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FACE COVERINGS & THE ADA

The ADA Does Not Allow For Exemptions For Employees/Guests To Avoid Mask Mandates

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As ski areas have been opening to the public, there has been some understandable confusion—if not outright disingenuous claims—about whether our guests may have exemptions from ski area face covering or mask mandates, such as health, disability, or religious exemptions within the Americans with Disabilities Act (ADA). **In short, there are unequivocally no exemptions that a guest may legally claim under the ADA that due to a medical condition or disability, they can be exempt from the ski industry's general face covering and mask mandates.** Since the advent of the COVID pandemic, the Department of Justice and the U.S. Equal Employment Opportunity Commission (EEOC) have clearly stated that businesses and other places of public accommodation may insist on such health protocols to protect their employees and other guests.

Anecdotally, ski areas recently have addressed these at times uncomfortable exchanges with their guests in a variety of manners, including the use of de-escalation techniques, directing guests to trained guest service officials or to a resort website with a more comprehensive explanation—even, in some cases, denying some guests access to services.

Because the ADA is a federal law, it applies to all businesses with more than 15 employees in all states—that certainly includes all ski areas. While most states have separate *state* laws regulating disability access at businesses, the vast majority of those states generally follow federal guidance. After the ADA was adopted in 1990, the U.S. Department of Justice (DOJ) promulgated a large number of regulations which more fully construe the law. For purposes of mask and face covering mandates imposed by most

businesses, one key DOJ regulation under the ADA allows businesses and other places of public accommodation to impose certain safety restrictions to protect employees, customers, and other members of the public. These safety rules effectively mean that businesses can limit access to their business without a requirement to accommodate certain needs of individuals with disabilities.

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Simply put, the ADA does *not* provide an individual with a disability, such as asthma or other conditions, to be exempt from a ski area’s mask or face covering requirement.

For example, according to 28 C.F.R. § 36.301(b), a business “may impose legitimate safety requirements that are necessary for safe operation.” These regulation further states that such “[s]afety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.” Notably, this “safety” exemption, as it is often referred, is the same regulation that ski areas have used to limit service animals from riding open chairlifts, due to the understandable safety concerns for guests, employees, and individuals skiing beneath chairlifts (the Colorado Human Rights Commission also affirmed that ski areas are not required to accommodate service animals on open chairlifts under the DOJ’s safety exemption in a 2018 ruling).

Moreover, according to other DOJ regulations, a business (referred to as a place of public accommodation) is not required to accommodate guests with disabilities “when that individual poses a direct threat to the health or safety of others.” *See 28 C.F.R. § 36.208(a)*. The DOJ has explained that “[d]irect threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.” *See 28 C.F.R. § 36.208(b)*.

On March 21, 2020, at the height of the early COVID pandemic, the EEOC came out and stated that COVID safety protocols imposed by businesses, to comply with state and federal health recommendations, satisfied this “direct threat” defense, and in turn, allowing such businesses to require all guests to follow such safety protocols, regardless of whether or not they have disabilities. Here is what the EEOC stated early during the COVID pandemic:

“Based on guidance of the CDC and public health authorities as of March 2020, the COVID-19 pandemic meets the direct threat standard. The CDC and public health authorities have acknowledged community spread of COVID-19 in the United States and have issued precautions to slow the spread, such as significant restrictions on public gatherings. In addition, numerous state and local authorities have issued closure orders for businesses, entertainment and sport venues, and schools in order to avoid bringing people together in close quarters due to the risk of contagion. These facts manifestly support a finding that a significant risk of substantial harm would be posed by having someone with COVID-19, or symptoms of it, present in the workplace at the current time. At such time as the CDC and state/local public health authorities revise their assessment of the spread and severity of COVID-19, that could affect whether a direct threat still exists.” [Reference](#)

This guidance from the EEOC and DOJ allow businesses to impose mask and face covering requirements, and to exclude access to those who decline to comply, notwithstanding their disability status. Simply put,

the ADA does *not* provide an individual with a disability, such as asthma or other conditions, to be exempt from a ski area's mask or face covering requirement. Indeed, numerous businesses, including all airlines, have also used the legal guidance from the DOJ and the EEOC to require all guests to wear masks during airline flights at all times—with no exceptions.

Ski areas can handle this confusing issue directly, but with sensitivity (see examples below). But other questions are certain to arise: what if someone has already had COVID, and cannot expose others—however, there are instances of individuals contracting the disease multiple times. As COVID vaccines become more distributed, that may arise as an excuse to avoid the face covering rules. However, given the time frame for vaccine distribution, and the fact that the vaccines will require at least two doses spread out over time, perhaps this issue will resolve itself much further into the season.

Simply put, federal law does not allow for any exemptions to these safety protocols adopted by businesses to protect their employees or guests from COVID, including for disabilities alleged under the ADA.

HOW TWO OF THE LARGEST SKI AREA COMPANIES IN THE INDUSTRY ARE FRAMING THIS ISSUE FOR THEIR GUESTS.

For Vail Resorts (which owns and operates 34 ski areas in the U.S.), their website provides the following Q&A for guests with Covid-related requirements:

Do I have to wear a face covering while I'm skiing and snowboarding?

While face coverings are not required during the physical acts of skiing and snowboarding if the guest is maintaining proper physical distance and is not in the vicinity of others, it is recommended guests do so. Otherwise, face coverings are required in every part of our operation, including while loading and riding on chairlifts and in gondolas, inside all buildings, and during all ski and snowboard lessons.

Are you allowing neck gaiters/buffs?

The type of face covering a guest may wear includes a cloth neck gaiter or other type of material that completely covers a person's mouth and nose.

Are there any exemptions allowed? What if I can't/won't wear a face covering, such as if I'm ADA exempt?

Face coverings are required in every part of our operation without exception. If a guest is unable or unwilling to wear a face covering, the guest will not be allowed access in order to limit the risk of COVID-19 exposure to other guests and employees.

See Vail Resorts, "Our Commitment to Safety," https://www.epicpass.com/info/winter-experience.aspx?tc_1=5.

Similarly, the 13 ski areas owned or operated by Alterra Mountain Company also do not allow for exemptions under the ADA for declining to wear a face mask for any reason, including a disability:

What if I sincerely don't believe face coverings are helpful? What should I do?

We are requiring face coverings throughout the resort, as explained above. If you are not actively engaged in the downhill sliding part of skiing or riding, you will likely need to have your face covering on. If you don't feel that you can deliver on this request, or if it's just not right for you, or if you think we're crazy for requiring face coverings – please don't visit Squaw Alpine while COVID-modified operating rules are in place. We will be happy to welcome you back unmasked when pandemic-related government regulations are removed.

What if I can't wear a face covering because of a disability?

We require face coverings be worn on resort property without exception. While we understand there are those with disability related issues with face coverings, the Americans with Disability Act does not provide a blanket exemption to people with disabilities from complying with legitimate safety requirements that are necessary for safe operations. We also believe that in most cases, people have already worked out disability related issues with face coverings, given that mask requirements have been broadly in place for months in order to help protect the public health. Disability-related mask issues can frequently be resolved by the use of a clear mask, a face shield or a looser face covering rather than a cloth mask (such as a scarf). These alternatives are considered reasonable accommodations to a face covering requirement and will be permitted for those who have a disability that prevents wearing a standard face covering. If these reasonable accommodations do not work for you, please contact us before you arrive. Any guest who refuses to comply with our face covering requirements or any other guidelines will be addressed directly and may be asked to leave the resort.

See Squaw Valley/Alpine Meadows FAQs on "What to Expect this Winter," <https://www.squawalpine.com/what-to-expect-winter-2020-21>.

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