

**Governor Wolf Announces Mandatory Masking:
All public employers should be requiring their employees to wear masks**

By Patrick J. Harvey, Esq. and Joshua C. Hausman, Esq.

On July 1, 2020 Pennsylvania Secretary of the Department of Health Rachel Levine, MD signed an Order requiring the wearing of masks whenever a person is in spaces generally open to the public, including outdoors when social distancing is unable to be observed. Previously, under the Secretary's April 15 Order, businesses were directed to require employees wear masks when on the worksite. Businesses were directed to also require that all customers wear masks while on the premises. Later guidance documentation issued by the Department of Health clarified that while local governments were advised to implement these health and safety procedures to the extent practicable, they were not required to do so. While we await clarification to determine if the Secretary's July 1, 2020 order is mandatory for municipalities, it is advisable that all municipalities update their COVID-19 safety policies to follow the mask Order.

In response to the accelerating spread of COVID-19 in several parts of the Commonwealth, Secretary Levine's July 1, 2020 Order requires all persons to wear face coverings if they are:

- Outdoors and unable to consistently maintain a distance of six feet from individuals who are not members of their household;
- In any indoor location where members of the public are generally permitted;
- Waiting for, riding on, driving, or operating public transportation or paratransit or while in a taxi, private car service or ride-sharing vehicle;
- Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank; or
- Engaged in work, whether at the workplace or performing work off-site, when interacting in-person with any member of the public, working in any space visited by members of the public, working in any space where food is prepared or packaged for sale or distribution to others, working in or walking through common areas, or in any room or enclosed area where other people, except for members of the person's own household or residence, are present when unable to physically distance.

The Governor's clarification that the April 15 business guidance order was not a mandate for local governments came only via a subsequently-issued FAQ. While there is some ambiguity in the new Order as to whether it is subject to, or supersedes, that prior clarification, the new Order is a mandate for individuals, and not for business entities. Until clarification is issued, it is advisable that public employers require that their employees wear masks whenever they are working anywhere where they are interacting with members of the public, in any spaces visited by members of the public, in any space where food is prepared or packaged, working in or walking through common areas, or in any enclosed rooms with others when social distancing is not possible. Under the new Order, employees would not be required to wear masks when working alone in private office spaces, unless others are present and distancing cannot be maintained.

The July 1 Order allows for certain exemptions from the masking requirement, including for those who cannot wear a mask due to a medical condition and those for who wearing a mask while working would create an unsafe condition. While the Order provides that individuals may not be required to show documentation that an exemption applies, employers are permitted to make medical inquiries of their employees which are job-related and consistent with business necessity. Employees should be asked to provide support for a medical exemption. In the event that a medical condition or safety consideration exists which precludes the wearing of a mask, employers should explore alternative requirements—such as plastic face shields that cover the nose and mouth—which accommodate the condition or address the safety issues while serving the purpose of limiting the potential spread of COVID-19.

Employers should update their COVID-19 safety policies regarding social distancing and mask wearing requirements including notice that discipline will occur if the policy is not followed. Municipalities should also update their policies for dealing with the public including requiring the public to wear masks in order to interact with municipal employees and possible appointment schedules to maximize social distancing. The attorneys at Campbell Durrant, P.C. remain available to assist your municipality with all of these issues.