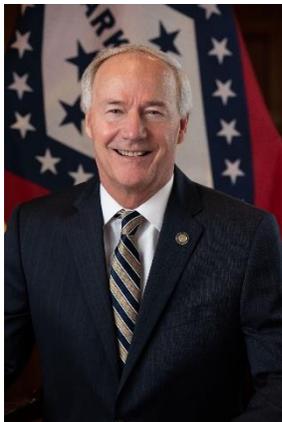




March 30, 2021

DEALERSHIP INFORMATIONAL ADVISORY  
**COVID-19 Updates #44**



**GOVERNOR ENDING MASK MANDATE  
EFFECTIVE TODAY**

Governor Hutchinson announced today, March 30, 2021, that he is lifting the statewide mask mandate immediately. The Governor stated that while businesses will now have the choice on whether to enforce a mask mandate, a number of businesses and government entities have already indicated they will continue to require masks. Included on this list are some restaurants, hotels, government buildings, event venues, schools that opt to continue mask policy, hospitals and health care providers. The Governor asked that Arkansans respect this

decision.

Additionally, the Governor announced that cities and municipalities will be allowed to implement their own mask mandates following the lifting of the statewide mandate. Dealers should monitor whether your municipality takes this action and comply with any local order that is enacted.

***WHAT DOES THIS MEAN FOR YOUR DEALERSHIP?***

While each dealership now has a choice on requiring employees and customers to wear a mask, the law firm of Friday Eldridge & Clark LLP offered the following information for businesses to consider:

**As a business/employer, can I still require my employees and/or customers to wear a mask after the Governor drops the mask mandate?**

- Yes, and you likely should.
- The CDC has released requirements for vaccinated individuals:  
<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>
- These guidelines include continuing to wear masks in public spaces, including the workplace.
- The CDC guidance also says that employees should continue to follow the protocols of their individual employers.

- CDC guidelines still include social distancing, wearing masks (even when social distancing), separating sick employees, disinfecting properly, informing employees of close contact to an infected employee, correct quarantine procedures, and providing PPE for your employees.
- Note that vaccinated employees no longer need to quarantine if they are not experiencing symptoms.
- Additionally, new OSHA workplace guidance gives many suggestions which mirror the CDC's guidance.  
<https://www.osha.gov/coronavirus/safework>
- The new OSHA guidance emphasizes the use of masks and recommends that employers provide all workers with face coverings.
- The OSHA guidance is advisory in nature but comes with a warning that employers have a general duty to keep their workplace free from recognized harms that cause death or serious physical harm. The guidance aims to abate the risk of these harms.

### **What if an employee refuses to wear a mask citing Constitutional grounds, no directive in place, disability, etc.?**

- Employers generally may require employees to wear masks while at the workplace even if there is no state mandate.
- If an employee claims a medical condition or disability, the employer should engage in the interactive process to determine if there is a reasonable accommodation under the ADA. The most common accommodations including working from home, moving the employee to a location where he/she does not interact with other individuals, or offering wearing a face shield.

### **What are the legal ramifications of NOT requiring masks?**

- Importantly, in order to receive immunity under the Governor's Arkansas Executive Order, an employer must follow CDC and OSHA guidelines. Thus, not requiring masks may strip you of immunity.
- Not requiring masks may make you susceptible to an OSHA investigation.
- The OSHA General Duty Clause requires employers to provide their workers with a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm. COVID-19 and risk of exposure to COVID-19 are considered recognized hazards. An employer could be subject to an OSHA investigation if accused of violating this general duty.
- Not requiring masks may make you liable for unemployment claims.
- The Arkansas Court of Appeals recently ruled that quitting a job where the employer failed to undertake COVID-related precautions was not considered unreasonable. Thus, employees may be entitled to unemployment benefits if they quit because of the risk of exposure to COVID-19 at the workplace. *Keener v. Dir., Dep't of Workforce Servs.*, 2021 Ark. App. 88 (2021).
- Additionally, on February 25, 2021, the U.S. Department of Labor released guidance that expands workers' eligibility for federal unemployment insurance. This means that workers will be eligible for Pandemic Unemployment Assistance if their regular unemployment benefits were denied because the employee refused to work or accept an offer of work at a worksite because they were not in compliance with coronavirus health

and safety standards. In some cases, workers may be retroactively paid from the beginning of the PUA program.

- If employees are operating under a collective bargaining agreement, there may be a clause that could be triggered if the union believes they are working unsafely.

**If *all* employees have been vaccinated, do they have to wear a mask?**

- As an initial matter, we will not be in a place where all employees are vaccinated any time soon.
- The current CDC guidance requires vaccinated individuals to wear masks in public places, including the workplace. This may change as vaccines become more common place, but this is the guidance today.

**If the statewide mask ordinance goes away, are local ordinances still in effect and have to be followed?**

- According to the Governor's March 30, 2021, press conference, while the mask mandate will be lifted statewide on March 30, 2021, cities and localities will be permitted to implement their own mask mandates (AADA updated as a result of today's announcement).
- Businesses, however, may institute or maintain a mask requirement for employees and customers while on their property. As discussed above, we encourage businesses to maintain a mask requirement consistent with current CDC and OSHA guidance to limit any potential liability.

**Any recommended signage for businesses that will still require masks?**

- Signage that communicates that masks are required for entry may help combat any claims of discrimination or arbitrary enforcement. Signage should be visible at each entrance, and ideally, readable from a distance of several feet to help prevent congregating at entrances.

For a printable version of new signage requiring that masks must still be worn when entering your dealership, please [CLICK HERE](#).



## COVID-19 GUIDANCE FOR BUSINESS

Governor Hutchinson and the Arkansas Department of Health also announced today, March 30, 2021, that vaccine eligibility will expand to include every Arkansan ages 16 to 64.

For information on vaccination clinics and locations, please check out the [Arkansas Department of Health's COVID 19 Vaccination Website](#) or call 1-800-985-6030.

As a reminder, dealership employees have been eligible for vaccination since March 16, 2021.

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## ADDITIONAL AND HELPFUL LINKS

For additional information related to maintaining your dealership as safe, we would recommend monitoring updates from the [CDC](#), [OSHA](#), and the [Arkansas Department of Health](#).

Please go to our website for links to information your dealership needs at [AADA coronavirus update](#).

As a reminder, NADA has produced a tremendous amount of resources to help dealers and their operations during the coronavirus pandemic. The site and the links will be updated continuously; bookmark the address, and click on the links as you need them for the latest versions of everything CARES Act, SBA, PPP, Tax Relief and more. Please check it out here: <https://www.nada.org/coronavirus/regulatory/>.

AADA will work to keep you updated on this situation, but a firm commitment to maintaining a safe and clean work environment for your employees and customers will help you navigate this health crisis.

If you have any questions about this bulletin please don't hesitate to call, 501-372-2596, or email Greg Kirkpatrick [greg@arkautodealers.com](mailto:greg@arkautodealers.com).