



# JACKSON COUNTY

Oregon

## Board of Commissioners

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Oregon Occupation Safety and Health  
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RE: Oregon OSHA's Draft COVID-19 Temporary Standard

Dear Rulemaking Team:

Jackson County offers the following comments on Oregon OSHA's Draft COVID-19 Temporary Standard that was published on August 17, 2020. The County appreciates the opportunity for employers to provide comments on the COVID-19 Temporary Standard.

**1. The Planned Adoption Date of September 14, 2020, is Impracticable.**

Oregon Occupational Safety and Health (Oregon OSHA) has indicated that it has a planned adoption and effective date of September 14, 2020, for the COVID-19 Temporary Standard (the Rule). This date would also be the first opportunity for employers to see a final version of the Rule, which Oregon OSHA plans to make effective "immediately" on September 14, 2020.

With public comments being accepted through September 7, 2020, and unknown potential changes being made in the week leading up to the September 14, 2020, effective date, employers will not have enough time to implement the extensive measures that are required by the Rule. For example, as currently drafted, the Rule would require employers throughout the State to: construct impermeable barriers; purchase and/or modify motor vehicles for three-foot separations between passenger seats; purchase face coverings for all employees; clean all door handles and drinking fountains at the beginning of "each shift"; designate and provide authority to social distancing officers after reallocating the work of existing employees and/or hiring social distancing officers; modify building layouts; post and electronically communicate the Rule and its requirements to employees; conduct and document COVID-19 risk assessments for every job classification; provide enhanced employee training regarding advanced epidemiological concepts; establish and implement written infection control plans on a facility-by-facility basis; and reallocate the work of existing employees and/or hire infection control plan administrators to implement, administer, and modify the infection control plans in a manner that is responsive to constantly-changing technologies, policies, procedures, and guidance from the Oregon Health Authority.

Which of these requirements will appear in the final version of the Rule? Employers would be in a position of having to guess the answer to that question. The amount of documentation currently required by the Rule will be burdensome and time-consuming, particularly for many employers during the pandemic. For this reason, Oregon OSHA should make the effective date for the Rule at least four weeks after the Rule is adopted.

## **2. The Sanitation Requirements Are Ambiguous, Unnecessary, and Unreasonable.**

The sanitation requirements in Subsections 2(c) and 3(e) of the Rule (Sanitation Requirements) are ambiguous. Specifically, the requirement to “thoroughly clean” every “high contact surface” at the “*beginning of each shift*” leaves uncertainty as to what Oregon OSHA means when it uses the undefined term “each shift.” How many “shifts” are there in a day? For large employers, employers may consider a “shift” to begin at any moment depending on employees’ remote work schedules, flexible schedules, intermittent leave, and other circumstances.

Also, the term “high contact surfaces” is not defined, and thus it is unclear whether employers are required to “thoroughly clean” every single surface that might be used by more than one employee. Although Oregon OSHA provides some examples, such as door handles and drinking fountains, the Rule makes it very difficult for employers to determine whether other surfaces, such as tables and chairs, would also need to be thoroughly cleaned “at the beginning of each shift.”

Further, the Sanitation Requirements are unnecessary and unreasonable. Many employers have employees with staggered shifts in multiple facilities. Thus, it would be unnecessary and unreasonable for employers to “thoroughly clean” every “high-contact surface[ ] used by multiple employees,” such as every door handle, in every facility, at the same time that any employee in the entire workforce happens to start their shift.

For the reasons set forth above, the Sanitation Requirements exceed Oregon OSHA’s rulemaking authority because they are not “necessary and reasonable” under Oregon Revised Statute (ORS) 654.025(2). Thus, Oregon OSHA should eliminate, or at least narrow and clarify, the Sanitation Requirements.

## **3. The Social Distancing Officer Requirements Are Ambiguous, Unnecessary, and Unreasonable.**

The social distancing officer requirements in Subsection 2(d) of the Rule (Social Distancing Officer Requirements) are ambiguous. First, these requirements do not specify how a social distancing officer can “ensure” that all social distancing, face covering, and sanitation policies and procedures are implemented. In many workplaces with multiple facilities this would be impossible. If, instead, Oregon OSHA intends for social distancing officers to “make reasonable efforts to ensure,” then this should be reflected in the rule.

Second, the following sentence is ambiguous: “The social distancing officer must have the authority to take prompt corrective action *or* to implement measures to eliminate *or* otherwise minimize exposure to COVID-19.” Section 2(d) (emphases added). May employers choose to limit a social distancing officer’s authority so that the officer only has the power to “otherwise minimize exposure to COVID-19”? Or must employers provide the officer with all authority described in the sentence: the authority to (1) take prompt corrective action; (2) implement measures to eliminate exposure to COVID-19; and (3) implement measures to otherwise minimize exposure to COVID-19?

If Oregon OSHA intends the latter interpretation, the Rule is unnecessary and unreasonable because it provides social distancing officers with unlimited authority that is impracticable in all workplaces where operational decisions are made by more than one person. For example, a social distancing officer may decide that the appropriate “corrective action” or “measure to eliminate” exposure to

COVID-19 is to entirely stop the operation of a facility, business, or public body. This decision may conflict with decisions made by chief executive officers, city managers, county administrators, and elected officials. Further, this decision may place the employer in a legally-precarious situation in which subsequent removal or termination of the social distancing officer could be viewed as an adverse employment action constituting unlawful retaliation. Moreover, conflicting views among management and social distancing officers could lead to acrimonious relations among employees and supervisors, particularly for employers with collective bargaining units.

For Jackson County and other counties throughout the state, the Social Distancing Officer Requirements conflict with existing laws relating to authority for the administration and management of counties. Specifically, the proposed rule conflicts with Oregon statutes (including ORS 203.010 to 203.750 relating to county governing bodies) as well as Jackson County Ordinances (including Jackson County Codified Ordinance Section 216.04 relating to duties delegated to the County Administrator).

For the reasons set forth above, the Social Distancing Officer Requirements exceed Oregon OSHA's rulemaking authority because they are not "necessary and reasonable" under ORS 654.025(2). Thus, Oregon OSHA should eliminate, or at least narrow and clarify, these requirements.

**4. Oregon OSHA Should Redraft the Rule and Allow Further Comments After Publication of a Second Draft Rule.**

The logistical, interpretive, and legal problems identified above are significant. For this reason, Jackson County respectfully requests that Oregon OSHA redraft the Rule and allow further comments after publication of a second draft.

Once again, Jackson County appreciates the opportunity to provide comment on the Rule.

Sincerely,

JACKSON COUNTY BOARD OF COMMISSIONERS

/s/ Colleen Roberts

Colleen Roberts, Chair

/s/ Rick Dyer

Rick Dyer, Commissioner

/s/ Bob Strosser

Bob Strosser, Commissioner

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By Email