

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

KIMBERLY PLETCHER, )  
Plaintiff, )  
and ) Case No. 2:20-cv-754 NBF  
JUDITH MARCH, JOSIAH KOSTEK, )  
GRAYDON GRAHAM, RONNIE )  
STURCHIO, NICHOLAS CONLEY, )  
SHARON BURTON, DEBBIE VIDOVICH, )  
PAUL SHEPHERD, GERALD )  
THOMCHICK, CONNIE WINNER, JOHN )  
DURSO, TRACY O'CONNOR, DOUGLAS )  
JANASZEK, OWEN BURK, BEN )  
ZYTNICK, GREGORY MANDICH, JOHN )  
BLACKSTONE, JAMES LEONARD, )  
KATHLEEN CUNNINGHAM, JAMIE )  
MARKS-BORICHEVSKY, POLLY )  
QUINTILIANI, CAROLYN L. STEWART, )  
TOMMY WYNKOOP, TAMMIE AIKEN, )  
STEVEN PARSONS, JEFREY COULSON, )  
KATHERINE DUCKSTEIN, NATHANIEL )  
DOLLAR, THOMAS BENSOR, VICKI )  
PARKER, STEPHEN MCRAE, KRISTIE )  
HARNISH, MOLLY SHIRK, MICHAEL )  
HAMMERS, )  
Consolidated Plaintiffs )  
v. )  
GIANT EAGLE, INC. and C&J GROCERY )  
CO., LLC, )  
Defendants.

**AMENDED MOTION FOR PRELIMINARY INJUNCTION FILED ON  
BEHALF OF PLAINTIFF JOSIAH KOSTEK**

AND NOW, COMES Plaintiff, Josiah Kostek, by and through his attorneys, Thomas B. Anderson, Esquire and Thomson, Rhodes & Cowie, P.C. and files this Amended Motion for Preliminary Injunction and in support thereof states as follows:

**I.     TITLE III OF THE ADA AND THE NEED FOR INJUNCTIVE RELIEF**

Thirty years ago, in 1990, the ADA was enacted in order to “eliminate discrimination against individuals with physical and mental disabilities across the United States.” McGann v. Cinemark USA Inc., 873 F.3d 218, 221 (3d Cir. 2017), quoting 42 U.S.C. § 12101(a)(1); PGA Tour, Inc. v. Martin, 532 U.S. 661, 674-75, 121 S. Ct. 1879, 149 L. Ed. 2d 904 (2001). “To help ‘effectuate its sweeping purpose,’ Congress enacted Title III of the ADA, which prohibits ‘public accommodations’ from discriminating against individuals on the basis of disability.” McGann, 873 F.3d at 221, quoting PGA Tour, 532 U.S. at 675; 42 U.S.C. § 12182(a). The passage of the ADA was premised on Congress’s finding that discrimination against the disabled is “most often the product, not of invidious animus, but rather of thoughtlessness and indifference,” of “benign neglect,” and of “apathetic attitudes rather than affirmative animus.” Chapman v. Pier I Imports, Inc., 631 F.3d 939, 944 (9<sup>th</sup> Cir. 2011). “Public accommodations,” include grocery stores, such as those operated by Giant Eagle. Scott v. Giant Eagle Mkt.,

2018 U.S. Dist. LEXIS 34514 \*11, 2:17-cv-00289 (W.D. Pa., Mar. 2, 2018), quoting 42 U.S.C. §§ 12181(7)(B) and (E).

In 2008, Congress amended the ADA when it passed the ADA Amendments Act of 2008 (“ADAAA”). Under the ADAAA, “a disability is broadly defined as: ‘(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.’” Anderson v. Kohl’s Corp., 2103 U.S. Dist. LEXIS 63479, \*26, 2:12-cv-00822 (W.D. Pa. May 3, 2013), quoting 42 U.S.C. § 12102(1).

Title III of the ADA prohibits discrimination in public accommodations and services and establishes a “general rule” that:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. §12182(a) (Emphasis added). The regulations applicable to Title III define a physical or mental impairment to include:

- (i) any physiological disorder or condition ... affecting one or more of the following body systems: neurological, ... respiratory, ... and cardiovascular;
- (ii) any mental or psychological disorder such as ... emotional or mental illness;
- (iii) contagious and noncontagious diseases; and

(iv) emotional illness and Attention Deficit Hyperactivity Disorder (ADHD).

28 C.F.R. § 36.105(b)(1) and (2). The phrase major life activity includes functions such as breathing, concentrating, thinking, communicating, interacting with others and the operation of the brain and neurological system. 28 C.F.R. § 36.105(c)(1)(i) and (ii). In virtually all cases, major depressive disorder, bipolar disorder, post-traumatic stress disorder, and obsessive compulsive disorder substantially limit brain function. 28 C.F.R. § 36.105(d)(2)(iii)(K).<sup>1</sup>

Title III of the ADA prohibits disability discrimination “in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations, of any place of public accommodation.” McGann, 873 F.3d at 222, quoting 42 U.S.C. § 12182(a). Disability discrimination includes “denying an individual on the basis of a disability ‘the opportunity … to participate in or benefit from the goods or services of a public accommodation.’” McGann, 873 F.3d at 222; 42 U.S.C. § 12182(b)(1)(A)(i). Discrimination also includes:

the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

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<sup>1</sup> In cases brought pursuant to Title III of the ADA the primary object of attention should be “whether public accommodations have complied with their obligations and whether discrimination has occurred, not the extent to which an individual’s impairment substantially limits a major life activity.” 28 C.F.R. § 36.105(d)(1)(i).

Scott, 2018 U.S. Dist. LEXIS 34514 at \*7, quoting 42 U.S.C. § 12182(b)(2)(A)(i).

The regulations also state a public accommodation “shall not” subject an individual to a denial of opportunity of the individual to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 28 C.F.R. § 36.202 (a). Giant Eagle may not force customers with disabilities to accept alternatives to shopping in its stores without masks, because Giant Eagle is forcing those disabled customers to choose a benefit “that is not equal to that afforded to other individuals.” 28 C.F.R. § 36.202(b). Giant Eagle may not force its disabled customers who cannot wear masks to accept alternatives to shopping in its stores because Giant Eagle may not force those customers to accept “different or separate” access to shopping in the store because it is not “necessary to provide the individual with a good, service facility, privilege, or accommodation, or other opportunity that is as effective as that provided to others.” 28 C.F.R. § 36.202(c). The fact that Giant Eagle has no comparable policies in West Virginia, Ohio and Indiana proves that the alternative options offered in Pennsylvania are not “necessary.”

The regulations also provide that Giant Eagle must afford its goods, services, facilities, privileges, advantages and accommodations to customers who cannot wear masks due to a disability “in the most integrated setting appropriate to the needs of the individual.” 28 C.F.R. § 36.203(a). Giant Eagle cannot force disabled

individuals to choose a “separate or different” shopping arrangement. 28 C.F.R. § 36.203(b). “Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit available under this part that such individual chooses not to accept.” 28 C.F.R. § 36.203(c). Moreover, Giant Eagle cannot utilize a standard or criteria or method of administration that has the effect of discriminating on the basis of a disability. 28 C.F.R. § 36.204.

This case is one of numerous consolidated cases involving violations of Title III of the ADA by Giant Eagle, Inc. (“Giant Eagle”).<sup>2</sup> Plaintiff suffers from several medical conditions that substantially limit his major life activities of breathing, thinking and concentrating, as well as his brain, respiratory and nervous systems. (See Plaintiff’s medical records filed under seal for the exact diagnoses). Plaintiff cannot wear a mask or cloth face covering without experiencing severe panic attacks and difficulty breathing.

Giant Eagle has refused Plaintiff access, and had him arrested for trespass, at its grocery store in Oil City, that is by far the closest grocery store to Plaintiff’s home. Plaintiff was refused access to the store, arrested and charged with

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<sup>2</sup> Giant Eagle, Inc. is the corporate owner and operator of most Giant Eagle stores, including the Oil City location relevant to this motion. Other stores are owned by independent retailers. However, Giant Eagle’s counsel has agreed to stipulate that all Giant Eagle stores, corporate and independently owned, are bound by the face covering policy of Giant Eagle, Inc. The only reason C&J Grocery Co., LLC was added as a defendant in the Amended Consolidated Complaint is that the independent retailer made the decision to ban Plaintiff Tommy Wynkoop from the Ligonier Giant Eagle.

disorderly conduct. Plaintiff was refused access to the Oil City Giant Eagle and arrested based upon the imposition of a mask policy that screens out people with disabilities that prevent them from wearing a mask inside Giant Eagle stores.

Giant Eagle's screening process at the entrances to its stores in Pennsylvania are not necessary for Giant Eagle to sell groceries and medication to customers as evidenced by the fact that Giant Eagle does not refuse access to anyone in West Virginia, Ohio, and Indiana who cannot wear a mask. For this same reason, Plaintiff, and others who cannot wear masks, do not pose a direct threat to others that would justify refusal of access to Giant Eagle stores. Giant Eagle did not implement its mask policy in Pennsylvania because of safety, Giant Eagle implemented its zero-exception mask policy based on politics, convenience, and "to ensure consistency for everyone involved." Exhibit "C" attached hereto.

Plaintiff requested a reasonable modification to Giant Eagle's mask policy, but Giant Eagle made no modification. Because Plaintiff was not a direct threat and his requested modification would not have altered the nature of Giant Eagle's business, Giant Eagle was legally obligated to make the requested modification and allow him to shop without a mask. 28 C.F.R. § 36.302(a). After Plaintiff asserted his rights under the ADA and challenged Giant Eagle's illegal policy, Plaintiff was harassed, arrested, charged with disorderly conduct and banned from

the Oil City store under threat of future arrest for trespass in violation of 28 C.F.R.  
§ 36.206.

Giant Eagle's corporate conduct has irreparably harmed Plaintiff for no legitimate reason. Giant Eagle's discriminatory policies and procedures must be stopped, and a preliminary injunction is the proper means to that end.

Plaintiff can clearly establish all elements of his Title III claim; Plaintiff is likely to succeed on the merits, and Plaintiff has standing to seek injunctive relief. Therefore, Plaintiff's motion for preliminary injunction should be granted.

## **II. FACTS SUPPORTING THE REQUESTED RELIEF**

Giant Eagle has adopted a policy that requires all customers in Pennsylvania to wear masks inside Giant Eagle stores, with no exception for customers who cannot wear a mask for medical reasons. Exhibit "C". Customers who cannot wear masks for medical reasons in Pennsylvania are denied access to Giant Eagle stores, however, if those customers were in West Virginia, Ohio, or Indiana, Giant Eagle would allow them to shop in its stores without a mask because Giant Eagle does not require any customer to wear a mask or face covering in its West Virginia, Ohio, and Indiana stores. Id. Giant Eagle's Pennsylvania mask requirement does not comply with the order of the Pennsylvania Secretary of Health, Pennsylvania Department of Health guidelines, or the guidelines published by the United States Center for Disease Control ("CDC").

Plaintiff is a person with a disability who has physical and/or mental conditions, including anxiety disorder, panic disorder, Post Traumatic Stress Disorder (PTSD), and other disorders outlined in his medical records filed under seal that substantially limit his major life activities of breathing, thinking, concentrating, his brain function, and his respiratory and nervous systems. Plaintiff cannot wear a mask over his face without experiencing severe anxiety and difficulty breathing. Exhibit "A". Plaintiff takes medication and is receiving treatment for these conditions. Id.; see also Plaintiff's medical records filed under seal.

On May 16, 2020, Plaintiff attempted to purchase groceries but was denied access to the grocery store because he could not wear a mask. Plaintiff explained that he could not wear a mask because of his medical conditions. Instead of allowing Plaintiff to shop in the store, he was harassed, berated, and threatened by employees and customers alike. Giant Eagle called the police and alleged trespass.

After being denied the opportunity to shop, Plaintiff left the store. When the police arrived, they took him into custody. He was assaulted by the officer during the arrest causing damage to Plaintiff's neck. Plaintiff has been charged with disorderly conduct because he attempted to shop without a mask.

On May 27, 2020, Plaintiff attempted to enter the Giant Eagle again, but was told he could not shop without a mask. This time Plaintiff recorded the encounter.

A video of the encounter is being provided to This Honorable Court with the medical records under seal. Plaintiff advised the employees that they were in violation of the ADA and all he wanted to do was purchase fruit. He placed two bags of fruit on the check-out counter, but no one would allow him to purchase the groceries. The employees stated that it was a private store and they could enact whatever policies they wanted. One employee physically threatened Plaintiff and another called him a “dumbass.”

The Giant Eagle employees again called the police and Plaintiff was told he is not allowed in the grocery store again, all because he was attempting to legally shop at the store without a mask. The police told Plaintiff he could go to Walmart or some other store to shop, but Giant Eagle was a private company that could deny him access if it wanted to and Plaintiff was told he was not ever welcome again at Giant Eagle. Thereafter, he received the letter attached hereto as Exhibit “B”. The Oil City store is located near Plaintiff’s home and is the only grocery store near Plaintiff’s home.

On April 15, 2020, Pennsylvania Governor, Tom Wolf issued a press release announcing that Dr. Rachel Levine, under her authority as Secretary of the Department of Health to take any disease control measures appropriate to protect the public from the spread of infectious disease, signed an order directing

protections for critical workers at businesses authorized to maintain in-person operations during the Covid 19 disaster emergency. Exhibit “D,” see p. 2.

The Order, effective April 19, 2020, provided in relevant part, that businesses covered by the order should:

require all customers to wear masks while on the premises, and deny entry to individuals not wearing masks, unless the business is providing medication, medical supplies, or food, in which case the business must provide alternative methods of pick-up or delivery of such goods; **HOWEVER, INDIVIDUALS WHO CANNOT WEAR A MASK DUE TO A MEDICAL CONDITION (INCLUDING CHILDREN UNDER THE AGE OF 2 YEARS PER CDC GUIDANCE) MAY ENTER THE PREMISES AND ARE NOT REQUIRED TO PROVIDE DOCUMENTATION OF SUCH MEDICAL CONDITION.**

Exhibit “E”, p. 5 at (6) (emphasis added).

The Pennsylvania Department of Health subsequently published guidelines for businesses, which were updated on May 1, 2020. The guidelines state:

Q. If a customer refuses to wear a mask will they be turned away or will the customer be refused service?

A. Yes, with the exception of businesses that provide medication, medical supplies, or food, which must offer another means for the customer to purchase goods if the customer is unable to wear a mask. Those means could include home delivery or contactless curbside pick-up. **However, individuals who cannot wear a mask due to a medical condition (including children under the age of 2 per CDC guidance) may enter the premises and are not required to provide documentation of such medical condition. ... Businesses should advise customers of the Secretary’s Order; tell the customer that only those who cannot wear a mask due to a medical condition may enter the premises without a mask; and advise the customer that almost any face covering would be acceptable.**

Q. How do businesses avoid confrontation with customers who do not wear a mask?

**A. ... [B]usinesses should advise customers of the Secretary's Order; tell the customer that only persons who cannot wear a mask due to a medical condition do not have to comply with the requirement to wear a mask....**

Exhibit "F", pp. 5-6 (emphasis added).

Despite the Pennsylvania Secretary of Health's order and guidelines above and CDC guidance to the contrary, Giant Eagle implemented policies and procedures that require all customers to wear masks even if they are disabled and they cannot wear a mask due to their medical conditions. Exhibit "C". Giant Eagle's policy flies in the face of recommendations from the CDC which state "**Cloth face coverings should not be placed on young children under the age of 2, anyone who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove the mask without assistance.**" The CDC also directs individuals to make sure when using a face covering that you do not have any difficulty breathing while wearing the cloth face covering. Exhibit "G", p. 2 (emphasis added).

Giant Eagle has adopted and enforces policies and procedures that require all "guests" shopping at all its Giant Eagle, Market District and GetGo locations wear masks or other face coverings in its Pennsylvania stores. Giant Eagle's policies and procedures make no accommodations for invitees who wish to shop in its

Pennsylvania stores who have disabilities that prohibit wearing a mask or make wearing a mask dangerous to the invitees. However, Giant Eagle stores in West Virginia, Ohio and Indiana have not instituted the same policy, in fact, they have “no policy.” Exhibit “C”. On May 13, 2020, news outlet, cleveland.com reported “Dan Donovan, a spokesperson for Pittsburgh-based Giant Eagle, told cleveland.com the chain has no policy when it comes to face masks and coverings for customers.” [https://www.cleveland.com/coronavirus/2020/05/see-which-cleveland-stores-require-customers-to -wear-masks-as-of-may-13.html.](https://www.cleveland.com/coronavirus/2020/05/see-which-cleveland-stores-require-customers-to-wear-masks-as-of-may-13.html)

Exhibit “H”, p. 5.

The Ligonier Giant Eagle has published the following:

**GIANT EAGLE POLICY:**

Moving forward until further notice in order to shop our store (or any other Giant Eagle location) you must be wearing a mask.

**There will be no exceptions regardless of any reason or medical condition.** We thank you for your compliance and understanding.

Exhibit “I”. (emphasis added). Matt Faccenda, the Ligonier Giant Eagle “Store Leader,” posted publicly that while Governor Wolf’s edict that customers should wear masks in stores included an exception and accommodation for customers who cannot wear a mask for medical reasons, the entire company has decided not to comply with the accommodation. **“It’s too easy to make up an excuse not to wear a mask,** and we refuse to put our team members and customers who do wear

a mask at any more risk than they already are. Health and safety of our community is more important to us than business.” Exhibit “J”. (emphasis added).

While Giant Eagle has implemented the no-exception policy above in Pennsylvania, Giant Eagle does not apply such a policy to its employees or “team members” who cannot wear masks for medical reasons. Giant Eagle allows its team members to work inside its stores without masks if they provide a medical excuse. Exhibit “K”, p. 1.

Plaintiff lives at 521 Hiland Avenue, Oil City, Pennsylvania. His residence is three-tenths of a mile from the Oil Giant Eagle grocery store. Exhibit “A” ¶ 2. Plaintiff wants to continue to shop at the Oil City Giant Eagle, but he has been permanently excluded from the Oil City Giant Eagle in retaliation for asserting his legal rights under the ADA. Exhibits “A”, ¶ 8 and “B”.

Giant Eagle repeatedly denied Plaintiff full and equal access and enjoyment of the goods and services offered to the public at the Oil City Giant Eagle. In fact, because Giant Eagle’s mask policy applies at all its Pennsylvania locations, Plaintiff has been deprived of full and equal access and enjoyment of goods and services at all Giant Eagle locations because he cannot wear a mask because of his medical conditions.

### **III. STANDARD FOR AWARDING PRELIMINARY INJUNCTION**

#### **A. Standing**

In order to have standing to pursue a claim, the plaintiff must allege facts showing “such a personal stake in the outcome of the controversy as to warrant [his] invocation of federal court jurisdiction and justify exercise of the court’s remedial powers on [his] behalf.” Scott, 2018 U.S. Dist. LEXIS 34514 at \*7, quoting Warth v. Seldin, 422 U.S. 490, 498-99, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975) (quotation omitted). “The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” Scott, 2018 U.S. Dist. LEXIS 34514 at \*7-8, quoting Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016) (citation omitted).

“The Third Circuit has emphasized that ‘the injury-in-fact element is often determinative.’” Scott, 2018 U.S. Dist. LEXIS 34514 at \*8, quoting Toll Bros., Inc. v. Twp. of Readington, 555 F.3d 131, 138 (3d. Cir. 2009). “To establish an injury-in-fact, a plaintiff must show that [he] suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and actual and imminent, not conjectural or hypothetical.”” Scott, 2018 U.S. Dist. LEXIS 34514 at \*8, quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).

Injunctive relief is the only remedy for a private ADA Title III violation. Scott, 2018 U.S. Dist. LEXIS 34514 at \*8, quoting Anderson v. Macy’s, Inc., 943

F. Supp. 2d 531, 538 (W.D. Pa. 2013). “Courts look beyond the alleged past violations and consider the possibility of future violations.” Id. “A plaintiff seeking prospective injunctive relief must demonstrate a real and immediate threat of injury in order to satisfy the injury in fact requirement.” Id. “The plaintiff must show that he or she is likely to suffer future injury from the defendant’s illegal conduct.” Scott, 2018 U.S. Dist. LEXIS 34514 at \*7, quoting Doe v. Nat’l Bd. Of Med. Examiners, 210 F. App’x 157, 159-60 (3d Cir. 2006).

In determining whether a plaintiff has standing under Title III, courts focus on “the likelihood of the plaintiff’s return to the place of public accommodation,” which requires consideration of “(1) the plaintiff’s proximity to the defendant’s place of public accommodation; (2) the plaintiff’s past patronage; (3) the definiteness of the plaintiff’s plan to return; and (4) the plaintiff’s frequency of nearby travel.

Scott, 2018 U.S. Dist. LEXIS 34514 at \*9 (quotations omitted). “The four-factor test is one of totality, and a finding in favor of the plaintiff does not require alignment of all four factors.” Scott, 2018 U.S. Dist. LEXIS 34514 at \*7, quoting Anderson, 943 F. Supp. 2d at 539 (quotations omitted).

Plaintiff has clearly suffered an injury in fact and will suffer future injury without injunctive relief. Plaintiff has been banned from the grocery store that is within walking distance (three-tenths of a mile) from his home. Plaintiff shopped for groceries at the Oil City Giant Eagle for 8 years. Before Giant Eagle implemented its mask policy, Plaintiff used to shop inside the Oil City Giant Eagle

on a weekly to monthly basis. Plaintiff had no intention of shopping for his groceries elsewhere.

While there is no telling how long Giant Eagle will continue to enforce its mask policy, or whether the policy will come and go in the future, several things are clear; (1) Plaintiff can no longer shop at the Oil City Giant Eagle, (2) Plaintiff cannot shop inside any Giant Eagle store, and (3) Plaintiff was banned from the Oil City Giant Eagle store because he asserted his legal rights under the ADA. Plaintiff clearly has standing to seek a preliminary injunction.

**B. Plaintiff has Established a Claim Under the ADA**

Plaintiff establishes a claim under Title III of the ADA by showing: “(1) discrimination on the basis of a disability; (2) in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation; (3) by the public accommodation’s owner, lessor or operator.” Anderson, 2103 U.S. Dist. LEXIS 63479 at \*22. “A plaintiff is discriminated against based on [his] disability if [he] is discriminated based on misconduct that stems from [his] disability.” Scott, 2018 U.S. Dist. LEXIS 34514 at \*11, citing LoCastro v. Cannery Casino Resorts, LLC, No, 13cv0168, 2013 U.S. Dist. LEXIS 57733, 2013 WL 1748347 at \*3 (W.D. Pa. Apr. 23, 2013).

Plaintiff has clearly alleged that he is a disabled person under the ADAAA because he has several health conditions that substantially limit his major life

activities of breathing, thinking, and concentrating, and his respiratory and nervous systems. Exhibit A ¶¶ 4-5. See also Plaintiff's medical records. Plaintiff's panic attacks, anxiety disorder, claustrophobia, PTSD, and other conditions substantially impact his breathing and brain function, and the conditions prevent him from wearing a mask because wearing a mask causes severe anxiety and difficulty breathing. Exhibit A, ¶ 5; see also Plaintiff's medical records.

Because Plaintiff cannot shop in Giant Eagle stores without wearing a mask and because wearing a mask is dangerous to his health and safety due to his disability, Plaintiff has been, and will in the future be, deprived of the full and equal enjoyment of Giant Eagle Stores. Plaintiff has been deprived of the ability to shop in Giant Eagle stores without putting his health and well-being at risk, unlike shoppers who can comply with Giant Eagle's mask requirement without potentially subjecting themselves to respiratory distress or other danger. Plaintiff's inability to comply with Giant Eagle's mask policy stems directly from his disability.

Plaintiff has also clearly alleged that Giant Eagle owns, leases or operates the grocery store that has violated his legal rights. The store in question is owned by Giant Eagle, Inc. See Exhibit A to Defendant's Status Report (Doc. 15). Accordingly, Plaintiff's complaint clearly establishes all the elements of a Title III claim.

The ADA also clearly prohibits retaliation and coercion. 28 C.F.R. §36.206. The regulations prohibit private entities from intimidating, threatening, or interfering with any individual in the exercise or enjoyment of any right granted or protected by the ADA. 28 C.F.R. §36.206 (b) and (c)(2). Giant Eagle clearly retaliated against Plaintiff for asserting his rights and banned him from the Oil City premises. Exhibits “A” and “B”. Plaintiff’s complaint sets forth all necessary elements of ADA retaliation and coercion.

### **C. Test for The Granting of a Preliminary Injunction**

To prevail on a request for preliminary injunctive relief, “the plaintiff must demonstrate that ‘(A) he is likely to succeed on the merits of his claim, (B) he is likely to suffer irreparable harm without relief, (C) the balance of harm favors him, and (D) relief is in the public interest.’” Evancho v. Pine-Richland Sch. Dist., 237 F. Supp. 3d 267, 283 (W.D. Pa. 2017), quoting Issa v. Sch. Dist. Of Lancaster, 847 F.3d 121, (3d Cir. 2017). “In evaluating whether the party seeking an injunction is likely to succeed on the merits, courts do ‘not require that the right to a final decision after the trial be ‘wholly without doubt’; the movant need only show a ‘reasonable probability’ of success.” Evancho, 237 F. Supp. 3d at 284 (citation omitted). “In each case, courts ‘must balance the competing claims of injury and must consider the effect on each part of granting or withholding of the requested relief.’” Id. (citation omitted). “And in exercising their sound discretion, courts

of equity should pay particular regard for the public consequences in employing the extraordinary remedy of an injunction.” Id. (citation omitted).

1. Plaintiff is Likely to Succeed on the Merits

There is a reasonable probability that Plaintiff will successfully prove that Giant Eagle violated Title III of the ADA and that injunctive relief is necessary and equitable. There is simply no legitimate basis for Giant Eagle’s zero-exception mask policy in Pennsylvania.

Giant Eagle has no policy at all and does not refuse to sell groceries and medication to its customers in West Virginia, Ohio and Indiana who do not wear masks. Giant Eagle has stated: “to ensure consistency for everyone involved, we are applying this directive to all guests, regardless of any medical or other claim that may be made.” Exhibit “C”. Giant Eagle cannot claim that its actions are reasonable and necessary because if that were the case, the same policy would apply to its shoppers in West Virginia, Ohio, Indiana, and Pennsylvania.

Customers with medical conditions that prevent them from wearing masks in West Virginia, Ohio and Indiana are free to enjoy the goods, services and accommodations in the same manner as every other non-disabled shopper.

Pennsylvania customers who cannot wear a mask are not any more of a threat than shoppers in West Virginia, Ohio, or Indiana who cannot wear masks, yet customers who cannot, or simply choose not to, wear masks in those three other states are

permitted to fully enjoy the same public accommodation as everyone else. In Pennsylvania, and Oil City specifically, customers who cannot wear a mask because of a disability, as that term is defined in the ADA, are screened out of equal access to Giant Eagle, shunned, and are not permitted inside the store.

Because Plaintiff cannot wear a mask, he cannot select his own groceries at a time and place that is convenient to him, just like every other customer in the store. Because Plaintiff cannot wear a mask, he must have someone else shop for him inside the store and he cannot pick up his groceries on the day he chooses to shop. Since he asserted his rights under the ADA and requested full and equal access to shop inside the Giant Eagle store with a reasonable modification to its policy, Plaintiff has been banned from the Oil City Giant Eagle premises in the future.

a. Plaintiff is Protected by the ADA

Plaintiff's anxiety disorder, panic disorder, PTSD, and other disorders outlined in his medical records qualify as a disability as that term is defined by the ADAAA, as described above. Plaintiff has received disability benefits due to his conditions, as evidenced by his medical records. Plaintiff's conditions prevent him from wearing a mask. Exhibit "A." Plaintiff was not a direct threat to anyone. Id. Plaintiff had no signs or symptoms of Covid 19, and his medical conditions clearly

fall within the exception to the Pennsylvania Secretary of Health's Order, and the corresponding guidelines. Id.

- b. Giant Eagle Must Comply with the ADA's Mandate Concerning Public Accommodations and Was Required to Modify its Mask Policy.

Without question, Giant Eagle is a public accommodation as defined by the ADA. Giant Eagle is open to the public and it must provide full and equal access to its goods, services, privileges, advantages and accommodations within the stores that it owns and operates. Giant Eagle must make reasonable modifications to its policies to comply with Title III and Giant Eagle cannot force disabled customers to accept alternative arrangements if they cannot wear masks and they are not determined to be a direct threat to the health or safety of others following an individualized assessment. Giant Eagle is also prohibited from threatening, coercing, and retaliating against customers like Plaintiff who assert their rights under the ADA.

- c. Giant Eagle Denied Plaintiff "Full and Equal Enjoyment" of its Public Accommodation Based on his Disability

Plaintiff was not only refused full and equal enjoyment of the Oil City Giant Eagle store because his disabling conditions prevent him from wearing a mask, Giant Eagle retaliated against him and threatened him with arrest for trespass in the future if Plaintiff steps foot on the premises of the Oil City Giant Eagle. Plaintiff

will also be refused full and equal access to all Giant Eagle stores in the future while Giant Eagle's illegal mask policy is in place.

The ADA requires that goods, services, facilities, privileges, advantages, and accommodations be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual. The United States Supreme Court has defined the phrase "most integrated setting" to mean "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible." Anderson v. Macy's, Inc., 943 F. Supp. 2d 531, 549 (J. Hornak) (W.D. Pa. 2013), quoting Olmstead v. L.C. ex. Rel. Zimring, 527 U.S. 581, 592, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999). "Providing segregated accommodations and services relegates persons with disabilities to the status of second-class citizens." 28 C.F.R. § 36 app. C.

Title III prohibits places of public accommodation from providing people with disabilities with services, facilities, privileges, advantages, or accommodations that are "not equal to," or are "different or separate from" those provided to other individuals. 42 U.S.C. §12182(b)(1)(A)(ii)-(iii). Title III requires all places of public accommodation to have access to the physical environment of the accommodation.

Plaintiff requested a modification to the mask policy due to his disability. The request was reasonable and in accordance with the recommendations, orders

and guidelines of the Pennsylvania Health Secretary, the Pennsylvania Department of Health, and the CDC. Giant Eagle made no individual direct threat analysis and merely implemented a zero-exception corporate policy. The requested modification would have allowed Plaintiff to enjoy full and equal access the grocery store as provided to people who are not disabled and are able to comply with the request to wear a mask without potentially subjecting themselves to respiratory distress and/or other physical or mental distress.

**D. Plaintiff Will Suffer Irreparable Harm in the Absence of Preliminary Relief**

Without preliminary injunctive relief, Plaintiff cannot set foot on the premises of the grocery store that is located only three-tenths of a mile from his home without trespassing. Plaintiff has been banned from the premises. Not only is Plaintiff prohibited from full and equal access to a public accommodation, Plaintiff has no access to the public accommodation without injunctive relief.

Plaintiff has been banned from a public grocery store because he challenged an illegal policy that violates the ADA. This Honorable Court should use its equity powers to enjoin Giant Eagle from blatantly disregarding Title III of the ADA. Plaintiff cannot comply with the mask policy at any Giant Eagle without putting his physical and emotional health at risk. Injunctive relief is the only remedy available to Plaintiff under Title III of the ADA and this type of illegal corporate

conduct is exactly the type of discrimination and retaliation that Congress sought to end with the enactment of Title III of the ADA.

**E. The Balance of Equities Tips Sharply in Plaintiff's Favor**

Plaintiff did nothing wrong, while Giant Eagle's policy and its actions towards him broke the law. Plaintiff is no more of a threat to anyone than every shopper in Giant Eagle's West Virginia, Ohio, or Indiana stores who either cannot, or simply chose not to, wear a mask. There is no justifiable reason for Giant Eagle's policy and its refusal to modify its policy. Giant Eagle's proposed alternative arrangements are unacceptable and unequal.

Giant Eagle implemented its zero-exception policy to achieve "consistency." Consistency is not an excuse to ignore the law. There is nothing in the ADA or the regulations that allow public accommodations to discriminate or retaliate against people with disabilities as long as the public accommodation applies the same rule to everyone; the exact opposite is true, and Giant Eagle should have known better than to implement such a ridiculous policy.

The seats at the back of a bus are made of the same materials as those in the middle or front of the bus, but forcing people to accept an arbitrary mandate about where they can go and how they can utilize a public accommodation, because of a characteristic or disability that they did not ask for or choose, is wrong. The whole

purpose of this Honorable Court’s equitable powers is to level the playing field and enforce what is legal and what is right.

Plaintiff is certain that this Honorable Court would not allow a corporation to keep people out of its stores because of their race, religion or sex. Plaintiff is certain that this Honorable Court would enjoin a corporation from refusing access to a public store because the customer could not shop in the store without a service dog. This case is no different; Plaintiff has been discriminated against and retaliated against in a clear violation of the ADA and this Honorable Court should use its powers of equity to right this wrong.

**F. The Public Interest Favors a Grant of Preliminary Relief to Plaintiff.**

Giant Eagle’s policy treats its “guests” like untouchable “lepers.” The ADA and the regulations implementing it have allowed disabled persons to fully and equally enjoy access to public accommodations for thirty years. The ADAAA was enacted to ensure that the definition of a person with a disability is as broad a definition as possible. The Pennsylvania Department of Health and the Pennsylvania Health Secretary put in place an order and guidelines that recognize the need for an accommodation that waives the mask requirement for anyone who cannot wear a mask because of a medical condition. The CDC guidelines also recognize that people who have trouble breathing when they don a mask should not wear masks.

The reason that Giant Eagle has no mask policy at all in Ohio, for example, is because Ohio Governor, Mike DeWine, felt that enacting a mandatory mask policy was an unreasonable extension of government power; “a bridge too far.” Exhibit “L”. Giant Eagle has used politics to determine whether or not to insist that all of its customers wear masks in its stores, rather than an individualized direct threat analysis. Exhibit “C” is unequivocal proof that Giant Eagle’s treatment of its customers is based upon the political directives of the states in which its stores are located.

Giant Eagle’s policy in Pennsylvania is illegal and unjustifiable. The policy is no different than a policy that would prohibit all shoppers from entering its stores accompanied by a dog; any dog – no exceptions. Perhaps it would just be too easy for shoppers to put a “service dog” vest on their golden retrievers and claim that their pets are there to assist the customers with navigation of the store or picking up items. Such a policy would clearly violate the ADA, and Giant Eagle’s mask policy also clearly violates the ADA.

The ADA recognizes the significant public interest in full and equal inclusion of disabled persons with respect to access to goods and services provided inside public accommodations like grocery stores. The regulations clearly establish that Giant Eagles’ alternative options that it has offered to its customers at some locations are not a viable alternative to allowing disabled shoppers who

cannot wear masks to shop inside Pennsylvania stores like everyone else. Giant Eagle cannot compel disabled customers to choose some alternative; that is illegal. There is no justifiable reason why Plaintiff was, or should be, excluded from entering any Giant Eagle store. Giant Eagle's permanent retaliatory ban of Plaintiff from its Oil City store is unconscionable and cannot be allowed to stand.

The public interest will best be served by this Honorable Court issuing an injunction that prohibits Giant Eagle from excluding disabled people who cannot wear masks from its stores. The public interest will best be served by an injunction that merely requires Giant Eagle to follow the guidelines of the Pennsylvania Department of Health so that shoppers who cannot wear a mask can shop at Giant Eagle stores like everyone else. All Plaintiff wants is to have access to a public accommodation in the same way that he has access to any other public accommodation; full, equal, safe, and in compliance with the Pennsylvania Department of Health recommendations, but more importantly, in compliance with the law.

#### **IV. CONCLUSION AND RELIEF REQUESTED**

For the reasons set forth herein, this Honorable Court should grant Plaintiff's request for a preliminary injunction that prohibits Giant Eagle from excluding customers with disabilities that prevent them from wearing masks to shop at Giant Eagle stores in the same manner as non-disabled customers. This Honorable Court

should enter an order requiring Giant Eagle to permit customers who cannot wear masks to shop inside its stores in compliance with the guidelines published by the Pennsylvania Department of Health. This Honorable Court should also enjoin the Oil City Giant Eagle from banning Plaintiff from its premises in retaliation for asserting his rights under the ADA.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

Dated July 1, 2020

/s Thomas B. Anderson

Thomas B. Anderson, Esquire  
PA I.D. #79990

THOMSON, RHODES & COWIE, P.C.  
Firm No. 720  
Two Chatham Center, 10<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 232-3400

Attorneys for the Plaintiff

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

KIMBERLY PLETCHER, )  
                        )  
Plaintiff,           )  
                        )  
and                   ) Case No. 2:20-cv-754 NBF  
                        )  
JUDITH MARCH, JOSIAH KOSTEK,     )  
GRAYDON GRAHAM, RONNIE         )  
STURCHIO, NICHOLAS CONLEY,      )  
SHARON BURTON, DEBBIE VIDOVICH, )  
PAUL SHEPHERD, GERALD         )  
THOMCHICK, CONNIE WINNER, JOHN )  
DURSO, TRACY O'CONNOR, DOUGLAS )  
JANASZEK, OWEN BURK, BEN       )  
ZYTNICK, GREGORY MANDICH, JOHN )  
BLACKSTONE, JAMES LEONARD,     )  
KATHLEEN CUNNINGHAM, JAMIE     )  
MARKS-BORICHEVSKY, POLLY      )  
QUINTILIANI, CAROLYN L. STEWART, )  
TOMMY WYNKOOP, TAMMIE AIKEN,   )  
STEVEN PARSONS, JEFREY COULSON, )  
KATHERINE DUCKSTEIN, NATHANIEL )  
DOLLAR, THOMAS BENSOR, VICKI   )  
PARKER, STEPHEN MCRAE, KRISTIE )  
HARNISH, MOLLY SHIRK, MICHAEL )  
HAMMERS,                )  
                        )  
Consolidated Plaintiffs       )  
                        )  
v.                     )  
                        )  
GIANT EAGLE, INC. and C&J GROCERY )  
CO., LLC,               )  
                        )  
Defendants.

**ORDER OF COURT**

AND NOW, on this \_\_\_\_ day of \_\_\_\_\_, 2020, upon consideration  
of Plaintiff's Amended Motion for Preliminary Injunction, it is hereby Ordered,

Adjudged and Decreed that Plaintiff's motion is granted. Giant Eagle, Inc. ("Giant Eagle") is hereby enjoined from denying access to its stores and premises to people with disabilities that prevent them from wearing masks or other cloth face coverings who seek to enter and fully enjoy all goods, services, facilities, privileges, advantages and/or accommodations owned, leased or operated by Giant Eagle.

Giant Eagle is enjoined from further implementing and enforcing its zero-exception mask policy. However, Giant Eagle may enact policies or procedures in compliance with the Order of the Pennsylvania Health Secretary and the Pennsylvania Department of Health guidelines.

Giant Eagle is further enjoined from preventing Plaintiff, Josiah Kostek, from entering the premises and utilizing the goods, services, facilities, privileges, advantages, and/or accommodations at the Oil City Giant Eagle grocery store. Giant Eagle is also enjoined from any further retaliation against Plaintiff, Josiah Kostek, for asserting his rights pursuant to the Americans with Disabilities Act.

---

J.

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

Josiah Kostek	:	
Plaintiff,	:	
	:	
vs.	:	No.: No.: 20-135 (E)
	:	
Giant Eagle, Inc.	:	
	:	
Defendant.	:	
	:	
	:	
	:	
	:	
	:	

**STATEMENT OF JOSIAH KOSTEK**

Josiah Kostek makes this statement subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn fabrication to authorities, which provides that if he makes a knowingly false statement, he may be subject to criminal penalties.

1. My name is Josiah Kostek. I reside at 521 Hiland Ave, Oil City, Pennsylvania, 16301. The statements herein are true and are based on my personal knowledge.

2. I have shopped for groceries at the Oil City Giant Eagle Store located at 602 East 2<sup>nd</sup> Street, Oil City, Pennsylvania for approximately eight years. The store is located only three-tenths of a mile from my home and before May 16th, I shopped at the store on a weekly to monthly basis. I walked to the store from my home.

3. The allegations set forth in the complaint filed in this case are true and accurate to the best of my knowledge and recollection. Additionally, I was assaulted by one of the officers when I was arrested for “trespass” because I cannot wear a mask. The officer injured my neck and forced a mask on my face during the unjustified arrest. The injury would not have

happened, but for Giant Eagle's illegal mask policy and response. I am currently undergoing mental and emotional counseling as a result of the event and assault and have been prescribed medication to reduce the effects of anxiety and PTSD.

4. I suffer from panic attacks, anxiety, and claustrophobia.

5. I cannot wear masks or cloth face coverings without experiencing severe anxiety, difficulty breathing.

6. I have not experienced any signs or symptoms of Covid 19, nor have I, or anyone I have been exposed to, been diagnosed with Covid 19.

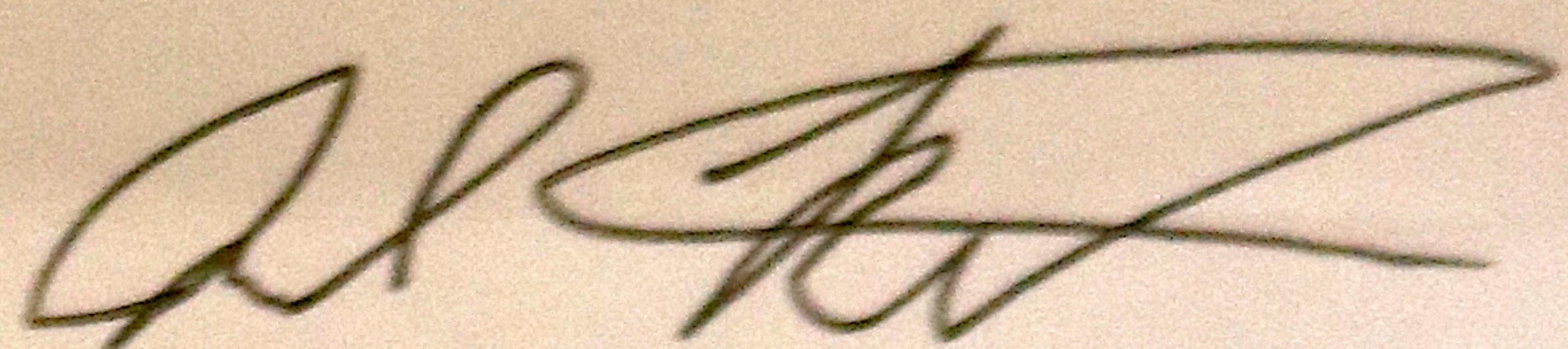
7. I advised several Giant Eagle employees, that I cannot wear a mask due to my medical conditions. I was told that I cannot shop in the store without wearing a mask. I was denied the ability to shop in the store because I cannot wear a mask due to my medical conditions. I have been threatened with physical assault and called a "dumbass" by Giant Eagle employees because I tried to purchase fruit in the store without wearing a mask. I have now been permanently banned from the store because I did not comply with the mask policy and because I asserted my rights under the Americans with Disabilities Act and the Pennsylvania Human Relations Act.

8. I received the letter from Giant Eagle Manager, dated May 30, 2020, attached hereto. This letter was sent after I asked to shop in the store without a mask because of my disability and asserted my legal rights. I did not receive the letter for approximately a week because I am recuperating from surgery. The letter was also sent to an incorrect address.

9. Shopping for my groceries elsewhere is very inconvenient, particularly when compared to shopping at the Oil City Giant Eagle, given its close proximity to my home. I want to return to shop in the Oil City Giant Eagle, immediately.

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12. Without the injunctive relief requested in my complaint, I cannot now, nor will I be able in the future, to shop at the Oil City Giant Eagle in any way and I cannot and will not be able to shop inside any Giant Eagle store as long as Giant Eagle refuses to follow the Pennsylvania Health Secretary's Order, the Pennsylvania Health Department's guidelines, and/or the CDC guidelines and requires that I wear a mask.



Josiah Kostek

06-10-2020

\_\_\_\_\_  
Date

**non-trespass order for Josiah Costek**

Mancini-Liebmann, Diana <Diana.Mancini-Liebmann@ganteagle.com>

Fri 5/29/2020 1:51 PM

To: Albert, Paul <Paul.Albert@ganteagle.com>;  
Dailey, James <James.Dailey@ganteagle.com>;  
brosenberger@oilcity.org <rosenberger@oilcity.org>  
Cc: Jacoby, Ronald <Ronald.Jacoby@ganteagle.com>

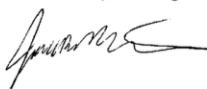


To: Josiah Costek  
120 Washington Ave  
Oil City, PA 16301

This letter is to inform Josiah Costek that he is no longer permitted on the property of Oil City Giant Eagle. Violation of this request is considered unlawful trespassing and will result in police involvement.

Thank you for your co-operation in this matter,

James Dailey, Giant Eagle Manager

A handwritten signature of James Dailey in black ink.

5-30-20

A handwritten date in black ink, indicating May 30, 2020.

<https://outlook.office.com/mail/sentitems/id/AAQkAGMxNWJhZjcyI.WRiZDktNGUzMC...> 5/29/2020



Thank you for contacting Giant Eagle, we genuinely appreciate your feedback.

Maryland and Pennsylvania government officials implemented a statewide order mandating that all businesses require employees to wear masks or other face coverings. At Giant Eagle, we are interpreting this to reflect all Team Members in all areas of our company, including stores, retail support centers and corporate offices.

Both the Maryland and Pennsylvania directives include mandatory mask or face covering for our guests as well. To ensure consistency for everyone involved, we are applying this directive to all guests, regardless of any medical or other claim that may be made.

In PA and Maryland - Everyone is REQUIRED to wear masks.

In WV/OH/IN, only Team Members are required to wear masks, guests are ENCOURAGED but not required.

We have numerous options in place to best support guests who report a medical condition and appropriately bring it to the attention of store leadership.

We also offer Curbside Pick Up and Home Delivery Services for those who are not able to wear masks or face coverings.

Thank you for your help in keeping our stores safe and providing peace of mind for fellow guests and Team Members.

Sincerely,  
Giant Eagle Customer Care

# Gov. Wolf: Health Secretary Signs Order Providing Worker Safety Measures to Combat COVID-19

April 15, 2020

## Press Release, Public Health

Governor Tom Wolf announced today that Dr. Rachel Levine, under her authority as Secretary of the Department of Health to take any disease control measure appropriate to protect the public from the spread of infectious disease, signed an order directing protections for critical workers who are employed at businesses that are authorized to maintain in-person operations during the COVID-19 disaster emergency.

"This order provides critical protections for the workers needed to run and operate these life-sustaining establishments," Governor Wolf said. "Businesses across the state have already begun to implement many of these protocols on their own, and we applaud their efforts to protect employees and customers."

"This order will ensure continuity across all life-sustaining businesses and will further our efforts to protect the health and safety of all Pennsylvanians," Dr. Levine said. "Together, we can all help mitigate the spread of COVID-19."

The order establishes protocols to help employees maintain a social distance during work:

- Provide masks for employees to wear during their time at the business, and make it a mandatory requirement while at the work site, except to the extent an employee is using break time to eat or drink, in accordance with the guidance from the Department of Health and the CDC. Employers may approve masks obtained or made by employees in accordance with this guidance;
- Stagger work start and stop times for employees when practical to prevent gatherings of large groups entering or leaving the premises at the same time;
- Provide sufficient space for employees to have breaks and meals while maintaining a social distance of 6 feet, including limiting the number of employees in common areas and setting up seating to have employees facing forward and not across from each other;
- Conduct meetings and training virtually. If a meeting must be held in person, limit the meeting to the fewest number of employees possible, not to exceed 10 employees at one time and maintain a social distance of 6 feet.
- Ensure that the facility has a sufficient number of employees to perform all measures listed effectively and in a manner that ensures the safety of the public and employees;
- Ensure that the facility has a sufficient number of personnel to control access, maintain order, and enforce social distancing of at least 6 feet;
- Prohibit non-essential visitors from entering the premises of the business; and
- Ensure that all employees who do not speak English as their first language are aware of procedures by communicating the procedures, either orally or in writing, in their native or preferred language.

Upon discovery of an exposure to a person who is a probable or confirmed case of COVID-19, businesses are also ordered to implement temperature screenings before employees enter the business prior to the start of work and send any employee home who has an elevated temperature of 100.4 degrees Fahrenheit or higher. Sick employees should follow CDC-recommended steps. Employees should not return to work until the CDC criteria to discontinue home isolation are met, in consultation with the health care providers and state and local health departments. Employers are encouraged to implement liberal paid time off for employees who are on home isolation.

Upon an exposure, businesses are also ordered to do the following:

- Close off and ventilate areas visited by that individual;
- Wait a minimum of 24 hours, or as long as practical, before beginning cleaning and disinfection;
- Clean and disinfect all spaces, especially commonly used rooms and shared electronic equipment;

- Identify and notify employees who were in close contact with that individual (within about 6 feet for about 10 minutes); and
- Ensure that the business has a sufficient number of employees to perform these protocols effectively and immediately.

In addition to the social distancing, mitigation and cleaning protocols, businesses that serve the public within a building or defined area are ordered to implement the following, based on the size of the building and number of employees:

- Require all customers to wear masks while on premises, and deny entry to individuals not wearing masks, unless the business is providing medication, medical supplies, or food, in which case the business must provide alternative methods of pick-up or delivery of goods, except individuals who cannot wear a mask due to a medical condition (including children the age of 2 years) may enter the premises without having to provide medical documentation;
- Conduct business with the public by appointment only and, to the extent that this is not feasible, limit occupancy to no greater than 50 percent of the number stated on their certificate of occupancy as necessary to reduce crowding in the business and at check-out and counter lines in order to maintain a social distance of 6 feet, and place signage throughout each site to mandate social distancing for both customers and employees;
- Alter hours of business so that the business has sufficient time to clean or to restock or both;
- Install shields or other barriers at registers and check-out areas to physically separate cashiers and customers or take other measures to ensure social distancing of customers from check-out personnel, or close lines to maintain a social distance between of 6 feet between lines;
- Encourage use of online ordering by providing delivery or outside pick-up;
- Designate a specific time for high-risk and elderly persons to use the business at least once every week if there is a continuing in-person customer-facing component;
- In businesses with multiple check-out lines, only use every other register, or fewer. After every hour, rotate customers and employees to the previously closed registers. Clean the previously open registers and the surrounding area, including credit card machines, following each rotation;
- Schedule handwashing breaks for employees at least every hour; and
- Where carts and handbaskets are available, assign an employee to wipe down carts and handbaskets before they become available to a new customer.

Failure to comply with these requirements will result in enforcement action that could include citations, fines, or license suspensions. Compliance with the order will be enforced beginning Sunday, April 19 at 8:00 PM.

The governor has directed the following state agencies and local officials to enforce orders related to the COVID-19 pandemic to the full extent of the law:

- Pennsylvania Liquor Control Board
- Department of Health
- Department of Agriculture
- Department of Labor and Industry
- Pennsylvania State Police
- Local officials, using their resources to enforce closure orders within their jurisdictions

"It is vital that we require businesses to practice these common-sense and scientifically proven safety protocols for the protection of workers and the public at-large. And that is what this order does," said state Senator Tina Tartaglione, Democratic chairwoman of the Senate Labor and Industry Committee. "Many of the measures included in this order were part of legislation that I proposed. I applaud this swift action by Secretary Levine and Governor Wolf to implement these much needed protocols."

This order follows another order by Dr. Levine providing direction for maintaining and cleaning buildings for businesses authorized to maintain in-person operations under her and Governor Tom Wolf's life-sustaining business orders announced March 19.

Governor Tom Wolf also recommends that Pennsylvanians wear a mask any time they leave their homes for life-sustaining reasons.

View Secretary Levine's order as a PDF here or on Scribd.

For the most up-to-date information on COVID-19, Pennsylvanians should visit <https://www.pa.gov/guides/responding-to-covid-19/>.

View this information in Spanish.



## Order of the Secretary of the Pennsylvania Department of Health Directing Public Health Safety Measures for Businesses Permitted to Maintain In-person Operations

The 2019 novel coronavirus (COVID-19) is a contagious disease that is rapidly spreading from person to person in the Commonwealth of Pennsylvania. COVID-19 can be transmitted from people who are infected with the virus even if they are asymptomatic or their symptoms are mild, such as a cough. Additionally, exposure is possible by touching a surface or object that has the virus on it and then touching one's mouth, nose, or eyes.

COVID-19 is a threat to the public's health, for which the Secretary of Health may order general control measures, including, but not limited to, closure, isolation, and quarantine. This authority is granted to the Secretary of Health pursuant to Pennsylvania law. *See Section 5 of the Disease Prevention and Control Law, 35 P.S. §§ 521.1, 521.5; sections 2102 and 2106 of the Administrative Code of 1929, 71 P.S. §§ 532, 536; and the Department of Health's (Department's) regulations at 28 Pa. Code §§ 27.60-27.68 (relating to disease control measures; isolation; quarantine; movement of persons subject to isolation or quarantine; and release from isolation and quarantine).* Particularly, the Secretary has the authority to take any disease control measure appropriate to protect the public from the spread of infectious disease. *See 35 P.S. § 521.5; 71 P.S. §§ 532(a), 1402(a); 28 Pa. Code § 28.60.*

Recognizing that certain life-sustaining businesses in the Commonwealth must remain open despite the need for strong mitigation to slow the spread of the virus, I am ordering certain actions to be taken by employers and their employees to protect their health and lives, the health and lives of their families, and the health and lives of the residents of the Commonwealth who depend upon their services. Special consideration is required to protect not only customers, but the workers needed to run and operate these establishments.

As cleaning, disinfecting, and other maintenance and security services performed by building service employees are critical to protecting the public health by reducing COVID-19 infection in the Commonwealth, I previously directed building safety measures in an Order that went into effect at 12:01 a.m. on April 6, 2020. Similarly, based upon the manner of COVID-19's continued and extensive spread in the Commonwealth and in the world, and its danger to Pennsylvanians, I have determined that an additional appropriate disease control measure is the further direction of safety measures for all employees and visitors at life-sustaining businesses that have remained open during the COVID-19 disaster emergency.

Accordingly, on this date, April 15, 2020, to protect the public from the spread of COVID-19, I hereby order:

A. A business that is authorized to maintain in-person operations, other than health care providers, pursuant to the Orders that the Governor and I issued on March 19, 2020, as subsequently amended, shall implement, as applicable, the following social distancing, mitigation, and cleaning protocols:

- (1) in addition to maintaining pre-existing cleaning protocols established in the business, as specified in paragraph (2) below, clean and disinfect high-touch areas routinely in accordance with guidelines issued by the Centers for Disease Control and Prevention (CDC), in spaces that are accessible to customers, tenants, or other individuals;
- (2) maintain pre-existing cleaning protocols established by the business for all other areas of the building;
- (3) establish protocols for execution upon discovery that the business has been exposed to a person who is a probable or confirmed case of COVID-19, including:
  - a. close off areas visited by the person who is a probable or confirmed case of COVID-19. Open outside doors and windows and use ventilation fans to increase air circulation in the area. Wait a minimum of 24 hours, or as long as practical, before beginning cleaning and disinfection. Cleaning staff should clean and disinfect all areas such as offices, bathrooms, common areas including but not limited to employee break rooms, conference or training rooms and dining facilities, shared electronic equipment like tablets, touch screens, keyboards, remote controls, and ATM machines used by the ill person, focusing especially on frequently touched areas;
  - b. identify employees that were in close contact (within about 6 feet for about 10 minutes) with a person with a probable or confirmed case of COVID-19 from the period 48 hours before symptom onset to the time at which the patient isolated:
    - i. If the employee remains asymptomatic, the person should adhere to the practices set out by the CDC in its April 8, 2020 Interim Guidance for Implementing Safety Practice for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19;
    - ii. If the employee becomes sick during the work day, the person should be sent home immediately. Surfaces in the employee's workspace should be cleaned and disinfected. Information on other employees who had contact with the ill employee during the time the employee had symptoms

and 48 hours prior to symptoms should be compiled. Others at the workplace with close contact within 6 feet of the employee during this time would be considered exposed;

- iii. Promptly notify employees who were close contacts of any known exposure to COVID-19 at the business premises, consistent with applicable confidentiality laws;
  - iv. ensure that the business has a sufficient number of employees to perform the above protocols effectively and timely;
  - c. implement temperature screening before an employee enters the business, prior to the start of each shift or, for employees who do not work shifts, before the employee starts work, and send employees home that have an elevated temperature or fever of 100.4 degrees Fahrenheit or higher. Ensure employees practice social distancing while waiting to have temperatures screened;
  - d. employees who have symptoms (*i.e.*, fever, cough, or shortness of breath) should notify their supervisor and stay home;
  - e. sick employees should follow CDC-recommended steps. Employees should not return to work until the CDC criteria to discontinue home isolation are met, in consultation with healthcare providers and state and local health departments. Employers are encouraged to implement liberal paid time off for employees who do not return to work as set forth above.
- (4) stagger work start and stop times for employees when practicable to prevent gatherings of large groups entering or leaving the premises at the same time;
  - (5) provide sufficient amount of space for employees to have breaks and meals while maintaining a social distance of 6 feet, while arranging seating to have employees facing forward and not across from each other in eating and break settings;
  - (6) stagger employee break times to reduce the number of employees on break at any given time so that appropriate social distancing of at least 6 feet may be followed;
  - (7) limit persons in employee common areas (such as locker or break rooms, dining facilities, training or conference rooms) at any one time to the number of employees that can maintain a social distance of 6 feet;

- (8) conduct meetings and trainings virtually (*i.e.*, by phone or through the internet). If a meeting must be held in person, limit the meeting to the fewest number of employees possible, not to exceed 10 employees at one time, and maintain a social distance of 6 feet;
  - (9) provide employees access to regular handwashing with soap, hand sanitizer, and disinfectant wipes and ensure that common areas (including but not limited to break rooms, locker rooms, dining facilities, rest rooms, conference or training rooms) are cleaned on a regular basis, including between any shifts;
  - (10) provide masks for employees to wear during their time at the business, and make it a mandatory requirement to wear masks while on the work site, except to the extent an employee is using break time to eat or drink, in accordance with the guidance from the Department of Health and the CDC. Employers may approve masks obtained or made by employees in accordance with Department of Health guidance;
  - (11) ensure that the facility has a sufficient number of employees to perform all measures listed effectively and in a manner that ensures the safety of the public and employees;
  - (12) ensure that the facility has a sufficient number of personnel to control access, maintain order, and enforce social distancing of at least 6 feet;
  - (13) prohibit non-essential visitors from entering the premises of the business; and
  - (14) ensure that all employees are made aware of these required procedures by communicating them, either orally or in writing, in their native or preferred language, as well as in English or by a methodology that allows them to understand.
- B. In addition to the above, the following measures apply to businesses, other than health care providers, that serve the public within a building or a defined area:
- (1) where feasible, businesses should conduct business with the public by appointment only and to the extent that this is not feasible, businesses must limit occupancy to no greater than 50% of the number stated on the applicable certificate of occupancy at any given time, as necessary to reduce crowding in the business, and must maintain a social distance of 6 feet at check-out and counter lines, and must place signage throughout each site to mandate social distancing for both customers and employees;

- (2) based on the building size and number of employees, alter hours of business so that the business has sufficient time to clean or to restock or both;
- (3) install shields or other barriers at registers and check-out areas to physically separate cashiers and customers or take other measures to ensure social distancing of customers from check-out personnel, or close lines to maintain a social distance between of 6 feet between lines;
- (4) encourage use of online ordering by providing delivery or pick-up options;
- (5) designate a specific time for high-risk and elderly persons to use the business at least once every week if there is a continuing in-person customer-facing component;
- (6) require all customers to wear masks while on premises, and deny entry to individuals not wearing masks, unless the business is providing medication, medical supplies, or food, in which case the business must provide alternative methods of pick-up or delivery of such goods; however, individuals who cannot wear a mask due to a medical condition (including children under the age of 2 years per CDC guidance) may enter the premises and are not required to provide documentation of such medical condition;
- (7) in businesses with multiple check-out lines, only use every other register, or fewer. After every hour, rotate customers and employees to the previously closed registers. Clean the previously open registers and the surrounding area, including credit card machines, following each rotation;
- (8) schedule handwashing breaks for employees at least every hour; and
- (9) where carts and handbaskets are available for customers' use, assign an employee to wipe down carts and handbaskets before they become available to each customer entering the premises.

This Order shall take effect immediately and be enforceable as of 8:00 p.m. on April 19, 2020.



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Rachel Levine, MD  
Secretary of Health



## Frequently Asked Questions:

**Updated May 1, 2020**

### **Order of the Secretary of the Pennsylvania Department of Health Directing Public Health Safety Measures for Businesses Permitted to Maintain In-Person Operation**

*Recognizing that certain life-sustaining businesses in the Commonwealth must remain open despite the need for strong mitigation to slow the spread of the 2019 Corona virus (COVID-19), the Secretary of Health has ordered certain actions to be taken by employers and the employees of life-sustaining businesses (employees) to protect their health and lives, the health and lives of their families, and the health and lives of the residents of the Commonwealth who depend upon their services.*

**Q. What sort of situations would mandate a 24-hour wait time, and what sort of situations would allow for a lesser wait time to disinfect surfaces?**

A. All businesses are ordered to wait a minimum of 24 hours, or as long as practical, before beginning cleaning and disinfection.

**Q. Often employees notify management of their pending or confirmed COIVD-19 case several days after they have been in the office or business. If the virus is not expected to live for several days on hard surfaces, do businesses still need to do additional cleaning?**

A. According to the CDC, if more than 7 days have passed since the person who is sick visited the business or facility, enhanced cleaning and disinfection is not necessary. However, the business should continue routine cleaning. If the person who is sick was onsite at the business or facility within 7 days, then the work site should be cleaned and disinfected.

**Q. The Order calls for 50% occupancy, every other register and cleaning every hour. If our business adheres to the social distancing and best practices mentioned in the Order, can we open additional registers if they are less than 6 feet away?**

A. The Department of Health (Department) recommends that businesses take as many precautions as possible to ensure employee safety. Disease transmission between employees is likely when working closely together. [The U.S. Department of Labor Occupational Health and Safety Administration \(OSHA\)](#) provides similar recommendations for businesses in regard to social distancing, including the “every other register” recommendation. However, if all other public health practices have been implemented, including limiting in-person shopping, limiting the number of customers to reduce crowding, installing shields or barriers, performing regular



cleaning and designating a specific shopping time for high risk individuals, then a business may consider opening checkout lanes that are next to each other.

**Q. The Order provides for an employee being sent home immediately if they get sick during the work day if exposed to the person who was a probable or confirmed case, and also provides for the cleaning and disinfecting of the surfaces in that employee's workspace, but why does it not mandate a 24 hour waiting period in that case?**

A. All life-sustaining businesses are ordered to wait a minimum of 24 hours, or as long as practical, before beginning cleaning and disinfection.

**Q. What type of cleaning is required?**

A. Facilities must clean and disinfect all spaces, especially commonly used rooms and shared electronic equipment. The Centers for Disease Control and Prevention (CDC) has [established guidance](#) on appropriate cleaning. Businesses should also refer to the Secretary's April 6, 2020 Order Directing Building Safety Measures.

**Q. Can a life-sustaining business use a third-party vendor or third-party service for cleaning?**

A. Yes, businesses can use an established or new vendor to comply with cleaning requirements.

**Q. Certain areas of our facility should never be unmanned even for cleaning. In that situation, if the client is in compliance with CDC Guidelines, would they be allowed to continue to man this critical equipment?**

A. Yes. An employer should consider the safety of its facility and employees when making the best decision possible.

**Q. If a facility is regulated by the FDA and can't comply because it cannot open up doors and windows in a clean room environment, what should it do?**

A. The business should follow FDA regulations and should consider the safety of its facility and employees while complying while making the best decision possible.

**Q. Does an entire facility need to be shut down in order to do appropriate cleaning?**

A. No. Businesses with a campus of multiple facilities or a building with multiple offices only need to close and clean the area of the building where an individual with a suspected or confirmed positive case of COVID-19 has worked. However, businesses should be mindful of bathrooms, breakrooms, building lobbies and other frequently visited areas.



**Q. Who is responsible for cleaning costs?**

**A. The business, unless the lease or other agreement establishes this as a responsibility of the landlord**

**Q. Is the Commonwealth dictating a particular mask?**

A. No. Employers may approve masks obtained or made by employees in accordance with the Department's [guidance](#). Customers may utilize masks obtained or made in accordance with the Department's [guidance](#). Scarves, bandanas, or other face covering will also suffice in place of a mask.

**Q. Are there recommendations on where employers can purchase masks for employees?**

A. Employers do not need to purchase masks from any specific vendor, but are required to provide masks to employees to wear during business hours. Homemade masks and masks owned by employees are allowable. The Department has published [guidance](#) on how to make cloth masks. Additionally, the Department of Community and Economic Development has created a [Business-2-Business Directory](#), which identifies potential vendors of masks and other Personal Protective Equipment (PPE).

**Q. Would a disposable face shield suffice in lieu of a mask?**

A. A disposable face shield would suffice in lieu of a mask. Employers may approve masks obtained or made by employees in accordance with guidance on homemade masks found on the Department's website.

**Q. Does this Order apply to essential workers who are outdoors, and heavy physical activity is part of their job description, such as employee of solid waste companies and landscaping?**

A. Yes. However, an employee does not need to wear a mask if it impedes their vision, if they have a medical condition, or if it would create an unsafe condition in which to operate equipment or execute a task.

**Q. Do banks and financial institutions need to comply with the masking requirement if there are associated security concerns with face coverings?**

A. Yes. Bank employees should wear masks at all times. Customers can be asked to remove their masks to reveal their face and then recover their face after the bank employee has identified the customer. This should take place within a minimum distance of six feet.



**Q. Is it acceptable for workers to remove facial coverings for operations where it would be unsafe to keep in place or to be in compliance with safety requirements?**

A. Yes. An employee does not need to wear a mask if it impedes their vision, if they have a medical condition, or if it would create an unsafe condition in which to operate equipment or execute a task.

**Q: What should employers do when an employee says they have anxiety and any mouth, nose covering can lead to panic attacks or other medical conditions?**

A. An employee does not need to wear a mask if it impedes their vision, if they have a medical condition, or if it would create an unsafe condition in which to operate equipment or execute a task.

**Q. Are masks required while driving for work?**

A. If the person is driving alone throughout the trip, no mask is needed in the vehicle, however, should they need to travel through a toll-booth or other drive thru they should be wearing a mask.

**Q. Does someone working in a personal office need a mask at all times?**

A. Employees isolated in their personal office space, when unshared with any other colleagues, do not need to wear a mask. However, when the employee leaves their individual office or has invited a colleague into their office, they must wear a mask. Additionally, one cannot wear a mask while eating or drinking. At those times, social distancing techniques should be applied.

**Q. What about orders that were placed by an employer for masks but will not arrive for some time. How should businesses comply until then?**

A. Employers may approve masks obtained or made by employees in accordance with guidance on homemade masks found on the Department's [website](#).

**Q. Are masks required by transit operators, bus drivers or others who operate a vehicle?**

A. Yes. However, an employee does not need to wear a mask if it impedes their vision, if they have a medical condition, or if it would create an unsafe condition in which to operate equipment or execute a task.

**Q. The Order references CDC guidance on masking, which requires masking only when employees cannot maintain social distancing?**



A. The Governor and Secretary of Health have chosen to employ safety measures beyond the CDC. Employees must wear masks at all times except when isolated from others in a private space or when it adversely affects their health.

**Q. Which body is responsible for ensuring these actions have been taken at a specific workplace?**

A. The Department does not dictate the employer's business structure. The employer is responsible for taking the necessary steps to implement the Secretary's Order **for employees**. **State enforcement agencies have been directed to begin enforcement of the Order with additional education for and warnings to non-compliant businesses, before moving progressively to more significant enforcement steps if warranted.**

**Q. Is there any plan to get this information into the hands of workers so they can ask their employer to take the necessary steps to protect them?**

A. The Secretary's Order and [the Department's FAQs](#) are available to the public on the Department's website. Employers are encouraged to share this information with their employees.

**Q. Is there a code enforcement hotline for employees to call?**

A. No. Complaints will only be taken online. **A webform for employees to submit complaints is available on the Department's [website](#).**

**Q. Will there be a waiver process or exceptions?**

A. This Order applies to life-sustaining businesses that remain open and already includes limited exceptions related to medical conditions and to occupational safety.

**Q. Where can employees report violations?**

A. **A [webform](#) for employees to report violations.**

**Q. If the customer refuses to wear a mask will they be turned away or will the customer be refused service?**

A. Yes, with the exception of businesses that provide medication, medical supplies, or food, which must offer another means for the customer to purchase goods if the customer is unable to wear a mask. Those means could include home delivery or contactless curbside pick-up.



However, individuals who cannot wear a mask due to a medical condition (including children under the age of 2 years per CDC guidance) may enter the premises and **are not required to provide documentation of such medical condition.**

If the customer is refused service, and if the business is not able to provide a mask, the business should consider providing information on mask making, distributing "how to" flyers, or sharing locations where a mask can be purchased. Additionally, businesses should advise the customer of the Secretary's Order; tell the customer that only those who cannot wear a mask due to a medical conditions may enter the premises without a mask; and advise the customer that almost any face covering would be acceptable. If a customer is belligerent or aggressive, there is no expectation that an employee should force a customer to comply or put themselves in a dangerous situation.

**Q. What if someone does not come in with a mask and the business cannot offer an alternative means of serving the customer?**

A. Businesses should consider providing masks to their customers or offering resources to customers for information on how to make masks. Consider sharing mask making on social media, distributing 'how to" flyers, or sharing locations where masks can be purchased. Customers can also be reminded to wear a scarf or bandana as a mask.

**However, individuals who cannot wear a mask due to a medical condition (including children under the age of 2 years per CDC guidance) may enter the premises and are not required to provide documentation of such medical condition.**

**Q. How do businesses avoid confrontation with customers who do not wear a mask?**

A. Businesses should consider how they would deal with a customer who came into their business without a shirt or shoes. Businesses should consider giving customers resources on how to make their own mask or provide a mask.

Additionally, businesses should advise customers of the Secretary's Order; tell the customer that only persons who cannot wear a mask due to a medical condition do not have to comply with requirement to wear a mask; and advise the customer that almost any face covering would be acceptable. If a customer is belligerent or aggressive, there is no expectation that an employee should force a customer to comply or put themselves in a dangerous situation.

**Q. As a manager, how do I handle an employee that refuses to wear a mask? Does this Order mean I can refuse them entry?**



A. All employees of life-sustaining businesses, with the exception of those with a medical condition or in the case of safety issues or while sequestered alone in a room, must wear a mask in the workplace. The Department does not dictate to employers how they should manage their workforce if employees refuse to comply with the Secretary's Order.

**Q. Are building security desks required to have shields or barriers to separate guard staff?**

A. This is not a requirement of the Secretary's Order. However, businesses should consider how much interaction their security staff have with customers or employees. If security staff have significant interactions, the Department recommends having a barrier.

**Q. What are the social distancing guidelines for elevator usage?**

A. Businesses should use their best judgment based on the square footage of the elevator. The Department recommends that business allow as few people as possible while also being mindful of crowds gathering while waiting for the elevator.

**Q. An elevated temperature is just one symptom. Is an elevated temperature enough to send an employee home?**

A. Yes, an elevated temperature should prompt sending the employee home. While an elevated temperature is just one symptom, employees should be monitoring for other symptoms as well and should be encouraged to stay home if exhibiting any of those symptoms.

**Q. Where should temperature screenings take place?**

A. It is best to do screenings as close to the door of a facility or outside, if possible. Businesses should consider taking the temperature of employees in their car as they enter parking lots/garages or inside of a building lobby. If taking temperatures inside, remember to clean high touch surfaces frequently.

**Q. Does the Order require the temperature screening of employees who do not physically enter the building?**

A. No, it is not required of employees who are working from home or have no contact with other employees, but is recommended.

**Q. Is a building owner or management company required to take the temperatures of tenants?**



A. Employers are responsible for taking the temperature or implementing a self-screen policy for their employees. The building owner is not required to screen tenants.

**Q. If an employee tests positive in a leased facility, what requirements are there in terms of notifying other entities that may occupy leased space?**

A. Tenants should notify the building owner that one of their employees has tested positive without sharing personal details. It is recommended that owners notify other tenants that someone within the building has tested positive without sharing personal details and should follow this protocol if one of their employees who works in the building tests positive. Building owners should ensure that common spaces within the building are cleaned according to guidelines.

**Q. If an employee tests positive in a leased facility, how does a business go about implementing temperature checks for staff that work in that leased facility, but do not work for the business. Ex/ Cleaning staff.**

A. The employer is responsible for implementing temperature screenings or implementing self-screening policies of their employees. In the example, the employer of the cleaning staff is responsible for instituting a temperature screening policy. It is recommended that the employer notify the owner of the leased facility of the presence in the leased facility of an employee who tests positive.

**Q. Following an exposure the Order says that “employees” must be screened. Does this mean that essential non-employees, such as contractors and delivery persons do not need to be screened?**

A. Non-employees are not subject to temperature checks; these employees should have temperature checks or self-screening policies put in place by their own employer. If, however, a contractor is physically present in a business as if he or she were an employee and has similar physical contact with employees as if he or she were an employee, the employer should temperature check that contractor.

**Q. If an employer discovers an employee with a confirmed case of COVID-19 has come into the business, does the Order require the employer to institute a temperature check for that person to return to work following their leave period OR does it require temperature screenings of all employees following the first confirmed case?**

A. Businesses should implement temperature screening or a self-screen policy for all employees before they physically enter the worksite upon discovery that the business has been exposed to



a person who is a case of COVID-19. This would include a temperature screening for the employee with a confirmed case when that employee returns to work after the quarantine period.

**Q. The Order provides guidelines for a person with a probable or confirmed case of COVID19. What is considered “probable”?**

A. A person is considered to have a probable case of COVID-19 if a person has symptoms (i.e., fever, cough, shortness of breath) and exposure to a high-risk situation, or if the person has a positive antibody test and either symptoms or high-risk exposure.

**Q. Do employees need to produce a doctor’s note when diagnosed with or suspected to have COVID-19?**

A. The Department does not dictate the employer’s medical leave policy.

**Q. Can temperature checks be done through self-screening? (i.e., employees told to take temp at home?)**

The Order requires that businesses check the temperature upon discovery that the business has been exposed to a person who is a probable or confirmed COVID-19 case. However, the Department recommends that employers check the temperature and or symptoms of all employees at the beginning of each shift, particularly in those areas of the Commonwealth with high positive case numbers. This can be done in several ways:

**If thermometers can be procured:**

- **Employers** may take their employees’ temperatures on site utilizing best practices.
- **Employees** may **self-screen** taking their temperature at home with business-provided thermometers or their own personal thermometer.

**If thermometers cannot be procured:**

- **Employers** may ask their employees to conduct a questionnaire-based screening at the worksite utilizing the Department approved screening tool or equivalent.
- **Employees** may **self-screen** by conducting a questionnaire-based screening at their home utilizing the Department approved screening tool or equivalent.

If utilizing **self-screening**, businesses **must** also establish a policy for employees to report their temperature or symptoms to the employer on a daily basis. This policy should include a provision that would not allow employees with symptoms to come onto the worksite.



Additionally, businesses should consider paid leave policies that incentivize workers to stay home when reporting symptoms, including a temperature of 100.4 F or higher. This would alleviate the potential of employees lying to avoid losing pay, or potentially losing jobs.

Daily self-screening is encouraged even if the employee is not scheduled to enter the worksite. For example, if an employee is off for the weekend, performing a self-screening is not required but a matter of good public health.

**Q. Is it required that a medical professional administer the temperature screenings?**

A. No.

**Q. In the event there is a positive test, is there an end date for temperature screening? How long must temperature checks be conducted?**

A. Temperature checks and or self-screenings should be conducted for at least 14 days after an exposure. However, the Department recommends that employers, particularly those in areas of the Commonwealth with high positive case numbers, continue to conduct temperature checks as a matter of routine even after that 14 day period.

**Q. Do businesses have the authority to issue temperature checks for customers/the general public at a facility?**

A. Businesses that are concerned that testing customers would create legal issues should check with their legal counsel.

**Q. Is the Order retroactive? If there was a positive case in the building 2 weeks ago, do we now need to do temperature screening?**

A. The Secretary's Order is not retroactive. The Department does, however, recommend screening under these circumstances, particularly in those areas of the Commonwealth with high positive case numbers.

**Q. If someone arrives at work in one location and is temperature screened, then drives to another work facility, does the person have to temperature screen again?**

A. The Secretary's Order does not require an employer to conduct temperature screenings in more than one location under the circumstances described; however, the Department recommends such temperature screenings and or symptom screens be conducted, particularly in those areas of the Commonwealth with high positive case numbers.



**Q. If someone begins their workday in another state and drives into Pennsylvania, do they have to temperature check once they get to their work destination in Pennsylvania?**

A. The Secretary's Order is only intended to address temperature screening at the employee's starting workplace. If the person was temperature checked at their starting workplace they do not need to be rescreened; however, such screening is recommended, particularly in areas of the Commonwealth with high positive case numbers.

**Q. Does the temperature-taking provision only apply after an employer is aware of a potential or actual exposure?**

A. The Secretary's Order is only intended to address the circumstances after an employer becomes aware of a potential or actual exposure. The Department recommends temperature screenings be conducted, at all times, however, particularly in those areas of the Commonwealth with high positive case numbers.

**Q. Is the temperature provision applicable to an entire facility/campus or can it be limited to specific at-risk buildings or sections of a buildings?**

A. Businesses with a campus of multiple facilities or a building with multiple offices only need to screen employees from the area of the building where an individual with a suspected or confirmed positive case of COVID-19 has worked. However, businesses should be mindful of bathrooms, breakrooms, building lobbies and other frequently visited areas. The Department recommends temperature screenings be conducted, at all times, however, particularly in those areas of the Commonwealth with high positive case numbers.

Please review the responses above for practices with respect to temperature screening at home.

**Q. Do all employees who work in a building need to have their temperatures checked even if they weren't exposed to the individual?**

A. Businesses within a large building of multiple offices only need to screen employees from the area of the building where an individual with a suspected or confirmed positive case of COVID-19 has worked. For example, if the COVID positive person works on a single floor of a building only that floor would need to be screened.

However, businesses should be mindful of bathrooms, breakrooms, building lobbies and other frequently visited areas. The Department recommends temperature screenings be conducted, at all times, however, particularly in those areas of the Commonwealth with high positive case numbers.



**Q. Is there any specific guidance regarding the sourcing/procurement of thermometers?**

A. No. Employers should use regular supply opportunities or visit DCED [Business-2-Business](#) portal.

**Q. If social distancing can be maintained, can there be an exemption to the mandatory mask requirement?**

A. No. Employees of life-sustaining businesses that work in group settings are at risk. Masks should be worn at all times. An employee does not need to wear a mask if it impedes their vision, if they have a medical condition, or if it would create an unsafe condition in which to operate equipment or execute a task.

**Q. The Order notes that essential businesses must limit occupancy to no greater than 50% of their certified occupancy. Can you please clarify whether this applies to Funeral Homes?**

**Previous guidance issued in SRN-2020-09 says Funeral Homes are strongly encouraged to limit any services to 10 or fewer people. Does the new Order supersede the State Registrar Notice (SRN) and permit Funeral Homes to allow 50% of their occupancy for viewings?**

A. Funeral Homes should follow the guidance from the SRN.

**Q. If a company is staggering breaks, but not staggering shift start/stop times, would they then be required to implement those as well?**

A. Employers should take all possible steps to encourage social distancing, including staggering shift start/stop times, as well as staggering breaks.

**Q. What restrictions are applied to health care workers?**

A. The Secretary's Order does not apply to health care workers. The Department has issued guidance for health care workers and health care settings through its Health Alert Network.

**Q. Are there any considerations being given to allow compliance as long as businesses are showing they are working aggressively toward achieving compliance?**

A. The Governor and the Secretary believe strongly that these provisions will protect employees and save lives. Life-sustaining businesses should take all necessary steps to comply by 8 p.m. Sunday April 19, 2020.



**Q. Do retailers need to designate specific shopping time for high-risk persons?**

A. The Department recommends that businesses take as many precautions as possible to ensure customer safety including special shopping hours at least once a week. However, if all other public health practices have been implemented, including limiting in person shopping, limiting the number of customers to reduce crowding, installing shields or barriers, performing regular cleaning and only opening every other register, then a business may consider if designated shopping times are necessary. Businesses should keep in mind that six feet is the recommended distance of separation. Infection is more likely to happen when customers and staff are in proximity.

**Transportation:**

**Q: Does the Order apply to airports and freight rail operators?**

A. Airports are regulated by the FAA. Freight rail operators are regulated by the FRA. Airports and Freight rail operators should therefore follow guidance from those federal regulators.

**Q. Does the Order require transit riders to wear masks? What about riders participating in the Medical Assistance Transportation Program?**

A. Transit riders should wear masks unless there is a medical reason that prevents them from wearing a mask, or unless they are unable to provide themselves with a mask or a suitable option (bandanna, scarf, etc.) because of economic reasons. A transit company that is able to provide masks for its customers should make every attempt to do so.

**Q. Do these restrictions apply to local governments and courthouses?**

A. Local political units were not required to suspend in-person operations under the business closure orders issued by the Governor and the Secretary on March 19, 2020. However, they were advised to curtail in-person operations to the extent practicable and to follow COVID-19 mitigation guidance provided by the Department and the CDC. Similarly, local political units are not required to follow the Secretary's Employee Safety Order; however, they are advised to implement the protocols that it outlines to the extent practicable. All decisions should appropriately balance public safety while ensuring the continued delivery of critical infrastructure services and functions.

**Q. Do the provisions of the Order apply to state employees?**

A. No, the Commonwealth is not a business that is directly covered by the Secretary's Order; however, Governor Wolf has chosen to implement the practices outlined in the Order where possible as an example for the other employers and employees in the Commonwealth.



**Q. Does the new Order apply to a manufacturing operation that is closed to the public, and in compliance with all CDC Guidelines?**

A. Yes. The wearing of masks is intended to benefit employees as well as the public.

**Q. With veterinarian workers not being characterized as health care workers how can they continue to function with social distancing?**

A. Veterinary offices should comply with all aspects of the Secretary's Order while attempting to utilize social distancing. It is understood that some veterinary procedures require close contact. Veterinarians should take proper precautions when interacting with customers and colleagues. Veterinarians should also consider limiting their in-person practice to urgent or emergency visits, and forgo elective procedures.

**Q. Out of which funds available to the Governor will he be reimbursing employees or employers for the costs associated with complying this new Order?**

A. Employees and employers will not be reimbursed. The Governor expects everyone to comply with the Secretary's Order to the best of their ability.



# Coronavirus Disease 2019 (COVID-19)

## About Cloth Face Coverings

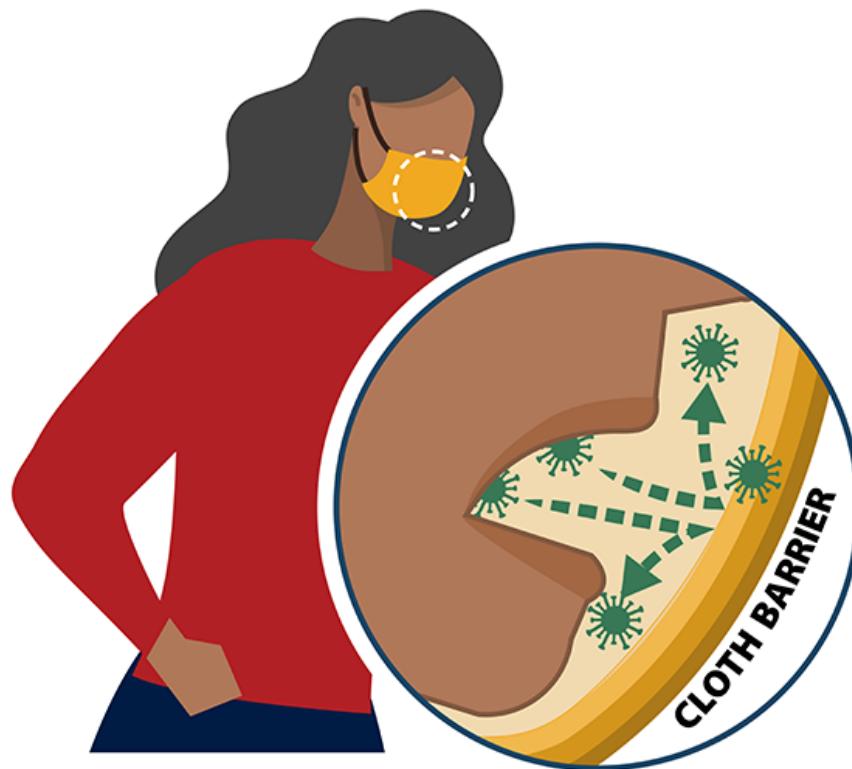
A cloth face covering may not protect the wearer, but it may keep the wearer from spreading the virus to others.

COVID-19 spreads mainly from person to person through respiratory droplets produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. [Studies and evidence](#) on infection control report that these droplets usually travel around 6 feet (about two arms lengths).

## Wear Cloth Face Coverings

[CDC recommends](#) wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain, such as grocery stores, pharmacies, and gas stations.

- Cloth face coverings may slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others.
- Cloth face coverings can be made from household items.



## Prevent Spread by Those Without Symptoms

While people who are sick or know that they have COVID-19 should isolate at home, COVID-19 can be spread by people who do not have symptoms and do not know that they are infected. That's why it's important for everyone to practice [social distancing](#) (staying at least 6 feet away from other people) and wear cloth face coverings in public settings. Cloth face coverings provide an extra layer to help prevent the respiratory droplets from traveling in the air and onto other people.

## Who should wear

- People older than 2 years of age in public settings where other social distancing measures are difficult to maintain

## Who should not wear

- Children under age 2
- Anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance

## More Information

[Recommendation Regarding the Use of Cloth Face Coverings](#)

[How to Wear Your Cloth Face Covering](#)

[How to Wash Your Cloth Face Covering](#)

[Video: U.S. Surgeon General, Dr. Jerome Adams- How to Make Your own Face Covering](#)

[Important Information About Your Cloth Face Coverings !\[\]\(2a730970869bd034df4f3492e902ed50\_img.jpg\)](#)

[ASL Video Series: Easy DIY Cloth Face Covering](#)

[How To Make Your Own Face Covering Video \(Spanish\)](#)

Page last reviewed: May 22, 2020

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## See which Greater Cleveland stores require customers to wear masks as of May 13

Updated May 14, 2020; Posted May 13, 2020



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cleveland.com has been contacting supermarkets, big box retailers, drug stores and assorted stores around Northeast Ohio to get their latest policies on masks for customers. Junfu Han

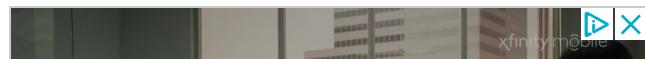
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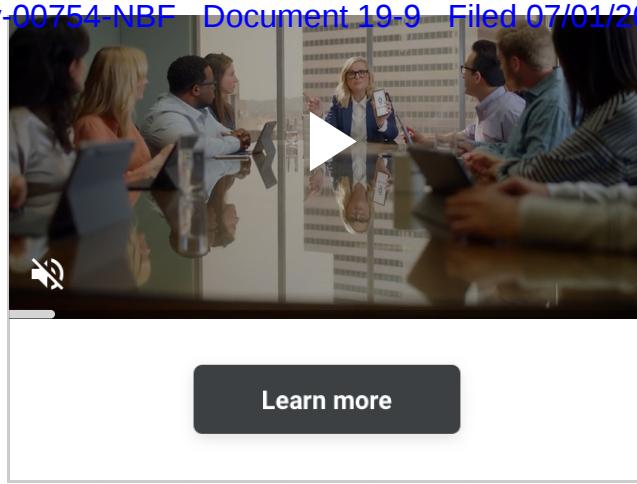
By [Kaylee Remington, cleveland.com](#)

CLEVELAND, Ohio -- As Ohio continues re-opening from coronavirus shutdowns, stores across the state are making critical decisions on safety measures for shoppers.

During this time, [stances on face coverings have flip-flopped by Ohio Gov. Mike DeWine](#). cleveland.com has been contacting supermarkets, big box retailers, drug stores and assorted stores around Northeast Ohio to get their latest policies on masks for customers.

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Here is the latest roundup of store policies.

## REQUIRING CUSTOMERS TO WEAR MASKS:

### **Costco**

Costco was the first major retailer to announce it was making face coverings mandatory for customers.

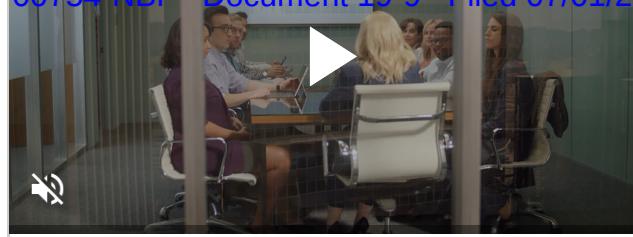
The policy began May 4. The requirement does not apply to children under age 2, or to shoppers with medical conditions that make it difficult to wear one.

### **Menards**

The store is requiring all guests to wear a face mask or covering while shopping in any of the stores. If someone does not have either one, \$1 masks are available for purchase at the door while supplies last. Also, children under 16 are not allowed in the store.

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[Learn more](#)

## **Mustard Seed Market & Cafe**

Mustard Seed announced that effective May 4, anyone entering the building is required to wear a face cover. It has two locations in Akron. The new procedure requires all customers, vendors, delivery drivers and salespeople to have a face covering. The exceptions are for health purposes and children under the age of 2.

## **NOT REQUIRING CUSTOMERS TO WEAR MASKS:**

### **Aldi**

Aldi is asking customers to wear a mask, but is not requiring them to do so.

### **CVS**

Since Ohio does not mandate customers to wear masks, it is not required at local CVS stores, spokesman Matt Blanchette told cleveland.com. "We have store signage in any market with state or local orders to remind customers that wearing a mask is required by law," Blanchette said.

### **Dave's Markets**

Aaron Saltzman, one of the owners of Dave's Markets, told cleveland.com the chain is "strongly encouraging their customers to wear a face covering when shopping."

### **Drug Mart**

Face coverings are not required for customers according to an email from a

Drug Mart spokesperson.

### **Family Dollar**

Family Dollar is not mandating that customers wear face masks or coverings, according to its [website](#).

### **Fresh Thyme**

Customer face coverings are strongly encouraged but not required, Fresh Thyme said in a statement from president Gerald Melville.

### **Giant Eagle**

Dan Donovan, a spokesperson for Pittsburgh-based [Giant Eagle](#), told cleveland.com the chain has no policy when it comes to face masks and coverings for customers.

### **Heinen's**

Locally-owned Heinen's "strongly encourages" guests to wear face coverings but does not mandate it.

### **Home Depot**

A mask is encouraged but not required in order to shop at [Home Depot](#).

### **Joann**

Joann, a national fabric and craft company based in the Cleveland area, is strongly encouraging customers to wear a mask, said spokesperson Shauntina Lilly.

### **Lowe's**

Lowe's customers will not be required to wear a mask, a company spokesperson said.

### **Lucky's Market**

Lucky's customers are not required to wear face coverings but it is strongly

encouraged, Cleveland store manager Vanessa O'Brien said.

### **Marc's**

Flyers at Marc's grocery store suggests customers wear masks and gloves while shopping, but the store does not require them.

### **Meijer**

Michigan-based Meijer says shoppers in Ohio will be encouraged, but not expected, to cover their faces.

### **Ollie's Bargain Outlet**

The outlet store does not specify that masks are mandatory in its coronavirus store policy notice.

### **Trader Joe's**

While Trader Joe's customers are encouraged to wear face coverings, the store does not require them.

### **Rite Aid**

Face coverings are strongly encouraged but not required of customers at this time, said Rite Aid spokesperson Chris Savarese.

### **Save A Lot**

According to the company's website, Save A Lot "asks customers and team members to wear masks," but are not requiring usage.

### **Target**

Target is not mandating that customers wear a face covering in order to shop, according to policies on its website.

### **Walgreens**

Walgreens is asking customers to wear face masks but it's not a requirement, according to its website.

“Walgreens encourages customers to wear face coverings but out of concern for employees’ safety, advises against confronting customers about the policy or trying to keep them from entering stores,” the company says on its website.

## **Walmart**

Walmart customers are not required to wear face masks. However, Walmart spokesperson Rebecca Thomason said the company “encourages customers to be especially mindful of one another during this unprecedented time and adhere to recommendations that we all use face coverings while in public spaces.”

## **Whole Foods**

Whole Foods is not mandating that shoppers wear a face covering. Last week a rep said customers would be asked to wear a mask while shopping and that Whole Foods will be providing face masks at the entrance for customers who do not have one, said Nathan Cimbala of the chain’s Global Public Relations Department.

*Reporters Brenda Cain and Yadi Rodriguez contributed to this report.*

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LOCAL**

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Edit



Matt Faccenda ► LigUnPol -  
Ligonier (unpolished)

...

April 20 at 1:08 AM ·

FYI



Ligonier Giant Eagle

April 20 at 1:07 AM ·

Good Morning.

GIANT EAGLE POLICY:

Moving forward until further notice, in order to shop our store (or any other Giant Eagle location), you must be wearing a mask. There will be no exceptions regardless of any reason or medical condition. We thank you for your compliance and understanding.

Like

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96

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9:04 AM



Doesn't it say in Wolfe's edict that you have to accommodate people who can't wear masks for medical conditions?

1 like 2

25 mins Like Reply More

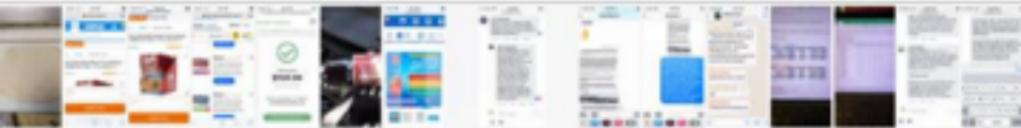


Matt Faccenda

**Kerri Goldinger** it does and our entire company has decided not to comply with that. It's too easy to make up an excuse to not wear the mask, and we refuse to put our team members and customers who do wear the mask at any more risk than they already are. Health and safety of our community is more important to us than business.

1 like 1 heart 7

23 mins Like Reply More



More



### **Giant Eagle - COVID-19 Policy/Protocols:**

Following discussions on April 16, 2020 with Keri Brown, Dan Guevara, Eric Polischak and Stephanie Weinstein - Human Resources, Vice President and Labor Attorney for Giant Eagle, the Company will be following the below protocols as it relates to COVID-19:

- The Company is utilizing two different platforms to control customer count in the stores.
  - The first platform is a device/technology that monitors traffic coming in and out of the door. (Company showed the Union this system) This data is captured and sent to the designated company representative in real time. It updates and sends data every twenty (20) seconds.
  - They are also utilizing the existing cameras as well. They created software that synchronizes analytics with the current cameras. It has the technology that can study shopping habits of the customers. The cameras cover the doors and shoppers in real time.
  - The technology is currently being used in New Ken, Irwin and Settler's Ridge locations.
- The Company stated that starting this Sunday April 19, 2020, they will implement a 30% occupancy level.
  - Company presented their plan to manage traffic control. They will place ground markers ten (10) feet from the entrance door. Following the social distance requirement, a marker will be placed every six (6) feet thereafter.
  - They will enforce this requirement with the customers and if needed call the authorities
  - They will continue the current practices already in place as well.
- All Team Members and Managers will be mandated to wear a face mask (not shields) beginning April 19, 2020.
  - Company stated that they have plenty of masks. They have surgical, cloth and other types on order. They asked us, if we hear that a store is running low or has none, for us to notify them as they will address it ASAP.
  - If a TM refuses to wear a mask, they will be required to present a doctor's note and if not, they will be sent home.
- The Company expects to receive temporal thermometers on April 23, 2020. They are planning a three-day pilot program in stores 8, 10 and 45. Full implementation will occur the following Tuesday, pending any setbacks. They have an ample supply for all the locations.
  - If a TM has a temperature of 100.4 or higher, that TM would be sent home with pay. The requirement to return to work is not to have a temperature for three days. They will be paid for the days they are off.
  - There will be a specific manager or designee performing the temp checks.
- The Company will address other safety concerns we brought to their attention today.

**Giant Eagle - COVID-19 Policy/Protocols:**

Following discussions with Dan Guerva, Human Resources for Giant Eagle, the Company will be following the below protocols as it relates to COVID-19:

**April 9, 2020**

- In response to your question in your e-mail about the customer capacity limits I wanted to share some additional steps the company is taking in order to help enforce the proper social distancing for our customers.
- Effective next week we will be implementing One Way Aisles throughout all of our stores.
- In addition, to the question about the 50% capacity I did obtain additional information regarding what makes up the total number. Unlike other retailers we are counting all of the Team Members & Team Leaders in that number which makes sense.
- I believe I had mentioned we have obtained new technology that will help us enforce the capacity limits.
- Finally, we now changed to only having one main entrance and exit to help enforce the capacity limits.
- I did get an update we may be receiving the thermometers early than mid-May as we had discussed. I will provide you an update when that takes place as well.
- See Illustrations Below:

**giant eagle** Overview of Components Element and Hardware Check-In List  
Items shown are not to scale.

**FLOOR DECALS**



**ENTER AISLE FLOOR DECAL**  
Size: 12x17  
Quantity: 10  
Part# 20GE40387CJD-A  
Placement: Display on the floor at the entrance to each aisle as shown on site plan. Please keep to center store grocery aisles that experience high traffic, as decal inventory allows.



**DO NOT ENTER AISLE FLOOR DECAL**  
Size: 12x17  
Quantity: 10  
Part# 20GE40387CJD-B  
Placement: Display on the floor at the entrance to each aisle as shown on site plan. Please keep to center store grocery aisles that experience high traffic, as decal inventory allows.

**BANNER BOARD**



**introducing one-way aisles**

To maintain social distancing and help minimize contact, please walk in the direction shown at each aisle.




6ft.



giant eagle

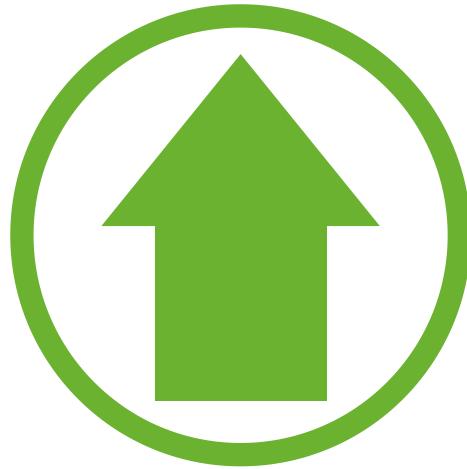


NOTE: EXAMPLE STORE LAYOUT ONLY. USE SIMILAR PLACEMENT TO CREATE ONE WAY TRAFFIC FLOW.



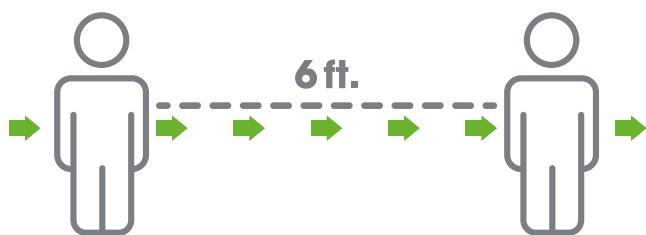
# one way

**One way only.** Enter here and maintain a distance of 6 feet from your fellow guests.



## introducing one-way aisles

To maintain social distancing  
and help minimize contact,  
please walk in the direction  
shown at each aisle.



**giant eagle**

SPACE FOR HARDWARE

MEMORANDUM OF AGREEMENT  
BY AND BETWEEN

Giant Eagle Markets Company  
(hereinafter referred to as the "Company")

And

United Food and Commercial Workers Union, Local 1776 KS  
(hereinafter referred to as the "Union")

As parties to the following Collective Bargaining Agreements – Master Grocery, Master Meat, Chippewa, Edinboro, Girard, Harborcreek, Harmar GEX, Millcreek, North Versailles, Rochester, Seven Fields, and West Mifflin – the Company and the Union agree to the following due to the national emergency and Coronavirus crisis:

1. The Company will provide a minimum of two (2) weeks of emergency replacement pay for any employee who has a confirmed diagnosis of COVID-19. Any employee who is required by their health care provider or the Company (based on current CDC risk assessment factors) to self-quarantine resulting in the employee being unable to work will be provided up to two (2) weeks of emergency replacement pay. Any employee who continues to be medically unable to return to work will be eligible to apply for and receive short term disability to which employees are normally entitled under the applicable collective bargaining agreement. Also, any employee who continues to be medically unable to return to work may use any paid time off that he or she has accrued under the applicable collective bargaining agreement. The Company and the Union agree to meet and discuss the impact of the emergency replacement pay on locations covered by the Pittsburgh Sick Days Act (the "Act") and modifications to the Act the City of Pittsburgh may pass.
2. The Company will pay all employees a Rally Bonus in appreciation for the hard work that they are doing to rally for the community and help get the community the critical things they need during this time. From March 15, 2020 through March 21, 2020, employees will receive an additional \$1.00 for every hour worked. From March 22, 2020 through May 2, 2020, employees will receive an additional \$2.00 for every hour worked. Employees will be paid the Rally Bonus in a lump sum (one-time total bonus payment) after May 2, 2020. Employees must be active at the time Rally Bonuses are paid in order to receive the lump sum.
3. The Company will waive all minimum hours requirements to maintain health benefits for all employees through April 2020. For employees who take a personal leave of absence, the Company will maintain health benefits through April 2020. Prior to the end of April 2020, the Company will discuss with the Union whether to extend these benefits beyond April 2020.

4. The Company will waive discipline under the Attendance Policy during the Coronavirus crisis, except for no call/no show violations for all employees, which will continue to be applied according to the Attendance Policy.
5. The Company will notify employees by May 1, 2020 (instead of April 1, 2020) of vacation schedules.
6. The Company may utilize third-party temporary community partners in the stores to clean and sanitize. The Company may also use those third-party temporary community partners to stock product and operate the registers due to the large number of call offs, as long as all employees' hours are maximized, including overtime. The Company agrees to maximize all employees' hours by making additional hours, including overtime, available to employees who volunteer. The Company will identify available work when it offers additional hours, including overtime.
7. The Company may utilize corporate or other employees to perform bargaining unit work, as long as all bargaining unit employees' hours are maximized, including overtime. The Company agrees to maximize all employees' hours by making additional hours, including overtime, available to employees who volunteer. The Company will identify available work when it offers additional hours, including overtime.
8. The Company and the Union agree that increases in employees' hours due to the Coronavirus crisis will not trigger the full-time position creation language in the following collective bargaining agreements: Chippewa, Girard, Harborcreek, Rochester, and West Mifflin.
9. The Company modified the bid process as follows from March 22, 2020 through March 28, 2020:
  - a. For specialized positions, CHRCs conducted phone screens with employees who signed the bid letters and made the final selections based upon the phone screens.
  - b. For non-specialized positions, the positions were granted by seniority, provided that the employee was available and had the ability to perform the necessary duties.
10. The Company and the Union agree that the Company will resume following the bid process contained in the applicable collective bargaining agreement beginning on March 29, 2020.
11. The term of this Agreement shall be for the duration of the 2020 national emergency because of the Coronavirus crisis as defined by a declared State of Emergency by the Governor of the applicable of State or Commonwealth or until May 2, 2020, whichever occurs sooner. The Company and the Union will discuss whether to extend the term of this Agreement.

12. The Company and the Union agree that they will not use the Agreement outlined above in any way in any grievance, arbitration, or other legal or administrative proceeding, or to claim the establishment of a practice, with the exception of a proceeding between the Company and Union in which a party seeks to enforce the terms of this Agreement.

Therefore, with the intention of being bound legally by the foregoing, the parties hereby affix their signatures to this Memorandum of Agreement.

Keri Brown 4/6/2020  
Company Date

Brodyfor IV 4/2/2020  
Union Date

Lane L. Helfer 4/3/20

Tony Helfer 04-06-2020

**Giant Eagle - COVID-19 Policy/Protocols:**

Following discussions with Dan Guerva, Human Resources for Giant Eagle, the Company will be following the below protocols as it relates to COVID-19:

**Action Items: Monday, March 23rd**

Existing In-Store Sustainability – Reusable/Plastic Bag signage (see attached)

- Please remove all signage and store in a safe place to be displayed upon completion of this temporary policy.

Store Sign (Bag Notice) - (see attached)

- This is to be printed by the stores, as needed.
- To be displayed on lobby doors, all front-end checkouts, and at the Customer Service desk, etc. as needed.

**Reusable Bag Perk Promotion**

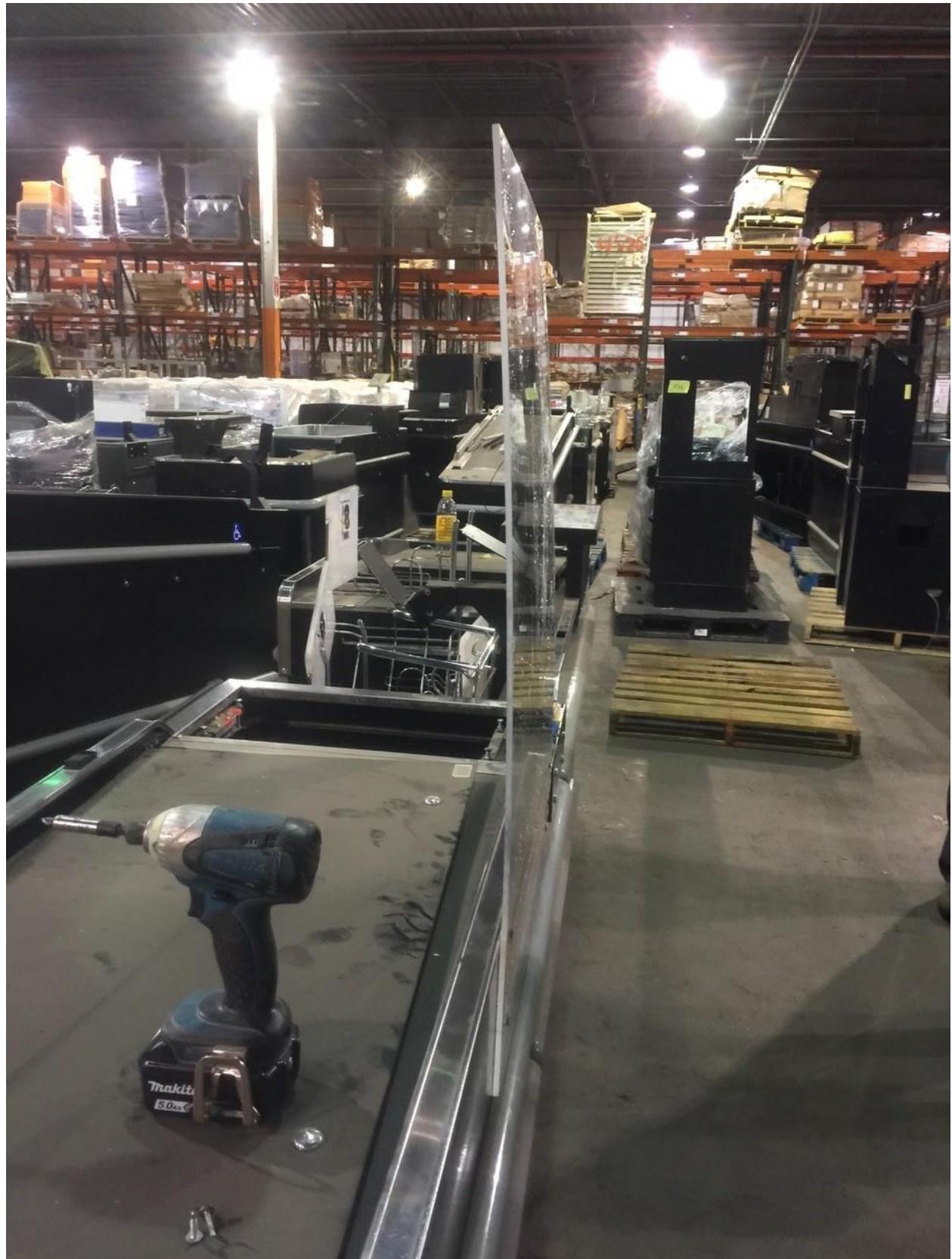
- The prompt at all registers will be disabled on Monday.
- Bag Impact locations- the prompt to charge for paper bags will also be removed.

**Talking Point-Customer Service**

- Utilize the signage to explain and communicate the temporary change. With this sudden change, many guests will continue to bring reusable bags into stores. In these instances, thank the guest for bringing their reusable bags, and communicate this temporary change and let them know we will be happy to bag their groceries and will use plastic.

**Cuyahoga County-Bexley and Waterworks-Bag Impact Locations**

- A pallet of plastic bags will arrive at your locations on Monday, March 23rd. Utilize paper bags in stores until plastic arrives.
- Please have plastic bags available at the SPG racks by the ROCM stations.
- Hi everyone, I just got confirmation from Dan Guevara that Plexiglass will be installed on the Front Ends.



Thank you for your support and cooperation and for all that you continue to do to serve our guests and communities.

**3-23-2020 -**

- bonus pay is only retro til 3/22. Will continue to evaluate going forward.
- in regards to our request of extending health and welfare out to May for not requiring a minimum hours worked, they are wanting to keep it the same through April and will re-evaluate but said they will do the right thing.
- they are continuing their work on getting plexiglass installed in all of the stores and are still working through the prepared foods issue. I did mention having it in the walk up Getgo locations and waiting to hear back. They are also working on social distancing guidelines/project and will get into the stores ASAP
- in regards to the memo "Critical industry employee authorization to travel regardless of the time of day" from Laura Karet attached below, that was meant only for the Ohio members due to the governors stay at home order there. It shouldn't have gone to any PA members.
- in regards to the letter from Bill Artman that included a \$25 gift card, if there are any members who haven't received it yet and don't within the next few days please instruct them to see their store Director who will make it right for them. It could be their address is incorrect or an issue with the mail which we can attest to.
- the company also requested to move the vacation approval deadline back from April to May 1st in light of all that is happening. It will have no negative effect on any vacations scheduled or requested but gives them more time to go through the approval process.

That's it for now but I'm sure there will be more to come

The Company stated they are committed to continuing dialogue as any matter(s) arise and the environment/circumstances change.

# **Notice: Reusable & Plastic Bags**

**As we remain committed to safeguarding the health and well-being of our guests and Team Members, we have implemented temporary adjustments regarding reusable and plastic bags:**

- Please refrain from bringing reusable bags as you shop stores.**
- We have suspended our reusable bag bonus perks program.**
- For your convenience, plastic and paper bags will be provided at checkout at no cost.**



### **Giant Eagle Corporate -COVID-19 Policy/Protocols:**

Following discussions with Dan Guevara, Human Resource, the Company will be following the below protocols as it relates to COVID-19:

The Company stated they are committed to continuing dialogue as any matter(s) arise and the environment/circumstances change.

#### **All Retail Supermarket Team Members**

**WHAT:** Cloth Face Cover Application & Removal

**WHERE:** PA/OH/WV/MD/IN

**WHEN:** **April 14, 2020**

**WHY:** Please review the attached instructional document for proper application and removal of cloth face covers. Discuss this document with all Team Members and remind them that this and other resources are available on the Team Member COVID-19 Information Portal, located by visiting the homepage of MyHRConnection. Each Team Member will receive one cloth face cover, arriving in stores today.



	<h2>How to Wear and Remove a Cloth Face Cover</h2>	ESFS
<b>Method (1 of 1)</b>		
<b>PPE Required:</b> None		
<b>How to apply the face cover:</b> <ol style="list-style-type: none"> <li>Clean your hands with soap and water or hand sanitizer before touching the cover.</li> <li>Remove a face cover from the package and make sure there are no obvious tears or holes other than the ear slits.</li> <li>Face covers are one-size fits all.</li> <li>Follow the instructions below.           <ol style="list-style-type: none"> <li>With the nose flap pointing up, place one ear through slit</li> <li>Wrap the face cover around the nose and mouth</li> <li>Place the other ear through the slit on the other side, cover should fit snugly but comfortably across the face.</li> <li>Adjust fit by changing ear slits if necessary</li> <li>Allow for breathing without restriction</li> </ol> </li> </ol>		
<b>How to remove a face cover:</b> <ol style="list-style-type: none"> <li>Clean your hands with soap and water or hand sanitizer before touching the cover. Avoid touching the front of the cover, which could be contaminated. Only touch the ear loops.           <ol style="list-style-type: none"> <li>Hold both of the ear loops and gently lift and remove the cover.</li> <li>Place cover in paper bag in-between use or in well vented area</li> </ol> </li> </ol>		
<b>How to clean the face cover:</b> <ol style="list-style-type: none"> <li>Face covers should be routinely washed</li> <li>Hand wash your face cover using warm water and laundry detergent, and then allow to air dry.           <ol style="list-style-type: none"> <li>Do not place in dryer</li> </ol> </li> </ol>		
	<p><i>Avoid touching the face cover while using it. Wash your hands prior to putting the mask on or taking it off.</i></p>	
	<p><i>If you have difficulty wearing the cloth face cover, notify leadership who can provide options.</i></p>	

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# Gov. DeWine admits mandating customers to wear face masks in stores went a ‘bridge too far’



File photo. (Source: The Associated Press)



By [Simon Hannig](#) | May 3, 2020 at 2:38 PM EDT - Updated May 3 at 2:38 PM

**CLEVELAND, Ohio (WOIO) -** Ohio Gov. Mike DeWine said he went too far with ordering customers to wear face masks in stores in his interview on “This Week” on ABC Sunday morning.

Gov. DeWine repeated his reasoning for backtracking what

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"It became clear to me that was just a bridge too far," Gov. DeWine said. "People were not going to accept the government telling them what to do."



This Week @ThisWeekABC



Ohio Gov. Mike DeWine tells [@MarthaRaddatz](#) his statewide order mandating face masks be worn in stores went "too far."

"It became clear to me that that was just a bridge too far. People were not going to accept the government telling them what to do." [abcn.ws/3b0HqAI](http://abcn.ws/3b0HqAI)



44 9:11 AM - May 3, 2020



96 people are talking about this



After issuing the order last Monday, he then rescinded his order the following day after citizens complained about wearing face masks in stores as customers.



## AUTHOR

**Simon Hannig**



Assignment desk/digital producer

**RECENT CONTENT****Governor Mike DeWine** @Gov... · Apr 28, 2020 

Replies to @GovMikeDeWine

There will have to be adjustments as we go. Within the last 24 hours, it has become clear to me that a mandatory mask requirement for retail customers is offensive to some of our fellow Ohioans. I understand that.

**Governor Mike DeWine**

@GovMikeDeWine

We've heard you. We will not mandate that retail customers wear a mask. But we strongly recommend that you do.

305 2:18 PM - Apr 28, 2020

273 people are talking about this

&gt;

**[ CLICK HERE FOR THE LATEST CORONAVIRUS NEWS ]**

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stores robbed just 28

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