***INSTRUCTION PAGE i***



**Following is a template letter** that can be used in the situation where a business selling necessary or essential goods does not accept your exemption from wearing a face covering and refuses you access to their premises.

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 certificate, or other masks' letters more specific to your situation.

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***INSTRUCTION PAGE ii***



**WHAT IS THIS LETTER FOR?**

Following is a proposed template letter you may consider sending to any essential business that has refused you access to their premises because they do not accept your exemption from wearing a face covering.

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#LMS67145](https://www.legislation.govt.nz/regulation/public/2022/0089/latest/whole.html%22%20%5Cl%20%22LMS67145)[8](https://www.legislation.govt.nz/regulation/public/2022/0089/latest/whole.html%22%20%5Cl%20%22LMS671458) 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%22%20%5Cl%20%22LMS599185).

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 workers).[[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) 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).

***What is an essential business?***

For the purposes of this letter, an **essential business** is a business or service the Government has assessed as supplying necessities and is able to be open under any Traffic Light system, whether at RED, ORANGE or GREEN. Those businesses are set out in the current COVID-19 Public Health Response (Protection Framework) Order 2021 (**Traffic Light Order**). Order 2021 (the Order) Schedule 2 and includes supermarkets, petrol stations and necessities for life.

***What is a face covering?***

A “face covering” does not mean a specific type of mask or a medical mask. Face covering is defined in clause 5 of the Order:

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

The grounds and circumstances giving rise to the **exemptions** from wearing a face covering are set out in the face covering rule at clause 11 of the Order, and repeated at paragraph 3 of the template letter below. 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.

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

|  |  |  |
| --- | --- | --- |
| * shortness of breath
* asthma
* bronchitis
 | * pregnancy
* feelings of anxiety
* deafness
 | * PTSD
* facial hair
* skin irritation
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**Disability** is defined in section 21(1)(h) of the Human Rights Act 1993.defined as:

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

You should not feel bad because you cannot wear a face covering. If you have a reason for not doing so, then as per the above exemptions, you should feel comfortable in your position.

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 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****.”*

<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>

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 and 11(3)(l) of the Orders). Because the pass is recognised in law, people with a Communication Card are encouraged to apply for a Face Mask Exemption 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>

While it is inappropriate for a business owner or employee to enquire about the nature of a person’s disability or condition, it is reasonable for them to ask whether a person has an exemption from face mask requirements.

If a business owner or employee refuses you entry for not wearing a mask, this may be discrimination on the ground of disability, and you could make a complaint to the Human Rights Commission. People with a mask exemption should be granted access to the same goods and services as people who can wear a mask.

Some businesses or services, such as GP practices may require people who aren’t wearing masks to access their business or service via a different entry process or location. However, this appears to be at odds with the Orders (see Schedule 6, Part 2A subpart 1 item 6 which expressly states patients at health services (other than a pharmacy) are not required to wear a face covering).

***What are my rights?***

It is a fundamental human right in New Zealand to be able to obtain goods and services without being discriminated against. The failure of a business to grant you access to goods or services for not wearing a face covering (due to a disability or condition), is an act of discrimination and is illegal.

1. You have the right not to wear a face covering where you have an exemption.[[6]](#footnote-7)
2. Exemptions are self-governing; you do not need a special exemption card or medical certificate to prove that you have an exemption.
3. 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).

If a business refuses you access to their premises to obtain essential goods and services, then the business is obliged to offer you affordable, timely and reasonable alternatives for you to obtain your essential goods and services, for example contactless pick up or delivery.

**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. This letter is only to be used in the situation where a business selling necessary or essential goods does not accept your exemption from wearing a face covering.
4. Do not forget to include your email in the letter so the essential business knows where best to respond to you in writing.
5. Sign off the letter.
6. Print or email the letter – make sure you keep a copy. DO NOT include the first 6 instruction pages with the letter.

The essential business 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.

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_

**Attention:** Owner and Management

**DENIAL OF ACCESS TO ESSENTIAL PRODUCTS / SERVICES**

1. I am writing to inform you of a situation where my right to access your premises has been refused on the basis that I was not wearing a face covering, although I informed you/your staff that I had an exemption for not doing so. Refusal to accept my exemption on face value is a violation of my rights and is discrimination.

**What is the law?**

 **Essential business**

1. Your business is an essential or necessary business which is lawfully permitted to remain open in Red under the current Traffic Light regime.

**Exemptions**

1. The wearing of a face covering by customers visiting your premises is required by clause 23 (or 23A) of the *COVID-19 Health Response (Protection Framework) Order 2021* (**Orders**). Both provisions are subject to an exemption, which is covered by clause 11 of the Order:



1. That means that apart from the other specific circumstances mentioned, a customer 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.

**Exemption are self-regulating and exemption cards are not a legal requirement**

1. The Government’s COVID-19 website suggests that these customers ***may*** carry an exemption card from Disabled Persons Assembly NZ.[[7]](#footnote-8) Further, 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 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.****”[[8]](#footnote-9)*

1. The Communication Card is still valid.
2. In June 2022, the MOH brought in a personalised Face Mask Exemption Pass. The Pass provides conclusive evidence that the holder is exempt under law from wearing a face mask and should be treated no differently to a person who can wear a mask (clause 106A and clause 11(3)(l) of the Orders).[[9]](#footnote-10)
3. Again, all of these cards/passes are optional and **not a legal requirement**.[[10]](#footnote-11)
4. Therefore, it is not a compulsory requirement and an exemption arises on the valid grounds specified in the Order. If a person does not elect to obtain an exemption card, then you must accept their exemption/s at face-value. It is not for you to consider the validity of the exemption offered.

**Laws breached**

1. Failure to respect a personalised Face Mask Exemption Pass and to treat a person differently because of that is a breach of clause 106A(1) of the Orders.
2. Further, it would be a breach of Information Privacy Principle 1 of the Privacy Act 2020 if you asked for details of the customer’s illness, condition or disability. You do not need that information, nor are you entitled to know it.
3. It is a fundamental right of every New Zealander to be able to obtain goods and services without discrimination as codified in the Human Rights Act which clearly states:

It shall be unlawful for any person who supplies goods, facilities, or services to

the public or to any section of the public—

1. to refuse or fail on demand to provide any other person with those goods, facilities, or services; or
2. to treat any other person less favourably in connection with the provision of those goods, facilities, or services than would otherwise be the case, by reason of any

 of the prohibited grounds of discrimination.[[11]](#footnote-12)

1. A failure to observe a customer's exemption from wearing a face covering which arises out of a disability or condition is a prohibited ground of discrimination under the Human Rights Act and is unlawful.[[12]](#footnote-13) This can give rise to a complaint to the Human Rights Commissioner.
2. If you maintain your unlawful position to refuse access to customers with exemptions from wearing a face covering, then you are obliged to provide your products and/or services by alternative means such as **contactless delivery or pick up within a reasonable time and at reasonable cost**.
3. If customers are disadvantaged because of their exemption from wearing of face coverings, and your store is the only one in the locality which the customer is able to access due to travel restrictions in the current Traffic Light System, your business may be held liable, particularly if the customer cannot access goods or services through contactless delivery (or other reasonable alternative) within a reasonable time and at reasonable cost.

**Why am I writing to you?**

1. [Set out the facts that have led to this complaint due to non-compliance with the above mentioned law. Include date(s) and time(s), places, names of persons involved and other relevant circumstances, including circumstances precluding access to goods or services through contactless delivery]
2. In circumstances where travel restrictions apply and your store is the only one available to me in my locality, your failure to supply me with essential goods / services is unlawful as it fails to recognise an exemption based on my disability or condition
3. Please advise me, **within 48 hours** of the date of this letter, as to the steps you will take to remedy your failure to abide by the law and to ensure my rights are observed. If no satisfactory response is received within that timeframe, I reserve my right to pursue legal remedies against your business.

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 2A, subpart 1 and subpart 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://legislation.govt.nz/regulation/public/2021/0386/latest/whole.html#LMS594292](https://legislation.govt.nz/regulation/public/2021/0386/latest/whole.html%22%20%5Cl%20%22LMS594292) [↑](#footnote-ref-7)
7. The Government's Unite Against Covid site confirms *"The use of this card is self-regulated and decided upon by the individual."* [https://www.dpa.org.nz/resources/covid-19-information-for-the-disabled-community#exempt](https://www.dpa.org.nz/resources/covid-19-information-for-the-disabled-community%22%20%5Cl%20%22exempt) [↑](#footnote-ref-8)
8. <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-9)
9. [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%22%20%5Cl%20%22advice-comm-card) [↑](#footnote-ref-10)
10. Clause 11(4) and <https://www.beehive.govt.nz/release/new-mask-exemption-card-remove-uncertainty> [↑](#footnote-ref-11)
11. Section 44, Human Right Act 1993. [↑](#footnote-ref-12)
12. Section 21(1)(h) of the Human Rights Act 1993. [↑](#footnote-ref-13)