

# Avoiding Workplace Violence: How Businesses Should React if Customers Become Violent When Asked to Wear a Mask

By Terri M. Solomon and Elizabeth C. Barrera on July 16, 2020

As businesses begin to reopen at varying rates and capacities, subject to state and federal containment measures, companies will be faced with the challenge of complying with safety standards while accommodating customers and clients. Face coverings, gloves, and social distancing remain standard preventive measures, and numerous jurisdictions have encouraged or even mandated such measures in public. The pandemic and the resultant restrictions have tapped a new source of fear and anger for some individuals. This article addresses concerns in navigating the reopening landscape when customers or clients aggressively refuse to abide by public health requirements.<sup>1</sup>

## New Normal, New Obligations

While formulating a plan for reopening, businesses should be mindful that they must keep up-to-date on applicable state, local, and federal guidelines and orders, which may indicate a business' obligation to enforce public health and social distancing measures or risk re-closure or additional penalties.<sup>2</sup> At this time, over 40 states and hundreds of local governments, as well as the District of Columbia, have enacted orders requiring face masks to some degree. None, however, have provided guidance to businesses as to how to enforce such requirements. Even in the past week, governors of several states have issued executive orders requiring masks to be worn in all public places. This has resulted in businesses becoming *de facto* enforcers of COVID-19-related safety mandates. When emotions are running high and stressors are prevalent, however, businesses can expect to be met with some resistance in their attempts to observe public health requirements, including individuals who become aggressive when required to wear a face mask.

Now, more than just a safety measure, the face mask has become an immediate political signal in the polarizing clash between those who see it as a moral responsibility for the community and those who see it as an absolute infringement on their freedom. The news is filled with reports and viral social media posts

that illustrate the escalation of this resistant aggression due to virus-related restrictions and scarcities. Across the country,<sup>3</sup> security guards face rising violence over enforcing protective mask requirements. Earlier this year, two customers attacked a security guard, breaking his arm, as he escorted them out of a retail store for not wearing a face covering. Another security guard at a liquor store was attacked when a customer was asked to wait outside the store in order to comply with Michigan's social-distancing capacity restrictions. Similarly, restaurant workers have been repeatedly met with violence when asking patrons to wear masks. A group called "Defending Utah" has organized "flash mob" anti-mask demonstrations that include staging groups of supporters to walk through businesses in defiance of mask policies. In Florida, an incident was captured in a now-viral video showing a customer pushing and shoving retail employees to gain entry into a store without a face mask. Restaurant employees in D.C. have been spit upon, threatened, and assaulted after trying to enforce mask requirements—including an incident in which a Plexiglas screen was hurled at an employee.

These incidents have escalated to include shootings and stabbings, culminating in several fatalities. In Michigan, customers are required to wear face coverings in grocery stores, and businesses may refuse service to anyone who declines to wear a mask. This has put businesses and their employees at the front lines of the battle between government regulation and customers who resist the guidelines. In Flint, Michigan, a retail security guard was shot and killed in May after attempting to enforce a statewide order requiring customers to wear masks. Most recently, Michigan State Police have confirmed a fatal incident in which a customer at a grocery store was asked by another customer, age 77, to cover his face, and the store refused service to the individual refusing to wear a mask. The unmasked customer stabbed the elderly customer and was subsequently shot in a clash with the local Sheriff's Department. The suspect died shortly after being transported to a local hospital.

A man in Aurora, Colorado opened fire in a restaurant after he was told he would not be served unless he was wearing a mask on three separate occasions. At the time, the city's residents were required to wear face masks in public. After being refused service for the third time after his refusal to don a mask, the man shot the restaurant's cook. Similarly, a fast-food restaurant in Oklahoma City, Oklahoma was the object of a shooting after informing a customer of its social distancing measures, which included a closed dining room with drive-through service as the only dining option. This led to a physical altercation with the customer, who allegedly knocked a restaurant employee to the ground, causing a violent head injury, and returned with a gun. She fired multiple rounds, injuring several employees. The frequency and severity of these incidents puts an increased pressure on businesses to prepare and prevent violent occurrences.

Under the federal Occupational Health and Safety Act (OSHA), employers have a general duty to provide a safe workplace for employees.<sup>4</sup> In addition, businesses may open themselves up to potential liability by botching their responses to violent and threatening engagement occurring on their premises. Given the likelihood of such encounters, businesses should think twice about the impact such threats could have on the safety of their employees and customers, as well as business operations.

## **What Can Businesses Do?**

In light of these highly publicized acts of violence, increased pressure is put upon businesses to provide employees with instruction on how to react when faced with situations that are likely to escalate into clashes. Not every establishment has security guards deployed on its premises, and even those businesses with security guards should not place those guards at risk to their safety to enforce public health guidelines. There are a number of steps that businesses can take:

### ***Signage***

In states where face masks are required by law, retailers should utilize signage outside the stores as the first line of communication to customers that no one will be permitted in the store without a face covering and that customers must practice social distancing inside. The Centers for Disease Control ([CDC](#)) recommends using verbal announcements, signs, and visual cues to promote social distancing and safety initiatives, even before customers enter the building. Restaurants and similarly situated businesses should consider including on the sign a phone number for curbside or delivery options for customers not wishing to comply with the public health requirements, where feasible, or provide remote shopping alternatives.

### ***Request Compliance***

Employers should not put their clerks, waiters, security guards or other employees in the dangerous position of escalating confrontation through mask enforcement. Generally, businesses are not security experts and lack the training and expertise to direct employees how to react when confronted by a violent patron. For this reason, companies should avoid tasking employees with enforcing mask and social distancing orders—the potential consequences can be both dangerous and costly.

Where customers attempt to enter the store without a mask, employers should instruct employees that they may politely ask the customer to put on a mask. At least one jurisdiction, the [Commonwealth of Pennsylvania](#), has recommended treating masks as businesses would treat requirements for shirts and shoes: No mask, no shirt, no shoes, no service. Where an employee or customer attempts to enter a business without a mask on, the Commonwealth recommends asking that person to leave and return when they have a mask. Businesses may wish to provide spare masks at the front door in such circumstances. In some instances, customers may have a valid medical reason that they cannot wear a mask, and businesses need not require certifications or other medical documentation of proof where a customer has asserted such a condition. A [separate Littler Insight](#) discusses the disability-related issues with face covering requirements.

### ***Leave Enforcement to the Professionals***

A clear dilemma occurs when a customer has been asked, but refuses, to wear a mask and insists on entering the business. The employer should, above all, remain calm, discreetly call local law enforcement, and allow the police to handle the situation. The reality is that not every call to law enforcement about customers refusing to don masks will result in a response by the police or law enforcement action. However, it is the responsibility of the police—not business owners or employees—to keep the peace and respond to threats of violence. The appropriate reliance on local law enforcement allows businesses to avoid the politicization of enforcement while ensuring the appropriate response to aggressive customers. When law enforcement arrives, employees should remain calm, follow officers' instructions, and avoid pointing, screaming, or yelling as the officers assess the situation. Employees should attempt to note identifying information to give to law enforcement, such as the clothing, description, and license plate information of the aggressor, where this can be done without added risk to the employee. Bystander customers and clients are likely to follow the lead of employees and managers during emergency situations.

For their own safety, employees should not argue with customers who refuse to wear a mask, as this has the potential to escalate the situation. Further, employees should not attempt to apprehend resistant customers, block customers from entering or exiting the store, or attempt to physically force the customers to leave. Similarly, employees should not become involved in disputes between customers regarding facemasks or social distancing. These type of actions are more likely to lead to physical altercations and provoke violence than to de-escalate the tense situation.

### ***Have a Plan in Place***

Having a plan in place *before* an emergency event helps to ensure that employees understand what to do when confronted with such a scenario, and allows the company to shape what its response will be. In this regard, OSHA encourages employers to develop and implement violence prevention programs.<sup>5</sup> In addition, "companies should consider preventing COVID-19 related physical confrontations within their larger workplace violence prevention programs," according to Dr. Russell Palarea, president of the Association of Threat Assessment Professionals ([ATAP](#)). Per Dr. Palarea's recommendations:

A comprehensive program would include a robust workplace violence prevention policy and a well-trained Threat Management Team, consisting of representatives from senior management, the company's Security, Human Resources, and Legal departments, and other relevant stakeholders. Threat Management Teams would provide onsite company personnel guidance on identifying concerning behavior and implementing threat management strategies to prevent incidents escalating over time to violent attacks.

As such, a company should consider its security protocols and specific violence response plans. Employers that choose to adopt a “zero tolerance” workplace violence policy should disseminate the policy to all employees, and ensure that that policy includes a statement of the company’s commitment to maintaining a safe working environment free from violence and intimidation, as well as the company’s reporting procedure. Existing workplace violence policies should be updated to cover non-employee violence, making employees aware of the company’s procedure for reporting customer threats and aggressions. The plan should also include establishing a liaison with local and regional law enforcement who can help identify ways to prevent and mitigate violence. In addition, businesses should ensure adequate staffing coverage for each shift—within the parameters permitted by re-opening criteria—to reduce the likelihood of violent incidents. The [CDC](#) further recommends providing training on stress management to workers in light of the anxiety and stress resulting from the pandemic.

Once a plan is in place for preventing and reporting violent occurrences, a company may wish to conduct periodic training of its employees who are most likely to interact with customers. If the company has designated a Threat Management Team to respond to occurrences or threats of violence, the team should develop an emergency response plan that anticipates how the business will react to aggressive customers or escalating threats. This response may include securing the business site, contacting law enforcement, informing employees and customers of the danger, and dealing with a media response. In any event, workers should have access to phones or alarms to use in an emergency.

Companies that assume the responsibility of training employees to take specific actions in the event of customer violence could face liability on top of the emergency circumstances. For this reason, it is advisable that employers not conduct de-escalation training themselves. Instead, companies that choose to provide employee training should turn to law enforcement professionals or properly vetted private companies that offer training or refresher courses on a periodic basis. Further, employers should make clear that the recommendations are those of the law enforcement officials and not the employer. Additionally, before implementing such trainings, businesses should carefully assess the qualifications of any trainer it retains; companies may want to consult with experienced professionals, including labor and employment counsel and other workplace safety and security experts.

### **What are Industries Already Doing?**

Even before the COVID-19 pandemic, businesses faced situations where disgruntled or aggressive customers posed a threat to the immediate safety of employees and clientele. While there is no one-size-fits-all solution to addressing workplace violence across working environments and workforces, employers should carefully consider their particular industry to evaluate what may work best for their employees. Guidance issued across industries relating to other types of emergencies is instructive under the present circumstances. While response protocols will vary from industry to industry and even community to community, in each industry employee safety is paramount.

Across industries, guidance, such as that issued by the American Bankers Association (ABA), concerning armed robbery protocols advises that employees faced with threats of violence remain calm, do not try to resist or intervene, and call 911 when it is safe to do so.<sup>6</sup> Once they have arrived on the scene, law enforcement officers have the responsibility for controlling the situation and ending the threat.

This is echoed in the immediate response imperatives issued by the American Society for Industrial Security International (ASIS), which advises employees to immediately report any violent incident to 911.<sup>7</sup> Because emergency responders are considered by ASIS to be only one element of a broader violence response plan, however, ASIS advises that immediate response procedures for onsite responders should include: (i) avoiding the danger zone by moving to a safer location, (ii) reporting the incident to local security and safety resources as well as public emergency responders, (iii) notifying bystanders and customers or employees within the vicinity to the potential danger, allowing them to either escape, avoid the situation, or seek shelter, (iv) providing first aid to injured persons when this can be done without placing anyone in further danger, (v) complying with public emergency responders during their response to an incident, (vi) accounting for all employees to determine their status and location, and (vii) if applicable and possible, using the building's paging system to alert customers and employees of the incident. A pre-existing plan should be implemented to notify all management of the violent incident as soon as reasonable.

OSHA's guidelines for preventing workplace violence for healthcare and social service workers provide that employers should advise employees of company procedures for requesting police assistance or filing charges when assaulted, including assisting them in doing so if necessary. Properly trained security officers and counselors should be available to respond to patients' aggressive behavior, following written security procedures. Management support during such emergencies is imperative, and managers should respond promptly to all complaints. Staff members and counselors who have been adequately trained should be available to de-escalate situations and counsel aggressive or violent patients. Finally, employees should be informed how to call for help or medical assistance. If an incident occurs, first aid and emergency care should be immediately provided to injured workers, as well as any measures necessary to prevent others from being injured.

In the context of late-night retail establishments, OSHA has recommended that prevention programs include a plan for maintaining security and assigning authority for the security program to trained individuals with adequate resources. In the event of violence resulting within the industry, response procedures suggested by OSHA include: (i) providing prompt first aid, (ii) reporting to the police, (iii) securing the premises to safeguard evidence, (iv) preparing an incident report, and (v) informing management about the incident.

As always, the Department of Homeland Security (DHS) recommends that businesses and their employees proactively prepare for the role they play in the safety and security of the community, advising that "if you see something, say something," and to call local law enforcement to report details of unsafe activity. DHS offers the following advice for navigating these type of risks: (i) employees should call 911 for emergencies

if they feel they are in danger; (ii) employees should submit suspicious activity reports to local law enforcement or call the non-emergency number; (iii) employers should have law enforcement and fire phone numbers listed for all employees to see. Specifically, DHS endorses the “[run, hide, fight](#)” approach in response to gun violence and active shooter scenarios.

In addition, as part of any safety initiative, businesses should consider partnering with their local law enforcement departments, where some precincts have officers available to assist or offer security consultations. Finally, businesses should implement incident-reporting procedures to record measures taken in the event of violent occurrences.

## Conclusion

Overall, even in the novel circumstances presented by the COVID-19 pandemic, businesses should position themselves to reduce risk by planning for a response to confrontation.

Businesses interested in related information may wish to consult Littler’s interactive [reopening map](#), as well as our [articles](#) identifying return to work protocols, employee health screening guidance, and list of statewide orders requiring face coverings.

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<sup>1</sup> The separate but similar issue of internal enforcement of an employer’s own rules for employee mask and distancing requirements is outside the scope of this article.

<sup>2</sup> For example, [Ohio’s Department of Public Safety Ohio Investigative Unit](#) has been created to ensure that all bars and restaurants in the state follow the required social distancing and public health guidelines, and revocation of liquor licenses are among the potential penalties for failure to do so.

<sup>3</sup> The violence is not isolated in the United States, however; this week, a bus driver in [Bayonne, France](#), died following an attack by passengers who refused to wear face masks.

<sup>4</sup> See 29 U.S.C. § 654(a)(1) (requiring each employer to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees”).

<sup>5</sup> See, e.g., *Recommendations for Workplace Violence Prevention Programs in Late Night Retail Establishments*, OSHA 3153-12R 2009.

<sup>6</sup> *Robbery Training Quick Reference*, American Bankers Association.

<sup>7</sup> *Workplace Violence Prevention and Intervention*, ASIS/SHRM WVPI.1-2011.

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