

September 2020 – Printer Friendly



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Commentary: Retailers and COVID-19 Liabilities

By Angela Kovach, Chain Store Age

It’s a confusing time for brick-and-mortar retailers as they navigate when and how to go about their daily operations under the looming specter of coronavirus. Most are struggling to maintain safety precautions, including enforcing store mask guidelines (and, in some cases, mandates) when some customers refuse to wear masks. But among the multitude of challenges retailers face as they reopen for business, the largest may be avoiding liability as a result of employees or customers becoming infected with COVID or other COVID-related issues.

Retailers face the daunting task of staying on top of the state and local government rules regarding operating during the pandemic. The rules are evolving constantly (and often conflicting), making it hard to understand what needs to be done for compliance. Some businesses may be in violation of local coronavirus regulations

and not realize it, while others shirk recommendations while hoping to escape enforcement. For instance, public health officials in Los Angeles found that 83% of restaurants and bars were not in compliance in late June. Even if businesses comply with regulations, it won't necessarily protect them from liability.

These are such extraordinary times and, as a result, there is no established legal precedent or clear standards for employee and customer safety during a pandemic—the norms and rules are playing out in real time. So far we haven't seen too many lawsuits filed against retailers overexposure leading to infection. But there have been lawsuits over COVID-19 exposure filed outside of retail—by workers in meat processing and federal employees in 13 agencies, including DHS, ICE and the military.

Many states have passed laws to provide some level of liability protection for essential businesses. The general trend is to protect these businesses from basic negligence lawsuits while still holding them generally responsible for willful misconduct, gross negligence or other intentional acts.

Being able to qualify as an essential business appears to be one of the strongest defenses a business has during this challenging time. Other ways a business might protect itself against lawsuits are by demonstrating compliance with state, local and federal guidelines and recommendations; showing that they had no knowledge of infections in the workplace; or proving that the plaintiff customer or employee failed to follow recommendations to protect against exposure.

It's incredibly difficult to prove that exposure occurred as a result of working at most jobs or during a shopping trip to a store. Front-line workers, such as medical personnel, delivery people and grocery store clerks, and employees in workplaces that have had a high percentage of infections will have a stronger case.

To strengthen their exposure case, customers would have to show that they came into contact with an infected employee at a business or that there was a high degree of certainty of infection traced back to the store, that the retailer was negligent and didn't take proper precautionary measures, that the business knew that an employee there was infected or had recently been exposed, and possibly that other people became ill after similar circumstances at the store.

Some retailers may consider methods to proactively mitigate liability, but those won't reliably hold up in court. For instance, it's not clear that requiring employees to sign liability waivers would be enforceable. Businesses can demonstrate that they took all reasonable precautions in accordance with state, local and federal guidelines to avoid a negligence claim, but without clear standards it will be tough to predict where the line against liability will fall.

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

Wisconsin Extends Mask Mandate Through November 21

By Mitchell Schmidt, Wisconsin State Journal

With positive COVID-19 cases surging in college communities across the state, Wisconsin Governor Tony Evers has extended the statewide mask mandate through late November.

On Tuesday, Evers announced the new mask mandate—along with the governor’s third public health emergency—in an effort to control the spread of COVID-19. Positive cases, primarily among 18- to 24-year-olds, have been rising since students returned to campus, despite a statewide mask mandate being in effect since August 1.

Under the order, everyone age 5 and older must wear a face covering when indoors or in any enclosed space open to the public including outdoor bars and restaurants, public transit and outdoor park structures. The order does not apply to people in their private residences. Face coverings are strongly recommended in all other settings where people may come in contact with others, including outdoors when maintaining physical distance is not possible. A violation of the order would not bring any criminal penalties but could result in a \$200 fine. Enforcement of the mask mandate has largely been left to local health departments and few, if any, fines have been issued.

“We continue to learn more about this virus, but what we do know is that we are facing a new and dangerous phase of the COVID-19 pandemic here in Wisconsin,” Evers said in a statement. “We are seeing an alarming increase in cases across our state, especially on campus. We need folks to start taking this seriously, and young people especially—please stay home as much as you are able, skip heading to the bars, and wear a mask whenever you go out.”

Last week, Evers hinted at the possibility of extending the statewide mask mandate, which he called an “important piece of the puzzle” to mitigate the spread of the disease.

The Evers administration’s stay-at-home order, issued in March by the Department of Health Services Secretary Nominee Andrea Palm, was struck down on procedural grounds, with the state Supreme Court saying the Legislature needed to have a say in any long-term COVID-19 regulations.

After saying multiple times that the court’s order prevented him from implementing a mask order, in July, Evers declared a new public health emergency and a separate order requiring masks. Both of the July orders are set to expire Sept. 28.

Current Face Covering Rules By State

Here is a recap of the current face covering requirements for retail hardware stores operating in each of MHA's five-state membership territory.

Illinois

Statewide order: Yes

Face coverings must be worn anytime customers, employees or other individuals on the premises are unable to maintain a 6-foot social distance. Non-complying businesses risk being charged with a Class A Misdemeanor, which includes a \$75-\$2,500 fine. Businesses deemed to be making "reasonable efforts" to comply with the rule are not to be penalized if a customer refuses to wear a mask on the premises. Limits of no more than 50% of maximum occupancy, per store, also apply. Interpretation and enforcement of the order rests with each local authority.

Minnesota

Statewide order: Yes

Masking is required for employees and customers in Minnesota. Stores are asked to handle non-compliant customers as they would any customer violating another store policy and are asked to offer alternative shopping (i.e. curbside pickup) for a non-complaint customer. Customers with medical conditions (need not be verified by the store) are exempt, but alternative shopping should be suggested. Under the order, a store may refuse service to a non-compliant customer, but is not required to refuse service.

North Dakota

Statewide order: No

At this time, the state encourages employers to recommend staff and customers wear face coverings where it is difficult to maintain social distancing, but there is no statewide requirement.

South Dakota

Statewide order: No

The South Dakota Department of Health currently recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain, especially in areas of significant community-based transmission.

Wisconsin

Statewide order: Yes

Governor Tony Evers's emergency order mandating face coverings statewide took effect August 1. That order was set to expire on September 28. On September 22, Evers issued a subsequent emergency order, extending the mask mandate to November 21. The rule applies to people ages 5 and up in all indoor public settings and in "enclosed spaces". It includes employees, customers and others in a retail store. When outside, masks are "strongly recommended" but not generally required so long as social distancing can be maintained. Enforcement, left largely to local health departments, has been spotty.

Lowe's to Add Pickup Lockers by Thanksgiving

From Retail Dive

Lowe's has announced plans to install contactless pickup lockers at its stores in most major metro markets by Thanksgiving, and will continue to roll out the technology to all stores by March 2021. Customers will receive a one-time barcode that can be scanned by the lockers when items are ready to be retrieved, according to a company announcement emailed to *Retail Dive*. The home improvement retailer said lockers are available now at stores in locations including Charlotte, Philadelphia, New York, New Jersey and Connecticut.

As the Coronavirus took hold, many consumers began turning to e-commerce more than ever before. Although Lowe's was deemed an essential business during mass lockdowns, and has remained open for walk-in customers, the home improvement retailer saw online sales skyrocket since the start of the pandemic.

Lowe's reported an 80% and 135% year-over-year increase in website sales during its first and second quarters, respectively. In recent months, the company has also worked to roll out features related to its digital business, like transitioning its website to the cloud and offering curbside pickup services.

While much of this has been accelerated to support the surge in online sales brought on by the pandemic, CEO Marvin Ellison has been working to right missteps in Lowe's online business since his arrival in 2018. Last year, the retailer announced it would invest half a billion dollars annually until 2021 in order to transform the technological makeup of its business, which included opening a new tech center in Charlotte, North Carolina.

To read the full article, [click here](#).

2021 Minnesota Minimum Wage Increase Announced

From Minnesota Department of Labor and Industry

Minnesota's minimum wage rates will be adjusted for inflation on January 1, 2021. The minimum wage will increase to \$10.08 an hour for large employers and \$8.21 an hour for small employers.

The current large-employer minimum wage, \$10.00, will increase by eight cents to \$10.08. Other state minimum wages, including the small-employer, youth and training wages, as well as the summer work travel exchange visitor program wage, which are all currently \$8.15, will increase by six cents to \$8.21. These increases are both 0.8%.

As of Jan. 1, 2021:

- Large employers—with annual gross revenues of at least \$500,000—must pay at least \$10.08 an hour.
- Small employers—with annual gross revenues less than \$500,000—must pay at least \$8.21 an hour.
- The training wage rate, \$8.21 an hour, may be paid to employees younger than 20 years of age for the first 90 consecutive days of employment.
- The youth wage rate, \$8.21 an hour, may be paid to employees younger than 18 years of age.

These state minimum wage rates will not apply to work performed in the cities of Minneapolis and St. Paul, which have higher minimum wage rates.

In the balance of the state, for February 2020, an estimated 206,000 jobs, or 8.5% of the total jobs, paid the minimum wage or less. February 2020 was the last month before the COVID-19 pandemic had a significant effect on the economy.

Minneapolis Further Delays Enforcement of Bag Fee Ordinance

Amid the pandemic, the City of Minneapolis has further delayed enforcement of its *Bring Your Own Bag* ordinance which requires most retailers to charge consumers a 5-cent fee for carryout bags and also imposes fines on retailers for not doing so.

In November 2019, the City of Minneapolis passed changes to its *Bring Your Own Bag* ordinance to require a 5-cent fee be charged on both paper and plastic carryout bags. The ordinance went into effect on January 1, 2020, with a six-month educational period.

Originally, stores were to be on board by July 1, 2020, or face the possibility of being fined for non-compliance. That compliance enforcement date was then pushed back to October 1, 2020. It has now been pushed back a second time, to January 1, 2021.

According to City of Minneapolis staff, delayed enforcement is designed to give retailers flexibility amid the COVID-19 pandemic, including a recognition that many retailers have asked customers to avoid using reusable bags.

Exercising Your Right To Vote This November

By Misha Lee, MHA Wisconsin Lobbyist

Like many of you, I have watched the erosion of common decency and civility in government and political campaigns with disappointment. Too often, people can't find a way to disagree without being disagreeable, especially among politicians. And while politics is not the only sector of our culture where such divisiveness is on full display, it is among the most prominent—especially in a Presidential election year.

However, it is imperative that we don't let our dissatisfaction keep us on the sidelines in the upcoming election.

It seems like every election in the past dozen years has been described as the most important election of our lifetime. As someone who has worked in the public policy and political arena for a quarter of a century, that description has always frustrated me. Not because it's hyperbole, but rather because ***all elections*** are, and should be, important. From local government races all the way up to President, your vote is critically important and powerful. Voting is not only your constitutional right, it is a privilege and responsibility as a citizen, and yes, as a Midwest Hardware Association member too.

Your participation in the democratic process is a key grassroots component of MHA's public policy and advocacy efforts to protect your business interests. Yes, there is the Presidential election which gets all the media hype, but other races deserve your attention. While the Governor is not up for re-election this fall, there are many state legislative races that matter. It is likely that the Republicans will remain in the majority in both the State Senate and the Assembly. In all likelihood come January 2021, the Democrats will control the Governor's office and the Republicans will control the Legislative branch. Split government will continue in Wisconsin. However, MHA members in Wisconsin and elsewhere can help determine the particular makeup of their Legislature by helping to support and elect candidates who appreciate the important role of Main Street small businesses like you.

With the Coronavirus pandemic still gripping the globe, and economic uncertainty and anxiety at record levels, citizen involvement in our government is more essential than ever. Closer to home, the next legislative session in Wisconsin will be one of the most challenging we've seen as policymakers are faced with addressing significant state and municipal budgetary shortfalls. Just examining the state Transportation Fund, a recent analysis from the nonpartisan Legislative Fiscal Bureau (LFB) highlights that preliminary Transportation Fund collections are down nearly \$100 million or 4.9 percent from original fund estimates as a result of impacts from COVID-19. How will the next Legislature address this shortfall in 2021 and will they propose new fee and revenue increases?

Another burden directly impacting the business community, with particular challenges for smaller employers, is the issue of civil liability and the need to protect Wisconsin businesses from predatory lawsuits alleging liability for COVID-19 exposures. As businesses face financial hardship during the pandemic, the last thing small employers need is to worry about falling victim to costly, frivolous litigation, especially when taking adequate precautions to keep their premises safe for employees and customers. Legislation has been proposed to shield businesses, schools, universities and other entities from the threat of predatory lawsuits. This is just one example, of many issues, that MHA and its members can advocate for among candidates on the ballot in November.

Keep in mind that MHA's advocacy efforts in support of Main Street issues like these do not begin when the Legislature reconvenes a new session in January. Our efforts start at the ballot box on Tuesday, November 3rd, and the future success of our advocacy efforts begins with you exercising your right to vote on that date and continuing to vote in elections beyond this November.

Be safe and thank you for allowing me to represent your interests at the State Capitol in Madison.

Illinois Releases Second Round of Funding for Businesses Curtailed by COVID-19

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

The Illinois Department of Commerce and Economic Opportunity (DCEO) announced the second round of the Business Interruption Grants (BIG) to help businesses impacted by the COVID-19 pandemic and the recent civil unrest.

BUSINESS INTERRUPTION GRANTS

In August, an initial round of funding was directed at businesses which were forced to limit their operations or close. Examples included restaurants, personal care services, gyms and fitness clubs, and businesses located in Disproportionately Impacted Areas (DIAs). The first round of Business Interruption Grants (BIGs) provided a \$49 million for successful applicants.

A \$220 million second round of BIGs aims to provide relief for all types of small businesses, but with a particular focus on businesses downstate and in Disproportionately Impacted Areas. The second round of BIGs also focuses on heavily impacted industry and regions-representing businesses that have been unable to reopen or have been operating at a severely diminished capacity since the spring.

The second-round application process began on Thursday, September 17, 2020. You may access the application [here](#).

PROGRAM SPECIFICS Businesses which demonstrate an interruption may receive a grant to reimburse expenditures incurred during periods of limited capacity or closure. The program focuses on reimbursing expenses associated with the business's operating costs which include, but are not limited to:

1. Payroll and benefit payments on behalf of retained employees.
2. Lease and mortgage payments for business location(s), as well as related utility expenses.
3. Variable costs for the goods or services provided.
4. Expenses related to personal protective equipment (PPE) for employees.

The period in which businesses may claim eligible expenditures is March 21, 2020 through December 30, 2020.

As well as meeting the program's basic criteria shown above, a qualifying business is:

1. Eligible for reimbursement as prescribed by 601(a) of the Social Security Act and added by section 5001 of the CARES Act. This includes businesses with less than 500 employees. Please keep in mind that priority will be given to small businesses.

2. Experiencing business interruption due to the COVID-19 public health emergency.
3. Registered and in good standing with the Illinois Secretary of State.
4. Licensed to do business within their industry (if applicable).

SECOND ROUND SPECIFICS

The second wave of BIGs includes the following provisions to ensure a wide distribution of funds both geographically and across business type:

1. **\$60 Million for Heavily Impacted Industries**—Includes businesses such as movie theatres, performing arts venues, concert venues, indoor recreation, amusement parks, and more.
2. **\$70 Million Disproportionately Impacted Areas**—Set aside for DIAs, defined by ZIP codes identified by the General Assembly for communities that are most economically distressed and vulnerable to COVID-19.
3. **Downstate Communities**—DCEO has committed to ensuring that at least half of all remaining funds, totaling more than \$100 million, are reserved for businesses in downstate and rural communities of Illinois.
4. **Priority Businesses**—Apart from the \$60 million for heavily impacted industries, applications from the following types of businesses will be prioritized for review for remaining funds: businesses directly affected by regional mitigations implemented by the state or local governments, independently owned retail, tourism- and hospitality-related industries including accommodations, and more.
5. **Grants and Loan Forgiveness for Illinois Small Business Emergency Loan recipients**—As authorized by the General Assembly, DCEO will offer grants for businesses that have incurred eligible costs to offset loans received under the Illinois Small Business Emergency Loan program. This round of loan forgiveness and grants will go to businesses that have received loans or remain on the wait list and the program will sunset going forward as DCEO and its partners focus on making BIG awards.

More information may be found in the following links:

1. [Application Questions](#)
 2. [Application Checklist](#)
 3. [Business Certification Form and Eligible Cost List](#)
 4. [Guidance for Businesses and Organizations that Receive Business Interruption Grants \(BIG\) and Funds from Other CARES Act Programs](#)
 5. [ZIP Codes that Qualify as DIAs for the Illinois Business Interruption Grant \(BIG\) Program](#)
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Forklift Workshop DVD Training

The Occupational Safety and Health Act of 1970 requires employers to have formal and practical training and evaluation for all forklift operators. Once initial training is conducted, employers must then evaluate each operator at least once every three years. The Forklift Workshop DVD Training can help you meet OSHA forklift training requirements.

The Forklift Workshop DVD is an innovative approach on education new and veteran operators on proper forklift safety procedures as required by OSHA. The workshop contains everything necessary, such as a 35 minute DVD, trainer's tools on CD-ROM, operator's handbook, quizzes, forklift poster, and more!

Contact Jordan Firkus at 800-888-1817 ext. 301, jordanf@midwesthardware.com or Andrea Ramage at 800-888-1817 ext. 365, andrear@midwesthardware.com.

Testimonials

"The Forklift Workshop DVD is a handy tool. It includes basic information to help train new forklift operators and provides a heads up on possible safety issues. The video and material provided make training quick and easy."

Mike, Manager

*United True Value
Oconto Falls, WI*

"We purchased the forklift training DVD system after a surprise OSHA visit as a necessity. Among the things we were fined and cited for was failure to have a formal and well-documented forklift training program. We purchased the forklift DVD training program from the Midwest Hardware Association to become compliant and avoid additional penalties."

Matt Johnson

*Johnson's Hardware & Rental
Mora, MN*

Sales Trends (July 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 - 23 stores
- Minnesota-Dakotas - 13 stores
- Wisconsin – 74 stores

	Month	YTD
Illinois	28.01%	22.35%
MN-Dakotas	24.07%	23.10%
Wisconsin	19.55%	20.47%
