

OSHA Issues New Federal Guidance for Employers in Addressing COVID-19

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On January 29, 2021, the federal Occupational Safety and Health Administration (“OSHA”) published new guidance on “Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the workplace.” Intended for non-healthcare settings, the guidance reflects practices and approaches many employers in Oregon have incorporated into their workplaces. The recommended practices are voluntary. Nonetheless, the Guidance is important because its elements may be included in the forthcoming Emergency Temporary Standards, which the Administration of President Biden has directed OSHA to consider and possibly implement by March 15, 2021.

Many of the recommendations dovetail with Oregon OSHA’s temporary rule that went into effect November 16, 2020. These include:

1. Masking Requirements: The Guidance suggests employers provide workers with face coverings, which include “double masking” such as a surgical mask and cloth face covering for use in the workplace when an employee is not eating or drinking or if it would present a hazard. Employees whose work tasks require a respirator should be provided with such equipment. Additionally, OSHA recommends that employers consider acquiring masks with clear coverings over the mouth if the workplace includes employees who are deaf or have a hearing deficit to facilitate lip-reading. For employees who are unable to wear a certain type of face cover due to a disability, employers are reminded that they should discuss a reasonable accommodation and use the interactive process. Employers with such an accommodation request should consult with the Equal Opportunity Commission’s recent accommodations guidance as well as with legal counsel.

2. Vaccines: The Guidance recommends that employers provide eligible employees access to COVID-19 vaccines at no-cost, and *provide information and training on the benefits and safety of vaccinations*. Additionally, as increasing numbers of Oregonians become vaccinated in the coming months, employers will face questions about whether to differentiate between those who have been vaccinated and those who have not. According to the Guidance, employers should continue requiring vaccinated employees to follow OSHA requirements for face coverings, social distance and other protocols. This is necessary because, as OSHA explains, at this time, “there is no evidence that COVID-19 vaccines prevent transmission of the virus from person-to-person.” Recall that in Oregon, in general, employers can require vaccinations that are job-related and consistent with business necessity or justified by a direct threat. However, employers must make exceptions to accommodate (1) an employee’s ADA-covered disability, and (2) an employee’s sincerely held religious belief



under Title VII. Additional guidance from the Equal Opportunity Commission is expected soon to clarify the permissibility of employer-sponsored vaccination incentive programs. These programs typically offer small incentives (such as a small monetary payment) for employees to become vaccinated against COVID-19. Stay tuned for this additional guidance and/or consult with legal counsel before implementing such an incentive program.

3. Prevention & Control Programs: Oregon OSHA’s temporary rule required employers to develop prevention, notice and infection control plans. A November 18, 2020, *Cascade Business News* article by Barran Liebman attorneys detailed these requirements, including the deadlines for compliance. The federal Guidance contains many of these same requirements such as training employees about the hazards of COVID-19, conducting a risk assessment and developing an infection control plan. Other advice contained in the Guidance includes assigning a workplace COVID-19 coordinator to administer the COVID-19 prevention and control plan. OSHA also explains that although most employers will follow a symptom-based strategy for identifying employees possibly infected by COVID-19, in some circumstances, a testing-based strategy may be appropriate.

4. Social-Distancing: The Guidance provides helpful strategies for employers to implement and maintain physical distance. Where workstations cannot be spaced more than 6-feet apart, OSHA recommends installing transparent shields or other solid barriers. Additionally, providing enhanced PPE and increased ventilation will assist in preventing the spread of COVID-19 in such circumstances. As you may recall, Oregon OSHA’s temporary rule already required all employers by January 6, 2021, to increase outside air circulation using existing HVAC systems, to the extent possible. However, the Guidance directs employers to the CDC’s guidance on optimization of ventilation, which includes the evaluation of air circulation and increase of air filtration, including the use of MERV-13 filters. Ensuring your ventilation system is working, functioning well and maintained (including cleaned regularly) is also recommended.

As OSHA develops voluntary and mandatory practices for employers concerning prevention and control of COVID-19, employers should continue to monitor these requirements. For employers in Oregon, there is substantial overlap in the requirements between state and federal OSHA. This is good news, as it will allow employers to meet these twin obligations efficiently.

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