

**KTJ**

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## LEGAL ALERT

# New Enforcement Measures For Face Coverings and Gathering Size Limits IDPH Emergency State Regulations

The Illinois Department of Public Health (“IDPH”) has adopted the following emergency rules effective for a maximum of 150 days:

### SAFETY RESTRICTIONS AND REQUIREMENTS

- **Face Coverings.** All businesses, services, facilities or organizations open to the public, whether indoor or outdoor places, (“covered entities”) are to ensure everyone on their premises unable to maintain a social distance of 6 feet, wear a mask or cloth face covering over nose and mouth (if person is “medically able” to tolerate face covering), if such person(s) are unable to maintain a social distance of 6 feet.
  - The face covering can be removed while eating/drinking.
  - No individual is responsible for this compliance, even if the individual is an owner, officer, principal or employee of the covered entity.
  - “Reasonable efforts” to gain compliance satisfy the regulation. [For retail businesses] “reasonable efforts” to comply with regard to customers is determined based on a totality of the circumstances can include:

- \* Posting signage requiring face coverings to be worn on the premises;
  - \* Providing face coverings to customers;
  - \* Giving verbal warnings to customers to wear a face covering when on the premises; and
  - \* Requesting that customers leave the premises if not wearing a face covering.
- Size of Gatherings. All gatherings of more than 50 people, [or gatherings of 50% or more of a building’s maximum occupancy as determined by the authority having jurisdiction, if 50% of a building maximum occupancy is less than 50 people] are prohibited unless exempted by law or Executive Order.

## **ENFORCEMENT**

- Possible violations. These face covering and gathering safety measures are to be enforced against covered entities by “enforcing entities” as follows:
  - Step one: covered entities shall be given a written notice of non-compliance by an enforcing entity and a reasonable opportunity to take prompt actions to comply with face covering and gathering limits. (The enforcing entity can remain on premises and observe until voluntary compliance is achieved or return at a later time to ensure that compliance was achieved depending on the time period provided to allow for compliance.)
    - \* “Reasonable opportunity” to take prompt action is determined by the enforcing entity based on the circumstances, which can include:
      - ~ The nature of the activity taking place;
      - ~ Whether the activity is being conducted indoors or outdoors;
      - ~ The public health risk;
      - ~ The number of individuals at risk of exposure to COVID-19; and
      - ~ The size of the building and crowd occupying the building.
    - \* Appropriate “prompt action” to address compliance with the face covering and gathering measures can include:
      - ~ Promptly distributing face coverings to patrons and/or employees; or
      - ~ If a business, service, non-profit or other entity open to the public is too crowded, reducing the number of persons on-site by placing an employee at the entrance to limit the number of people entering until the occupancy is in compliance with gathering limits.
  - Step two: if the enforcing entity determines the covered entity has not voluntarily complied in a reasonable period of time after receiving the written notice above, the enforcing entity can

issue a written order to the covered entity for all or some of the persons on premises to disperse until in compliance with face covering and/or gathering requirements.

- Step three: if the covered entity refuses to comply with the written order to disperse at Step two, the covered entity shall be subject to penalties per the emergency regulation.

- Sample Form Notices (Non-Compliance and Order to Disperse) IDPH is to provide to all certified local health departments a sample written notice of non-compliance and a sample written order to disperse and post these on the IDPH website.
- Investigation of COVID Spread. IDPH and local health authorities have ongoing authority to investigate the occurrence of cases, suspect cases or carriers of COVID-19 in a public or private place for the purposes of verifying the existence of the disease, locating and evaluating contacts of cases, identifying those at risk of disease, and determining necessary control measures. 77 Ill.Adm.Code Section 690.30
  - Such investigations may include entering a place of employment for purposes of conducting investigations of those conditions within the place of employment that are relevant, pertinent and necessary to the investigation.
  - When two or more suspected cases of COVID-19 occur in any covered entity, the business owner, or the person in charge of the establishment shall cooperate with public health authorities in the investigation of cases, suspect cases, outbreaks and suspect outbreaks.

## **PENALTIES FOR FAILURE TO COMPLY**

- Class A Misdemeanor. If the covered entity refuses to comply with the written order to disperse at Step two, or engages in repeated or continued violations after receiving two or more written notices of noncompliance or multiple orders to disperse, the entity can be found guilty of a Class A misdemeanor, which provides for a minimum fine of \$75 and a maximum fine of \$2,500. There are also possible additional criminal penalties. When considering this penalty, if due to repeated violations, enforcing entities are to take into consideration the time period between violations.
  - Under the Act, the Illinois Director of Public Health shall institute prosecutions and proceedings for violation of the rules and regulations adopted by the Department of Public Health. The State's Attorney of each county shall prosecute all persons in his or her county violating or refusing to obey the rules and regulations of the Department of Public Health.
  - No individual is subject to the penalties under Section 8.1 for violation of this emergency rule, including an individual owner, officer, principal or employee of a covered entity.
- Pursuant to the procedures set forth in current public health regulations for the control of communicable disease, IDPH or a certified local health department is authorized to order the closure of a covered entity if appropriate pursuant to the regulations.

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## **ENFORCING AND LOCAL AUTHORITY NOT SUPERCEDED**

This emergency regulation does not supersede any enforcing entity's authority to seek penalties related to violation of an isolation or quarantine order pursuant to Section 690.1415(b) nor does anything in this emergency rule supersede any authority of an enforcing entity to enforce a local rule, ordinance or order.

“Section 690.50 Pandemic or Epidemic Respiratory Disease – Emergency Provisions” 77 Ill.Adm.Code Section 690.50

The full emergency IDPH regulation is available at:

[https://www.dph.illinois.gov/sites/default/files/COVID19/77-690RG-E\\_o.pdf](https://www.dph.illinois.gov/sites/default/files/COVID19/77-690RG-E_o.pdf)