Oregon Employers Face New Safety Obligations Thanks To New COVID-19 Rules

Insights
11.19.20

The Oregon Occupational Safety and Health Administration recently adopted a temporary rule requiring employers to implement safety measures to reduce the spread of COVID-19. The rule, which took effect November 16 and remains in effect through May 4, 2021 – requires you to complete an Exposure Risk Assessment and Infection Control Plan by December 7 and provide employee training by December 21. These dates are rapidly approaching, so your compliance efforts need to begin immediately. What do Oregon employers need to know about this significant development?

General Obligations
On November 6, the Oregon Occupational Safety and Health Administration adopted new rules related to COVID-19 and the workplace. The new Oregon-OSHA rule generally reflects prior guidance from the governor and the Oregon Health Authority (OHA), such as social distancing, notices, and masks.

However, employers cannot rest on their laurels as the rule also imposes new obligations. It requires all employers in Oregon to comply with new COVID-19 related standards. The new rule includes strict sanitation requirements, an obligation to maximize the ventilation of workspaces, a requirement to develop and implement an exposure risk assessment, an obligation to create an infection control plan, and a requirement to train all employees within six weeks of adoption of the rule regarding sanitation, distancing, mask requirements, and general information about COVID-19.

For employers with more than 10 employees statewide, you must also adopt a written risk assessment and a written infections control plan. For those employers who are visual learners, Oregon-OSHA produced this chart that outlines the specific obligations on employers.

A brief summary of the obligations outlined in this new rule are provided below. You should reach out to your legal counsel for a detailed review of each new obligation:

- *Exposure Risk Assessment* – All employers must conduct a COVID-19 exposure risk assessment by December 7, 2020. Oregon-OSHA has created a template, which can be found on its website. The rule outlines specific questions employers must answer; it also requires employees to have the opportunity to provide feedback regarding the assessment.

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- *Infection Control Plan* – By December 7, 2020, all employers must establish and implement an infection control plan and address the issues specifically raised in the rule, which include, but are not limited to, procedures the employer will use to notify employees when they may have been exposed to COVID-19. Workers who had contact with an infected person must be notified within 24 hours of the employer's knowledge of the positive test. This plan must be in writing for employers with 10 or more employees (statewide). A copy of the plan must also be made accessible to all employees. Employers must implement an infection control plan specific to the type of work performed on a facility-by-facility basis.
- *Employee Training* – Employers must provide the training outlined in the rules by December 21, 2020. Employees must be given an opportunity to provide feedback and ask questions during the training regarding the policies and the steps taken to minimize the risk of COVID-19.
- *Medical Removal* – Employees who are ordered to quarantine by a medical provider/local public official must be permitted to return to their prior duties (if they are still available) without facing an adverse action related to the COVID-19 quarantine.
- *COVID-19 Notice*: A process for notifying affected employees that they had work-related contact with an individual with a positive COVID-19 test must be put in place. Workers who had contact with the infected person must be notified within 24 hours of the employer's knowledge of the positive test. Oregon-OSHA has provided the model policy here.
- *Cleaning/Sanitation/Ventilation*: Employers must provide employees with supplies and time for more frequent cleaning and to perform hand hygiene before using shared equipment, eating, or touching their face or eyes. Cleaning must occur at least every 24 hours for workplaces occupied less than 12 hours a day. If workplaces are occupied more than 12 hours a day, cleaning must be done every 8 hours. Employers must provide employees with sufficient hand-washing supplies and facilities as well as supplies to clean work surfaces. Also, by January 6, 2021, employers must maximize the amount of outside air circulated through existing HVAC systems. Likewise, air filters and intake ports must be properly maintained and cleaned.
- *Posting*: Oregon-OSHA has provided posters that must be posted in a central location where workers will see it. For remote workers, the employer must provide the employees the information electronically. In addition, signs must be posted in places where face coverings are required.
- *Physical Distancing and Masking*: Keeping consistent with prior obligations, within the workplace, employers must ensure that all individuals, including customers, vendors, and patrons be six feet apart unless it can be shown it is not feasible for some activities. Likewise, employers must ensure that all the aforementioned individuals who are five years or older (at the workplace or other premises subject to the employer's control) wear a mask, face covering, or face shield in accordance with OHA guidelines. Employers also must supply face coverings at no cost to employees. Finally, the rule also mandates that when employees are transported in a vehicle for work purposes, regardless of duration/distance, all occupants in the vehicle must wear a mask, face shield, or face covering.

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What To Do Next

There is much information for employers to process, particularly on the tight timelines being imposed by Oregon-OSHA. Compliance cannot be achieved in one day. For example, the risk assessment requires a written detailed analysis of 13 separate factors specific to each workplace and the infection control plan requires you to address specific issues for your workplace. To top it all off, the rules require feedback from employees about the risk assessment questions raised by OSHA. These rules require an in-depth evaluation of your workplace.

If you need any assistance with the infections control plan, training, or risk assessment, do not hesitate to reach out to your legal counsel. The December 7 deadline to complete the Exposure Risk Assessment and Infection Control Plan and December 21 deadline to complete employee training will be here before you know it.

In conclusion, the above alert outlines general guidance for all Oregon employers. The Oregon-OSHA rule provides further mandatory guidance to the following specific industries: restaurants, bars, brewpubs and tasting rooms at breweries, wineries and/or distilleries, retail stores, outdoor/indoor markets, personal service providers, construction operations, indoor and outdoor entertainment facilities, outdoor recreation organizations, transit agencies, collegiate, semi-professional and minor league sports, swimming pools and spas, sports courts, fitness organizations, public and private K-12 schools and early education providers, colleges and universities, veterinary care providers, fire service and EMS, law enforcement, jails and custodial institutions. The obligations for these industries can be found in Appendix A.

We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any attorney in our Portland office.

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular situation.

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