



# Safer at Home and in the Vast, Great Outdoors

## Civil Rights Guidance for Employers and Places of Public Accommodation during Safer at Home and in the Vast, Great Outdoors

### **Background:**

Effective June 1, 2020, Governor Jared Polis issued [Executive Order D 2020 091](#) directing Colorado to enter the new phase of the COVID-19 pandemic, Safer at Home and in the Vast, Great Outdoors. The goal remains for people to stay at home or in the vast outdoors as much as possible, and avoid any unnecessary social interactions. The Colorado Department of Public Health and Environment (CDPHE), based on the Governor's directive, has issued [Seventh Amended Public Health Order 20-28](#), which provides details of certain restrictions and safety guidance by broad industry type. CDPHE is making the information contained in the Public Health Order available via the [Safer at Home webpage](#).

Coinciding with the Safer at Home and in the Vast, Great Outdoors Executive Order are [Executive Order D 2020 039](#) and [Amended Public Health Order 20-26](#), ordering workers in critical businesses and critical government functions to wear non-medical face coverings while at work. Drawing on these orders, Amended Public Health Order 20-28 mandates that employees at businesses wear non-medical face coverings, and recommends that businesses encourage all clients, customers, or patients to do the same.

On May 21, 2020, Governor Polis issued [specific guidance](#) to employers and places of public accommodation regarding reasonable accommodations that may need to be made for employees and consumers due to the presence of COVID-19. More recently, [Executive Order D 2020 092](#) was issued amending Executive Orders D 2020 039 and D 2020 067 (referenced above) to include a clause providing discretion to employers and operators of places of public accommodation to “deny admittance or service and require the removal of any individual who fails to wear a medical or non-medical face covering.” The amendment goes on to remind employers and operators of places of public accommodation that, while using their discretion to deny admission based on failing to wear a medical or non-medical face covering, they must adhere to federal and state anti-discrimination laws. Further details can be found in the table and FAQ below.

In an effort to provide not only additional clarity on industry and business-specific safety measures, but also to synthesize information from many State of Colorado sources, we have compiled the following guidance.

## Specific “Do’s and Don’ts” for Businesses and Places of Public Accommodation Under Safer at Home and in the Vast, Great Outdoors:

Please note: This matrix was adapted from [the guidance](#) issued by Governor Polis on May 21, 2020. Please review the full guidance for more detail.

Guidance for Employers	Guidance for Places of Public Accommodation
<ul style="list-style-type: none"> <li>● <b>Must</b> make reasonable accommodations requested by employees with disabilities (absent undue hardship) to allow them to continue working.</li> <li>● <b>Should</b> make reasonable accommodations to offer protection to those at <i>greater risk of severe illness due to COVID-19</i>, absent undue hardship, meaning significant difficulty or expense.</li> <li>● <b>Should</b> consider accommodations for those who request reduced contact due to a disability, e.g. one way aisles, plexiglass or other barriers, etc.</li> <li>● <b>Should</b> implement temporary job restructuring, temporary transfers, or modifying a work schedule to accommodate individuals with a disability who have requested reduced contact with others.</li> <li>● <b>May</b> consider whether any restructure or accommodations present undue hardship to the employer, and should work with individuals with a disability to determine alternative solutions.</li> <li>● <b>May</b> require employees to wear protective gear, e.g. facial coverings or gloves, and observe infection control practices. However, if a disability under the Americans with Disabilities Act (ADA) or religious accommodation under Title VII is requested and needed, employers <b>should</b> provide the necessary modification or alternative, absent undue hardship.</li> <li>● <b>May</b> ask employees if they are experiencing symptoms consistent with COVID-19, but must maintain all information as a confidential medical record under the ADA.</li> <li>● <b>May</b> require a doctor’s note, but under current circumstances may accept a form, stamp, or email from a doctor or local clinic.</li> <li>● <b>May</b> screen job applicants for COVID-19 symptoms only <i>after</i> making a conditional offer, but must apply rules consistently across all employees</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Must not</b> post or allow to be posted any signage that states or implies “We reserve the right to refuse service to anyone” as such signage implies that unlawful discriminatory practices may be employed. Such signage is prohibited per Colorado Civil Rights Commission Rule 20.4.</li> <li>● <b>Should</b> make reasonable efforts to allow individuals with a disability that prevents the wearing of a mask or facial covering (such as breathing issues or facial disfigurement) to enter or use a place of public accommodation, absent undue hardship.</li> <li>● <b>Should</b> make reasonable efforts to grant access and services to all customers, e.g. structural change (like a separate entrance), change in policy or procedure such as curbside delivery or pickup.</li> <li>● <b>May</b> ask an individual without a facial covering to leave the establishment, unless such request invokes another form of discrimination, i.e. only asking patrons of a particular race, sex, etc. to leave for this purpose.</li> <li>● <b>May</b> exclude an individual with a disability from entering an establishment or participating in an activity or service if that individual’s presence would result in a direct threat to the health and safety of others. This determination must not be based on generalizations or stereotypes, and must be based on an individual assessment. <ul style="list-style-type: none"> <li>○ This does not apply to health care related places of public accommodation.</li> </ul> </li> </ul> <p>Employees or Applicants:</p> <ul style="list-style-type: none"> <li>● May file a complaint of discrimination with the <a href="#">Colorado Civil Rights</a></li> </ul>

Division.

- entering the same type of job.
- **May** withdraw a job offer if a prospective employee has COVID-19 symptoms *only* if the employer needs the applicant to start immediately.
- **May not** postpone or withdraw a job offer if an individual is at higher risk of contracting COVID-19, such as being 65 years or older or pregnant. Telework may be offered as an alternative.

Employees (or a third party such as a doctor):

- **Must** let an employer know that an accommodation is needed due to a medical condition. This request for accommodation may be made in conversation or in writing, and may reference the ADA in doing so.

## Frequently Asked Questions From Employers and Operators of Places of Public Accommodation

### Regarding Accommodations for Disabled Employees in the Workplace

#### **Question: What is a “reasonable accommodation?”**

**Answer:** A reasonable accommodation is any change to the application or hiring process, to the job, to the way the job is done, or to the work environment that allows a person with a disability who is qualified for the job to perform the essential functions of the job and enjoy equal employment opportunities. (Americans with Disabilities National Network [www.adata.org](http://www.adata.org)). An employer shall make “reasonable accommodation” to the known disabilities of an otherwise qualified applicant or employee with a disability unless the employer can demonstrate the accommodation would impose an undue hardship or that it would require any additional expense that would not otherwise be incurred. (3 CCR 708-1, Rule 60.6 (A))

Reasonable accommodation may include:

- (a) Making facilities used by employees readily accessible to and useable by individuals with disabilities; and
- (b) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

**Question: What constitutes “undue hardship” for a business?**

Answer: In determining whether an accommodation would impose an undue hardship on an employer’s operation, factors to be considered include: the overall size of the employer’s operation with respect to the number of employees, number and type of facilities, and size of budget; the type of the employer’s operation, including the composition and structure of the employer’s workforce; and the nature, cost, and funding for the accommodation needed. (3 CCR 708-1, Rule 60.6 (A))

**Question: What types of reasonable accommodations are suggested for individuals who cannot have any contact with others due to increased risk of contracting COVID-19?**

Per current Equal Employment Opportunity Commission (EEOC) Guidance, low-cost solutions achieved with materials already on hand or easily obtained may be effective. If not already implemented for all employees, accommodations for those who request reduced contact with others due to a disability may include changes to the work environment such as designating one-way aisles, using plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers whenever feasible per CDC guidance, or other accommodations that reduce chances of exposure.

Flexibility by employers and employees is important in determining if some accommodation is possible in the circumstances. Temporary job restructuring of marginal job duties, temporary transfers to a different position, or modifying a work schedule or shift assignment may also permit an individual with a disability to perform safely the essential functions of the job while reducing exposure to others in the workplace or while commuting.

**Regarding the Wearing of Facial Coverings**

**Question: Which disabilities or conditions allow an individual to lawfully abstain from wearing a mask or facial covering?**

Answer: According to the Centers for Disease Control (CDC), the following people **should not** wear masks or facial coverings:

- Children younger than 2 years of age;
- Anyone who has trouble breathing;
- Anyone who is unconscious, incapacitated or otherwise unable to remove the cover without assistance.

Further, individuals with a facial or cranial disfigurement may be unable to wear a mask or face covering, and should be exempt.

**Question: Can I post a sign that states that patrons of my business must wear a facial covering, or else they will be asked to leave?**

Answer: Yes. However, the sign must explicitly state that a facial covering is required. Signs stating or implying that service may be refused to anyone at the discretion of the business owner are not lawful; the requirement must be applied equally to all customers, and cannot be selectively used, particularly with members of a protected class (i.e. members of a certain race, gender, sexual orientation, etc., who are protected under the Colorado Anti-Discrimination Act).

**Question: What can I do if a patron of my business refuses to wear a facial covering?**

Answer: If an individual wants to enter your establishment without a facial covering, you may ask, “Do you have a face covering?” If the answer is “no,” you may ask if they can return when they have one, or provide one for them to wear if your business is offering facial coverings to customers. If the customer refuses to wear a face covering, pursuant to [Executive Order D 2020 092](#), the establishment may deny admission or services and require the removal of the individual from the establishment. However, the establishment may offer alternatives to in-person service, such as curbside pick-up, contactless delivery, or assistance with services/products available online. Additionally, if the customer indicates that they are unable to wear a mask or face covering due to a facial disfigurement or disability, the establishment must consider other reasonable accommodations.

In order to avoid situations in which a customer may become upset by the requirement to wear a facial covering while in your establishment, it may be helpful to clearly communicate the policy in advance if possible. For example, if your establishment or business schedules appointments or reservations with customers and clients, you can inform them of the policy at the time the reservation or appointment is made. You may also add the policy to the website of your business and advertise other options for receiving service such as curbside pick up, no contact delivery, or online services.

**Question: If I choose to provide protective gear to employees or customers, how and where can I obtain facial coverings and gloves?**

Answer: Public Health Order 20-28 requires a cloth face covering or a medical grade mask at all times for employees and customers of personal services ([page 12, Section L, Personal Services](#)). Guidance for creating a non-medical grade mask or facial covering can be accessed [here](#), and should be reviewed to ensure homemade facial coverings are as safe as possible. It is important to note that generally personal protective

equipment (PPE), and especially equipment like N95 masks, gowns, face shields, and bonnets, will continue to be prioritized for healthcare professionals who are on the front lines fighting the virus. However, resources for acquiring PPE can be found via <https://energizecolorado.com/>.

City and county requirements for face mask/covering use around the State of Colorado are below. If you do not see your city or county listed below, please [contact your local public health agency](#) for further guidance.

- [City of Aspen](#)
- [City of Boulder](#)
- [Boulder County](#)
- [City of Denver](#)
- [City of Estes Park](#)
- [City of Glenwood Springs](#)
- [City of Lafayette](#)
- [Larimer County](#)
- [City of Lone Tree](#)
- [City of Louisville](#)
- [City of Loveland](#)
- [City of Northglenn](#)
- [Routt County](#)
- [Summit County](#)
- [City of Superior](#)
- [City of Wheat Ridge](#)