

# “MASKS IN THE WORKING ENVIRONMENT: WHAT DOES THE LAW SAY?”

This info sheet is based around the information in our webinar with Workers of England union, available via: <https://smilefree.org/webinar>.

Important: People have different situations so the information provided in this info sheet, and the webinar it is based on, is of course general in nature. It doesn't, and is not intended to, constitute legal advice; all information provided is for general informational purposes only.

You should contact professional representation for advice with respect to any particular legal matter. No one should act or refrain from acting on the basis of this information without first seeking professional legal advice in the relevant jurisdiction.

Across the whole of the UK, there is no legal requirement to wear a mask in healthcare settings (and, even when there was a law, there was always a 'reasonable excuse' exclusion clause – such as 'it causes me severe distress').

So how can you counter attempts by your employer to force you to wear one?

## **What can you do if pressured to wear a mask at work? Some practical steps**

### **1. Try to ally informally with colleagues**

- If possible, try to find colleagues who feel the same
- Chat to them informally to discuss ways forward and for moral support

### **2. Speak informally to your line manager**

- Say 'I don't feel comfortable wearing a mask ...'
- Or say 'I'm exempt' – No need to say why.

If mask coercion continues ... ..

### **3. Ask the union for standard letter to forward to employer**

- Submit to employer & Human Resources department

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- Letter outlines the range of legal reasons why they shouldn't be coercing you to wear a mask.
- May wish to attach Smile Free's fully referenced letter to NHS chief executives.

If mask coercion continues ... ..

### **4. Submit formal grievance, if possible, as a staff group**

- Letter starting with, 'I/We wish to submit a formal grievance based on your insistence on masks in the workplace and your failure to recognise my mask exemption ...'
- Can use letter template from union.
- Ask for formal union representation so as to have someone to sit in & support you at each stage of the grievance process.
- NHS more complicated: has multi-stage grievances; an informal stage followed by a further two review panels.

If mask coercion continues ... ..

### **5. Consider early conciliatory option involving the conciliatory service ACAS**

If mask coercion continues ... ..

### **6. Claim 'constructive dismissal' and take it to a tribunal**

- Do NOT resign.
- Tribunal takes at least 9 months to get to initial hearing and often 2 years to reach an outcome.

## **Useful questions to ask an employer who is coercing you to wear a mask:**

1. 'In this organisation, does your 'policy' take precedence over the law?'
2. 'Are you indirectly changing my formal contract without my agreement?'
3. 'Are you fulfilling your duty of care to me by ignoring my assertion that masks are making me feel anxious/unwell?'
4. 'If you are insisting that masks are an essential element of Personal Protective Equipment, have you checked that you are consistently adhering to the strict regulations in this area?'

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5. 'Can I see the comprehensive risk assessment you have conducted on me regarding mask wearing in this working area?'
6. Can you reassure me that you have conducted the necessary tests to confirm that carbon dioxide levels behind my mask do not exceed the safety limits required by the EH40/COSH legislation?
7. 'If you are suggesting that masks are a medical intervention, do you not believe in the principle of informed consent?'
8. 'Are you complying with the requirements of the Equality Act by making "reasonable adjustments" to accommodate my needs?' [Moving a health worker to an office job is not a reasonable adjustment].

The Workers of England Union is an official/registered trade union. Anyone living in the UK, working in any industry (health or otherwise), can join. All union representatives are independent of employers (unlike some larger trade unions where reps are employees). Everyone has a legal right to union representation, and can choose any union they like.

### **For more information:**

Workers of England Union website: <https://www.workersofengland.co.uk>

Workers of Scotland Union website: <http://www.workersofscotland.uk>

Workers of Wales Union website: <http://www.workersofwales.uk>

Smile Free: the campaign against forced masking in the UK <https://smilefree.org>

Smile Free webinar with Ryan Karter (Workers Union of England) <https://bit.ly/3qkjodB>

Smile Free open letter to NHS chief execs: <https://bit.ly/3BkCbvH>

ACAS <https://www.acas.org.uk>