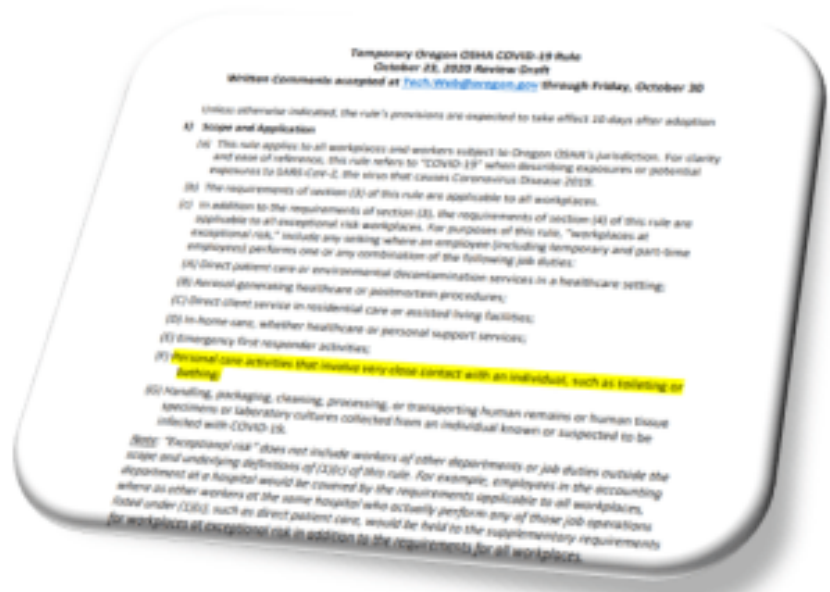


OCTOBER 28, 2020 | OSHA RULEMAKINGS & STANDARDS

Oregon to Issue COVID-19 Temporary Standard in Early November (Compliance Deadlines in Early December)

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

On Friday, October 23, 2020, Oregon OSHA released the latest version of its proposed [COVID-19 Emergency Temporary Standard](#) (the "OR ETS"). Already delayed several times, it now appears that the OR ETS will go into effect the week of November 2nd, and include 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 October 23rd draft 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.



Employers seeking to have input in the final rule have little time as Oregon OSHA presently plans to only accept written comments through Friday, October 30. Depending on how extensive the feedback is submitted, Oregon OSHA will finalize the rule and adjust the various effective dates included in it depending upon its adoption date.

About 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 plans to develop and release materials to support work on the risk assessment, the written exposure control plan, and the training activities required in the rule. The agency is also still revising an OSHA Hazards Poster that employers will be required to post in the workplace.

For the majority of employers, the OR ETS will require them to 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:

For example, every Oregon employer must, within one month of the ETS' adoption date, both 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 within 6 weeks after the rule's adoption.

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 minimum, these elements:

- 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. The physical distancing section of the rule reiterates that masks, face coverings and/or shields must be worn indoors as set forth in the section regarding their use and also requires that they are worn if individuals cannot be at least 6 feet apart while working in outdoor settings.
- **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. The ETS also requires that employers ensure all individuals use a mask, face covering, or shield whenever inside, irrespective of physical distancing measures, unless they are in a private workspace that is not shared with others.
- **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 twice every 24 hours if it is occupied more than 12 hours a day. In the latter settings, the two cleanings must be at least 8 hours apart. When cleaning areas, surfaces or equipment used by an infected individual, the employer should wait at least 24 hours before disinfecting, but need not clean it if it has been 7 days or more since used by the infected individual.
- **Ventilation.** Employers have two months from the effective date of the ETS to maximize the amount of

outdoor air that is circulated through their existing HVAC system, to the extent the system settings can be modified. 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 whereby they notify affected employees that they had a work-related contact with someone who tested positive for COVID-19. Under such a process, the employer must ensure that affected employees are so notified within 24 hours of when the employer learned that the positive individual was in the workplace while infectious or otherwise had contact with workers.
- **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 will have only one month from the rule's adoption to conduct their workplace exposure assessments and develop their written infection control plans—and 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.

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.