

Oregon OSHA Adopts Significant COVID-19 Workplace Safety and Health Rules

By Matthew Tripp

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Oregon has become the third state in the nation to enact a [workplace safety and health standard](#) specifically addressing the coronavirus. Many provisions of the new Oregon OSHA rule take effect November 16, 2020. While some of the more onerous provisions, such as those requiring employers to conduct a risk assessment and implement an infection control plan, will be phased in through December. Employers could be fined up to \$12,675 for violations of the Rule and up to \$126,749 for repeat or willful violations. The general requirements imposed on all workplaces are summarized below.

Physical Distancing (November 16, 2020)

- Work activities and workflow must be designed to eliminate the need for any employee to be within six feet of another individual in order to fulfill their job duties. This requirement does not apply where the employer determines and can demonstrate that such physical distancing is not feasible for certain activities.

Masks, Face Coverings, and Face Shields (November 16, 2020)

- Employers must ensure that all individuals at the workplace or other premises subject to the employer's control wear a mask, face covering, or face shield in accordance with the requirements of the Oregon Health Authority's Statewide Mask, Face Covering, Face Shield Guidance. When employees are transported in a vehicle for work purposes, regardless of distance or duration, everyone in the vehicle must wear a mask, face covering, or face shield unless employees are wearing respirators under certain circumstances.
- Employers must provide masks, face coverings, or face shields to employees free of cost. If an employee chooses to wear their own mask, face shield, or face covering instead of one provided by the employer, the employer may allow it but is not required to do so unless the employee chooses to wear a respirator under certain circumstances. Employers must allow employees to wear masks, face shields, or face coverings even when it is not required.

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

- Employers must establish a process to notify "exposed employees" that they had a workplace contact with a person who has tested positive for COVID-19. "Exposed employees" are 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 masks, face coverings, or other protective equipment.
- Employers must also establish a process to notify "affected employees" that an individual who was present in the facility has confirmed COVID-19. "Affected employees" are those who worked in the same facility or in the same well-defined portion of the facility, such as a particular floor, where the COVID-19 confirmed individual was present.

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- The employer's process must include a mechanism for notifying both exposed and affected employees within 24 hours of the employer being made aware that an individual with COVID-19 was present in the workplace while infectious or otherwise may have had work-related contact with its employee(s) while infectious. Oregon OSHA will publish a model procedure that employers can use to ensure compliance.

Medical Removal (November 16, 2020)

- Whenever a medical provider, the Oregon Health Authority, or a local public health agency recommends an employee be restricted from work in order to quarantine or isolate for COVID-19, the employer must remove the employee from the workplace and direct the employee to isolate at home and away from other non-quarantined individuals. Employees who quarantine or isolate are entitled to return to their previous job if it is still available and without any adverse action as a result of the quarantine or isolation activities. Employers must also allow such employees to work from home if suitable work is available and the employee's condition does not prevent it.

Cleaning and Sanitation (November 16, 2020)

- Employers must regularly clean or sanitize all common areas, shared equipment, and high-touch surfaces (as defined by the Rule) that are under its control and that are used by employees or the public. The cleaning and sanitation procedures must be carried out at least once every 24 hours if the workplace is occupied less than 12 hours a day and at least every 8 hours while in use, if the workplace is occupied more than 12 hours a day, except in locations with only "drop-in" availability or minimal staffing. In those locations, employers are permitted to rely upon a regular schedule of cleaning and sanitation and directing employees to sanitize their own work surfaces before use.
- Employers must provide employees with the supplies (such as soap and water) and the reasonable time necessary to clean or sanitize more frequently than would otherwise be required if the worker chooses to do so and to perform hand hygiene before using shared equipment.
- Employers must clean and disinfect any common areas, shared equipment, and high-touch surfaces under the employer's control that an individual known to be infected with COVID-19 used or had direct physical contact with, unless the areas, equipment, or surfaces have been unoccupied or otherwise unused for at least seven days.

Posting Requirement (November 16, 2020)

- Employers must post Oregon OSHA's [COVID-19 Hazards Poster](#) in a conspicuous manner in a central location where workers can be expected to see it. Employees working remotely must be provided with a copy of the COVID-19 Hazards Poster through electronic or equally effective means.

COVID-19 Testing for Workers (November 16, 2020)

- Employers must make their employees and space available at no cost to the workers whenever a local public health agency or Oregon Health Authority indicate that COVID-19 testing within the workplace is necessary. If the employer requests such testing, it is responsible for covering the cost (if any) of the test itself, as well as the cost of employee time and travel.

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Requirements for Building Operators (November 23, 2020)

- Building operators must ensure that the Rule's cleaning sanitation requirements are implemented in common areas to the extent they have control over such areas. Building operators must also ensure that a copy of Oregon Health Authority's "[Masks Required](#)" sign is posted in all areas where masks or face coverings are required.

Exposure Risk Assessment (December 7, 2020)

- Employers must conduct a COVID-19 exposure risk assessment, without regard to the use of PPE, masks, face coverings, or face shields. Oregon OSHA has created a [risk assessment template](#) for employers to use and has also indicated that sample risk assessments will be made available. Employers with more than ten employees statewide (and workplaces at exceptional risk, defined below) must document their risk assessment in writing.
- The risk assessment must involve participation and feedback from employees. The Rule sets forth specific topics that the risk assessment must address, including remote work, physical distancing, mask and face covering requirements, COVID-19 reporting procedures, ventilation, physical barriers, foot traffic controls, and sanitation.

Infection Control Plan (December 7, 2020)

- Employers must establish and implement an infection control plan based on the risks and controls identified in the COVID-19 exposure risk assessment, including, for example, maximizing ventilation, staggering shifts, redesigning the workplace to accommodate physical distancing, reducing use of shared surfaces and tools, limiting the number of employees and other individuals in work areas, and using PPE, etc.
- Employers with more than ten employees statewide (and workplaces at exceptional risk, defined below) must document their infection control plan in writing and ensure that a copy is accessible to employees at their workplace.

Employee Training (December 21, 2020)

- Employers must provide information and training to employees regarding COVID-19, and employees must be given opportunities to provide feedback. At a minimum, the training must cover physical distancing requirements; mask and face covering requirements; cleaning and sanitation requirements; signs and symptom reporting procedures; the employer's COVID-19 infection notification process; medical removal of employees; transmission of the SARS-CoV-2 virus, including pre-symptomatic and asymptomatic transmission; COVID-19 symptoms; and safe and healthy work practices and control measures.
- Oregon OSHA will provide some materials for the training, but the training itself must be conducted by employers. Virtual training is acceptable. To the extent the employer has already provided sufficient training covering these topics, the training needs to be repeated.

Ventilation Requirements (January 6, 2021)

- Employers must optimize the amount of outside air circulated through existing HVAC systems, whenever employees are present in the workplace. This does not require installation of new ventilation equipment. But employers must ensure proper maintenance and cleaning of the ventilation system's air filters and intake ports.

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In addition to the above-described general requirements, the Rule also contains additional mandatory guidance for businesses and public agencies in 19 different industries, including K-12 educational institutions (public or private); early education providers; institutions of higher education (public or private); restaurants, bars, brewpubs and public tasting rooms; retail stores; outdoor and indoor markets; personal services providers; construction; entertainment facilities; outdoor recreation organizations; transit agencies; collegiate, semi-professional and minor league sports; professional and Pac-12 sports; licensed swimming pools, spa pools, and sports courts; fitness-related organizations; veterinary clinics; fire service and EMS; law enforcement; and jails and custodial institutions.

The Rule also imposes additional, heightened requirements on “workplaces at exceptional risk,” defined as workplaces where employees perform job duties that include direct patient care; decontamination services in a healthcare setting; aerosol-generating healthcare or postmortem procedures; direct client service in residential care or assisted living facilities; emergency first responder activities; and certain personal care activities, such as toileting or bathing; or working with specimens or laboratory cultures collected from an individual known or suspected to be infected with COVID-19.

Employers should prioritize their compliance efforts in order to meet the Rule’s staggered effective dates. There is no one-size-fits-all approach, and employers are encouraged to work with counsel to achieve compliance.

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Matthew Tripp represents local and national clients in litigation before state and federal courts and administrative agencies. Matt has defended against claims of breach of contract, retaliation, constructive discharge, wrongful termination, disparate treatment, and wage-and-hour violations. In addition to representing clients in litigation, Matt also assists clients with a variety of business and employment issues, such as workplace safety, contract negotiations, disability accommodation, protected leave, wage-and-hour issues, and employee discipline and termination.

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