
Labor & Employment Law Daily Wrap Up

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By WK Editorial Staff

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In an October 2, 2020, memorandum, OSHA issued temporary guidance for enforcing initial and annual fit-testing requirements related to tight-fitting powered air-purifying respirators in order to ensure the availability of respirators. The interim guidance is effective immediately and remains in effect until further notice.

Nonbinding. The memorandum states that it: "does not have the force and effect of law and is not meant to bind the public in any way" and "is intended only to provide clarity to the public regarding existing requirements under the law or agency policies."

Enforcement discretion. The "new enforcement discretion policy," as OSHA called it, permits the use of National Institute for Occupational Safety and Health (NIOSH)-approved tight-fitting powered air-purifying respirators for protection against the coronavirus when initial and/or annual fit testing is infeasible due to respirator and fit-testing supply shortages.

The new guidance applies to healthcare personnel and other workers in high or very high exposure risk activities.

Not applicable. The guidance does not apply to powered air-purifying respirators that:

- Have not been approved by NIOSH;
- Are used by any workers with low or medium exposure risk to the coronavirus;
- Are used by any workers for protection against airborne hazards other than the coronavirus, such as chemical hazards; or
- Are loose-fitting and do not require fit testing.

Alternative respirator classes. When respiratory protection must be used, employers may consider the use of alternative classes of respirators that provide equal or greater protection compared to a N95 Filtering Facepiece Respirator, such as N99, N100, R95, R99, R100, P95, P99, and P100 respirators, and NIOSH-approved, non-disposable elastomeric respirators or powered air-purifying respirators, either loose-fitting or tight-fitting.