OSHA Allows Healthcare Employers to Suspend N95 Annual Fit-Testing During Coronavirus “Outbreak”

March 19, 2020

On March 14, 2020, the Occupational Safety and Health Administration (OSHA) issued temporary enforcement guidance addressing the fit-testing requirements in the agency’s respiratory protection standard (29 C.F.R. § 1910.134). The guidance applies to healthcare workers using N95 respirators to protect them from the novel coronavirus 2019 (COVID-19). Driving the guidance is the current supply shortage of N95 filtering facepiece respirators, which are destroyed or compromised during the fit-testing process.

OSHA is directing its field offices to exercise enforcement discretion when evaluating a healthcare employer’s compliance efforts with the respiratory protection standard’s annual fit-testing requirement, § 1910.134(f)(2). According to the guidance, the agency is directing inspectors to excuse noncompliance with annual fit testing so long as the healthcare employer is:

1. Making a good-faith effort to comply with 29 C.F.R. §1910.134
2. Using only respirators certified by the National Institute for Occupational Safety and Health
3. Implementing Centers for Disease Control and Prevention “and OSHA strategies for optimizing the supply of N95 filtering facepiece respirators and prioritizing their use”
4. Performing initial fit tests for each healthcare employee “with the same model, style, and size respirator that the worker will be required to wear for protection against COVID-19”
5. “Inform[ing] workers that the employer is temporarily suspending the annual fit testing of N95 filtering facepiece respirators to preserve and prioritize the supply of respirators for use in situations where they are required to be worn” (emphasis added)
6. “Explain[ing] to workers the importance of performing a user seal check (i.e., a fit check) at each donning to make sure they are getting an adequate seal from their respirator”;
7. “Conduct[ing] a fit test if they observe visual changes in the employee’s physical condition that could affect respirator fit (e.g., facial scarring, dental changes, cosmetic surgery, or obvious changes in body weight) and explain to workers that, if their face shape has changed since their last fit test, they may no longer be getting a good facial seal with the respirator and, thus, are not being adequately protected; and,”
“Remind[i]ng workers that they should inform their supervisor or their respirator program administrator if the integrity and/or fit of their N95 filtering facepiece respirator is compromised.”

**Annual Fit Testing in the Healthcare Industry**

Annual fit testing requires employers to test respirators each year to ensure that they remain effective for employee use. An employee wears the respirator and tests are performed to determine whether it remains effective for that individual employee. OSHA authorizes two kinds of testing: quantitative and qualitative. Quantitative testing destroys N95 respirators. Qualitative testing generally does not, although some experts suggest discarding the respirators used during testing. With the healthcare industry facing a shortage of N95 respirators, OSHA decided the lesser hazard is to have employers forego annual fit testing rather than exacerbate the supply shortage.

Ogletree Deakins will continue to monitor and report on developments with respect to COVID-19 pandemic and will post updates in the firm’s [Coronavirus (COVID-19) Resource Center](https://ogletreedeakins.com/coronavirus) as additional information becomes available. Critical information for employers is also available via the firm’s [webinar programs](https://ogletreedeakins.com/).