

**PRE-ACTION LETTER FOR BUSINESSES WHO  
REFUSE ENTRY TO CUSTOMERS WHO ARE EXEMPT  
FROM WEARING A MASK**



**Dear Business Operator/Owner \_\_\_\_\_**

**It has been brought to our attention that your business premises at \_\_\_\_\_ has been operating a policy of excluding from entering said premises persons because they are not wearing face masks, despite in all cases their informing your staff members that they are exempt from wearing such face masks under the relevant legislation and attendant regulations.**

**This is a serious matter, involving a systematic breach of the law and serious infringement of the civil and human rights of these individuals under the Constitution and the European Convention on Human Rights (ECHR).**

**The relevant Statutory Instrument under the Health Act 1947 (amended 2020) is No. 296/2020 and states inter alia:**

**Section 4. (1) A person shall not, without reasonable excuse, enter or remain in a relevant premises in a relevant geographical location without wearing a face covering.**

**The regulations as set out in S.I. 296/2020 go on to elaborate on the procedures to be followed in the event that a citizen, having a 'reasonable excuse', may wish to avail of an exemption from wearing a face covering in a 'relevant premises', in which category your premises is included:**

**Section 5. ("Reasonable Excuse') 5. Without prejudice to the generality of what constitutes reasonable excuse for the purposes of Regulation 4(1), a person has reasonable excuse if -**

- (a) the person cannot put on, wear or remove a face covering -**
  - (i) because of any physical or mental illness, impairment or disability, or**
  - (ii) without severe distress,**
- (b) the person needs to communicate with a person who has difficulties communicating (in relation to speech, language or otherwise),**
- (c) the person removes the face covering to provide emergency assistance or to provide care or assistance to a vulnerable person,**
- (d) the person removes the face covering to avoid harm or injury, or the risk of harm or injury,**
- (e) the person removes the face covering in order to, and only for the time required to, take medication,**
- (f) the person removes the face covering at the request of a responsible person, or of a worker, in order to enable him or her to ascertain the person's age by reference to photographic identification for the purposes of the sale of goods or services in respect of which there is a minimum age requirement or**

where the responsible person, or worker, has lawful authority to verify the person's identity, or

(g) the person removes the face covering at the request of a responsible person, or of a worker, in order to assist the responsible person or worker to provide him or her with healthcare or healthcare advice.

It is clear from the above schedule that a person who informs your staff members that he or she is availing of the said exemption under any of the headings listed from (a) to (g) above, in order to enter such premises as those under your proprietorship in order to avail of the services advertised and offered therein to the public by you is legally entitled to do so, and that any attempt to prevent them doing so is itself a breach of the law.

There is no requirement or provision under the abovementioned regulations for a person claiming an exemption from the mandatory wearing of face coverings to provide evidence or proof of any disability. Nor is there an entitlement on the part of proprietors, employees or other relevant persons to legitimately request such evidence or proof.

To be precise and clear: the regulations set down no requirement that someone claiming such an exemption produce a letter from a GP or other medical practitioner. The sole requirement is that the person him/herself simply declare a claim to such an exemption.

It is not open to the proprietors and/or employees of relevant premises to interrogate such a person concerning their declaration of an exemption: Medical matters are subject to conditions of total confidentiality. This duty of confidentiality covers all medical records (including x-rays, lab-reports, etc.) as well as communications between patient and doctor, and is not a matter that any third party may intervene upon. There is no requirement for someone suffering from any disability to discuss this with any other person, in public or private, for any reason. Such information is personal and as such is protected under the Data Protection Act 2018.

Your attention is also drawn to the contents of the following page dealing with the wearing of face coverings in public on the [gov.ie](https://www.gov.ie) website:

<https://www.gov.ie/en/publication/aac74c-guidance-on-safe-use-of-face-coverings/>

– in particular we draw your attention to the section titled:

**Who should not wear one**

**Cloth face coverings are not suitable for children under the age of 13 and anyone who:**

**has trouble breathing**

**is unconscious or incapacitated**

**is unable to remove it without help**

**has special needs and who may feel upset or very uncomfortable wearing the face covering**

**Do not criticise or judge people who are not able to wear a face covering.**

Your attention is drawn especially to the final sentence of the foregoing.

We would remind you further that your current policy on face coverings is in breach of another legislative instrument, the Equal Status Acts 2000-2018, which prohibits discrimination and entitles inter alia persons suffering from a

**disability to be treated equally in relation to the provision of goods and services, regardless of their disability or its attendant requirements or incapacities.**

**We request that, with immediate effect, you take steps to remedy these ongoing breaches of the law and of the fundamental rights of some of your customers, and in that context issue without delay a directive to your staff and all such relevant persons under your authority making clear that these breaches of the law must cease that your customers are not in future to be subjected to such unlawful, humiliating and discriminatory treatment.**

**Failure to uphold the law in this regard could result in civil proceedings being issued against you and your business.**

**Yours sincerely,**