Insights

COVID-19 Enforcement Plan Compliance Alert: K-12 Educational Institutions and Indiana's Face Covering Mandate

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On Friday, July 24, 2020, Indiana Governor Eric Holcomb issued **Executive Order 20-37**, entitled Face Covering Requirement. Section 6 of Executive Order 20-37 detailed guidelines for K-12 educational institutions. On Thursday, July 30, 2020, Governor Holcomb issued **Executive Order 20-39** (the "Executive Order"), which rescinds Section 6 and provides additional requirements and exemptions.[1]

SUMMARY

All Indiana K-12 educational institutions should develop and implement a COVID-19 Enforcement Plan in compliance with the Executive Order. All public and private K-12 educational institutions must require all students grades 3-12 (regardless of age), faculty, staff, vendors, visitors, contractors, and volunteers, to wear a face covering or face shield at all times while physically present in any building, facility, or grounds, with specific exemptions. The Executive Order clarifies the exemption to face coverings in classroom settings. Given the rapidly changing COVID-19 compliance environment, K-12 educational institutions should regularly review applicable local, state, and federal requirements and guidance and update their COVID-19 safety plans accordingly.

Q & A REGARDING INDIANA'S FACE COVERING MANDATE

When does the Executive Order become effective?

The Executive Order took effect at 12:01 a.m. on Monday, July 27, 2020, and will remain in effect for the duration of the public health emergency unless rescinded or modified by Governor Holcomb. The duration of the Executive Order differs from Executive Order 20-37, which was set to expire on August 26, 2020, unless rescinded or modified by Governor Holcomb before that date.

What are the requirements for K-12 educational institutions?

All public and private K-12 educational institutions must comply with the face covering mandate under Executive 20-37. The Executive Order sets forth the same requirements outlined in Section 6 of Executive Order 20-37 with minor changes. These requirements include the following:

- Buildings, Facilities and Grounds: "[A]ll public and private K- 12 educational institutions shall require all students in grades 3-12 regardless of age, all faculty, all staff, all vendors, all contractors, all volunteers, and all visitors to their educational institutions to wear a face covering or a face shield while physically present in any building, facility or grounds at all times who do not otherwise fall within an exemption listed in ¶ 4 in

Executive Order 20-37 (Face Covering Requirement) or who fall within an exemption" listed in Section 3(c) of the Executive Order.

- School Buses or School-sponsored Modes of Transportation: Face coverings are required for "All students regardless of age or grade, all faculty, all staff, all vendors, all contractors, all volunteers, and all visitors … while on a school bus or other school-sponsored mode of transportation except those who fall within an exemption listed in ¶ 4b-f in Executive Order 20-37."

What are the changes to the face covering mandates in K-12 educational institutions?

The Executive Order's main change to Section 6 of Executive Order 20-37 occurred in Section 3(c) of the Executive Order, which provides the unique, additional exemptions to those mentioned in Section 4 of Executive Order 20-37. Section 3(c)(iv) of the Executive Order clarifies the exemption for face coverings in classroom settings.

Specifically, if a K-12 educational institution can configure "a classroom or place of instruction … so that all students can maintain at least three (3) feet of social distancing from one another at all times, and where students are positioned to face in the same direction, face coverings need not be worn during in-person educational instruction by students. Instructors must wear a face covering or face shield unless the instructor(s) can maintain six (6) feet of social distancing from students."

However, if a K-12 educational institution cannot configure "a classroom or place of instruction … so that all students can maintain either six (6) feet of social distance or at least three (3) feet of social distancing from one another with students facing the same direction at all times, face coverings or face shields must be worn during in-person educational instruction by students. Instructors must wear a face covering or face shield unless the instructor(s) can maintain six (6) feet of social distancing from students. At the direction of the instructor, a student may be permitted to remove his or her mask on an intermittent and temporary basis."

What are other exemptions are specific to the K-12 educational institutions?

Additional exemptions to the face covering mandate for K-12 educational institutions include (1) during food consumption, (2) in faculty/staff areas, (3) for children between ages 2-8 not on school buses or other school-sponsored modes of transportation, (4) in classroom settings when six (6) feet of social distancing can be maintained and as described above, (5) during recess, and (6) during extracurricular and co-curricular activities.

How will the state enforce these requirements?

The Executive Order provides that "[s]chools are responsible for developing and implementing an enforcement plan."

What is the penalty for non-compliance?

Executive Order 20-37 states that its purpose is "to protect the health and lives of Hoosiers, to ensure businesses will remain open, to allow schools to reopen and operate safely, and to allow Hoosiers to continue to participate in their chosen activities." State and local health departments are responsible for enforcing compliance through "education about the importance of wearing face coverings and dispelling myths and misconceptions about the use and/or the benefits of the requirement." Vigilance in following the Executive Order's directives could also assist K-12 educational institutions in avoiding potential liability arising from claims that may be asserted by faculty, staff, visitors, parents, and other third parties. Likewise, K-12 educational institutions should continue monitoring state and local health departments' requirements.

What K-12 educational institutions do next?

K-12 educational institutions should develop and implement an enforcement plan to comply with the Executive Order. K-12 educational institutions should then circulate the enforcement plan to parents, teachers, and staff members while also making the enforcement plan publicly available for visitors and vendors. If K-12 educational institutions previously created an enforcement plan, those institutions should now review and update plans accordingly.

If your K-12 educational institution needs assistance developing and implementing, or reviewing and updating, an enforcement plan, please contact **Amy J. Adolay**, **Shelley M. Jackson**, or **Kate E. Trinkle** of Krieg DeVault LLP's **Labor and Employment** practice group.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.

[1] The **COVID-19 Safety Plan Compliance Alert: Indiana's Face Covering Mandate** discusses the other provisions of Executive Order 20-37 in greater detail.