



Eastern North Dakota Synod Evangelical Lutheran Church in America

God's work. Our hands.

Memorandum

To: Bishop Tessa Moon Leiseth
From: Kristy Albrecht Synod Attorney
Subject: ND State Health Officer's Order # 2020-08
Date: November 17, 2020

State Health Officer Order # 2020-08

The State Health Officer issued this order on November 13:

Effective November 14, 2020, at 12:01 a.m. through December 14, 2020, at 12:01 a.m., face coverings are required in indoor businesses and indoor public settings, as described in this Order. Face coverings must also be worn in outdoor business and public settings when it is not possible to maintain physical distancing. This order applies to all workers, patrons, customers, visitors or guests unless exempt under Paragraph 4 of this Order.

The Order defines "business" to churches, which are nonprofit organizations that employ workers:

"Business" and "businesses" are broadly defined to include entities that employ or engage workers, including private-sector entities, public-sector entities, non-profit entities, and state, county, and local governments.

The order lists several circumstances when mandatory face coverings may be temporarily removed:

- When speaking (e.g., preaching) in an indoor public space provided that physical distancing is always maintained.
- During performances in an indoor public space when a face covering cannot be used while playing a musical instrument, provided that physical distancing is always maintained.
- When an individual is alone, including when alone in an office, a room, a cubicle with walls that are higher than face level when physical distancing is maintained, or an enclosed work area.

- “When an individual is participating in a religious service at a faith based organization, provided that physical distancing is maintained to the extent possible between persons who are not members of the same household.”

Churches must post one or more signs that are visible to all persons—including workers, members, and visitors—instructing them to wear face coverings as required by this Order.

The order specifically permits organizations to adopt more protective policies:

Nothing in this Order should be construed to prevent a [church] from developing a policy that imposes more protective requirements with respect to face coverings, consistent with applicable law, than those in this Order...

A person who violates or fails to obey the Order may be guilty of an infraction. North Dakota Century Code section 12.1-32-01 explains the potential penalty for an infraction:

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows: * * *

7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who, within one year before commission of the infraction of which the person was convicted, has been convicted previously at least twice of the same offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint must specify the offense is a misdemeanor.

Governor Burgum also issued Executive Order 2020-43 on November 13. This Executive Order placed restrictions on large event venues. However, the Executive Order stated an exception:

Religious events...are exempt from this order. Religious organizations are strongly encouraged to utilize COVID-19 mitigation strategies from the ND Department of Health and the Centers for Disease Control.

Suggestion

I understand why the Order states that a protective mask may be temporarily removed during a worship service – the Governor and State Health Officer want to avoid a potential constitutional church-state conflict. That provides an opportunity for faith-based organizations.

It is my suggestion that the two bishops (east and west) invite the leadership of the full communion partners and possibly other denominations to co-sign a statement that:

- Urges churches to require all persons attending worship services to wear protective masks when entering, inside, and departing the church building.
- Urges North Dakotans to comply with the letter and spirit of the Governor's executive orders and the State Health Officer's orders.
- Encourages, in settings where social distancing is not possible or mask wearing is not acceptable practice, congregational leaders to suspend in-person worship services until the Centers for Disease Control and Protection, the Governor, and the State Health Officer advise that churches can safely resume in-person worship services.

The denomination leaders would be basing this action on scripture (e.g., Matthew 22:36-40). Church leaders would be asking all North Dakotas to wear protective masks and take other protective measures because we care for each other.