

*Updated 12/1/2020



Oregon OSHA Temporary Workplace Safety Rules for COVID-19

FAQ¹

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Purpose

On November 6, 2020, Oregon Occupational Safety and Health Agency (OR-OSHA) adopted the [Temporary Oregon OSHA COVID-19 Rule](#) (“the Rule”). The Rule is aimed at laying out minimum standards for addressing the effects of the pandemic on the workplace and applies to all employers. Businesses without employees will not follow this Rule, but will have to follow the Oregon Health Authority guidance. The purpose of this document is to provide answers to frequently asked questions regarding the new Rule.

OR-OSHA is issuing helpful materials, such as fact sheets, templates, and videos, to assist employers to comply with the Rule, too. So, Oregon employers should monitor OR-OSHA’s webpage closely and/or sign up for their email alerts [here](#).

¹ Special thanks to Maggie Powers, a third-year law student at Lewis & Clark Law School, for doing the heavy lifting on researching and drafting this guide.

Frequently Asked Questions

1. When do the new Oregon OSHA rules go into effect, and how long are the rules in effect for? Who do the new rules apply to?

The Rule takes effect November 16, 2020 and will remain in effect until May 4, 2021, unless revised or repealed before that date.² The Rule applies to all Oregon employers and workplaces. See [here](#) for OR-OSHA's COVID webpage.

2. How does Oregon OSHA's rule work with OHA guidance?

The OR-OSHA's new Rule builds upon current [guidance from the Oregon Health Authority \(OHA\)](#). While the Rule generally reflects the existing requirements and recommendations previously released by OHA, there are some slight differences and additional requirements. **Employers are required to follow both the Rule and the OHA Guidance.** Part of this is because OSHA regulation generally only applies to employers, and partly because the OHA guidance may provide for higher required standards due to changes in the rate of Covid-19 infections or new knowledge about the virus. The Rule often refers to the OHA guidance, and for things like shutdowns or times where the guidance scales back business operations, OR-OSHA is clear that the OHA guidance trumps the Rule.

The OSHA Rule is meant to be a stable Rule that all employers can follow and it is unlikely to change. The OHA guidance, on the other hand, can change quickly in response to the pandemic, including changes to capacity, face coverings, stages of reopening, or freezes. The OSHA Rule as it applies to specific industries may not have many changes for industries that have already been operating according to the OHA guidance; however, the part of the Rule that applies to all employers does have new requirements, including new or updated requirements for cleaning and sanitation, employee training, risk assessments, infection control plans, and Covid-19 testing and notice to other employees if someone has gotten sick.

You can learn the details of the Rule by reading it on [OR-OSHA's COVID webpage](#) or by watching our more in-depth presentation (or just the slides) on the [SBLC's pandemic resource page](#).

3. Are employers required to provide employers masks, face coverings, or face shields? How often do employers have to replace face coverings?

Yes. Employers must provide masks, face coverings, or face shields for employees at no cost to the worker.³ The Rule specifically refers employers to the OHA mask guidance

² OAR 437-001-0744.

³ OAR 437-001-0744 (3)(b)(A).

(found updated [here](#)) and notes that it doesn't recommend face shields only, since they've proven to be less effective than face coverings and masks. Employers should also know that they can allow employees to wear their own face coverings, but they don't have to. In other words, employers may require that employees only wear the face coverings or masks provided by the employer. In addition, the Rule specifies that if an employee chooses to wear a mask and it is NOT required (say, for example, in a closed office), the employee can do so and the employer must allow it. Facial coverings must be replaced as frequently as necessary to ensure that the mask is functioning appropriately.

4. What is the exposure risk assessment, and when must employers conduct it by?

Employers must conduct a Risk Assessment by December 7, 2020.⁴ The purpose of the Risk Assessment is to reduce the risk of infection and spread of COVID-19 in the workplace. In conducting the Risk Assessment, the Rule sets forth 13 questions (22 questions when you count the subparts) that employers must address.⁵ Further, the Rule requires employee participation in conducting the Risk Assessment.⁶ The 13 questions are:

- (1) Can employees telework or work from home? How are employees encouraged or empowered to do so?
- (2) What are the anticipated work distances between employees? Does this change during non-routine work activities?
- (3) What are the anticipated work distances between employees and other individuals (customers, vendors, etc.)? Does this change during non-routine work activities?
- (4) Are there modifications to workplace and/or job duties to provide at least 6 feet of distance between all individuals?
- (5) What is the face mask or shield policy at the workplace? How is policy communicated to employees and individuals at workplace?
- (6) What is the policy and procedures for reporting COVID-19 signs and symptoms? How is policy and procedures communicated to employees? How might quarantined employees work from home if they are well enough to do so?

⁴ OAR 437-001-0744 (3)(g).

⁵ OAR 437-001-0744 (3)(g)(C).

⁶ OAR 437-001-0744 (3)(g)(A).

- (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) What are the policies and procedures for reporting workplace hazards related to COVID-19? How are policies and procedures communicated to employees?
- (10) What are the sanitation methods related to COVID-19? How have the methods been communicated to employees and other individuals?⁷
- (11) If the business is one covered by Appendix A, how is the employer complying with the specific Appendix A COVID-19 requirements and “applicable guidance” from OHA? 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?

The Rule also requires employers with more than 10 employees to document the following:

- A. The name, job title and contact information of the person who conducted the Risk Assessment;
- B. Date the assessment was completed;
- C. Employee job classifications that were evaluated; and
- D. Summary of answers to each of the 13 exposure Risk Assessment questions⁸

While the Rule does not specifically require that employers document the process in conducting the Risk Assessment, it is a good idea and will assist employers in demonstrating their good faith efforts to comply with the Rule. OR-OSHA has provided templates for conducting the Risk Assessment can be found [here](#).

⁷ See OAR 437-001-0744 (3)(c) (specifying cleaning and sanitation requirements).

⁸ OAR 437-001-0744 (3)(g)(B).

In addition, though employers with less than 10 employees are not required to document their risk assessment in writing, it is a good idea, just as documenting the process is, above. If this seems overwhelming and you'd like some help, OR-OSHA is offering free virtual consultations on Covid-19-related questions and you can see their information about those consultations in both English and Spanish [here](#).

5. What is the infection control plan, and when must employers conduct it by?

Along with the Risk Assessment, all employers must create an Infection Control Plan ("the Plan") no later than December 7, 2020.⁹ For employers with more than 10 employees, the Plan must be in writing and available to employees.¹⁰ It is a good idea for employers with less than employees to have a written Plan, as well, but it's not required. The goal of the Plan is to address and remedy the risks identified in the Risk Assessment. To do so, the Rule lays out six, mandatory elements that the Plan must cover, including:

- (1) Job assignments or worker tasks requiring the use of PPE to minimize employee exposure to COVID-19;
- (2) Procedure to ensure adequate supply of masks, face coverings, and PPE to minimize employee exposure to COVID-19;
- (3) List and description of specific hazard control measures implemented;
- (4) Policies and requirements for wearing masks and face coverings in workplace, and method of informing individuals (including employees, customers, vendors, etc.) of the requirements;
- (5) Procedures for employers to communicate with employees (as well as other employers at multi-employer worksites) about an employee's exposure to someone known or suspected to be infected with COVID-19 (i.e., contact tracing and notification procedures); and
- (6) Procedures to provide employees with information and training required by the Rule.¹¹

OR-OSHA has provided a template for the Infection Control Plan [here](#).

6. What information and training do employers need to provide, and by when must they do so?

⁹ OAR 437-001-0744 (3)(h).

¹⁰ OAR 437-001-0744 (3)(h)(A).

¹¹ OAR 437-001-0744 (3)(h)(B).

Employers must provide workers with information no later than December 21, 2020.¹² The training must cover the following 10 mandatory COVID-19 related topics:

- (1) Physical distancing requirements as they apply to the employee's workplace and job function(s);
- (2) Mask, face covering, or face shield requirements as they apply to the employee's workplace and job function(s);
- (3) COVID-19 sanitation requirements as they apply to the employee's workplace and job function(s);
- (4) COVID-19 signs and symptom reporting procedures that apply to the employee's workplace;
- (5) COVID-19 infection notification process as required by this rule;
- (6) Medical removal as required by this rule;
- (7) The characteristics and methods of transmission of the SARS-CoV-2 virus;
- (8) The symptoms of the COVID-19 disease;
- (9) The ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus; and
- (10) Safe and healthy work practices and control measures, including but not limited to, physical distancing, sanitation and disinfection practices.

The training can be provided in person or virtually. It can also be pre-recorded, written, or in another form, so long as it conveys the required information to employees. The training must be in a language that the employees can understand, and employers must provide employees with an opportunity for feedback.

OR-OSHA will be providing materials that employers may use to fulfill this requirement on their [website](#).

7. When employees are transported in a vehicle for work purposes, must all occupants of the vehicle wear a mask?

¹² OAR 437-001-0744 (3)(i).

Yes. When employees are transported in a vehicle for work purposes, all occupants in the vehicle must wear a mask, face covering, or face shield regardless of the travel distance or duration involved.¹³ The only exception for this requirement is if all occupants within the vehicle are members of the same household.¹⁴

8. Does the new rule require employers to purchase or install a new ventilation system?

No, the Rule does not require employers to purchase or install new ventilation systems, but it does have updated requirements for the systems in place. By January 6, 2021, employers must work with building operators to optimize the amount of outside air circulated through the HVAC system (on days where the air quality is at least moderate).¹⁵ This does not require installing a new HVAC system or even upgrading the existing system to certain standards. Rather, it requires cleaning and maintaining all filters and intake ports that provide outside air to the HVAC system as frequently as necessary.¹⁶

9. Does OR-OSHA provide any consultation services?

Yes. OR-OSHA provides free and confidential services. For more information see their flyer for virtual consultations [here](#).

10. Are there industry-specific guidelines?

Yes. Appendix A of the Rule provides mandatory workplace guidance for industry-specific and activity-specific activities. This includes, but is not limited to:

- A-1: Restaurants, Bars, Brewpubs and Public Tasting Rooms at Breweries, Wineries and Distilleries
- A-2: Retail Stores
- A-4: Personal Services Providers

The SBLC has created presentations for the three industries listed above on our pandemic resources page on our [website](#).

Other types of workplaces covered specifically in Appendix A of the Rule include:

- Outdoor/Indoor Markets

¹³ OAR 437-001-0744 (3)(b)(B).

¹⁴ *Id.*

¹⁵ OAR 437-001-0744 (3)(f).

¹⁶ *Id.*

- Construction Operations
- Indoor and Outdoor Entertainment Facilities
- Outdoor Recreation Organizations
- Transit Agencies
- Collegiate, Semi-Professional and Minor League Sports
- Professional and PAC-12 Sports
- Licensed Swimming Pools, Licensed Spa Pools and Sports Courts Mandatory Workplace Guidance
- Fitness-Related Organizations
- K-12 Educational Institutions (Public or Private)
- Early Education Providers
- Institutions of Higher Education (Public or Private)
- Veterinary Care
- Fire Service and EMS
- Law Enforcement
- Jails and Custodial Institutions