

Employees and their rights as regards face masks

An employer who requires employees to wear a face covering in an office environment should know that this is not a legal requirement, except in relation to a designated business within statutory rules as found [here](#). Therefore, employers should consider the guidance on face coverings for the particular type of work involved as part of a risk assessment.

Any employers who do not fall within the statutory rules should be aware that asking their employees to wear a face covering is a request only. They should also be aware that face coverings are NOT in fact a replacement for other ways of managing risk. The most effective methods of preventing the transmission of a virus remain social distancing, regular hand washing and cleaning.

Given the nature of the request to wear a face covering in a business not within the statutory rules, and the fact that it is likely to be unrelated to an employee's duties, an employer may wish to put the obligation on a contractual footing. Employers may, therefore, decide to try and introduce a contractual requirement. However, a contract of employment is a legal agreement between the employer and the employee. Its terms cannot lawfully be changed by the employer without agreement from the employee (either individually or through a recognised trade union), and in any event an employer should not breach equality laws when changing contract terms. See further [here](#).

So, if a change of contract has not happened, and the request to wear a face covering is just that, (i.e., the business concerned is not one within the statutory rules), an employee may refuse the request to wear a face covering.

In such a case, the employer should consider the reasonableness of imposing sanctions if employees do not wear a face covering, against its health and safety obligations. In this regard an employee may wish to furnish their employer with several peer reviewed medical reports about the dangers of face coverings and mask wearing, which can easily be found online.

The employer should also consider whether face coverings are a proportionate way to address risk, considering the employer's health and safety risk assessment, and perhaps the evidence that face coverings in fact represent a real threat to health. Specific objections by an employee should be considered on a case-by-case basis.

Before enforcing a face covering policy within a business not within the statutory rules, it may be beneficial and indeed good practice for employers to consult employees and their representatives to see what opinions are held. Employers should also consider taking legal advice before introducing such a policy to ensure they have taken all the necessary steps.

A LAWYERS OF LIGHT INFORMATION LEAFLET

CONNECT ON TELEGRAM AT <https://t.me/lawyersoflight>

Employers will generally be vicariously liable for the negligence of their employees, which means that an employer may be liable if someone's health is damaged due to their employee's negligent disregard of health and safety rules. In practice, however, it would be exceedingly difficult for anyone to show that they contracted Covid-19 because of an employee's failure to wear a face covering.

In all cases, that is where it is not mandatory to wear a face covering at work, and even where it is, employers should be careful about introducing and enforcing blanket policies requiring employees to wear face coverings, as they could run the risk of unlawfully discriminating against people who have legitimate reasons for not wearing them. For example, it could be indirect disability discrimination to discipline an employee who suffers from COPD for not wearing a face covering, if they are unable to do so because it would prevent them breathing properly.