

Anticipating Oregon OSHA's final rules for COVID-19 in the workplace

Oregon employers may be familiar with the rush that was the deadline for Oregon Occupational Safety and Health Administration (OSHA) temporary rules in late 2020. Building from those, Oregon OSHA is expected to release its final rules before the scheduled expiration of the temporary ones on May 4, 2021.

While we do not know what exactly will be included in the final rules, many employers do not want to be caught off guard with these extensive requirements as they were with the temporary rules in late 2020. The proposed final rules are similar to the temporary rules in many ways, but as Oregon OSHA's rulemaking notice states: "in some cases, the provisions were expanded from the temporary rule as more information became available in relation to the transmission of the virus and public comments."

Employers are wise to familiarize themselves with the general nature of the proposed final rules in order to prepare. The proposed final rules are over 100 pages long, so below is a breakdown of some key areas to flag.

General requirements and more

Like the temporary rules, the proposed final rules include extensive requirements for all employers as well as appendices for specific industries that contain additional requirements for any businesses operating in those sectors. The industries that can expect the additional appendix requirements include: restaurants, bars, brewpubs and tasting rooms, retail stores,



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personal service providers, construction operations, entertainment facilities, sports, veterinary care, and schools, just to name a few.

For example, the proposed appendix for employers engaged in construction activities requires advance screening. Specifically, the proposal would require each construction employer that controls access to a site to develop and implement a system to screen employees and visitors accessing the site using a pre-screening checklist consistent with the recommendations from the Centers for Disease Control and Prevention (CDC). Employers operating in this industry would also be required to limit work in occupied areas of a home or other structure to only those tasks that are strictly necessary.

Further, "workplaces at exceptional risk" are required in the proposed rules to follow additional protocols in a number of respects. Workplaces at exceptional risk are defined as: "any setting (whether a health care setting or not) where any employee performs one or any combination of the following job duties:

- direct patient care;

- environmental decontamination services in a health care setting;
- aerosol-generating health care or postmortem procedures;
- direct client service in residential care or assisted living facilities;
- emergency first responder activities;
- personal care activities that involve very close contact with an individual, such as toileting or bathing; or
- handling, packaging, cleaning, processing or transporting human remains or human tissue specimens or laboratory cultures collected from an individual known or suspected to be infected with COVID-19."

Rules regarding vaccines

The proposed rules also have several requirements regarding vaccines that were not included in the temporary rules. This has obviously been a huge area of debate, so it is possible there will be substantial differences between the available proposed rule and what Oregon OSHA actually includes in its final rules.

However, as the proposed rules stand currently, employers would be required to cooperate by making their employees and appropriate space available at no cost to the employees whenever a local public health agency or Oregon Health Authority (OHA) indicates that vaccination within the workplace is necessary. If vaccination is conducted at the employer's own direction, the employer is required to cover the cost of vaccination, including but not limited to the time the employee needs to

travel to and receive the vaccine.

The proposed rules also make clear that unless a health agency or OHA directs otherwise, employers are not required to make employees accept the vaccination. Employers would also need to keep a record of employees who are offered the vaccination but decline. The proposed rules even indicate that Oregon OSHA intends to prepare a model declination form that can be used by employers.

The proposed rules also make an important policy statement: "it is the considered opinion of both the Oregon Health Authority and Oregon OSHA that all individuals should accept vaccination unless it is medically contra-indicated. Allowing some workers to decline such a vaccination does not indicate any doubts on the part of the state or Oregon about the value of the vaccine and the importance of reaching a high vaccination rate to both public and worker health."

Employers should stay tuned for the final version of the rules from Oregon OSHA and make sure their workplaces are in compliance.

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