

April 14, 2020

Covid-19 Daily Briefing Recap

OSHA: Record Keeping, Reporting, and Respirators (Update)

Please note that the following is a recap of our COVID-19 Daily Briefing from April 14, 2020. Due to the rapidly evolving nature of the pandemic, we recommend that you consult the most up to date materials possible. Visit Jackson Lewis P.C.'s [COVID-19 resource page](#) for updates on workplace impacts and [sign up here](#) to receive invitations to future daily COVID-19 webinar briefings and email updates on ongoing legal and workplace health challenges.

Recordkeeping and Reporting COVID-19 Cases

On Friday, April 10, OSHA issued [new guidance](#) which recognizes that most employers may have difficulty determining whether COVID-19 cases are due to workplace exposures. OSHA will therefore exercise enforcement discretion in order to provide certainty to the regulated community. Please see our related [OSHA Law Blog post](#) for further detail.

Is an employee's confirmed positive COVID-19 test recordable?

- Employers in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions must continue to make work-relatedness determinations pursuant to 29 CFR § 1904.
- All other employers will not be required to make recording determinations except where there is objective evidence that a COVID-19 case is work-related, e.g., a cluster of cases develops among workers who work closely together, and the evidence was reasonably available to the employer.

Does this apply to reporting?

The new guidance is not as clear on *reporting* COVID-19 positive cases, but it is reasonable to infer that if cases are not *recordable* due to the difficulty in determining work-relatedness, then that principle would equally apply to *reporting* cases where appropriate criteria, such as a fatality or in-patient hospitalization, were met.

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Face Coverings, Masks, Respirators

Type	Requirements and Recommendations
N95 respirators (aka “dust masks” or filtering facepieces)	<ul style="list-style-type: none"> • PPE: N95s and equivalent respirators ARE protective to the wearer • OSHA requires that for VOLUNTARY USAGE employers must provide Appendix D • OSHA requires that for MANDATORY USAGE employers must provide: <ul style="list-style-type: none"> – Written program – Fit testing – Medical exam • We recommend employers treat KN95s or other equivalent respirators as N95s with respect to the above OSHA requirements
Surgical masks	<ul style="list-style-type: none"> • Not PPE: surgical masks ARE NOT protective to the wearer • No OSHA requirements for either voluntary or mandatory usage • Training recommended on: <ul style="list-style-type: none"> – Signs and symptoms of COVID-19 – How to wear – How to care for and store the mask at end of each use • Can be reused if cared for properly • Do not microwave
Other facial coverings (e.g. bandannas, home-made coverings)	<ul style="list-style-type: none"> • Not PPE: facial coverings ARE NOT protective to the wearer • CDC has recommended simple cloth face coverings to slow the spread of the virus and help prevent transmission from asymptomatic carriers • No OSHA requirements for either voluntary or mandatory usage • Healthcare professionals recommend non-woven (e.g. felt) over woven (e.g. cotton); when using woven materials, two layers are better than one • Wear over nose and mouth • You can incorporate coffee filters or vacuum bag material in between two pieces of fabric • Can be washed

What if I have more questions?

As issues and concerns around COVID-19 unfold daily, employers must prepare to address the threat as it relates to the health and safety of their workforce. Keep up to date with [Jackson Lewis' latest available information and resources](#). If you have any questions, please contact the Jackson Lewis attorneys with whom you regularly work.