

## Environmental and Workplace Health & Safety

# OSHA Faces FAQs on Face Coverings

By: [Gabrielle Sigel](#)



On June 10, 2020, in a series of six “frequently asked questions and answers” ([Face Coverings FAQs](#)), OSHA provided its first general guidance on the use of cloth face coverings in the workplace. In announcing the FAQs, OSHA’s Principal Deputy Assistant Secretary, Loren Swett, stated that it was issuing the guidance because “millions of Americans will be wearing masks in their workplace for the first time” and “OSHA is ready to help workers and employers understand how to properly use masks so they can stay safe and healthy in the workplace.”

The Face Coverings FAQs document is the first COVID-19 guidance that OSHA has provided in a Q&A format. In this format, OSHA’s guidance may not provide straightforward answers to many employers’ questions. For most employers, the most important takeaway from the Face Coverings FAQs is: **Cloth face coverings are not OSHA-required personal protective equipment (PPE), which must be provided and paid for by an employer; however, an employer may recommend or require cloth face coverings as a method of non-PPE virus “source control” and as part of a COVID-19 infection response plan.** OSHA does not address whether employer-required cloth face coverings, when required as non-PPE “source control,” must be paid for by the employer.

Here are some key points from the Face Coverings FAQs:

- Cloth face coverings are used to “contain the wearer’s potentially infectious respiratory droplets produced when an infected person coughs, sneezes, or talks and to limit the spread of ... the virus that causes ... COVID-19, to others.” By “containing” droplets, rather than protecting the wearer against “droplets,” cloth face coverings are solely used for “source control,” not wearer protection.
- “Source control” is to prevent people who are asymptomatic or pre-symptomatic “from spreading potentially infectious respiratory droplets to others.”
- Cloth face coverings, whether homemade or commercially produced, “are not considered personal protective equipment (PPE)” under OSHA’s PPE regulations, [29 CFR 1910.132](#).
- **Cloth face coverings are different from PPE**, such as medical face masks (surgical masks) or respirators, because the **sole purpose of cloth face coverings is as source control.**
- Because face coverings are not PPE, “OSHA’s PPE standards do not require employers to provide them.” However, “OSHA generally recommends that employers encourage workers to wear face coverings at work,” as a method of source control.
- Because cloth face coverings are not necessary PPE, an employer cannot be required under OSHA’s PPE standards to provide them at no cost to workers.
- Employers can require cloth face coverings. Specifically, employers “**may choose to ensure** that cloth face coverings are worn as a feasible means of abatement in a control plan designed to address hazards from ...the virus that causes COVID-19.” (emphasis added) In those circumstances, employers are “choos[ing] to use cloth face coverings as a means of source control,” in combination with engineering and administrative controls, such as social distancing.

- Cloth face coverings cannot be a substitute for social distancing measures.
- Cloth face coverings cannot be used by “those who have trouble breathing or are otherwise unable to put on or remove a mask without assistance.”
- Employers “have discretion” as to “whether to allow employees to wear cloth face coverings... based on the specific circumstances present at the work site.” For example, an employer can determine that cloth face coverings cannot be used if they “present[] or exacerbate[] a hazard” or are incompatible with otherwise required PPE.
- If the employer determines that cloth face coverings are inappropriate, “employers can provide PPE, such as face shields and/or surgical masks,” instead of encouraging face masks. In a footnote, OSHA explains that when surgical masks are used solely for “source control,” they are not considered “PPE,” which would be required to be provided and paid for by the employer under the PPE regulations.
- Neither cloth face coverings nor surgical masks can be used as a substitute for respirators, when respirators are required. Respirators prevent the wearer from inhaling small particles, and must be provided and used according to OSHA’s Respiratory Protection standard, [29 CFR 1910.134](#).
- Per existing regulation, filtering facepiece respirators (FFRs), such as N95s, can be used by employees “voluntarily,” if they first receive certain required information regarding their use and hazards.
- Even though cloth face coverings are not required pursuant to PPE regulations, OSHA twice refers to an employer’s statutory obligations under the OSH Act’s [General Duty Clause](#) to provide a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” In those references, OSHA refers to using cloth face coverings as source covering one “feasible method” to address hazards from the virus in the workplace.

OSHA makes important distinctions between a cloth face coverings and “medical face masks,” of which surgical masks are an example. A surgical mask is not necessarily approved by the FDA as a medical device. **Both** medical face masks and cloth face coverings fail to protect the wearer against airborne transmissible agents because of their loose fit, and **both** can be used to “contain the wearer’s respiratory droplets,” *i.e.*, “source control.” However, **in contrast with cloth face coverings, surgical masks can be PPE** if they are used to “protect workers against splashes and sprays (*i.e.*, droplets) containing potentially infectious materials.” However, a surgical mask also may not be considered PPE, when it is used solely as “source control.” Thus, with respect to surgical masks, OSHA is making the distinction between PPE and non-PPE based on the purpose for which the employer uses it—if the mask is used solely for purposes of “source control,” it is not PPE; if the mask is used for wearer protection against others’ droplets, it is PPE. However, because “cloth face coverings” are defined to exclude protecting the worker from others’ infection, if an employer is stating that it is using a piece of equipment as a method of **wearer protection**, the employer will be required to show that, in fact, the device can provide that protection and treat it as PPE.

OSHA’s references to the General Duty Clause are worth repeating and analyzing. In the Face Covering FAQs, OSHA makes a distinction between what is required by existing regulations, such as the PPE or Respiratory Protection standards, and what may be required under the General Duty Clause. In other guidance, OSHA has stated that the General Duty Clause is one of the ["OSHA requirements"](#) that “apply to preventing occupational exposure to SARS-CoV-2.” In the [first comprehensive guidance](#) OSHA issued regarding COVID-19, at page 7, OSHA stated that developing an infectious disease response plan is a step that all employers can take to guard against the workplace risks of exposure to the virus.

In the context of the General Duty Clause, OSHA's Face Covering FAQs guidance states that an employer's "control plan designed to address hazards" from the virus and COVID-19 can include "control measures," including engineering controls, administrative controls (such as social distancing), PPE and different methods of virus "source control," all as "feasible methods" to address the hazards. OSHA also describes non-PPE as a "means of abatement" under the General Duty Clause. Thus, especially because of the potentially broad scope of the General Duty Clause, an employer would be well-advised to have a COVID-19 response plan, which should include an identification of the risk of workplace exposure (it may be low), descriptions of engineering and administrative controls, PPE and other measures for the "abatement" or "control" of risk of exposure to the virus in the workplace. Consistent with the Face Coverings FAQs guidance, the response plan should carefully distinguish between equipment to be used as required PPE and equipment required or allowed to be used as "source control."

Please feel free to contact the author with questions or for further information. For regular updates about the impact of COVID-19 in the workplace and on business generally, please visit Jenner & Block's [Corporate Environmental Lawyer blog](#) and Jenner & Block's COVID-19 Resource Center.

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