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Oregon OSHA Releases New Temporary COVID-19 Rules Implicating Almost Every Oregon Employer

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Oregon OSHA has adopted temporary rules related to COVID-19 that will go into effect on November 16, 2020. While many general requirements will affect employers on the date the rules go live, there are also specific deadlines implicating many employers later in November and December of this year.

General Requirements in Effect November 16, 2020

1. Physical Distancing in the Workplace

Employers must ensure 6 feet of physical distances between all individuals in the workplace unless the employer determines and can demonstrate that 6 feet of separation is not feasible for certain activities. This requirement applies to both indoor and outdoor worksites.

Where social distancing is not feasible, employers must ensure all workers utilize a mask, face shield, or face covering.

2. Masks, Face Shields, & Face Coverings

Employers must ensure that all individuals at the workplace or employer's premises – including employees, part-time workers, customers, vendors, patrons, and contractors – who are not actively eating, drinking, or smoking are wearing a mask, face shield, or covering. These requirements are subject to the Oregon Health Authority's Statewide Mask, Face Covering, Face Shield Guidance.

Masks, face coverings or face shields are strongly recommended in all indoor work spaces, but not required when at or in a location where the employee, contractor, or volunteer has a job that does not require interacting with the public or with other employees (such as a large warehouse), **and** where at least 6 feet of distance can be maintained between other people. When 6 feet of distance cannot be maintained, such as in a restroom or break room, masks, face coverings, or face shields are required. Masks, face coverings, or face shields are not required when individuals are stationed at a “private, individual workspace not shared with other people.” It is unclear at this time whether open air cubicles that separate employees by a partial barrier are excluded from the mask requirements.

Additionally, employers are required to provide access to a mask, face shield, **or** face covering at no cost to employees. Employers may allow employees to wear their own mask, face shield, or face covering, and must allow employees to wear a covering even when a covering is not required.

3. COVID-19 Infection Notification Process

Employers must establish a process to notify exposed employees of a work-related contact with an individual who has tested positive for COVID-19. They also must notify affected employees (those who worked in the same facility or in the same well-defined portion of the facility, such as a particular floor) that an individual who was present in the facility has confirmed COVID-19.

The process must include a mechanism for notifying affected employers within 24 hours of the employer being made aware of a positive COVID-19 test result of an employee who was in the workplace or had work-related contact with workers.

Employers should consider outlining this process in writing and sharing it with employees as part of their Infection Control Plan outlined below.

4. Medical Removal of Employees

If the Oregon Health Authority (OHA), a local public health agency, or a medical provider recommends an employee be restricted from the workplace due to quarantine or isolation for COVID-19, the affected worker must be directed to isolate at home and away from other non-quarantined individuals. Employees who are identified through public health contact tracing and needing to quarantine or isolate fall into this category. Isolation or quarantine must continue until the employee is released by their medical provider or an appointed public health authority determines the employee may return to work.

During an employee's isolation, an employer *must* allow the affected employee to work from home if suitable work is available and the employee's condition does not prevent working. The employee is also entitled to return to their previous job duties, if still available, without any adverse action.

Employers are not required to retain an employee's job if the job would have become unavailable regardless of the employee's quarantine or isolation (such as through layoff or downsizing). Employers may not, however, make a quarantining or isolating employee's job unavailable by filling the job with another employee.

5. Workplace Cleaning Requirements

Employers must regularly clean common areas, shared equipment, and high-touch areas at least once every 24 hours if the workplace is occupied fewer than 12 hours during a day or at least once every 8 hours while in use, if the workplace is occupied more than 12 hours a day.

However, locations with only "drop-in" availability or minimal staffing are permitted to rely upon a regular schedule of cleaning and sanitation and directing employees to sanitize their own work surfaces before use.

6. Poster Requirement

The "COVID-19 Hazards Poster" must be permanently posted in a central location where workers are expected to see it. An electronic copy of the poster should be provided to employees working remotely. Copies of the posters are available in English [here](#) and Spanish [here](#).

Deadline Specific Requirements

1. COVID-19 Exposure Risk Assessment – December 7, 2020 Deadline

By December 7, 2020, all employers must conduct a “COVID-19 exposure risk assessment.” This assessment does not take into account the use of personal protective equipment or face coverings, such as masks and face shields.

The assessment requires feedback and participation by employees. This can be accomplished through an interactive process with employees, such as a safety meeting, safety committee, union involvement, etc.

After feedback is gathered from employees, employers with more than 10 Oregon employees (including temporary or part-time workers) or employers with “an exceptional risk workplace” must document in writing their COVID-19 risk assessment, which must include the following:

- The name(s), job title(s), and contact information of the person(s) who performed the exposure risk assessment;
- The date the exposure risk assessment was completed;
- The employee job classifications that were evaluated; and
- A summary of the employer’s answers to 13 specific exposure risk assessment questions, which can be found [here](#).

It is advisable to put the assessment in writing regardless of employer size so that, should an employer receive a safety complaint or concern, the memorialized written assessment can be shared with Oregon OSHA or any investigating agency to demonstrate the employer’s compliance.

2. Infection Control Plan – December 7, 2020 Deadline

All employers are required to establish and implement an “infection control plan” specific to the “type of work performed by employees” by December 7, 2020. The plan must be tailored on a “facility-by-facility basis.” If an employer has multiple facilities that are substantially similar, its infection control plan may be developed by facility type rather than site-by-site so long as any site-specific information that affects employee exposure risk to COVID-19 is included in the plan.

Again, employers with more than 10 employees must document this plan in writing and provide employees at the worksite with access to the plan. The plan must contain six elements outlined [here](#).

3. Ventilation Requirements – January 6, 2021 Deadline

No later than January 6, 2021, employers must maximize the amount of outside air circulation through their existing HVAC system when employees are present in the workplace. This includes replacing air filters as needed and ensuring HVAC intake ports are clean and functioning properly. Employers are not required to purchase new HVAC systems or retrofit existing systems.

While there is no written condition for this requirement, employers should memorialize in writing what steps were taken to comply by the deadline in case of agency scrutiny.

4. Employee Information and Training – December 21, 2020 Deadline

Employers must provide information and training regarding COVID-19 to employees in a manner understood by affected workers. Employees must be afforded the opportunity to provide feedback regarding the information and training. The specific topics that must be covered can be found [here](#).

Employers should take an organized approach in meeting these requirements by the associated deadlines. Oregon OSHA has indicated it will release templates and training materials in the coming weeks to aid employers with compliance. While these resources will be informative, every organization is unique. There is no one-size-fits all solution to the Exposure Risk Assessment or Infection Control Plan requirements. Employers with multiple worksites or complex work environments are encouraged to consult legal counsel as needed for drafting and compliance.

For questions about OSHA's new COVID-19 rules or for any other questions relating to navigating COVID-19 in the workplace, contact Andrew Schpak or Daniel Walker at 503-228-0500, or at aschpak@barran.com or dwalker@barran.com.