

Legal Q&A: Reopening, Masks, and Vaccines

Natch Greyes, Government Affairs Counsel
NH Municipal Association (NHMA)

With the reopening and changing guidelines, libraries have started asking questions about Governor Sununu's end of the pandemic emergency announcement, the NH Universal Best Practices, and what's allowed (and what's not). Fortunately, there are some definite answers.

HIPAA & ADA: We have received numerous questions regarding HIPAA, ADA, and related laws and whether they apply. Can you help clarify some of the federal rules?

Health Insurance Portability and Accountability Act of 1996, commonly called HIPAA, is probably the most misunderstood of all the voluminous federal statutes. HIPAA privacy rules apply to health care professionals as well as employers. It does not apply to a regular person, a business, or most other entities. It is entirely permissible, for example, for a retail establishment to ask if an unmasked customer has been vaccinated prior to allowing that customer to access that business's facility.

Similarly, the U.S. Equal Employment Opportunity Commission has clarified that the federal equal employment opportunity laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to some exceptions. Importantly, an employee who does not get vaccinated due to a disability (covered by the ADA) or a sincerely held religious belief, practice, or observance (covered by Title VII) may be entitled to a reasonable accommodation that does not pose an undue hardship on the operation of the employer's business. For example, as a reasonable accommodation, an unvaccinated employee entering the workplace might wear a face mask, work at a social distance from coworkers or non-employees, work a modified shift, get periodic tests for COVID-19, be given the opportunity to telework, or finally, accept a reassignment. This will be very role-specific and employers should consult with an attorney who practices employment law in New Hampshire and is familiar with N.H.'s labor laws, including RSA 202-A:17, in situations where an employee is either unvaccinated or unwilling to share vaccination status upon employer request.

MASKS: We require masks at the library and will continue to do so for the foreseeable future. What should we do if someone shows up to the library without a mask? Are we required to let them in, or can we deny them access, like any one of the numerous businesses in town that requires masks?

The library can deny access to a person if the person refuses to wear a mask in accordance with the rules for its facility much like a business. However, libraries should keep in mind that it may be possible to provide some services, such as scheduled curbside checkouts, to the unmasked public as an alternative means of allowing unmasked individuals into the library itself. These alternative arrangements are not only a good method of minimizing risk, but may also provide greater library access to individuals, such as the elderly or disabled, who otherwise may have difficulty accessing library services.

USE OF FACILITIES: Our library is located in another town building and has meeting rooms that we allowed outside groups to use, including municipal boards, pre-COVID-19. Who decides what happens with the library and those rooms?

RSA 202-A:6 clearly places the "entire custody and management of the public library and of all the property of the town relating thereto" in the hands of the library trustees. Therefore, it is important to know what is and what is not library property. It is reasonable to assume that the physical space occupied by the 'library' as delineated by walls, doors, signs, etc., qualifies as the 'library' that is under the exclusive custody and control of the library trustees. So, just as the trustees set the hours for the library, they could set other rules for access of the library facility.

In this case, it may or may not be difficult to know whether the meeting rooms qualify as part of the library itself as the library is not freestanding and, thus, easily distinguished from other town property (which, unless delegated to another board, is under the control of the select board pursuant to RSA 41:11-a). If the rooms are only accessible by going through the library (e.g. walking through the stacks, etc.) and not accessed by other hallways, etc., in the town building, then they are likely part of the library and controlled by the trustees. However, past practice — such as who is charged with overseeing room reservations, etc. — and any understanding as between the select board and library trustees can be equally informative.

Regardless of whether the meeting rooms qualify as library property — and thus are governed by the library trustees — or not, it is a good idea for the trustees to discuss reopening plans with other relevant boards and bodies, such as the select board. Working collaboratively, municipal boards can come up with ways to make traditional programs — such as a children’s story time — both accessible, safer, and fun by, for instance, moving it to the town gazebo or under the big oak tree in front of town hall. It’s important for everyone to remember that even though more than half of our state has been vaccinated, the threat of infection by COVID-19 is still very real for those who have not yet had the opportunity to be vaccinated because of their age, and it’s important to take steps to try to mitigate their risk. □