

Guidance on Executive Order 202.16 Requiring Face Coverings for Public & Private Employees Interacting with the Public

Executive Order

Executive Order 202.16, issued on April 12, 2020, provided the following face mask mandate:

For all essential businesses or entities, any employees who are present in the workplace shall be provided and shall wear face coverings when in direct contact with customers or members of the public. Businesses must provide, at their expense, such face coverings for their employees. This provision may be enforced by local governments or local law enforcement as if it were an order pursuant to section 12 or 12-b of the Public Health Law.

This requirement takes effect Wednesday, April 15 at 8 p.m.

Department of Health Guidance

It was clear that this face mask directive applied to essential businesses, but it was not clear whether this directive applied to government employers—in fact, the references to “essential businesses” was an indicator that it might not. However, the NYS Department of Health issued guidance today indicating that **Executive Order 202.16 applies to both public and private employers.**

The Executive Order and the Department of Health Guidance require businesses and state and local government employers, agencies, and authorities to obtain face coverings for provision to employees who directly interact with the public at no cost to the employee.

- Face coverings may include cloth masks, homemade masks, quick cut masks, or bandanas, or may include surgical masks, N-95 respirators, and face shields, though the guidance cautions that medical-grade products are seriously needed by healthcare professionals at this time.
- Employees may use their own face coverings but must not be mandated to do so by the employer.
- Employees are required to wear face coverings when in direct contact with members of the public, except where doing so would inhibit or otherwise impair the employee’s health.
- Whether an employee is in direct contact with the public is determined by the employer, but, at a minimum, includes any employee who is routinely within close contact (i.e. six feet or less) with members of the public, including customers or clients.



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Additional Consideration for Public Employers

Local governments with police agencies will need to decide at a policy level, with the elected official or officials involved, how the Executive Order will be enforced given the permissive language of the order. Regarding enforcement, the order states:

“This provision may be enforced by local governments or local law enforcement as if it were an order pursuant to section 12 or 12-b of the Public Health Law.”

New York Public Health Law § 12 provides that any person who violates, disobeys, or disregards any term or provision of the Public Health Law or of any related lawful notice, order, or regulation for which a civil penalty is not otherwise expressly prescribed by law, is liable for a civil penalty of up to \$2000 per violation. The penalty may be increased to up to \$5000 for a subsequent violation in a twelve-month period and up to \$10,000 if any violation directly results in serious physical harm. Pursuant to Public Health Law § 12-b, willful violation of health laws constitutes a criminal matter ranging in penalties from fines to imprisonment for up to six months.