

Human Rights Tribunal of Alberta dismisses mask complaint

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In *Szeles v. Costco Wholesale Canada Ltd.*, the decision from the Human Rights Tribunal of Alberta marked a positive step for employers in retail settings that implemented comprehensive and scientifically based mandatory masking policies that also accommodated customers with disabilities.

The Chief of the Commission and Tribunals noted that the decision in this case was based on the employer's policy in force in November 2020 with information before the tribunal.

Background

Costco Canada instituted a mandatory masking policy in response to the ongoing COVID-19 pandemic. The complainant was an individual who identifies as having a disability that prevents him from wearing a face mask. On the date of the incident that gave rise to this claim, the complainant entered the store located in Edmonton, Alberta **without a face mask. The store's staff indicated to the complainant that he was not able** to enter the store without a face mask, pursuant to its mandatory masking policy and the ongoing pandemic.

The complainant responded that he was exempt from the masking requirement because of his disability. The store staff indicated that the complainant could not enter the store without a face mask, but offered that the complainant could use a face shield instead. Costco Canada also provided for alternative accommodations, including online shopping and home delivery options. The complainant refused these accommodations. The police were called, and the complainant was eventually removed from the store. He alleged discrimination against Costco Canada on the ground of a physical disability.

Holding

The complaint was dismissed by the Human Rights Tribunal of Alberta. The restrictions developed by the employer were reasonable and justifiable in light of the ongoing COVID-19 pandemic. The policy was introduced for a valid purpose, and there was no evidence to suggest that it was instituted in bad faith. The employer provided

information from local and international health organizations that face shields may be an alternative to, albeit not as effective as, face masks. The complainant was not able to demonstrate that the other accommodations offered by the employer, such as online shopping, would impose any serious limitation on him.

If you have questions regarding how your COVID-19 policies may impact your business, contact our Labour and Employment team or any of the contacts listed below.

Special thanks to BLG student [Mark Muccilli](#) for his contribution to this article.

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