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November 1, 2025

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David Keeling  
Assistant Secretary of Labor for Occupational Safety and Health  
Occupational Safety and Health Administration  
United States Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Re: Amending the Medical Evaluation Requirements in the Respiratory  
Protection Standard for Certain Types of Respirators; Docket ID: OSHA-2025-  
0006

Dear Assistant Secretary Keeling:

On behalf of North America's Building Trades Unions (NABTU), its fourteen affiliated national and international unions and the three million construction workers they represent, I am writing to provide comments on the Department of Labor's Occupational Safety and Health Administration's proposed rule regarding amending the medical evaluation requirements in the respiratory standard for certain types of respirators that was published in the *Federal Register* on July 1, 2025.

NABTU strongly urges OSHA to withdraw its proposed rule that would eliminate medical evaluation requirements for filtering facepiece respirators (FFR) and loose-fitting powered air-purifying respirators (PAPR) as it will harm workers and create additional burdens for employers.

NABTU is also requesting an informal hearing on this proposed rule.

Thank you for the opportunity to provide comment on the Notice of Proposed Rulemaking, and please do not hesitate to contact me if you have any questions regarding our position.

Sincerely,

Chris Trahan Cain  
Director of Safety and Health

**Comments on the Occupational Safety and Health Administration's Proposal to Amend the Medical Evaluation Requirements in the Respiratory Protection Standard for Certain Types of Respirators**

**Submitted by North America's Building Trades Unions**

Docket No: OSHA-2025-0006

November 1, 2025

These comments are submitted by North America's Building Trades Unions (NABTU) on behalf of its 14 affiliated national and international unions and the 3 million working men and women they represent. NABTU strongly urges OSHA to withdraw its proposed rule that would eliminate medical evaluation requirements for filtering facepiece respirators (FFR) and loose-fitting powered air-purifying respirators (PAPR). 90 FR 28463. The proposal will harm workers and create additional burdens for employers.

Our comments will outline the flaws in OSHA's reasoning, demonstrate how the proposed changes deprive workers of essential medical evaluations that help identify impairments that may be made worse by respirator use, and explain how these changes would force employers to handle confidential medical concerns without proper support.

**I. Medical Evaluations are Routine Practice in the Construction Industry.**

In practice, the medical evaluation provisions are relatively simple for employers to provide in the construction industry. Medical evaluations have been routinely provided to members of NABTU's affiliates for decades without issue for all types of respirators.

During initial onboarding, contractors provide construction workers with a medical questionnaire, typically through an online format. The questionnaire is submitted directly to a physician or licensed-health care provider (PLHCP), ensuring that the employer does not receive the worker's personal medical information and that confidentiality is maintained.

Based on the employee responses, a follow-up call with the PLHCP may be initiated. During this conversation, the PLHCP evaluates the worker's health status and determines whether further medical evaluation is necessary or if any limitations should be placed on respirator use to prevent adverse health effects. The PLHCP communicates only the necessary work-related recommendations or restrictions to the

employer—such as limitations on hours of use, activities during use, or respirator type—without disclosing any confidential medical details. The simple questions asked help identify significant health issues such as hypertension, cardiovascular issues, respiratory conditions, claustrophobia, or skin conditions, that may require limitations of respirator use.

## **II. Removing Medical Evaluation Provisions of the Respiratory Protection Standard is Inconsistent with the Occupational Safety and Health Act of 1970.**

OSHA’s proposal to remove longstanding medical evaluation requirements for respirators ignores the clear mandate and authority set in the OSH Act. Congress clearly understood the need and value of medical evaluations when creating the OSH Act by expressly including them within the Act, stating that it is its policy and purpose to assure safe and healthful working conditions, “by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;” 29 U.S.C. § 651(2)(b)(7).

Congress went further by mandating OSHA to include specific medical requirements in standards and stressing the importance of medical confidentiality:

In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health and Human Services, such examinations may be furnished at the expense of the Secretary of Health and Human Services. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health and Human Services, and, at the request of the employee, to his physician.

29 U.S.C. § 651(6)(b)(7)

As described in later sections, OSHA’s proposed rule disregards Congressional direction by eliminating medical evaluation requirements for FFRs and loose-fitting PAPRs without evidence that workers will not face material impairment due to respirator use, and in the face of evidence that respirators cannot be safely used by every individual, including those with hypertension, respiratory conditions, claustrophobia, and skin conditions. Medical evaluations are essential to identify health concerns and set limitations to protect

employees from adverse health effects from all respirator types and preserve medical confidentiality.

### **III. Absence of Data does not Justify the Elimination of Longstanding Best Practices. Absence of Data is a Reason to Uphold Protections.**

OSHA relies on one primary argument to justify its proposal to remove medical evaluation requirements for the use of FFRs and loose-fitting PAPRs: the lack of data showing material impairment avoided by medical evaluations. 90 FR 28465. Although NABTU acknowledges that the evidence is limited, we fundamentally disagree with OSHA's conclusion. The lack of conclusive evidence reinforces the importance of preserving medical evaluation requirements – not eliminating them. In the face of uncertainty, the agency must uphold—not erode—protections that prevent harm to workers' safety and health. In the paragraphs below, NABTU responds to the minimal evidence that OSHA presented in the NPRM.

#### *Epidemiological studies*

The lack of large-scale epidemiological studies is not a valid justification for eliminating provisions. It is reasonable that the occupational safety and health epidemiology community has prioritized investigating persistent and high-impact workplace hazards over evaluating the efficacy of a best practice that has been accepted for over 30 years. 63 FR 1207. Significant changes to longstanding best practices should be based on the presence and not the absence of epidemiological data. Removing protections that workers have relied upon for decades and then waiting for evidence of harm to present and be studied goes against OSHA's fundamental mission to assure safe and healthy workplaces. 29 U.S.C. § 651(b) (through OSH Act, Congress intended to ensure “safe and healthful working conditions” across the nation and “to preserve our human resources.”); *see also Indus. Union Dep't, AFL-CIO v. API*, 448 U.S. 607, 656 (1980) (upholding OSHA interpretation of data that erred “on the side of overprotection rather than underprotection.”)

OSHA has referenced two studies (Doney et al., 2005 and Brousseau et al., 2015) that found medical evaluations are not always performed.<sup>1,2</sup> These studies did not examine the efficacy of medical evaluations, only employers' compliance with current regulatory requirements and public health guidelines. Therefore, they cannot be used to justify the

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<sup>1</sup> Doney, B. C., Groce, D. W., Campbell, D. L., Greskevitch, M. F., Hoffman, W. A., Middendorf, P. J., ... Bang, K. M. (2005). A Survey of Private Sector Respirator Use in the United States: An Overview of Findings. *Journal of Occupational and Environmental Hygiene*, 2(5), 267–276. <https://doi.org/10.1080/15459620590949020>.

<sup>2</sup> Brousseau LM, Conroy LM, Sietsema M, Cline K, Durski K. Evaluation of Minnesota and Illinois hospital respiratory protection programs and health care worker respirator use. *J Occup Environ Hyg*. 2015;12(1):1-15. doi: 10.1080/15459624.2014.930560. PMID: 24918755.

inclusion or removal of medical evaluation requirements in the respiratory protection standard.

### *Increased respirator usage after the emergency of COVID-19*

OSHA has stated there is no data on adverse outcomes from individuals with underlying medical conditions during the COVID-19 pandemic despite large increases in respirator usage, making it difficult for them to justify that medical evaluations are necessary. 90 FR 28465.

In fact, evidence from the COVID-19 pandemic shows that FFRs were frequently worn without adhering to many provisions of the respiratory protection standard, compromising their fit and effectiveness.<sup>3</sup> Also, CDC guidance for workers was consistently changing for respirators and face coverings, at one point even recommending cloth face coverings or bandanas for use in workplaces in place of respiratory protection.<sup>4</sup> These mixed messages resulted in confusing information on the importance of fit testing, proper seals, medical evaluations, and limitations of respirators for employers and workers.

Importantly, the same health conditions that could result in limited respirator use during a medical evaluation are risk factors for severe disease and death from COVID-19, including asthma, hypertension, or other respiratory or cardiovascular issues. Individuals with these conditions often chose to remove themselves from work that was at a high-risk of COVID-19 exposure and required the extended use of FFRs during this time.<sup>5</sup> Therefore, there would be no information on limitations or adverse health effects related to respirator use during this time.

The respirator shortage the world faced during the COVID-19 pandemic had an impact on the construction industry's ability to obtain the necessary respiratory protection for known respiratory hazards. OSHA should encourage the epidemiology community, including its sister agency NIOSH, to examine the chronic health effects from potential exposure to respiratory hazards due to PPE shortages during this time. This information would be of greater value to the occupational safety and health community than invalidating longstanding respiratory protection practices.

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<sup>3</sup> <https://www.osha.gov/sites/default/files/respiratory-protection-covid19-compliance.pdf>

<sup>4</sup> Business Insider. "The CDC says healthcare workers who can't get a mask should use a bandana or scarf as a 'last resort' as supplies run short." 19 March 2020. <https://www.businessinsider.com/cdc-recommends-health-workers-use-bandan-as-face-masks-crisis-2020-3>

<sup>5</sup> Philips, Z. "After 5 Years, Construction Still Reels from COVID's Labor Impact." *Construction Dive*, March 13, 2025. <https://www.constructiondive.com/news/covid-impact-construction-labor-five-years/742445/>

*Available data on effects largely shows minimal impact on health*

OSHA acknowledges that the available evidence does not conclusively show that using FFRs or loose fitting PAPRs in the workplace has minimal health impacts for all workers. 90 FR 28433. In fact, the literature OSHA cites in the NPRM excluded individuals that reported health conditions that could lead to adverse health effects.

Recent studies referenced in the NPRM, Epstein et al., 2020 and Anil et al. 2023, assessed cardiovascular parameters only on healthy individuals performing low to moderate exercise and did not evaluate conditions that are reflective of the realities of work in the construction industry. In Anil et al., healthy volunteers from the healthcare sector performed indoor cycling in an air-conditioned room with low humidity.<sup>6</sup> In Epstein et al., healthy individuals participated in short-term moderate-strenuous aerobic exercise that resulted in a significant increase in end-tidal carbon dioxide levels and concluded, “[s]ubjects suffering from lung diseases should have a cautious evaluation before attempting physical activity with any mask.”<sup>7</sup>

In contrast to the environmental conditions in these studies, construction work commonly involves long work hours and overtime, high exertion tasks, work in hot and humid conditions, and exposure to toxic substances that cause serious health effects such as lung and cardiovascular disease.<sup>8</sup>

Once again, the lack of data cannot be used to determine the lack of a health outcome. It can only be used to determine that the question has not been investigated. It is also foreseeable that common best practices and regulations that have been in place would not be a research priority.

#### **IV. OSHA Must Prevent Any Level of Harm to Workers, Not Only Harm That May Result in Immediate Death**

Within the section of the proposed rule titled “*Workers are able to respond quickly when symptoms arise,*” OSHA has stated that in the “rare circumstance that a worker develops a symptom from wearing an FFR or loose-fitting PAPR, these scenarios are not immediately

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<sup>6</sup> Anil, Abhijith K., et al. "Comparative study of the effect of N95 facemask and Powered Air-purifying Respirator (2 fans, N95 filter) on cardiovascular parameters of healthy individuals during exercise." *Industrial health* 61.2 (2022): 125-133.

<sup>7</sup> Epstein, Danny, et al. "Return to training in the COVID-19 era: the physiological effects of face masks during exercise." *Scandinavian journal of medicine & science in sports* 31.1 (2021): 70-75.

<sup>8</sup> Trueblood, A.B., Harris, W., Dufoe, D., Yohannes, T., & Brooks, R.D. (2025). *The Construction Chart Book 7th edition. Hours Worked, Overtime, and Time Use.* CPWR-The Center for Construction Research and Training. [www.cpwr.com/research/data-center/the-construction-chart-book/](http://www.cpwr.com/research/data-center/the-construction-chart-book/).

Dangerous to Life or Health.” This rationale is deeply flawed and contradictory to the OSH Act which mandates the agency to set the standard which most adequately assures that no employee will suffer material health or functional capacity 29 U.S.C. § 655(b)(5). OSHA’s statement implies that unless a worker is at immediate risk of death, adverse health effects are acceptable. This position is abhorrent and fundamentally contradicts the agency’s core mission.

Environmental conditions that require respiratory protection are already high-risk environments. Respiratory protection is required under 1910.134 when the risk of exposure to harmful dusts, fogs, fumes, mists, gases, smokes, sprays or vapors that cause occupational diseases cannot be feasibly controlled through effective engineering controls.

Construction workers face routine exposure to a wide array of dangerous substances, many of which are harmful even at extremely low concentrations. Carcinogens, such as asbestos, crystalline silica, beryllium, inorganic arsenic, cadmium, and hexavalent chromium, are common construction hazards with no known safe level of exposure.<sup>9</sup> Inhalation of even trace amounts can lead to devastating diseases like lung cancer, mesothelioma, and other chronic illnesses.

Construction workers also encounter many respiratory irritants, such as ammonia, formaldehyde, toxic dusts, welding fumes, solvents, and diesel exhaust, which can cause immediate symptoms such as coughing, wheezing, and shortness of breath after brief exposures. These symptoms can turn life-threatening when experienced by individuals with asthma, chronic obstructive pulmonary disease (COPD) and other respiratory issues—the exact health conditions that are known to be identified during medical evaluations for respirator use.

Construction workers can also encounter sensitizing chemicals in paints and coatings. Sensitizing chemicals include isocyanates. Isocyanate exposure can result in adverse health effects such as occupational asthma. Once a worker becomes sensitized through repeated exposure, even extremely low levels of exposure to the toxic substance can trigger an adverse health event.

To suggest that it is acceptable for a worker to experience a health effect from respirator use—so long as it is not immediately fatal—and then be left unprotected in a toxic environment is ethically indefensible. Such a stance undermines the very foundation of the

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<sup>9</sup> [https://ntp.niehs.nih.gov/sites/default/files/ntp/roc/content/listed\\_substances\\_508.pdf](https://ntp.niehs.nih.gov/sites/default/files/ntp/roc/content/listed_substances_508.pdf);  
<https://ntp.niehs.nih.gov/research/assessments/cancer/roc>.

OSH Act, 29 U.S.C. § 651(b), and betrays the trust that millions of workers place in OSHA to safeguard their health and well-being.

## **V. Evidence Shows that Medical Evaluations Protect Workers from Material Impairment.**

OSHA has been mandated to assure safe and healthful working conditions and courts have determined that OSHA does not require scientific certainty or precision of the exact point at which each type of [harm] becomes a material impairment. *AFL-CIO v. OSHA*, 965 F.2d 962, 975 (11<sup>th</sup> Cir. 1992). While the evidence that OSHA presents in the NPRM doesn't provide scientific certainty or precision, all current evidence shows that medical evaluations can protect against material impairment. NABTU is providing additional evidence to show that medical evaluations protect workers from material impairment that could occur from the use of FFRs and loose fitting PAPRs.

### *Hypertension*

Workers with hypertension must be evaluated by a health care provider to determine if they can wear a respirator on the job. Workers with hypertension may experience additional strain when wearing a respirator and may need time limitations, activity limitations, or respirator type limitations. In 2024, 23.8% of construction workers reported that they had hypertension at one point in their lifetime. Of these, 82.7% had hypertension within the past year.<sup>10</sup>

### *Respiratory conditions*

There are many respiratory conditions which may require restrictions in respiratory use, including conditions caused by common construction hazards. OSHA must consider workers with respiratory conditions, including asthma, COPD, silicosis, asbestosis, and other types of pulmonary fibrosis. Occupational asthma can be caused by epoxies, adhesives, diisocyanates, metal fumes and dusts, metalworking fluid, and wood dusts.<sup>11</sup> COPD can be caused by a myriad of occupational hazards including exposure to dusts, fumes, chemicals and vapors. Respirators are commonly used to reduce workers' exposure to hazards that cause these health conditions, and workers who are working in environments with these hazards are more likely to have these health conditions.

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<sup>10</sup> CPWR—The Center for Construction Research and Training. (2025). Health Risk Factors in Construction [dashboard]. <https://www.cpwr.com/research/data-center/the-construction-chart-book/interactive-7th/injuries-illnesses-health/health-risk-factors/>.

<sup>11</sup> NIOSH. Work-related Asthma Exposures. <https://www.cdc.gov/niosh/asthma/hcp/exposures/index.html>

According to BLS, in 2023, there were 1,600 recordable respiratory condition cases among construction workers, with a rate of 2.2 per 10,000 FTEs.<sup>12</sup> A recordable condition is defined as one that resulted in one or more of the following: days away from work, restricted work/job transfer, medical treatment beyond first aid, or loss of consciousness.

Respiratory conditions have been regularly reported by construction workers. In 2024, 11.3% of construction workers reported being told they had asthma. Of these, 13.1% reported having an asthma attack/episode within the past year.<sup>13</sup> In 2024, 1.7% of workers were told they had COPD at one point in their lifetime.<sup>14</sup> Additionally, in a review of construction workers who participate in a medical screening program after working in our nation's nuclear weapons complex, approximately 13% of screened construction workers (n=17,941) had COPD. Of those 67.4% were classified as moderate to severe cases.<sup>15</sup>

### *Claustrophobia*

Studies have shown that among the U.S. population 12.5% of individuals experience claustrophobia at some point in their lives.<sup>16</sup> A 2017 study, researchers analyzed common psychological disorders in construction management and found that claustrophobia directly results in significant distress, functional cognition inference, anxiety and panic in construction, with 48% of participants reporting symptoms of claustrophobia such as fear of suffocation or restriction.<sup>17</sup> While this study analyzed individuals in construction management who are unlikely to wear a respirator or receive the required medical evaluation like a construction trades worker, it shows that there is a high likelihood for those entering the construction industry to face claustrophobia.

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<sup>12</sup> Bureau of Labor Statistics. (2024). SNR07. Illness cases by category of illness - rates, counts, and percent - industry division. <https://www.bls.gov/iif/nonfatal-injuries-and-illnesses-tables/illness-cases-by-category-of-illness-rates-counts-by-industry-division-2023-national.xlsx>

<sup>13</sup> CPWR—The Center for Construction Research and Training. (2025). Health Risk Factors in Construction [dashboard]. <https://www.cpwr.com/research/data-center/the-construction-chart-book/interactive-7th/injuries-illnesses-health/health-risk-factors/>.

<sup>14</sup> CPWR—The Center for Construction Research and Training. (2025). Health Risk Factors in Construction [dashboard]. <https://www.cpwr.com/research/data-center/the-construction-chart-book/interactive-7th/injuries-illnesses-health/health-risk-factors/>.

<sup>15</sup> Dement, J. M., Cloeren, M., Ringen, K., Quinn, P., Chen, A., Cranford, K., ... & Hines, S. (2021). COPD risk among older construction workers—Updated analyses 2020. *American journal of industrial medicine*, 64(6), 462-475.

<sup>16</sup> Vadakkan C, Siddiqui W. Claustrophobia. [Updated 2023 Feb 8]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2025 Jan-. Available from: <https://www.ncbi.nlm.nih.gov/sites/books/NBK542327/>

<sup>17</sup> Wang, C., Mohd-Rahim, F.A., Chan, Y.Y. & Abdul-Rahman, H. (2017). Fuzzy mapping on psychological disorders in construction management. *Journal of Construction Engineering and Management*, 143(2). [https://doi.org/10.1061/\(ASCE\)CO.1943-7862.0001217](https://doi.org/10.1061/(ASCE)CO.1943-7862.0001217)

The two primary hazards that may result in a claustrophobic event are toxic substance levels that require use of a respirator and confined spaces. Currently, the medical questionnaire includes a question about claustrophobia and workers are given an opportunity to discuss their concerns with a medical provider. Then with a conversation, a medical provider can determine if any limitations are required.

This medical evaluation is also the only opportunity workers have to share claustrophobia concerns. There is no medical evaluation in the confined space standard or other standards where workers may be at risk of a claustrophobic episode at work due to the nature of the task. However, workers performing confined space work frequently receive a medical evaluation for respirator use as the nature of confined space work often makes them necessary. Without a medical evaluation through a questionnaire and then consultation with a medical provider, there is no opportunity for construction workers to identify concerns so their job tasks will not be limited to prevent a claustrophobic episode.

Claustrophobia can result in a myriad of health effects that places the worker and their coworkers at risk. Claustrophobia due to the use of certain respirators has been described as “the more extreme reaction of hyperventilation, tachycardia, sweating, fear and inability to keep the mask on” and is considered a “combination of physiological and psychological responses” (Missri & Alexander, 1978, as cited in Ritchie, 1992).

#### *Skin conditions (dermatitis)*

OSHA must also consider skin conditions that affect a worker’s ability to wear a respirator. Skin conditions, such as dermatitis or eczema, can be caused by common construction hazards, including cement products and solvents. Skin conditions can be exacerbated by respirator use due to friction, pressure on the skin, and accumulation of moisture. In 2024, 7.7% of construction workers reported they had an itchy rash due to eczema or atopic dermatitis. Of those, 57.5% reported they had been told by a doctor that they had eczema or atopic dermatitis.<sup>18</sup>

In 2023, there were 500 recordable nonfatal skin diseases or disorders among construction workers that were severe enough to require a day away from work, job restriction or transfer, or medical treatment beyond first aid.<sup>19</sup>

#### *Data in the OSHA Docket*

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<sup>18</sup> CDC. 2024 National Health Interview Survey. CPWR Data Center Calculations.

<sup>19</sup> Bureau of Labor Statistics. (2024). SNR07. Illness cases by category of illness - rates, counts, and percent - industry division. <https://www.bls.gov/iif/nonfatal-injuries-and-illnesses-tables/illness-cases-by-category-of-illness-rates-counts-by-industry-division-2023-national.xlsx>.

The 1998 final rule included comments from the Organization Resources Counselors, Inc (Docket No. H-049, Ex. 54-424) showing that medical evaluations limited 2% of their workforce from wearing respirators due to various health conditions and Boeing (Docket No. H-049, Ex. 54-445) sharing that 1-2% of their workforce was also limited for not participating in an evaluation or employee preference (63 FR 1213, 1219). Additionally, OSHA provided data from more recent studies that also found between 1-2% of workers who were provided medical evaluations either had limitations put on their work or were denied respirators by the medical provider. OSHA is now changing their conclusion that 1-2% of the workforce is not sufficient to provide these protections (Pappas et al., 1999, Desai et al., 2017). We strongly disagree with OSHA's change in conclusion; 1-2% of the workforce is significant. Assuming the accuracy and applicability of these estimations to the construction industry, 126,000 to 252,000 construction workers of the 12.6 million construction labor force may be unable to wear a respirator.<sup>20</sup> These workers are significant, and their health and safety protections must be preserved.

#### **VI. Eliminating Medical Evaluations for FFRs and Loose-fitting PAPRs Heightens the Risk of Adverse Effects, Increases Employer Liability, and Reduces Medical Confidentiality.**

Medical evaluations for respirator use are a critical safeguard. They ensure that respirator use is medically appropriate, protect workers from preventable harm, and offer employers a clear, consistent framework for compliance and accountability—ultimately reducing liability. It also ensures that all health-related information is a confidential matter between the employee and the PLHCP and allows employees the choice on what and how to disclose medical conditions. Importantly, if OSHA moves forward with this proposal, the absence of a medical evaluation requirement must not absolve employers of responsibility to prevent and address adverse health effects that occur from respirator use.

Employers must have a continued obligation to ensure that workers are medically fit to use respirators and to manage any health-related limitations. The logistics to meet this obligation include implementing confidential medical reporting systems, maintaining confidential medical records, and making appropriate accommodations to protect against adverse health effects. These obligations are all more effectively and reliably managed through the current medical evaluation process.

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<sup>20</sup> Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, J. Robert Warren, and Michael Westberry. Integrated Public Use Microdata Series, 2024 Current Population Survey: Version 9.0 [dataset]. Minneapolis, MN: IPUMS, 2025. doi.org/10.18128/D030.V9.0.

Additionally, removing the medical evaluation requirement does not eliminate the risk. It simply obscures it and makes it more difficult to manage. Employers would be forced to be in a reactive position, where they must respond to medical emergencies or adverse health outcomes that could have been prevented by a medical evaluation. It also places workers in a vulnerable position, where they may feel coerced to choose between protecting their health by disclosing personal medical information to their employer or maintaining their employment.

The success of preventing an adverse event due to respirator use depends on medical confidentiality to encourage employees to disclose personal health conditions. Construction workers are legitimately concerned about being discriminated against (blackballed) by employers that do not want to have to accommodate any limitations on the employee's ability to function like everyone else in the workplace. Construction is a highly physical occupation; hiring is done quickly and often without much oversight; and construction employees are justifiably concerned about being blackballed when employers have any reason to view them as physically compromised or vulnerable to health or safety risks on the site.

It is highly unlikely that an employee would disclose a health condition to their employer that could impact their employment. The complexity of this scenario increases when the health condition is due to workplace exposures. A system that does not include medical confidentiality and a PLHCP reduces the employees' choice to disclose a health condition, increasing employer liability. Current standards such as respirable crystalline silica (1926.1153) include strong medical confidentiality language for this exact reason. Going backwards by removing an option for an employee to disclose a health condition during a confidential medical evaluation increases the chance of both an adverse health condition and discrimination.

Even with the most responsible and well-intentioned employer, this proposal would result in unnecessary liability for an employer that is currently managed through the current medical evaluation provisions. Considering a scenario where an employee willingly shares their personal medical information with their employer and the employer tries to take appropriate action based on the information without a PLHCP evaluation, respirator use may not properly be limited. It is likely that employees underestimate the seriousness of their condition, believing they can "push through" symptoms without professional medical assessment. Employers are also not medical experts and may underestimate the seriousness of conditions reported to them. Medical evaluations require the PLHCP to be provided with essential information such as a description of the type of respirator to be used, other PPE used, and workplace conditions that could impose physiological burdens.

The PLHCP then assesses the working conditions and individual health information to make a medical determination. Employees and employers would most likely not properly incorporate all confounding health or workplace factors that a PLHCP would consider in evaluating and recommending limitations. To reduce liability, most responsible employers would rely on a third party with medical expertise to be involved, as is already provided through the current standard.

## **Conclusion**

NABTU strongly urges OSHA to withdraw the proposed rule eliminating medical evaluation requirements for filtering facepiece respirators and loose-fitting powered air-purifying respirators. The absence of data does not justify the removal of any longstanding protections that safeguard worker health. Ensuring that workers are medically fit to use respirators and preventing adverse health outcomes is an essential part of the respiratory protection standard. Eliminating this requirement is inconsistent with the OSH Act, increases risk, undermines medical confidentiality, and places undue liability on employers. OSHA must uphold its duty to protect workers by maintaining the current medical evaluation provisions in the respiratory protection standard.