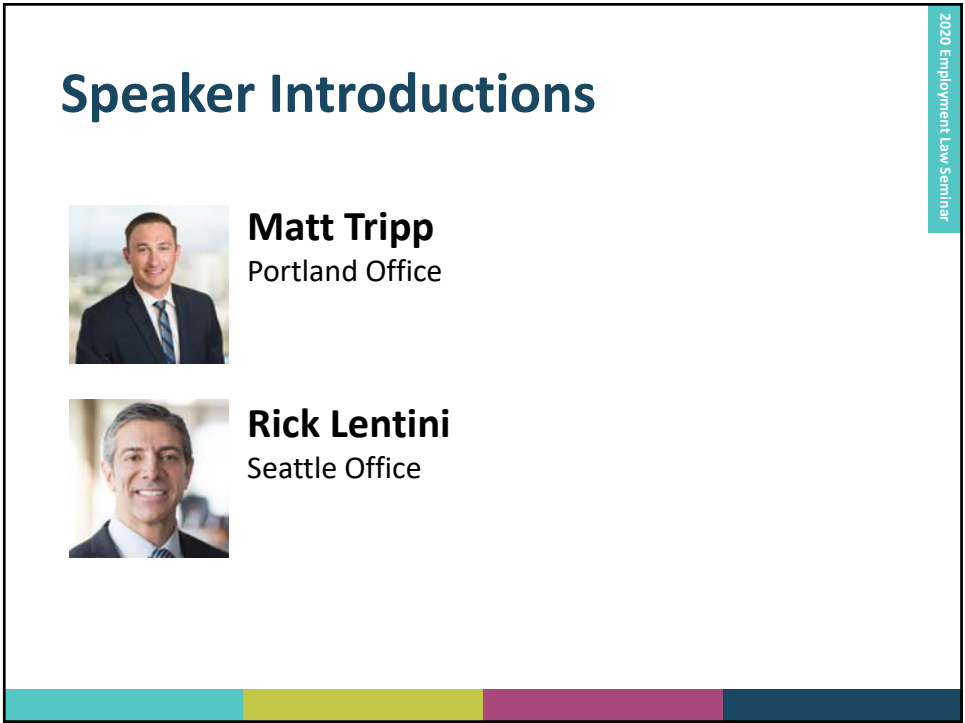






Renovations and Pandemic Precautions Gone Viral: Workplace Safety and Health

2020 Employment Law Seminar
Day 1: COVID-19 Workplace Issues




Speaker Introductions


Matt Tripp
Portland Office



Rick Lentini
Seattle Office



2020 Employment Law Seminar



Occupational Safety and Health— Overview

2020 Employment Law Seminar

- Federal OSHA
 - General duty clause
 - Specific safety standards
 - Recordkeeping
 - Reporting
- State-approved plans
- COVID-specific rules

Federal OSHA

2020 Employment Law Seminar

- General duty clause: This clause requires employers to keep their workplaces free of any recognized hazards that are likely to cause death or serious physical harm to its employees. It is a catchall provision that can be cited in instances when no specific OSHA safety standard applies.

Federal OSHA

- An employer violates the general duty clause if:
 - The employer fails to keep the workplace free of a hazard to which employees were exposed
 - The employer actually or constructively recognized the hazard
 - The hazard is likely to cause death or serious physical harm
 - There is a feasible and economically viable way to correct the hazard

Federal OSHA

- Specific safety standards:
 - General industry
 - Construction
 - Maritime and longshoring
 - Agriculture

Federal OSHA

- Recordkeeping: Covered employers must prepare and maintain records of serious occupational injuries and illnesses.
 - Work-related
 - Triggering events

Federal OSHA

- Reporting: All employers under OSHA jurisdiction must report fatalities or severe injuries to OSHA. This is separate from the recordkeeping obligation.
 - Fatalities
 - Inpatient hospitalizations of one or more employees
 - Amputations
 - Losses of an eye

Employee Complaints

- Formal v. informal
- Retaliation prohibited
- Potential for OSHA investigation to follow

2020 Employment Law Seminar

Oregon State COVID-19 Workplace Rules

- Physical distancing
- Masks, face coverings, and face shields
- Cleaning and sanitation
- Medical removal
- Posting requirement
- COVID-19 testing for workers
- Requirements for building operators

2020 Employment Law Seminar

Oregon State COVID-19 Workplace Rules

2020 Employment Law Seminar

- COVID-19 infection notification process
 - "Exposed employees" and "affected employees"
 - Notice must be provided within 24 hours
 - Confidentiality of medical information
 - Oregon OSHA model policy

Oregon State COVID-19 Workplace Rules

2020 Employment Law Seminar

- Exposure risk assessment (December 7, 2020)
 - Oregon OSHA template
 - Employers with ten or more employees must document in writing
 - Requires participation and feedback from employees
 - Specific topics must be addressed: e.g., remote work, physical distancing, mask and face-covering requirements, COVID-19 reporting procedures, ventilation, physical barriers, foot-traffic controls, and sanitation

Oregon State COVID-19 Workplace Rules

2020 Employment Law Seminar

- Infection-control plan (December 7, 2020)
 - Based on the risks and controls identified in the COVID-19 exposure risk assessment
 - Examples: 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
 - Employers with ten or more employees must document in writing

Oregon State COVID-19 Workplace Rules

2020 Employment Law Seminar

- Employee training (December 21, 2020)
 - Oregon OSHA materials cover
 - › Characteristics and methods of transmission of the SARS-CoV-2 virus
 - › Symptoms of the COVID-19 disease
 - › The ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus
 - › Safe and healthy work practices and control measures

Oregon State COVID-19 Workplace Rules

2020 Employment Law Seminar

- Employee training (December 21, 2020)
 - Employers must also provide training on
 - › Physical distancing requirements as they apply to the employee's workplace and job function(s);
 - › Mask, face covering, or face shield requirements as they apply to the employee's workplace and job function(s);
 - › COVID-19 sanitation requirements as they apply to the employee's workplace and job function(s);
 - › COVID-19 signs and symptom reporting procedures that apply to the employee's workplace;
 - › COVID-19 infection notification process; and
 - › Medical removal as required by the rule.

Oregon State COVID-19 Workplace Rules

2020 Employment Law Seminar

- Ventilation requirements (January 6, 2021)
 - Must optimize the volume of outside air circulated through existing HVAC systems whenever employees are present in the workplace and ensure proper maintenance and cleaning of the ventilation system's air filters and intake ports.
 - This does not require employers to install new ventilation equipment.

Washington State COVID-19 Workplace Practices

- The Washington Industrial Safety and Health Act (WISHA) mirrors the federal OSHA
- L&I has issued guidance on COVID-19 practices applicable to all employers

2020 Employment Law Seminar

Washington State COVID-19 Workplace Practices

- COVID-19 practices applicable to specific industries such as construction, grocery and agriculture can be found at www.Lni.wa.gov/safety-health/safety-topics/topics/coronavirus

2020 Employment Law Seminar

Social Distancing and Mask Use

- Keep employees keep at least six feet apart
- Install barriers and other protections if six feet distancing is not feasible
- Ensure employees use the cloth face covering, mask or respirator required based upon the risk level of the job

2020 Employment Law Seminar

Social Distancing and Mask Use

- Customers entering a retail establishment must wear a face covering unless they state they have a medical condition which prevents them from doing so
- Some industries have specific guidelines for interacting with customers

2020 Employment Law Seminar

Hand Washing

- Provide fixed or portable hand washing facilities
- Require employees to wash when arriving at work, taking breaks, using the bathroom, before and after eating, drinking or using tobacco products, and after touching contaminated surfaces
- Provide stations with hand sanitizer, wipes, or towelettes in portable containers

Cleaning and Sanitizing

- Establish a cleaning and sanitizing schedule
- Provide supplies for regular scheduled cleaning and for deep cleaning and sanitizing after a suspected COVID-19 exposure
- Disinfect high-touch surfaces often

Cleaning and Sanitizing

- Ensure employees use gloves, eye and face protection when handling chemicals, and keep Safety Data Sheets on site
- Clean work vehicles regularly and each time a different person uses them

Procedures for Sick Workers

- Adopt procedures to identify and send home or isolate workers who develop signs of COVID-19
- Require sick workers to stay home or remain isolated

Procedures for Sick Workers

- When an employee is suspected or confirmed to have COVID-19, cordon off, deep clean and sanitize all work areas affected
- Follow CDC guidelines on isolation periods and return to work, which vary depending on symptoms

Employee Education

- How to identify the signs, symptoms and risk factors associated with COVID-19
- How to prevent the spread of COVID-19 at work
- How to wash hands with soap and water for at least 20 seconds
- How to cover coughs and sneezes and avoid touching the face with unwashed hands

Employee Testing and Inquiries

- Must conduct daily COVID-19 symptoms checks of all employees and other persons entering the worksite
- May require all employees to submit to COVID-19 tests periodically
- May ask individual employees COVID-19 questions or require testing only with a reasonable belief that they have the virus

Employee Testing and Inquiries

- May ask employees why they were absent from work and where they travelled
- May NOT ask if employees' family members have COVID-19 or its symptoms
- May require a medical release to return to work for all employees who contract COVID-19

Notifications

- If an employee has contracted COVID-19, you should notify coworkers who had close contact, without revealing the identity of the infected employee
- Ask confirmed close contacts to test for COVID-19 and self-quarantine for 14 days or follow CDC guidelines
- Report two or more COVID-19 cases to the appropriate Health Department
- Keep medical information confidential

Discrimination and Retaliation

- It is unlawful to take adverse action against a worker for exercising safety and health rights or raising safety and health concerns
- High-risk employees are those over 65 years old or with conditions rendering them more vulnerable
- High-risk employees and must have choice of all available options to reduce the risk, including the option to telecommute, use workplace preventative measures, take leave, or apply for unemployment or insurance benefits

Discrimination and Retaliation

- Employers must maintain all employer-related health insurance benefits until the high risk employee is deemed eligible to return to work
- Employers may not discriminate against high risk employees, such as by requiring them to cease working, or retaliate against them for exercising their rights

Accommodation

- If an employee requests a reasonable accommodation, you must discuss with them the reasons why and what they need to perform the essential functions of the job
- Determining an effective reasonable accommodation is case specific, and you may want to seek a medical or legal opinion

Thank You!



Matt Tripp

matthew.tripp@millernash.com

503.205.2437



Rick Lentini

richard.lentini@millernash.com

206.777.7471

2020 Employment Law Seminar