

THE COVID-CONFUSION OVER FACE MASKS, N95S AND RESPIRATORS: SMALL DETAIL OR BIG DIFFERENCE FOR EMPLOYERS?

Insights
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COVID-19 pandemic guidance from agencies like the Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration (OSHA) has been constantly changing and confusing for employers. Directives concerning the use of face coverings and masks have proven to be one of the most commonly misunderstood areas.

This spring, the World Health Organization (WHO) and CDC originally claimed that face masks were not necessary for healthy individuals. But the agencies later reversed course early this summer, claiming that masks should be worn in public. State and local governments followed suit, issuing a litany of directives requiring masks be worn in public areas, including the workplace. Complicating matters even further, many employers never had employees wear personal protective equipment (PPE), face masks, or respirators before the pandemic and are thus are unfamiliar with OSHA regulations that govern wearing face coverings. Some of the most common misunderstandings are discussed below.

OSHA CLASSIFIES N95 “DUST MASKS” AS RESPIRATORS

One of the most common and potentially significant misunderstandings for employers is not treating a N95 mask – commonly known as a “dust mask” that can be purchased at your local hardware store – as a respirator. This misunderstanding could lead to OSHA citations or other claims by employees. OSHA has specifically stated that

Related People



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N95s are filtering facepiece respirators. In a November 22, 2011, standard interpretation letter, OSHA noted:

Question 7: If OSHA considers the N95 filtering facepiece a respirator covered by the respiratory protection standard, what parts of paragraph (h) involving “maintenance and care of respirators” are applicable? Does the employer have to comply with Appendix B-2 involving “Respirator Cleaning Procedures”?

Response: *The N95 filtering facepiece respirator is a “disposable respirator.”* It must be discarded after use, or when it becomes damaged or soiled. It cannot be cleaned and disinfected according to the method described in Appendix B-2. OSHA is presently not aware of any alternate procedures provided by respirator manufacturers in their user instructions that would allow for cleaning and disinfecting their filtering facepiece respirators.

Respirators protect the wearer and help reduce the amount of air breathed in with potentially virus-infected droplets. Non-respirator face masks (or face coverings) are considered **source control barriers**, which protect others by reducing the spread of large respiratory droplets to others when the wearer talks, sneezes, or coughs.

To be clear, OSHA and the CDC is not recommending that the public wear N95 respirators. However, if your employees are wearing **N95s** “dust masks” on a voluntary or mandatory basis to meet the requirements of a face covering mandate, your company is subject to OSHA’s **respiratory protection standard**. This standard requires, among things, medical evaluations and fit tests for mandatory respirator use, and other requirements if the N95s are used on a voluntary basis, including providing voluntary use employees with the language provided in **Appendix D** of the standard.

ARE FACE MASKS CONSIDERED PPE?

Another point of confusion throughout the pandemic is whether face coverings should be treated as personal protective equipment. Although studies have shown that wearing a non-respirator face mask can provide some protection to the individual wearing it, OSHA claims that most face coverings **are not PPE**. Thus, OSHA’s **PPE standard** does not apply to nearly all of the face coverings worn by employees during the pandemic. (Note, however,

that OSHA has said surgical masks can be “used to protect workers against splashes and sprays (i.e., droplets) containing potentially infectious materials,” and therefore surgical masks would be considered PPE in that capacity.)

However, while generally not considered PPE, treating face masks as personal protective equipment will bolster and provide uniformity to your safety program, including ensuring employees are properly trained, wearing a clean mask that doesn’t pose a hazard, and that the masks are provided at no charge to employees. Further, in the event of an OSHA inspection or litigation, having these procedures in place will demonstrate to an agency or fact finder a commitment to safety, and assist with defeating any claims brought against the company.

A chart showing the most common types of face coverings worn during the pandemic, along with the requirements attached to each type, is set forth below.

“HOMEMADE MASKS,” BANDANAS, AND SCARVES	FACE MASKS (DESIGNED FOR THAT PURPOSE) AND SURGICAL MASKS (IN MOST SITUATIONS)	N95S OR “DUST I
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Personal Protective Equipment Under OSHA Standards?	No	No	<u>Yes</u>
Training Required?	No	No	Yes, if the re: require emplo
Medical Evaluations Required?	No	No	Yes, if the re: require emplo
Fit Test Required?	No	No	Yes, if the re: require emplo

Employer to Pay for Mask?	No	No	Yes, if the re: requir emplo
<u>Appendix D</u> Information Required?	No	No	Yes, if the re: volunt

Even if face masks are not considered to be PPE under OSHA standards, we recommend that employers complete the following task list before requiring employees to wear face coverings pursuant to state/local law or rule:

- perform a hazard assessment;
- consider other alternative options to protect employees;
- identify and provide appropriate PPE for employees;
- train employees in the use and care of PPE;
- train employees how to clean and maintain PPE, including replacing worn or damaged PPE; and
- prepare a plan that is periodically reviewed, among other steps, including employee specific requirements.

Finally, OSHA requires employers to provide PPE to employees free of charge, with a few exceptions. Employers are not required to pay for “everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots or ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.” Although not required by OSHA, we recommend that employers pay for face coverings if required to be worn in the workplace.

KEY TAKEAWAYS AND CONCLUSION

The COVID-19 pandemic has presented many challenges to employers and created several misunderstandings, none of which is more crucial than following the safety regulations concerning face coverings. Before implementing your face

covering policy as employees return to work, remember to consult local and state guidance, as well as that of OSHA and the CDC, to ensure the various legal requirements are met. Here are the key takeaways:

- 1. Most face coverings are not considered personal protective equipment.**
- 2. Even though not considered PPE, prudent employers will treat face coverings as PPE under OSHA regulations to promote safety in the workplace and defend against potential OSHA citations and claims.**
- 3. N95 dust masks are considered filtering facepiece respirators under OSHA's standards.**
- 4. If your employees are using N95s to meet pandemic-related face covering mandates – on a voluntary or required basis – carefully review your requirements under OSHA's respiratory protection standard.**
- 5. Local and state orders may require the use of face coverings in the workplace; however, these directives will not require N95s for most workplaces.**

This a constantly evolving area, with new guidance being issued nearly every day. Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, or any member of [our Post-Pandemic Strategy Group Roster](#). You can also review the [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

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