

In the Matter of Protective Face)	CHIEF JUSTICE ORDER
Coverings in the Oregon State)	No. 21-028
Courts)	
)	ORDER REINSTATING REQUIRED USE OF
)	PROTECTIVE FACE COVERINGS IN THE
)	OREGON STATE COURTS, WITH
)	EXCEPTIONS

I HEREBY FIND AS FOLLOWS:

1. ORS 1.002 provides that:
 - a. The Chief Justice of the Oregon Supreme Court is the administrative head of the judicial department of government in this state; shall exercise administrative authority and supervision over the courts of this state consistent with applicable provisions of law and the Oregon Rules of Civil Procedure (ORCP); and, to facilitate exercise of that administrative authority and supervision, may make rules and issue orders as appropriate or take any other action appropriate to perform the functions of the office of Chief Justice; and
 - b. The Chief Justice may delegate the exercise of any powers specified in ORS 1.002 to the Presiding Judge of a court.
2. ORS 1.171(2) provides that, to facilitate exercise of administration and supervision over the circuit court of the district consistent with applicable provisions of law, the Presiding Judge may apportion and otherwise regulate the disposition of the judicial business of the circuit court of the judicial district, and make rules, issue orders, and take other appropriate action to that exercise; ORS 1.171(3) provides that the Presiding Judge may assign actions and proceedings pending before a court to other judges of the judicial district for hearing and disposition; and ORS 1.171(4) provides that a Presiding Judge may delegate the exercise of any of the administrative powers of the Presiding Judge to another judge of the court or to the Trial Court Administrator.
3. ORS 8.225 provides that a Trial Court Administrator for a judicial district has the duties, powers, and functions prescribed by law or by rules of the circuit courts in the district, and that the Trial Court Administrator may delegate the powers of the office to employees of the Trial Court Administrator.
4. On March 8, 2020, Governor Kate Brown signed Executive Order 20-03, which declared a state of emergency because of the threat that the COVID-19 coronavirus posed to public health and safety (hereafter, "COVID-19 state of emergency"). On June 25, 2021, Governor Brown issued Executive Order 21-15, which extended the COVID-19 state of emergency to December 31, 2021, but otherwise rescinded earlier Executive Orders, including her earlier imposition of statewide restrictions relating to protective face coverings.
5. On June 28, 2021, I issued Chief Justice Order (CJO) 21-025, which established updated directives relating to court operations, including an easing of earlier requirements for wearing protective face coverings.

6. On July 27, 2021, the Centers for Disease Control and Prevention (CDC) issued Guidance to the effect that local decision-makers should assess certain factors to inform the need for prevention strategies to minimize preventable morbidity and mortality related to COVID-19, including the level of COVID-19 transmission, health system capacity, vaccination coverage, capacity for early detection of increases in COVID-19 cases, and populations at risk for severe outcomes from COVID-19. The CDC Guidance further states that proven effective strategies against transmission, beyond vaccination, include the use of protective face coverings. Also on July 27, 2021, the Oregon Health Authority (OHA) issued a recommendation for use of protective face coverings in all public indoor settings statewide. In issuing this Order, I have considered the CDC Guidance and OHA recommendations; current risk levels across Oregon's judicial districts; the vulnerable populations that our courts serve; the jurors and potential jurors who report to our courts; and the need to act so that judges, court staff, and the public are protected.

This Order is based on the foregoing and on currently available information concerning the risks and spread of the COVID-19 virus, and the effectiveness of vaccines, and may be revised as further information becomes available or as directives from the Governor or guidance from health authorities change.

I hereby ORDER as follows:

1. Definitions. As used in this order:
 - a. "Administrative Authority" means, as to any judge, the Presiding Judge; as to any staff, "Administrative Authority" has the meaning set out in Judicial Department Personnel Rule 2.01.
 - b. "Court facility" means the courthouse or any alternative physical location being used by the court or the Office of the State Court Administrator, but not any part of a building or location that is not under the court's control.
 - c. "Enclosed office or workstation" means an office or workstation that is enclosed from floor to ceiling on all sides, including a courtroom.
 - d. "Fully vaccinated" means that at least 14 days have passed since a person received the full number of injections required by the specific COVID-19 vaccine maker.
 - e. "In person" means that a court proceeding is being conducted in the court facility, including at least one in-person participant who is neither the judge nor court staff.
 - f. "Open work area" means a work area consisting of one or more temporary or permanent workstations that either have no barriers or are partially separated by barriers that do not enclose the workstation from floor to ceiling on all sides, such as cubicles.
 - g. "Participant" means any individual who is participating in a proceeding, other than the judge and staff, including lawyers, parties, witnesses, jurors, interpreters, and courtroom security personnel.

- h. “Presiding Judge” means the presiding judge of a judicial district or any person to whom that judge has delegated authority under this order. For purposes of this order, as applicable and pursuant to other statutory authority, the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, and the Tax Court Judge have the same authority in their respective courts as that described for a Presiding Judge.
- i. “Proceeding” means a trial, hearing, or other proceeding. When this order grants authority to a judge presiding over an in-person proceeding, that same authority extends to a mediator conducting an in-person mediation, a facilitator providing in-person facilitation services, or the Citizen Review Board conducting in-person review of cases involving children in foster care.
- j. “Protective face covering” means a covering of the nose and mouth to protect against spreading the COVID-19 virus, as recommended or described as a means of protection by the CDC and OHA.
- k. “Staff” means Oregon Judicial Department staff.

2. General Requirements

- a. Except for children under 2 years of age, and unless an exception or exemption described in this order applies, all persons entering or working in the court facility, including judges and staff, are required to wear a protective face covering while in the court facility.
- b. Enclosed offices and workstations
 - (1) Judges and staff may remove their face coverings when they are alone in enclosed offices or workstations. When judges or staff leave their enclosed offices or workstations, or when another person enters their enclosed offices or workstations, they must wear a protective face covering, unless an exception or exemption applies.
 - (2) Subparagraph 2.b.(1) applies to a workstation located within an open work area of any size, including any workstation partially separated by barriers from that open area, such as a cubicle, but only if
 - (A) Only 1 person is working in that open work area; and
 - (B) That open work area is separated from the public by a floor to ceiling divider.

3. Exceptions for fully vaccinated judges and staff

- a. Fully vaccinated judges and staff who have received approval from the Administrative Authority are not required to wear protective face coverings as described in paragraph 2, unless they are:
 - (1) Working in an adult jail or correctional facility, as determined by the Administrative Authority;

- (2) Working in a youth detention or correctional facility, as determined by the Administrative Authority;
 - (3) In a public area of the court facility, such as the front entry, waiting areas, hallways, restrooms, and elevators; unless the Presiding Judge has designated the particular area as an area in which protective face coverings are not required; or
 - (4) Participating in a courtroom proceeding at which participants are required to wear protective face coverings under paragraph 4.
- b. To be eligible for the exception set out in subparagraph 3.a., an individual must obtain approval from the Administrative Authority. Before granting approval, the Administrative Authority shall both request and review proof of fully vaccinated status. An Administrative Authority may delegate the request-and-review responsibility, but retains the authority to approve any exception.
4. Court proceedings conducted in person
- a. A judge presiding over an in-person proceeding may:
- (1) Permit one or more fully vaccinated participants to remove their protective face coverings during the proceeding, provided that the judge both requests and reviews proof of fully vaccinated status of any such participant. If so, the authorized participant may remove a protective face covering only while in the courtroom.
 - (2) Require that all participants, including the judge and staff, and all staff who enter the location where the proceeding is being conducted, wear protective face coverings during the proceeding. The judge must impose such a requirement upon the request of a participant or may impose such a requirement on the judge's own initiative. If this subparagraph applies,
 - (A) The judge who is presiding over the trial or proceeding may
 - (i) Temporarily remove the judge's protective face covering to ensure that a particular participating person understands a particular communication from the judge;
 - (ii) Require or permit a juror to temporarily remove a protective face covering when the juror is answering a question during *voir dire*;
 - (iii) Require or permit a witness to remove a protective face covering when the witness is testifying, provided that a minimum of 6 feet of social distance is consistently maintained between the witness and any other person; and

- (iv) Require or permit any other participating person to temporarily remove a protective face covering to ensure that a particular communication is understood.
 - (B) When the judge who is presiding removes the judge's own protective face covering or requires or permits a juror, witness, or any other participating person to do so under subparagraph 4.a.(2)(A),
 - (i) if the removal is for less than 15 minutes, the judge may use or require other protective measures, such as the use of a face shield or protective physical barrier, additional social distancing, or the use of remote means;
 - (ii) if the removal is for more than 15 minutes, the judge shall use or require other protective measures, such as the use of a face shield or protective physical barrier, additional social distancing, or the use of remote means.
- b. A Presiding Judge may:
 - (1) Permit fully vaccinated court participants to remove protective face coverings during court proceedings without the need for the judge presiding over the proceeding to grant individual requests. The Presiding Judge may grant such permission only after requesting and reviewing proof of fully vaccinated status. A Presiding Judge's permission under this subparagraph does not apply, however, if the judge presiding over a particular court proceeding has required court participants to wear a protective face covering under subparagraph 4.a.(2).
 - (2) Delegate the request-and-review responsibility described in subparagraph 4.b.(1) to the Trial Court Administrator, but retains the authority to approve an exception under that subparagraph.

5. Exemptions

- a. A Presiding Judge or that judge's designee(s) may grant an exemption from paragraph 2 to any person who seeks to enter, but who does not work in, the court facility, due to disability, respiratory or other health-related issues, or other legally required cause. The Presiding Judge shall grant such an exemption when required by law.
- b. An Administrative Authority may grant an exemption from paragraph 2 to a judge or a staff person who works in the court facility only when the law requires an exemption due to disability or other legally required cause. The Administrative Authority may grant a temporary exemption from this rule for the time necessary to determine whether the law requires an exemption.
- c. If an exemption is granted under this paragraph, the Presiding Judge or that judge's designee(s) may require other protective measures, such as the use of a

face shield or protective physical barrier, additional social distancing, or the use of remote means.

6. The court will provide protective face coverings and information about how to use them.
7. A Presiding Judge, the Chief Judge of the Court of Appeals, or the Tax Court Judge may issue a Presiding Judge Order, Chief Judge Order, or Tax Court Judge Order that imposes additional requirements regarding the wearing of protective face coverings, provided that such an order does not conflict with the provisions of this order and is not less protective or restrictive than the provisions set out in this order.
8. This order supersedes subparagraph 2.b. of CJO 21-025 (Order Establishing Updated Directives Relating to Court Operations – Protective face coverings, generally). Subparagraphs 2.c. and 2.d. of CJO 21-025 (Protective measures in proceedings; Protective measures in other particular circumstances) remain in effect, except that the protective face covering requirements set out in this order supersede any conflicting provision in those subparagraphs.
9. This order supersedes any existing Presiding Judge Order, Chief Judge Order, or Tax Court Judge Order, or part of any such an order, that conflicts with the provisions of this order.
10. This order is effective on August 2, 2021, and will remain in effect until amended, superseded, or vacated by further Chief Justice Order.

Dated this 29th day of July, 2021.



Martha L. Walters
Chief Justice