

Frequently Asked Questions on Mask Wearing Requirements **by the PEI Human Rights Commission – December 14, 2020**

On November 19, 2020, the Government of PEI updated its mandatory order under the *Public Health Act* to include a mandatory mask rule in public spaces as a means to reduce the spread of COVID-19. The PEI Human Rights Commission recognizes that mask wearing has been proven as an important public health measure to reduce the spread of COVID-19. The Commission has received many calls from service providers, employers and individuals seeking to understand their rights and responsibilities.

The Province's masking rules set a minimum standard for businesses in PEI. It is possible that businesses may choose to follow stricter rules, however; businesses are discouraged from refusing entry to individuals who claim to be exempt, and should not require proof of exemptions. There may be certain cases, however; where allowing entry without a mask is not possible.

Is there a protection under the *Human Rights Act* for people who choose not to wear a mask as a matter of personal preference?

No, there is not. Being required to wear a mask does not violate your human rights when public health is at stake. In general, for most people, it is not the basis for a complaint under the *Human Rights Act*.

Is there a protection under the *Human Rights Act* for people who are not able to wear a mask because of a disability?

Yes, there is. If someone can't wear a mask for a reason that is protected by human rights, such as age or disability, they may be able to ask their employer or service provider to accommodate their needs.

The CPHO has considered those factors in the Prevention and Self-Isolation Order by building in exemptions such as age limits and factors relating to disability. In the information page relating to mask wearing, the CPHO recommends:

Some individuals are unable to wear masks for various reasons. In some cases, these reasons may not be visible to others. We are not expecting Islanders to produce proof of exemption. Islanders should always treat each other with kindness, respect and understanding.

It is important to note that some people cannot wear masks for medical reasons and that sometimes these reasons are not visible. Islanders, including business owners and staff, are encouraged to be kind and show compassion and understanding.

If I am a customer entering a store without a mask, do I have to provide medical information?

Probably not. Where the relationship is brief (for example store/customer) the business should not be asking for medical information as this is sensitive personal information. You may have to tell them you can't wear a mask for a medical reason, but you do not need to provide details.

What do I do if I think my disability has not been accommodated?

If a person believes they have been discriminated against, they can file a complaint with the appropriate Human Rights Commission. If it happened in PEI, usually that will be the PEI Human Rights Commission but there are exceptions. If you are thinking about filing a complaint you should call and speak to one of our staff who can help you understand the process and requirements.

If I file a Human Rights Complaint about not being accommodated, will I have to provide proof of my disability to the Human Rights Commission?

Yes. As part of the complaint process you will have to provide evidence that you have a disability that prevents you from wearing a mask. That is one of the pieces of evidence we need to determine if there has been a breach of the *Human Rights Act*.

Can I always insist on entering a public space without a mask if I am unable to wear one due to a disability?

Not Always. If accommodating you will put others at risk, it may not be possible to allow you entry, and other arrangements should be explored.

There may be some public places/ businesses that can not accommodate a person who can not wear a mask within their business. Businesses may be able to establish that it would cause them "undue hardship" to do so. This may relate to cost factors or to the health and safety of others in the space. This may be due to the small size of the space and/or the need to protect other customers or staff who are unable to physically distance.

It is also important for people who can not wear a mask to consider the advice of the CPHO:

It is especially important that people unable to wear a mask practice physical distancing, wash or sanitize hands frequently and get tested if unwell. It is also recommended that people unable to wear masks avoid, as much as possible, crowded places and large gatherings.

In many cases, it may be possible to allow a person to enter a business without a mask. If not, the business should explore what other accommodations could be made. Some possibilities could include:

- Arranging curbside pickup or delivery.
- Setting up a certain time where people who are unable to wear masks are able to be in the space while the business is able to limit the number of other people or staff, or just before closing to allow for immediate sanitizing.

There is no clear answer to the question of whether someone who can not wear a mask can enter a business. Those questions must be answered on a case by case basis depending on the business operation, financial costs and health risks to others. Both parties may need to have a discussion to determine what might be possible to allow the person who can not wear a mask to have access to the service.

What are some best practice ideas?

If you are an individual who is unable to wear a mask, you may wish to contact the store manager to discuss what options are available to you prior to attending the business.

Business owners are encouraged to communicate with their customers what accommodation arrangements might be possible or who to contact to discuss those arrangements.

If you can accommodate people who can not wear a mask, do so. If a customer tells you they can not wear a mask – believe them.

The Commission encourages individuals who are exempt from wearing a mask, due to health or other protected grounds, to communicate with service providers and employers to find the appropriate accommodation. Businesses are urged to seek alternative ways to offer their services and individuals who are exempt from mask wearing are required to accept reasonable accommodation while also paying special attention to physical distancing, frequent hand washing, and avoiding crowded places as much as possible.

If I am employee seeking special arrangements at work, do I have to provide medical information to my employer?

Possibly. Where the relationship is longer and ongoing (employer/employee) it may be necessary for you to provide your employer with medical information so that you can both explore what kind of arrangements may be necessary. Medical information should only be sought to the extent necessary and must be kept confidential.