CAN AN EMPLOYEE REFUSE TO WEAR A MASK?

What You Need to Know

What reason is the employee giving for refusing to wear a mask in defiance of company policy?

1. **Serious Health Condition**
   - Employee can’t wear mask because of medical condition.
   - Under the Family and Medical Leave Act, a “serious health condition” involves either inpatient care or continuing treatment by a healthcare provider.
   - Employer can require medical certification of serious health condition. Does employee have a serious health condition?
   - If not, you can require medical certification and employee can’t wear mask. Be careful and consider consulting an attorney as this can be a high bar.

2. **Disability**
   - Under the Americans with Disabilities Act, a disability is a physical or mental impairment that substantially limits a major life activity (e.g., claustrophobia, asthma).
   - If employee has a disability that limits ability to wear a mask, employer can require medical documentation. Is the employee able to document an ADA disability that limits the ability to wear a mask?
   - If no, you must consider a reasonable accommodation. If employee is otherwise eligible for FMLA leave, employer can require medical certification of serious health condition and employee can take 12 weeks of unpaid leave.

3. **Religious Belief**
   - Religious beliefs must be “sincerely held” and may include beliefs that are new, uncommon, or not part of a formal church or sect.
   - As part of the interactive process, you can ask for proof that the sincerely held religious belief prohibits wearing a mask.
   - If employee is otherwise eligible for FMLA leave, employer can require medical certification of serious health condition and employee can take 12 weeks of unpaid leave.

All accommodations would create an undue hardship (significant difficulty or expense) or the employee would pose a direct threat to health/safety that can’t be eliminated or reduced with reasonable accommodation. Be careful and consider consulting an attorney as this can be a high bar.

You can require your employee to wear a mask. If an employee refuses, you can discipline the employee for violating your policy.