

MEMORANDUM

From: Gary Jay Kushner
Scott Reisch
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Date: April 21, 2020

Re: OSHA Recommendations Regarding Facemask Use in the Workplace

To date, OSHA has not recommended the universal use of facemasks in the workplace to address the spread of SARS-CoV-2. OSHA has instead tailored its general recommendations to the potential occupational exposure risks that workers face and emphasized that employers have the responsibility to assess and respond to workplace hazards, comply with OSHA standards, and stay abreast of guidance. However, OSHA's guidance to manufacturing employers states that employers should "allow" workers to wear masks over their nose and mouths to prevent spread of the virus¹. Moreover, OSHA frequently references and refers employers to CDC guidance documents. Though OSHA has not specifically directed employers to CDC guidance on facemask use, CDC guidance recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies), especially in areas of significant community-based transmission².

Evaluating Risk Levels and Assessing Workplace Hazards

A worker's risk of occupational exposure to SARS-CoV-2³ generally depends on industry type and the likelihood of contact within 6 feet of people known to be, or suspected of being, infected with SARS-CoV-2.⁴ OSHA has developed four risk categories for classifying worker exposure to SARS-CoV-2: (1) **Lower** (i.e., no contact with people known to be, or suspected of being, infected with SARS-CoV-2 or frequent close contact with (i.e., within 6 feet of) the general public); (2) **Medium** (i.e., frequent and/or close contact with people who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19 patients); (3) **High** (i.e., high potential for exposure to known or suspected sources of COVID-19); and (4) **Very High** (i.e., high potential for exposure to known or suspected sources of COVID-19 during specific medical procedures).⁵ These are not rigid categories and workers' occupational risk may change as they take on different tasks or community conditions change.⁶ However, depending on the circumstances, food industry workers are likely to fall within the first or second categories unless there is an outbreak of COVID-19 cases in their workplace.

¹ OSHA, [COVID-19 Guidance for the Manufacturing Industry Workforce](#) (April 16, 2020).

² CDC, [Use of Cloth Face Coverings to Help Slow the Spread of COVID-19](#) (last updated April 13, 2020).

³ SARS-CoV-2 is the virus that causes Coronavirus Disease 2019 (COVID-19).

⁴ OSHA, COVID-19, [Hazard Recognition](#) (last viewed April 15, 2020).

⁵ See, e.g., OSHA, [Guidance on Preparing Workplaces for COVID-19](#) at 18 (March 9, 2020) [hereinafter *Workplace Guidance*]; OSHA, COVID-19, [Hazard Recognition](#) (last viewed April 15, 2020).

⁶ OSHA, COVID-19, [Control and Prevention](#) (last viewed April 15, 2020); OSHA, COVID-19, [Hazard Recognition](#) (last viewed April 15, 2020).

The measures employers should take to reduce occupational exposure to COVID-19 are highly dependent on occupational risk levels. It is therefore essential for employers to conduct a thorough hazard assessment. A hazard assessment is designed to identify if and when workers are at increased risk of exposure to the virus on the job by considering various exposure factors.⁷

Industry-Specific Guidance

In all workplaces, OSHA's recommendations for managing occupational exposure to COVID-19 are based on controls: **engineering controls** (i.e., isolating employees from the hazard), **administrative controls** (i.e., changes in work policy or procedures to reduce or minimize exposure), **safe work practices** (i.e., procedures for safe and proper work), and **personal protective equipment** (PPE) (i.e., gloves and facemasks).⁸ A combination of controls will be necessary to protect workers in most cases, but all employers must conduct a hazard assessment and select controls tailored to the results of the assessment.⁹

OSHA guidance for workers involved in retail operations in critical sectors (i.e., selling essential supplies) and its guidance for the manufacturing industry workforce provide some insight into what types of controls food industry employers should consider. OSHA recommends that retail employers adopt various combinations of controls, depending on the results of their hazard and risk assessments, such as using physical barriers and signs to keep individuals from congregating; establishing protocols and providing supplies to disinfect frequently touched surfaces; controlling the number of individuals allowed inside the facility at any point in time; providing workers with additional breaks so they can wash or sanitize their hands frequently; and encouraging workers to avoid touching their faces.¹⁰ OSHA recognizes that even retail workers are "unlikely to need PPE beyond what they use to protect themselves during routine job tasks," but recommends that employers consider whether their hazard and risk assessments warrant the use of items such as gloves or face protection.¹¹ OSHA's tips for the manufacturing industry are similar in that they recommend establishing flexible work hours; employee social distancing; limiting or altering work activities when social distancing is a challenge (i.e., temporarily moving or repositioning workstations to create more distance or installing barriers between workstations); training workers on PPE use; encouraging respiratory etiquette and personal hygiene; and discouraging shared use of tools and equipment.¹² This guidance also states that employers in the manufacturing industry should "[a]llow workers to wear masks over their nose and mouth to prevent the spread of the virus."¹³

Complying with OSHA Standards

A hazard assessment also can help employers determine the applicability of OSHA standards because which standards apply depends on work tasks, setting, and exposure risks. In the context of COVID-19, the following standards may apply: ¹⁴

- *Recording and Reporting Occupational Injuries and Illness*, 29 C.F.R. § 1904.

⁷ OSHA, COVID-19, [Hazard Recognition](#) (last viewed April 15, 2020).

⁸ Workplace Guidance at 12.

⁹ *Id.*; OSHA, COVID-19, [Control and Prevention](#) (last viewed April 15, 2020)

¹⁰ OSHA, COVID-19, [Control and Prevention](#) (last viewed April 15, 2020).

¹¹ *Id.*

¹² OSHA, [COVID-19 Guidance for the Manufacturing Industry Workforce](#) (April 16, 2020).

¹³ *Id.*

¹⁴ OSHA, [Standards](#) (last viewed April 15, 2020); OSHA, [Interim Enforcement Response Plan for Coronavirus Disease 2019 \(COVID-19\)](#) (April 13, 2020).

- *Personal Protective Equipment* (General Requirements, 29 C.F.R. § 1910.132; Eye and Face protection, 29 C.F.R. § 1910.133; Respiratory Protection, 29 C.F.R. § 1910.134; and Hand Protection, 29 C.F.R. § 1910.138).
- *General Duty Clause*, Section 5(a)(1) of the OSH Act.
- *Bloodborne Pathogens*, 29 C.F.R. § 1910.1030.
- *Hazard Communication*, 29 C.F.R. § 1910.1200.
- *Sanitation*, 29 C.F.R. § 1910.141
- *Specification for Accident Prevention Signs and Tags*, 29 C.F.R. § 1910.145.

Of particular note is the OSHA General Duty Clause, which requires employers to furnish to each worker “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.”

Conclusion

While OSHA has not recommended the universal use of facemasks in the workplace, various OSHA standards may require the use of facemasks or other controls in the food industry depending upon the hazards in a particular workplace. In light of variability in occupational hazard levels, the flexibility of controls, the number of potentially applicable legally enforceable standards, and the frequency at which federal agencies are issuing guidance in response to the rapidly evolving COVID-19 pandemic, it is essential that employers stay abreast of these matters in order to maintain compliance and protect worker safety.