

## ANALYSIS

This following FAQ's deal with the rules now in place (via an Emergency Amendment) by the Illinois Department of Public Health under their authority to control communicable diseases.

### Did the Emergency Amendment affect occupancy limits?

- Yes. Gatherings of more than 50 people (or gatherings of 50% or more of a building's maximum occupancy as determined by the authority having jurisdiction, if 50% of a building maximum occupancy is less than 50 people) are prohibited unless exempted by law or Executive Order.
  - This appears to remove the 5 per 1,000 standard. However, Phase 4 Guidance allows for you to use either 50% of occupancy or 5 people per 1,000 square feet. We would recommend continuing to follow whichever standard you are currently using until told otherwise.

### What are the rules regarding masks?

- Any business open to the public or employees shall require employees, customers, and other individuals on the premises who are over age two and able to medically tolerate a face covering to cover their nose and mouth with a face covering when on premises AND unable to maintain at least a six-foot social distance. [See 690.50 (c)(1), 690.50 (c)(2), 690.50 (d)(E).]

### What are the penalties for violating the rule?

- Class A Misdemeanor including a \$75-\$2500 fine and/or up to 365 days in jail.
- IDPH FAQs state that only fines of \$75-\$2500 will be assessed.

### Who is liable for the penalty?

- Only the business entity. The rule states that no individual, owner, consumer, or visitor is liable for the penalty.

### How can a business be deemed to be in compliance with the rule?

- The rule only applies when/where employees, customers, and other individuals on the premises are unable to maintain at least a six-foot social distance. [See 690.50 (c)(1), 690.50 (c)(2), 690.50 (d)(E)]. However, that interpretation is eventually up to the enforcing authority.
- A company only has to make "reasonable efforts" to comply with the rule.
- For retail businesses, "reasonable efforts" to comply with regard to customers shall be determined based on the totality of the circumstances and include, but are not limited to [See 690.50 (c)(2), 690.50 (d)(E)]:
  - Posting signage requiring face coverings to be worn on the premises;
  - Providing face coverings to customers;
    - There is no stated requirement for this to be a free offering. If you provide a mask for a fee and the customer turns it down then you are being "reasonable".
  - Giving verbal warnings to customers to wear a face covering when on the premises;
  - Requesting that customers leave the premises if not wearing a face covering.
    - There is no requirement to remove the customer, only to request them to leave.
- 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 making "reasonable efforts" and has complied with the rule. [See attached IDPH FAQs]

### **Who enforces the rule?**

- All local boards of health, health authorities and officers, police officers, sheriffs, and all other officers and employees of the State or any locality, including the Department and certified local health departments shall enforce the rules.

### **What are the enforcement steps?**

- **WRITTEN NOTICE:** The business shall be given a written notice of non-compliance by an enforcing entity.
- **REASONABLE OPPORTUNITY TO CURE:** Reasonableness of the time period includes but is not limited to:
  - The nature of the activity taking place;
  - Whether the activity is being conducted indoors or outdoors;
  - The public health risk;
  - The number of individuals at risk of exposure; and
  - The size of the building and crowd occupying the building.

Examples of actions that might be taken include, but are not limited to:

- Distributing face coverings to patrons and/or employees;
- In instances where a business is too crowded, reducing the number of persons on-site by placing an employee at the entrance to limit the number of people entering until the occupancy is in compliance.
- **WRITTEN ORDER TO DISPERSE:** If the business has not voluntarily complied, the enforcing entity may issue a written order to the business to have all or some of the persons on premises disperse (order to disperse) until such time as the business or establishment is in compliance. [See "How Can a Business Be Deemed to be in Compliance?"]
- **CLASS A MISDEMEANOR:** A business may be subject to a Class A Misdemeanor for the following reasons:
  - If a business refuses to comply with a WRITTEN ORDER to disperse that business shall be subject to a Class A Misdemeanor.
  - The business engages in repeated or continued violations after receiving TWO OR MORE WRITTEN NOTICES OF NONCOMPLIANCE.
  - The business engages in repeated or continued violations after receiving ONE OR MORE WRITTEN ORDERS TO DISPERSE.

### **Can the local health department or the Illinois Department of Public Health investigate COVID cases within a business?**

- Yes. According to the rule, when two or more suspected cases of COVID-19 occur in any business, organization, institution, facility, school or daycare, the business owner or the person in charge of the establishment SHALL cooperate with public health authorities in the investigation of cases, suspect cases, outbreaks and suspect outbreaks. [690.50 (e)]

### **Can the local health department or the Illinois Department of Public Health close a business if COVID cases occur on the premise?**

- Yes. The Department or a certified local health department may order the closure of a business. [690.50 (f)]

## **How long may a local health department or the Illinois Department of Public Health close a business?**

- 48 hours unless exigent circumstances exist.

The Department or certified local health department SHALL within 48 hours after issuing the order, obtain:

1. The consent of the person or owner; OR
2. File a petition requesting a court order authorizing a closure. If a local health department or the Department DOES NOT get the consent of the business, they must obtain a court order within 48 hours authorizing the involuntary closure of business that shall specify the following:
  - 1) The identity of all persons or groups subject to isolation or quarantine, if known;
  - 2) The premises subject to closure;
  - 3) The reason for the order for closure, including the suspected dangerously contagious or infectious disease if known;
  - 4) The date and time at which closure will commence;
  - 5) The anticipated duration of closure based on the suspected dangerously contagious or infectious disease, if known;
  - 6) The measures taken by the Department or the certified local health department to seek voluntary compliance or the basis on which the Department or the certified local health department determined that seeking voluntary compliance would create a risk of serious harm;
  - 7) The medical basis on which closure is justified, including but not limited to:
    - o Clinical manifestations;
    - o Physical examination;
    - o Laboratory tests, diagnostic tests or other medical tests;
    - o Epidemiologic information; or
    - o Other evidence of exposure or infection available to the Department or certified local health department at the time.

The petition shall be accompanied by the declaration of the Department or the certified local health department attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.

When exigent circumstances exist that cause the court system to be unavailable or that make it impossible to obtain consent or file a petition within 48 hours after issuance of an immediate order, the Department or certified local health department must obtain consent or file a petition requesting a court order as soon as reasonably possible.

[See 20 ILCS 2305/2(c); Section 690.1330 (e)]

**IF THE CONSENT OF THE BUSINESS OWNER IS NOT PROVIDED OR A COURT ORDER OF CLOSURE IS NOT PROVIDED WITHIN 48 HOURS, THE BUSINESS MAY REOPEN IMMEDIATELY.**