



OSHA Fines Healthcare Facilities for Improper Use of N95 Respirators

Employers beware, particularly those in healthcare sectors. If you provide a NIOSH-approved N95 “respirator” to protect employees from COVID-19, there are a number of OSHA respiratory protection standards that must be followed in a comprehensive Respiratory Protection Program. [The Department of Labor OSHA’s July 21, 2020, national press release](#) makes clear that OSHA will seek the maximum possible penalties for serious violations against companies that do not fully satisfy the respiratory protection standards.

While employers in all business sectors may be quick to want and protect employees with the use of N95 respirators, OSHA’s recent enforcement case highlights traps for the unwary when using respirators, versus using cloth face coverings or surgical masks. This is because OSHA standards and rules are very different for “respirators” (designed to protect the person wearing the respirator), as opposed to the use of surgical masks or face coverings which are not designed or certified to prevent the inhalation of small airborne contaminants. [OSHA’s website provides a description of differences](#) between respirators (filtering face pieces), versus cloth face coverings (which do not satisfy the PPE standard) and surgical masks (which may satisfy the PPE standard). For healthcare providers, the CDC also provides a helpful summary of differences between [respirators and surgical masks](#).

In the event an employer makes a determination that a respirator is required to protect employees from inhaling airborne contaminants at the workplace, OSHA’s [respiratory protection standard](#) specifies a number of very detailed obligations that an employer must follow, such as:

- fit testing (i.e., to ensure a proper seal between the user's face and the respirator forces inhaled air to be pulled through the respirator's filter material and not through gaps between the face and respirator);
- training;
- medical evaluation; and
- disinfecting and maintaining respirators.

Three skilled nursing facilities and rehabilitation centers in Ohio have been [cited for not properly following the respiratory protection standards](#) by not conducting adequate "fit testing" of employees and related respiratory protection standards, and OSHA is seeking the maximum penalty of a serious citation of \$13,494 for each of the three violations, for a total combined penalty \$40,482.

OSHA's enforcement case reminds employers that they must carefully evaluate whether they choose to use respirators, versus face coverings or surgical masks, as a means of workplace safety and protecting employees. And in those situations where N95 respirators or other respirators are necessary to protect against workplace exposures to airborne contaminants, an employer must develop and implement a comprehensive respiratory protection program.

This post was drafted by [Andrew Brought](#), an attorney in the Kansas City, MO office of Spencer Fane LLP.