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DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

To: Nevada Businesses

Re: Updated COVID-19 Guidance for Nevada Businesses (Effective Date: March 17, 2022)

This guidance supersedes previous Nevada Occupational Safety and Health Administration (Nevada OSHA) COVID-19 guidance released on February 14, 2022. This guidance has been updated to reflect requirements contained within the COVID-19 Healthcare Emergency Temporary Standard (ETS) for reporting COVID-19 fatalities and in-patient hospitalizations. This guidance also provides an update on inspection efforts at healthcare facilities.

New: COVID-19 Inspections of Healthcare Facilities

On March 2, 2022, Federal OSHA released a [COVID-19 Focused Inspection Initiative in Healthcare](#). Nevada OSHA is not required to adopt this initiative. However, Nevada OSHA will support the initiative through the [COVID-19 National Emphasis Program](#) by evaluating previous COVID-19 inquiries and inspections for possible follow-up enforcement action at businesses in the following North American Industry Classification System (NAICS) Codes:

- 622110 General Medical and Surgical Hospitals
- 622210 Psychiatric and Substance Abuse Hospitals
- 623110 Nursing Care Facilities (Skilled Nursing Facilities)
- 623312 Assisted Living Facilities for the Elderly

Updated: COVID-19 Healthcare Emergency Temporary Standard

Nevada OSHA adopted the [COVID-19 Healthcare Emergency Temporary Standard](#) effective on July 1, 2021. As of December 23, 2021, this Emergency Temporary Standard is no longer in effect, with the exception of the recordkeeping and reporting components of the Emergency Temporary Standard. These requirements have been updated in this document.

COVID-19 Vaccination and Testing Emergency Temporary Standard

Federal OSHA withdrew its COVID-19 Vaccination and Testing Emergency Temporary Standard on January 25, 2022 and is instead pursuing a permanent COVID-19 Healthcare Standard.

Federal Face Covering Requirements

On January 21, 2021, [President Biden issued an executive order](#) promoting COVID-19 safety in domestic and international travel. This executive order mandates the public wear face coverings inside of airports, on planes, and on public and school buses. According to the [Center for Disease Control](#), this does not apply to outdoor or "open-air areas" of transportation hubs.

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As this generally relates to public safety and not employee safety, Nevada OSHA will evaluate complaints related to these matters and take action when employees are potentially exposed to hazards related to COVID-19. Nevada OSHA's jurisdictional authority is limited to health and safety matters where an employee-employer relationship exists, and no other jurisdiction has authority over the matter.

Department of Health and Human Services Face Covering Requirements

Masks and protective equipment requirements in facilities servicing vulnerable populations such as hospitals, clinics, and long-term care facilities will be overseen at the direction of the [Department of Health and Human Services \(DHHS\)](#).

On February 10, 2022, [DHHS released a technical bulletin](#) which states that all healthcare facilities must continue to implement all infection control practices, to include masking, in accordance with all applicable state and federal statutes and regulations.

Nevada OSHA may consider employers failing to comply with the aforementioned DHHS requirements as a violation of the Nevada OSHA General Duty Clause NRS 618.375(1) or other applicable occupational safety and health statutes and regulations.

Other Nevada OSHA COVID-19 Guidance for Businesses

Per Section 7 of Declaration of Emergency Directive [#044](#), Nevada OSHA is responsible for enforcing all violations of its guidelines, protocols, and regulations, including those promulgated pursuant to the Governor's Directives and local directives affecting employees. While Declaration of Emergency Directive [#052](#) rescinded face covering requirements, other requirements continue to apply as detailed in this document.

Voluntary Use of Filtering Facepiece Respirators (N95/KN95 Masks)

While face coverings are no longer required in Nevada, employers may allow employees to voluntarily wear N95/KN95 masks. This document provides guidance on notification requirements to employees.

Need Safety Consultation Assistance?

Complying with COVID-19 safety standards can be complex. The Division of Industrial Relations Safety Consultation and Training Section (SCATS) offers [free](#) consultations to businesses to help them understand and implement the requirements in order to comply with the health and safety guidance and directives for all businesses, and specific requirements for each industry.

If you have questions about this guidance, please call [SCATS](#) at 702-486-9140 (south) or 775-688-3730 (north).

Nevada OSHA COVID-19 guidance is subject to revision. Please check back frequently for updates.

For questions about this guidance related to enforcement, please call Nevada OSHA at 702-486-9020 (south) or 775-688-3700 (north).

COVID-19 Healthcare Emergency Temporary Standard (Updated)

Although the COVID-19 Healthcare Emergency Temporary Standard has expired, the following recordkeeping and reporting requirements from the Emergency Temporary Standard are still in effect for certain healthcare employers as defined under [29 CFR 1910.502\(a\)](#):

- 29 CFR 1910.502(q)(2)(ii)
- 29 CFR 1910.502(q)(3)(ii)-(iv)
- 29 CFR 1910.502(r)

Please note that these requirements do not apply to non-healthcare employers.

New: Reporting COVID-19 Fatalities and In-Patient Hospitalizations

Under [29 CFR 1904.39\(b\)\(6\)](#), employers are required to report a work-related fatality to OSHA only if death occurs within 30 days of the work-related incident, or an in-patient hospitalization only if the in-patient hospitalization occurs within 24 hours of the work-related incident.

However, pursuant to [29 CFR 1910.502\(r\)](#), covered healthcare employers are required to report each work-related COVID-19 fatality or in-patient hospitalization of any employee regardless of the amount of time between the exposure to COVID-19 in the work environment and the death or in-patient hospitalization. Employers must report each employee COVID-19 fatality to OSHA within 8 hours of learning about the fatality. Employers must also report each employee COVID-19 in-patient hospitalization to OSHA within 24 hours of learning about the in-patient hospitalization.

Note: If an employer makes a report to OSHA concerning a COVID-19 in-patient hospitalization and that employee subsequently dies from the illness, the employer does not need to make an additional fatality report to OSHA.

Employee COVID-19 Logs

Per [29 CFR 1910.502\(q\)\(2\)](#), covered healthcare facilities with 11 or more employees are required to establish and maintain COVID-19 logs to comply with the Emergency Temporary Standard. The logs must contain at least the following information for each employee who is positive for COVID-19, regardless of whether the instance is connected to exposure to COVID-19 at work:

- Employee's name;
- One form of contact information;
- Occupation;
- Location where the employee worked;
- The date of the employee's last day at the workplace;
- The date of the positive test for, or diagnosis of, COVID-19;
- And the date the employee first had one or more COVID-19 symptoms.

Per [29 CFR 1910.502\(q\)\(3\)](#), COVID-19 logs must be available for review by the end of the next business day after a request is made in the following circumstances:

Requestor	Information Required to be Provided
Nevada OSHA	The entire log, as maintained
A particular employee, or anyone having written authorized consent of the employee	The individual COVID-19 log entry for a particular employee
Any employees, their personal representatives, and their authorized representatives	A version of the COVID-19 log that removes the names of the employees, contact information, and occupation, and only includes, for each employee in the COVID-19 log, the location where the employee worked, the last day that the employee was at the workplace before removal, the date of that employee's positive test for, or diagnosis of, COVID-19, and the date the employee first had one or more COVID-19 symptoms, if any were experienced

Federal OSHA believes the danger faced by healthcare workers continues to be the highest concern, and measures to prevent the spread of COVID-19 are still needed to protect them. Given these facts and given that Federal OSHA is making efforts to finalize the [COVID-19 Healthcare Emergency Temporary Standard](#) as a rule, Nevada OSHA strongly encourages all healthcare employers to continue to implement the ETS requirements in order to protect employees. As Federal OSHA works towards a permanent regulatory solution, Nevada OSHA will enforce the general duty clause and its general standards, including the Personal Protective Equipment (PPE) and Respiratory Protection Standards, to help protect healthcare employees from the hazard of COVID-19.

The Respiratory Protection Standard applies to personnel providing care to persons who are suspected or confirmed to have COVID-19. Nevada OSHA will accept compliance with the terms of the Healthcare ETS as satisfying employers' related obligations under the general duty clause, respiratory protection, and PPE standards. Continued adherence to the terms of the healthcare ETS is the simplest way for employers in healthcare settings to protect their employees' health and ensure compliance with their Occupational Safety and Health (OSH) Act obligations. The terms of the Healthcare ETS remain relevant in general duty cases in that they show that COVID-19 poses a hazard in the healthcare industry and that there are feasible means of abating the hazard.

Overview of Requirements in Governor's Emergency Directives

General Face Covering and Personal Protective Equipment Requirements

- As of February 10, 2022, all state-mandated mask requirements included within Declaration of Emergency Directive [#024](#), [#045](#), and [#047](#) have been terminated.
- Declaration of Emergency Directive [#052](#) allows employers and local jurisdictions to have more restrictive requirements for face coverings and personal protective equipment.

Required COVID-19 Prevention Plan

Per [NAC 618.540\(1\)\(b\)](#), employers are required provide an explanation of the methods used to identify, analyze, and control new and existing hazardous conditions. Nevada OSHA considers COVID-19 to be a recognized hazard. Nevada OSHA will continue to require all businesses to protect employees from all recognized hazards, which includes COVID-19. The COVID-19 Prevention Program must be included in the Written Safety Program (WSP) required by Nevada Revised Statutes 618.383 and Nevada Administrative Code 618.538 for businesses with more than 10 employees. Businesses with 10 or fewer employees are highly encouraged to have a written COVID-19 Prevention Program.

The most effective programs engage workers and their union or other representatives in the program's development and include the following key elements: conducting a hazard assessment; identifying a combination of measures that limit the spread of COVID-19 in the workplace; adopting measure to ensure that workers who are infected or potentially infected are separated and sent home from the workplace, and implementing protections from retaliation for workers who raise COVID-19 related concerns.

Job Hazard Analysis (JHA):

- All employers are required to conduct JHAs pertaining to the tasks performed in accordance with [29 CFR 1910.132](#). See [Federal OSHA publication 3071](#) for guidance.
- All employers are required to evaluate respiratory hazard(s) in the workplace, identify relevant workplace and user factors, and base respirator selection on these factors in accordance with [29 CFR 1910.134](#).
- For higher-risk workplaces, including but not limited to the health care industry, funeral homes, and laboratories, where the presence of infectious diseases are likely to be present, a JHA should be completed for each task or procedure that could be affected by the hazard of COVID-19.

Sanitation:

- Clean surfaces with products containing soap or detergent to reduce germs by removing contaminants and decreasing the risk of infection from surfaces.
 - When no people with confirmed or suspected COVID-19 are known to have been in a space, cleaning once a day is usually enough to sufficiently remove viruses that may be on surfaces and help maintain a healthy facility.
- Disinfect using [U.S. Environmental Protection Agency \(EPA\)'s List N disinfectants](#) to kill any remaining germs on surfaces, which further reduces any risk of spreading infection. Each business needs to evaluate if disinfection is needed in shared spaces if the space:
 - Is a high traffic area, with a large number of people;
 - Is poorly ventilated;
 - Does not provide access to handwashing or hand sanitizer
 - Is occupied by people at increased risk for severe illness from COVID-19.(Required: Reference: [Centers for Disease Control and Prevention](#))

- If there has been a sick person or someone who tested positive for COVID-19 in your facility within the last 24 hours, clean and disinfect the spaces they occupied. (Required: Reference: [Centers for Disease Control and Prevention](#))
- Employers utilizing chemicals as referenced in this guidance document must comply with [29 CFR 1910.1200](#), the Hazard Communication Standard.

Monitoring Health Status of Employees

- Instruct any workers who meet the current CDC guidelines for quarantine and isolation to stay home from work to prevent or reduce the risk of transmission of the virus that causes COVID-19. See the [latest CDC guidelines on quarantine and isolation](#).
- Ensure that absence policies are non-punitive.
- Eliminate or revise policies that encourage workers to come to work sick or when unvaccinated workers have been exposed to COVID-19.

(Recommended: Reference - [Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace](#).)

Voluntary Use of Respirators

Are N95/KN95 masks considered to be respirators?

N95 and KN95 masks are considered filtering facepiece respirators. Per [29 CFR 1910.134\(b\)](#), a filtering facepiece respirator is defined as a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium.

Are employees required to wear N95/KN95 masks in Nevada?

Some employees may be required to wear N95/KN95 masks in Nevada to reduce the risk of transmission of COVID-19. Each employer needs to assess respiratory hazards in the workplace and take steps necessary to protect employees. Per [29 CFR 1910.134\(c\)\(1\)](#), if employees are using *any type of respirator* (e.g., N95, KN95 mask) that is *required by the employer* or *necessary to protect their health* a written Respiratory Protection Program is required. For example, some industries may have higher risk of exposure to COVID-19, such as the nursing industry, where an employer may determine that N95/KN95 masks are needed to protect the health of employees. Other industries may determine that the risk of exposure to COVID-19 is not high and N95/KN95 masks are not required.

Can employers allow employees to voluntarily wear N95/KN95 masks?

Yes, employers may allow employees to voluntarily wear N95/KN95 masks for everyday use to reduce risk of transmission of COVID-19, regardless of exposure risk, if employers follow certain requirements. [29 CFR 1910.134](#) outlines what employers must do when allowing employees to voluntarily wear filtering facepiece respirators when otherwise not required.

What are employers required to do if employees want to voluntarily wear N95/KN95 masks?

Per [29 CFR 1910.134\(c\)\(2\)\(i\)](#), an employer must provide the respirator user with information contained in Appendix D of 1910.134 (included below).

How can employers meet the notification requirements?

There are easy ways for employers to meet the notification requirements. Per [29 CFR 1910.134\(k\)\(6\)](#), the information contained in Appendix D can be provided in any written or oral format. Some examples of compliant communication of Appendix D are:

- A group email sent to employees containing Appendix D language;
- Tailgate training where the language in Appendix D is provided orally; or
- Onboarding training that includes the language in Appendix D.

*Note that posting the Appendix D language on an employee bulletin board or other location does not meet the notification requirements per OSHA Directive: [CPL 02-00-158](#).

Nevada OSHA will use its enforcement discretion to provide employers 60 days from January 25, 2022 to show that they have complied with these notification requirements.

Does an employer have to fit test or medically evaluate employees voluntarily wearing N95/KN95 masks (filtering facepiece respirators)?

No. The employer does not need to ensure that an employee is medically able to use a filtering facepiece respirator, nor implement fit testing procedures, if the filtering facepiece respirator is used voluntarily.

Is an employer required to create a written Respiratory Protection Program when employees voluntarily wear N95/KN95 masks (filtering facepiece respirators in the workplace)?

Per [29 CFR 1910.134\(c\)\(2\)\(ii\)](#), if employees are solely using *filtering facepiece respirators* on a *voluntary* basis a written Respiratory Protection Program is not required.

Per [29 CFR 1910.134\(c\)\(1\)](#), if employees are using *any type of respirator* that is *required by the employer* or *necessary to protect their health* a written Respiratory Protection Program is required. Employers are required to assess respiratory hazards in the workplace and take the steps necessary to protect employees. For example, some industries may have higher risk of exposure to COVID-19, such as the nursing industry, where an employer may determine that respirators are needed to protect the health of employees.

Conclusion

Any guidance, protocol, plan, or regulation that is produced by the State of Nevada or a local government, if more restrictive, shall be enforced by Nevada OSHA per [Section 7 of Declaration of Emergency #044](#). Following these guidelines does not constitute, and is not a substitute for, compliance with all laws and regulations applicable at any particular time. Individuals and businesses are responsible for ensuring that they comply with all laws and regulations that apply to them, including, but not limited to, federal and state health and safety requirements.

Additionally, compliance with this guidance does not ensure prevention of spread of infections from COVID-19 or any other cause.

Additional Resources

For further guidance, please see the following links:

- Federal OSHA COVID-19 Prevention Program resources
 - <https://www.osha.gov/coronavirus/safework>
 - <https://www.osha.gov/coronavirus/guidance/industry>
- Centers for Disease Control and Prevention
 - <https://www.cdc.gov/coronavirus/2019-nCoV/index.html>
- Mine Safety and Health Administration: <https://www.msha.gov/coronavirus>
- State of Nevada- <https://nvhealthresponse.nv.gov/>
- Nevada OSHA: <http://dir.nv.gov/OSHA/Home/>

Appendix D Handout for Employers

Appendix D to 29 CFR 1910.134 (Mandatory) Information for Employees Using Respirators When Not Required Under the Standard

Respirators are an effective method of protection against designated hazards when properly selected and worn. Respirator use is encouraged, even when exposures are below the exposure limit, to provide an additional level of comfort and protection for workers. However, if a respirator is used improperly or not kept clean, the respirator itself can become a hazard to the worker. Sometimes, workers may wear respirators to avoid exposures to hazards, even if the amount of hazardous substance does not exceed the limits set by OSHA standards. If your employer provides respirators for your voluntary use, or if you provide your own respirator, you need to take certain precautions to be sure that the respirator itself does not present a hazard.

You should do the following:

1. Read and heed all instructions provided by the manufacturer on use, maintenance, cleaning and care, and warnings regarding the respirator's limitations.
2. Choose respirators certified for use to protect against the contaminant of concern. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services, certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will tell you what the respirator is designed for and how much it will protect you.
3. Do not wear your respirator into atmospheres containing contaminants for which your respirator is not designed to protect against. For example, a respirator designed to filter dust particles will not protect you against gases, vapors, or very small solid particles of fumes or smoke.
4. Keep track of your respirator so that you do not mistakenly use someone else's respirator.