



British Columbia's
Office of the Human Rights
Commissioner

A human rights approach to mask-wearing during the COVID-19 pandemic


A message from B.C.'s Human Rights
Commissioner

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This publication can be found in electronic format on the website of British Columbia's Office of the Human Rights Commissioner: bchumanrights.ca/mask

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**To the Indigenous peoples of this place we now call British Columbia:
Today we turn our minds to you and to your ancestors. You have kept your unceded homelands strong. We are grateful to live and work here.**

A human rights approach to mask-wearing during the COVID-19 pandemic

THROUGHOUT THE PANDEMIC, my Office has evaluated COVID-19 policies through a human rights lens and advocated for the continued protection of marginalized and vulnerable populations. Mask wearing has been an important way for us to do this as it protects others from transmission of the virus, in addition to providing a layer of protection for ourselves.

Human rights principles must be at the core of our response to the pandemic. Following health and safety guidelines to prevent and reduce COVID-19 transmission should not generally cause concern or give rise to a complaint under [B.C.'s Human Rights Code](#) except where someone has a medical condition or disability or other part of their identity protected under the Code (also called protected grounds) that makes it difficult for them to follow the guidelines.

This advice applies to wearing masks. We need to ensure there is balance between the rights of people who cannot wear a mask on the basis of [protected grounds](#) in B.C.'s *Human Rights Code* (such as disability) and the public health risks, especially to people who are at risk of more severe illnesses even when vaccinated.

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Mandatory mask orders and exemptions

A mandatory mask order for indoor public spaces was first announced in November 2020. Since then, the order has been amended, rescinded, and re-introduced depending on the public health context of the time.¹

When masks are required, public health orders include a number of critical exemptions which I urge duty bearers—that is, those who have a legal obligation or responsibility to respect, protect and fulfil human rights, including employers, housing providers and other service providers—to respect.

These include, for example, exemptions for:

¹ For up-to-date information on masking requirements and the indoor public spaces where this applies, visit the website of the [Provincial Health Officer](#).

- children under 12 years old²
- anyone who is unable to wear a mask because of a health condition or impairment (whether that health condition or impairment is physical, psychological, behavioural, cognitive or mental)
- anyone who is unable to put on or remove a mask without help from another person
- communicating with a person for whom visual cues, facial expressions, lip-reading or lip movements are essential

Duty bearers cannot be fined for allowing people without masks to enter an indoor public space. However, having a valid reason not to wear a mask does not guarantee a person access to an indoor space. Duty bearers can choose to accommodate these individuals in other ways, as described below.

When masks are not required by order of the Public Health Officer but are recommended, some duty bearers, such as businesses, employers, or service providers, will require that people continue to wear masks in public indoor spaces. They may be entitled to do so, but they must also accommodate those who cannot wear a mask on the basis of a protected ground under B.C.'s *Human Rights Code*.

When masks are not required, I encourage everyone to remain mindful of the disproportionate risk faced by the most vulnerable members of our communities – including children and others who are not equally protected by the vaccine – and to continue to take precautions, including wearing masks in all settings recommended by public health officials.

Advice as you develop mask-wearing policies

As duty bearers are implementing mandatory mask-wearing policies and procedures in their work, shared living and service spaces to help reduce the risk of spreading COVID-19, here is my advice:

I strongly encourage you to take into account the protected grounds covered under B.C.'s *Human Rights Code* by ensuring that exemptions and accommodations are clearly articulated within your policies. For example, you may need to state that your policy does not apply – or applies differently – to people with a medical condition, such as a severe respiratory issue, or a disability that inhibits their ability to wear a mask, such as being unable to place or remove a mask without assistance. Masks could also be a barrier to people with hearing disabilities who rely on lip reading or facial expressions to communicate. They may also not be suitable for children and adults with certain physical, intellectual or developmental disabilities.

If someone identifies a reason they are unable to wear a mask that is based on a protected ground under B.C.'s *Human Rights Code* (again, such as disability), you may have a duty to accommodate their needs in a way that respects their human rights as well as public health directives. **This does not apply if someone is able to wear a mask but chooses not to as a matter of personal preference.**

An inability to access or use a mask or an inability to follow a health and safety procedure must not lead to automatic negative consequences such as employee discipline or termination, complete denial of service or eviction from housing. If someone is not wearing a mask, I recommend engaging with the person to see if they are unable to wear a mask based on a protected ground before considering refusal of entry or service.

² It is important to note that indoor spaces in schools are not considered indoor public spaces, and that masking orders may differ. Consult the latest order for mask use in schools for up-to-date information on who is required to wear a mask in indoor school areas.

I strongly recommend that duty bearers proactively develop options to accommodate those who cannot wear a mask or face covering. Some examples of accommodations include:

- offering curbside pickup, which may allow a person to receive a retail service even if, because of their disability, they are unable to wear the mask required to enter a store
- determining whether an employee can work remotely
- increasing ventilation in enclosed spaces

Where there is a longer-term relationship between the duty bearer and the individual — such as in the case of an employer and employee or a housing provider and tenant — duty bearers may need additional information to support an accommodation. However, medical information should only be sought to the extent necessary to determine the limitations an individual has in relation to mask wearing and how they can be accommodated. Duty bearers must keep this medical information confidential and share it only to the extent necessary to implement the accommodation.

Where the relationship is brief, I recommend duty bearers accommodate those who are unable to wear masks without requiring them to provide medical information, as this is sensitive personal information. In an August 2021 decision, the B.C. Human Rights Tribunal (BCHRT) found that individuals do not need to reveal details about their disability when seeking accommodation, but they should inform a duty bearer, such as a service provider, that they require some form of disability-related accommodation.³ Note that, a person filing a human rights complaint about being unable to wear a mask due to disability will have to provide evidence to the BCHRT of their disability and explain why it interferes with their ability to wear a mask. This has since been confirmed in further rulings of the BC Human Rights Tribunal.

No one should have to be exposed to the virus — or excluded from public spaces — because others refuse to follow public health directives merely as a matter of personal choice.

In addition, duty bearers should:

- clearly describe possible exemptions and accommodations in the mask wearing policy and provide training for employees who are most likely to come into contact with people unable to comply with the mask wearing policy.
- implement policies that focus on education, rather than just enforcement
- visibly display mask wearing policies, including exemptions and accommodations, throughout the work space, common housing areas or service locations so that people who are unable to wear masks are not harassed by other employees, tenants or service users
- provide free masks for those who do not have access to masks

³ Rael v. Cartwright Jewelers and another, 2021 BCHRT 106

There are limits to how far duty bearers have to go to accommodate the needs of employees, tenants or clients. Duty bearers should take every step possible to address the needs of people who require accommodation, unless taking those steps would amount to “undue hardship” for the duty bearer.

Undue hardship depends on the circumstances of each case. For example, certain duty bearers may find some accommodations to be inordinately expensive. Duty bearers can claim undue hardship as the reason why certain policies or practices need to stay in place, even though they may have a negative effect on the people they serve. Duty bearers will need to provide “sufficient and objective” evidence to prove undue hardship in the context of defending a human rights complaint.

We have choices: now and always, we can choose to be compassionate, kind and respectful of our rights and differences.

Employers and housing and service providers should ensure any restrictions on employees, tenants and clients are consistent with the most recent advice from public health officials and that they are justified for health and safety reasons.

Advice for those with medical concerns about mask-wearing

As duty bearers and rights holders, we must recognize our mutual responsibility to keep each other safe, and we must do so in a way that respects and promotes human rights for all. If you have a medical issue and are concerned about how the requirement to wear a mask might impact you, here is my advice:

Talk to a medical professional to get their advice and suggestions. They will be able to work with you to determine what your specific needs and mask-wearing limitations may be.

When a mandatory mask policy is in place, consider notifying the person responsible for upholding the policy if you are unable to wear a mask due to a [protected ground](#) under B.C.’s *Human Rights Code* in order to start a conversation about potential accommodations.

Ultimately, no one should experience harassment or other discrimination as a result of the response to COVID-19 due to a disability or medical condition. Additionally, no one should have to be exposed to the virus—or excluded from public spaces—because others refuse to follow public health directives merely as a matter of personal choice.

In the face of a continuing global pandemic, what we do as individuals, families, organizations and communities has a profound impact on the greater good. Our collective action is essential to uphold human rights for all.

While right now many of us may feel aspects of our lives are beyond our control, we do have choices: now and always, we can choose to be compassionate, kind and respectful of our rights and differences.

Sincerely,



Kasari Govender
B.C.’s Human Rights Commissioner



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