

Know Your Rights

Mask-Wearing and the Americans with Disabilities Act

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COVID-19 has resulted in broad policies requiring masks in stores, shops, and other places of business. As of July 1, the state of Oregon will require people to wear face coverings in all indoor spaces other than a personal home. That means that people are expected to wear a mask or other face covering when going to a grocery store, a pharmacy, a doctor's office, a gym, or any other indoor space where people work.

This requirement is good news for many people with disabilities who are especially vulnerable to COVID-19. It presents a lot of challenges, however, for some people with disabilities who can't wear masks for reasons associated with their disabilities. Finding a way to accommodate specific needs while protecting public health is a real challenge.

As a person with a disability, do I have rights in public places like grocery stores, pharmacies, and doctors' offices?

Yes. The Americans with Disabilities Act protects you from discrimination on the basis of disabilities in public places, such as stores, restaurants, bars, service establishments, theaters, hotels, recreational facilities, private museums and schools, doctors' and dentists' offices, shopping malls, and other businesses.

Businesses must modify their policies and procedures when necessary to serve customers with disabilities and take steps to communicate effectively with customers with disabilities. However, what these modifications look like may be different from business-to-business.



What if I need to shop at a store but I can't wear a mask?

Before going to a store, call ahead to find out what accommodations you can obtain. While some stores may let you in without a face covering because of your disability, most stores will not let you in without a face covering. It's better to work this out ahead of time, even if that means calling from right outside the store. A face-to-face conversation with someone who isn't wearing a mask will get the store staff more agitated and make it less likely that you get what you want.

Should I insist on entering a store without a mask?

Don't insist on entering a store without a mask if someone stops you. Don't argue with a staffer about whether you need to wear a mask. COVID-19 is a highly-infectious and sometimes fatal disease. A better approach would be to look for other ways to get the things you were looking for without going inside.

While ordering things online or having your groceries delivered to you curbside might not be your preference, these kinds of accommodations are likely going to be your best option for getting what you need. You should know a few key rules in your favor when using these kinds of alternative accommodations.

Can I be charged for alternative accommodations, such as grocery delivery?

Stores can't charge you more for reasonable accommodations. Even if they would otherwise charge someone for curbside delivery or online ordering, they have to waive any fees for you if you're getting those services as a reasonable accommodation. In order to get the fee waived, you'll likely need to make clear to the store ahead of time that you need the special service as a reasonable accommodation, that you're not just using it as a convenience.

If the store does not normally provide curbside pick-up, delivery, or some other accommodation, are they required to?

Stores are required to offer reasonable accommodations, even if they don't already offer them to the general public. Some people asking for reasonable accommodations, like curbside pickup, are told that the store doesn't offer that service.

While stores don't have to offer curbside pickup to everybody, they do have to accommodate people with disabilities. In most cases, asking a staffer to take your order and bring your groceries or other purchases out to you will be a reasonable accommodation.

Be creative about how you can get the things that you need and work with the store staff to find the best way to balance your needs with the health of staff and customers at the store.

What if a business tells me that the mask requirement is state law and that they can't make any exceptions?

The state guidance says that the requirement is subject to exceptions under federal law and that stores and businesses must make “accommodations for employees, contractors, customers and visitors” under “[s]tate and federal disabilities laws if applicable.” The state guidance on masks does not mean that stores and businesses are exempt from the Americans with Disabilities Act. Businesses still must find some accommodation for you.

What if I can't wear a mask and there is no alternative to me visiting a business?

Call ahead, explain what you need, and work with the business to find an accommodation. For some services, such as getting a haircut or getting an eye test, you simply have to appear physically in an office or store. When you call ahead, discuss with the staff how to mitigate any risk. Be prepared to ask questions, for example:

- » Could you visit at a less busy time, such as right when the business opens?
- » Could the business open earlier, or close later, than usual to see you?
- » Could you be treated in a more isolated spot, where you'd be exposed to fewer customers or staff, or outside in the open air?
- » Can you wear a different face covering like a loose scarf or a face shield?
- » Is there a way that the service could be delivered while you are six feet or more away from others for most of the time you're present?

Remember that some workers at a business may be especially vulnerable to COVID-19 or have family members who are especially vulnerable. Try hard to reach a compromise that works for you and the business.

What if I am deaf or hard-of-hearing and usually communicate by reading lips?

You still have the right to effective communication during the COVID-19 pandemic. Many people who are deaf or hard-of-hearing routinely rely on reading lips, which ordinary masks make impossible. Wherever possible, start out your visit to a business by calling ahead. Some businesses may have a small number of transparent masks or face shields available for their staff, so that you can communicate.

The business might also designate a specific customer service representative or manager for you to work with. For simple communications, such as asking where you'd find an item, ask the staffer to write down the answer or physically lead you to the aisle where you'd find it. For a more substantial back-and-forth, you could ask a staffer to have a longer conversation using a transparent mask or face shield, or to talk with you with their mask briefly lowered.

Some appointments, such as doctor's appointments, will require a lot of discussion. Remind your provider when you make the appointment, or far in advance of the appointment, that you won't be able to read the lips of someone wearing a mask. Ask if they have transparent masks or face shields that the provider could use. If not, consider whether alternate services, such as live transcription or an ASL interpreter, would help you communicate effectively.

Can a store demand to see documentation that my disability prevents me from wearing a mask?

Probably not, but no one Federal authority has given definitive guidance about whether a store can or can't ask for medical documentation about inability to wear a mask.

Generally, guidance from the U.S. Department of Justice has not allowed asking for documentation for accommodations at business where you would have a brief interaction, such as grocery stores or pharmacies. People with disabilities do not generally have to walk around with documentation of disability constantly on their person.

What if my employer requires me to wear a mask, but I cannot because of my disability?

The same rules that apply generally to accommodations in businesses apply to maskwearing requirements at your workplace. If you can't wear a mask at work because of your disability, talk with your employer to request an accommodation. Some alternatives you may want to ask your employer for are:

- » Wear a loose scarf or face shield instead of a mask
- » Work remotely
- » Work in a spot separated from the public or co-workers
- » Get a physical modification to your workspace, like special ventilation or a clear partition to separate you from co-workers and customers
- » Get a technological accommodation, such as allowing video-conference or telephone meetings with customers or co-workers from your workspace, rather than in-person meetings
- » Temporarily change the kind of work you're doing, so that you're interacting with coworkers or customers less
- » Ask for a transfer to another position within the same business

You can also request long-term unpaid leave as a reasonable accommodation. Long-term leave should probably be a last resort as an employment accommodation, especially since no one knows when the pandemic or the need to wear masks will end.

While you may not have to provide documentation of a disability to get an accommodation as a customer or visitor in a retail store, the rules are different at your job. Your employer can ask for a letter from your provider verifying that your disability prevents you from wearing a mask, though your employer cannot ask for your specific diagnosis.

If you know that you will need an accommodation around mask-wearing requirements, reach out to your provider to obtain an appropriate letter as soon as you can.



More Resources

Where to file a complaint

- » Oregon Bureau of Labor and Industries (BOLI): You may submit complaints related to denial of modification in a place of public accommodation for people with disabilities. The complaint form is here: <https://www.oregon.gov/boli/workers/Pages/complaint.aspx>
- » Oregon Health Authority Public Health Division's Health Care Regulation & Quality Improvement (HCRQI): You may submit complaints related to denials of service at hospitals. Please note that they don't have the authority to intervene and order a hospital to take action on behalf of a patient. The complaint form is here: <https://www.oregon.gov/OHA/PH/ProviderPartnerResources/HealthcareProvidersFacilities/HealthcareHealthCareRegulationQualityImprovement/Pages/complaint.aspx>

DRO resources

- » DRO Know Your Rights: Employment
- » Guidance on masks and accommodations Oregon Health Authority
- » Tips for communicating through face coverings and masks, Multnomah County

Contact us at: 503-243-2081 or 1-800-452-1694 or write us at Disability Rights Oregon, 511 SW 10th Avenue, Suite 200, Portland, Oregon 97205.

