



Face coverings – what is the position for retailers after 19 July?

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Following confirmation of the PM's announcement of the relaxation of social distancing measures from 19 July, official [Government guidance has now been published](#) in terms of ensuring a 'COVID secure' working environment covering major sectors, entitled 'Working safely during coronavirus (COVID-19): guidance from Step 4'.

The guidance from the Department for Business, Energy and Industrial Strategy covers construction work, offices, factories, science labs, bars, restaurants and other hospitality settings, events and attractions, hotels and other guest accommodation, shops and "close contact services" such as nail bars and hairdressers.

The guidance specifically for the retail sector can be found [here](#).

What the guidance says about face coverings

The new government guidance says businesses should "encourage and recommend" the wearing of masks on their premises.

Ministers have toughened up their guidance on the wearing of face masks following polling and pressure from shop workers unions in favour of mask wearing continuing – strongly recommending it in all enclosed public places, including shops.

On face masks, the new guidance states: *"Consider recommending the use of face coverings by workers and customers as a safety measure, in enclosed and crowded spaces where they may come into contact with people they don't normally meet."*

"In the long term, we expect that businesses will need to take fewer precautions to manage the risk of COVID-19."

For the retail sector the guidance specifically states:

'7.2 Face coverings

A face covering is something which safely covers your mouth and nose.

Face coverings are no longer required by law. However, the government expects and recommends that people continue to wear a face covering in crowded, enclosed spaces. Where worn correctly, this may reduce the risk of transmission to themselves and others. Be aware that workers may choose to wear a face covering in the workplace.

Consider encouraging, for example through signage, the use of face coverings by workers, particularly in indoor areas where they may come into contact with people they do not normally meet. This is especially important in enclosed and crowded spaces.

In close contact services, having considered the risk of COVID-19, you may decide that in your premises you're going to ask clients or staff to wear a face covering, especially where practitioners are conducting treatments which require them to be in close proximity to a person's face, mouth and nose.

When deciding whether you will ask workers or customers to wear a face covering, you would need to consider the reasonable adjustments needed for staff and clients with disabilities. You would also need to consider carefully how this fits with other obligations to workers and customers arising from the law on employment rights, health and safety and equality legislation.

Some people are not able to wear face coverings, and the reasons for this may not be visible to others. Please be mindful and respectful of such circumstances.'

'COVID Secure' guidance for retailers – priority steps

The guidance also sets out priority actions retailers should ensure are in place to protect staff and customers. It features six steps to protect yourself, your staff and your customers during coronavirus.

1. Complete a health and safety risk assessment that includes the risk from COVID-19

Complete a risk assessment, considering the measures set out in this guidance. Also consider reasonable adjustments needed for staff and customers with disabilities. Share it with all staff. Keep it updated. [Find out how to do a risk assessment.](#)

2. Provide adequate ventilation

You should make sure there is a supply of fresh air to indoor spaces where there are people present. This can be natural ventilation through opening windows, doors and vents, mechanical ventilation using fans and ducts, or a combination of both. You should identify any poorly ventilated spaces in your premises and take steps to improve fresh air flow in these areas. In some places, a CO2 monitor can help identify if the space is poorly ventilated. [Read the advice on air conditioning and ventilation on the HSE website.](#)

3. Clean more often

It's especially important to clean surfaces that people touch a lot. You should ask your staff and your customers to use hand sanitiser and to clean their hands frequently.

4. Turn away people with COVID-19 symptoms

Staff members or customers should self-isolate if they or someone in their household has a persistent cough, a high temperature or has lost their sense of taste or smell. They must also self-isolate if they or a close contact has had a positive COVID-19 result, or if they have been told to self-isolate by NHS Test and Trace. If you know that a worker is self-isolating, you must not allow them to come to work. It's an offence to do this.

5. Enable people to check in at your venue

You're no longer legally required to collect customer contact details, but doing so will support NHS Test and Trace to contact those who may have been exposed to COVID-19 so that they can book a test. You can enable people to check in to your venue by displaying an [NHS QR code poster](#). You do not have to ask people to check in or turn people away if they refuse. If you choose to display a QR code, you should also have a system in place to record contact details for people who want to check in but do not have the app.

6. Communicate and train

Keep all your workers, contractors and visitors up-to-date on how you're using and updating safety measures.

These are the priority actions to make your business safer during coronavirus. You should also read the full version of the guidance [here](#).'

The Health and Safety at Work Act 1974 regime

The guidance needs to be read in conjunction with retailers' obligations under the Health and Safety at Work Act 1974 (HSAW) and duties and obligations this places on businesses.

The Health and Safety at Work Act 1974 requires businesses to ensure a safe workplace environment and to take reasonable steps to reduce workplace risks. Employees also have a duty under the same Act to co-operate with their employer so that it can comply with its own obligations.

What are businesses, including retailers, doing about face coverings?

Since the PM's announcement of the easing of social distancing measures from 19 July, retailers have had to consider their position given the onus of responsibility for deciding their policy has been shifted by the government on to them.

What follows is an overview:

Retailers

Waterstones is one of the first retailers to state its policy on face coverings. It has stated in a Tweet:

"Following the lift of restrictions on 19 July across England, we will observe new government guidance.

"Given our enclosed browsing environment, we encourage our customers to wear face masks and observe social distancing, respecting the safety of staff and fellow book lovers."

Signage will be up but staff will not enforce the wearing of face coverings.

This news was a publicity coup for Waterstones, trending on Twitter.

The New Statesman has published [this article](#) stating why Waterstone's policy is a smart move.

Timpsons, the shoe repair and key cutting chain, and jewellery retailer **Beaverbrooks** have said that while plastic screens and other safety measures would remain in place, and staff would continue to wear face-coverings, customers would be left to decide the matter for themselves. This was before the government guidance was published though and therefore it is possible with the tougher recommendations they may also toughen their position.

As an example of this **Sainsbury's** was one of the first major retailers to set out its new policy the day after the PM's announcement on lockdown easing measures also saying it was a matter of personal choice. It did though say they would canvass staff opinion.

Now Sainsbury's is also one of the first to respond and update its policy following the publication of the government guidance, building on its messaging to encourage customers to wear a face covering 'if they

can', with staff also encouraged to do so, unless they are behind a screen.

Sainsbury's said its strategy reflected feedback from customers and colleagues, with the majority of those surveyed in favour of keeping the mask policy in place.

"Our colleagues' safety is vital and many of our colleagues would feel more comfortable if those who can wear face coverings continue to wear them," Sainsbury's chief executive Simon Roberts said.

Tesco has also now said it will "encourage shoppers to continue to wear masks just to be on the safe side."

Asda, Lidl, Aldi, John Lewis and Waitrose have also now all said they will continue to maintain in place policies advocating the wearing of face coverings for staff and customers.

Further details can be seen [here](#).

Public transport

Transport for London - face coverings must be worn on London's transport network despite restrictions easing on 19 July, according to the London Mayor.

Sadiq Khan has said he was not prepared to put tube, bus and other transport users at risk by relaxing the rules on face coverings.

Wearing a face mask will be a condition of carriage unless exempt.

Airlines

Ryanair, BA, EasyJet and Virgin Atlantic have all said their policy will remain for passengers to wear face coverings.

Legal risks facing retailers arising out of face coverings

Failure to ensure appropriate social distancing measures are in place may lead to the following risks for retailers arising out of infections:

- HSAW Act claims
- Personal injury/ fatality claims

The latest government guidance is important in terms of defensibility. Where an employer is able to prove it has kept abreast of government advice and, more importantly, can prove it has interpreted and applied that general advice carefully, having regard to the particular characteristics of its business and workforce, it should be well-placed to defend claims brought against it.

At the same time retailers need to be mindful that some staff and customers will have mask exemptions and their obligations under Part 3 of the Equality Act 2010 in that regard so as to avoid claims of discrimination under the relevant provisions of the Equality Act. This is particularly important given some disabilities are 'hidden'.

The Equality Act 2010 ('the Act') places service providers under an obligation not to discriminate in the provision of goods and services to the public, which impacts most on business and property owners/controllers in the retail sector.

Refusing access to a goods and service provider's business premises on the basis that an individual declines to wear a face covering may amount to discrimination on the basis of a protected characteristic under the Act. Disability, religion or belief and pregnancy are recognised as protected characteristics and most likely to be relevant to issues around face covering wearing.

At the same time, retailers need to be aware that customers not wearing face coverings may cause anxiety amongst staff which may in itself leave your organisation open to a claim, including constructive dismissal and personal injury.

We have identified an increasing trend of claims being intimated against retail businesses arising out of members of the public being challenged for not wearing face coverings. Retailers need to be aware that a

member of staff challenging a customer for not wearing a face covering runs the risk of a legal claim being presented both against the retailer and the member of staff individually under Part 3 of the Equality Act for disability discrimination. The most common grounds are for failure to make reasonable adjustments, harassment or discrimination in relation to something that *arises* from disability (i.e. the individual's disability makes them unable to wear a face covering and they should not be treated unfavourably as a result).

Numerous disability charities have set up campaigns to raise awareness of mask exemption. Many have also provided free template letters that can be used to raise formal complaints and seek compensation against premises that discriminate against those not wearing masks. It appears hundreds are taking up these services and trying to pursue claims for discrimination claiming compensation for injury to feelings under part 3 of the Act of which retailers need to be particularly wary given that such claims raise reputational issues.

Our view – use of face coverings in the retail sector beyond 19 July

Given the government guidance now published effectively strengthens the recommendations on face coverings, and taking into account businesses statutory health and safety obligations under the HSAW Act 1974 to staff, customers, clients and contractors and exposure to the sort of claims outlines above, it may seem premature for members of the public to disregard face coverings regardless of government lockdown easing measures coming into force on 19h July.

Mindful that the new guidance needs to be read in the context of retailers' statutory obligations under the HWSA regime and set against the background of rising infection rates due to the Delta variant, it would be wise for retailers to proceed with caution.

It may also be a sensible business decision, sending out a message to both customers and staff that your business's focus is to provide a safe shopping environment at a time when infection rates are increasing causing anxiety amongst both shop workers and the buying public.

Next steps

The Government's guidance sets out six priority steps that retailers should take to protect customers and staff, which can be found [here](#).

These priority steps include carrying out a 'COVID secure' workplace risk assessment. If they haven't already done so, retailers should be carrying out an appropriate risk assessment now, considering the measures set out in the government's latest guidance. This risk assessment should be carried out in consultation with unions or workers, where there is no union recognition. Retailers ought also to consider reasonable adjustments needed for staff and customers with disabilities. The risk assessment may be shared with staff to provide reassurance and it should be updated regularly.

Based on the retailer's risk assessment, it may well decide to keep existing social distancing measures including face coverings in place for the time being at least whilst infection rates remain high.

Other priority steps and measures for retailers recommended in the guidance include:

- Ventilation
- Cleaning
- Turning away staff and customers with COVID symptoms
- Track and trace
- Contactless payments

These should be considered alongside face coverings as part of retailers' COVID secure strategy going forward.

It would also be wise for retailers to formulate a formal policy for the benefit of staff and

customers by way of guidance on COVID Secure measures in place - both in store and in the office - which it can refer to in the event of a dispute.

How we can help

At BLM we are supporting retailers with advice and assistance with their 'COVID Secure' risk assessments and drafting appropriate policies including face coverings that have regard to the culture of the business and make up of its staff, customers and workplace environment.

We are also highly experienced in defending claims brought by customers citing mask exemptions under Part 3 of the Equality Act 2010.

Please do get in touch with us if you would like any help or guidance to ensure your business remains 'COVID Secure' and in keeping with the latest government guidance across all jurisdictions.



Julian Cox
Head of Employment

+44 (0)20 7865 8453
julian.cox@blmlaw.com