

EMPLOYEE HESITANCY TO USE A FACE COVERING

Guidance for supervisors, managers, and local HR representatives

The purpose of both the University of Wisconsin–Madison COVID-19 Workplace Safety Policy and the [campus public health protocols](#) is to promote the safe and orderly performance of on-site work, and a key component of both those documents involves the use of face coverings. In accordance with that guidance, employees currently must wear either a reusable cloth face covering or a single-use disposable mask¹ when they are:

- In any area within campus buildings unless they are working alone in a private space (e.g., office, lab, mechanical space, etc.);
- In a University vehicle with any other person;
- On campus buses; and
- In outdoor spaces when physical distancing is not possible.



We anticipate that most employees will be able to comply with this requirement. However, in the rare circumstance when an employee expresses an unwillingness or an inability to do so, this guidance helps supervisors, managers, and local HR representative take appropriate steps.

If an employee is not wearing a face covering,² supervisors/HR professionals should follow a specific process. We recommend the following steps:

- **Remind:** In a location that is apart from co-workers, remind the individual about the face covering requirement.
- **Ask:** In a non-accusatory manner, ask the employee why they are not wearing a face covering.
- **Listen:** Listen carefully to the employee's answer.
- **Respond:** Depending on the answer the employee provides, reply as follows:

If the employee cites . . .	Supervisor/HR professional should . . .
Occupational/safety hazard, interference with job, or religious reason ³	Consult with divisional HR immediately and follow up with the employee as soon as possible. Supervisors should not discuss religious beliefs with the employee.
Medical reason	Instruct the employee to consult with their Divisional Disability Representative (DDR) . ⁴ Also, the supervisor/HR professional should notify divisional HR. Supervisors should not talk with the employee about their medical condition.
Any other reason	Direct the employee to wear a face covering (or have someone who has authority to give the employee a directive do so). ⁵

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When having the conversation referenced above, supervisors and HR representatives should ensure that it is a respectful dialogue. We recommend, for instance, that supervisors not be drawn into debates about the efficacy of face coverings or about employees' opinions of the university's guidance on this topic.

¹ For purposes of this document, the designation "face covering(s)" refers to both reusable cloth face coverings and single-use disposable masks.

² Throughout this document, any reference to not wearing a face covering includes the possibility that an employee is wearing a face covering but is not doing so correctly.

³ See EEOC, "Religious Discrimination," available at [eeoc.gov/religious-discrimination](https://www.eeoc.gov/religious-discrimination).

⁴ If an employee in your unit is having difficulty wearing a face covering due to a disability or chronic medical condition, we will need to consider whether a reasonable accommodation can be made. The DDR will work with the employee to identify if there are any reasonable alternatives. The goal for DDRs is to consult with the employee and complete their analysis as soon as possible and without delay. However, due to the complexity and anticipated increase in requests, please note that the process may take some time. The DDR will consult with the manager/supervisor on next steps if a potential modification or accommodation is considered for the employee.

⁵ See also FAQ (following this section) at "What should I do if I follow the process outlined above, and an employee refuses to follow my directive to wear a face covering?"

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FAQs

What should I do if I follow the process outlined above, and an employee refuses to follow my directive to wear a face covering?

If an employee refuses to follow your directive, take the following steps:

- Ensure that the directive aligns with campus guidelines (i.e., that one of the exceptions to the face covering requirement does not apply).
- Repeat the directive, ensuring that the employee understands (1) its meaning and its intent as a directive; (2) that you have authority to give the directive; and (3) the consequences of not complying with the directive. E.g., “As your supervisor, I am directing you to wear a face covering. Your failure to do so may be viewed as insubordination and may result in disciplinary action, up to and including discharge. Furthermore, your failure to wear a face covering will be considered a safety hazard, and you will be directed to leave the workplace immediately.”
- If the employee fails to follow your directive, tell them to leave the workplace until further notice. Also, inform them that either the supervisor/manager/local HR representative or divisional HR will follow up with them. If the employee refuses to leave, contact divisional HR immediately for further guidance.
- Contact HR immediately to discuss next steps.

Unless instructed otherwise by HR, you should follow up with the employee via email. That email should, at a minimum, outline your recollection of what transpired. For instance:

Dear [Employee]:

This email is a follow-up to our conversation earlier today at [the Academics Building]. By way of review, I noticed that you were not wearing a face covering, in violation of relevant campus guidelines on this topic. I asked you why you were not doing so, and you told me that [the requirement was “stupid”]. I told you to put on a face covering, and you refused. Then, I told you that, as your supervisor, I was directing you to wear a face covering and that your failure to do so could be viewed as insubordination and result in disciplinary action, up to and including discharge. Also, I told you that your failure to do so would be considered a safety hazard, and you would be directed to leave the workplace immediately. Unfortunately, you refused to put on a face covering, and I directed you to leave the workplace until further notice. You left the worksite at [insert time employee departed].

In terms of a path forward, [Insert guidance from HR, which could include notification of paid administrative leave and of an investigative/pre-disciplinary meeting with the employee.].

Feel free to contact me if you have any questions.

Sincerely,

[Supervisor]

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If an employee is sent away from the workplace for refusing to wear a face covering, do they get paid for the full day?

Probably yes. Withholding compensation is considered a disciplinary action. Prior to taking disciplinary action, the university must follow relevant policy on discipline.

There may be exceptions to the principle outlined above. For instance, student hourly employees and limited-term employees do not have the same procedural protections as academic staff, university staff, or faculty. Therefore, colleges/schools/divisions may have more flexibility to refrain from providing compensation to student hourly employees and limited-term employees for time they do not work. Please work with HR to understand the options that apply to each specific situation.

What are some possible modifications for employees who are unable to wear a face covering?

In general, face coverings are a requirement at the workplace. The specific modification that may be provided to an employee will be fact-specific. Some possible modifications include the following:

- Relocating the employee to a different location in the building or elsewhere on campus (e.g., where the employee does not need to wear face covering because they will be working alone, etc.);
- Instituting an alternative work schedule or staggering start times, (e.g., allowing the employee to work at times when others will not be present, etc.);
- Allowing the employee to telecommute;
- Reassigning duties or transferring the employee to a different position (possibly in conjunction with another step listed above) where they are able to telecommute or work alone in an office or lab;
- Approving the use of leave for the employee (if available); or
- Implementing any other modification approved by DDR or HR.

As a general matter, only DDRs (for a medical related reason) and HR professionals should discuss possible alternatives to face coverings with employees. Also, in some cases, a DDR or HR professional may involve the supervisor to help determine what modifications may be reasonable in any given situation.

For more information contact smartrestartHR@ohr.wisc.edu

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