

July 2020 – Printer Friendly



Thank you for reading the “printer friendly” version of the MHA’s monthly **eHELPS** newsletter. If you would like to receive **eHELPS** via email, please send your request to ehelps@midwesthardware.com.

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Minnesota Announces Statewide Face Covering Requirement

Yesterday, Governor Walz announced **Executive Order 20-81**. This order requires face coverings in indoor spaces and public buildings, including retail stores, and in similar outdoor settings where social distancing is not possible. This mandate goes into effect on Saturday, July 25.

Signage will be required at retail stores. Retailers will be required to make a reasonable effort to educate non-compliant customers. Retailers will be required to deal with non-compliant customers in a manner similar to how they would deal with any other non-compliant customers relative to their store policy.

Any retailer or other impacted party that blatantly disregards the order will be subject to penalties including up to a \$1,000 fine or by imprisonment for not more than 90 days.

Business obligations, what a face covering is, and exemptions to the face covering mandate can be found [here](#).

Most Minnesota businesses were already required to have a written COVID-19 preparedness plan. That plan should now be updated to include a face covering policy. Updated Preparedness Plan Requirement Guidance for retail stores can be found [here](#).

Some exemptions to the mask mandate include:

- children under 2 who must never wear masks due to risk of suffocation
- children 2-5 are not required to wear face coverings
- people with medical or health conditions, strenuous work, and more (Retailers are not required to verify health conditions.)

MHA was disappointed that Governor Walz's statewide mandate did not include language which specifically preempted local and municipal face mask orders. Fortunately, many municipal orders contain language that allows a state order to supersede the local order. In those cases, the state order prevails.

Members who operate stores in cities, towns and municipalities that have their own face covering mandates in place should check with their local officials to see which standards need to be followed.

In summary, under the new statewide order taking effect on July 25, retailers are required to:

1. Ensure workers and customers are masked.
2. Update COVID-19 preparedness plans to reflect the masking requirement.
3. Treat non-compliant customers as you would any other customer violating a store policy.
4. Post signage indicating that masks are required.

New Statistics Show Retail Shrink Topped \$61B in 2019

From the Retail Dive, Tatiana Walk-Morris

Retail shrink in 2019 reached \$61.7 billion, up from \$50.6 billion in 2018. Those figures are according to the "National Retail Security Survey" conducted by the

National Retail Federation (NRF). Seven in 10 survey respondents reported a shrink rate of more than 1%.

Per the report, 29% of respondents indicated that e-commerce crime was a risk or threat that has become much more of a priority during the past five years, followed by organized retail crime (27.5%) and cyber-related incidents including data breaches (27.5%).

The report also found that over 52% of respondents are allocating technology resources to address risks this year, down from nearly 56% from the year before. Staff resource allocation is also down to 26% in 2020 from nearly 29% in 2019.

According to [the NRF's previous research](#), retail shrinkage totaled \$46.8 billion in 2017, indicating that retail's shrink problem has continued to grow over the past few years.

"Between an increase in incidents and new ways to steal, shrink is at an all-time high," NRF vice president for research development and industry analysis Mark Mathews said in a statement. "Loss prevention experts are facing unprecedented challenges from individual shoplifters to organized gangs to highly skilled cybercriminals. Retailers are responding with both traditional methods and the latest technology, but this is an ongoing challenge that can only be won with the support of lawmakers and law enforcement."

Read the full article [here](#).

MHA's Members Talk About Busy Stores and Increased Challenges During Pandemic

By Michelle Bruch, Southwest Journal

Deemed essential businesses, most hardware stores never closed their doors during the COVID-19 lockdown. Most were busier than ever. Now, even as retailing is trying to gradually return to normal, most stores remain busy. For many, finding adequate inventory to keep their store's fully-stocked and meet their customers demand is the biggest challenge. Traditional supply chain channels are no longer as reliable as they had been.

Recently, an article appeared in the Southwest (Minneapolis) Journal which included a number of MHA members sharing experiences of operating their retail hardware stores during the COVID-19 pandemic. The complete article can be found [here](#).

Worker's Compensation and Your Store's Liability For COVID-19

By Misha Lee, MHA Wisconsin Lobbyist

While MHA members continue to navigate these unprecedented times surrounding the Coronavirus pandemic, a recent publication from the State of Wisconsin Legislative Council comes to mind as a resource. The Legislative Council is a nonpartisan service agency that provides legal advice and guidance to members of the Wisconsin Legislature so that legislators can make better, more informed decisions.

The Legislative Council published a June 2020 Issue Brief discussing Worker's Compensation and employer liability for employees diagnosed with COVID-19 following their return to work. The Issue Brief explains that the state Worker's Compensation Act provides that employee injuries sustained from an illness or infection are generally covered by Worker's Compensation, but employees must demonstrate that they became ill through the course of their employment. Employees seeking Worker's Compensation coverage for a COVID-19 diagnosis must show their illness was caused by exposure at work. Injuries, including COVID-19, are covered whether or not the employer was negligent.

Wisconsin Worker's Compensation law provides an "exclusive remedy" for employees who are injured in the course of their employment, meaning that employees cannot bring separate legal actions outside of the Worker's Compensation system against their employer for an employment-related injury. However, as the Issue Brief outlines, employees can still bring actions against third parties other than their employer, if the third party is at least partially responsible for their injury. Employees must prove that the third party's negligence led to their injury, which also could include COVID-19 exposure.

[Read the Legislative Council Issue Brief here](#)

The widespread COVID-19 pandemic leaves employers and third parties, even those following federal and state government recommended best practices and guidelines, open to lawsuits if employees or customers contract the virus. Various polling data suggests that employer liability is real, with many employees indicating they would sue their employer over contracting COVID-19. This uncertainty and increased exposure to liability and costly lawsuits is of great concern to many employers throughout the state. Wisconsin needs a "safe harbor" for businesses that comply with government recommendations and practice appropriate protocols. Despite hardware stores being listed as "essential businesses" by Wisconsin and federal governments, these measures can help ensure business owners and their employees are comfortable remaining open and protect employers from civil claims filed outside of the Worker's

Compensation system. That is why many statewide business organizations are urging Wisconsin lawmakers to take action to help prevent a wave of COVID-19 related lawsuits from trial lawyers that could seriously undermine efforts to restart and rebuild our economy.

The Legislature has adjourned its regular 2019-20 session, but there's speculation lawmakers could return sometime after the November elections in order to complete some unfinished business. It's also possible they could also consider legislation on liability protections for businesses related to COVID-19 lawsuits at that time.

It's also possible that the United States Congress may take action. Most likely, business liability protections will be part of the negotiations which take place leading up to the next federal COVID-19 stimulus package.

Illinois Changes COVID Metrics, Regions, and Resurgence Mitigation Measures

By Alec Laird, MHA Illinois Lobbyist & Vice President, Government Relations for Illinois Retail Merchants Association

While states across the country experience a surge in new COVID-19 cases, Illinois remains largely an outlier with lower hospitalization and infection rates along with one of the highest testing rates in the country.

Last week, Illinois Governor JB Pritzker announced substantial changes to the regions and metrics Illinois will use to determine the protocols to be followed by different types of businesses should a resurgence occur. These measures could have a direct impact on businesses, including hardware stores, should a resurgence occur within their region.

Regions

Up until last week, the Governor had combined Illinois's 11 Emergency Medical Services (EMS) Regions into four. There were many critics of this combination because rural areas were lumped in with large cities such as Chicago and the Metro East. More cases arise in the cities and thus the rural areas were not able to advance quicker in the reopening stages. However, those four regions have now been eliminated and the original 11 regions have been restored.

1. NORTH: Boone, Carroll, DeKalb, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, Winnebago
2. NORTH-CENTRAL: Bureau, Fulton, Grundy, Henderson, Henry, Kendall, Knox, La Salle, Livingston, Marshall, McDonough, McLean, Mercer, Peoria, Putnam, Rock Island, Stark, Tazewell, Warren, Woodford

3. WEST-CENTRAL: Adams, Brown, Calhoun, Cass, Christian, Greene, Hancock, Jersey, Logan, Macoupin, Mason, Menard, Montgomery, Morgan, Pike, Sangamon, Schuyler, Scott
4. METRO EAST: Bond, Clinton, Madison, Monroe, Randolph, St. Clair, Washington
5. SOUTHERN: Alexander, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Marion, Massac, Perry, Pope, Pulaski, Saline, Union, Wabash, Wayne, White, Williamson
6. EAST-CENTRAL: Champaign, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Effingham, Fayette, Ford, Iroquois, Jasper, Lawrence, Macon, Moultrie, Piatt, Richland, Shelby, Vermillion
7. SOUTH SUBURBAN: Kankakee, Will
8. WEST SUBURBAN: DuPage, Kane
9. NORTH SUBURBAN: Lake, McHenry
10. SUBURBAN COOK: Suburban Cook
11. CHICAGO: City of Chicago

A map of the resurgence plan regions along with daily updates on resurgence measurement data, may be found [here](#).

New Metrics To Determine Resurgence

New metrics will now be used to determine whether or not a region is experiencing a COVID resurgence which could result in increased restrictions placed on businesses within the region. Those metrics are:

1. Sustained increase in 7-day* rolling average (7 out of 10-days) in the positivity rate and ONE of the following severity indicators:
 - o Sustained 7-day increase in hospital admissions for a COVID-19 like illness
 - o Reduction in hospital capacity threatening surge capabilities (ICU capacity or medical/surgical beds < 20%)*

OR

2. Experience three consecutive days averaging? 8% positivity rate

Mitigation Measures

Once a region meets the resurgence criteria, a three-tiered menu of mitigation options will be considered. If sustained increases in health metrics continue unabated, further mitigations could be added from additional tiers.

The mitigation measures **specific to retail** are as follows:

Tier 1

Reduce in-person capacity at retail locations.

Tier 2

Suspend in-person non-essential retail. Allow on-line and curbside pick-up for all retailers.

Tier 3

Suspend all non-essential retail. Only essential retail (i.e. hardware stores, grocery stores, pharmacies) remain open.

To see the a more complete list of mitigation measures for other businesses including bars and restaurants, offices, gyms and salons [click here](#).



Federal/State Labor Law Posters

Some businesses order labor law posters through companies online, and pay anywhere from \$30 to over \$100 per poster, depending on the poster. Sometimes businesses may not receive the appropriate posters they need. MHA makes it easy for Members by automatically sending a FREE 6-in-1 Federal Labor Law poster when you renew your 2020 membership. The Federal 6-in-1 poster includes:

- Equal Employment Opportunity is THE LAW (applicable to most private employers)
- EMPLOYEE RIGHTS, Employee Polygraph Protection Act (applicable to private employers)
- Job Safety and Health, It's the Law! (applicable to private employers)
- YOUR RIGHTS UNDER USERRA, The Uniformed Services Employment and Reemployment Rights Act (applicable to all employers)
- EMPLOYEE RIGHTS Under the Fair Labor Standards Act (applicable to all employers)
- EMPLOYEE RIGHTS AND RESPONSIBILITIES Under the Family and Medical Leave Act (applicable to all employers)

To print mandatory State posters applicable to your business, go to www.midwesthardware.com, login to "My MHA", and click on "Labor Law Posters". Posters can be printed on normal 8 1/2 x 11 paper.

If you have forgotten your username and/or password, contact Andrea Ramage at 800-888-1817 ext. 365 or andrear@midwesthardware.com.

Sales Trends (May 2020)

Here are the most recent Illinois, Minnesota-Dakotas, and Wisconsin hardware store sales trends, gathered from association members using the MHA's monthly accounting service. The figures derived for each region includes sales data from the following number of stores:

Illinois - 21 stores

Minnesota-Dakotas - 11 stores

Wisconsin – 71 stores

	Month	YTD
Illinois	52.12%	16.40%
MN-Dakotas	49.74%	23.44%
Wisconsin	46.81%	19.57%
