

ARTICLES

New COVID-19 Workplace Safety Requirements for Oregon Employers

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On November 6, 2020, the Oregon Occupations and Health Division (OR-OSHA) released a Temporary Rule Addressing COVID-19 Workplace Risks ([OAR 437-001-0744](#)).

The rule took effect on November 16, 2020, and remains in effect until May 4, 2021, unless earlier revised or repealed. The rule creates a number of new obligations for employers including, as discussed in more detail below:

- allowing employees to wear masks even when not required
- performing a COVID-19 risk assessment
- adopting an infection control plan
- providing employee training
- creating a mechanism to notify employees of close contact with an infected individual within 24 hours, and
- reinstatement of employees following isolation/quarantine.

The rule applies to all employees who work in places of employment subject to OR-OSHA's jurisdiction, incorporates guidance from the Oregon Health Authority (OHA) and includes provisions generally applicable to all workplaces and specific rules for exceptional-risk workplaces as well as guidance for specific industries and types of businesses (1). This article will discuss the rule as generally applicable to employers.

- **Mask, face covering, or face shield requirements.** Employers must now allow an employee to wear a mask, face shield or face covering even when it is not required.
- **Posting.** Employers must post the "COVID-19 Hazards Poster" in a conspicuous place and must provide a copy of the poster to remote employees electronically.

- **Infection Notification Process.** Employers must establish a process to notify employees within 24 hours that they have either: had a work-related contact with an individual who has tested positive for COVID-19; or that an individual who was present in the same facility or portion of a facility has confirmed COVID-19.
- **Medical removal/job reinstatement.** Employers must allow an employee who has been instructed to quarantine or isolate by public-health authorities or a medical provider to work at home if suitable work is available and the employee's condition permits, and must return the affected employee to their previous job duties if still available and without any adverse action as a result of participation in COVID-19 quarantine or isolation activities.
- **Risk Assessment.** By December 7, 2020, all employers must conduct a COVID-19 exposure risk assessment and must obtain employee feedback/participation when conducting the risk assessment. Employers with ten or more employees and workplaces at exceptional risk must complete a written assessment. ([Link to template](#)). The risk assessment must address multiple questions related to potential employee exposure to COVID-19 including:
 - Can employees telework or otherwise work remotely? How are employees encouraged or empowered to use those distance work options to reduce COVID-19 transmission at the workplace?
 - What are the anticipated working distances between employees? How might those physical working distances change during non-routine work activities?
 - What is the anticipated working distance between employees and other individuals? How might those working distances change during non-routine work activities?
 - How have the workplace or employee job duties, or both, been modified to provide at least six feet of physical distancing between all individuals?
 - How are employees and other individuals at the workplace notified where and when masks, face coverings, or face shields are required? How is this policy enforced and clearly communicated to employees and other individuals?
 - How have employees been informed about the workplace policy and procedures related to reporting COVID-19 symptoms? How might employees who are identified for quarantine or isolation as a result of medical removal under this rule be provided with an opportunity to work at home, if such work is available and they are well enough to do so?
 - How have engineering controls such as ventilation and physical barriers been used to minimize employee exposure to COVID-19?

- How have administrative controls (such as foot-traffic control) been used to minimize employee exposure to COVID-19?
- What is the procedure or policy for employees to report workplace hazards related to COVID-19? How are these hazard reporting procedures or policies communicated to employees?
- How are sanitation measures related to COVID-19 implemented in the workplace?
- How have the industry-specific or activity-specific COVID-19 requirements and applicable guidance from the Oregon Health Authority been implemented for workers?
- In settings where the workers of multiple employers work in the same space or share equipment or common areas, how are the physical distancing; mask, face covering, or face shield requirements; and sanitation measures required under this rule communicated to and coordinated between all employers and their affected employees?
- How can the employer implement appropriate controls that provide layered protection from COVID-19 hazards and that minimize, to the degree possible, reliance on individual employee training and behavior for their efficacy?
- **Infection-Control Plan.** By December 7, 2020, all employers must establish and implement an infection-control plan based on their risk assessment that adopts controls including, but not limited to, ventilation, staggered 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, personal protective equipment, etc. Employers with more than ten employees and workplaces at exceptional risk must document their infection control plan in writing and make a copy available to employees. The infection control plan must include, at a minimum:
 - A list of all job assignments or worker tasks requiring the use of personal protective equipment (including respirators) necessary to minimize employee exposure to COVID-19;
 - The procedures the employer will use to ensure that there is an adequate supply of masks, face coverings, or face shields and personal protective equipment (including respirators) necessary to minimize employee exposure to COVID-19;
 - A list and description of the specific hazard control measures that the employer installed, implemented, or developed to minimize employee exposure to COVID-19;
 - A description of the employer's COVID-19 mask, face covering, and face shield requirements at the workplace, and the method

of informing individuals entering the workplace where such source control is required;

- The procedures the employer will use to communicate with its employees and other employers in multi-employer worksites regarding an employee's exposure to an individual known or suspected to be infected with COVID-19 to whom other workers may have been exposed; and
- The procedures the employer will use to provide its workers with the initial employee information and training required by this rule.

- **Employee Training.** No later than December 21, 2020, employers must provide workers with information and training regarding COVID-19. This information and training can be provided remotely or using computer-based models but must be provided in a manner and language understood by the affected workers. OR-OSHA will provide training materials for use by employers. Training must cover the following topics and allow an opportunity for employee feedback:

- Physical distancing requirements as they apply to the employee's workplace and job function(s);
- Mask, face covering, or face shield requirements as they apply to the employee's workplace and job function(s);
- COVID-19 sanitation requirements as they apply to the employee's workplace and job function(s);
- COVID-19 signs and symptom reporting procedures that apply to the employee's workplace;
- COVID-19 infection notification process;
- Medical removal of infected individuals;
- The characteristics and methods of transmission of COVID-19;
- The symptoms of COVID-19;
- The ability of pre-symptomatic and asymptomatic individuals to transmit COVID-19; and
- Safe and healthy work practices and control measures, including but not limited to, physical distancing, sanitation and disinfection practices.

- **Common Areas.** Employers who operate or control buildings where employees of other employers work must ensure sanitation requirements are met and must post signs in areas where masks, face coverings or face shields are required.

- **Ventilation Requirements.** By January 6, 2021, employers must optimize the amount of outside air circulated through its existing heating, ventilation, and air conditioning (HVAC) system(s), to the extent the system can do so when operating as designed, whenever there are employees in the workplace and the outdoor air quality index remains at either "good" or "moderate" levels. Employers must also

maintain/replace air filters to ensure proper function of ventilation systems and clean and maintain intake ports that provide outside air.

The rule also restates existing OR-OSHA and OHA rules concerning physical distancing, masks/face coverings/face shields, and cleaning and sanitation. The full text of the temporary rule is [HERE](#).

OSHA Reporting and Recording of Work-related COVID-19 Cases

Employers should also be aware that OSHA recently clarified reporting requirements for COVID-19 cases. Under OSHA regulations, “employers are only required to report in-patient hospitalizations to OSHA if the hospitalization ‘occurs within twenty-four (24) hours of the work-related incident.’” For cases of COVID-19, the term “incident” means an exposure to SARS-CoV-2 in the workplace. Therefore, in order to be reportable, an in-patient hospitalization due to COVID-19 must occur within 24 hours of an exposure to SARS-CoV-2 at work. As OSHA explains: “An employer must report such hospitalization within 24 hours of knowing both that the employee has been in-patient hospitalized and that the reason for the hospitalization was a work-related case of COVID-19” ([Reporting Requirements](#)).

The fact that a work-place exposure is not reportable to OSHA, does not mean that the incident should not be recorded by an employer who is required to keep OSHA injury and illness records. Guidance on recording work-related confirmed cases of COVID-19 can be found [HERE](#).

COVID-19 related rules and regulations are constantly changing and it is possible that by the date of publication, rules above may have been amended or modified. Employers are advised to monitor the OR-OSHA, OHA and OSHA websites and subscribe to agency alerts to receive the latest information.

Endnote

1. For example, there are separate appendix with guidance for: (i) Restaurants, Bars, Brewpubs, And Public Tasting Rooms At Breweries, Wineries, and distilleries; Retail Stores; Outdoor and Indoor Markets; Personal Services Providers; Construction Operations; Indoor and Outdoor Entertainment Facilities; Outdoor Recreation Organizations; Employers operating swimming pools, spa pools, sport courts and fitness-related organizations; Veterinary Care; Schools, Collegiate Sports; First Responders and Law Enforcement.

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