



**Disability Protections of the Pennsylvania Human Relations Act
&
Order of the Secretary of Pennsylvania Department of Health
Universal Face Covering Requirement**

The Pennsylvania Human Relations Commission (“PHRC”) enforces laws that protect individuals from certain discrimination pertaining to where you live, work, learn, and obtain services offered to the public. These laws include protections against discrimination because of disability.

The Order of the Secretary of Pennsylvania Department of Health Requiring Universal Face Coverings does not conflict with the laws enforced by the PHRC. This Order can be found here:

<https://www.governor.pa.gov/wp-content/uploads/2020/07/20200701-SOH-Universal-Face-Coverings-Order.pdf>

INVOKING ANTI-DISCRIMINATION PROTECTIONS

The Order of the Secretary of Pennsylvania Department of Health Requiring Universal Face Coverings provides exceptions to the mandatory face covering requirement. The exceptions are found in Section 3(A)(i-v). **This guidance addresses the exceptions outlined in subsections (i) and (v) only as they pertain to individuals with a disability and a medically necessary need for an exception.** Pursuant to Section 3(B) of the Order of the Secretary, an individual is not required to show documentation that an exception is required. **This may not be adequate for individuals seeking to invoke the protections of the Pennsylvania Human Relations Act (“PHRA”) which entitles individuals to certain disability related accommodations.** Accommodations could include, but are not necessarily limited to, entry to a public space or place of employment without a face covering, alternative ways to access services or the workplace, alternative ways to access housing services such as virtual tours, or distance learning in education. Only individuals who have a disability under the law and a related need that is obvious are not required to request an accommodation and establish the need for it through an interactive process.



WHAT IS A DISABILITY UNDER THE LAW THAT MAY REQUIRE A REASONABLE ACCOMMODATION?

A person with a physical or mental impairment which substantially limits one or more of such person's major life activities may be entitled to a reasonable disability related accommodation. In employment, this accommodation must enable the individual to perform the essential functions of the job with or without a reasonable accommodation. However, accommodations are not limited to the employment context. Housing providers, public accommodations, and educational institutions covered by the law must also provide reasonable disability accommodations. The accommodation requested must be in connection with the disability. The existence of a disability under the law is interpreted broadly to promote equal opportunity. In the context of COVID-19 and face covering exceptions, an example of an impairment which may require an accommodation might be chronic obstructive pulmonary disease ("COPD").

HOW DOES SOMEONE REQUEST AN ACCOMMODATION?

A person who needs a disability related accommodation does not need to use any magic words to request it. It is enough to trigger a responsibility of a covered public accommodation, employer, housing provider, or educational institution for an individual to say that they have a medical impairment that prohibits them from wearing a face covering.

The PHRC is aware of the existence of cards circulating on the internet purporting to certify a face covering exemption. There is no state or federal certification or identification card that must be obtained to establish the need for a disability related face covering exemptions.

WHAT IS REQUIRED AFTER THE REQUEST IS MADE?

After a request is made known, both parties have the duty to engage in the "interactive process" in good faith. This may involve the covered entity requesting more information about the disability or the need for an accommodation if it is not obvious. The parties begin working together to identify a solution that allows the individual with a disability equal opportunity.

MUST THE REQUESTED ACCOMMODATION BE GRANTED?

Not always. For instance, accommodations that represent an undue hardship or that pose a direct threat under the law may be denied. The burden is on the entity denying the accommodation to establish this legal standard has been met.

A “direct threat” is defined as a significant risk of substantial harm to the individual or others that cannot be reduced or eliminated through reasonable accommodation. Factors to be considered include: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm. An undue hardship decision should be arrived at after good faith interactive dialogue. An undue hardship generally involves significant difficulty and expense. See also 16 Pa. Code § 44.4.

If more than one accommodation exists, the entity providing the accommodation may often choose the one that is less costly or difficult to provide, so long as the accommodation is **effective** for providing equal opportunity.

SUGGESTED ACCOMMODATIONS

There are many effective accommodations to promote equal opportunity for individuals who struggle to wear face coverings. Not all suggestions will be reasonable under the circumstances or be effective for every need, but we suggest that you consider some of these suggestions as resources.

Employment Accommodations: workstations away from others, alternative facial shields, work from home arrangements, or alternative days or hours. A resource for employment accommodation ideas: <http://askjan.org/>

Housing Accommodations: virtual tours, execution of documents online or by mail, mailing of rental payments, requests for maintenance online, maintenance service at times when the individual is not home.



Public Accommodations (i.e. stores and supermarkets): online shopping and delivery, curbside pickup, over the phone orders, special shopping times or days.

Educational Institutions: workstations or seating away from others, distance learning, or virtual attendance in classrooms.

RETALIATION IS AGAINST THE LAW

Individuals who make good faith request for accommodations are protected from unlawful retaliation under Section 5(d) of the Pennsylvania Human Relations Act. 43 P.S. §955(d).

ENTITIES WITH QUESTIONS REGARDING THE LAW

Entities that have questions about complying with the law or that need more information or training may contact the PHRC at:

PHRC@pa.gov or 717-787-4410

INDIVIDUALS WHO BELIEVE THEY HAVE BEEN DISCRIMINATED AGAINST

Individuals who believe that they have been discriminated against may contact the PHRC to discuss their concern or file a complaint of discrimination at:

717-787-4410
between the hours of 9:00 AM-4:00 PM.

Mitigation measures required by the Commonwealth, such as those contained in the Secretary's Order referenced in this guidance, are an important part of keeping vulnerable individuals safe. The PHRC urges everyone to stay safe and to show concern for the safety of others. For more information about the PHRC, you may visit:

<https://www.phrc.pa.gov/Pages/default.aspx>