



QUESTIONS AND ANSWERS

Regarding the Oregon Occupational Safety and Health Division's (Oregon OSHA)
Education and Enforcement of Issues Related to COVID-19

Scope of Oregon OSHA COVID-19 Activity

What issues can Oregon OSHA address?

Oregon OSHA will address employee inquiries and complaints, and provide advice to employers related to any potential violation of existing Oregon OSHA rules or directives issued by Gov. Kate Brown if they involve potential workplace exposure. 3/27/2019

Under what authority can Oregon OSHA address public health issues for which Oregon OSHA has no rules?

All employers in Oregon are required by the Oregon Safe Employment Act (OSEA) to provide a safe and healthful workplace for their employees, regardless of the industry type or job function. Specifically, [OAR 437-001-0760\(1\)](#) – Rules for all Workplaces applies to all employers, including those in the construction industry and [OAR 437-001-0099\(2\)](#) – General Rules for agriculture.

In addition, Oregon OSHA has clear statutory authority to enforce other laws normally enforced by other agencies and other agencies' rules to the degree that they involve worker exposure to hazards. While we do not traditionally refer to the Governor's Office as an "agency" the term can be applied broadly, and Oregon OSHA believes that it has the authority to enforce the requirements of the executive order(s) as they relate to potential worker exposure to COVID-19. 4/3/2019

Will Oregon OSHA address concerns regarding price-gouging?

No, it is outside both our authority and our expertise. We have no ability to address public concerns about price gouging. The Oregon Department of Justice's (DOJ) consumer protection offices have the authority to address price gouging. Their website has information about it, including about the COVID-19 crisis, at <https://www.doj.state.or.us/consumer-protection/sales-scams-fraud/price-gouging/>. 3/27/2019

Will Oregon OSHA address concerns regarding existing or new sick leave laws?

No, enforcement of state law related to sick leave is the Oregon Bureau of Labor and Industries'(BOLI) responsibility. BOLI provides specific guidance and a sick leave Q&A in the context of the COVID-19 crisis at <https://www.oregon.gov/BOLI/WHD/OST/Pages/index.aspx>. 3/27/2019

If Oregon OSHA is enforcing the Governor's Executive Order, will we be taking complaints about individuals who do not stay in their home?

No. Our authority and involvement is limited to businesses and to the workplace. In fact, no state agencies will be questioning whether drivers have a valid reason to remain at home. The attached document from the Oregon State Police may be helpful if people have questions on this issue. Although the order is summarized in the phrase "Stay at Home; Stay Safe" the real point of the order is to avoid or at least minimize in-person contact outside the home. A driver alone in his or her car raises no concerns on that score for any law enforcement or regulatory body.

3/27/2019

OSP Enforcement FAQ

Will Oregon OSHA be addressing concerns about crowds on beaches or in parks or congregating in other locations?

No. Our authority and involvement is limited to businesses and to the workplace. If individuals have concerns about groups congregating they need to address those to local authorities using non-emergency contact numbers. Because such activities are very visible it is also likely that local law enforcement will become aware of them relatively quickly even without receiving a complaint or other notification. How they address them, of course, will be a question for local authorities, taking into account their available resources and other factors.

3/27/2019

Expectations of Businesses and other Employers

Are all non-essential businesses required to cease operations?

No. Although some businesses are required to close to the public, no businesses are required to entirely cease operations, so businesses may still expect employees to come to work.

3/27/2019

Which businesses must close their doors to the public?

Because the governor has determined that close personal contact in Paragraph 2 of Executive Order No. 20-12 (issued March 23, 2020) mandates the closure of the following:

- Amusement parks
- Aquariums
- Arcades
- Art galleries (to the extent they are open without appointment)
- Barber shops and hair salons
- Bowling alleys
- Cosmetic stores
- Dance studios
- Esthetician practices

Fraternal organization facilities
Furniture stores
Gyms and fitness studios (including climbing gyms)
Hookah bars
Indoor and outdoor malls (specifically, all portions of a retail complex containing stores and restaurants in a single area)
NOTE: This prohibition does not apply to mall operations that provide food, grocery, health care, medical, pharmacy or pet store services
Indoor party places (including jumping gyms and laser tag)
Jewelry shops and boutiques (unless they provide goods exclusively through pick-up or delivery service)
Medical spas, facial spas, day spas, and non-medical massage therapy services
Museums
Nail and tanning salons
Non-tribal card rooms
Skating rinks
Senior activity centers
Ski resorts
Social and private clubs
Tattoo/piercing parlors
Tennis clubs
Theaters
Yoga studios
Youth clubs

3/27/2019

Can such businesses continue to have employees work during the mandated closure?

Yes. Employees can perform work (cleaning, maintenance, inventory, etc.) inside the business while it is closed.

3/27/2019

Can we use PPE to allow employees to work in close contact?

Social Distancing and PPE

Oregon OSHA expects workplaces to comply with the governor's Executive Order No. 20-12 to maintain social distancing and meet Oregon occupational safety and health workplace standards. The CDC has provided guidance on wearing cloth face coverings in public to help slow COVID-19 transmission.

Employers are expected to maintain required social distancing in their workplaces following a process similar to the hierarchy of controls. First, employers should eliminate, substitute, or postpone non-critical tasks involving employee close contact. Then, use engineering controls, administrative controls, and safe work practices to maintain social distancing at the workplace. The use of face coverings or

respirators alone can not be the singular solution for achieving the important effects of social distancing. Keeping in line with the hierarchy of controls, PPE and cloth face coverings should be utilized as a last resort.

If these modifications are unable to achieve the social distancing requirements and employees must work in close contact in order to complete business-critical tasks, then PPE (such as successfully fitted respirators) should be used to supplement, but not replace, production and work practice modifications.

Most importantly, it is critical to emphasize that maintaining 6-foot social distancing remains important to slowing the spread of the virus. Employers must recognize that the use of PPE to circumvent social distancing requirements is a last resort option after all other feasible controls and safeguards have been implemented. PPE alone cannot be used by employers to comply with social distancing requirements.

Please keep in mind, there is a severe shortage of PPE in Oregon. It is imperative that healthcare facilities have an adequate supply of PPE to protect our healthcare providers on the front line of this emergency. Governor Brown issued Executive Order No. 20-10 to conserve PPE. EO No. 20-10, strongly encourages all industries (except healthcare) to cancel or postpone non-essential uses of PPE during the ongoing state of emergency, so that equipment can be conserved and redirected to the State's COVID-19 response via the Office of Emergency Management. All of those wishing to donate surplus PPE, should contact the PPE Coordinator listed in EO No. 20-10 at (971)-900-9952. 4/14/2019

What are Oregon OSHA's comments about cloth face coverings?

The CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies). This recommendation is particularly important in areas of significant community-based transmission.

As stated by the Oregon Health Authority, preventing transmission of the COVID-19 virus depends on physical distancing, frequently washing hands and surfaces, and staying home when you are sick. Personal Protective Equipment (PPE) (e.g. masks, gowns and gloves) protects healthcare personnel who are taking care of patients with COVID-19. A shortage of PPE has prompted many in the public to offer to make face coverings for healthcare personnel. In addition, the Centers for Disease Control and Prevention (CDC) released recommendations April 3, 2020, regarding cloth face coverings for the general public.

Here are Oregon Health Authority's recommendations:

[Oregon Guidance on Use of Homemade Masks or Face Coverings](#) by the Public to Prevent Spread of COVID-19: April 4, 2020

Strictly speaking, a cloth face covering is not personal protective equipment (PPE) in the traditional sense of how PPE is used, nor does it meet the design specifications for respiratory protection. The use

of cloth face coverings are encouraged from a public health perspective because they ensure the mask wearer covers their cough or sneeze by default.

It is critical to emphasize that maintaining 6-foot social distancing remains important to slowing the spread of the virus. CDC is additionally advising the use of simple cloth face coverings to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others. Cloth face coverings fashioned from household items or made at home from common materials at low cost can be used as an additional, voluntary public health measure.

Here is the CDC webpage. It includes instructions for making a cloth face cover: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html> 4/14/2019

What about restaurants and bars?

The operation of restaurants and bars was addressed by Executive Order No. 20-07 (issued March 17, 2020), which banned on-site consumption of food and drink at food establishments. Such organizations can continue to provide delivery and pickup (both curbside and interior) services. 3/27/2019

What about other retail businesses not listed in the answer above?

Paragraph 6 of Executive Order No. 20-12 prohibits all other retail businesses from operating unless the business designates an employee or officer to establish, implement, and enforce social distancing polices, consistent with guidance from the Oregon Health Authority (OHA). While many such businesses are operating in manners similar to those required of restaurants and bars, the Executive Order does not strictly require it. However, it certainly should be encouraged. 3/27/2019

What about grocery, health care, medical or pharmacy services?

Paragraph 8 of the executive order exempts such businesses from the requirements of Paragraph 6, although they are encouraged to comply with social distancing guidelines (most such businesses appear to have implemented procedures to minimize [although not to eliminate] contact between staff and customers even at the point of purchase). 3/27/2019

What about child care facilities?

Licensed childcare facilities must close from March 25, 2020, through April 28, 2020, unless that period is extended or terminated earlier by the governor. Notwithstanding this order, childcare facilities are allowed to remain open during this effective period if they meet requirements that address "stable" group size and prioritize the childcare needs of first responders, emergency workers, healthcare professionals, followed by critical operations staff and essential personnel, consistent with guidance provided by the Oregon Department of Education, Early Learning Division.

The governor has delegated authority to the Oregon Department of Education, Early Learning Division, to set forth exceptions to the rule allowing childcare facilities to remain open during the effective

period, if it becomes necessary to do so. Oregon OSHA does not expect to address complaints about child care facilities, and certainly has no authority to address the questions about prioritizing services.

3/27/2019

What about work in office environments?

Beginning March 25, 2020, Section 9 of Executive Order No. 20-12 prohibits businesses and non-profits from work in offices whenever telework or work-at-home options are available, in light of position duties, availability of teleworking equipment, and network adequacy.

3/27/2019

What about government offices?

Paragraphs 12 and 13 apply to the executive branch of state government. It requires all such offices to close to the public to the maximum extent possible and to provide services by phone and online during regular business hours. When contact with the public must take place, social distancing measures must be enforced to the maximum extent possible. It also requires teleworking to the maximum extent possible and requires a social distancing designee to the degree such telework options are not possible.

Paragraph 12 and 13 of the executive order do not apply to the state legislative or judicial branches, federal government, local government, or tribal governments, although they are encouraged to adhere to the same policies.

3/27/2019

Will Oregon OSHA take complaints related to the teleworking requirements?

Yes, if the employee is alleging worker exposure as a result of the failure to provide teleworking. But the evaluation of whether a business or non-profit is in violation will be a fact-specific and complex determination. If the employer has appointed an individual to establish, implement and enforce social distancing policies (as required by Section 10) and has made a reasonable effort to determine whether telework options are available, it is unlikely that we would be able to cite a violation of this provision.

3/27/2019

In several places the Executive Order refers to closing businesses for non-compliance. Will Oregon OSHA order such closures?

Oregon OSHA will close a business only in the event of a flagrant refusal to comply. Such an order should not be issued without approval from the Administrator (Michael Wood), the Deputy Administrator (Julie Love), or the Oregon OSHA Policy Manager (Renee Stapleton). If we do so, we will be relying on the red warning notice authority found in the Oregon Safe Employment Act.

3/27/2019

Do construction, agriculture, or non-retail establishments need to appoint someone to identify social distancing measures and enforce them?

Strictly speaking, no. But they should do so. For example, the Oregon Home Builders Association has recommended to all its members that they should follow the guidance in the governor's Executive Order as it relates to social distancing and its enforcement. 4/3/2019

Without a specific requirement, is there anything Oregon OSHA can do to address worker concerns in businesses not covered by the order?

Yes. We still have jurisdiction to address complaints alleging workers are at risk. And, while proving all the elements of a general duty violation (should it come to that) would be more difficult, we certainly would have no problem proving that COVID-19 is a recognized hazard. We may not be able to tell an employer in such a situation exactly what they must do, but we can reasonably advise them that the situation does require them to take specific measures to minimize the risk their employees face. 3/27/2019

What resources are available to help businesses and other employers?

There are several avenues to obtain information, including industry-specific guidance put out by a number of organizations.

Oregon OSHA has information available for employers at <https://osha.oregon.gov/Pages/re/covid-19.aspx>

In addition, both the CDC and federal OSHA have resources for businesses and employers:

CDC: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>

Federal OSHA: <https://www.osha.gov/Publications/OSHA3990.pdf>

At least one workers' compensation insurance carrier has dedicated financial assistance in relation to COVID-19. Check with your insurance carrier to see if they are offering assistance. 3/31/2019

Updated: March 27, 2020

Updated: April 3, 2020

- Added Q&A Can we use PPE to allow employees to work in close contact?

- Added and OAR 437-001-0099(2) – General Rules for agriculture to Under what authority can Oregon OSHA address public health issues for which Oregon OSHA has no rules?
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- Updated Can we use PPE to allow employees to work in close contact?
- Added What are Oregon OSHA's comments about cloth face coverings?