

MEMO

To: Sikh Healthcare Professionals

From: The Sikh Coalition

Date: March 22, 2020 (last updated April 7, 2020)

Re: Religious Accommodations by Hospitals for Respirators During the COVID-19 Outbreak

This memo is to provide information and guidance during this very serious COVID-19 pandemic that is rapidly changing the way healthcare professionals (“HPs”) provide treatment. The federal government has declared a national emergency, and many states are responding by instituting shelter-in-place orders to try and mitigate the impact of this pandemic. Because this is such an unprecedented event, there is no black and white when it comes to the rules, policies and procedures in place, and we hope to share some information that may be helpful as you navigate through balancing your religious beliefs with performing your medical duties and also maintaining your own health and safety.

It has come to our attention that, in some cases, Sikh HPs who keep their facial hair are being directed to shave/trim their facial hair in order to comply with newly released Occupational Safety and Health Administration¹ (“OSHA”) and Centers of Disease Control and Prevention (“CDC”) standards as a result of the COVID-19 outbreak. Hospitals have been advised that all employees should (a) wear masks or respirators when treating patients affected by COVID-19, and (b) establish a seal to maximize respiratory protection.² However, due to the shortage of respirators in general, enforcement of this policy requiring HPs’ wear of sealed respirators and masks for the treatment of COVID-19 patients is discretionary, not mandatory. Thus, neither OSHA nor the CDC are enforcing these requirements. Please note that these relaxed standards, released in late March and early April respectively, are likely temporary and you should continue to check both the OSHA website and your own hospital’s policies for updates.

In some cases, hospitals are mandating that all HPs meet a fitted seal test with respirators they have on hand, which are generally N95 respirators, despite OSHA and CDC guidelines not requiring that currently. Though most hospitals also have Powered Air-Purifying Respirators (“PAPRs”) available – which provide for full coverage of its wearer’s face regardless of facial hair, facial deformities or a myriad of other reasons a N95 fit test may not be met -- they are more expensive and in limited supply. As a result, in some cases these Sikh HPs are being

¹ United States Department of Labor Occupational Safety and Health Administration Enforcement Memo, Temporary Enforcement Guidance – Healthcare Respiratory Protection Annual Fit-Testing for N95 Filtering Facepieces During the COVID-19 Outbreak (March 14, 2020), available at <https://www.osha.gov/memos/2020-03-14/temporary-enforcement-guidance-healthcare-respiratory-protection-annual-fit>.

² *Id.*



ordered to either shave/trim their beards to wear the available N95 respirators, or risk disciplinary action ranging from suspension to termination.

Due to the rapidly evolving and emergency nature of the COVID-19 outbreak, it is unclear what level of religious protections remain in place during this time in the interest of safety considerations. Furthermore, hospital obligations vary based on whether they are public or private, as employees of the public sector are subject to greater constitutional protections by their employers than those who work for the private sector. **While this is not intended as legal advice, our goal is to provide you with necessary information from which you can make a thoughtful decision regarding the balance of your religious beliefs and the safety of your patients and yourself. In the event you do require consultation or more information, please reach out to the Sikh Coalition's Legal team at <https://www.sikhcoalition.org/legal-help/>.**

If your hospital administration requires you to shave/trim your facial hair to meet their fit test requirements for the N95 (or another readily available respirator), please review the following information:

1. Review your employee handbook for emergency situations or crisis plans to determine whether the hospital has a policy on suspension or revocation of religious accommodations, failure to comply with hospital wide safety mandates, and an appeals process for such orders, including a timeline to file an appeal.
2. Immediately put your administration and supervisors on written notice that you maintain your facial hair pursuant to a sincerely held religious belief, and your practice is such that it cannot be shaved or trimmed even in emergency situations.
3. Immediately put your administration and supervisors on written notice that, as a result of your religious beliefs, you require a PAPR rather than an N95 respirator to treat patients suffering from the COVID-19 outbreak.
4. Ask what steps the hospital has taken to try and provide this accommodation for you. Remind them that requiring you to shave/trim is not the least restrictive means of accomplishing their goal of maintaining safety because there is a respirator available (the PAPR) that can provide you with a seal without having to shave or trim.
5. Ask whether the hospital is making any accommodations for people with facial hair, either for medical, religious or other reasons. If not, ask what criteria they are using to decide whom they are asking to shave/trim. If they are making accommodations, explain that you would also like to obtain an accommodation to maintain your facial hair.
6. Establish an understanding of (a) how many PAPRs the hospital has on hand, and (b) the process by which you can obtain one in an emergency situation (i.e. whether one will be assigned to you or if they are doled out on a first-come first-serve basis).
7. In the event PAPRs are doled out on a first-come first-serve basis, establish the process by which you can exchange an N95 respirator with an individual who has a PAPR.
8. While we recognize that supplies are limited, we recommend that, if plausible, you look to purchase your own PAPR to avoid this issue altogether. Some hospitals may provide reimbursement for the cost.



9. Understand that, if you choose to continue treating COVID-19 patients in person without an appropriately fitted respirator and face mask, you will likely be asked to waive future claims against the hospital.
10. Understand that, if you choose to be suspended or terminated by not complying with the hospital's directives, there is no certainty as to the strength of future claims based on the emergency nature of this outbreak. Some factors to take into consideration may include whether you work for a public or private hospital, and the level to which the CDC and OSHA have relaxed their standards on the use of face masks and respirators as well.
11. In the event you can provide medical care virtually, seek to do so to minimize your exposure.
12. If you are a HP at higher risk for severe illness from COVID-19 from contact with known or suspected COVID-19 patients, ask to be excluded from providing in person medical care altogether (i.e. you are of older age, have chronic medical conditions, or pregnant).

While these are unprecedented times and there is no clarity as to whether hospitals may be held justified in suspending religious and medical accommodations for HPs due to the compelling safety concerns at play, we do know that standards have been relaxed nationwide due to the massive shortage in respirators and masks in general. For example, as of March 17th, the CDC recommends that HPs use homemade facemasks such as bandanas or scarves to care for COVID-19 patients when masks are not available.³ As a result, there is significantly less strength to a safety argument for hospitals requiring their employees to shave/trim hair in violation of a religious belief, and it leaves room for employee protections of religious practices. These recommendations may change, however, so it is important to continue checking the CDC's website for updates.

Ultimately, because we are in uncharted territory on how concerning this outbreak is, how long it will last, and the rapidly evolving safety concerns involved, these types of challenges will continue. We aim to arm you with as much information as possible during these trying times so you are in the best position to make the right decision for yourself. We also recommend that you continue to check for policy updates from your hospital, OSHA and the CDC websites routinely. If you have any specific questions or concerns, please feel free to reach out to the Sikh Coalition's Legal team as soon as possible for a consult.

Sincerely,



Amrith Kaur
Legal Director
The Sikh Coalition

³ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19) (March 17, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/face-masks.html>.