

OSHA COVID-19 Guidance Advises Wearing Masks in Workplace

By Joshua R. Adams &

July 9, 2020

Meet the Authors



Joshua R. Adams

(He/Him)

Principal

980-465-7239

Joshua.Adams@jacksonlewis.com

Related Services

COVID-19

Workplace Safety and Health

As cases of COVID-19 continue to spike across the country and many jurisdictions have begun to require the use of face coverings in public, the Occupational Safety and Health Administration (OSHA) has [unveiled](#) and updated its Frequently Asked Questions discussing masks in the workplace.

Consistent with Centers for Disease Control and Prevention (CDC) recommendations, OSHA advises employers to encourage workers to wear *cloth* face coverings while at work. OSHA also recommends maintaining social distancing in the workplace, even when workers wear cloth face coverings.

Should an employer require use of cloth face coverings?

CDC's current guidance recommends that employees wear cloth face coverings in public settings and work environments where social distancing measures cannot be maintained. A patchwork of state and local orders requiring masks or face coverings also have emerged. They provide focused recommendations around use of cloth face coverings or mandating use of coverings in areas where there is sustained direct contact with the public (*e.g.*, retail environment). (For examples, see our articles, [Philadelphia Enacts COVID-19 Whistleblower Legislation](#), [Cities of Minneapolis and St. Paul Issue Face-Covering Orders](#), and [More Minnesota Cities Following Suit in Requiring Face Masks](#))

Therefore, a best practice is to require employees and site visitors to wear cloth face coverings if social distancing measures or other engineering controls (*e.g.*, physical barrier) are not feasible or practical.

Is a respiratory protection program required?

Employers need not develop and implement a written respiratory protection program under OSHA's Respiratory Protection Standard (29 C.F.R. § 1910.134). OSHA states in its guidance that cloth face coverings are not respirators or personal protective equipment (PPE). However, employers should assess not only the risks to employees of communicating and contracting COVID-19, but also the risks associated with allowing or requiring masks to be worn.

For purposes of cloth face coverings and COVID-19, OSHA states employees may wear cloth face coverings "based on the specific circumstances present at the work site." For some workers, employers may determine that wearing cloth face coverings presents or exacerbates a hazard, and, as a result, masks should not be worn. OSHA notes that where cloth face coverings are not appropriate in the work environment or during certain job tasks (*e.g.*, because they could become contaminated or exacerbate a heat-related illness), employers can provide employees with PPE such as face shields, surgical masks, or respirators. Like cloth face coverings, surgical masks and face shields can help contain the wearer's potentially infectious respiratory droplets and help to limit spread of COVID-19 to others.

What about surgical masks and N95s or KN95s?

Surgical masks are fluid resistant, disposable, and loose-fitting protection that create a physical barrier between the mouth and nose of the wearer and potential contaminants in the immediate environment. Surgical masks are not covered by OSHA's Respirator Protection Standard. Subject to performing the hazard assessment described above, an employer may allow the voluntary use of surgical masks, and the employer may provide surgical masks for voluntary use.

"N95s" or "KN95s" on the other hand, are considered respirators and are PPE subject to the requirements of OSHA's respirator standard. If the employer determines that a filtering face piece such as an N95 or KN95 is *not required* in its workplace to protect against COVID-19, it may still permit voluntary use of such respirators. In permitting employees to voluntarily use N95s or KN95s, the employer must determine that such respirator use will not in itself create a hazard (*i.e.*, by ensuring that masks are not used if dirty or contaminated, and that their use does not interfere with the employee's ability to work safely). The employer also must provide to each voluntary wearer the information in Appendix D to 29 C.F.R. § 1910.134 ((Mandatory) Information for Employees Using Respirators When Not Required Under the Standard).

Potential of OSHA Citations

No workplace safety standard specifically addresses the protection of workers from COVID-19. However, employers have a responsibility to provide workplaces "free from recognized hazards likely to cause death or serious physical harm" under the Occupational Safety and Health Act's General Duty Clause (GDC).

OSHA's COVID-19 guidance, including that for cloth masks, can be utilized as a basis for OSHA's issuance of a GDC citation. To avoid such a citation and protect employees, employers should undertake a hazard or exposure assessment of their workplace(s) to determine appropriate controls measures for COVID-19. The assessment may include a combination of engineering and administrative controls, safe work practices like PPE, social distancing, and cloth face masks.

Title VII and ADA Considerations

OSHA notes that employers should evaluate their "accessible communication policies and procedures," such as considering providing masks with clear windows to facilitate communication between workers and members of the public who rely on lip-reading.

In its [COVID-19 Guidance](#), the Equal Employment Opportunity Commission states when an employee with a disability needs an accommodation related to PPE (such as modified face masks for interpreters) or an employee needs a religious accommodation under Title VII of the Civil Rights Act (such as modified equipment or PPE due to religious beliefs), the employer "should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business."

State and Local Considerations

Finally, employers should review any applicable state and local face-covering orders to determine whether any exceptions to those requirements are permitted and whether employers must make exceptions for employees with medical restrictions that prevent the employee from wearing a face covering. Like other reasonable accommodation analyses, this will require an individual assessment of the facts, including the employee's limitations,

the work environment, and the applicable state and local orders.

Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance and are available to help employers weed through the complexities involved with [state-specific or multistate-compliant plans](#).

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 team](#).

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.