

OSHA Releases COVID-19 Guidance

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The United States Department of Labor's Occupational Safety and Health Administration (OSHA) ensures safe and healthful working conditions for employees by setting and enforcing standards and by providing training, outreach, education and assistance.

The COVID-19 outbreak has increased demand for N95 filtering face piece respirators (N95 FFRs), limiting availability for workers in healthcare and emergency response. On April 3, 2020, OSHA issued interim guidance for employers to combat the supply shortages of N95 FFRs and to comply with the respiratory protection standard (29 CFR § 1910.134). This guidance will remain in effect until further notice and applies in all industries.

Employers must continue to manage their respiratory protection programs and be mindful of N95 FFR shortages. Specifically, employers should identify and evaluate respiratory hazards in the workplace, and develop and implement written respiratory protection programs. Businesses should reassess their engineering controls, work practices, and administrative controls to identify any changes they can make to decrease the need for N95 FFRs. Some examples provided in the guidance include using portable local exhaust systems or moving operations outdoors. Employers may also consider temporarily suspending non-essential operations, to the extent such operations are not already suspended due to state mandates.

If respiratory protection must be used, employers may consider use of alternative classes of respirators that provide equal or greater protection compared to N95 FFRs. These devices include National Institute for Occupational Safety and Health (NIOSH)-approved, non-disposable, elastomeric respirators or powered, air-purifying respirators. The Centers for Disease Control and Prevention (CDC) provides guidance when considering N95 FFR alternatives. Employees are permitted to extend the use of or reuse N95 FFRs as long as the respirator maintains its structural and functional integrity and the filter material is not physically damaged, soiled or contaminated. In their respiratory protection programs, employers must identify the circumstances under which a disposable respirator will be considered contaminated and not available for extended use or reuse. Employers must also address an appropriate sequence for donning/doffing to prevent contamination.

In the event that N95 FFRs are not available and the employer has shown a good faith effort to acquire them or to use alternative options, businesses should exercise discretion for the use of expired N95 FFRs. Employers may only use previously NIOSH-certified expired N95 FFRs.

The expired respirators should be inspected to confirm that their structural and functional integrity has not been compromised. Over time, components such as the straps, nose bridge, and nose foam material may degrade.

Healthcare employers are subject to separate requirements regarding the use of N95 FFRs. Generally, expired N95 FFRs must not be used when performing procedures on patients infected with, or potentially infected with COVID-19. They also should not be used by employees who are performing or who are present for procedures expected to generate aerosols or procedures where respiratory secretions are likely to be poorly controlled (e.g., cardiopulmonary resuscitation, intubation, extubation, bronchoscopy, nebulizer therapy, sputum induction). Healthcare employers should prioritize the use of N95 FFRs by activity type.

OSHA has indicated that it will exercise enforcement discretion when issuing citations under 29 CFR § 1910.134(d) and/or the equivalent respiratory protection provisions of other health standards based on this guidance. Recommendations to avoid citations include, but are not limited to:

- demonstrating a good faith effort to obtain alternative FFRs, reusable elastomeric respirators, or air purifying respirators;
- continuing to monitor the supply of N95 FFRs and prioritize their use according to CDC guidance; and
- implementing other feasible measures to protect employees, such as using partitions, restricting access, cohorting patients, or using other engineering controls, work practices, or administrative controls that reduce the need for respiratory protection.

Employers who utilize respiratory protection in the workplace should carefully review their policies regarding the use of N95 FFR protective gear to ensure compliance with this new guidance.

If you have questions relating to the use of N95 FFRs and other protective equipment for your employees, please contact Stephen Bowers (bowersss@whiteandwilliams.com; 215.864.6247), Joshua Tumen (tumenj@whiteandwilliams.com; 212.714.3069) or another member of our Labor and Employment Group.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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