Employees Wearing Facial Coverings or Masks in the Workplace During COVID-19 Pandemic

Should we require face coverings going forward? Does OSHA provide guidance? Is the cost of masks on the employer or the employee? What if an employee refuses to wear a mask or face covering? These questions are being asked by employers who are planning for the continued safety of their work environment now and in the future.

There is some research to support that an infected person wearing a mask may reduce spreading the disease to others. Since a person infected with COVID-19 may not exhibit symptoms for many days, he or she may unknowingly spread the virus when interacting with others. However, there has not been research to support that a currently uninfected, healthy person will avoid getting the virus by wearing a mask.

The Centers for Disease Control (CDC) is recommending (not requiring) that people consider wearing a cloth facial covering or mask if they need to be in places where it may be difficult to maintain the recommended six feet of social distance from others. Cloth masks and facial coverings may also serve to reduce the amount a person touches his or her face. Many employers are taking CDC guidance to heart and considering either encouraging or requiring employees to wear face masks or face coverings when in the workplace.

Some states, in their reopening plans, are recommending or requiring employees to wear face coverings, especially when social distancing is difficult. Employers should carefully review their respective state plan for specific requirements.

OSHA regulations require employers to have a respiratory protection program in place if employees are required to use respirators and some face masks in the workplace.

This includes the following, among other requirements:

- Establishing a written respiratory protection program;
- Performing a hazard assessment;
- Considering other options to protect employees;
- Identifying and providing appropriate personal protective equipment (PPE) for employees;
- Providing NIOSH-certified equipment and ensuring proper sizing and fit;
- Training employees in the use and care of PPE;
- Training employees how to clean and maintain PPE, including replacing worn or damaged PPE; and
- Preparing a written plan that is periodically reviewed, among other steps, including employee specific requirements.

Given the shortage of face masks and respirators, the CDC’s recommendation of wearing cloth masks to minimize the spread of COVID-19 has many employers considering requiring cloth masks be used at work. Employers do not have to develop and implement a written respiratory protection program when workers only use filtering facepiece respirators voluntarily. Rather, they must:

- Ensure that its use does not present a health hazard;
- Ensure that the respirator is properly cleaned, stored and maintained; and
- Provide employees with a copy of Appendix D of OSHA’s Respiratory Protection Standard

Employees working at an essential business who are unable to work remotely may request to be permitted to wear, or be provided with, cloth masks or facial coverings in an effort to reduce the spread of COVID-19. Employers should consider if this action would help lessen the anxiety felt by employees and allow the use of masks as an additional precautionary measure. Consideration should be taken, however, as to whether the face covering may cause a safety hazard if operating machinery.
OSHA generally requires employers to pay for the cost of PPE. Although cloth face coverings are not technically considered PPE under OSHA, if an employer requires employees to wear a cloth face covering in the workplace, the employer should cover the costs associated with the face covering.

Employees using any type of facial covering should ensure they are wearing it properly. The World Health Organization has a video on proper removal and application of facial covering materials. In addition, the CDC provides guidance on the use of cloth facial coverings and OSHA released a video and poster that show employers and workers how to properly wear and remove a respirator. The video and poster are also available in Spanish.

Lastly, if an employer requires employees to wear face coverings in the workplace, and an employee refuses, the employer should ask questions of the employee to better understand their reason for refusal. Employers will need to take into consideration any religious protections under Title VII or if the employee may need a related reasonable accommodation under the Americans with Disabilities Act (ADA).