

COVID-19 means “coronavirus disease of 2019”, more technically referred to as “severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).”

Coronaviruses are a large group of viruses that cause upper-respiratory tract illnesses. Several coronaviruses have been identified which can cause serious – even fatal – disease, including SARS and MERS.



SASKATCHEWAN
HUMAN RIGHTS
COMMISSION

COVID-19, Public Services, and Nonmedical Masks or Face Coverings*

Businesses and service providers are governed by the latest Public Health Order and the details of the Re-Open Saskatchewan Plan, which provides specific sector/industry rules and requirements for operation during the current public health emergency. Businesses and service providers may need to consider new or different ways to accommodate clients who have pre-existing disabilities and who may be unable to wear a face mask.

Due to the spread of COVID-19, a provincial state of emergency was declared on March 18, 2020, and the state of emergency is ongoing. As well, [Public Health Orders](#) have been issued by the Chief Medical Health Officer implementing new restrictions on all persons in Saskatchewan.

As of August 6, 2020, indoor and outdoor private and public gatherings of over 30 people are prohibited, except in specific circumstances where 2-meter distancing between people can be maintained, and in accordance with the [Re-Open Saskatchewan Plan](#).

In the event that a critical public service or allowable business service is unable to maintain 2-meter distancing, other measures must be in place to prevent the transmission of COVID-19. Such measures might include the use of non-medical masks or face coverings.

COVID-19, Disability, and the Code

During this time, [The Saskatchewan Human Rights Code, 2018](#) (“the Code”) remains in full effect – businesses and service providers must

not discriminate against clients, which includes denial of service.

Persons who have contracted, or are perceived to have contracted, COVID-19 could be considered to have a disability, as defined by *The Saskatchewan Human Rights Code, 2018*. As such, negative treatment, including denial of service or harassment, towards persons who have, or are perceived to have, COVID-19 may be prohibited under the Code.

Businesses and service providers must seek to accommodate persons unable to comply with mask policies or other public health orders – up to the point of undue hardship.

Persons who believe they have been subject to discrimination on the basis of disability, or other prohibited grounds, may contact the Saskatchewan Human Rights Commission.

*This document alerts businesses and service providers to potential human rights issues that may arise, and is for information only. The information herein is subject to change, and does not constitute legal advice. Further changes to this document should be expected.



Q1. How do the Public Health Orders affect businesses and service providers?

Businesses and other services providers have an obligation to protect their employees and customers. Reasonable public health and safety measures taken to prevent and reduce the spread of COVID-19, especially in accordance with directives from Saskatchewan Public Health authorities, are unlikely to violate *The Saskatchewan Human Rights Code, 2018*.

Q2. How are face masks mandated in the Public Health Order and the Re-Open Saskatchewan Plan?

The use of face masks is primarily required by people working in patient care in the Health system. These are required to be official Personal Protective Equipment (PPE), such as surgical/procedural masks.

Generally, employees outside the Health system are not required to wear masks, except in certain situations, such as when the 2-meter distance cannot be maintained. Full sector/industry details are available in the [Re-Open Saskatchewan Plan](#).

Q3. Has the Chief Medical Health Officer mandated the use of masks at all businesses?

As of August 6, 2020, the current Public Health Order issued by the province’s Chief Medical Health Officer does not require the universal use of masks at all businesses.

However, there are specific places where masks are required. For example, in the personal care sector, where close contact between a service

provider and a client is necessary (e.g., barbers, massage therapists, etc.).

Q4. Should workers in non-healthcare settings be advised to wear a homemade non-medical/cloth mask?

Employers may use their discretion to allow staff who are otherwise healthy to wear homemade masks. [More information about non-medical masks](#) is available from Saskatchewan Health.

Q5. Can a business or service provider require people, including customers, to wear face masks beyond that required by the Public Health Order?

Yes. Generally speaking, a business or service provider may implement requirements for employees and customers (e.g., “no shirt, no shoes, no service”). As long as the requirements do not discriminate against a person on the basis of a protected characteristic under the Code, it will not be a human rights violation.

Along with being able to implement a mandatory mask policy, businesses and service providers may also ask reasonable screening questions consistent with public health advice, such as:

- Are you experiencing symptoms of COVID?
- Do you have a recent history of exposure to a known or suspected case of COVID?
- Do you have a recent history of travel outside the province or country?

Saskatchewan Human Rights Commission

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Rules and requirements set by a business or service provider must consider accommodations for persons on the basis of a protected characteristic – up to the point of undue hardship.

Businesses and service providers may request medical information to support the request for accommodation.

However, they are not entitled to a diagnosis. A medical note confirming that the customer or employee is unable to wear a mask for medical reasons should suffice. Businesses and service providers must protect a customer’s private medical information.

Individuals relying on medical exemptions are advised to carry a doctor’s note to support their request for accommodation.

Q6. What kinds of people should not have to wear a mask?

Public health officials in Canada and abroad generally agree that the following persons are not required to wear a mask:

- children under 2 years old;
- persons unable to remove a mask on their own;
- persons who have difficulty breathing;
- other persons with disabilities that would be adversely impacted by wearing a face mask.ⁱ

Under the Code, a business or service provider must accommodate a person unable to wear a mask due to a protected characteristic (e.g., disability) up to the point of undue hardship.

Q7. How can a business or service provider accommodate a person unable to wear a mask, while also protecting the health and safety of employees and other patrons?

The particular accommodation should fit the person’s need(s) and the circumstances of the business or service to the point of undue hardship. As such, suitable accommodations will likely differ on a case-by-case basis.

In some circumstances, the suitable accommodation may be to allow the person to receive services without a mask. However, a reasonable accommodation might instead take other forms. Including:

- 1) Curbside pickup
- 2) Delivery options
- 3) Alternative hours of service
- 4) Personal shopper
- 5) Remote delivery of services, through telephone, email or videoconferencing
- 6) Other options.

Q8. I am a service provider. I understand that each situation is unique, but I need to advise my employees how to respond to a person who either claims to have a medical reason for not wearing a mask or just refuses to wear a mask.

If your organization has established a “mandatory mask” policy for customers, you may wish to prominently display your policy, along with options for accommodation for persons unable to comply with the mask policy.

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You will want to make sure your employees are informed about the policy, how to implement it, and what to do when a person wants to enter without a mask.

In many cases, it will be obvious that a customer is unable to wear a mask, such as with infants and with some types of disabilities. In cases that are not obvious, you may wish to have a manager or supervisor respond to the customer.

Keep in mind that a business or service provider would not typically be entitled to medical diagnosis information of a customer.

If you determine that a customer without a mask cannot be admitted to your business or service, you will want to provide the service in an alternate way – unless doing so creates an undue hardship.

Q10. I have been denied service at a business or service provider because I'm unable to wear a mask, what can I do?

Persons who believe they have been subject to discrimination on the basis of disability, or other prohibited grounds, may contact the SHRC.

For further information, visit:
saskatchewan.ca/covid19.

The Saskatchewan Human Rights Commission maintains a Business Help Line: 1-800-667-9249.

ⁱ Government of Saskatchewan, [Guidance on Non-Medical Masks](#), accessed August 21, 2020; and Government of Canada, [Non-Medical Masks and Face Coverings: About](#), accessed August 21, 2020.

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