

OHS COMPLIANCE
**THE NEW NORMAL:
IMPLEMENTING
A MANDATORY
WORKPLACE FACE
MASK POLICY**

AUGUST 2020

INTRODUCTION

Ensuring Correct Face Mask Use in the Workplace

Although social distancing is vital to prevent the spread of COVID-19, sometimes it's simply not possible to maintain the necessary 2 meters/6 feet of separation. Close encounters are especially difficult to avoid in indoor public spaces, especially workplaces. So, it's crucial for people in those settings to wear masks or other face coverings.

The scientific studies clearly show that community use of face masks is an effective infection control measure. And if you know how COVID-19 spreads, it's easy to understand why.

Explanation: Unlike some other viruses that come from insects or animals, the source of coronavirus is a person with the infection. The virus spreads from the respiratory droplets we all emit every time we cough, sneeze, talk or even breathe. Face masks keep this from happening by keeping those respiratory droplets from traveling into the air to others, either directly or via contaminating surfaces or objects that the other person subsequently touches.

Contrary to common belief, face masks don't protect the wearer but rather the persons his/her respiratory droplets may infect. The wearers' protection comes in knowing that the other people they may encounter are wearing their own masks. Thus, failure to wear a mask is not only dangerous but also selfish.

From almost the moment the pandemic began, Health Canada and other public health agencies have

been calling on people to wear masks in public when they can't maintain social distancing. What began as a recommendation has since morphed into a legal obligation in the many parts of the country where municipalities have adopted bylaws making it mandatory to wear masks in workplaces and indoor enclosed public spaces. As of July 21, more than 50 Canadian cities have adopted mask laws, including Toronto.

This Special Report helps employers understand and comply with their legal responsibilities to ensure that people in their facilities have and use proper face protection.

Cloth face coverings are recommended as a simple barrier to help prevent respiratory droplets from traveling into the air and onto other people when the person wearing the cloth face covering coughs, sneezes, talks, or raises their voice. This is called source control. This recommendation is based on what we know about the role respiratory droplets play in the spread of the virus that causes COVID-19, paired with emerging evidence from clinical and laboratory studies that shows cloth face coverings reduce the spray of droplets when worn over the nose and mouth. COVID-19 spreads mainly among people who are in close contact with one another (within about 6 feet), so the use of cloth face coverings is particularly important in settings where people are close to each other or where social distancing is difficult to maintain.

ANSWER

Probably yes, but it depends on the situation.

EXPLANATION

OHS laws require employers to furnish and ensure workers use PPE appropriate to protect them against the hazards to which they're exposed at work. During the COVID-19 pandemic, such PPE includes respiratory protection to all workers exposed to risk of infection.

The reason for this is because of how COVID-19 spreads. The dynamic: Respiratory droplets from a person carrying the virus come into contact with another person, either as a result of direct physical contact or indirectly via droplets that land on surfaces that another person subsequently touches, breathes or ingests. Face masks keep this from happening by containing the droplets and ensuring that mask wearers don't spread them. Wearing a mask, in other words, doesn't protect the wearer so much as the persons with whom he/she has direct or indirect contact. The wearer's protection comes from knowing that everybody else in the place is also wearing a mask.

WHO HAS TO WEAR A MASK?

Under current Canadian Chief Medical Officer (CMO) guidance, all individuals should wear face masks where social distancing, i.e., 6 feet/2 meters of physical separation can't be maintained. That includes not just workers but also all individuals at the facility, including contractors and subcontractors, customers, clients, and other visitors. The only exception is for people who work remotely, alone, in isolation or in other settings and conditions where they have no close contact with others.

DISCIPLINE FOR MASK REFUSALS

A worker required to wear who refuses to do so is subject

to discipline the way any worker who deliberately disobeys an organization's OHS policy would. Just follow your normal progressive discipline policies and procedures.

DISABILITY & ACCOMMODATION

Exception: Refusal to wear a mask may be justified to the extent it's based on a disability, e.g., where a worker has a skin condition making it unreasonably painful or uncomfortable to wear masks. At that point, it becomes a matter of accommodating the worker's disability to the point of undue hardship, e.g., an alternative method or device or allowing the worker to work in complete isolation. However, the point of undue hardship is reached when the accommodation would endanger others, e.g., letting the worker work close to others without a mask.

Religious rights can also be grounds for refusing to wear respiratory protection. This has been an issue in cases where workers whose religions require beards have to use tight-fitting respirators requiring an effective seal to the nose and face. The good news is that the non-medical masks that the vast majority of workers will be required to use to avoid spreading COVID-19 isn't tight-fitting and should be effective even if users have facial hair.

COMPLIANCE

How to Create a Workplace Mask Policy

What began as a public health guideline is evolving into a legal duty with municipalities across the country adopting bylaws requiring individuals to wear masks or face coverings in enclosed indoor public spaces, including workplaces. As a result, employers must adopt and enforce mandatory mask policies at their facilities. While mask requirements vary slightly by jurisdiction, here are the 10 basic elements they should include.

POLICY STATEMENT

Start by stating that all entrants must wear a proper mask or face covering and that failure to comply will be grounds for denial of entrance or immediate removal and, if the violator is an employee, discipline up to and including termination (Policy, Sec. 1).

STATEMENT OF PURPOSE

Indicate that the purpose of this policy is to prevent COVID-19 infection and ensure compliance with regulatory requirements and public health guidelines (Policy, Sec. 2).

DEFINITION OF "MASK"

There needs to be a specific definition of what constitutes a mask, namely, a non-medical face mask, bandana, or other covering that:

- Goes over the nose and mouth;
- Ties around the ears or back of the head;
- Fits snugly against the sides of the face and;

- Is secured under the chin.

Just as importantly, you want to clarify what a mask does not include, namely, the N95 type filtered medical mask required by healthcare workers nor a face shield that protects only the wearer (Policy, Sec. 3).

WHOM THE POLICY COVERS

Explain that the mandatory mask policy covers not just employees but all building entrants, including contract workers, vendors, clients, customers, visitors, and guests, unless an exemption applies (Policy, Sec. 4).

WHERE THE POLICY APPLIES & DOESN'T APPLY

Clarify that the policy covers not just all indoor spaces but also outdoor work areas where proper social distancing can't be maintained, as well as in company vehicles. Also list exceptions where people don't have to wear a mask, which may differ by jurisdiction but typically includes:

- Work or time spent alone in a personal office or workspace;
- Walking, exercising or other outdoor activity where individuals are at least 2 meters/6 feet apart;
- Driving a single occupancy vehicle;
- Telework; or
- Other operations, conditions, or situations where people are alone in a personal room or space or assembled but still maintain the required social distancing boundaries (Policy, Sec. 4).

MASKS DON'T REPLACE REQUIRED PPE

Clarify that wearing a mask in no way relieves employees of their duty to use the job-specific PPE required by your company's safe work procedures and OHS policies (Policy, Sec. 5).

EXEMPTIONS

Establish legitimate exemptions where wearing a mask could endanger the user, such as when:

- A medical professional has advised that wearing a mask may pose a health risk or impair the user's breathing;
- Wearing a mask would create a health or safety risk to the wearer under federal, provincial or local regulations or OHS guidelines;
- The user can't put on or take off the mask without assistance;
- The user is deaf or hard of hearing and relies on facial and mouth movements to communicate; or
- The user is a baby or toddler under 2-years-old (Policy, Sec. 5).

ACCOMMODATIONS

In addition to health and safety exemptions, human rights laws require you to make reasonable accommodations for disabilities, religious beliefs, and other protected characteristics to the point of undue hardship (Policy, Sec. 6).

EMPLOYER RESPONSIBILITIES

List the roles and responsibilities of different stakeholders under the Policy, starting with company management as employer. Under the OHS laws of most jurisdictions, employers must supply required PPE at their own expense, except for personal items like safety boots. While it's unclear which side of the line COVID-19 masks

fall, best practice seems to dictate that employers furnish the masks but allow employees to pay for and use their own masks instead. Other employer responsibilities include ensuring signs are posted, proper disposal or cleaning is arranged, and training is provided (Policy, Sec. 7.1).

OTHER ROLES & RESPONSIBILITIES

Other roles and responsibilities to address:

- Department heads should assess and identify mask supply needs, ensure signs are posted and rules are followed in their work area (Policy, Sec. 7.1);
- In addition to carrying out the responsibilities exercised by department heads at smaller organizations without departments, supervisor should also deliver the necessary mask training and instruction and enforce the mask rules (Policy, Sec. 7.3); and
- Employees should be responsible for correctly using and either disposing of or laundering/storing their masks, depending on what kind of masks you use (Policy, Sec. 7.4).

FAQ'S

PPE: 10 FAQs for Using Face Masks to Prevent COVID-19 Infection

Q1. ARE WE LEGALLY REQUIRED TO MAKE WORKERS USE FACE MASKS??

Q1. ANSWER

Yes. The source of that duty is the OHS law requirement that employers ensure that workers use appropriate PPE, including respiratory equipment to protect them against the hazards to which they're exposed. To apply these principles to COVID-19, you need to understand how the virus spreads.

Dynamic: Respiratory droplets from a person carrying the virus come into contact with another person, either as a result of direct physical contact or indirectly via droplets that land on surfaces that another person subsequently touches. Face masks keep this from happening.

Q2. WHO HAS TO WEAR FACE MASKS?

Q2. ANSWER

According to current Canadian Chief Medical Officer (CMO) guidance, all individuals should wear face masks where social distancing, i.e., 6 feet/2 meters of physical separation can't be maintained. That includes not just workers but also all individuals at the facility, including contractors and subcontractors, customers, clients and other visitors. The only exception is for people who work remotely, alone, in isolation or in other settings and conditions where they have no close contact with others.

Q3. WHAT KIND OF FACE MASKS MUST WORKERS USE?

Q3. ANSWER

It depends on the jobs they perform:

"Very high" or "High" risk jobs, which include mostly healthcare workers, EMTs, ambulance personnel and medical support staff, must use N95 particulate filtering masks at a minimum and may need more extensive protection, e.g., self-contained breathing apparatus if they have an unusually high degree of frequent or close contact with patients who have or are suspected of having COVID-19.

"Medium" and "low" risk jobs require only a non-medical face mask. In fact, the CMO doesn't want these workers or the general public to use N95s because they're in short supply and need to be reserved for healthcare workers.

Q4. MUST EMPLOYERS PROVIDE THE REQUIRED FACE MASKS?

Q4. ANSWER

Yes. Under OHS laws, employers are responsible for paying for and furnishing the PPE workers need to do their jobs. So, you can't re-open unless and until you verify that you can secure an adequate supply of face masks.

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Q5. MUST EMPLOYERS PROVIDE FACE MASKS WORKERS NEED TO COMMUTE TO AND FROM WORK?

Q5. ANSWER

Technically, you're required to provide workers PPE only when they're present at the workplace. But keep in mind that OHS laws define "workplace" very broadly as including not just the employer's facility but also any place where workers are routinely expected to perform their job, e.g., at customer sites, while traveling on business and, in some cases, even inside the worker's home in telecommuting situations. However, commuting to and from work doesn't count. As a practical matter, though, workers should be able to use the simple non-medical face masks you provide during the shift while returning home from work and traveling to the workplace for the next shift.

Q6. CAN N95 MASKS BE RE-USED?

Q6. ANSWER

Normally no, but given the current emergency and mask shortage, public health authorities have given the okay to extended or re-use of N95s if employers ensure that:

- Masks are properly sterilized and stored between

uses;

- Users perform a successful seal check before each use;
- Users are instructed to inspect their mask before each use and throw it out if the functional integrity of any of its parts is compromised; and
- The user follows safe procedures to prevent contamination when putting on and taking off a re-used mask.

Q7. CAN N95 MASKS BE USED AFTER THEY HAVE EXPIRED?

Q7. ANSWER

Normally, N95 mask NIOSH approval expires after 5 years and you're not allowed to use it after that. But during the pandemic, it's okay to use an N95 after its 5-year shelf life as long as employers ensure that:

- The straps are inspected to ensure they still work and effect a tight seal;
- The mask is visually inspected, especially the nose bridge and filter material which can degrade;
- The mask is still capable of being fit-tested and the user carries out a successful fit-test and seal check before each use; and
- The masks were stored in accordance with the manufacturer's specifications.

Q8. CAN YOU DISCIPLINE WORKERS FOR REFUSING TO WEAR A FACE MASK?

Q8. ANSWER

Yes. You not only can but must treat a worker's violation of PPE, social distancing, hygiene and other COVID-19 rules and restrictions as a serious offence meriting discipline in accordance with your normal progressive discipline policies and procedures.

discipline policies and procedures.

Q9. IS RELIGION A VALID EXCUSE NOT TO WEAR A FACE MASK?

Q9. ANSWER

No. The good news is that the non-medical masks that most workers will have to use don't require a tight fit to be effective. So, workers won't have to shave their beard to use them. But religious discrimination could become an issue in a healthcare setting where workers required to have beards for religious reasons are required to use tight-fitting masks. The first thing employers should do in this situation is consider accommodations allowing the worker to do the job without wearing the mask, e.g., assigning him to a position not involving close contact with others.

But the one compromise you may not make is allowing the worker to do a job requiring an N95 (or more extensive equipment) with a looser mask or no mask at all.

Explanation: Human rights laws require employers to accommodate workers' religious beliefs to the point of undue hardship. Court cases have made it clear that undue hardship includes accommodations that would put a worker or another person in direct danger.

Bottom Line: The duty to prevent COVID-19 infection takes precedence over the worker's religious rights.

Q10. DO WORKERS NEED ANY SPECIAL FACE MASK USE TRAINING?

Q10. ANSWER

Yes. You must ensure workers understand:

- How COVID-19 infections can occur;
- How the face mask protects them from infection;
- The mask's limitations and capabilities; and

- How to correctly use the mask.

Workers required to use N95 or other tight-fitting respirators also need to be trained on how to perform the necessary inspections and seal checks. And if the mask or respiratory protection is to be re-used, they must also be trained in how to correctly store, clean and maintain the equipment.

ASK THE EXPERT

Can We Discipline Workers for Refusing to Wear a Face Mask?

QUESTION

We're requiring all of our workers to use face masks when they're indoors but some of them are refusing. Do we have the right to discipline them? And, if so, under what law?

ANSWER

Probably yes, but it depends on the situation.

EXPLANATION

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SAFETY TRAINING

COVID-19 Face Mask Do's & Don'ts

Wearing face masks and face coverings is vital to prevent COVID-19 infection where people can't maintain the required social distancing separation of 2 meters/6 feet. And now municipalities around the country are adopting bylaws mandating the use of masks in all indoor public spaces, including workplaces. But requiring masks is just the beginning; you must also ensure that personnel and others at your facility use those masks properly. To help you out, here is a list of Do's and Don'ts that you can turn into a training handout, poster and/or sign to ensure proper face mask use at your facility.

FACE MASK DO'S & DON'TS

DO'S

- √ **DO** make sure your mask completely covers your nose and mouth
- √ **DO** put on your mask correctly using the tie loops
- √ **DO** wear your mask snug around your face and adjust it as necessary throughout the day
- √ **DO** when taking off your mask and putting it down, place it with the outside down on a tissue; if a tissue isn't available, clean the surface on which you placed it down afterwards
- √ **DO** wash your hands and face after removing the mask and before touching your face
- √ **DO** keep your mask clean and launder it once day in warm water
- √ **DO** store your mask in a clean and dry space or properly

dispose of it

- √ **DO** request a new mask if the one you're using becomes unsanitary or damaged

also wearing a mask.

DON'TS

- X **DON'T** wear your mask under your nose or mouth
- X **DON'T** let a strap dangle down or cross the straps
- X **DON'T** touch or adjust your facemask without cleaning your hands before and after
- X **DON'T** wear your mask on your head or around your neck or arm
- X **DON'T** let your mask fog your safety glasses or otherwise obstruct your vision
- X **DON'T** lay your mask on a surface that could be contaminated or contaminate the surface
- X **DON'T** wear your mask near machinery, equipment, or parts in which it may become entangled
- X **DON'T** use a mask if it is damaged in any way

COMPLIANCE ALERT!

What to Do If You Can't Find N95 Masks to Protect Your Healthcare Workers from COVID-19?

'Having a hard time finding N95 masks for your healthcare or other high-risk workers? You're not alone, the N95 particulate filtering face-piece respirator, which the Health Canada has recommended to protect both health care and non-medical workers from COVID-19, is in short-supply. So, how do you provide adequate respiratory protection to workers during the shortage? The answer may lie deep within the bowels of your PPE supply stocks, according to official Government guidance ("Optimizing the use of masks and respirators during the COVID-19 outbreak," March 28, 2020).

WHAT YOU CAN DO: USE EXPIRED MASKS

OHS laws typically require that N95 respirators be NIOSH-approved. The N95 respirator has a shelf life of 5 years from the date of manufacture. At that point, the elasticity and other physical characteristics essential to effective performance wear out and their NIOSH approval expires, and you can't use it anymore.

At least those are the normal rules. But desperate times call for desperate measures. In response to the COVID-19 pandemic, NIOSH did a quick study evaluating stockpiled N95s from 10 geographically dispersed facilities with a range of storage conditions and determined that certain N95 models retain their protective qualities and can be safely used until the shortage subsides. On the basis of those findings, the US Centers for Disease Control and

Prevention (CDC) green lighted their use.

Health Canada has adopted those guidelines and now says that it's temporarily okay to use N95 respirators past their shelf life for COVID-19 as long as you take the right precautions.

4 NECESSARY PRECAUTIONS

There are 4 things you must do when using N95 respirators after their expiration date. (The guidelines don't limit how long after the expiry date you use the masks as long as the precautions are taken.)

1. ENSURE THE STRAPS STILL WORK

Deterioration of the mask's elastic straps over time can reduce its tightness. So, ensure the straps still work.

2. VISUALLY INSPECT FOR PHYSICAL DAMAGE

The mask must be visually inspected, especially the nose bridge and filter material which can degrade.

3. PERFORM FIT-TESTING

Make sure the N95 can be fit-tested and that workers carry out the required fit-testing and seal check before using the mask.

4. VERIFY STORAGE CONDITIONS

If possible, verify that the mask was stored in accordance with the storage conditions recommended by the manufacturer.

ANOTHER OPTION: EXTENDED OR REUSE OF MASKS

The CDC has also given the emergency okay to allowing extended use or reuse of an N95 by the same worker, provided that the respirator maintains its structural and functional integrity and the filter material isn't physically damaged, soiled or contaminated, e.g., with blood, oil or paint. Extended use is preferred over reuse because of the contact transmission risk associated with putting on and taking off masks during reuse.

4 NECESSARY PRECAUTIONS

There are 4 things to do when permitting extended or reuse of N95s:

1. ENSURE PROPER STORAGE BETWEEN USES

When respirators are being re-used, employers must ensure that workers properly store their masks between periods of reuse.

2. SEAL CHECKS

Users should perform a user seal check each time they put on a respirator and not use the mask unless and until the seal check is successful.

3. TRAINING & INSTRUCTION

Employers should train workers to understand that they need to toss the respirator if the structural and functional integrity of any part of it is compromised, it

should be discarded, and that if a successful user seal check cannot be performed, another respirator should be tried to achieve a successful user seal check.

4. SAFETY PROCEDURES FOR MASK DONNING & REMOVAL

If reuse of respirators is necessary, an appropriate sequence for donning/doffing procedures must be used to prevent contamination.

THE 2 THINGS YOU CAN'T DO

There are 2 things you're not allowed to do when you can't get workers who are exposed to COVID-19 the N95 protection they need.

1. SUBSTITUTE A LESS PROTECTIVE MASK

If the N95 is the required means of respiratory protection, you can't substitute masks that provide a lower level of protection.

Example: Because they're looser in fit, surgical masks don't provide the same level of filtration as N95 respirators. So, you can't use them as a substitute when a tight-fitting respirator is required.

1. SUBSTITUTE A LESS PROTECTIVE MASK

Health Canada is urging employers to be careful about using homemade masks made of cotton or other fabric, with pockets to insert other masks or filters to be worn over N95 respirators (in an effort to reuse respirators). These types of masks are unregulated and may not be effective in blocking virus particles that may be transmitted by coughing, sneezing or certain medical procedures.

Contact Info



1.800.667.9300



Info@ohsinsider.com