

# GUIDE TO COVID-19 WORKPLACE SAFETY REGULATION IN FOUR STATE-PLAN STATES

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## BACKGROUND: US OSHA COVID-19 REGULATION AND GUIDANCE IN THE PRIOR ADMINISTRATION

US OSHA currently has several well-established regulations that apply to aspects of workplace protection that also apply to certain workplaces operating during the pandemic. For example, OSHA's PPE and respiratory standards would apply particularly to work in hospitals and those in direct contact with people or bodies known to be infected by COVID-19. See, e.g., 29 CFR 1910.132, 1910.133, 1910.134. OSHA's illness recordkeeping standard applies to workplaces otherwise required to do that recordkeeping (29 CFR 1904.2(a)), and all workplaces are required to report to OSHA work-related cases that result in hospitalization or death within 24 hours of a workplace exposure (see fn 9). The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act, 29 USC 654(a)(1), requires each employer to furnish to each worker "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." 29 U.S.C. § 654(a)(1). Yet, the General Duty Clause does not provide clear direction on what an employer must do at the workplace, and enforcement by OSHA during the pandemic under the General Duty Clause can be difficult in all but the most egregious cases.

On its COVID-19 resource webpage, OSHA essentially recognizes that it does not have a comprehensive standard for working during the pandemic, as the state-plan states' COVID-19 regulations do. OSHA points to its own bloodborne pathogen standard and California's Aerosol Transmissible Diseases (ATD) standard as either provisions that "offer a framework that may help control some sources of the virus," or "provid[ing] useful guidance for protecting [non-healthcare] workers exposed to SARS-CoV-2."<sup>1</sup> OSHA has responded to previous threats of airborne disease and viral transmission by issuing specific guidance, as in the case of the [Zika virus](#), [avian flu](#), and the [H1N1 virus](#). To state the obvious, SARS-CoV-2 is unique in US workplaces for many reasons, including the length of time it has been a threat, its asymptomatic transmission, and the sheer number of cases of sickness and death.

On March 9, 2020, OSHA issued its "[Guidance on Preparing Workplaces for COVID-19](#)," ([Preparing Guidance](#)) and on June 17, 2020, OSHA issued its "Guidance on Returning to Work," ([Reopening Guidance](#)) (both currently under review by OSHA under the Biden Administration).<sup>2</sup> In its *Preparing Guidance*, OSHA recommended that employers divide job tasks into exposure levels of "very high, high, medium, and lower risk" and then recommends steps employers should consider taking to protect workers in each risk category, using its "hierarchy of controls" framework for addressing workplace risks, i.e., engineering controls, followed by administrative controls, safe work practices, and PPE. Specific controls generally were not offered, and OSHA repeatedly described controls as "to be considered," including physical barriers.

In its *Reopening Guidance* issued three months later as a supplement to the *Preparing Guidance*, OSHA's "guiding principles" were that employers' reopening plans "should address":

- Hazard Assessment

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<sup>1</sup> [OSHA COVID-19/Regulations webpage](#) (last viewed 2/24/2021).

<sup>2</sup> Each of the formerly issued OSHA guidance documents has a banner stating, "Given the evolving nature of the pandemic, OSHA is in the process of reviewing and updating this document. These materials may no longer represent current OSHA recommendations and guidance. For the most up-to-date information, consult Protecting Workers Guidance [which was issued on January 29, 2021 and is discussed below]."

- Hygiene
- Social Distancing
- Identification and Isolation of Sick Employees
- Return to Work After Illness or Exposure
- Controls
- Workplace Flexibilities
- Training
- Anti-retaliation

In addition to the two basic guidance documents, through 2020, OSHA issued industry-specific COVID-19 Alerts for specific industries or types of jobs. For example, it issued, [COVID-19 Guidance for the Package Delivery Workforce](#), which contained “tips [to] help reduce the risk of exposure.” Those tips included suggestions such as, “Allow workers to wear masks over their nose and mouth to prevent them from spreading the virus” and “Discourage workers from using other workers’ tools and equipment.” These guidance documents were not clear mandates for any specific type of hazard control.

The previous administration [successfully resisted](#) attempts to force it to adopt an Emergency Temporary Standard (ETS), instead insisting that it would rely on existing regulations and guidance, the General Duty Clause, and its enforcement priorities.

## FOUR STATE-PLAN STATES’ APPROACH

Four state-plan states determined that employers in their state should be regulated more prescriptively and with compliance mandates not found in US OSHA guidance.

In summary, these states took each of the elements in the *Reopening Guidance* and added specific, mandatory requirements, particularly with respect to hazard controls, return-to-work policies, and training. The principal differences are whether the state’s regulations expressly accommodate different levels of exposure risk (as described in the *Preparing Guidance*) and/or whether the state provides specific requirements for specific industries. The structure of Virginia’s permanent COVID-19 workplace safety regulation is built on the exposure risk approach described in the *Preparing Guidance*, and then adds specific controls and requirements for each exposure risk level. Michigan Emergency Rules require employers to categorize risk, but also includes hazard controls by industry. Oregon Emergency Rules have more industry-specific but fewer industry-wide prescriptive controls. Only California’s ETS does not rely on either an industry-specific or exposure risk regulatory approach, imposing requirements through its Injury and Illness Prevention Plan model for all employers except those healthcare employers already covered by its 2009 Aerosol-Transmitted Disease regulation. California’s ETS also requires more action, compared to all other states, in response to COVID-19 cases in the workplace, such as testing of exposed and potentially exposed employees, and wage and benefit protections for employees who are required to be excluded from the workplace for quarantine or isolation.

By the end of the prior administration, these four states were the only states with workplaces operating under a comprehensive COVID-19 workplace safety regulation, enforced by the state’s occupational safety and health agency, not federal OSHA. The other states’ employers were operating under US

OSHA guidance and existing regulations, as described above, and their Governors' COVID-19 public health directives and orders.

The COVID-19 workplace safety regulations of the four state-plan states that have issued those regulations prior to President Biden's March 15, 2021 deadline for US OSHA to issue its own ETS are described below, in the order by which they became the law of that state.

## ***California: Aerosol Transmissible Diseases Standard, 8 CCR § 5199***

California has two regulations which apply to working in a pandemic but only one of which was issued for the sole purpose of COVID-19 safety in all California regulated workplaces. In 2009, California issued its ATD Standard, which applies only to named industries, e.g., health care, certain first responders, laboratories, correctional facilities, homeless shelters, and drug treatment centers. 8 CCR § 5199. The ATD Standard recognizes that certain pathogens require heightened airborne isolation, rather than just protections against droplets. SARS-COV-2 is an example of a pathogen needing airborne isolation.

Although issued well before and without specifically targeting the COVID-19 pandemic, California's ATD Standard was immediately available to address COVID-19 safety issues in the most high hazard workplaces. For aerosol transmissible diseases, like COVID-19, covered employers must have the following:

- written exposure control plan and procedures
- engineering and work practice controls, including airborne isolation rooms
- PPE requirements, including N95 respirators<sup>3</sup>
- training of employees on pathogen exposure, use of PPE, and procedures if exposed
- removal from the workplace of exposed employees
- medical services for exposed employees

Many of the elements of the ATD standard can be found in the other three state-plan states' COVID-19 standards, existing OSHA COVID-19 guidance, and in existing federal PPE regulation. See, e.g., 29 U.S.C. 1910.134.

## ***Virginia: Final Permanent Standard for Infectious Disease Prevention of the SARS-COV-2 VIRUS that Causes COVID-19, 16VAC25-220***

Virginia was the first state-plan state to issue a COVID-19 workplace safety standard, as an emergency temporary standard, effective July 27, 2020. On January 27, 2021, Virginia became the first state to have a [permanent standard](#) targeting COVID-19 safety applicable to all Virginia-regulated workplaces. Under the permanent standard, Virginia requires all regulated employers to conduct a detailed workplace assessment to categorize workplace hazards and job tasks by exposure risk levels. This exposure-assessment approach is consistent with the approach recommended in OSHA's original COVID-19 guidance issued in March 2020, [Guidance on Preparing Workplaces for COVID-19](#) (now under review by Biden's OSHA). In the Virginia Standard "high" and "very high" exposure risk levels

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<sup>3</sup> Due to the shortages of respirators during the pandemic, California OSHA (Cal/OSHA) issued [interim guidance](#) regarding alternative means of compliance for health care facilities.

apply to the healthcare industry, first responders, mortuaries, correctional institutions, and similar employment most likely to put employees in direct contact with people ill with COVID-19. The “lower exposure risk” level applies to remote work and office work as long as employees can remain six feet apart at all times. All other employers are considered at the “medium exposure risk” level. In general, the distinctions between the four exposure risk levels affect the extent of controls, the extent of training, and the need for risk assessments or exposure control plans to be written.

All Virginia employers, at all exposure levels, are required to: assess risks; establish procedures for reporting signs and symptoms and positive cases of COVID-19 to the employer; implement specified return-to-work time periods after infection or exposure; provide notice to employees, others’ employees, and building operators when there is a positive case onsite; notify public health authorities and Virginia OSHA (VOSH) in cases of multiple employee COVID-19 cases per local and VOSH regulation; implement physical distancing including in common areas; avoid or control exposures when in a vehicle for work purposes; comply with face covering and PPE requirements, except for cases of medical exemption; implement sanitation and disinfection procedures; and provide exposure risk level-specific training. The Virginia permanent standard allows for VOSH enforcement discretion, under certain circumstances, if the employer can show that it is in compliance with at least as protective CDC guidance or if it can show that PPE downgrades are due to lack of availability “on commercially reasonable terms.” See 16VAC25-220 10.C and 10.E. See [previously published articles](#) for more extensive discussions of the Virginia COVID-19 standard.

## ***Michigan: Emergency Rules Coronavirus Disease 2019 (COVID-19)***

On October 14, 2020, the Michigan Department of Labor & Economic Opportunity’s Michigan Occupational Safety and Health Administration (MIOSHA” issued a set of COVID-19 [Emergency Rules](#). These rules are in effect for six months, unless made final. The Rules have provisions that apply to all Michigan workplaces, and additional specific provisions that apply to specific industries including health care, construction, casinos, personal care, in-home services, public accommodations, fitness facilities, manufacturing, retail, restaurants, schools, and meat and poultry processing. The Emergency Rules can be extended for an additional six months by Governor decree. MIOSHA’s rules codify executive orders previously issued by Governor Whitmer until, in October 2020, the Michigan Supreme Court invalidated the Michigan Emergency Powers of the Governor Act of 1945.<sup>4</sup>

The Michigan Emergency Rules require the following for all employers:

- Categorize jobs into lower, medium, high and higher exposure risk, with lower exposure risk only for tasks that do not require contact with the public or coworkers. The vast majority of non-healthcare and related industries in Michigan will be in the medium exposure risk level, because they require frequent or close contact with the general public and coworkers. Rule 3.
- Develop a written plan to prevent exposure, which includes an exposure determination, engineering and administrative controls, PPE, hand hygiene and surface disinfection, pre-entry health screening, informing the employer of COVID-19 signs and symptoms, and training. The plan should be consistent with CDC guidance and US OSHA’s March 2020 guidance on preparing workplaces for COVID-19. Rule 4.

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<sup>4</sup> [In re Certified Questions in Midwest Inst. of Health, PLLC, et al. v. Governor of Michigan, et al.](#), No. 161492, Michigan Supreme Court (Oct. 2, 2020).

- Name a workplace COVID-19 coordinator(s) who must be on site when other employees are present. Rule 7(1).
- Mandate face coverings in all shared spaces and when six-foot separation cannot occur. Rule 7(4-6).
- Require employers to report a COVID-19 positive test or symptoms to coworkers, confidentially, and to the local health department. Rule 6(4).
- Implement return-to-work time period for ill employees that follows CDC guidance. Rule 6(5).
- Require certain “basic infection measures,” including prohibiting shared tools and equipment “when possible” and creating “a policy prohibiting in-person work for employees to the extent that their work activities can feasibly be completed remotely.” Rule 5(3) and (8).
- Train on the disease, infection control practices, PPE use, symptoms and disease transmission, employer notification procedures, and methods for reporting unsafe working conditions. Rule 10.
- Document and maintain for one year records of training, each health screening, and each notification made of exposure or positive cases under Rule 6.

## ***Oregon: Temporary Rule Addressing COVID-19 Workplace Risks, OAR 437-001-0744***

Oregon OSHA has had [temporary COVID-19 workplace safety rules](#) in effect since November 16, 2020, which remain in effect until May 4, 2021, unless extended. Like the Michigan rules issued shortly before, Oregon has rules that apply to all employers and then additional rules for a wide range of specific industries from restaurants to fitness centers, from personal services providers to transit agencies, and from schools to prisons. See OAR 437-001-0744. Appendices A-1 through A-19. Oregon OSHA has scheduled multiple public hearings through March 4, 2021, to receive comments on its plan to revise its COVID-19 temporary rule and to make it permanent before it expires. The last day to submit written public comments is April 2, 2021. However, even if it becomes a permanent rule, it is Oregon OSHA’s intent to repeal it when “it is no longer necessary to address [the] pandemic.”

The Oregon temporary rule generally categorizes workplaces as “all workplaces” or “workplaces at exceptional risk.” For all, even the smallest employers, the regulation addresses: physical distancing (§ 3(a)),<sup>5</sup> face masks (§ 3(b)), cleaning and sanitation (§ 3(c)), ventilation (§ 3(f)), a risk assessment (§ 3(g)), an infection control plan (§ 3(h)), employee training (§ 3(i)), infection notification (§ 3(j)), testing (§ 3(k)), medical removal (§ 3(l)), and special controls for individual industries (§ 3(m)). Only small businesses (fewer than 11 employees statewide) are exempt from the requirement for a written risk assessment and a written infection control plan. See OAR 437-001-0744 §§ 3(g)(B); 3(h)(A). The Oregon temporary rule also requires that building operators are responsible for sanitation requirements and posting “Masks Required” signs in common areas where other employers’ employees work. § 3(e).

“Exceptional risk” workplaces are generally those involved with direct COVID-19 patient care, and they are subject to additional and more stringent training, infection control, sanitation, PPE, ventilation, engineering controls, screening, and medical removal requirements. See § 4.

While the industry-specific requirements vary, as examples, the construction-specific standard, Appendix A-5, requires advance entry health screening at controlled entry points, that employees are kept at six-foot distances to the extent “practical,” and if not, they must maintain the largest distance

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<sup>5</sup> The Oregon temporary rule’s citations are to sections of OAR 437-001-0744.

practical for the shortest period of time. Construction workers are required to wear face masks when working less than six feet apart outdoors and in all indoor spaces, consistent with the [Oregon Health Authority's Masks, Face Coverings and Face Shield Guidance](#).<sup>6</sup> The other industry-specific appendices require various controls with respect to physical distancing, face coverings, signage, sanitation and disinfection, ventilation, pre-entry health screening, and/or operations specific to those industries.

At this point in its [proposed permanent rule](#), Oregon OSHA is not planning to change the provisions for risk assessment, infection control plan, or training. However, it is preparing to make more limited the circumstances when face shields would be acceptable for reasons of practicality, accommodation needs, and "user acceptance." Oregon OSHA's proposed changes also would require employers to consider before they transport multiple people in the same vehicle, but does not prohibit the practice. The ventilation rule is proposed to be changed to require all but small employers to check the system quarterly and to attest in writing that the ventilation system complies with Rule § 3(f). Oregon OSHA proposes to require employers to provide written notification to employees of their rights to return to work at the same job and encourages employers to also provide information about leave options. Oregon OSHA ties its quarantine and isolation requirements to applicable public health guidance or medical provider requirements without setting any specific return-to-work time period. § 3(l). However, all employees who are close contacts and all employees who are in the same facility must be notified of each COVID-19 case in their facility. § 3(j). Reporting of cases to the Oregon Health Authority is only by healthcare providers and laboratories. § 3(j) (note).

### **[California: COVID-19 Prevention Emergency Temporary Standard, 8 CCR §§ 3205, 3205.1, 3205.2, AND 3205.3](#)**

On November 30, 2020, [California's COVID-19 ETS](#) became effective for all workplaces regulated by Cal/OSHA. Cal/OSHA's ETS requires that all employers have a written COVID-19 Prevention Program, as part of their long-existing requirement to have an Injury and Prevention Program for all other risks. The COVID-19 Prevention Program must include the following specific elements:

- Identify COVID-19 hazards in the work environment, including "all interactions, areas, activities, processes, equipment, and materials." 8 CCR § 3205(c)(2)(D).
- Conduct COVID-19 inspections to determine hazards to address positive cases and "outbreaks" and to take corrective action in response. *See, e.g.*, 8 CCR §§ 3205(c)(4), (c)(2)(H).
- Implement hazard mitigation and controls, including physical distancing, social distancing, pre-entry health screening, PPE and face coverings, personal hygiene, sanitation, and disinfection. *See, e.g.*, 8 CCR §§ 3205(c)(2)(G); (c)(7); (c)(8). Each of these regulatory topics have significant prescriptive detail regarding how they must be implemented.
- Communicate to employees information regarding hazards, protections, and controls, including that employees can report exposures and hazards without fear of reprisal, accommodations for employees at increased risk of severe disease, and access to testing. *See, e.g.*, 8 CCR § 3205(c)(1).
- Implement procedures for responding to COVID-19 symptoms, cases, and exposures, including specified time periods for when exposed or sick employees can return to work. *See* 8 CCR §§ 3205(c)(2) and (c)(3). Notably, the California COVID-19 ETS, when first issued, required that

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<sup>6</sup> Note that the Health Authority's guidance states that more stringent federal requirements apply to "individual and sectors" and more stringent Oregon OSHA rules apply to workplaces.

close contact exposed employees be quarantined for 14 days, but days after the ETS became final, the CDC changed its guidelines for quarantine, shortening it to 7-10 days in most circumstances.<sup>7</sup> Thus, to make the new COVID-19 ETS consistent with federal guidance, Governor Newsom issued an order on December 14, 2020, modifying the ETS's quarantine period to match the CDC guideline, which had been adopted by the California Department of Public Health.<sup>8</sup>

- Notice to close contact employees and contractor employees in cases of potential exposure in the time period 2 days before through 10 days after symptom onset or positive testing (8 CCR §§ 3205(b)(9); (c)(3)(B)(3)) and requiring the employer to test all close contact employees (8 CCR § 3205(c)(3)(B)(4)).
- Communicate benefits information and a wage and benefits hold harmless for workers exposed to COVID-19 in the workplace. 8 CCR § 3205(c)(10).
- Report to the local public health agency an “outbreak,” consisting of, at a minimum, a 14-day period during which three or more positive cases (either of an employee or otherwise) occur within an “exposed workplace,” which may be only a portion of the entire worksite. 8 CCR §§ 3205.1 and 3205.2. If there is an “outbreak,” testing of all employees in that “exposed workplace” must occur, at the employer’s cost, at least weekly, during the length of the outbreak. 8 CCR §§ 3205.1(b), 3205.2(b).
- Communication and training to all employees on the provisions of the written COVID-19 Prevention Program, as well as regarding the hazards and methods of transmission of the disease. 8 CCR § 3205(c)
- Report to Cal/OSHA and continue recordkeeping of COVID-19 cases, consistent with existing Cal/OSHA regulation, except that COVID-19 cases must be separately recorded and have specific confidentiality protections. 8 CCR § 3205(c)(9). Notably, the California ETS requires that all work-related COVID-19 cases be reported to Cal/OSHA whenever they result in hospitalization or death. This contrasts with federal guidance, which requires reporting to US OSHA only when hospitalization or death occurs within 24 hours of the work-related exposure, which is a fairly rare occurrence for COVID-19.<sup>9</sup>
- Specific protections and procedures for employer-provided housing and transportation. 8 CCR §§ 3205.3 and 3205.4.

The California ETS is in effect through, at the latest, October 2, 2021, when it must be made into a final regulation or it will expire. Cal/OSHA currently is holding meetings of its Advisory Committee to consider recommended changes to the ETS, prior to any extension or finalization of the regulation.

Several employer organizations filed lawsuits to enjoin enforcement of the COVID-19 ETS, including its wage and benefit hold harmless provisions. On February 25, 2021, the lower level court hearing denied plaintiffs’ requests for an injunction to stop enforcement of the California ETS.<sup>10</sup>

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<sup>7</sup> See, e.g., [“Transcript for CDC Telebriefing on the COVID-19 Outbreak,”](#) December 2, 2020.

<sup>8</sup> [California Executive Order N-84-20, December 14, 2020.](#)

<sup>9</sup> See, e.g., [OSHA QuickTakes COVID-19 Q&A](#) (Feb. 16, 2021).

<sup>10</sup> See *Nat’l Retail Federation v. Cal. Dept. of Indus. Relations*, No. CGC20588367, Cal. Super. Ct.; *Western Growers Ass’n v. Cal. Occupational Safety and Health Standards Bd.*, No. CPF21517344, Cal. Super. Ct., [Order Denying Plaintiffs’ Application for Preliminary Injunction](#), filed 2/25/2021.

A comparative summary of the four state-plan states against each other and the most recent US OSHA guidance, “*Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*” ([Protecting Guidance](#)), can be found here:

## High-Level Comparison of COVID-19 Workplace Safety Elements: State-Plan States and U.S. OSHA (as of 2/25/21)

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COVID-19 Workplace Safety Element	Virginia Permanent Standard	Michigan Emergency Rules	Oregon Emergency Rules	California ETS	U.S. OSHA “Protecting Guidance” (1/29/21)
Distinctions by Industry or Exposure Risk	Distinctions by exposure risk level; not industry specific	Categorize exposure risk; additional controls by industry	“Exceptional risk” vs. all other workplaces, plus distinctions in controls by industry	No distinctions by industry or exposure risk, all employees covered, except if only one employee, work from home, or if covered by § 5199	Industry-specific guidance supplements other basic guidance
Risk Assessment	Written plan should “consider and address” risks	Evaluate routine and reasonably expected tasks	Written risk assessment for all but small employers	Detailed, written assessment required	Employers “should” perform hazard assessment
Address Effect of Vaccine	No	No	No	No	Yes: encourage vaccination; reimburse time; maintain controls even after vaccination
Designate Responsible Person	Yes, knowledgeable person	Yes, workplace coordinator on-site at all times	Yes, knowledgeable person responsible for administration	No COVID-19 specific person required, but IIPP requires designation of responsibilities to various levels in the organization	Yes, assign workplace coordinator representing employer and element of program
Ventilation	Requirements for all but lower exposure risk level	Addressed only for sports and fitness facilities	Yes for all employers, by risk level	Yes, with increased requirements after outbreak	Improving ventilation is part of controls, including ASHRAE guidance
Training	Required for all, but modified extent for lower risk level	All employers	All employers	All employers, including discussion of leave benefits	All employers, in language understandable.
Face Coverings Required	All locations, including vehicles, depending on physical separation and exposure risk, with exceptions for medical and religious reasons; requirements for composition and how to wear	Yes, in shared spaces and when cannot consistently maintain 6 feet; industry-specific re requirement for members of public	Yes, per State guidance, based on physical distance for all persons onsite and industry-specific	Yes, when indoors and outdoors if less than 6-foot distance, subject to certain exceptions	Key method to protect others and reduce own exposure, in addition to physical distancing. Employers “should” provide at no cost with reasonable accommodation. Incorporates CDC guidance re composition.
Notice of Positive Cases	To employee close contacts, at worksite, and building owners	Notify close contacts and local health department of each case	Notify close contacts and all in facility; close contacts to contact physician and local public health re testing	Notify close contacts and all in exposed workplaces	Notify employees of exposure
Written Prevention Program	All employers, except lowest level of exposure and small employers at medium level	All employers must have written plan consistent with current CDC guidance and OSHA March 2020 guidance	All employers except small employers	All employers as part of IIPP or separate	“prevention program is most effective way to mitigate spread,” but whether “written” is not addressed
Pre-Entry Screening & Testing Required	Pre-entry screening no symptomatic test required except severely immunocompromised	Pre-entry screening; no reference to pre-entry testing	Pre-entry screening is industry-specific; test at no cost if directed by state or local health authority	Pre-entry screening required for all; test all close contacts and, if Outbreak, employees within exposed workplace	Follow state and local guidance and priorities
Quarantine & Isolation Requirements/Return-to-Work	Defined periods; no requirements stated for close contacts/exposed employees	Multiple requirements tied to CDC guidance	Only if recommended by Oregon public health or medical provider, and industry-specific requirements	Defined periods for symptomatic and test-positive cases, and for close contacts	Current CDC guidelines incorporated, but local health dept. may have other options
CDC Guidelines as Enforcement Defense or Safe Harbor	Enforcement defense if equally as protective and VOSH and Health Commissioner agree	Written plan must be consistent with CDC current guidelines and OSHA March 2020 guidance	Quarantine, isolation, face covering requirements based on State Health Authority. CDC guidelines referenced throughout exceptional risk and industry-specific rules.	No, but must monitor applicable State and local health department orders and guidance	Current CDC guidelines are incorporated into guidance, but no explicit Safe Harbor
Benefits or Job Protection for Infected or Exposed Workers	No discussion	No discussion	Allow employee to work at home if possible; right to return to job “if still available”	Yes: hold harmless if quarantine or isolated due to workplace exposure	Yes
“Outbreak” Reporting	Yes, report if 2 or more cases within 14 days within “work site”	Report every case onsite to local health department	Report of cases per State Health Authority requirements	Yes, report and provide testing if at least 3 or more cases in 14 days	Report outbreaks as required by local health department

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For more information or advice on the various state-plan states’ COVID-19 standards, OSHA standards and guidance, and enforcement nationwide, please contact the [author](#). Additional information regarding working during the COVID-19 pandemic can be found on [this blog](#) and in the [Jenner & Block COVID-19 Resource Center](#).

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