



August 7, 2020

The Honorable Dr. Anthony Evers
Governor
State Capitol 115 East
Madison, WI 53702

RE: Face-Covering Mandate

Dear Governor Evers:

Wisconsin Manufacturers & Commerce (WMC) is the combined State Chamber of Commerce, Manufacturers' Association and Safety Council. WMC represent 3,800 businesses of all sizes and from every sector of the economy.

Since you announced your statewide face-covering requirement last week, WMC has fielded numerous contacts from our membership seeking clarification on how the order effects businesses that have work environments not clearly addressed in the order. To be sure, a one-size fits all approach doesn't recognize the vast diversity of Wisconsin's business community and its workplaces.

Wisconsin businesses need clarity. Therefore, as the largest representative of business in the state, we submit the below comments, questions and requests we received from our members for your consideration and, hopefully, for your prompt response.

Liability Concerns: You may be aware that WMC has strongly encouraged the use of face-coverings as a best practice recommended by the Centers for Disease Control (CDC) and the Occupational Safety and Health Administration (OSHA). We have opposed mandates largely out of concern that it represents yet another layer of potential legal liability for employers. As such, WMC urges you to work with the legislature to enact comprehensive COVID-19 liability protections for employers.

Such liability protections are also critical for K-12 schools, post-secondary schools (the UW-System, technical colleges, and private colleges and universities), as well as many other private and public sector entities at risk of costly, harassing and frivolous lawsuits filed by trial attorneys looking to compound the harm already caused to employers by the pandemic.

Employee Exemption Claim: If an employee refuses to wear a mask because of an exemption, for instance the medical condition exemption in 3(b)(iv), does the employer have a duty to provide special accommodations to the worker? If the worker later contracts COVID-19 and claims it is work-related, is the exemption a defense for the employer from workers' compensation or other claims that the mask mandate was meant to help protect against.

Face Shields: WMC requests that you amend your order to include face shields. As you know, many Wisconsin businesses have responded to the COVID-19 global health crisis by retooling production to manufacture various types of personal protective equipment (PPE). Among the items proudly being produced in Wisconsin are face shields.

Multiple manufacturers and builders have told WMC that wearing fabric masks in combination with OSHA-mandated eye protection (goggles, safety glasses, etc.) causes fogging that in itself creates safety concerns. In addition, fabric masks, in some circumstances, are considered a hazard because they can potentially be entangled in a machine, can accumulate hazardous substances from industrial processes, and can cause the wearer to be subject to heat illness. Allowing face shields, as suggested by OSHA, addresses these concerns.

We also request a specific exemption for employees who wear a welding helmet or reusable respirators commonly used in painting or spray booths.

Definition of Enclosed Spaces: Several construction firms have asked for clarification on the definition of enclosed spaces as it relates to buildings under construction or renovation. Can you provide a definitive explanation of what constitutes an enclosed space?

CDC/OSHA Deference: The last two issues – face shields and enclosed spaces – could easily be addressed by amending the face-covering order to specifically defer to existing CDC and OSHA guidance as it relates to best practices to prevent the spread of COVID-19 in the workplace. OSHA, in particular, has a solid historical understanding of the diverse workplaces in the U.S. economy. Allowing Wisconsin businesses to continue to follow OSHA guidelines over potentially conflicting or confusing local and statewide orders would address the bulk of the concerns and questions from the business community, while also accomplishing your stated goal of fighting the spread of COVID-19.

Other Workplace Considerations: Recognizing that safety and feasibility considerations are different for each employer, other states like Ohio, have included the following exceptions in their statewide mask order:

- An exception for employees who are not in an enclosed space, but who are separated by at least six feet in all directions from all other individuals in an area that is not intended for use or access by the public.
- Instances where face coverings are in violation of a business' documented safety policies.
- In an industrial or manufacturing facility where employees are separated by at least six feet in all directions, or by a barrier in a manufacturing line or work area.

We believe these are reasonable exceptions, and respectfully request that you amend your order to include them.

Supremacy Clause: Compliance objectives are more easily achieved when regulatory obligations are clear to individuals. Having conflicting and overlapping requirements at both the state and county/municipal level has already resulted in confusion and avoidable complexity and complication with respect to face covering requirements. To remove that confusion and complexity, we suggest inclusion of a supremacy clause, consistent with that in your Safer at Home order, that supersedes any local order that is in conflict with your statewide order.

For the record, the Wisconsin Safety Council – a division of WMC – recently partnered with various other entities, including the Wisconsin Hospitals Association and Wisconsin Medical Society, in funding a statewide public service announcement to encourage the public to wear face-coverings and has published a multi-step guide to help keep employees safe in the workplace.

The point is that WMC wants to work with your Administration and all other stakeholders to protect both the lives and livelihoods of all Wisconsinites during the COVID-19 pandemic. Thank you in advance for considering the above requests. I look forward to your response.

Sincerely,



Kurt R. Bauer
President/CEO