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Coronavirus Update: Employees Wearing Masks at Work

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The leaders of our Workplace Safety and Health group, Charles Palmer and Denise Greathouse, are taking part in the American Bar Association meeting with the leading government OSHA lawyers, OSHA judges, and enforcement personnel, along with industry lawyers this week. Mr. Palmer reports that, not surprisingly, there was significant discussion regarding the Coronavirus, and employer obligations under OSHA. Mask wearing at work was the most discussed topic, with industry lawyers reporting multiple client questions per day on this topic.

Specifically, if employees bring to work and use respirators (masks) (known as filtering face pieces or dust masks or NIOSH N95 masks) at work on a "voluntary" basis, what must the employer do? The general rule is that, where use of these dust masks is strictly voluntary, employers are not required to fit test employees, provide for medical evaluations, or provide training about respirators under 29 CFR 1910.134. But, employers are required to provide Appendix D of the OSHA standard to employees who use such masks on a voluntary basis.

What is a filtering face piece mask regulated by OSHA under the law?

The OSHA Deputy Director for Enforcement, Patrick Kapust, clarified that the standard surgical mask is not a filtering face piece respirator regulated under the OSHA standard. The NIOSH 95 mask is a filtering face piece respirator regulated by OSHA. If employees wear a surgical mask on a voluntary basis, the employer does not have to provide the employees the OSHA Appendix D document (or take any of the other actions required by 29 CFR 1910.134). Employees who wear the N95 mask on a voluntary basis, must receive the OSHA Appendix D to the standard.

Any use of N95 masks mandated or recommended by the employer is subject to full compliance with 29 CFR 1910.134 including fit testing, no beards, training on use, and



verification the employee can safely use the mask. Any use of other respirators beyond surgical Or N95 masks, whether voluntary or mandatory, is subject to the full requirements of 29 CFR 1910.134.

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