



# Are Your California Employees Asking for Dust Masks Because of the Raging Fires?

Insights

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Our California offices reported that local governments are providing N 95 dust masks to citizens because of the wild fires. Such masks may not actually help all users and the smoke and particulate may not exceed permissible levels. Nevertheless, these masks do often provide comfort when exposed to dusty conditions which are uncomfortable but do not present a hazard.

## **Thomas Fire Creating 'Hazardous' Air-Quality Conditions in Santa Barbara**

By Kelsey Brugger ( [Contact](#) ), Tyler Hayden ( [Contact](#) )

**[Update: Thursday, 11:49 a.m.]** The Santa Barbara County Public Health Department has noted a total of three locations where N95 face masks can be picked up for free:

- Franklin Community Center (1136 E Montecito St.) from 1-4:30 p.m.
- Costco in Goleta from 11-4:30 p.m.
- Carpinteria City Hall from 11:30-4 p.m.

The department also warned that ordinary dust masks and surgical masks are not effective.

Not surprisingly, some employers want to make their employees work as comfortable as possible and have determined to also provide dust masks. This seems to us to be an appropriate response to show employees that you care about them; however, there are OSHA, Cal-OSHA and other legal considerations. Providing dust masks for voluntary use in a lawful way should not be too burdensome – even in the hyper-regulated California environment – but be careful to follow the available legal guidance.

We'll simplify the steps as much as possible, but make sure you consider the legal issues or get guidance from your counsel.

### **Cal-OSHA Requirements for Voluntary Use of a Respirator.**

N 95s and similar dust masks are not simply a paper mask, and should be viewed more seriously. Here is the confusing Cal-OSHA standard:

[2] Where respirator use is not required:

(A) An employer may provide respirators at the request of employees or permit employees to use their own respirators, if the employer determines that such respirator use will not in itself create a hazard. If the employer determines that any voluntary respirator use is permissible, the employer shall provide the respirator users with the information contained in Appendix D to this section (“Information for Employees Using Respirators When Not Required Under the Standard”); and

(B) In addition, the employer must establish and implement those elements of a written respiratory protection program necessary to ensure that any employee using a respirator voluntarily is medically able to use that respirator, and that the respirator is cleaned, stored, and maintained so that its use does not present a health hazard to the user. Exception: Employers are not required to include in a written respiratory protection program those employees whose only use of respirators involves the voluntary use of filtering facepieces (dust masks).

In English both the Cal-OSHA and Fed-OSHA (LINK) standards provide as follows for when an employee voluntarily wants to use a Respirator, even where it is not necessary.

First, there are TWO types of Voluntary Use Requirements:

- Voluntary Use of a Dust Mask; and
- Voluntary use of Respirators other than Dust Masks.

### **Voluntary Use of Dust Masks.**

In OSHA-speak, a dust mask is often referred to as the eloquently named “filtering facepiece respirators” and the most common type you encounter is the N 95, as described at the CDC site.

The employer must:

- **First**, determines that such respirator use will not in itself create a hazard.

We see public authorities, including Health authorities providing or encouraging N 95 usage, so it should not be difficult to confirm that providing N 95s in the typical Cali situation will not itself create a hazard. However, if you are in unusual circumstances, such as fighting or working closer to a fire (or anytime you have reason to believe that a respiratory hazard is present) you need to make a determination, which may require testing and consultation with advisors on use of respirators.

As part of this process, provide the manufacturer’s instructions and any other pertinent information.

- **The Second**, and often overlooked requirement is that , the employer shall provide the respirator users with the information contained in Appendix D to this section (“Information for Employees Using Respirators When Not Required Under the Standard”);

If the use **is truly voluntary** and “no air contaminants are above the permissible level, employers are not required to include in a written respiratory protection program those employees whose only use

of respirators involves the voluntary use of filtering facepieces (dust masks).”

In plain English, this means that Employers are **not** required to provide a (1) Medical evaluation or (2) Fit test for voluntary use of a dust mask.

### **Best Practices or Implied Duties.**

One reason OSHA has not claimed that voluntary use of such dust masks does not have to be included in the Respirator Protection Program, with its many requirements, is that the masks are disposable. Ergo, explain to users that they are not reusable and to discard them as provided in the manufacturer’s instructions. The following excerpt from a Fed-OSHA Interpretation explains this consideration:

The N95 filtering facepiece respirator is a “disposable respirator.” It must be discarded after use, or when it becomes damaged or soiled. It cannot be cleaned and disinfected according to the method described in Appendix B-2. OSHA is presently not aware of any alternate procedures provided by respirator manufacturers in their user instructions that would allow for cleaning and disinfecting their filtering facepiece respirators.

The OSHA Interpretation goes on to set out other useful recommendations:

Many requirements in paragraph (h), however, would still be applicable to N95 filtering facepiece respirators. For example,

- Employers must provide respirators that are clean, sanitary, and in good working order [(h)(1)].
- If a respirator cannot be cleaned and disinfected, it may not be used by more than one user [(h)(1)(ii)], and, once soiled or contaminated, it can no longer be maintained in a sanitary condition [(h)(1)(i)] and must be discarded.
- If respirators are to be reused, they must be stored to protect them from damage, contamination, dust, sunlight, extreme temperatures, excessive moisture, and damaging chemicals; and they must be stored to prevent deformation of the facepiece or exhalation valve [(h)(2)(i)].
- Employers must also ensure the respirators are inspected before each use [(h)(3)(i)(A) and (ii)]. Respirators that fail an inspection, or are otherwise found to be defective, must be removed from service [(h)(4)].

Again ... have the employees read the Manufacturer’s Instructions, and get them to sign that they received and read the Appendix that you must provide them. Go online for [Appendix D \(“Information for Employees Using Respirators When Not Required Under the Standard”\)](#); but it says:

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 respirators 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 designated 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.

Finally, do not pontificate or make claims that the masks prevent all problems or are required. Reference common sense information such as [the earlier referenced Article](#) provided:

**[Original story: Thursday, 10:14 a.m.]** Smoke and ash drifting west from the Thomas Fire in Ventura County have created “hazardous” air-quality conditions along the South Coast, according to readings taken Thursday morning by monitoring stations managed by the [Santa Barbara County Air Pollution Control District \(APCD\)](#).

At 7 a.m., the Santa Barbara station measured 373 micrograms of PM10 (particulate matter smaller than 10 microns in diameter) and 220 micrograms of PM2.5 (particulate matter smaller than 2.5 microns in diameter) in the air. The APCD, which follows federal Environmental Protection Agency standards, describes levels of 301-500 as “hazardous” and 201-300 as “very unhealthy.” (PM2.5 particles, or “fine particulates,” are generally considered a more serious health concern than PM10 as smaller particles can travel deeper into the lungs.) “Hazardous” is the APCD’s highest level of warning.

The APCD’s monitoring station in Goleta measured 269 micrograms of PM10 (“very unhealthy”) and 184 of PM2.5 (“unhealthy”) at 9 a.m. Data for Carpinteria was not immediately available.

The APCD has advised residents across the county to limit their time outdoors and avoid activities that stir up ash. People should keep their home and office windows closed, and prevent air circulation from the outside, said APCD spokesperson Lyz Hoffman. Drivers should switch their car’s air system to “recirculate” mode.

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**For those forced to work or venture outside today, the Santa Barbara County Reserve Medical Corps has begun distributing free N95 face masks from the Camino Real Marketplace in Goleta.** They're stationed in front of Costco and near the movie theater. The masks were donated by Direct Relief. The Corps is in the process of setting up other distribution sites in Santa Barbara.

**Hoffman warned that wrapping scarves or sweaters around one's face is not an effective way to filter out smoke or fine particles. N95 masks offer a bit of protection but only for short periods of time, she said. They are not meant to work on children, and adults with respiratory conditions should consult their doctor before wearing one as they reduce airflow. And, Hoffman explained, "It's really important for people to follow the instructions, because if it's not fitted, it's not going to work."**

The CVS on West Carrillo Street has sold out of N95 masks but is expected to receive more later today. The CVS on lower State Street has also sold out and doesn't expect another shipment for several days. Rite Aid and Home Improvement Center have exhausted their supplies as well. Home Depot is expecting to receive a shipment before noon.

High Efficiency Particulate Air (HEPA) filters can be purchased to help remove ash, soot, and dust from inside air. The APCD suggests keeping the device in one room to serve as a "clean-air room." Because the air overall is very dry due to low humidity, health officials advise staying hydrated by drinking lots of water and avoiding caffeinated and alcoholic beverages.

Resources include [the California Smoke Information Page](#). Or the relevant Air Pollution Control District such as [Santa Barbara County](#) or the [Ventura County Air Pollution Control District](#).

**This will not be the last time you encounter air problems from California Wild Fires.**

As NPR recently observed, [California Wildfires are becoming the New Reality](#). Better to anticipate and prepare for the next occasion.

**What do I do when employees want to Voluntarily use another type of Respirator than a Dust Mask?**

For voluntary use of respirators other than dust masks, the OSHA requirements don't rise to the level of that required under the full Respiratory Protection Program, but employers must take certain more involved protective measures.

The employer must:

- Determine that the respirator use will not in itself create a hazard,
- Provide the respirator users with the information contained in the standard's Appendix D,
- **Ensure that the respirator users are Medically Qualified to wear respirators, and**
- **Ensure that the respirators properly fit and are correctly cleaned, stored, and maintained** (different rules may apply regarding facial hair).

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Hazards could result from improper use of other types of Respirators, including:

- By an undetected medical condition (e.g., asthma, heart condition).
- Dermatitis caused by a dirty respirator.
- Infectious illness or an ingestion problem caused by a dirty or poorly disinfected respirator.

We will talk more another time on the full Respiratory Protection Program obligations under fed and Cal-OSHA, but in the interim, don't misstep if you respond to employee requests or make available masks in response to wild fires and recommendations by the authorities.

Howard

### ***Related People***



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