



# Masking the Problem? When Workers Want To Wear Masks Due To Coronavirus Or Flu

Insights

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Fear of the coronavirus and flu may cause anxiety among employees who frequently encounter other people, which may lead them to request permission to wear – or to simply wear without permission – a medical mask or respirator. While this may address the anxieties of employees, it could lead to other problems, such as causing customers or coworkers to panic. To avoid these issues, some employers in industries such as retail have prohibited their employees from wearing medical masks or respirators, like the department store in London that recently barred staff from wearing masks due to the “risk of spreading further anxiety.”

What are your legal rights and obligations when it comes to permitting your workers to wearing masks?

## ***Coronavirus and the Flu Have Dominated The News***

It’s no wonder that your employees may be concerned about the deadly coronavirus (COVID-19) outbreak that began in December in Wuhan, the capital of China’s Hubei province. It has infected individuals in more than 30 countries, with recent news that the virus continues to spread, including a significantly increased number of cases in countries such as South Korea, Italy, and Iran. While the outbreak has remained largely concentrated outside North America, 35 cases have been confirmed in the United States.

The coronavirus is not the only current health threat making the news. While COVID-19 has grabbed most of the headlines, the Centers for Disease Control and Prevention has indicated that seasonal influenza activity in the United States has been elevated for over 15 weeks and will remain high for the foreseeable future.

For these reasons, you may soon encounter an employee who wants to wear a mask at work. Here are answers to the two most common questions we’ve been encountering.

## ***Can employers in the United States refuse an employee’s request to wear a medical mask or a respirator?***

Yes, under most circumstances. Under the Occupational Safety and Health Administration’s (OSHA) respiratory protection standard, 29 C.F.R. 1910.134, which covers the use of most safety masks in the workplace, a respirator must be provided to employees only “when such equipment is necessary to protect the health of such employees.” Likewise, OSHA rules provide guidance on when a respirator

protect the health of such employees. Likewise, OSHA rules provide guidance on when a respirator is not required: “an employer **may** provide respirators at the request of employees or permit employees to use their own respirators, if the employer determines that such respirator use will not in itself create a hazard” (29 C.F.R. 1910.134(c)(2)). In almost all situations, however, there is no recognized health or safety hazard – even when employees work near other people and thus there is no need for a mask or respirator.

The World Health Organization (WHO) has stated that people only need to wear face masks if they are treating someone who is infected with the coronavirus. The WHO has also said that wearing masks may create a false sense of security among the general public. Doctors agree that the best defense against the coronavirus and influenza is simply washing your hands. Thus, the consensus is that there are more appropriate measures of defense than wearing a surgical mask or respirator.

### ***Can an employee simply refuse to work without a mask?***

OSHA has addressed the common question of whether an employee can simply refuse to work in unsafe conditions. The safety agency provides this guidance, which wouldn't require the use of a mask or respirator in most situations:

*Your right to refuse to do a task is protected if all of the following conditions are met:*

- *Where possible, you have asked the employer to eliminate the danger, and the employer failed to do so; and*
- *You refused to work in “good faith.” This means that you must genuinely believe that an imminent danger exists; and*
- *A reasonable person would agree that there is a real danger of death or serious injury; and*
- *There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.*

Given the consensus that face masks are only necessary when treating someone who is infected with the coronavirus or influenza, masks are likely not necessary to protect the health of most employees. Therefore, most employers do not have to provide, or allow employees to wear, a surgical mask or respirator to protect against the spread of the coronavirus or influenza. The use of the word “**may**” in OSHA's respiratory protection standard makes it clear that when a respirator is not necessary to protect the health of employee, it is within the discretion of the employer to allow employees to use a respirator. Accordingly, you are well within the applicable OSHA standard to deny an employee's request to wear a surgical mask or a respirator in almost all situations.

Absent a legally recognized disability, unique physical condition, or an occupation where employees work directly with those impacted by a condition such as the coronavirus or flu, you are generally not required to allow workers to wear masks at work.

This is an evolving area of workplace safety law with constant changes. If you have questions regarding this issue, contact your workplace safety counsel.

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## ***Related People***

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**Nicholas S. Hulse**  
Associate  
704.778.4183  
Email



**Travis W. Vance**  
Regional Managing Partner  
704.778.4164  
Email

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