CAN AN EMPLOYEE REFUSE TO WEAR A

MASK?

BLR

What You Need to Know

What reason is the employee giving for refusing to wear a mask in defiance of company policy?

None of these

Serious Health Condition

Disability

Religious Belief

Under the Americans with Disabilities Act, a disability is a physical or mental impairment that substantially limits a major life activity (e.g., claustrophobia, asthma).

Employee can't wear mask because of medical condition.

Religious beliefs must be "sincerely held" and may include beliefs that are new, uncommon, or not part of a formal church or sect.

Engage in interactive process (discussion) with employee.

Under the Family and Medical Leave Act, a "serious health condition" involves either inpatient care or continuing treatment by a healthcare provider. Employer can require medical certification of serious health condition. Does employee have a serious health condition?

Engage in interactive process (discussion) with employee.

As part of the interactive process, you can require medical documentation.

As part of the interactive process, you can ask for proof that the sincerely held religious belief prohibits wearing a mask.

NO   **YES**

If employee is otherwise eligible for FMLA leave, employer can require medical certification of serious health condition and employee can take 12 weeks of unpaid leave.

Is the employee able to document an ADA disability that limits the ability to wear a mask?

Is the employee able to document a sincerely held religious belief that limits the ability to wear a mask?

YES   **NO**

NO

YES   **NO**

You must consider modified masks or alternatives on a "case by case" basis.

If your employee has a serious medical condition but no FMLA leave available, you should consider whether the employee has a qualifying disability that would exclude the employee from your mask policy.

You must consider a reasonable accommodation.

YES

YES   **NO**

You and your employee find a reasonable accommodation, like a face shield or social distancing, that allows the employee to perform essential job functions.

All reasonable accommodations would be an undue hardship, which under Title VII, requires more than a minimal burden on operation of employer's business.

All accommodations would create an undue hardship (significant difficulty or expense) or the employee would pose a direct threat to health/safety that can't be eliminated or reduced with reasonable accommodation.

Be careful and consider consulting an attorney as this can be a high bar.

You and your employee find a reasonable accommodation, like a face shield or social distancing, that allows the employee to join the workplace.

You can require your employee to wear a mask. If an employee refuses, you can discipline the employee for violating your policy.

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