

## MDM&C Update

[Click Here to Learn More About MDM&C >](#)

June 3, 2020

### ***I AM NOT WEARING A MASK!***

Connecticut is reopening. Parts of the ‘stay at home’ orders have been lifted and it is likely that the remaining restrictions will be lifted shortly. To reduce the risk of spreading the virus, the Centers for Disease Control have issued guidelines and recommendations for the return to work, including some for specific industries. The guidelines and recommendations include rearranging the physical layout of the workplace, rearranging employee’s schedules and other infection mitigation measures.

Among the infection mitigation measures are face masks and many employers are requiring employees to wear face masks in the workplace. But the wearing of face masks has become a somewhat contentious issue and some have argued that requiring a face mask unduly restricts one’s personal freedom. What if an employee refuses to wear a mask in the workplace?

That answer is relatively easy – absent a disability that would preclude the wearing of a face mask, an employer can require an employee to wear a face mask on the job. This means that if employees refuse to wear a face mask in the workplace because the employees believes one is unnecessary, or it infringes on their personal freedom, an employer can suspend or even terminate the employees.

Should an employee assert that the employee cannot wear a face mask because of a disability, the answer is more complicated. Both federal and Connecticut law require employers to make a reasonable accommodation for employees with a disability. The EEOC has advised employers that they can require employees to wear protective equipment, such as face masks. “However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship.” Therefore if an employee with a disability asserts that a face mask cannot be worn because of the disability, the employer would have to engage in an interactive process with the employee to determine if there is a reasonable accommodation.

But what if the employee refuses to wear a face mask outside of the workplace? Can the employee be disciplined or even terminated for exposing others to a risk of the virus? Employees at will can be terminated for any reason, other than one that is statutorily prohibited or against public policy.

In Connecticut, among the statutes limiting employment at will is Connecticut General Statute §31-51q, which prohibits disciplining or discharging an employee for exercise of rights guaranteed by the First Amendment and the comparable Connecticut Constitution provisions.

Therefore, an employee, who, during non-work time attends a large public gathering without a mask and without observing social distancing, protesting government restrictions imposed to curb the spread of COVID-19, may be protected by Connecticut

law from discipline and termination. The statute does provide that the employee is not protected, if the employee's First Amendment activity "substantially or materially interfere[s] with the employee's bona fide job performance or the working relationship between the employee and the employer."

So, although an employee's participation in a demonstration without a mask and without social distancing is possibly protected activity, an employer can require an employee to take reasonable steps to protect other workers and those reasonable steps may include requiring the employee to remain at home after potential exposure of the virus.

If you have any questions about this or any other employment issue, please feel free to contact **Bernard E. Jacques** at [bjacques@mdmc-law.com](mailto:bjacques@mdmc-law.com).

## *Offices*

---

NEW JERSEY | NEW YORK | COLORADO | PENNSYLVANIA  
CONNECTICUT | MASSACHUSETTS | DELAWARE | RHODE ISLAND | FLORIDA

The information provided in this Newsletter should not be relied upon as legal advice or a legal opinion on any specific set of facts or circumstances. The contents are intended for general information purposes only and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have. This Newsletter may be considered Advertising under the court rules of certain states.

© COPYRIGHT 2020 McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP. ALL RIGHTS RESERVED.

---

[Unsubscribe](#)