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COVID-19 Mask Requirements as a Workers' Rights Issue: Parallels to Smoking Bans



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INTRODUCTION

Considerable public debate has emerged regarding the importance of wearing masks to prevent the spread of coronavirus disease 2019 (COVID-19) and thus whether they should be required in workplaces. Recognizing the precedents for constraining individual behavior within workplaces, this article draws parallels to smoking bans and argues that mask requirements should be considered fundamental occupational health protections. As with smoking in confined spaces dispersing environmental tobacco smoke, maskless patrons exacerbate the risks for workers through the diffusion of respiratory droplets. The context of indoor environments matters for the prevention of these potential health hazards. Smoke particulates diffuse in confined spaces to those nearby, accumulating to levels that can result in or aggravate health conditions.^{1,2} For COVID-19, confined indoor spaces facilitate the diffusion of respiratory droplets containing the virus—diffusion that can be reduced by masks.³ Although valid reasons exist to require wearing masks outdoors where individuals congregate, this article focuses on indoor requirements because delays in addressing this issue, especially as states reopen with varying degrees of rapidity, will very likely be detrimental to public health and, particularly, to the well-being of frontline workers.

The sources of the implementation of workplace mask requirements vary. Like smoke-free environments, private businesses are free to implement mask requirements for customers and employees even in absence of public policy. Some, however, choose not to implement the requirements owing to the fears of alienating customers, some of whom, as protests have revealed, view the imposition of health guidelines as an infringement on individual liberties. For the sake of occupational health, state and local governments should take an active stance to promote mask wearing in workplaces for the enhancement of population health in general and the health of frontline workers in public-facing industries in particular.

COVID-19, MASKS, AND (WHOSE) RIGHTS

Responding to images of maskless crowds patronizing recent business reopenings, U.S. Health Secretary Azar said, “That’s part of the freedom we have here in America.”⁴ This encapsulates the main argument against mask requirements as something akin to infringement on individual liberties. Notably, similar arguments have been expressed regarding smoking in workplaces.¹ Individual liberties should not be taken lightly, of course, but such liberties do not extend to the imposition of risk to others. Even political philosophies emphasizing personal liberties over state intervention, such as libertarianism and liberalism, recognize the limits of rights to the point of harm to others.^{5–7} Yet, as demonstrated by viral videos showing confrontations between employees and customers,⁸ many individual liberty proponents are defensive even with precedents for restricting certain liberties for the sake of reducing hazards to others. Indeed, this point was summarized well by Craig Jelinek, President and Chief Executive Officer of Costco, who stated, “This is not simply a matter of personal choice; a face covering protects not just the wearer, but others too. . . and our employees are on the front lines.”⁹

Similar to smoking inside retail shops, restaurants, or public transportation, today’s maskless patron impedes workers’ rights to safe and healthy occupational environments in addition to posing risks to other patrons. Although a mask refuser or smoker might argue that other patrons could simply frequent mask-wearing/smoke-free establishments or even not go out at all, such logic neglects workplace rights and risks to workers’ health. This point is all the more pressing considering that (1) the primary rationale against stay-at-home

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orders was to return workers to their jobs and (2) many states have indicated that workers who refuse would forego unemployment benefits. This creates a difficult choice because workers cannot simply change jobs in the face of emergent health risks, especially given the difficulties in finding employment in another field for which one is qualified. Moreover, because health policies and job options are geographically determined, workers will likely face the same environment if re-employed elsewhere.

MASKS AS WORKPLACE PROTECTIONS

There is little reason why debates about indoor mask wearing should not consider the same standards that undergirded original arguments for indoor smoking bans—those grounded in concerns for workplace safety and health and executed and monitored by local and state agencies.^{1,10} Indeed, decades of research have shown that smoking bans led to measurable improvements in working conditions and worker's health.^{2,11–13} Although the literature on COVID-19 and occupational health is only just developing, studies on mask wearing released thus far³ imply that frontline workers will spend long hours with potential exposure to COVID-19 and its harms without similar protections or oversight. Although some (e.g., individual rights proponents) will cry foul about uniform protections being an attack on individual liberty or business functioning and profit, it is important to recognize that smoking bans were originally contested for the same reasons¹⁰ but are now less often viewed as such. Extending mask requirements to the types of workplaces that have long been smoke free, including those in which workers interface with the public—such as retail and transportation/travel—is essential for the health and safety of workers. Although smoke-free policies are not universal in restaurants and bars (contested locations for mask wearing as well), existing smoking bans offer a clear precedent—a precedent wherein worker's rights to a healthy work environment ultimately take precedence over patrons' preferences.

Private business owners may resist, viewing any government intervention as an affront to a free market and business rights. Such tensions, however, are hardly new. There is a long history of pitting business interests against labor generally and the rights of workers to security, fair compensation, and safety and health in the U.S.¹⁴ Although workers have tended to be on the losing end of these battles for the last several decades, federal and state governments are more inclined to intervene during times of economic instability in a manner that is simultaneously good for workers and businesses.¹⁴ Here too, there are parallels to smoking bans. Many service-

industry owners initially argued that they would lose revenue if they obeyed smoking bans, yet such revenue disruptions did not materialize.¹⁵ This was due to, in part, the fact that the geographic nature of bans restricts customer alternatives. Indoor mask requirements for the sake of employees and other patrons as well would work similarly if federal, state, and local governments take a stronger stance for their citizenry and those workers most at risk.

HEALTHY WORKPLACES, MASKS, AND INEQUALITY

Intimately tied to the question of workers' rights to a healthy workplace and potential oversight/protections are concerns about inequality. The particular flash points for both smoking bans and mask requirements are public-facing workplaces, especially in service and retail industries. These sectors are disproportionately composed of lower-wage and racial/ethnic minority workers.¹⁶ In this manner, mask requirements within public-facing workplaces may be a key means to reduce COVID-19 inequalities.

Lower-wage and minority workers already experience health disparities,¹⁶ including sicknesses linked to both smoking¹⁷ and COVID-19.¹⁸ They are also simultaneously disadvantaged when it comes to healthcare access.¹⁷ By urging a return to work without mask requirements, states are essentially requiring vulnerable populations to risk their health for the benefit of patrons. From health and inequality research,¹⁷ including on smoking bans,¹⁹ it is relatively easy to anticipate that not requiring masks in workplaces open to the public will exacerbate inequalities in COVID-19 for already vulnerable segments of the lower-wage and racial/ethnic minority workforce, which will have a broader inequitable impact on their families and communities.

PROTECTING WORKERS

Many considerations regarding smoking bans also apply to mask wearing. First, mask-wearing requirements, like smoking bans, are fundamentally a workers' rights issue. Recognizing behavioral infringement on others' rights and well-being highlights important, although currently underacknowledged, limits to individual liberties. Unlike the constant effect of smoking leading to permanent bans, the encroachment upon liberties through mask requirements would not necessarily be permanent, a point that legislators could make clearer to the public. Although the question of when to lift mask-wearing requirements is not yet clear—something that the development of a vaccine or curative therapies will hopefully

help clarify—inconveniences or potential backlashes surrounding individual liberties can be countered by pointing to the temporary character of any such requirements. Interim requirements are especially pertinent in businesses frequented by the public, where workers have increased risk of exposure to others' actions and choices. Relative to smoking, which does not interfere with eating or drinking in a restaurant or bar in the same manner that a mask does, it seems especially important that proximity considerations be treated seriously in the case of COVID-19 and that customers wear masks during interactions with workers in service occupations and, if possible, during breaks in eating and drinking. In industries such as retail and transportation/travel, there are fewer reasons for workers or patrons to either remove or resist wearing masks.

Second, consistent and monitored legal requirements for mask wearing, particularly indoors, will be especially essential for workers' rights to safety and well-being until the pandemic is resolved. As states reopen, some more rapidly than others, the immediate health benefits of mask-centered policy cannot be overstated given current evidence on the role of respiratory particulates in viral transmission and the ability of masks to reduce these particulates.³ Furthermore, for smoking bans and other tobacco-control policies, a key behavioral mechanism for change was denormalization¹; that is, the process of identifying and defining a behavior as non-normative with the aim of benefiting public health. By emphasizing workers' rights to a healthy working environment, the same mechanisms may be applied to masks. Denormalizing mask refusal may lead to wider substantive changes that promote public health and potentially extend mask wearing more broadly, including to outdoor spaces where people congregate and even beyond the COVID-19 pandemic. Mask wearing is ubiquitous in countries in East Asia, which some have credited to the normalization of mask-wearing behavior resulting from past epidemics in the region.^{3,20} Thus, if mask wearing can be normalized now through policies targeting COVID-19, workers may experience reduced risk not only from COVID-19 but also from future airborne epidemics and common illnesses such as influenza. Thus, even though mask-wearing requirements can eventually be lifted when the pandemic subsides, there may be long-term benefits to normalizing mask wearing, such that voluntary adoption during influenza season occurs.

Third, many business owners enforce a smoking ban even when not required by law. In the interests of their workers, businesses should implement mask-wearing policies in locales lacking such laws. As an additional incentive to business owners, the perception of a healthy and safe working climate is associated with increased

worker productivity along with the health benefits to employees.²¹

Finally, smoking ban enforcement often occurs informally through business owners, employees, and other patrons, with state authorities stepping in only when violations are consistent. Although smoking and mask-wearing violations are both easy to identify, the risk from the smoker is clear from the behavior. It is much more difficult, by contrast, short of a test, to detect whether an individual is infected with COVID-19 and putting workers at risk. If anything, however, this discrepancy makes indoor mask requirement policies all the more important because it remains unknown who may pose a risk to workers, especially given the possibility of asymptomatic transmission. Given the mortal threat of COVID-19 to some and the possibility of a second wave of the pandemic, clear and consistent policies for mask wearing and enforcement by state and local governments is warranted. Having such policies will enable employers to do what is right for patrons while simultaneously conferring on employees the dignity and protections they deserve.

Much as indoor smoke-free policies do not eliminate all threats to impaired pulmonary and cardiovascular health, indoor mask requirements are unlikely to eliminate all COVID-19 risks to workers. Other actions are necessary as well, such as the Centers for Disease Control and Prevention's recommendations for businesses: distancing where possible, reducing the need to touch surfaces and disinfecting frequently touched surfaces, and handwashing breaks and proper sanitary practices.²² Nonetheless, as smoking bans greatly reduced exposure to environmental tobacco smoke for workers, mask requirements would greatly reduce exposure to respiratory droplets that enable viral transmission.³ Ultimately, much like stepping outside to smoke, wearing a mask until the pandemic is resolved may feel like a nuisance; however, both pose a relatively small inconvenience when compared with workers' rights to a healthy, safe work environment.

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