

View from the Chair; Business Newsletter; 13 October 2020 Geraldine McGahey, Chief Commissioner, Equality Commission NI

Face coverings and the law for employers and service providers

Amongst all the new situations caused by the coronavirus, one that has generated a great deal of heated discussion is the law governing the wearing of face coverings. From the equality point of view, the main issue for employers and service providers is the potential for disability discrimination.

Regulations introduced in August made it a criminal offence for a person aged 13 or over, without reasonable excuse, to enter and remain in a shop or enclosed shopping centre, or to use a bus, coach or train without wearing a face covering that covers their nose and mouth. These rules will soon be extended to apply to a range of other places and services.

In businesses other than these, where the rules do not apply, you may still ask your customers to wear face coverings and, if you do, the advice is the same for all.

If the rules apply to your premises, you as a service provider have a power to enforce them, but you do not have to. It is up to each service provider to decide whether they will enforce the new rules.

The rules allow for exceptions: they do not apply to customers or passengers who cannot wear face coverings because they have a disability, or because they would otherwise suffer severe distress. They are deemed to have a reasonable excuse, and thus a legal defence, if they choose not to wear face coverings. If you do not make these exceptions, you could be open to a complaint of disability discrimination from a customer or passenger who has a disability.

You as the person responsible for the premises can ask customers to wear a face covering. You can also ask them to leave if they will not comply, but you should be aware that you run the risk of discriminating against someone with a disability if you do. Not all disabilities are visible, and the new law runs alongside the Disability Discrimination Act 95, with its reasonable adjustment duty. In this case, it would likely be a reasonable adjustment to your face covering policy to accommodate someone with a disability.

The Government's guidance says: 'Some people don't have to wear a face covering including for health, age or equality reasons. No one who is exempt from wearing a face covering should be denied entry if they are not wearing one'.

As for asking someone why they are not wearing a face covering, even asking for evidence of a disability could put a service provider at risk of facing a disability discrimination complaint from a disabled customer or passenger.

The Government's guidance to the public says: 'There is no need to get a letter from a doctor or the government to show that you do not need to wear a face covering...you only need to say, if asked, that you cannot wear a face covering because you are exempt.'

We have published a [new guidance note on face coverings](#). We can also advise you individually by phoning the Advisory Services Team on 028 90 500 600 or by emailing edenquiries@equalityni.org