

OREGON OSHA'S NEW COVID-19 RULE: WHAT IT MEANS FOR YOUR BUSINESS

Kristin Bremer Moore
Tonkon Torp LLP
503.802.2154

Megan Reuther
Tonkon Torp LLP
503.802.2174

Tonkon Torp's COVID-19 Webinar Series
Tuesday, November 10, 2020

TODAY'S SPEAKERS



Kristin Bremer Moore

Partner

kristin.bremer@tonkon.com



Megan Reuther

Attorney

megan.reuther@tonkon.com

TIMELINE FOR TEMPORARY COVID-19 RULE

- Rule adopted **November 6**
- Takes effect 10 days after adoption, on **November 16**
- Risk Exposure Assessment and Infection Control Plan due by **December 7**
- Employee training to be completed by **December 21**
- Rule in effect until **May 4, 2021**, unless revised or repealed
- Keep watching!:
<https://osha.oregon.gov/rules/advisory/infectiousdisease/Pages/default.aspx>

OVERVIEW OF RULE REQUIREMENTS

- Comply with Specific Safety Standards
- Perform Risk Assessment
- Create Infection Control Plan
- Conduct Employee Training
- Post OSHA Hazards Poster

WHO IS COVERED BY RULE?

“...all workplaces and workers subject to Oregon’s OSHA jurisdiction”

- Section 3 of the Temporary Rule applies to all workers
- Section 4 of the Temporary Rule applies to “workplaces at exceptional risk”

**SPECIFIC SAFETY STANDARDS:
“THE EMPLOYER MUST ENSURE...”**

**Effective November 16
(10 days after Rule adopted)**

PHYSICAL DISTANCING

- You must “ensure” that “work activities and workflow” are designed to keep “individuals” at least six feet apart
- If you can **demonstrate** that such distancing is not feasible, then narrow to certain activities and mask, face shields, or face coverings must be worn

VEHICLES WHEN TRANSPORTING WORKERS

- Must wear face masks or shields the entire time
- Unless workers are from same household
- Only applies to transportation required for work, not commuting to/from home to work

MASKS, FACE COVERINGS AND FACE SHIELDS

- In accordance with OHA's Statewide Mask Guidance
- Who? **All** individuals five years or older (includes workers, customers, vendors, patrons, contractors, etc.)
- When? Areas subject to employer's control, including transportation
- Exceptions?
 - In private, individual workspace not shared with others
 - Actively eating or drinking
 - Not feasible (ex. swimming, identify verification, sleeping)
- How? Supplied by employer at no cost to workers

SANITATION

- “Regularly” clean all common and high-touch areas and shared equipment
 - Common areas: lobbies, bathrooms, break rooms, conference rooms, etc.
 - High-touch surfaces: counter-tops, credit card terminals, door knobs, light switches, handrails, elevator panels, steering wheels, printers, etc.
 - Shared equipment used to perform tasks
- How often?
 - Every 24 hours for areas occupied for less than 12 hours
 - Every 8 hours for areas occupied for 12 hours or more
 - Any area/shared equipment that an individual known to be infected with COVID-19 used or had direct physical contact with, after at least 24-hour waiting period (7-day exception)
- Hand hygiene – employers must provide supplies and time for washing hands before using shared equipment

POSTING REQUIREMENTS

- COVID-19 Hazards Poster (provided by OSHA)
 - <https://osha.oregon.gov/OSHAPubs/5504.pdf>
 - Visible location
 - Electronically to remote employees
- “Mask Required” signs (for Building Operators)
 - <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2728.pdf>
(OHA’s poster)

MAXIMIZE VENTILATION

No later than January 6, 2021, employers and building operators should work together to:

- “...must optimize the amount of outside air circulated through it existing [HVAC] system(s), to the extent the system can do so when operating as designed” when employees are in building and the outdoor air quality index remains at either “good” or “moderate” levels
- Clean and maintain all filters and intake ports that provide outside air to HVAC system, as frequently as necessary

CONDUCT RISK ASSESSMENT

By December 7, 2020

OVERVIEW OF RISK ASSESSMENT

- Purpose to reduce risk of infection and spread of COVID-19
- Workplace is anywhere workers work
- Multi-facility vs. site-by-site
- Must include employee feedback/interactive process
- Must answer 13 questions (22, including subparts), which are laid out in the Rule
- Document, document, document...

RISK ASSESSMENT: 13 QUESTIONS

1. Can EEs telework/WFH? How are EEs encouraged or empowered to do so?
2. What are the anticipated work distances between EEs? Change during non-routine work activities?
3. What are the anticipated work distances between EEs and other individuals? Change during non-routine work activities?
4. Modifications to workplace and/or job duties to provide at least six feet of distance between all individuals?
5. Face mask or shield policy at the workplace? How is policy communicated to employees and individuals at workplace?
6. Policy and procedures for reporting COVID-19 signs and symptoms? How are policy and procedures communicated to employees? How might quarantined employees WFH, if well enough?

RISK ASSESSMENT: 13 QUESTIONS

7. How have engineering controls such as ventilation and physical barriers been used to minimize exposure?
8. How have administrative controls been used to minimize exposure?
9. Policies and procedures for reporting workplace hazards related to COVID-19? How are policies and procedures been explained to EEs?
10. Sanitation methods related to COVID-19? How have methods been communicated to employees and other individuals?
11. How have Appendix A specific COVID-19 requirements and “applicable guidance” from OHA been implemented? How are periodic updates incorporated into workplace on an ongoing basis?
12. In mixed employer settings, how are physical distancing, masks, sanitation requirements communicated and coordinated between all employers and their affected employees?
13. How can employer implement controls that provide layer protection from COVID-19 hazards and that minimize reliance on individual EE training and behavior (i.e., WFH)?

HOW TO CONDUCT ASSESSMENT

- Identify the “workplace”: single or multiple facilities; type of areas (ex. plant, shipping, admin offices); types of equipment and workflow
- Must involve participation and feedback from employees = “interactive process”
 - Representatives of each facility/work area/job function
 - Ex. safety committee, collective bargaining, employee survey
 - Don’t make hazard worse – remote meetings!
 - Be aware:
 - Reporting safety concerns = protected activity
 - Reporting violations = triggers investigation and remedial actions
 - Disclosing medical condition = ADA implications; confidential
 - Paid time? Required? Voluntary? During work hours?

DOCUMENTING THE ASSESSMENT

If more than 10 EEs, then assessment must be recorded, in writing, and include (form provided by OSHA):

- Name, job title, contact information of person who conducted exposure risk assessment
- Date exposure risk completed
- Employee job classifications that were evaluated
- Summary of answers to each exposure risk assessment question

INFECTION CONTROL PLAN

By December 7, 2020

INFECTION CONTROL PLAN

- All employers must establish and implement a Plan to address any risks identified in the assessment
- If an employer has more than 10 employees in Oregon, the Plan must be in writing and copies must be available to employees
- Site-by-site v. facility type
- Can rely on materials developed by associations, licensing agencies and franchisors to assist in compliance
- Written Plan must cover at least the six elements laid out in the Rule

MANDATORY ELEMENTS

- List of job assignments and tasks requiring personal protective equipment (PPE)
- Procedure to ensure adequate supply of masks and PPE
- List (with a description) of each hazard control measure implemented
- Policy for masks in workplace and methods for informing all necessary individuals
- Procedure for communicating with employee (and other employers at mixed worksite) about a potential exposure risk
- Procedure to provide employees with required information and training

EMPLOYEE INFORMATION AND TRAINING

By December 21, 2020

SUMMARY OF TRAINING

- Provide “workers with information and training regarding COVID-19”
- Must be provided to all workers (ex. in person, virtual, pre-recorded video, written)
- In language affected employees can understand
- Provide opportunity for feedback

MANDATORY TRAINING TOPICS

- Physical distancing
- Face coverings
- Sanitation
- COVID-19 signs and symptoms and reporting procedures
- COVID-19 infection notification to employees
- Quarantine requirements
- Characteristics and methods of transmission of virus*
- Ability of pre-symptom and asymptomatic infected person to transmit virus*
- Catchall: safe and healthy work practices*

*OSHA will provide training materials

BUT WAIT! THERE'S MORE!

OTHER RULE REQUIREMENTS

- Infection Notification Process
 - Notify exposed or affected EEs within 24 hours of ER's notice
- COVID-19 Testing
- Medical Removal (Isolation and Quarantine)
- OSHA Recordable Incident
- Job protection
- Anti-discrimination
- Appendix A – Industry-Specific and Activity-Specific Rules

QUESTIONS?



Kristin Bremer Moore

Partner

kristin.bremer@tonkon.com



Megan Reuther

Attorney

megan.reuther@tonkon.com