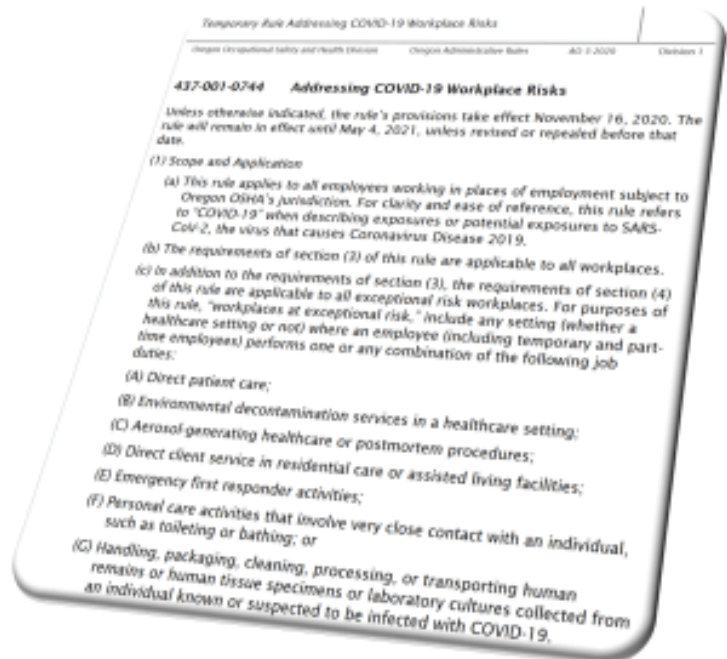


NOVEMBER 12, 2020 | STATE OSH PLANS

Oregon OSHA Issues Final COVID-19 Temporary Standard (Compliance Deadlines in Early December)

By Conn Maciel Carey's [COVID-19 Task Force](#)

Earlier this week, on Monday, November 9, 2020, Oregon OSHA released its final [COVID-19 Emergency Temporary Standard](#) (the "OR ETS") after several delays. Employers will have to act quickly to come into compliance, as the ETS goes into effect November 16th, with a series of major deadlines coming due in early December.



The ETS includes one set of mandates for all workplaces and another set for what it defines as "workplaces of exceptional risk" — namely those that include job duties related to direct patient care, aerosol-generating or post-mortem procedures, in-home care and/or direct client service in residential care or assisted living facilities. The OR ETS also includes an [appendix with "mandatory guidance" for 19 specific industries](#) and/or workplace activities, including:

- restaurants and bars;
- retail;

- construction;
- veterinary clinics; and
- entertainment facilities.

Explaining the need for an emergency rule, leadership at OR OSHA said this:

“The COVID-19 emergency has highlighted the risks that any infectious disease, particularly one that is airborne, can create for a wide variety of workplaces. As a result of both the immediate and long-term risks highlighted by the current public and occupational health crisis, Oregon OSHA is responding to the request that the state adopt an enforceable workplace health rule on an emergency basis this summer, to be replaced by a permanent rule.”

Oregon OSHA has plans to release materials on its website to support work on the risk assessment, the written exposure control plan, and the training activities required in the rule. Presently, there is a template exposure risk assessment form available. The agency also released a [poster](#) that employers must post in the workplace.

For the majority of employers, the OR ETS requires that they take steps and adopt measures that are similar, if not identical, to those we discussed in our blog posts regarding [Virginia OSHA’s COVID-19 ETS](#) and [Michigan OSHA’s new COVID-19 emergency rules](#). At its core, the emergency standard will require employers to develop and implement:



1. COVID-19 Exposure Risk Assessments
2. A Written COVID-19 Exposure Control Plan
3. COVID-19 and Exposure Control Training
4. Specific Engineering and Administrative Controls

We detail those 4 core requirements below.

Exposure Risk Assessments:

By December 7, every Oregon employer must conduct an exposure risk assessment and establish and implement an exposure control plan. Employers must also provide workers with information and training on various topics no later than December 21.

Note that the exposure risk assessment must involve participation and feedback from employees, which can be accomplished through a safety meeting, safety committee, discussions with a supervisor, negotiated through collective bargaining, or some other interactive process. In other words, the completion of this assessment should not be conducted in a vacuum without employee input.

The OR ETS also requires that employers create a written record of their assessment that includes:

1. the name, title and contact info of the person(s) who performed the assessment;
2. the date it was completed;
3. the job classifications that were evaluated; and
4. a summary of the employer's answers to each of the 13 questions set forth in the ETS.

Fortunately, OR OSHA will allow employers to develop a common assessment based on the type of facility—welcome news to national and regional employers, particularly those that operate retail establishments, hotels, restaurants, etc. that are substantially similar to each other—provided they address any site-specific information that affects employee exposure risks.

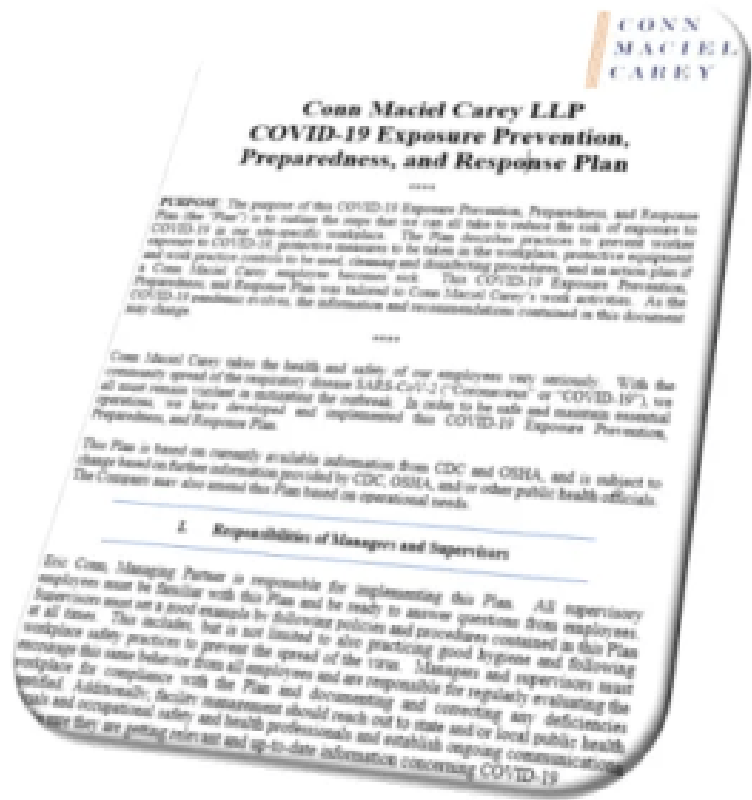
Key questions that must be answered as part of the exposure assessment process include

- Can employees telework or otherwise work remotely?
- What are the anticipated working distances between employees and how might they change during non-routine activities?
- How have the workplace and/or duties been modified to achieve 6 feet of distance?
- How are employees and others notified of the mask, face cover or face shield requirements?
- How have employees been informed about policies or procedures for reporting COVID-19 symptoms?
- How have engineering and/or administrative controls been used to minimize exposure?
- How are sanitation measures being implemented?
- How can employees report workplace hazards and how are these procedures communicated to employees?

Written Exposure Control Plan:

Once employers complete the exposure assessment, those with more than 10 employees must then create a

written exposure control plan that contains, at a



- A list of all tasks or assignments requiring use of PPE necessary to minimize exposure to COVID-19
- The procedures the employer will use to ensure an adequate supply of masks, face coverings, face shields and PPE necessary to minimize exposure
- A list and description of the specific hazard control measures adopted, implemented or installed by the employer
- A description of the employer’s mask, face cover and face shield requirements and the methods used to inform those entering the workplace where such source control is required
- The procedures the employer will use to communicate with its employees (and other employees in multi-employer worksites) regarding exposure to an individual known or suspected to be infected, including contact tracing and general communications in the workplace
- The procedures that will be used to provide employees with the information and training required by the OR ETS

Other Specific Controls:

In addition to requiring employers to conduct and document COVID-19 exposure assessments, and develop and implement exposure control plans and training programs, the OR ETS also imposes a number of other specific requirements—many of which will sound familiar from months of monitoring CDC, OSHA, and Health Department guidance—including:

- **Physical distancing.** The OR ETS mandates that employers ensure that both work activities and workflow are “designed” to eliminate the need to be within 6 feet of another individual unless the employer determines and can demonstrate that such distancing is not feasible for certain activities.
- **Masks, face coverings or face shields.** Significantly, the OR ETS imposes a face covering requirement that goes beyond employees, to include customers and patrons, dubiously including them along with employees, temporary workers and vendors as individuals subject to employers’ control. Notwithstanding the surge of violent interactions with customers and [CDC guidance against turning employees into mask police](#), throughout this pandemic, OR OSHA has attempted to aggressively enforce the Governor’s mask mandate—insisting that employers refuse customers who enter without a face covering—so employers should expect more of the same. The only difference is that it will now be easier for the agency to cite employers if they opt not to refuse service to mask-less customers. Under the ETS, employers must provide face coverings at no charge to employees and have the option to require face shields instead, although the rule “strongly recommends” the use of masks or face covers for source control rather than a shield alone.
- **Sanitation.** Employers must regularly clean or sanitize all common areas, shared equipment and high touch areas at least every 24 hours if the workplace is occupied less than 12 hours a day or at least every 8 hours while in use, if the workplace is occupied more than 12 hours a day. When cleaning areas, surfaces or equipment used by an infected individual, it is recommended but not required that the employer wait at least 24 hours before disinfecting. This sanitation requirement does not apply to areas, surfaces, or equipment that has been unoccupied or otherwise unused for seven days or more.
- **Ventilation.** Employers have until January 6, 2021, to optimize the amount of outdoor air that is circulated through their existing HVAC system, to the extent the system can do so when operating as designed. While employers are not required to install new systems or meet the ANSI/ASHRAE standards, they will be required to maintain and replace air filters as necessary and ensure that all air intake ports that provide outside air are cleaned, maintained and kept clear of debris.
- **Infection notification.** Employers must establish a process to notify exposed employees (those who were within 6 feet of a confirmed COVID-19 individual for a cumulative total of 15 minutes or more, regardless of whether one or both of them were wearing source control) that they had a work-related contact with an individual who has tested positive for COVID-19, as well as to 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). Employers must thus have a mechanism for notifying both exposed and affected employees within 24 hours of the employer being made aware that an individual with COVID-19 was present in the workplace while infectious or otherwise may have had work-related contact with its employee(s) while infectious.
- **Employee testing and medical removal.** Employers will be expected to cooperate if and whenever a local public health agency or the Oregon Health Authority indicates testing is necessary by making its employees and space available at the workplace. Whenever a local health agency, the Oregon Health Authority, or a medical provider recommend that an individual be restricted from work, employers must direct that person to isolate at home.
- **Posting and training.** Employers must permanently post the Oregon OSHA COVID-19 Hazards poster in a conspicuous manner in a central location in the workplace. Not surprisingly, employers will have to train employees on the various elements of their infection control plan, including physical distancing, face covers,

sanitation, medical removal and infection reporting and notification processes. Also, employees must be trained on COVID-19 symptoms, methods of transmission, and the ability of symptomatic and asymptomatic persons to transmit the virus.

The OR ETS is a comprehensive, detailed rule that imposes a wide range of requirements on employers with operations in Oregon. Employers have less than one month to conduct their workplace exposure assessments and develop their written infection control plans—and less than 6 weeks to train employees on these measures. Those deadlines will come and go quickly, in part because of the Thanksgiving holiday falls within that period.

Employers would be well-advised to closely review the requirements imposed by the OR ETS and begin their efforts to complete the necessary steps now. We are here to answer your questions and help you complete your exposure assessments and develop your infection control plans.

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For additional resources on issues related to COVID-19, please visit Conn Maciel Carey's [COVID-19 Resource Page](#) for an [extensive index of frequently asked questions](#) with our answers about HR, employment law, and OSHA regulatory related developments and guidance, as well as COVID-19 recordkeeping and reporting flow charts.



Likewise, subscribe to our [Employer Defense Report](#) blog and [OSHA Defense Report](#) blog for regular updates about the Labor and Employment Law or OSHA implications of COVID-19 in the workplace. Conn Maciel Carey's COVID-19 Task Force is monitoring federal, state, and local developments closely and is continuously updating these blogs and the FAQ page with the latest news and resources for employers.

