***INSTRUCTION PAGE i***

Text

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**Following is a template letter** that can be used in the situation where you are informing your employer that you have an exemption from wearing a face covering.

If you have been forwarded this letter by a friend, family member or colleague, then please go to <https://voicesforfreedom.co.nz/resources> to see more information regarding applying for a face masks exemption communication card, or other masks' letters more specific to your situation.

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| --- |
| Disclaimer: It is a strict condition of reading and/or using this letter in any way you irrevocably agree that you are bound by the terms and conditions of this disclaimer. If you do not agree with the terms and conditions of this disclaimer, you are prohibited for reading and/or using this letter. Notwithstanding anything in this letter, the information set out in this letter is for general information only, and should not be construed as legal advice and/or health advice. No client-solicitor relationship is created whatsoever. Before taking any action based on this letter, you should consider your personal situation and seek professional legal advice. You acknowledge and agree that you were advised to take legal advice prior to using any information in this letter. If you use this letter and/or any information in the letter you acknowledge and agree that you have relied on your own judgement and initiative and not in reliance of anything else. The reader and/or user of this letter agrees to protect, indemnify, defend, and save harmless the author absolutely from and against any and all damages, claims, losses, demands, liabilities (including vicarious liability), injuries, suits, actions, judgements, costs, and expenses of any kind whatsoever (including reasonable legal fees) arising out of or in any way connected with this letter and the information contained within. Any person and/or persons that shares this letter without this disclaimer accepts full liability for any damage whatsoever caused.  If you are sharing this document with others, you acknowledge and agree that you are prohibited from removing this disclaimer. The disclaimer may only be removed once the letter is ready to be sent by the person sending it. You are also prohibited from amending the letter other than the sections identified for you to add to and you acknowledge and agree to this. If, however, you would like to use parts of this letter in a letter that you draft yourself then you are permitted to do so. |

***INSTRUCTION PAGE ii***

Text

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**GUIDE TO USING THIS LETTER**

Following is a proposed template letter you may consider sending to your employer regarding your face covering exemption.

New Zealand moved to Orange Traffic Light setting on 13 April 2022 under the COVID-19 Health Response (Protection Framework and Vaccination) Amendments Order 2022, [https://www.legislation.govt.nz/regulation/public/2022/0089/latest/whole.html#LMS671458](https://www.legislation.govt.nz/regulation/public/2022/0089/latest/whole.html" \l "LMS671458) relevant to masks, this updated the COVID-19 Health Response (Protection Framework) Order 2021 (**Orders**) [https://www.legislation.govt.nz/regulation/public/2021/0386/latest/whole.html#LMS599185](https://www.legislation.govt.nz/regulation/public/2021/0386/latest/whole.html" \l "LMS599185).

The Orders change regularly - for the latest orders see: .<https://covid19.govt.nz/about-our-covid-19-response/legislation-and-key-documents/>

Under the Orders:

1. Masks[[1]](#footnote-2) are to be worn on transport including school transport, arrival and departure points for public transport, retail businesses or services, public facilities (excluding swimming pools), pharmacies, vet services, a court or tribunal, a specified social service, NZ post, government agencies, health premises (but not a patient), workers at a gathering.[[2]](#footnote-3)
2. Medical-grade face coverings[[3]](#footnote-4) to be worn by worker at a food or drink business, close proximity business, event worker, or vaccine mandated worker (health care workersw).[[4]](#footnote-5)
3. You are not required to wear a face mask at outdoors setting and in non-public facing workplaces. However, employers can apply their own policies on wearing a face mask.[[5]](#footnote-6) A good response to any employer policy is: if the public health response doesn’t require it then the employer will need to provide good grounds for justifying it.
4. Exemptions from wearing both face coverings and medical-grade face coverings are the same – they are self-governing (no exemption card or communication card is required) as confirmed in clause 11(4) of the Orders - and arise where a person has a condition or disability that makes it unsafe, difficult or not possible to wear a face covering (clause 11(4) of the Orders).
5. However, if you wish to have written confirmation of your exemption, the new MOH personalised mask exemption is recognised at law (clause 106A and clause 11(3)(l) of the Orders).

**Masks exemption cards**

In early April 2022, **the MOH brought in a mask exemption** called a “Communication Card”. These cards are the same as the ones issued by the Disabled Persons Assembly (but now specifying reasons). The MOH website states that:

*“A Communication Card has been developed for you to show to transport operators, retailers and service providers. These make it easier to explain that a face mask is unsuitable for you.* ***There is no legal requirement to carry a Communication Card, though many choose to do so****.”* [[6]](#footnote-7)The Communication Card was available until 30 May 2022 and is still valid.

From the beginning of June 2022, the **MOH bought in a personalised mask exemption** called a “Face Mask Exemption Pass”. The Face Mask Exemption Pass provides conclusive evidence that the holder is exempt under law from wearing a face mask (clause 106A of the and clause 11(3)(l) Order. Because the pass is recognised in law, people with a cCommunication cCard are encouraged to apply for a Face Mask eExemption Pass. For Further details, and how to apply for a Face Mask Exemption Pass, see: <https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-health-advice-public/covid-19-use-face-masks-community/covid-19-advice-people-who-have-difficulties-wearing-face-mask>

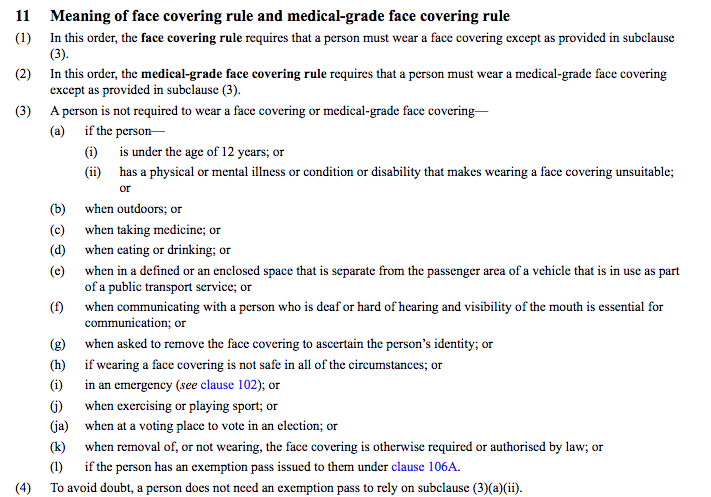
If a business owner refuses an employee entry for not wearing a mask, or treats them differently, this may be discrimination on the ground of disability, and you could make a complaint to the Human Rights Commission and/or Employment Relations Authority. People with a mask exemption should be given the same opportunities and treated no differently to those people who can wear a mask.

***What are exemptions from wearing face coverings?***

Both face coverings and medical-grade face coverings are subject to the same exemptions.

The Order specifies the grounds for exemptions; the likely main ground for an exemption will be that you have a condition or disability making it unsafe, difficult or not possible for you to wear a face covering.

Grounds for exemptions are also specified in the Order and include:



**Condition/s** are not defined, but a non-exhaustive list of conditions that people have found make wearing a face covering unsuitable includes:

|  |  |  |
| --- | --- | --- |
| 1. shortness of breath 2. asthma 3. bronchitis | 1. pregnancy 2. feelings of anxiety 3. deafness | 1. PTSD 2. facial hair 3. skin irritation |

**Disability**[[7]](#footnote-8) is defined as: physical disability or impairment:

1. physical illness:
2. psychiatric illness:
3. intellectual or psychological disability or impairment:
4. any other loss or abnormality of psychological, physiological, or anatomical structure or function:
5. reliance on a guide dog, wheelchair, or other remedial means:
6. the presence in the body of organisms capable of causing illness:

<https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-health-advice-public/covid-19-use-face-masks-community/covid-19-advice-people-who-are-unable-wear-face-mask>

Your employer is obliged to accept your face covering exemption on face value (excuse the pun). Your employer can also not discriminate against you should you not be able to not wear a face covering due to a condition, illness or disability.

***What are my rights?***

You and your employer are in a relationship of trust and confidence and have a duty to deal with each other in good faith in a clear and communicative manner.[[8]](#footnote-9)You have the right to a healthy and safe workplace – your employer is required to identify potential risks and ensure that those risks cannot adversely affect the health and safety of employees by having appropriate policies, procedures, and resources in place, to minimise and monitor the risk:[[9]](#footnote-10)You have the right not to wear a face covering where you have an exemption.[[10]](#footnote-11)Exemptions are self-governing; you do not need a special exemption card or medical certificate to prove that you have an exemption.

1. Your exemption should be taken on face value by everyone that you come into contact with, failure to do so could be discrimination and may be a breach of the Human Rights Act that protects disabled people (noting that this is defined very broadly in the Human Rights Act).

**HOW TO USE THIS LETTER?**

1. Read the letter carefully so that you understand what you are sending – this letter is **your letter**.
2. The points you need to complete or closely consider for your situation are highlighted in yellow. Keep this information factual and do not hesitate to get it checked by a friend, colleague or family member.
3. Make sure you have read an understood from the first section above to be sure that this is applicable to you.
4. This letter is only to be used in the situation where your employer does not accept your exemption from wearing a face covering. If this letter does not apply to your situation, then go to <https://voicesforfreedom.co.nz/resources> for other mask exemption template letters
5. Do not forget to include your email in the letter so your employer knows where best to respond to you in writing.
6. Sign off the letter.
7. Print or email the letter – make sure you keep a copy. DO NOT include the first 7 instruction pages with the letter.
8. Your employer may respond to this letter and if they do, then you will need to consider their response, and may need to obtain advice specific to your situation.

**YOUR CONTACT DETAILS**

Date

**Name of employer**

**Address**

**Address**

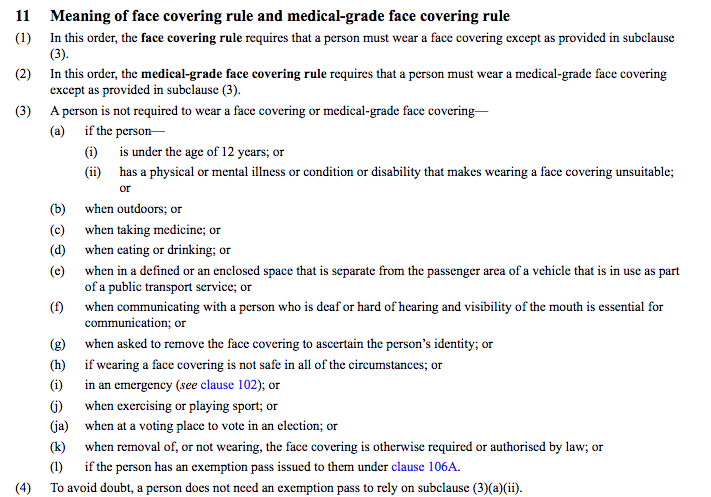
FOR: The Manager | Executive Board

**FACE COVERING OR MEDICAL-GRADE EXEMPTION TO EMPLOYER**

1. I am writing to you with regard to the requirement for employees to wear a face covering or medical-grade face covering under the current COVID-19 Public Health Response (Protection Framework) Order (the **Order**)[[11]](#footnote-12).
2. The purpose of this letter is to advise that under the Order, I have an exemption from wearing a face covering. For convenience I have set out below the relevant terms of the Order and why I am exempt.

**The Order**

1. The Order specifies the wearing of a face covering or medical-grade face covering by employees working on premises (cl 23 or cl 23A) unless in certain circumstances including where a person has an exemption (cl 11). Exemptions from wearing a face covering are:



1. That means that apart from the other specific circumstances mentioned, an employee is exempt from wearing a face covering if it is not suitable because of a physical or mental illness, condition or disability that they have, or it is not safe to wear a face covering in all of the circumstances.
2. In early April 2022, the MOH bought in a mask exemption card called a “Communication Card”. These cards are the same as the ones issued by the Disabled Persons Assembly (but now specifying reasons). The MOoH website states that:

*“A Communication Card has been developed for you to show to transport operators, retailers and service providers. These make it easier to explain that a face mask is unsuitable for you. There is* ***no legal requirement to carry a Communication Card****, though many choose to do so.” [[12]](#footnote-13)*The Communication Card is still valid.

1. In June 2022, the MOH brought in a Face Mask Exemption Pass. Per clause 106A and 11 of the Orders, the Face Mask Exemption Pass provides conclusive evidence that the holder is exempt under law from wearing a face mask. The pass is recognised in law and they must be respected.[[13]](#footnote-14)
2. Again, all of these cards/passes are optional and **not a legal requirement**.[[14]](#footnote-15)That means that face covering and medical-grade face covering exemptions are self-governing and must be accepted on face value, no exemption cards are necessary.

**Obligations to one another**

1. I acknowledge in your health and safety obligations under the Health and Safety at Work Act 2015, that you have a responsibility to assess the potential risks and benefits of any measures you propose to implement, including those mandated by the Order. Wearing a face covering causes me difficulties and it is unsafe for me.
2. In addition, it is unlawful for an employer to refuse or alter an employee's role where an employee's exemption from wearing a face covering arises out of a disability or condition.[[15]](#footnote-16)

**I am not able to wear a face covering**

1. I am not able to wear a face covering in the circumstances specified by the Order because [look at the first section of this letter for some phrasing and what reasons your situation falls under, etc. You will need to provide sufficient details to show your employer why the exemption applies, i.e., explain what condition/disability/illness arises and why that makes it unsuitable to wear a face covering. The employment relationship is different to one of a shopkeeper or strangers, etc. It is based on one of ‘good faith’ – in the interests of good faith you will need to expand on the issues which give rise to your exemption.]
2. I trust that the above is sufficient explanation with regard to my exemption from wearing a face covering. I confirm that I am willing ready and able to continue to perform my role of employment.

Yours sincerely,

Email: [insert e-mail address]

1. Clause 23 of the Order <https://www.legislation.govt.nz/regulation/public/2021/0386/latest/LMS602502.html> [↑](#footnote-ref-2)
2. Schedule 6, Part 2, Order <https://www.legislation.govt.nz/regulation/public/2021/0386/latest/LMS570864.html> [↑](#footnote-ref-3)
3. Clause 23A of the Order <https://www.legislation.govt.nz/regulation/public/2021/0386/latest/LMS672706.html> [↑](#footnote-ref-4)
4. Schedule 6, Part 2A, Order <https://www.legislation.govt.nz/regulation/public/2021/0386/latest/LMS570864.html> [↑](#footnote-ref-5)
5. <https://covid19.govt.nz/prepare-and-stay-safe/keep-up-healthy-habits/wear-a-face-mask/> [↑](#footnote-ref-6)
6. <https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-health-advice-public/covid-19-use-face-masks-community/covid-19-advice-people-who-are-unable-wear-face-mask> [↑](#footnote-ref-7)
7. Disability is defined in section 21(1)(h) of the Human Rights Act 1993. [↑](#footnote-ref-8)
8. S4(1) Employment Relations Act 2000. [↑](#footnote-ref-9)
9. Health and Safety at Work Act 2015. [↑](#footnote-ref-10)
10. [https://legislation.govt.nz/regulation/public/2021/0386/latest/whole.html#LMS594292](https://legislation.govt.nz/regulation/public/2021/0386/latest/whole.html" \l "LMS594292) [↑](#footnote-ref-11)
11. [https://www.legislation.govt.nz/regulation/public/2021/0386/latest/whole.html#LMS599185](https://www.legislation.govt.nz/regulation/public/2021/0386/latest/whole.html" \l "LMS599185) [↑](#footnote-ref-12)
12. <https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-health-advice-public/covid-19-use-face-masks-community/covid-19-advice-people-who-are-unable-wear-face-mask> [↑](#footnote-ref-13)
13. [https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-health-advice-public/covid-19-use-face-masks-community/covid-19-advice-people-who-have-difficulties-wearing-face-mask#advice-comm-card](https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-health-advice-public/covid-19-use-face-masks-community/covid-19-advice-people-who-have-difficulties-wearing-face-mask" \l "advice-comm-card) [↑](#footnote-ref-14)
14. Clause 11(4) of the Orders and <https://www.beehive.govt.nz/release/new-mask-exemption-card-remove-uncertainty> [↑](#footnote-ref-15)
15. Section 22 of the Human Rights Act 1993 <https://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304482.html> [↑](#footnote-ref-16)