



Oregon OSHA Releases New COVID-19-Related Temporary Workplace Safety Rules with Upcoming Deadlines for All Employers

On November 5, Oregon OSHA finally published OAR 437-001-0744 *Addressing COVID-19 Workplace Risks* (the Rule) after months of various drafts, feedback from businesses, and revisions. This regulation now sets out in detail how Oregon employers can ensure that they are meeting their obligation to provide a safe workplace to their employees during this pandemic. The [regulation](#) is over 20 pages and comes with a 50+ page appendix. The Rule will become effective on November 16, 2020. We outline the key terms and steps below.

Oregon OSHA designates rules for two categories of employers: (1) all workplaces (all employers who employ at least 1); and, also, (2) workplaces at exceptional risk due to direct patient care or other similar responsibilities. This alert focuses only on the rules set out for all workplaces. (For those employers who fall into the exceptional risk category, we advise that they contact our office for guidance on the job duty specific requirements for their industry.)

Physical Distancing (Deadline November 16, 2020)

All employers must take steps and adjust practices to ensure that both work activities and workflow are designed to eliminate the need for any employee to be within six feet of another individual in order to perform their job duties, unless the employer can demonstrate that such physical distancing is not feasible for certain activities. While prior drafts of the Rule outlined very detailed examples about “bank tellers” and other employees who are serving customers may be separated by a transparent barrier and how to measure and calculate the six feet of distance, none of these examples made it into the final rule. Therefore, we do not have clear guidance on how the six feet is measured if there is a transparent barrier in place in between an employee and a member or another coworker. It appears that Oregon OSHA realized how difficult it was to issue guidance on so many different possibilities. Without clear guidance, a common sense approach will be to ensure that the barrier is large enough to provide a barrier past the employee’s face when standing or sitting to block the aerosols. The Rule also provides an exception for when the six feet cannot be maintained and requires the employee and any other individual within six feet of the employee to wear a face covering and that as much distance as practical is kept between the individuals.

Face Covering, Masks, Face Shields (Deadline November 16, 2020)

The Rule requires every employee and individual, including members, vendors, or contractors, to wear a mask, face covering, or face shield as required by the [Oregon Health Authority’s Statewide Mask, Face Covering, Face Shield Guidance](#). This guidance requires employees, contractors, volunteers, members, and others to wear a mask, face covering, or face shield in all indoor work spaces. The exemption is if an employee is in a location where the employee does not have a job that requires interacting with the public or with other employees, such as a large warehouse and at least six feet of distance can be maintained between other people. When six feet of distance cannot be maintained, such as in a restroom or break room, masks, face coverings, or face shields are required. Face coverings are not required when an employee is eating or



drinking. Employers must provide masks and face coverings for employees. Employers must engage in the reasonable accommodation process under disability laws if an employee has a disability which prohibits the employee from wearing a face covering. However, the Rule makes clear that such an accommodation does not include simply exempting the individuals from the requirement to wear masks, face coverings, or face shields in public spaces. (Face shields without a face covering are not effective to prevent exposure.)

In addition, if transporting employees in a vehicle for work purposes, regardless of the distance, everyone in the vehicle must wear a mask, face covering, or face shield.

Cleaning and Sanitation (Deadline November 16, 2020)

The Rule requires employers to regularly clean and sanitize all common areas, shared equipment, and high touch surfaces within the control of the employer and that are used by the employees or the public.

In general, the regular cleaning must occur as follows:

- (1) If the space is occupied less than 12 hours a day: at least once every 24 hours; or
- (2) If the space is occupied more than 12 hours a day: at least once every 8 hours.

Employers must provide employees with the time needed and supplies to perform hand hygiene before using shared equipment (photocopier, breakroom equipment). In addition, employers must provide employees with supplies and reasonable time necessary to clean or sanitize more frequently than would otherwise be required if the employee chooses to do so.

Oregon OSHA Poster (Deadline November 16, 2020)

The Rule requires all employers to post its "[COVID-19 HAZARDS POST.](#)" In addition, employers must provide a copy to all remote employees.

Building Operators (Deadline November 23, 2020)

By no later than November 23, 2020, employers who operate or otherwise control buildings where employees work must: (1) ensure that the sanitation requirements outlined above are met; and (2) post signs in areas where masks, face coverings, or face shields are required.

Ventilation Requirements (Deadline January 6, 2021)

By no later than January 6, 2021, employers must optimize the amount of outside air circulated through its existing heating, ventilation, and air condition (HVAC systems). However, this regulation does not require the installation of new equipment.



The employer must ensure that (1) all air filters are maintained and replaced as necessary to ensure the proper function of the system; and (2) all intake ports that provide outside air to the HVAC system are cleaned, maintained, and cleared of any debris that may affect the function of the system.

Exposure Risk Assessment (Deadline December 7, 2020)

By no later than December 7, 2020, employers must conduct a COVID-19 exposure risk assessment. Oregon OSHA provides a [template](#) to help employers complete the assessment and draft the findings. Employers must include employees in the risk assessment by obtaining feedback from the employees and this may be achieved via a safety meeting or safety committee process. Safety committees already consist of a mix of management and staff (at least 50% non-management employees) who can complete the assessment. The safety committee should document the process and record all feedback to submit answers to the risk assessment. All employers with more than 10 employees statewide must record their risk assessment findings. The Risk Assessment outlines 13 questions which range from how have job duties been modified to ensure at least six feet of distance between all individuals to what is the procedure for employees to report workplace hazards related to COVID-19. Employers must realize that it will take some time to complete the 13 questions, in particular, if employers have multiple worksites which are not similar requiring multiple assessments. Employers should immediately start to review the questions and set a timeline for employee participation and final drafting.

Infection Control Plans (Deadline December 7, 2020)

By no later than December 7, 2020, employers must also establish and implement an Infection Control Plan based on the risks identified in the COVID-19 Risk Assessment. While Oregon OSHA will provide a template for the Infection Control Plan (at a future date), Employers will need to work quickly to identify all of the elements of the plan. The plan must include:

- (1) a list of all job assignments or worker tasks requiring the use of PPE necessary to minimize employee exposure to COVID-19;
- (2) the procedures the employer will use to ensure that there is an adequate supply of mask, face covering, or face shields and PPE necessary to minimize employee exposure to COVID-19 (PPE is defined as specialized clothing or equipment for protection against a hazard);
- (3) a list and description for the specific hazard control measures that the employer installed or implemented to minimize employee exposure;
- (4) a description for the employer's COVID-19 mask, face covering, and face shield requirements at the workplace, and method for informing the employees;
- (5) the procedures the employer will use to communicate with its employees and other employers in multi-employer worksites regarding an employee's exposure to an individual



known or suspected to be infected with COVID-19 to whom other workers may have been exposed; and

(6) the procedures that the employer will use to provide its workers with the initial employee information and training required by this rule.

Employee Training (Deadline December 21, 2020)

By no later than December 21, 2020, employers must provide workers with information and training regarding COVID-19. This training can be provided remotely or using a computer-based model but must be provided in a manner and language understood by the employees. Also, the training must allow for an opportunity for feedback from employees about the topics covered in the training. The Rule outlines the scope of the training and Oregon OSHA plans to release training materials that can be used to complete the training.

COVID-19 Infection Notification Process (Deadline November 16, 2020)

Employers must establish a process to notify:

(1) “exposed employees” who are defined as those who were within six feet of a confirmed COVID-19 individual for a cumulative total of 15 minutes or more, regardless of whether one or both of them were wearing face coverings, that they had a work related contact with an individual who has tested positive for COVID-19; and

(2) “affected employees” who are defined as employees who work in the same facility or in the same well-defined portion of the facility (same floor) as an individual who has confirmed COVID-19 and who was present in the facility.

Oregon OSHA will be publishing a model procedure before the effective date of the Rule that may be used.

COVID-19 Testing for Employees (Deadline November 16, 2020)

Employers must clearly communicate, in writing when possible, if an employer is going to direct testing of an employee or if the employer is not going to require testing. This is critical because the employer is responsible for the cost of the test, employee time, and employee travel if the employer requests or requires the test. However, if the employer does not require the test, the employer is not expected to cover the direct cost of such testing or any related travel.

Employers must cooperate with local public health agencies or the OHA when they indicate that COVID-19 diagnostic testing within the workplace is necessary.



Medical Removal (Deadline November 16, 2020)

If the OHA or local health agency or medical provider recommends an employee be restricted from work due to quarantine or isolation, the employer must direct the employee to isolate at home. Except from providing the direction to isolate or quarantine to the employee, the employer has no further obligation to enforce the employee's isolation or quarantine. The employer must allow the employee to telework if suitable work is available and the employee's health does not prevent it. Employers cannot retaliate against employees for quarantining or isolating as required and the employee must return to the employee's previous job duties if still available.

While the Rule requires employers to quickly take on additional work and deadlines, the goal is to ensure a safe workplace for everyone, and the attention to detail at each stage could make a difference for many employees. Over the next two months, it will be critical to develop a team and deadlines to comply with the Rule. Our attorneys are available to help apply the Rule's requirements to your business and to ensure compliance.

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