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OSHA relaxes respirator requirements amid N95 shortage

In response to a nationwide shortage of N95 filtering facepiece respirators during the COVID-19 pandemic, OSHA has announced temporary easing of some of its regulations on respiratory protection.

On April 8, the agency provided leniency on annual respirator fit testing to all covered employers. OSHA initially had given that only to those in the health care industry in a March 14 memo.

Employers must still make “good-faith efforts” to comply with OSHA’s respiratory protection regulations, among other steps, including communicating to workers whether annual fit testing is suspended temporarily.

On April 3, OSHA issued two interim enforcement guidance memos. One allows for the reuse of N95 respirators and the use of expired N95s in certain cases.

The other memo allows for the use of filtering facepiece respirators and air-purifying elastomeric respirators certified by other countries or jurisdictions, under the following performance standards:

- Australia: AS/NZS 1716:2012
- Brazil: ABNT/NBR 13694:1996, ABNT/NBR 13697:1996 and ABNT/NBR 13698:2011



- People’s Republic of China: GB 2626-2006 and GB 2626-2019
- European Union: EN 140-1999, EN 143-2000 and EN 149-2001
- Japan: JMHLW-2000
- Republic of Korea: KMOEL-2014-46 and KMOEL-2017-64
- Mexico: NOM-116-2009

Also allowed is the use of expired filtering facepiece respirators or air-purifying elastomeric respirators that were previously certified under the standards of other countries or jurisdictions. The enforcement guidance applies to all industries, especially workplaces where respiratory protection is impacted by the shortage and where health care personnel are exposed to suspected or confirmed COVID-19 patients.

OSHA also is asking employers to reassess engineering controls, work practices and administrative controls to decrease their need for N95 respirators.

“Employers should, for example, consider whether it is possible to increase the use of wet methods or portable local exhaust systems or to move operations outdoors,” the memos state. “In some instances, an employer may also consider taking steps to temporarily suspend certain nonessential operations.”

If respirators are needed, OSHA is recommending the use of other filtering facepieces, such as N99 or N100 models, reusable elastomeric respirators, or powered air-purifying respirators. Any N95 alternatives should be NIOSH-approved.

If these alternatives are unavailable or their use would create other hazards, employers may consider the extended use or reuse of N95 respirators “as long as the respirator maintains its structural and functional integrity and the filter material is not physically damaged, soiled or contaminated (e.g., with blood, oil, paint).”

Workers should perform seal checks each time they wear a respirator and should not use that particular respirator

— article continues on p. 4

COVID-19 pandemic: OSHA details enforcement priorities for area offices

OSHA is instructing area directors to prioritize COVID-19-related inspections according to a workplace's risk of exposure and in coordination with regional offices.

An April 13 memo from OSHA states that the agency's interim enforcement response plan gives "flexibility and discretion for our field offices to maximize OSHA's impact in securing safe workplaces for workers in this evolving environment."

Fatalities and imminent-danger exposures related to the pandemic will take priority for onsite inspections. Covered

establishments with "high" to "very high" risk levels, such as health care organizations and first responders, will be given "particular attention."

Meanwhile, establishments with medium or lower exposure risk levels may not have an onsite inspection – even if workers file complaints.

"In such cases, area offices will use the nonformal procedures for investigating alleged hazards," the memo states. "Inadequate responses to a phone/fax investigation should be considered for an onsite inspection in accordance with the [Field Operations Manual]."

The memo has examples of organizations at each risk level, as well as a sample letter to employers for COVID-19-related enforcement activities, a sample hazard alert letter and a sample alleged violation description for General Duty Clause citations, along with guidance for OSHA compliance safety and health officers during inspections.

"Workers requesting inspections, complaining of coronavirus exposure, or reporting illnesses may be protected under one or more whistleblower statutes and will be informed of their protections from retaliation," an OSHA press release states.

OSHA ALLIANCES

The OSHA Alliance Program fosters collaborative relationships with groups committed to worker safety and health. Alliance partners help OSHA reach targeted audiences and give them better access to workplace safety and health tools and information. For more on OSHA alliances, go to osha.gov/dcsp/alliances/index.html.

Damage Prevention Council of Texas

Date of alliance: Jan. 30, 2020

OSHA and the Damage Prevention Council of Texas hereby form an alliance to provide Damage Prevention Council of Texas chapters, members and others with information, guidance and access to training resources that will help them protect the health and safety of workers, particularly by reducing and preventing exposure to trenching and excavation hazards. Through the alliance, the organizations will use relevant injury, illness and hazard exposure data when appropriate to help identify areas of emphasis for alliance awareness, outreach and communication activities.

Raising awareness:

- To share information on OSHA's national/regional/local emphasis program and regulatory agenda, as well as opportunities to participate in the rule-making process.



- To encourage worker participation in workplace safety and health through seminars and events.

Training and education:

- To develop effective training and education programs for workers regarding trenching and excavation hazards, and to communicate such information to constituent employers and workers.
- To develop effective training and education programs for employers to promote understanding of workers' rights, including the use of the OSHA complaint process, and the responsibilities of employers, and to communicate such information to workers and employers.
- To deliver or arrange for the delivery of trenching and excavation safety courses.

Outreach and communication:

- To share information among OSHA personnel and industry safety and health professionals regarding Damage Prevention Council of Texas good practices or effective approaches through training programs, workshops, seminars and lectures (or any other applicable forum) developed by the participants.
- To work with other alliances on specific issues and projects on trenching and excavation that are addressed and developed through the Alliance Program.
- To develop and disseminate case studies on trenching and excavation hazards and publicize their results.
- To develop information on the recognition and prevention of workplace hazards, and to develop ways of communicating such information to employers and workers in the industry.

Excerpted from osha.gov/alliances/regional/region6/agreement_20200130.

In Other News...

OSHA reminder: Workplace whistleblowers have rights during COVID-19 pandemic

Retaliation against workers who report unsafe or unhealthy conditions during the COVID-19 pandemic is illegal, OSHA is reminding employers.

An April 8 press release from the agency lists forms of retaliation, including firings, demotions, denials of promotion or overtime, and reductions in pay or hours.

Workers can file whistleblower complaints with OSHA – online or via phone at (800) 321-6742 – if they believe their employer has retaliated against them. The agency protects whistleblowers under 23 statutes.

OSHA promotes Amanda Edens to deputy assistant secretary

OSHA has appointed Amanda Edens deputy assistant secretary of the agency.

According to an April 1 press release, Edens has worked at the agency for 35 years, starting as an industrial hygienist. In 2012, she began serving as the director of the agency's Directorate of Technical Support and Emergency Management.

She also has served as acting director of the Directorate of Evaluation and Analysis and the Directorate of Enforcement Programs.

In addition, Edens contributed to the development of standards on asbestos, bloodborne pathogens and hexavalent chromium.

In her new role, Edens will supervise OSHA's 10 regional administrators, along with the agency's Directorate of Enforcement Programs, Directorate of Training and Education, and Directorate of Construction.

OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

Escape-only respirators

Standards: 1910.134; 1910.134(c)(1); 1910.134(e)(1); and 1910.120

Date of response: Sept. 4, 2019

Background: The employer has truck drivers who drive in and out of oil/gas refineries. Drivers are provided with a North 7900 Series air-purifying disposable-mouthpiece type respirator for use as an escape-only respirator. The owner's manual of the respirator warns employers to be aware of any physical limitations or illnesses that would preclude or limit a user from wearing this type of respirator. However, an OSHA letter of interpretation from March 8, 1999, implies that a medical evaluation is not required for escape-only respirators.

Question 1: *Are medical evaluations required for users of escape-only respirators?*

Response: No. As explained in the OSHA directive, "Inspection Procedures for the Respiratory Protection Standard" (June 26, 2014), an employee who is only expected to wear a NIOSH-approved escape-only respirator (i.e., a respirator that is intended to be used only for emergency exits) is not required by the Respiratory Protection Standard (1910.134) to complete a medical evaluation.

The OSHA letter of interpretation to Ms. Mary Kiestler (dated March 8, 1999) that you reference in your letter is consistent with the directive's policy. For more information on respirator medical evaluation requirements, please refer to the OSHA directive.

As further explained in this directive, a self-contained breathing apparatus is not considered an escape-only respirator. If you provide employees with an SCBA, which can be used to enter atmospheres considered immediately dangerous to life and health, a medical evaluation would be required. See March 8, 1999, letter to Mary Kiestler.

Please also be aware that your truck drivers may be covered by OSHA's Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard (1910.120). This depends on the presence of a hazardous substance and the nature of the response of the truck driver. If drivers have a potential for exposure to hazardous substances during the loading or unloading process and take action to respond to a leak or spill from the vehicle, then they are covered by section 1910.120. However, if drivers do not leave the vehicle and are not exposed to hazardous substances at either end of the trip, then they are not covered by section 1910.120. For further guidance, please see the OSHA letter of interpretation to Mr. Lawrence M. Sontoski, dated July 17, 1991, and also OSHA's Hazardous Waste Operations and Emergency Response (HAZWOPER) Safety and Health Topics page.

Patrick Kapust, Acting Director
Directorate of Enforcement Programs

Excerpted from [osha.gov/laws-regs/standardinterpretations/2019-09-04-0](https://www.osha.gov/laws-regs/standardinterpretations/2019-09-04-0).

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if a seal check cannot be performed successfully. Employers also should educate workers about when to discard a respirator should the structural or functional integrity become compromised, as well as how to put on/take off a respirator.

Expired N95s should be used only if no new ones are available and an employer has shown “a good-faith effort to acquire the respirators or to use alternative options.”

Employers may only use NIOSH-certified expired N95s, and employees must know that they are using expired respirators.

Employers and employees also should not mix expired and non-expired respirators, and should visually inspect respirators to ensure their integrity.

For health care providers, expired N95s must not be used during surgery on patients suspected or confirmed to

have COVID-19, or during procedures “expected” to generate aerosols or where respiratory secretions will likely be poorly controlled, such as intubations.

In response to concerns about a shortage of fit-testing kits and test solutions, OSHA advises employers to reserve fit-testing equipment for workers using respirators for “high-hazard procedures.”

Field offices are asked to perform additional enforcement discretion if an employer switches a worker’s respirator to an equivalent-fitting make/model/style/size N95 or other filtering facepiece respirator without performing an initial fit test.

“In the absence of fit-testing capabilities, if a user’s respirator model is out of stock, employers should consult the manufacturer to see if it recommends a different model that fits similarly to the model used previously by employees,” an OSHA press release states.

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