



## Facemasks and Respirators in the Workplace

As concerns about the spread of COVID-19 grow, many employees working in essential businesses, have sought to wear their own face masks and gloves to work. To date, many employers have granted employees permission to do so. Now, the CDC and the White House are recommending that the public wear some form of mask as a voluntary public health measure, and many states or localities are even requiring it. So, it is important to be aware of the OSHA guidelines and obligations regarding face masks in the workplace. Depending on the type of face mask used, and whether it is required by the employer or permitted for voluntary use, there may be requirements that employers must follow under OSHA's respiratory protection standard, [29 C.F.R. 1910.134](#), or Personal Protective Equipment standard, 29 C.F.R. 1910.132. And where those standards do not technically apply, for example to loose-fitting masks and face coverings, OSHA's General Duty Clause could be a regulatory backstop.

OSHA's respiratory protection standard provides that a respirator shall be provided to each employee when such equipment is necessary to protect the health of such employee; i.e., if there are exposures to chemicals or other hazardous agents above permissible exposure limits or just if the employer decides it is necessary. If a respirator is necessary because of exposure levels or simply because an employer requires employees to wear respirators, the employer must establish a written respiratory protection program, which must include a number of different provisions and additional requirements related to fit testing, medical evaluations, procedures for proper use, storage, cleaning, and training.

As of today, OSHA's current [Guidance for Workplaces for Covid-19](#) does not indicate that N95 respirator masks or any type of respirator is required to protect grocery store employees. However, the guidance does not explicitly address the situation if grocers allow employees to use their own personal face covering or masks.

As a starting point, let's review the three categories of face coverings that grocers may encounter in the workplace.

- **Tight fitting face pieces:** half- or full-face tight-fitting elastomeric face pieces with a filtering medium are considered by OSHA to be respirators, and they pose additional risks to employees that do not use them properly.
- **N95 masks:** although they are called masks and look like masks, they are actually considered by OSHA to be respirators.
- **Simple paper or cloth masks or face coverings:** common masks such as surgical or dental masks as well as face coverings like bandanas or scarves, are not considered to be respirators, and do not trigger any requirements under 1910.134, and likewise are not considered to be PPE (under 1910.132), but that does not mean they may not be required.

A grocer's regulatory obligations will depend on which type of face covering is allowed or required to be used in the workplace.

*i. N95 Respirator Masks*

If respiratory protection is not required, but an employee voluntarily uses an N95 mask, there are some – albeit minor – regulatory obligations. Specifically, grocers that allow employees to voluntarily use N95 masks in the workplace must provide the employee a copy of Appendix D of 1910.134 and assess whether the employee would be harmed by wearing the mask. See [2009 Interpretation Letter](#); [2018 Interpretation Letter](#).

If employees are able to obtain and voluntarily use N95 masks, grocers must provide each such employee a copy of [Appendix D](#) in 29 C.F.R. 1910.134. To avoid any confusion about managers and supervisors identifying employees wearing N95 masks and to mitigate enforcement risk, it would be prudent to make an announcement to employees about the voluntary use of N95 masks (that you will permit it), post a copy of Appendix D in the workplace, and document your efforts to provide employees the information in Appendix D.

*ii. Tight-Fitting Face Pieces*

While permitting employees to voluntarily use N95 masks may pose some additional burden, grocers should be especially cautious of employees who seek to wear respiratory protection more substantial than a surgical mask or N95 mask. For instance, if a grocer permits employees to use, even if just on a voluntary basis, a half-face, elastomeric tight-fitting respirator or self-contained breathing apparatus, there are much more rigorous regulatory requirements that they need to meet. In particular, a grocer would be required to pay for required medical evaluations for such voluntary use, provide for fit testing of the equipment, and provide voluntary users with appropriate facilities and time to clean, disinfect, maintain, and store the respirators.

To avoid these issues, grocers should consider expressly disallowing voluntary use of respirators that are more substantial than the N95.

*iii. Cloth and Paper Masks and Coverings*

In light of the various state and local orders requiring members of the public to wear face coverings or mandating that employees in certain essential businesses wear face coverings, the landscape for grocers about what their obligations are with respect to providing and paying for such masks is muddled.

Under normal circumstances, cloth face coverings (e.g., loose-fitting dental/surgical masks or any generic cloth covering, like a bandana) do not implicate OSHA's respiratory protection standard or any other OSHA standard. Now, however, the potential OSHA risk depends on the jurisdiction that the grocery store is in, and also what ultimately is considered to be "reasonable" for employers in the grocery industry.

Some states and local authorities are mandating face coverings either for all members of the public (which would include employees at grocery stores) or for all employees of essential businesses where perfect social distancing cannot be achieved (which most likely applies to most or all employees in grocery stores). In those locations, grocers must require, provide, and pay for the face covering, unless an employee opts to use a personal facemask. Grocers in jurisdictions where face masks are required of employees should monitor their employees to make sure they are abiding by applicable state and/or local orders and wearing either personal facemasks or grocer-provided masks.

Even in jurisdictions that are not mandating face coverings by order of the governor or health departments, the recommendations from the CDC, the White House, and in some guidance from OSHA are quickly reaching a level of consensus, such that we may already be at a point where it would be a violation of OSHA's General Duty Clause to not require their use.

Even in that circumstance, it is technically still not necessary for a grocer to provide and pay for the face coverings, but since it may be required that employers ensure they are being worn, from a practical standpoint, the safest approach is for the grocer to provide and pay for such masks.