

August 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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Illinois Adopts New Rule Allowing Stores to be Fined for Actions of Their Customers

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

A little-known Illinois committee failed to overturn Governor JB Pritzker’s new rule to punish retailers for the actions of consumers. The Joint Committee on Administrative Rules (JCAR) voted to NOT reject an **emergency rule** filed by the Illinois Department of Public Health that holds businesses responsible for the actions of consumers who do not wear masks on their premises. The rule also specifically states that there can be no enforcement action against individuals who are NOT wearing face coverings.

Of the 11 committee members present, 6 voted in favor of suspension of the new rule, while 5 voted against suspension. Eight votes were required to suspend the rule. Since it did not reach that threshold, the rule stays in effect.

OVERVIEW

The new rule does the following:

1. Applies when/where employees, customers, and other individuals on the premises who are unable to maintain at least a six-foot social distance. However, it will be up to local enforcement officials to determine if that social distance is maintained.
2. Businesses need to make “reasonable efforts” to comply with the rule which includes following Phase 4 Guidelines. If a business is following the Phase 4 Guidelines established by the Department of Commerce and Economic Opportunity (DCEO), the business is deemed to be following the rules and **SHOULD NOT be penalized** for a consumer not wearing a mask on the premises. [See attached **IDPH FAQs**]. However, many people do not understand the various Phase 4 Guidelines so this will depend on enforcement authorities being properly informed. MHA members can review the Phase 4 Guidelines for their retail sector [here](#).
3. The following steps will be taken **BEFORE** a penalty is assessed:
 - o The business shall be given a written notice of non-compliance.
 - o The business shall be given a reasonable opportunity to comply. It is unclear what will constitute a “reasonable opportunity” and, again, local authorities can have their own interpretations.
 - o Only after determining the business has not voluntarily complied, after the notice and reasonable time to cure, the enforcing entity may issue a written order to “disperse”. Disperse includes requiring all or some of the consumers from the premise to become compliant. The rule is silent as to whether the business must clear the business, whether they will be assisted by law enforcement, what to do if people are in line or at a table with or awaiting their orders, etc.
 - o If the business refuses to comply with a written order to disperse, the business is liable for the Class A Misdemeanor.
4. The rule specifically states that enforcement cannot be directed against individuals.

A more complete analysis of the recent changes adopted via an Emergency Amendment by the Illinois Department of Public Health as they relate to retail stores is available [here](#).

Employers Waiting for Guidance on Payroll Tax Deferral

By Roger Russell, Accountingtoday.com

In what amounted to an end run around Congress, President Trump signed a series of executive memorandums and an executive order on August 8, 2020, to address issues left unresolved by the congressional failure to agree on additional bipartisan stimulus legislation.

"It's actually a memorandum rather than an executive order," observed Mark Luscombe, CPA and principal federal tax analyst for Wolters Kluwer Tax & Accounting. "The difference is not legally significant. An executive order gets published in the *"Congressional Record."*

While three of the executive actions are not tax-related—addressing enhanced unemployment payment, eviction moratoriums, and student loan relief—the fourth defers payroll taxes from September 1, 2020, to December 31, 2020. "There were three presidential memoranda and one executive order," said Luscombe. "The order was the one relating to evictions."

"The president has been pushing for forgiveness of payroll tax for some time, but neither Republicans nor Democrats were in favor of it because it doesn't provide much immediate help, just a gradual benefit over time," Luscombe continued. "They would prefer a stimulus with more of an immediate benefit, but Trump went with a payroll tax deferral because that's all he felt he could do with executive action without congressional involvement."

"The administration felt it only had the power to issue a deferral, not a forgiveness," Luscombe said. "The memorandum only applies to the 6.2 percent employee's share of Social Security taxes. It does not apply to the 1.45 percent employee's share of Medicare taxes."

Since the memorandum constitutes only a deferral, will someone have to pay the piper come January?

"It's likely that this would have to start to be repaid in January," Luscombe said. "The Treasury is expected to issue guidance on how the deferral will work and address several uncertainties. A lot of employers are waiting for the guidance to be issued."

On August 12, 2020, the U.S. Chamber of Commerce sent a letter to Treasury Secretary Steven Mnuchin asking for further clarity about the payroll tax deferral. Included in the letter were concerns about who elects this deferral, who is ultimately liable for the repayment of the deferred taxes, when the repayment will be due, and what mechanism will be used to collect that repayment. The letter further notes questions about what happens when employees have fluctuating salaries or receive bonuses; where employees are employed for a short term, such

as with seasonal holiday workers; and where employees leave employment prior to the end of the deferral period. You can [read the letter here](#).

Retail Federation Chief Economist Says Economic Recovery Still Being Tested

From the National Retail Federation

Despite broad indications that the economy has begun to recover as businesses reopen from the coronavirus pandemic, conflicting data makes it difficult to say how steadily the comeback will continue according to National Retail Federation Chief Economist Jack Kleinhenz.

“Optimism about the economy and retail spending is being tested daily with the spread of the coronavirus,” Kleinhenz said. “Big questions are looming, and we are all grappling to discern what incoming data is telling us about the health of the economy and consumers. Depending on the data selected, the answers are not entirely clear”.

“A key question is whether the pace of growth and momentum will carry forward over the next few months,” Kleinhenz said. “Based on quarterly and monthly data, the U.S. economic recovery continues despite elevated COVID-19 cases. But in examining weekly data, the pace of improvement appears to be slowing. Could it be that we are at or heading back to the same spot we were at two months ago?”

Kleinhenz’s remarks came in the August issue of NRF’s Monthly Economic Review, which said monthly indicators showed the economy improving in May and June but that more frequent data showed the pace of recovery flattening by mid-July.

Economists traditionally look at monthly and quarterly numbers to gauge the status of businesses and consumers. However, the release of that data lags weeks behind when it is collected and with the situation changing rapidly since the outbreak of the coronavirus early this year, more frequent information has been needed to keep up. In response, the Federal Reserve and others have begun tracking some indicators as often as weekly.

Consumer spending was up 8.2 percent in May, for example, ending two consecutive months of decline, and up another 5.6 percent in June. Meanwhile, retail spending as calculated by NRF—excluding automobile dealers, gasoline stations and restaurants to focus on core retail—was up 4.9 percent in June. The Federal Reserve Bank of New York’s Weekly Economic Index—a composite of indicators—worsened from -6.65 percent on July 18 to -7.24 percent as of July 25, with officials citing a decrease in retail sales. The weekly Mobility and Engagement

Index from the Federal Reserve Bank of Dallas also showed the economy leveling off in mid-July.

With many economists saying the timeline of the recovery will be determined by the efforts to control the virus, the Federal Reserve Bank of Cleveland conducted a survey in early July that found 89.9 percent of those polled wear a mask for activities such as shopping in a grocery store. The bank said it conducted the survey because masks “have the potential to help reduce the spread of COVID-19 without greatly disrupting economic activity.”

To read more, [click here](#).

What’s Happening with the Multi-Billion Dollar Visa-Mastercard Settlement?

The \$5.54 billion payment card interchange fee settlement remains in limbo.

MHA members will recall this class action lawsuit states that merchants paid excessive fees to accept Visa and Mastercard cards because Visa and Mastercard, together with their respective member banks, violated antitrust laws.

In December, 2019, the court deciding the case gave its final approval to the settlement. However, on January 3, 2020, an appeal of the court’s final approval order was filed. The appeal process continues, and at this time it is unknown how long the process may take.

The pending settlement calls for merchants who accepted Visa and Mastercard-branded cards any time from January 1, 2004 to January 25, 2019, to file claims and receive a monetary settlement. However, with the appeals process continuing, **no claims** are able to be filed at this time.

That has not prevented third-party agencies from continuing to reach out to merchants, telling them they could “miss out” on their share of the settlement. The agency will agree to file claims on the merchant’s behalf in exchange for a percentage of the merchant’s settlement proceeds.

The problem is, no claims can currently be filed while the lawsuit is still being appealed. In addition, the claims filing process has not yet been determined. It may end up being a very simple and easy process that merchants can complete on their own, without giving away 25% to 50% of their settlement proceeds to a third party.

Right now, there is no way to predict when a judgement of the current appeal may be issued. Only if that appeal is denied will the lawsuit become final. At that time, all merchants will be flooded with information about what they need to do in order to file a claim. A case this broad will not fly under the radar.

At this time, before all appeals have been exhausted, before the lawsuit itself has been declared final and closed, and before the claims filing process has been announced, agreeing to give up a percentage of whatever funds you may be entitled to appears to be premature. MHA continues to advise our members to wait and let the process play out before agreeing to give up a portion of your settlement to a third-party, when the claims filing process may be very simple to complete on your own.

Wisconsin Primary Election Yields Few Surprises

By Misha Lee, MHA Wisconsin Lobbyist

The August primary election results yielded few surprises as we now head into what is expected to be a hotly contested November general election from the top of the ticket all the way on down. The recent election also proved to be a good night for incumbents with only one losing to a challenger candidate.

Looking at Congressional races, all eight of Wisconsin's seats in the U.S. House of Representatives are up for election this fall. Conversely, neither of Wisconsin's two U.S. Senate seats are up for election in this cycle.

U.S. House of Representatives primaries of interest were:

- Longtime Senate Majority Leader Scott Fitzgerald (R-Beaver Dam) won the Republican primary with nearly 80 percent of the vote in the 5th Congressional District primary. Fitzgerald will face Democratic opponent Tom Palzewicz. Palzewicz was defeated by retiring Congressman James Sensenbrenner in 2018. Fitzgerald should easily win this election.
- In the 3rd Congressional District, Republican Derrick Van Orden (R-Hager City) won a two-way primary and will now face 12-term Democratic Congressman Ron Kind. Van Orden is a retired former Navy Seal, actor and business consultant. Kind won re-election in 2018 with 60 percent of the vote. This race will be one to watch on election night.
- Democrat Jessica King (D-Oshkosh), an attorney and former State Senator and Oshkosh City Council member, easily won a 3-way Democratic primary with 75 percent of the vote to challenge three-term Republican Congressman Glenn Grothman of Campbellsport in the 6th Congressional District.

Grothman was re-elected in 2018 with 56 percent of the vote and is favored to win re-election.

In state legislative races, 16 of Wisconsin's 33 State Senate seats (even-numbered districts) and all 99 State Assembly seats are up for re-election this year. There were 9 legislative incumbents who faced primary challenges and 8 of them easily won their races, with all surpassing 60 percent of the vote.

Wisconsin Senate primary races of interest were:

6th Senate District (Sen. LaTonya Johnson, D-Milwaukee, incumbent)

- State Senator LaTonya Johnson easily held off a challenge in the Democratic primary by Michelle Bryant (D-Milwaukee), who is Chief of Staff to State Senator Lena Taylor (D-Milwaukee). Johnson captured 77 percent of the vote.

10th Senate District (Sen. Patty Schachtner, D-Somerset, incumbent)

- Representative Rob Stafsholt (R-New Richmond) captured 66 percent of the vote in the Republican primary versus Cherie Link (R-Somerset). Stafsholt was first elected to the Assembly in 2016 and re-elected since. He is a farmer and owner of multiple small businesses. Stafsholt will now face incumbent State Senator Patty Schachtner (D-Somerset) in the general election.

Read the full article [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 (June 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 - 20 stores

Minnesota-Dakotas - 12 stores

Wisconsin – 68 stores

	Month	YTD
Illinois	37.51%	19.59%
MN-Dakotas	35.53%	23.94%
Wisconsin	28.16%	19.99%