

Electronic Alert

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Masks Mandate Update Part 2: OHA Issues Temporary Rule on Statewide Mask Mandate

By Amy Angel & Julie Preciado

The Oregon Health Authority (OHA) filed its temporary rule requiring masks to be worn in indoor spaces in Oregon effective August 13, 2021.

“Indoor spaces” is defined broadly to mean *anywhere* indoors that is not a **private residence** or a **private automobile being used for personal use** (*i.e.* not used for ride sharing), including:

- public and private workplaces;
- businesses;
- indoor areas open to the public;
- building lobbies, elevators, and bathrooms;
- common or shared spaces;
- classrooms;
- transportation services; and
- other indoor space where people may gather for any purpose.

The rule further defines “**public and private workplaces**” as indoor places where people work, including, but not limited to businesses, banks, food processing plants, manufacturing facilities, construction sites, warehouses, and farms. Additionally, “**common or shared spaces**” means:

“Areas where individuals may interact such as a restroom, breakroom, hallway, elevator, lobby, classroom, large room with cubicles, meeting rooms, conference rooms, and any area open to the public.”

The statewide rule is substantially similar to the Multnomah County Health Department Rule implementing the County Indoor Face Covering Mandate. When the state and county rules differ, businesses in Multnomah County must comply with the stricter rule.

Key differences where Multnomah County requires more:

- Responsible persons must provide face coverings to employees and educate employees on safe communication with people who cannot wear face coverings and on how to provide accommodations.
- Multnomah County excludes face shields from the definition of face coverings, because they allow droplets to be released. Accordingly, in Multnomah County, the use of a face shield alone does not meet the requirements of the Order. While the OHA rule allows the use of face shields to comply with the mandate, OHA does not recommend that individuals wear a face shield instead of a mask or face covering, unless it is not feasible due to certain medical conditions or necessary accommodations.

- Multnomah County only excepts athletic or other physical activities from the mask requirement where use of a face covering would be *unsafe* because of exertion or risk of strangulation. The State allows an exception to the mandate while “practicing or playing a competitive sport at any level.”
- Multnomah County’s mask mandate applies not only to indoor spaces, but also to “enclosed areas,” which together with indoor spaces includes:
 - **any section or area of a business** that is enclosed on three or more sides with walls or windows (permanent or temporary) and also by a roof – whether accessible by the public or not;
 - **any building or space** that meets the above criteria to which the **public has access** by right or by invitation (express or implied), including all lobbies; or common areas, workplaces, classrooms, elevators, bathrooms, or meeting rooms
 - **any other spaces outside of private residences** where people gather for any purpose, including entertainment, social, civic, cultural, or religious purposes.

While the definitions essentially include the same areas, the County inclusion of any “enclosed area” with three walls and a roof could encompass some temporary outdoor eating areas and other similar structures.

- The OHA rule includes an exception to the mask requirement when an individual is performing, including but not limited to playing music, delivering a speech to an audience, and theater. Multnomah County does not include this specific exception but some of these activities may fall under their exception for when an individual is engaged in an activity that makes wearing a face covering impracticable.

Key difference where the State requirements are stricter:

- Both Multnomah County and the State require posted signs, but the State specifies that signs must be posted at every entrance to the indoor space.
- The OHA rule does not include an exception to the mask requirement when an individual is at or in a location where the employee, contractor, or volunteer does not have a job interacting with the public or with other employees, such as a large warehouse and at least six feet of distance can be maintained between other people. Accordingly, the exception is not available, even in Multnomah County.

Businesses and employers should carefully review the OHA rule and update their policies, practices, and signage.

Updated 08/18/21: To avoid confusion and ensure statewide consistency and approach, Multnomah County rescinded its mask requirement and instead will follow the statewide mandate in effect until Feb. 8, 2022.

For questions about complying with the current mask mandates, contact Julie Preciado or Amy Angel at 503-228-0500, or at jpreciado@barran.com or aangel@barran.com.

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