



WASHINGTON CIVIL RIGHTS COUNCIL



Mask-Free Shopping Guide

Version 2, May 2021

This guide provides a step-by-step process with supporting resources to help citizens avoid medical discrimination. Previously known as “Free People’s Educational Packet,” it is built on the information in the [Overview of Medical Discrimination Law](#) and [Overview of Mask Medical Exemptions](#) documents.

You do not need a written exemption from a doctor to use this guide (see the FAQ). If you want to take legal action against stubborn discriminators, see the [Legal Action Packet](#) which builds on the information outlined here.

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The latest version of this document, as well as other legal resources & ways to take action, can be found at <https://truthark.org/legal/>

Your Basic Rights

1. No corporate policy or executive mandate can violate law
2. Existing state and federal law requires that full and equal accommodation be provided for all persons, regardless of their medical or disability status, by all businesses open to the general public
3. Curbside service is not equal access because you can't make your own shopping decisions
4. A person is only legally regarded as a threat to others if they have received an individual assessment using all current medical knowledge & related facts about both that person and the current situation
5. The health department mandates specifically provide mask medical exemptions
6. Guidance from the office of the governor and DOH clearly states that a person should not be asked what their medical condition is or prevented entry by a business if they are maskless

Educate the Business

We recommend carrying printed versions of the [Overview of Medical Discrimination Law](#), [Overview of Mask Medical Exemptions](#), and [Notice of Liability](#) documents when you enter any place of public accommodation so you can share reference codes and direct quotes from the law.

The Basics

- **Be diplomatic.** It's not enough to simply be in the right, you have to convince the other party that you are in the right. Smugness and arrogance will immediately backfire; you have to be persuasive if you want them to change their behavior. It may help to envision yourself as a shepherd and the other person as part of your wayward flock, if that appeals to you.
- Calm, assertive body language and an aura of confidence will go a long way. Don't underestimate the power of nonverbal communication.
- Don't be a disturbance. Always de-escalate and avoid confrontation if you can, including offering to talk outside.
- Avoid overwhelming the other person with arguments and information or they will become defensive. Let the other person read the quotations rather than reading for them.
- If you can get them to agree to small statements to establish common ground then you are making good progress. "Does this business follow the law? Would you deny someone service based on the color of their skin? Did you know the exact same laws prevent both racial & medical discrimination?" Etc
- If you anticipate trouble it is a good idea to have a friend with you who can film any discriminatory interactions. A body cam is also useful, simply state you are filming the interaction when you turn it on.

Step 1: State Your Case

If a customer or store clerk is harassing you or denying you service:

1. **Stay calm, the law is on your side.**
2. Say the following: “I have an exemption and am unable to wear a mask. The Dept. of Health orders specifically provide exemptions, and state and federal law prohibit you from harassing me or denying me equal accommodation. What accommodations do you have, as required by law, for someone who can’t wear a mask?”
3. If you are still denied service, don’t argue. **Ask to talk to the person in charge.**
4. Ask the person in charge for their name and title and write them down. You may need them if you decide to take legal action or if you are denied service at the same store again later.
5. If necessary, offer to talk to them outside or somewhere out of the way.
6. If the person in charge didn’t hear or reply to your question in step 2, then repeat those statements. Wait patiently for their answer to the question.
7. Curbside service is not equal accommodation because you don’t get to pick out your own produce or benefit from flash sales or impulse buys!
8. If they choose to accommodate you then you can either go about your business or give them a [Notice of Liability](#) (Step 3) for their reference. If they refuse to accommodate you, go to Step 2.

Step 2: Refute Their Response

If the person in charge still denies you service or argues the facts with you, use the supporting documents with legal citations as needed to refute their statements.

The steps in this section are optional, depending on the documents you have on hand and the store’s behavior. Use your judgment on the best approach to take and the best order in which to present your evidence.

If you don’t feel like explaining, you can skip straight to [Step 3](#).

- **If they deny that exemptions exist** or they have to honor them, use the [Overview of Mask Medical Exemptions](#) document.
 - Show the person the quotation from the mask order and the bolded sections of the “Best practices for businesses” section. Let them read all of the text if they want.
 - If someone wants to know your condition, point them to the “DOH mask FAQ” section and again to the relevant sections of the “Best practices for businesses” section. Both of these clearly state they should not ask for your medical information.

- **If they maintain their policy is lawful** or offer you alternative accommodation which is not fully equal you can try showing them the [Overview of Medical Discrimination Law](#) document.
 - Start by politely explaining that they must provide full and equal accommodation under the law, exactly the same as a masked/vaccinated/etc person would receive.
 - As proof, you can share some or all of the excerpts from the Federal Law - “Americans with Disabilities Act” section and the Washington State Law - “Freedom from discrimination” & “Unfair practices of places of public resort” sections.
- **If they accuse you of endangering others**, point them to the definition of “direct threat” in the Federal Law - “Americans with Disabilities Act” section of the [Overview of Medical Discrimination Law](#).
- **If someone has gone over the line restraining, threatening, or harassing you**, try sharing with them the “Federal Law - Crimes” or “Washington State Law - Crimes” sections of the [Overview of Medical Discrimination Law](#) so it is very clear that they are overstepping their bounds.
 - Depending on their behavior they could be violating the License Required, Criminal Impersonation, Unlawful Imprisonment, Disorderly Conduct, or Harassment laws.
- **If they accuse you of Trespassing**, show them the definition and lawful defense against Trespass in the “Washington State Law - Crimes” section of the [Overview of Medical Discrimination Law](#). You cannot be charged with trespassing if you are there lawfully!
- **If they say L&I is pressuring them**, express sympathy that the state is delegating unreasonable enforcement requirements to businesses and hanging them out to dry. State that L&I can’t prosecute them if they are following the State’s own guidelines, and use the same citations as the “If they maintain their policy is lawful” section above.

Step 3: Use the Notice of Liability

The [Notice of Liability](#) is a handy reference guide with many legal citations that can serve as a basic overview or a starting point for further research. It is not a legal document. You can let them read it and discuss it while you’re there if you so choose.

- If a business is refusing to accommodate you, say the following: “[This Notice of Liability](#) explains in brief the laws your business is breaking. Legal action may be brought against the business AND against you personally because you are enforcing unlawful policy. Are you still going to deny me service?”
- If you are only giving them the document for educational purposes, say: “[This handout](#) explains the law in brief. It is not a legal document, it’s just educational.”
- Either way, urge them to look up the law and read it for themselves.

Step 4: Legal Action

If they still won't accommodate you, you can consider taking legal action against them, with or without an attorney. See our [Legal Action Packet](#) for help.

FAQ

What if I don't have a medical exemption?

You do not need a written note from a doctor to have an exemption and stores are not allowed to ask for your private medical information. Furthermore you do not need to prove to the store you have an exemption. See the text & citations in the [Notice of Liability](#) for more on this.

The health secretary's [mask order 20-03.1](#) states the following people are exempt from wearing a mask: "Persons with a medical condition, mental health condition, developmental or cognitive condition, or disability that prevents wearing a face covering."

If wearing the mask hurts your mental health by causing anxiety or making you upset, your physiology can be changed for the worse. Upset and stress put you into a sympathetic ("fight or flight") state, which disrupts healthy digestion and can cause nutrient malabsorption. It also downgrades the functioning of your immune system and can exacerbate underlying conditions.

What if the police are called?

While the law protects your right to move about freely in public spaces, during these odd COVID times, there is a chance that a misinformed business will call law enforcement to help them enforce their discriminatory policy.

If you have not arranged ahead of time for someone to record (video and audio) a law enforcement interaction, now is the time to do so. It's always nice to travel in pairs for this reason. The second that law enforcement is on the scene, someone should be recording their interaction at the business. Even at the last minute, while you are speaking with a law enforcement officer, you should always ask someone nearby to witness the interaction.

Verbal contact with the officer

1. Make sure to step outside when you speak to the police officer. Police face pressure to get you off the business property and will be much nicer and willing to talk once you are outside.
2. Remain very CALM and MOTIONLESS. That way the cop can't accuse you of trying to evade their authority or disturbing the peace.
3. Ask "*Officer, what law are you enforcing? What is the RCW code (law) you are responding to?*" There is no law to wear face coverings so the officer has to use

something else. If the officer talks about mask mandates, you can show them the [Overview of Mask Medical Exemptions](#).

4. **If Law enforcement names “Trespassing”** as the issue (which they always do!) ask next, *“What EVIDENCE do you have that I have trespassed?”* They don’t and won’t have any evidence. Point out that it is not trespassing if you are there lawfully, and the law provides for medical exemptions and equal accommodation.
5. **If the officer says it’s private property** and the establishment can make its own rules, ask *“Can a public accommodation (privately owned or not) enforce a policy that violates the law, such as not allowing someone to enter based on skin color the establishment disapproves of, because the same state and federal laws that prohibit racial discrimination also prohibit discrimination based on medical conditions?”*
6. You can continue the dialog in much the same way as you would with the business, see the [Educate the Business](#) section. Trespassing is covered in the “Washington State Law - Crimes” section of the [Overview of Medical Discrimination Law](#).

Most of the time, at this point, the officer will shrug their shoulders and will just give you a verbal warning and leave. Don’t expect to convince or convert a police officer’s mind on the spot. You are just educating and planting seeds.

Physical contact with the officer

1. If the Law Enforcement officer goes beyond talking and initiates contact such as grabbing you or trying to put you in cuffs), do not resist. While resisting is natural it gives the officer cause to create a bogus charge of “resisting arrest.”
2. While motionless, look at them and ask *“Am I being detained?” “Am I being arrested?”*
3. If the answer is “YES” remain CALM and ask the officers name and badge number (for the recording). At this point you are going to the police station. Do not panic. The officer may do that to harass you or if they are having a bad day but you have broken no law and they know it. They will end up releasing you with no charges and no citation.
4. If the answer is “No” say *“Am I free to go now?”* Wait for an explicit answer. That’s important. This is formal code. It puts the officer on notice that you know your rights and they will not mess with you further and will let you go.

I have other questions or feedback!

If you have feedback or need any informal advice, please email WCRC@protonmail.com. We would love to hear about your experiences!

Notice of Liability

1. Executive branch orders & guidelines are not law.
2. No health order, executive order, or ordinance suspends established law or negates rights ensured by law.
3. The health secretary's [mask order 20-03.1](#) specifically provides exemptions for "Persons with a medical condition... or disability that prevents wearing a face covering."

The state provides guidance on how to handle these exemptions in a document from the Office of the Governor called "[Overview of COVID-19 Statewide Face Covering Requirements](#)" and in a "[Cloth Face Coverings and Masks FAQ](#)" on the DOH website. These sources assert that:

- "No individual is required to provide proof or documentation to anyone at any time about their health or medical status"
- "The governor's proclamation does not oblige businesses to enforce the use of face coverings by individuals who are exempt from the health order"
- "Under no circumstances should the business representative attempt to physically block an individual from entering or physically remove them from the premises"

It is unlawful for any place of public accommodation to prohibit someone from entering or fully enjoying the services of that establishment. Private businesses are still places of public accommodation as long as they are open to the general public. ([Civil Rights Act of 1964 Title II Section 2000](#), [Americans with Disabilities Act Title III](#), [RCW 49.60.030](#), [RCW 49.60.215](#))

A person is only legally regarded as a threat to others if they have received an individual assessment using all current medical knowledge & related facts about both that person and the current situation. ([Americans with Disabilities Act Section 36.208](#))

There is no valid claim of trespass for not wearing a mask because this business establishment is open to the public and it is not trespass if the patron has entered lawfully and has not interfered with the business. Mask medical exemptions are lawful. ([RCW 9A.52.090](#))

Masks are designated as "medical devices" by the FDA. Directing someone to wear one is potentially practicing medicine without a license. ([RCW 18.71.021](#), [RCW 18.130.190](#))

It is a crime to deprive someone of their rights provided by law, punishable by up to a year in jail plus fines. ([18 U.S. Code § 242](#))

It is a crime to attempt to enforce law if you are not a police officer. ([RCW 9A.60.040](#))

One form of harassment defined by state law is "To subject the person threatened or any other person to physical confinement or restraint." Punishable by up to a year in jail and a \$5,000 fine. ([RCW 9A.46.020](#), [RCW 9.92.020](#))

Ignorance of the law is no excuse and any person enforcing an unlawful policy can potentially be held personally liable to both civil and criminal penalties under the cited laws.