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**DATE:** August 21, 2020  
**TO:** All SMARCA Contractors  
**FROM:** John Quarnstrom and Jim Bigham  
**RE:** OSHA Enforcement of Face Coverings

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OSHA has begun enforcement of face mask use on construction jobsites in Minnesota and around the country. This week OSHA Consultation was on a large school job in Central Minnesota and observed a majority of the workforce without face coverings. They notified the employees and contractors on the job that they would be informing OSHA Enforcement of the situation, they should expect to have an OSHA Enforcement inspection and citations will be issued if face masks are not being properly worn at the time of the inspection. Citations under the General Duty clause have been issued in Minnesota and other states.

We encourage you to review your jobsites to ensure compliance with your Safety and Coronavirus Preparedness Plans. Issuing discipline for noncompliance is your best option to get employees to follow the rules and potentially provide an employee misconduct defense. Now would also be a good time to have a toolbox talk or other communication of the safety requirements, including wearing of facemasks.

Job Hazard Exception:

Some contractors have determined wearing of facemasks is not required because it creates a greater job hazard. This is most common for roofing employees working outside, in hot sun conditions and around hot asphalt. If you plan to use the job hazard exception, we encourage you to document your analysis and reasoning that led you to that conclusion. You should also address the possibility of using face shields. Creating a document and written analysis after the citation is issued will not be as persuasive.

Medical Exception:

We understand some employees are telling employers they cannot wear a facemask for medical reasons. There may be suspicion that the medical excuse is not legitimate, but you should not automatically ask for medical documentation. Governor Walz' Executive Order, HIPPA and the CDC all recommend the employer avoid asking for private health information in most cases. Some employers are allowing face shields to be used as a substitute in these situations. If you allow a face shield to be used instead of a face mask, you should document the reason for this decision. Assignment to another job that does not require a mask may also be an alternative response.

Unfortunately, there are many decisions surrounding COVID-19 that do not have black and white answers. Judgment calls are being made every day on these issues. Feel free to call us or our Safety Director, Mark Walber, if you would like to talk through a decision and get another opinion.