



## Guidance for Restaurants: Guests' Face Covering Use\*

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### 1. Are guests required to wear face masks when coming into a restaurant?

A: Many jurisdictions require individuals to wear face coverings in public spaces, including restaurants, because of the COVID-19 pandemic. The Association has a comprehensive list of ["Facial Covering & Health Screening Requirements."](#) For questions regarding whether employers may require employees to wear face coverings while working, please see the Restaurant Law Center's [guidance on employee mask use and temperature checks."](#)

### 2. What if a guest refuses to wear a mask on Constitutional grounds?

A: Guests and employees have no constitutional free speech rights in a private business or workplace. The First Amendment to the U.S. Constitution protects an individual's right to free speech from infringement by the *U.S. Government* — not a private business. Similarly, state constitutions do not create such rights. Thus, a restaurant can legally deny service to individuals that refuse to wear a mask for alleged Constitutional reasons.

### 3. What if a guest refuses to comply because of a disability?

A: Title III of the Americans with Disabilities Act (ADA) requires restaurants to provide equal enjoyment of goods and services to individuals with disabilities. If a guest has a medical or disability-related condition that may require an accommodation, then the restaurant must consider the reasonable accommodation it can offer the guest. A guest must advise the business he/she needs an accommodation if the need for one is not obvious. A restaurant should not request medical documentation when a guest requests a public accommodation.

However, a restaurant need not accommodate a guest if doing so would impede the business's ability to safely provide its goods and services. Under current Centers for Disease Control and Prevention (CDC) guidance, allowing unmasked members of the public into business establishments creates a health and safety risk. Moreover, COVID-19 is spread by persons who may be asymptomatic, and who possibly have no idea whether they carry the virus. As a result, guests are required to wear masks or other suitable face coverings (e.g., bandana, face shield, and the like) under state and local ordinances mandating masks.

Under these circumstances, businesses have a good faith basis to *not* accommodate an unmasked member of the public. Although, no-contact shopping alternatives should be considered and communicated to the guest where a disability is involved, such as allowing for a curbside order.

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#### 4. What if I am concerned about a violent confrontation?

A: Reports abound of restaurant workers confronted with increasing violence when asking patrons to wear a mask. Under the Occupational Health and Safety Act, employers have a duty to provide a safe workplace for employees. Businesses should consider the impact threatening guest encounters on their premises could have on the safety of their employees and guests, as well as business operations. Some practical steps businesses can take include the following:

- **Make signage abundant and clear.** The CDC recommends using verbal announcements, signs, and visual cues to promote social distancing and safety initiatives even before guests enter the building. Many businesses use humor to communicate the necessary message (the internet provides many examples). Another approach is to focus on employee safety and the mandate on the company to provide a safe work environment (i.e., “We want our associates to remain healthy and available to provide you the guest service you deserve, so please wear your mask.”).
- **Provide no-contact service delivery where possible.** Restaurants should consider providing no-contact service alternatives and including the phone number for curbside pickup or delivery options on mask signage for guests not wishing to comply with the public health requirements.
- **When possible, give masks away for free.** When a guest attempts to enter a business without a mask on, the business can offer one. This may defuse the situation if the person simply forgot their mask and feels frustrated that he/she needs to return home or their car to retrieve a mask before entering.
- **Train employees on mask policies and procedures.** Employees should not argue with guests who refuse to wear a mask and potentially escalate the situation. Employees should not attempt to apprehend resistant guests, block guests from entering or exiting the store, or physically force guests to leave. Employees should remain calm, discreetly call security or local law enforcement and allow the police to handle it.
- **Assign the right person(s) to communicate the message.** Staff have different skill sets; some are charming and disarming, while others are whizzes with numbers but have a gruff demeanor. The more pleasant the approach with non-compliant guests, the more likely of gaining compliance. Instead of being demanding with a guest who refuses to wear a mask, try a softer approach (e.g., “Wow, you must be having a tough day today. This whole COVID-19 situation has been hard on all of us. How can I convince you we all just want to get through the day healthy and ready for tomorrow?”). It may not always work, but this is about minimizing the issues when possible.

For questions regarding this document, please contact [Angelo Amador](#), Executive Director of the Restaurant Law Center, at 202-331-5913 or via email at [aamador@restaurant.org](mailto:aamador@restaurant.org).



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