

A Roadmap for the New Normal in the Workplace Under COVID-19

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Many businesses throughout the West Coast will soon start the process of phased returning to the workplace or have already welcomed employees back to workplaces to some extent. This requires employers to take new measures to protect their employees, their operations, and their customers.

Whether, when, and how a particular business can reopen fully and return employees to the workplace will largely depend on where the business is located and what industry it is in. In all cases, however, employers must remember that they have an overarching obligation under state and federal workplace health and safety laws to provide a workplace that is free from recognized hazards that cause or are likely to cause death or serious physical harm to their employees. This means that employers, now more than ever, need to remain vigilant in staying informed about potential risks and proactive in adopting proper procedures to reduce them. To help with that effort, we have compiled a list of key considerations and links to the resources that employers will want to take into account when bringing employees back to the workplace.

In order to cover the breadth of content and provide the depth of substantive resources that we hope will be useful as a reference for going forward, we are providing links to a host of applicable guidance and additional resources on the substantive items covered by this overview.

DIVERGENT APPROACHES BY STATE TRIGGER DIFFERENCES IN REOPENING

Washington

Washington's approach to the pandemic was to initially impose a blanket closure that applied to most businesses, except those operations that were specifically excluded because they were deemed "essential." On June 30, 2021, Washington allowed all industry sectors to return to usual capacity and operations with the exception of venues for large events. By [Governor's Proclamation](#), a "large event" is a ticketed or preregistered assembly of 10,000 or more individuals at an outdoor venue or 1,000 or more individuals at an indoor venue.

- Capacity restrictions: For large indoor events, venues are restricted to 75% capacity, unless vaccination verification for attendees is occurring. If vaccination verification for attendees is occurring prior to entry, and the venue requires all attendees be vaccinated, there are no capacity restrictions.
- Minor children: Currently, attendees under the age of 12 at large events are allowed to attend without proof of vaccination or a negative COVID-19 test. At the time of this publication, the Centers for Disease Control (“the CDC”) has approved the Pfizer-BioNTech COVID-19 vaccine for children ages 5 through 11 years old. Governor Inslee has endorsed the vaccine and we may see large event restrictions extend to minor children.
- Face coverings: Everyone five years of age and older must wear a face covering in public indoor settings and at large, outdoor events with 500 or more attendees, regardless of vaccination status.

Washington counties (like [King County](#)) continue to impose other restrictions so employers need to monitor their local regulations.

Oregon

Alternatively, Oregon initially closed only specific businesses (for example, restaurants and bars (except for takeout/delivery), recreational facilities, arcades, salons, gyms, malls, jewelry shops, spas, tanning salons, and yoga studios). The state also strongly encouraged telework wherever possible, but allowed most businesses to continue operating, so long as they could meet physical distancing requirements. In May 2020, Oregon began allowing businesses in 31 of the state’s counties to begin Phase 1 reopening, subject to specific health and safety protocols. Independent from the Phase 1 reopenings, and also beginning in May 2020, Oregon eased restrictions and implemented specific statewide requirements for child care facilities, summer schools, day camps, and stand-alone retail operations.

In November 2020, the Oregon Occupational Safety and Health Administration (“Oregon OSHA”) [adopted a final temporary rule](#) imposing requirements on all workplaces related to, among other things, physical distancing, masks, COVID-19 infection notification processes, medical removal of employees from the workplace, cleaning and sanitation, COVID-19 testing for workers, exposure risk assessments, employee training, infection control plans, and ventilation requirements.

On June 30, 2021, Governor Brown’s [Executive Order No. 21-15](#) took effect and rescinded most of Oregon’s statewide requirements regarding physical distancing, masking, and capacity limitations. Oregon OSHA revised its COVID-19 workplace rules, eliminating masking and distancing requirements except in certain settings, such as healthcare and transit. Shortly thereafter, Oregon, like the rest of the country, experienced a surge of COVID-19 cases and hospitalizations due to the emergence of the Delta variant. In response, Oregon imposed a new statewide [mask mandate](#) and vaccination requirements [healthcare workers](#) and [K-12 educators and staff](#). Oregon OSHA incorporated the new mask requirement into its COVID-19 workplace rules.

While Oregon OSHA no longer requires all employers to impose physical distancing requirements (except in healthcare and transit settings), the other requirements of its COVID-19 workplace rules are still in effect. Those rules include requirements relating to COVID-19 infection notification processes, medical removal of employees from the workplace, cleaning and sanitation, COVID-19 testing for workers, exposure risk assessments, employee training, infection control plans, and ventilation requirements. The rules also impose additional requirements on employers in healthcare, emergency medical services, transit, and veterinary

industries, as well as “workplaces at exceptional risk.” Additionally, all employers may still choose to require their employees to maintain physical distance, even when not required by Oregon OSHA’s COVID-19 workplace rules.

California

On June 15, 2021 California fully reopened all industry sectors and retired the Blueprint for a Safer Economy framework. The remaining restrictions are limited to [mega-events](#), defined as indoor events with 500 or more people and outdoor events with 5,000 or more people.

- [Indoor mega-events](#): Attendees must provide proof that they are fully vaccinated, or have received a negative COVID-19 test. Attendees age 18 and older must also provide identification confirming that you are the person presenting proof of vaccination status or negative test result.
- [Outdoor mega-events](#): California Department of Public Health recommends that venue and event operators require proof of vaccination or testing.

Federal

On January 13, 2022, the United States Supreme Court blocked enforcement of the federal OSHA’s Vaccination and Testing rule. In Washington, Governor Inslee has implemented a vaccine mandate for certain state employees and the education sector however he has not signaled any expansion to the private section. Oregon OSHA [stated](#) that it will not adopt such a rule in Oregon. And finally, California OSHA continues to enforce its state-specific Emergency Temporary Standards on COVID that have most recently been updated on January 6, 2022.

GENERAL GUIDELINES AND RESOURCES ON REOPENING

While a business’s ability to reopen is generally governed by proclamations from the governors, the contingencies and prescribed reopening procedures themselves primarily flow from guidance issued by public health authorities and occupational safety and health agencies. Given that, it is important that employers know and consult the relevant resources from these authorities in preparing for and resuming operations:

- The [Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace](#) by the federal OSHA sets out the basic standards for all workplaces and incorporates specific guidance from the CDC.
- The CDC’s [Guidance for Workplaces and Businesses](#) addresses preventive measures as well as protocols excluding COVID-19-positive, symptomatic, and potentially exposed workers. There are also new [resources](#) to assist employers in specific industries and occupations.
- State-Specific Resources:
 - Washington’s Department of Health has issued “[Guidance for Non-Health Care Businesses and Organizations During COVID-19](#)” and “[Guidance for Daily COVID-19 Symptom Screening of Staff and Guests](#)” in partnership with the Department of Labor and Industries and other state agencies, as well as [specific guidance](#) about when masks are recommended or required.
 - The [Oregon Health Authority](#) and [Oregon OSHA](#) have also published resources and guidance for employers.

- California’s Department of Public Health (CDPH) has issued “[Employees & Workplaces Guidance](#)” and “[Beyond the Blueprint for Industry and Business Sectors](#)”. The State also maintains a COVID-19 [public safety measures platform](#) with current restrictions for certain industries.

GENERAL GUIDELINES AND RESOURCES ON RETURNING TO WORK

With a framework for reopening in mind, employers should recognize that the guidelines and regulations have evolved with new COVID-19 variants and geographic disparities on vaccination rates, and we expect they will continue to evolve. As of this publication, our West Coast states ([Washington](#), [Oregon](#), and [California](#)) each have their own COVID-19 prevention programs for workplace safety that comports with the guidance from the federal OSHA, which Alaska generally follows. These state regulations have replaced prior suggested guidance and are enforced through fines, penalties, and workplace shutdowns. Employers should continue to monitor their applicable state OSHA guidance for changes.

A CHECKLIST OF COMMON REQUIREMENTS AND BEST PRACTICES FOR REOPENING

Employers will need to adopt and follow a host of protocols and practices for employees to return to work safely, memorialized in a written Pandemic/COVID-19 Preparedness Plan. States like California and Oregon have provided a [model written program](#) and the federal OSHA has issued topic-specific policies, like ventilation. A well- developed plan will include a number of common details across virtually all industries that we expect will apply to nearly all employers. Here are the key elements of such a plan:

- Have a plan and clear protocols in place for addressing employee illness.**
 - ✓ Educate all employees on the potential symptoms of COVID-19. The list of symptoms has been [updated by the CDC](#) and now includes cough, shortness of breath/difficulty breathing, fever (over 100.4 degrees Fahrenheit), chills, muscle pain, sore throat, new loss of taste or smell, congestion/runny nose, nausea/vomiting, and diarrhea. Employees should be self-evaluating for symptoms before coming to the workplace.
 - ✓ Make sure that employees know not to come to work if they are ill, have been exposed to someone who is ill, or are experiencing any symptoms of COVID-19.
 - ✓ Have a well-developed and clearly communicated protocol for employees to follow if they become ill, including removal from the workplace and a separate area where they can be isolated until they leave the workplace.
 - ✓ Temporarily close off any areas where an individual with probable or confirmed COVID-19 worked or touched surfaces, until the areas and surfaces are cleaned and disinfected.
 - ✓ Designate a qualified supervisor to monitor employees’ health and enforce the company’s COVID-19 protocols and policies.
 - ✓ Do not punish or otherwise take adverse action against an employee for reporting workplace safety concerns, including concerns related to COVID-19. Consider whether additional policies or supervisory trainings may be needed to ensure that this expectation is followed.
- Take appropriate steps to help prevent the virus from spreading and keep the workplace safe and healthy.**

- ✓ Consider appropriate screening measures for employees and visitors. Some industries may mandate temperature and symptom checks upon arrival; others may rely on employee affirmations that they have not exhibited symptoms.
 - Don't forget to abide by applicable [recordkeeping obligations](#) and comply with additional pay requirements that may be triggered under existing policies or practices, applicable union contracts, or wage and hour laws.
 - Be sure also to consider [privacy implications](#) that may apply.
- ✓ Consider appropriate physical distancing measures and personal protective equipment (PPE) that may be needed.
 - Some employers may be required to ensure that all personnel are at least six feet apart at all times and may need to install partitions.
 - Under applicable state and local governance, employers may be required to mandate that employees wear masks as a condition of returning to the workplace, or at a minimum working in an area where others are present. Other employers may choose to voluntarily implement such a mandate. At a minimum, employers must permit employees to wear masks in the workplace. In fact, [Oregon](#), [Washington](#), and [California](#) have each issued formal guidance in this regard.
 - Employers may be required or choose to provide employees with additional PPE, such as gloves, gowns, goggles, and face shields.
 - Evaluate physical and administrative controls to make adjustments to minimize the potential for contamination and unnecessary contact. For example, employees may be scheduled in shift-specific "teams," or assigned specific restrooms and/or break areas, so as to minimize the amount of overlap and contact among employees.
- ✓ [Ensure and maintain sanitation of workspaces, equipment, and tools](#). The CDC has also published a "[Disinfecting Decision Tool](#)" to aid in this effort. Also be sure to use [appropriate disinfectants](#) known to combat the virus.
- ✓ [Ensure that employees exercise rigorous personal hygiene](#).
- ✓ Be sure to consider whether any new protocols or policies might implicate any collective bargaining obligations, and reach out to union leadership in advance if so.

□ **Be aware when protections may entitle certain employees *not* to return to work.**

- ✓ State sick leave mandates in [Oregon](#), [Washington](#), and [California](#) are triggered when employees may need to be out ill themselves, are needed to care for family members who are ill, or can't work due to the closure of a child's school/daycare.
- ✓ Federal Family Medical Leave Act and state equivalent leaves may be available if an employee or a family member becomes seriously ill or requires care.
 - In Washington, this may include the new [Paid Family and Medical Leave](#) that is administered by the state Employment Security Department.

- In California, employees who are excluded from the workplace because of a workplace COVID-19 exposure are eligible for pay in certain circumstances under the [Emergency Temporary Standards](#).
 - ✓ The federal [Americans with Disabilities Act](#), and related state disabilities laws, may entitle an employee with a health condition that makes the person vulnerable to, or potentially triggered by, COVID-19 to additional periods of leave or other accommodations, such as remote work or schedule adjustments.
 - ✓ Some states, such as Washington, have enacted additional protections for employees deemed to be at high risk of COVID-19 complications.
- **Make sure that policies, practices, training, and posters are up to date.**
- ✓ All employees and new hires should be trained on the company's policies related to COVID-19. In Washington, reopening will be expressly conditioned on having a written plan and/or policies available at each location and available for inspection by state and local authorities.
 - ✓ Develop policies, or update existing policies as appropriate, to address the additional leaves outlined above, as well as flexible scheduling and/or [telework](#) (if feasible) so that employees can stay home to care for sick family members or care for children whose schools or places of care are closed.
 - ✓ The CDC and many local public health authorities have also published helpful workplace posters about proper hygiene and physical distancing to avoid spreading the virus.
- **Stay proactive about educating on and enforcing nondiscrimination protections.** Consider whether this should include additional training or policy updates related to certain stigmas that may be associated with the pandemic. For example, the Washington Department of Health has published resources intended to address [stigma reduction](#) associated with misperceptions about the virus and its causes, including a [toolkit](#) for use with education and outreach. The U.S. Equal Employment Opportunity Commission has also released [anti-harassment policy tips](#), a [checklist](#) for employers, and [chart of risk factors](#) that lead to harassment and appropriate responses.

SUMMARY

We hope this is a helpful compilation as employers engage in their own efforts to prepare to welcome employees back to the workplace, whatever that may look like. Of course, this is just a small snapshot of the available resources and guidance that is available, and employers are encouraged to check out the [Miller Nash COVID-19 Resource Center](#) in particular for more information.

As always, employers should call on us if they have questions or need assistance with their reopening efforts.

About the Authors

Amy Robinson represents public and private employers throughout Washington, Oregon, and Alaska in a broad range of workplace-related issues. She skillfully handles matters for clients regarding wage-and-hour, leave laws, disability and accommodation, and complaints related to discrimination, retaliation, and harassment. Amy is adept at guiding employers through policy and handbook creation, as well as crafting employment contracts, such as noncompete agreements, nonsolicitation agreements, and nondisclosure agreements.

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