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**Additional OSHA Guidance on COVID-19**  
**(current as of April 10, 2020)**

A few weeks ago, OSHA issued [guidance](#) on preparing workplaces for COVID-19. The guidance provided recommendations to help employers plan for the impact of COVID-19 on their businesses, workers, customers and the public. There are a few recent updates, which we have summarized below:

**Recordkeeping and Reporting Requirements**

OSHA has confirmed that COVID-19 can be a recordable work-related illness that must be documented on an employer's OSHA 300 log in certain circumstances. OSHA advised employers to consider three factors in making that determination:

1. The case is a confirmed case of COVID-19. OSHA advised employers to consult CDC guidelines to determine whether a case is considered confirmed, but for the purpose of recording requirements, an employee must have a positive, laboratory-confirmed case of COVID-19.
2. The case is work-related, as defined by 29 CFR 1904.5. This question is likely to be the most difficult one for an employer. OSHA has discussed a number of things employers should consider as they attempt to identify potential sources of exposure. According to OSHA, employers should rely on identification of employees with symptoms of COVID-19 and/or a history of travel to heavily impacted areas. Employers should also consider whether employees may encounter someone infected with COVID-19 in the course of their duties. OSHA's previously issued [guidance on preparing workplaces for COVID-19](#) may help employers with this question.
3. The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g., medical treatment beyond first-aid, days away from work).

If an employer determines that a confirmed case of COVID-19 is work-related, any in-patient hospitalization or death is reportable to OSHA.

## Respiratory Protection Guidance

OSHA has issued a number of guidance documents in light of the current shortage of certain personal protective equipment, namely, respirators. A few weeks ago, OSHA issued [temporary enforcement guidance](#) on respiratory protection fit testing requirements for healthcare employers. The purpose of the guidance was to ensure that respirators are being used where they are needed most. Yesterday, it [expanded that guidance](#) to apply to all workplaces where the use of respirators is required. The guidance provides that OSHA will “exercise enforcement discretion” regarding the annual-fit testing requirements as long as employers:

- Make a good-faith effort to comply,
- Use only NIOSH-certified respirators,
- Implement CDC and OSHA strategies for optimizing the supply of N95 filtering respirators and prioritizing their use,
- Perform initial fit tests for each employee with the same model, style, and size respirator that the employee will be required to wear for protection against COVID-19,
- Inform workers that the employer is temporarily suspending the annual fit testing of N95 filtering respirators to preserve and prioritize the supply of those respirators for use in situations where they are required to be worn,
- Explain to employees the importance of performing a user seal check each time a respirator is worn,
- Conduct a fit test if the employer observes visual changes in an employee’s physical appearance that could affect respirator fit, such as changes in body weight or facial scarring, and
- Remind employees that they should inform their supervisor if the integrity and/or fit of their N95 filtering respirator is compromised.

OSHA has also indicated that it will exercise additional enforcement discretion if an employer switches to an equivalent fitting make, model, size, or style filtering respirator without first performing an initial fit test. OSHA indicates to employers that most respirator manufacturers produce multiple models in the same or similar sizes and encouraged employers to consult with those manufacturers to find a suitable alternative in the event of a shortage.

OSHA issued [additional enforcement guidance](#) specific to the potential for respirator shortages. This guidance states that, in the event that extended use or reuse of N95 filtering respirators becomes necessary, the same worker may reuse his or her respirator so long as the respirator maintains its structural and functional integrity and the filter material is not damaged, soiled, or contaminated (for example, with blood, oil, or paint). However, employers must address the circumstances under which a respirator will be considered contaminated in its Respiratory Protection Program. OSHA indicates that it will also exercise enforcement discretion regarding the use of expired N95 filtering respirators in certain situations and subject to testing requirements, so long as the employer has made a good faith effort to acquire other respirators.

*Please note that these are fast-moving times, and the information provided is only accurate as of the day posted (April 10, 2020). The information provided does not, and is not intended to, constitute legal advice; instead, all information is prepared and provided for general informational purposes only.*

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