

Quiz: Which Employees Are Exempt from Mandatory Face Mask Rules?



The 3 types of exemptions you must make to your mandatory mask policy.

Companies that don't follow current COVID-19 public health guidelines and government emergency orders (which we'll refer to collectively as 'guidelines') face the risk of fines and even closure orders. And the guidelines say that individuals in workplaces must wear a mask or face covering. But there are also exceptions. As the human rights commissions of several jurisdictions have clarified, there are 3 basic grounds for individuals to be exempt from mandatory mask rules:

1. They work in a setting that allows them to maintain the minimum social distance of 2 metres/6 feet apart from others;
2. The mask endangers their health or safety;
3. They can't safely use the mask due to a disability or other personal characteristic requiring accommodation under human rights laws.

Here's a scenario you can use to apply these rules.

SITUATION

ABC Company has adopted and strictly enforces a mandatory face mask policy at its workplace. While most people are cooperative, there are also a few refusals.

Your job: Determine whether the refuser has a valid case for an exemption.

1. Ava, who works alone in an enclosed office, doesn't want to wear a mask because it musses up her makeup;
2. Brianne, who works in an office with 2 co-workers, has similar complaints;
3. Cal claims he doesn't have to follow the workplace mask since he's a customer and not a worker;
4. Dave, an on-site maintenance worker, claims he's exempt because he's not an ABC Company employee, even though he works very close to them;
5. Evan, who works in a crowded space, claims he can't breathe with the mask on
6. Felicia, who works right next to Evan, says the mask makes her break out in hives
7. Greg, who works alongside Evan and Felicia, contends that masks don't promote safety and that following what he regards as a stupid government rule violates his political principles

8. Hillary, who is hard of hearing, doesn't mind wearing the mask herself but doesn't want her co-workers to do so because the mask makes it impossible for her to read their lips

QUESTION

Which of the above has/have a valid claim to be exempt from the mandatory mask policy under the current guidelines'

ANSWER

Ava, Evan, Felicia and Hillary all have valid claims for an exemption; Brianne, Cal, Dave and Greg do not.

EXPLANATION

A. Ava WOULD BE exempt. Although preserving makeup doesn't justify a refusal, Ava doesn't have to wear a mask because she works alone in an enclosed office. However, she does have to put her mask on whenever she goes to the restrooms or leaves the office for any other reason.

B. Brianne WOULD NOT BE exempt. While it sounds similar to Ava's situation, the big difference is that Brianne shares her office with 2 co-workers. So, all 3 office occupants must wear a mask to avoid exposing each other.

C. Cal WOULD NOT BE exempt. Customers must also wear masks, unless they're dining at tables kept 2 metres/6 feet away or otherwise maintaining social distancing.

D. Dave WOULD NOT BE exempt. Workplace mask rules apply not just to a company's employees but also visitors like employees of contractors or vendors who work at the site and can't social distance.

E. Evan WOULD BE exempt. Making it hard for a person to breathe would certainly qualify as a form of endangerment justifying an exemption from a mandatory mask rule.

F. Felicia WOULD BE exempt. Allergies or susceptibilities are also a legitimate excuse not to wear a mask. That includes not just physical susceptibilities like whatever is causing Felicia to break out in hives but also mental susceptibilities and conditions that being compelled to wear a mask might activate.

G. Greg WOULD NOT BE exempt. Human rights laws of many jurisdictions ban discrimination on the basis of creed. However, in the first case to address this question, the Ontario Human Rights Commission ruled against an individual who

refused to wear a mask on personal political grounds. **Caveat:** The refuser lost because his refusal was based on his insistence that the government's mandatory masks rule was misguided and didn't protect health, which the science clearly contradicted. The case might have gone the other way if the refuser's view actually creed rather than just a personal opinion. Thus, the ruling leaves the door open to the argument that creed may justify refusal to follow a no-mask rule when it's truly based on personal political, religious or other beliefs the constitute 'recognisable cohesive belief system or structure' [*Sharma v. Toronto (City)*, 2020 HRT0 949 (CanLII)].

H. Hillary WOULD BE exempt. Hearing impairment is a disability that an employer must accommodate up to undue hardship. Although each case is different, relief from a mandatory mask rule would likely qualify as a reasonable accommodation, especially if it's necessary to protect an employee's health and safety.