

Masks and Human Rights

FAQs for Customers Seeking Accommodation

On November 24, 2020, BC's Minister of Public Safety and Solicitor General [ordered](#) that all individuals must wear a face mask in all indoor public spaces, including in retail stores and in workplaces (in shared common areas of office buildings).

The order includes exemptions for:

- children under 12 years old;
- anyone who is unable to wear a mask because of a health condition or impairment;
- anyone who is unable to put on or remove a mask without help from another person.

The order's medical exemption reflects the provisions of the [BC Human Rights Code](#). When a person cannot wear a mask for medical reasons, but still wants to access a service normally available to the public, the service provider has a duty to accommodate that person to the point of undue hardship.

These FAQs have been created to help service providers and people seeking services understand their rights and responsibilities around the requirement to wear a mask. It is for general informational purposes only and does not constitute legal advice.

The law can change. As human rights tribunals and courts make decisions on these issues, we will do our best to update the information we provide. However, we cannot guarantee that these FAQs reflect the current state of the law.

- Last Revised March 3, 2021

Q: I have a disability that prevents me from safely wearing a mask. Am I entitled to enter a business without wearing one?

A: Not necessarily. The Government of BC has issued a mandatory mask order requiring masks be worn in all public indoor spaces. The order contains some exemptions, including for people who cannot wear a mask due to a disability.

As a service provider, a business has a duty to accommodate people with disabilities to the point of undue hardship. This means the business must take all reasonable and practical steps to remove barriers people with disabilities may face when trying to access their services.

The service provider also has a duty to keep its staff and other customers reasonably safe from the threat of COVID-19 transmission. Therefore, it could be an undue hardship for the service provider to allow you to enter their premises without a mask in some circumstances.

Human rights law says that people are not entitled to a *perfect* accommodation, and should be prepared to agree to a reasonable proposal from a service provider. A reasonable accommodation may be something short of you getting full and unrestricted access to the normally-provided services. For example, instead of letting you enter a store without a mask on, the business may ask that you order a product ahead of time and collect it outside the business. This could be a reasonable accommodation in some circumstances.

Q: What kind of things might make up a reasonable accommodation?

A: So far, the BC Human Rights Tribunal has not made any decisions relating to mask exemptions for people with disabilities. This means we do not have any clear guidance on what a reasonable accommodation should look like, or when the point of undue hardship has been reached.

Nonetheless, many service providers have found creative ways to accommodate customers with disabilities who cannot wear a mask. Some solutions might include serving you outside or in a better ventilated area, asking you to come back at a particular time when fewer staff and customers are around, or accessing services by telephone or online.

Q: Do I need to provide the business with medical evidence that I cannot wear a mask?

A: Typically, no. The service provider should work with you to find an accommodation without needing your medical information. However, if you are a regular user of the service, you could choose to give them some medical information to help reach a reasonable accommodation plan.

You will have to share medical information if you file a complaint with the BC Human Rights Tribunal. This is because you will have to prove to the Tribunal that you have a disability, and that your disability prevented you from safely wearing a mask.

Q: How do I request an accommodation from a service provider?

A: A good first step would be to notify a staff member that you have a disability that prevents you from wearing a mask, and you are therefore exempt from the mask requirement. You could then ask what they are able to do to ensure you can still access their services.

Some businesses will have established policies for accommodating people with disabilities, while others may take a more case-by-case approach. In either case, businesses should

make genuine efforts to work with you to reach a reasonable accommodation once they learn that you cannot safely wear a mask due to your disability.

Q: I tried to get an accommodation from a service provider but they refused - what should I do?

A: Service providers that say they are not able or willing to accommodate a person with a disability may be in violation of the BC *Human Rights Code*. You might choose to inform them of this yourself and discuss the duty to accommodate with them. Materials published by the [BC Human Rights Commissioner](#) could help you to have this conversation.

Remember that the *Code* covers a wide range of different types of service providers, including retail stores, restaurants, doctor's offices, hair salons, and strata councils. Whether a service provider can safely provide services to people who are not wearing masks may depend on the type of service provided.

If you think you have been denied a service contrary to the BC *Human Rights Code*, you may choose to file a complaint with the [BC Human Rights Tribunal](#). This is a formal legal process. You may be able to reach a resolution of your complaint with the help of a Tribunal mediator. If not, the Tribunal will make a formal decision on whether or not you were discriminated against by the service provider.

It is often a good idea to try to resolve the issue yourself before filing a complaint with the Tribunal. The Tribunal process can take a very long time and can be stressful to go through, and there is no guarantee that you will be successful.

Q: How do I file a complaint with the BC Human Rights Tribunal?

A: You can [file a complaint](#) with the BC Human Rights Tribunal by completing a Form 1.1 complaint form. If you are filing on someone else's behalf you should complete a Form 1.2 as well as a Form 1.1 to be authorized as their representative.

Q: What will I need to do to prove that I was discriminated against?

A: To prove your case, you will need to convince the Tribunal that you have a disability covered by the *Code* (a "protected characteristic"), that you suffered some negative impact because of the service provider's actions ("adverse impact"), and that the adverse impact is connected in some way to your disability ("nexus"). This is called the "complainant's case".

A disability covered by the *Code* must be something relatively serious or severe that interferes with your ability to function in some way. Conditions like asthma, COPD, and diagnosed mental health conditions like PTSD and anxiety disorders have all been recognized as disabilities under the *Code*.

An “adverse impact” might include being denied entry to a store, or being refused service by a service provider. However, if you were able to access the service in some other way (for example, by placing an order online and picking up the item from outside the store), you might have trouble proving there was any “adverse impact”.

To prove a “nexus” between your disability and the adverse impact, you’ll have to prove that your disability was connected to, or a factor in, the adverse impact. If you were denied service because you couldn’t wear a mask due to a disability, the nexus would likely be established.

Q: Could a service provider justify how they treated me?

A: Once a complainant has made out their case (see above), the service provider has the opportunity to try and justify their conduct. The respondent may argue that they did try to accommodate you, they offered you a reasonable accommodation, and that doing more would have resulted in an undue hardship for their business.

Q: What’s involved in making a human rights complaint?

A: Both parties will have to share whatever evidence they have that is relevant to the complaint. This is called “disclosure”. You will need to provide evidence that shows that you have a disability, and that your disability prevents you from wearing a mask. If you cannot show this then your complaint may be dismissed. The service provider should provide any evidence that shows how they tried to accommodate you.

If your complaint reaches a Tribunal hearing, a Tribunal Member will hear from the parties, weigh the evidence, and make a decision about whether you have proved your case of discrimination. If they agree that you were discriminated against, the Tribunal may award [remedies](#) for the discrimination, such as compensation or an order that the respondent not discriminate in future.

Most complaints do not reach the hearing stage and are resolved through [mediation](#). The Tribunal offers free mediation services as part of its process. Some complaints are also dismissed without a hearing through the Tribunal’s [Application to Dismiss](#) process.

Q: I do not have a disability but do not believe I should have to wear a mask. Am I entitled to enter a business without a mask or request an accommodation?

A: No – both the mask mandate exemption and the duty to accommodate only apply to people who are unable to wear a mask for medical reasons. This means that you must follow the requirements of the mask order, unless you have a disability that stops you from safely wearing a mask.