close-contact personal services: “All patrons must wear a mask or cloth face covering pursuant to Rule 5, unless receiving treatment that specifically involves the face or head (e.g., facials, shaving, trimming around the ears).” Exhibit A, Section 17.a.iv.

**County of Maui Exceptions**

Masks and other facial coverings shall not be required:

1. at or inside a private residence;
2. inside a private automobile, provided the only occupants are members of the same household or residence;
3. inside a hotel, motel, or commercial lodging establishment guest room, or inside any apartment;
4. of persons who cannot wear a mask or facial covering due to an existing medical condition;
5. of an individual who is hearing impaired or an individual who is communicating with an individual who is hearing impaired;
6. where federal or state safety or health regulations prohibit the wearing of facial coverings;
7. of persons actively engaged in strenuous outdoor physical activity, provided adequate social distancing is both possible and practiced;
8. of persons swimming or engaged in other activities that may cause the facial covering to become wet;
9. while persons are actively eating, drinking, or smoking; and
10. while a person is receiving services that require access to that person's nose or mouth.

Businesses or designated operations shall refuse to allow entry to persons not wearing face coverings, unless an exception applies under this section. Businesses not enforcing this rule may be subject to enforcement, including fines and mandatory closure.

(Emphases added.)