Ask The Expert: Can We Discipline Employees for Refusing to Wear a Face Mask?



QUESTION

We're requiring all of our employees to use face masks when they're indoors but some of them are refusing. Do we have the right to discipline them? And, if so, under what law?

ANSWER

Probably yes, but it depends on the situation.

EXPLANATION

OHS laws require employers to furnish and ensure employees use PPE appropriate to protect them against the hazards to which they're exposed at work. During the COVID-19 pandemic, such PPE includes respiratory protection to all employees exposed to risk of infection.

The reason for this is because of how COVID-19 spreads. The dynamic: Respiratory droplets from a person carrying the virus come into contact with another person, either as a result of direct physical contact or indirectly via droplets that land on surfaces that another person subsequently touches, breathes or ingests. Face masks keep this from happening by containing the droplets and ensuring that mask wearers don't spread them. Wearing a mask, in other words, doesn't protect the wearer so much as the persons with whom he/she has direct or indirect contact. The wearer's protection comes from knowing that everybody else in the place is also wearing a mask. they don't get out.

Who Has to Wear a Mask

Under current Canadian Chief Medical Officer (CMO) guidance, all individuals should wear face masks where social distancing, i.e., 6 feet/2 meters of physical separation can't be maintained. That includes not just employees but also any and all individuals at the facility, including contractors and subcontractors, customers, clients and other visitors. The only exception is for people who work remotely,

alone, in isolation or in other settings and conditions where they have no close contact with others.

Discipline for Mask Refusals

An employee required to wear who refuses to do so is subject to discipline the way any employee who deliberately disobeys an organization’s health and safety policy would. Just follow your normal progressive discipline policies and procedures.

Disability & Accommodation

Exception: Refusal to wear a mask may be justified to the extent it’s based on a disability, e.g., where an employee has a skin condition making it unreasonably painful or uncomfortable to wear masks. At that point, it becomes a matter of accommodating the employee’s disability to the point of undue hardship, e.g., an alternative method or device or allowing the employee to work in complete isolation. However, the point of undue hardship is reached when the accommodation would endanger others, e.g., letting the employee work close to others without a mask.

Religious rights can also be grounds for refusing to wear respiratory protection. This has been an issue in cases where employees whose religions require beards have to use tight-fitting respirators requiring an effective seal to the nose and face. The good news is that the non-medical masks that the vast majority of employees will be required to use to avoid spreading COVID-19 isn’t tight-fitting and should be effective even if users have facial hair.