[INSERT DATE]

FAO: The Company Secretary

 [INSERT NAME AND ADDRESS OF COMPANY]

**URGENT**

**Re: Discrimination, Harassment and Victimisation on your premises on [INSERT DATE]**

Dear Sir/Madam,

I write in furtherance to my attendance at [INSERT NAME AND ADDRESS OF STORE], at approximately [INSERT TIME] on [INSERT DATE], at which time I was subjected to disability discrimination by the Manager on the basis that I am unable to wear a face covering.

**Disability Discrimination**

Please be advised that the Manager acted in a manner contrary to the relevant law on face coverings, namely Paragraph 5 of Statutory Instrument No. 296 of 2020 Health Act 1947 (Section 31A Temporary Restrictions) (Covid 19) (Face Coverings in Certain Premises and Businesses) Regulations 2020, as extended. In addition, I wish to place you on notice that I suffer from a disability as defined under Section 2(1) of the Equal Status Acts 2000 – 2018 (the “**Equal Status Acts**”) and the actions of the Manager in question constituted disability discrimination., harassment and/or victimisation, and was therefore illegal.

**Background**

The background to this matter is [INSERT DETAILS].

**Statutory Instrument 296 of 2020 and Reasonable Excuse**

In accordance with Paragraph 5 of Statutory Instrument 296 of 2020, as amended, a person has a reasonable excuse for not wearing a face covering if:

*“(a) the person cannot put on, wear or remove a face covering -*

 *(i) because of any physical or mental illness, impairment or disability, or*

 *(ii) without severe distress,*

*(b) the person needs to communicate with a person who has difficulties communicating (in relation to speech, language or otherwise),*

*(c) the person removes the face covering to provide emergency assistance or to provide care or assistance to a vulnerable person,*

*(d) the person removes the face covering to avoid harm or injury, or the risk of harm or injury,*

*(e) the person removes the face covering in order to, and only for the time required to, take medication,*

*(f) the person removes the face covering at the request of a responsible person, or of a worker, in order to enable him or her to ascertain the person’s age by reference to photographic identification for the purposes of the sale of goods or services in respect of which there is a minimum age requirement or where the responsible person, or worker, has lawful authority to verify the person’s identity, or*

*(g) the person removes the face covering at the request of a responsible person, or of a worker, in order to assist the responsible person or worker to provide him or her with healthcare or healthcare advice.”*.

It is clear from the above list of *exemptions* that a blanket refusal of service is neither stipulated nor sanctioned through Statutory Instrument 296 of 2020 – meaning that a relevant premises in seeking to refuse service to a person, with a reasonable excuse, cannot seek sanctuary in the law.

**Equal Status Acts and Disability Discrimination**

Section 5(1) of the Equal Status Acts stipulates that a person shall not discriminate in disposing of goods to the public generally or a section of the public. Section 3(2)(g) of the Equal Status Acts, states that an act of discrimination occurs if a person is treated less favourably on the grounds of their disability.

Clearly, disabled people have a right to equal access to goods and services and your stated policy of refusing service is discriminatory in itself. This is because a disabled person who is unable to wear a face covering has the right to access services in the same manner as a person without such a disability that is able to wear a face covering.

I wish to place on record that I found the incident extremely distressing and humiliating and was shocked and surprised that employees of your company have not been instructed on the relevant law surrounding face coverings under Statutory Instrument 296 of 2020, as extended and consequential actions that may be construed as disability discrimination under the aforementioned Equal Status Acts.

**Requirement to Provide Doctors Note Confirming Proof of Reasonable Excuse**

In order to pre-empt any suggestion that I (or any other person) may be required to provide a doctor’s note proving my (their) “*reasonable excuse*”, I wish to advise you of the following:

1. There is no requirement or authority under Statutory Instrument 296 of 2020 to inquire into or request proof of a person’s “*reasonable excuse*”.
2. It is clear that the Executive did not intend to give such powers to a “*responsible person*” in respect of a relevant premises under Statutory Instrument 296 of 2020 given that the authority to request “*such information as the relevant person considers necessary to determine whether or not the passenger has reasonable excuse*” is specifically granted through the Public Transport Regulations (Statutory Instrument 244 of 2020), which was enacted one month prior to Statutory Instrument 296 of 2020, thereby illustrating the fact that the Minister of Health did not consider it appropriate or necessary to request evidence of reasonable excuse in a relevant premises. This point is pivotal to any argument that a *“responsible person*” has been granted any power by law to request any such proof.
3. The General Data Protection Regulations 2016 (the “**Regulations**”) stipulate that certain categories of sensitive personal data are subject to additional protections under the Regulations. One such special category of data is “*data concerning health*” which means

 “*personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status.*

Article 9 of the Regulations states that the “*Processing of personal data revealing …. data concerning health……. shall be prohibited”.*

*S*pecial category data can only be processed where there is a legal basis for the processing of the data under Article 6 of the Regulations and where there is an applicable exemption to the general prohibition on processing special category data under Article 9.

Given that I do not consent to the processing of my special category data by your store and the Executive has not stipulated a requirement for proof of reasonable excuse through Statutory Instrument 296 of 2020, I fail to see what lawful basis you have for requiring access to such special category data as a condition of entry/service in your store.

In light of the above, it is clear that any such policy of requesting proof of reasonable excuse is unlawful.

**No Mask No Entry Policy**

In addition, your “*No Mask No Entry*” policy not only contravenes Statutory Instrument 296 of 2020, as extended, as it fails to facilitate the exemptions as cited above. It also constitutes indirect disability discrimination under the Equal Status Acts as the very exemptions for people with disabilities demonstrates that a person with a disability is less likely to be able to wear a face covering than a person without such a disability.

**Reasonable Excuse Exemptions are a Proportionate Response**

You will note that the Minister of Health in the exercise of powers conferred on him through the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 made these regulations:

*“Having regard to the immediate, exceptional and manifest risk posed to human life and public health by the spread of Covid-19…….”*

It follows that the *exemptions* to wearing a face covering under Paragraph 5 of Statutory Instrument 296 of 2020, as extended, were inserted as a proportionate response to the immediate, exceptional and manifest risk of COVID-19. The Government clearly deduced, on the basis of scientific evidence from the National Public Health Emergency Team (“**NPHET**”), that such limited exemptions for disabled people would not enhance the risk of COVID-19 amongst the general population. Indeed, we trust that you will agree the Executive would not have included such exemptions for disabled people if scientific evidence suggested that your customers or staff would be placed at increased risk of harm. It follows, therefore, that your discriminatory practices cannot objectively be justified on the unfounded basis that such actions protect staff and customers.

**Lack of Appropriate Training and Understanding of the Law**

I appreciate that the Manager(s) discriminatory actions may have been precipitated by a lack of appropriate training and understanding of the law pertaining to face coverings. I wish to remind you, however, that in accordance with Paragraph 4(4) of Statutory Instrument 296 of 2020 as extended, the duties of a “*responsible person*” are limited to taking reasonable steps to engage with the person entering the premises to inform them of the requirement to wear a face covering and to promote compliance. The Manager(s), therefore, in refusing to grant me access the store and/or its services, breached the above-cited Statutory Instrument 296 of 2020 as extended and the Equal Status Acts.

For the avoidance of doubt, I confirm that your policies contravene:

1. public health guidance;
2. the law surrounding face coverings; and
3. discriminate against people with disabilities.

I trust that you will agree that it is fundamental that the rule of law is upheld, and that disabled people continue to have their right to dignity respected. It is, therefore, of vital importance that disabled people who cannot wear face coverings continue to have equal access to all goods and services.

**REQUIRED ACTION**

As you will be aware claims under the Equal Status Acts must be made within two months of the latest incident of discrimination. That said, my pivotal concern is in ensuing that the discriminatory practises engaged in by your store are rectified, as opposed to proceeding with a claim for compensation (which will undoubtedly result in cost, expense and bad publicity for your store).

In this regard, in the first instance, I wish to give you an opportunity to investigate this matter and review your policies to ensure compliance with the above-cited law. Should you fail to respond to this letter within 4 weeks from the date hereof or should your response be unsatisfactory, I confirm that I shall serve notice under the Equal Status Acts of intention to issue a claim to the Workplace Relations Commission for compensation on the grounds that I was refused service and that your policies constitute disability discrimination.

You will no doubt be aware that, following a recent Supreme Court decision, Workplace Relations Commission Hearings are now held in public and determinations are publicised. The Workplace Relations Commission may award up to €15,000 compensation under the Equal Status Acts.

I would advise you to bring this letter to the attention of your solicitors immediately. Please note also that this letter shall be relied upon in any proceedings that might follow.

I look forward to receiving your response within the time frame outlined above.

Yours faithfully,

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[INSERT YOUR NAME AND ADDRESS]