



# Recent CDC Guidance Could Bolster Argument For Cloth Face Coverings To Be Personal Protective Equipment

Insights

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A recent update from the Centers for Disease Control and Prevention (CDC) could eventually lead federal workplace safety authorities to conclude that employers have significant additional obligations when it comes to their employees wearing cloth face masks. While the heavy lifting may not start until President-elect Biden takes office, employers may want to track recent developments so you are prepared to quickly pivot if compliance changes do take place.

## Recent Update From The CDC May Change The Equation

Since the COVID-19 pandemic began, the CDC has recommended the use of cloth face coverings to help stop the spread of the virus. The principal purpose of wearing a face covering, we were told, was not to protect the wearer of the face covering from others but to protect others from the wearer. On November 10, however, the CDC for the first time concluded that wearing cloth face masks helps protect the **wearer of the mask** in addition to those around the wearer. As the CDC concluded, “The prevention benefit of masking is derived from the combination of source control and personal protection for the mask wearer.”

While the CDC’s updated guidance may not seem relevant to the workplace, it may eventually impact whether the United States Occupational Safety and Health Administration (OSHA) views cloth face coverings to be personal protective equipment (PPE). While OSHA has not considered cloth face coverings to be PPE, the agency reached this conclusion with then-in-effect CDC guidance that wearing face coverings was related to source control (preventing the spread of the virus from the mask wearer to others). Now that the CDC has changed its tune, what will happen next at OSHA?

## OSHA Isn’t Changing Course – Yet

After the CDC issued the November 10 guidance, OSHA updated its frequently asked questions responses to once again state that it **does not consider** cloth face coverings to be PPE. In affirming its prior guidance, OSHA downplayed the significance of the CDC finding, stating that it “does not think enough information is available to determine whether a particular cloth face covering provides sufficient protection from the hazard of COVID-19 to be” PPE.

Under a Biden administration, however, OSHA’s position may well change. Even under the Trump administration, OSHA has generally tracked CDC guidance in its enforcement of OSHA regulations pertaining to COVID-19. Given that our Workplace Safety and Catastrophe Management Practice Group believes that President Biden’s OSHA will take on a more aggressive stance when it comes to

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enforcing workplace safety standards, there stands a good chance that the agency will reconsider its position and follow the CDC's lead on cloth face coverings.

### **Gazing Into Crystal Ball: What Might Change?**

If OSHA were to consider cloth face coverings to be PPE, employers would need to follow OSHA's requirements for use, selection, and training. This would include the following obligations:

- Conducting a hazard assessment to determine if COVID-19 airborne transmission hazards are present, which may necessitate the use of face coverings;
- Selecting the type of face covering required;
- Training employees on the proper use, cleaning, and care of face coverings;
- Providing face coverings at no cost to employees; and
- Ensuring employees wear the face coverings.

### **Conclusion**

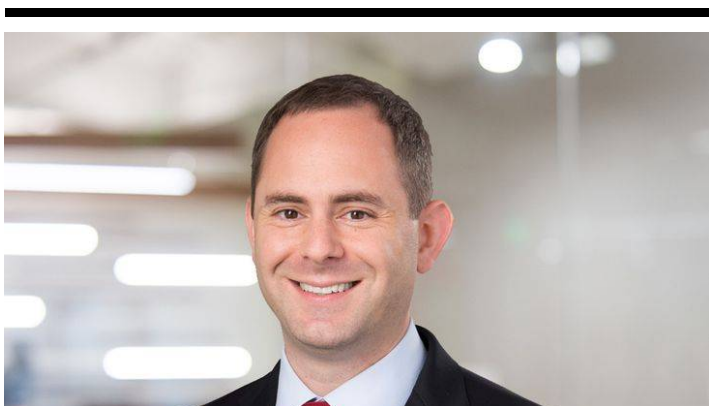
While many employers already require employees to wear face masks — either pursuant to company policy or state or local health regulations — and have already taken these steps as we have recommended before, your failure to follow these recommendations in the future could result in OSHA citations. Again, this hinges on OSHA concluding that face masks should be considered PPE, so you should ensure you are tracking the latest developments to understand your compliance obligations.

We will keep you updated with any developments. Fisher Phillips will continue to monitor this 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 Workplace Safety and Catastrophe Management Practice Group.

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*This Legal Alert provides an overview of specific federal developments. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

### **Related People**





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