

RENOVATIONS AND PANDEMIC PRECAUTIONS

Workplace Safety & Health Gone Viral



SCOPE AND APPLICATION OF THE OCCUPATIONAL SAFETY AND HEALTH (OSH) ACT

The federal OSH Act is a comprehensive piece of legislation designed to regulate safety and health in the workplace. The Occupational Safety and Health Administration (OSHA) oversees and enforces the OSH Act by issuing regulations and holding employers responsible for violations through inspections and corrective action. Although the OSH Act applies in every state, the District of Columbia, Puerto Rico, and all American territories, many states maintain their own OSHA-approved program. These programs must meet federal OSHA approval and maintain the minimum standards of the OSH Act.

Covered employers

The OSH Act covers any entity or organization that has at least one employee, including nonprofit organizations. However, the OSH Act does not cover workplace safety and health where conditions are regulated by other federal agencies (such as mining and nuclear energy) and family farms. Nor does it cover most public employers. State-approved plans may cover public employers if they choose, as is the case in Oregon, Washington, New York, Connecticut, Illinois, New Jersey, Maine, and the Virgin Islands.

Covered employees

The OSH Act covers all employees, regardless of their title, status, or means of compensation. Independent contractors are not covered. When determining whether a person is an employee or an independent contractor, OSHA uses a multifactor “economic realities” test. This test focuses primarily on whether and to what extent the alleged employer exercises control over the person’s work and how the person is compensated.

State safety and health regulations

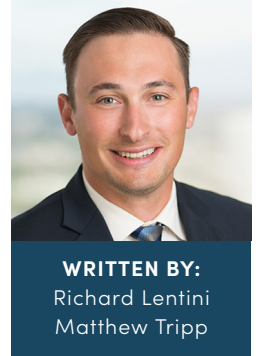
Although employment in every state is covered by the OSH Act, state governments may regulate safety and health matters instead if they develop a state plan that is approved by federal OSHA. Once a state’s proposed plan receives final approval, OSHA relinquishes jurisdiction over workplace safety and health matters within the state. The following states and territories regulate safety and health for private-sector employers under their own approved state plans: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

Although most approved state plans incorporate the safety and health standards adopted by federal OSHA and implement and enforce those standards in much the same way, there can be significant differences between the standards and requirements of federal OSHA and those of an approved state plan.

SAFETY REQUIREMENTS AND OBLIGATIONS UNDER THE OSH ACT

There are two primary sections of the OSH Act that impose obligations on employers:

- The general duty clause.
- Specific safety standards.



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The general duty clause

The general duty clause requires an employer to keep its workplace free of any recognized hazards that are likely to cause death or serious physical harm to its employees. The clause is a catchall provision that can be cited in instances when no specific OSHA safety standard applies.

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.

The most important of these elements is the recognized hazard.

Recognized hazard

For there to be a general duty clause violation, the employer must have either:

- Actual knowledge. The easiest way for OSHA to meet this requirement is by showing that the employer was aware that a condition existed and that it was hazardous. Actual knowledge can be proven with evidence of employee complaints about the hazardous condition, previous accidents, or the employer's own internal warnings or work rules.
- Constructive knowledge. OSHA can also show constructive knowledge, most commonly through proof that an employer's industry was aware of a hazardous condition associated with a particular piece of equipment, chemical, or work practice. OSHA can demonstrate industry recognition through testimony of safety experts in the industry or by reference to consensus safety standards from certified safety organizations (for example, the American National Standards Institute or the National Fire Protection Association), industry publications, or manufacturers' warnings.

Consequences for general duty clause violations

Employers should pay particular attention to citations issued under OSHA's general duty clause. This is especially true if the employer has received a citation in response to an accident that resulted in the death or serious injury of an employee. If a general duty clause citation is affirmed against an employer, that citation can

be used as evidence that the employer knew of the dangerous condition that caused the accident and willfully disregarded it. This can be extremely damaging evidence in a personal injury, wrongful death, intentional tort, or workers' compensation lawsuit brought under state law.

Safety standards

The OSH Act authorizes the Secretary of Labor to issue and adopt specific safety standards that improve the safety and health of workers. With this authority, the Secretary of Labor has issued specific safety standards in four general areas:

- General industry;
- Construction;
- Maritime and longshoring; and
- Agriculture.

The vast majority of OSHA's inspection and enforcement activity takes place under the general industry and construction standards.

General industry

The general industry standards regulate a broad spectrum of safety and health issues, including workplace floors, stairs, ladders, scaffolding, fire prevention, fire safety, entrances, exits, moving platforms, ventilation, noise, non ionizing radiation, many dangerous gases and chemicals, hazardous waste, personal safety gear, sanitation, medical services, cranes, helicopters, machinery, tools, welding, electrical systems, and commercial diving.

The general industry standards apply to nearly all employees. However, there are tailored rules for safety and health hazards in designated industries, such as pulp and paper mills, sawmills, bakeries, laundry operations, logging, telecommunications, and electrical power generation. Also, the general standards do not apply if the machinery or work at issue is subject to specific standards contained in the construction, maritime and longshoring, or agricultural standards (29 C.F.R. § 1910.5).

Specificity of regulations

OSHA's safety standards can be further broken down by their degree of:

- General standards. Both the general industry and construction rules contain broadly worded standards requiring employers to provide things such as safety training, personal protective equipment (PPE), and machine guarding. For example, the construction industry standards contain a general training standard that requires employers to provide

training to “each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.” (29 C.F.R. § 1926.21).

- Specific standards. By contrast, there are standards that apply only to narrowly defined types of machinery, equipment, or materials and impose detailed requirements about how to safely work with that machinery, equipment, or material. As a general rule, if two standards could apply to a working condition, the more specific standard is the one that employers should follow.

Violation of safety standard

To show that an employer violated a safety standard, OSHA must demonstrate that:

- The cited standard applies to the condition at issue.
- The employer failed to comply with the cited standard.
- An employee had access to the unlawful condition or zone of danger.
- The employer knew (or should have known with the exercise of reasonable diligence) that the unlawful condition existed.

OSHA must prove that its proposed date for fixing the problem (also referred to as abatement) is reasonable. Under some standards, OSHA must also prove that the proposed abatement methods are feasible and reasonable. For example, courts and the Occupational Safety and Health Review Commission (the Review Commission) have held that for the Secretary of Labor to prove a violation of OSHA’s noise standard (which specifically references “feasible” means of compliance), the Secretary must demonstrate that a technologically feasible method of abatement exists.

In many cases, the most difficult element for OSHA to prove is that employees had access to the zone of danger created by the alleged OSHA violation. To carry that burden, OSHA must show that it is reasonably predictable, either because of the nature of an employee’s job duties and work practices or otherwise (including inadvertent entry or contact), that employees have been, are, or will be in the zone of danger.

An employer may be able to rebut allegations that its employees are exposed or have access to a hazard by demonstrating that employees have received safety training, are well supervised

during any allegedly dangerous operations, or both. It is also helpful to an employer’s defense to present evidence of work practices and procedures that mitigate or eliminate the potential for employees’ exposure to a hazardous condition during their work.

EMPLOYEE COMPLAINTS AND NONRETALIATION

Types of complaints

The OSH Act gives employees and their representatives the right to file complaints with OSHA regarding alleged safety violations or hazards present at an employer’s worksite. According to OSHA’s Field Operations Manual (the written guidance used by OSHA’s compliance officers when conducting an inspection), there are two types of complaints:

- Formal complaints.
- Nonformal complaints.

Formal complaint

A formal complaint is one made by a current employee or a representative of employees that:

- Asserts that an imminent danger, a violation of the OSH Act, or a violation of an OSHA standard exposes employees to a potential physical or health harm in the workplace.
- Is reduced to writing or submitted on a Form OSHA 7.
- Sets out the basis for the complaint with reasonable detail.
- Is signed by at least one current employee or employee representative.

In most cases, a formal complaint sparks an OSHA inspection.

Nonformal complaint

A nonformal complaint is any complaint that does not meet all of the requirements of a formal complaint. The most common type of nonformal complaints are those made by former employees. When a nonformal complaint is submitted, OSHA, in most cases, sends a letter to the accused employer describing the allegations and requesting a response to the allegations within five working days.

Retaliation prohibited

Section 11(c) of the OSH Act prohibits retaliation against employees for filing, instituting, or causing to be filed OSH Act proceedings, as well as retaliation against employees for testifying

in OSH Act proceedings. The language of this section affords a broad range of protections to employees. Section 11(c) protects employees from retaliation not only by their employer, but also by an employees' union or other third parties who may attempt to blacklist or otherwise negatively affect a complaining employee.

Retaliation is not limited to termination of employment. It can be any negative action that affects an employee's compensation or other terms and conditions of employment. Retaliation protections are triggered by a complaint to OSHA, a complaint submitted to the employee's employer, or a complaint to other federal, state, or local agencies that have authority over occupational safety and health matters.

If an employee files a complaint of retaliation under Section 11(c), OSHA investigates. In most cases, the investigator exclusively handles retaliation complaints. To show that unlawful retaliation occurred, OSHA must prove that the employee's safety complaint (or other protected activity) was a substantial reason for the adverse action. An employer that takes adverse action against a complaining employee should ensure that the justifications for the adverse action are well supported and documented. Documentation is crucial in defending against potential retaliation charges.

RECORDKEEPING

OSHA's recordkeeping regulation requires certain covered employers to prepare and maintain records of serious occupational injuries and illnesses. Certain employers and industries are partially exempt from this requirement.

Work-related

OSHA's recordkeeping standards require the employer to determine whether the injury or illness is work-related. An injury is presumed to be work-related if an event or exposure in the work environment is a discernible cause of the injury or illness. The work environment includes:

- The physical area where workers conduct business or perform services or operations.
- Other locations where employees work or are present as a part of work.
- The equipment, tools, and materials that employees use during their work and the space they occupy.

Determining whether an injury or illness is work-related can be a very fact-intensive and

complicated endeavor, and it may be necessary to consult counsel.

Triggering events

An injury or illness must be recorded if it is work-related and results in any of the following: death; days away from work; restricted work or transfer to another job; medical treatment beyond first aid; loss of consciousness; or a significant injury or illness diagnosed by a physician or other licensed health care professional.

Forms

There are three primary forms for recording workplace injuries and illnesses:

- Log of Work-Related Injuries and Illnesses (Log) (OSHA Form 300).
- Injury and Illness Incident Report (OSHA Form 301).
- Annual Summary (OSHA Form 300A).

These three forms are packaged together on [OSHA's website](#). Completed forms must be kept for five years after the end of the year they are completed.

Procedure for employees to report workplace injuries and illnesses

Employers must have a policy that requires employees to report workplace injuries and sets out the procedure for doing so. OSHA requires that employers:

- Establish a procedure for employees to report all workplace injuries and illnesses promptly and accurately that is:
 - reasonable; and
 - does not deter or discourage a reasonable employee from accurately reporting a workplace injury or illness. (29 C.F.R. §§ 1904.35(a)(1) and (b)(1)).
- Inform each employee:
 - of the employer's reporting procedure;
 - that employees have the right to report work-related injuries and illnesses; and
 - that employers may not discharge or discriminate against employees for reporting work-related injuries or illnesses.

Electronic submission of injury and illness records to OSHA

Covered employers must submit injury and illness records through OSHA's secure website.

- Covered employers with 250 or more employees at any time during the previous

calendar year should submit information from the 300A Summary every year.

- Covered employers with 20 or more employees but fewer than 250 employees at any time during the previous calendar year, that work in industries that OSHA has classified as highly hazardous within the electronic recordkeeping requirements, should also submit information from the 300A Summary every year.
- For all other covered employers, electronically submit information from the 300 Log, 301 Incident Report, and 300A Summary to OSHA if the employer receives written notification from OSHA.

If an employer is partially exempt from keeping OSHA injury and illness records, the employer is not subject to these electronic submission requirements, unless otherwise notified by OSHA in writing. OSHA's electronic submission requirements apply to all covered employers, including those located in states with safety and health plans approved by OSHA.

Reporting certain accidents or injuries

Not to be confused with the obligations to *record* certain injuries and illnesses, all employers under OSHA jurisdiction must *report* fatalities or severe injuries to OSHA. Employers exempt from routinely keeping OSHA records due to company size or industry are not exempt from the reporting obligation.

Employers must report all work-related:

- Fatalities.
- Inpatient hospitalizations of one or more employees.
- Amputations.
- Losses of an eye.

“Inpatient hospitalization” means a formal admission to the inpatient service of a hospital or clinic for care or treatment. Employers do not have to report an inpatient hospitalization that involves only observation or diagnostic testing. Employers must report fatalities within 8 hours of discovery, and inpatient hospitalization, amputation, or eye loss within 24 hours.

Exceptions to reporting requirement

Employers do not have to report a fatality, inpatient hospitalization, amputation, or loss of an eye if the fatality or injury:

- Resulted from a motor vehicle accident on a public street or highway. However, if the motor vehicle accident occurred in a construction

work zone, the employer must report the incident to OSHA.

- Occurred on a commercial or public transportation system (airplane, train, subway, or bus).
- Occurred more than:
 - 30 days after the work-related incident in the case of a fatality; or
 - 24 hours after the work-related incident in the case of an inpatient hospitalization, amputation, or loss of an eye.¹

OREGON STATE COVID-19 WORKPLACE RULES

Oregon OSHA has generally adopted the OSH Act standards and also adopted state-specific standards for general industry, construction, and agriculture. In addition, Oregon recently enacted a [workplace safety and health standard](#) specifically addressing the coronavirus. Many provisions of the new Oregon OSHA rule are effective 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 2020. 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 person 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 people 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.

¹Material in this section was collected from Health and Safety in the Workplace: Overview, Practical Law Practice Note Overview 9-500-9859.

- Employers must provide masks, face coverings, or face shields to employees free of cost. If an employee instead chooses to wear their own mask, face shield, or face covering, the employer may (but is not required to) allow it unless the employee chooses to wear a respirator under the “voluntary use” provisions of the Respiratory Protection standard (29 C.F.R. § 1910.134). 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 person with confirmed COVID-19 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 a person with confirmed COVID-19 was present in the facility. “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 person was present.
- The employer’s process must include a mechanism for notifying both exposed and affected employees within 24 hours after the employer learns that a person 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 their 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 the procedures must be carried out 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 receive a copy 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 the 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.

Requirements for building operators (November 23, 2020)

- Building operators must ensure that the Rule's cleaning and 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 the 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, 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 receive 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 COVID-19, 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 volume of outside air circulated through existing HVAC systems whenever employees are present in the workplace. This does not require employers to install new ventilation equipment. But employers must ensure proper maintenance and cleaning of the ventilation system's air filters and intake ports.

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.

WASHINGTON STATE COVID-19 WORKPLACE SAFETY PRACTICES

The Washington Industrial Safety and Health Act (WISHA) mirrors the federal OSHA in many respects and has issued guidance on safety practices relating to the COVID-19 pandemic. The following standards apply to all employers. WISHA COVID-19 guidance applicable to specific industries, such as construction, grocery, and agriculture, are not addressed in this paper, but can be [found here](#).

Social distancing and mask use

- Keep employees at least six feet away from coworkers and the public when feasible.
- If six-foot distancing is not feasible, install barriers and other proven prevention methods.
- Employees must use the cloth face covering, mask, or respirator required based on the risk level of the job. Attached is the May 22, 2020 Washington State Department of Labor & Industries chart describing the risk categories and the required and recommended mask or respiratory protection for each.
- Customers entering a retail establishment must wear a face covering unless they state they have a medical condition that prevents them from doing so.
- Some industries have specific guidelines for interacting with customers.

Hand washing

- Provide fixed or portable hand-washing facilities with clean and hot or tepid water, soap, and paper towels.
- Require employees to wash their hands 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 to facilitate frequent hand sanitizing between hand washings after handling objects touched by others.

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, following Centers for Disease Control and Prevention (CDC) guidelines.

- Frequently disinfect high-touch surfaces.
- 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.
- When an employee is suspected or confirmed to have COVID-19, cordon off, deep clean, and sanitize all affected work areas.
- 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 use a brief questionnaire or ask questions of all employees, and may check temperatures.
- 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.
- May ask employees why they were absent from work and where they traveled.
- 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 (within six feet for 15 minutes in 24 hours) that they may have been exposed, 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 over 65 years old or with conditions rendering them more vulnerable have additional protections and must have 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. Employers must allow high-risk employees to choose from available options and must maintain all employer-related health insurance benefits until the 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.
- 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.

KEY TAKEAWAYS

1

OSHA's general-duty clause requires an employer to keep its workplace free of any recognized hazards that are likely to cause death or serious physical harm to its employees. The clause is a catchall provision that can be cited in instances when no specific OSHA safety standard applies

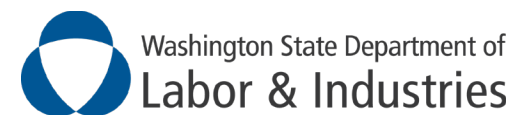
2

Oregon is one of just a handful states to enact a workplace safety and health standard specifically addressing the coronavirus.

3

Washington has issued COVID-19-specific guidance for safe workplace practices.

Washington Coronavirus Hazard Considerations for Employers (except COVID-19 care in hospitals & clinics) Face Coverings, Masks, and Respirator Choices



May 22, 2020

Worksite Tasks	Negligible Transmission Risk	Low Transmission Risk	Medium Transmission Risk	High Transmission Risk	Extremely High Risk
Health status of the people around you	Healthy/Asymptomatic (no COVID-19 symptoms)	Healthy/Asymptomatic	Healthy/Asymptomatic	Healthy/Asymptomatic	Probable or known COVID-19 source or direct human mouth, nose, eye interactions.
Example of work conditions *, **	Employee working alone, or all outside, or 1-9 total persons inside building/structure with outside or HVAC air, where at least 6-foot distance is always maintained . Tools are not shared or are sanitized between different users.	Crews outside on large worksite where at least 6-foot distance is easily maintained fulltime and only broken intermittently, in passing, up to several times a day. Tools are not shared or are sanitized between different users.	Large crews outside where at least 6-foot distance is mostly maintained , but with job tasks that require several minutes of 6-foot distance broken several times a day. Tools are shared and sanitized between different users.	Work in close quarters, such as a multiple-occupancy permit-required confined space or inside a room with 10 or more people where at least 6-foot distance is not maintained , and includes job tasks requiring sustained close-together (less than 3 feet apart) work for more than 10 minutes in an hour multiple times a day.	Transporting/caring for symptomatic patients with probable or active COVID-19 within 6 feet in vehicle; or non-hospital setting or a residence with no sanitization protocols in place.
	Worksite with controlled and low public interaction, where at least 6-foot distance is always maintained and only broken in passing once or twice a day.	Work inside a structure/office where number present allows for at least 6-foot distance to be easily maintained fulltime and only broken intermittently, in passing, up to several times a day.	Work inside a structure/office where at least 6-foot distance is mostly maintained , but with job tasks that require sustained several minutes of 6-foot distance broken several times a day without sneeze guards or other mitigations.	Work cleaning and sanitizing of surfaces and floor after confirmed active COVID-19 employee was present in the area. Also includes work that cannot be delayed, performing services in homes of quarantined confirmed COVID-19 clients. Examples include emergency plumbing repair or in-home pet euthanasia.	Healthcare work involving face-to-face close proximity or potential for coughing or sneezing while working with healthy or asymptomatic people . Potential for droplets of biological material or fluids to become airborne within the breathing zone of the employee. Examples include tonometry during eye exams, visual examination of the oral and nasal cavities, visual examination of the eyes, swab sampling in the mouth or nose.

Worksite Tasks	Negligible Transmission Risk	Low Transmission Risk	Medium Transmission Risk	High Transmission Risk	Extremely High Risk
		Non-healthcare work involving personal services (such as haircuts) where there are 1 or 2 workers inside room. All clients assumed to be wearing cloth face coverings or higher level of protection.	Non-healthcare work involving personal services (such as haircuts) where there are 3-6 workers inside a room where at least 6-foot distance is not maintained and job tasks require sustained close-together (less than 3 feet apart) work. All clients assumed to be wearing cloth face coverings or higher level of protection.	Healthcare work involving procedures in close proximity to healthy or asymptomatic people with potential for aerosols generated from saliva or mucous from the mouth or nose. Examples include dental work with an ultrasonic scaler, air/water syringe, or hand piece, administering medicines with a nebulizer, spirometry, deep or forced breathing exercises.	
<p>Number of people and conditions in work vehicle</p> <p>Note: Vehicles must be sanitized between different drivers and occupants.</p>	Vehicle operation: employees ride alone and vehicles are sanitized between different drivers.	Vehicle with more than one occupant but can maintain 6-foot distance that is only broken intermittently up to several times a day.	Vehicle with more than one occupant but mostly maintain 6-foot distance with job tasks that require several minutes of 6-foot distance broken several times a day.	Vehicle with more than one occupant where at least 6-foot distance is not maintained , and includes job tasks requiring close-together (less than 3 feet apart) work for more than 10 minutes in an hour more than once a day.	Vehicle with more than one occupant where at least 6-foot distance is not maintained , and includes job tasks requiring close-together (less than 3 feet apart) work for more than 10 minutes in an hour at least once a day.

Work Conditions	Negligible Transmission Risk	Low Transmission Risk	Medium Transmission Risk	High Transmission Risk	Extremely High Risk
Minimum required mask or respiratory protection for employees without additional engineering controls or PPE ***	Reusable cloth face covering that fully covers mouth and nose are required for employees covered by Governor Executive Order Industry agreements except when working alone in room, vehicle, or on jobsite.	Reusable cloth face covering that fully covers mouth and nose are required for employees covered by Governor Executive Order Industry agreements except when working alone in room, vehicle, or on jobsite.	Non-cloth disposables: dust mask, KN95 or other non-approved foreign-system NIOSH-style filtering facepiece respirators, or non-FDA approved procedure masks.	Elastomeric half- or full-face respirator with particulate filters **** --OR-- Powered-air purifying respirator (PAPR) with particulate filter. (Tight-fitting respirators must be fit-tested and the wearer must be clean-shaven. No fit-testing is required for loose fitting systems.) --OR-- Industrial use N95, R95 or P95 or foreign-system non-NIOSH approved filtering facepiece respirator (or other particulate respirator****).	FDA-approved surgical mask or healthcare N95 filtering facepiece respirator**** or elastomeric respirator with particulate filters. Tight-fitting respirators must be fit-tested and the wearer must be clean-shaven. Powered-air purifying respirator (PAPR) with particulate filter may be used; no fit testing is required for loose-fitting models. When feasible, clients with COVID-19 should also wear an FDA-approved surgical N95 or surgical mask.
Strongly recommended worksite protections	Reusable cloth face covering that fully covers mouth and nose for all employees not working alone.	Use multiple engineering and administrative controls together to reduce frequency and risk of touch and airborne transmission between people. Ask workers for suggestions on further improvements to controls.	Use face shield combined with minimum face covering to lower risk category where work or job task allows.	Minimize number of workers present in high-risk work tasks. Consider all possible ways to accomplish the work without people in close proximity.	Add face shield to surgical masks or eye goggles to half- face disposable respirators and non-permeable disposable upper body coverings; use powered-air purifying respirator (PAPR) system, elastomeric full-face respirators with particulate filters or higher protection.

Work Conditions	Negligible Transmission Risk	Low Transmission Risk	Medium Transmission Risk	High Transmission Risk	Extremely High Risk
Comment	Employees should be strongly encouraged not to carpool to and from work unless wearing facial covering or mask protection. This is suspected as a source of several national outbreaks.				

*Social distancing is at least 6 feet apart between employee to employee, or employee to any other human.

**Other respirators or PPE may be required due to other hazards such as chemical exposures or projectile exposures. The PPE ensemble must protect the worker from all hazards that are not otherwise controlled.

*** Without additional engineering controls or PPE for employees like barriers or face shields or local ventilation.

**** Particulate-filtering respirators are rated by NIOSH for oil mist resistance (N, R, or P) and filtering efficiency (95, 99, and 100). An N-95 respirator is the least resistant to oil mists and lowest-filter efficiency. For protection from the COVID-19 virus, an N-95 rated respirator is sufficient and any other particulate respirator can be substituted. Foreign-certified respirators below may be used:

- Australia: AS/NZS 1716:2012
- Brazil: ABNT/NBR 13694:1996; ABNT/NBR 13697:1996; and ABNT/NBR 13698:2011
- People's Republic of China: GB 2626-2006; and GB 2626-2019
- European Union: EN 140-1999; EN 143-2000; and EN 149-2001
- Japan: JMHLW-2000
- Republic of Korea: KMOEL-2014-46; and KMOEL-2017-64
- Mexico: NOM-116-2009