

Cloth Face Coverings At Work: Are They Personal Protective Equipment, And Who Pays For Them?

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The CDC recently recommended the use of homemade cloth face coverings in public settings, which raised many questions among in the workplace law community. The two most common questions: Are these DIY cloth face coverings considered personal protective equipment (PPE) pursuant to OSHA regulations? If worn at work, who is responsible for providing them or paying for them?

The Basics

The CDC recently issued new recommendations to the general public, recommending the use of cloth face masks where other social distancing measures are difficult to maintain (such as grocery stores and pharmacies), especially in areas of significant community-based transmission.” To be clear, the CDC is not recommending the general public wear N95 respirators or surgical masks. As the CDC states, “Those are critical supplies that must continue to be reserved for healthcare workers and other medical first responders, as recommended by current CDC guidance.”

Are Cloth Face Masks Considered PPE?

At this time, there is no definitive answer from the Occupational Safety and Health Administration (OSHA) as to whether the cloth face masks are PPE. This is a critical answer, as it would open up a whole host of additional obligations for employers. Examining the specific details will help provide the best guidance for employers.

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General Rule

OSHA's PPE standard applies to "all protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers." Before an employer can require an employee to put on PPE, the employer must, among other things,

- perform a hazard assessment;
- consider other alternative options to protect employees;
- identify and provide appropriate PPE for employees;
- train employees in the use and care of PPE;
- train employees how to clean and maintain PPE, including replacing worn or damaged PPE; and
- prepare a plan that is periodically reviewed, among other steps, including employee specific requirements.

The gist of the CDC guidance is that the agency is recommending cloth face masks be worn when in public to help prevent the spread of the COVID-19 virus from the wearer of the mask, who may be infected but asymptomatic. To be clear, OSHA has not, as of yet, issued any guidance that cloth face coverings are recommended to protect the wearer, or that they are considered PPE. It's also clear that cloth face masks are not considered respirators under OSHA rules.

That said, certain surgical masks (there are a couple of different types and levels of protection) may provide some barrier protection for the wearer. A 2017 Standard Interpretation Letter titled "Voluntary Use of Surgical Masks" described surgical masks this way: "They are fluid resistant, disposable, and loose-fitting protection that create a physical barrier between the mouth and nose of the wearer and potential contaminants in the immediate environment. They are commonly used in health care settings for the protection of the patient and they are also often used to prevent splashes from contacting the face of the wearer.

However, surgical masks do not seal tightly to the wearer's face, nor do they provide a reliable level of protection from inhaling smaller airborne particles, as OSHA noted in its 2017 publication. Cloth face coverings would most likely provide even less protection to the wearer as most will likely not include a fluid resistant layer.

When you add all of this together, there is a strong argument that the homemade cloth face coverings are not PPE because they provide little to no protection for the wearer. On the other hand, if an employer requires employees to wear them, rather than simply allowing them to be worn on a voluntary basis, then there could be an argument that cloth face coverings are PPE.



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If you decide to require employees to wear a cloth face covering at work, then the most risk-averse position would be to treat them as if they are PPE and conduct the analysis and training mentioned above. If you simply allow employees to wear them at their discretion, then there is likely no further action required.

Who Should Pay For Cloth Face Coverings?

OSHA standards generally require employers to provide PPE to employees free of charge, with some exceptions. Employers are not required to pay for “everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots or ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.”

Although the CDC has advised the public to wear cloth face coverings to prevent the spread of COVID-19 (and these face coverings could arguably be considered “everyday clothing” or “ordinary clothing,” especially if made from a t-shirt), you may need to pay for them if you require employees to wear them in the workplace. The PPE standard provides that employers cannot require employees to provide their own PPE and an employee’s use of PPE they already own (e.g., homemade cloth masks) must be voluntary. So if an employee voluntarily brings in their own cloth face covering to work, then you do not have to reimburse the employee for its cost. The safest course of action would be for an employer who requires employees to wear the cloth face covers to provide or pay for them.

It’s worth noting that some state and local governments are requiring cloth face coverings to be worn in public and by employees who interact with the public. In such situations, and depending on the state or local law, then employers are likely required to provide them and/or pay for them.

Conclusion

The CDC has made clear in its recommendations that cloth face coverings do not replace its prior advice about social distancing and handwashing. Therefore, cloth face coverings – whether mandated or simply permitted – should be part of an overall safety plan that incorporates OSHA’s guidance and updated CDC guidance.

We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips’ Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any member of our Workplace Safety and Catastrophe Management Practice Group, or our COVID-19 Taskforce. You can also review our nationwide Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus and our FP Resource Center For Employers, maintained by our Taskforce.



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