

HEALTH FREEDOM

DEFENSE FUND

FREQUENTLY ASKED QUESTIONS RE MASKS

1. Q: Can my employer force me to wear a mask at this time?

A: Currently, masks are authorized for use by the general public as “investigational products” under an Emergency Use Authorization (“EUA”). They are not an approved product, and are referred to in the law as “unapproved products” because they have not been fully tested and approved for use by the FDA. Under the federal law that allows the FDA to issue EUAs (21 U.S.C. § 360bbb-3), you cannot be forced to wear a mask. The law provides that recipients of a product authorized for use under and EUA can refuse to take the product. In this instance, the mask is the product.

2. Q: Can my employer fire me for refusing to wear a mask?

A: This issue has yet to be decided by the courts. Some attorneys take the position that employers can fire employees who refuse to wear a mask. However, this conclusion conflicts with the language of the critical statute, 21 U.S.C. § 360bbb-3, which provides that an unapproved product authorized for emergency use only, such as masks, can only be used if:

(i) Appropriate conditions designed to ensure that health care professionals administering the product are informed—

(I) that the Secretary has authorized the emergency use of the product;

(II) of the significant known and potential benefits and risks of the emergency use of the product, and of the extent to which such benefits and risks are unknown; and

(III) of the alternatives to the product that are available, and of their benefits and risks.

(ii) Appropriate conditions designed to ensure that **individuals to whom the product is administered are informed**—

(I) that the Secretary has authorized the emergency use of the product;

(II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and

(III) of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.

(iii) Appropriate conditions for the monitoring and reporting of adverse events associated with the emergency use of the product.

(emphasis added)

Note that the recipient of the product (the mask) must be informed of the option to refuse administration of the product. An employer who fires an employee for refusing to wear a mask would therefore be firing an employee for asserting a right guaranteed under federal law. Moreover, the health care professionals administering the product would be administering the

product in violation of federal law, and beyond the scope of the authorized use of the product. We therefore conclude that employers may not fire employees who refuse to wear a mask at this time.

3. Q: Can my employer subject me to special treatment, such as forcing me to work from home, or work in separate areas should I refuse to wear a mask.

A: This question has not been addressed by any court to date. An employer taking actions of nature noted above would seem to be punishing an employee for asserting the federally protected right of refusing to wear an emergency device that has yet to be approved by the FDA. The employer subjecting a healthy person, exhibiting no signs of illness or contagion, differently than other employees simply because that person asserted the federally protected right to refuse to wear a mask could be seen as attempting to coerce that employee into wearing a mask against their will, a violation of the federal law quoted above.

4. Q: What should I do if my employer tries to force me to wear a mask?

A: You should provide your employer with the HFDF Employer Mask Notice, that can be downloaded [HERE](#). If your employer continues to insist that you wear a mask, please contact us by email, and we will attempt to refer you to a lawyer in your area who has been educated on this issue who may be able to assist you. We cannot guarantee that we will be able to assist every person who contacts us, but we will do our best to try to help you.

5. Q: My employer says that I am threatening the health of my co-workers because I refuse to wear a mask. What should I do?

A: Your employer is incorrect that the masks have been authorized by the FDA on the basis that they prevent the transmission of a virus like COVID-19. Here is a quote from the FDA's emergency use authorization for the use of masks by the general public:

Authorized face masks must meet the following requirements:

1. The product is labeled accurately to describe the product as a face mask and includes a list of the body contacting materials (which does not include any drugs or biologics);
2. The product is labeled accurately so that it does not claim to be intended for use as a surgical mask or to provide liquid barrier protection;
3. The product labeling includes recommendations against use in a clinical setting where the infection risk level through inhalation exposure is high;
4. **The product is not labeled in such a manner that would misrepresent the product's intended use; for example, the labeling must not state or imply that the product is intended for antimicrobial or antiviral protection or related uses or is for use such as infection prevention or reduction;**

(emphasis added)

Thus, any statement by your employer that the mask is required to protect against microbes or viruses, or is required to prevent or reduce infection is contrary to the use authorization for masks.