



JACKSON COUNTY

Oregon

Board of Commissioners

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Matthew Kaiser
State of Oregon
Department of Consumer and Business Services
Oregon Occupational Safety and Health Division
PO Box 14480
Salem OR 97309-0405

RE: Oregon Occupational Safety and Health Division's (OSHA) Proposal on Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces

Dear Mr. Kaiser:

The Jackson County Board of Commissioners would like to offer the following comments on *Oregon OSHA's Proposed Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces* (the Rule) that was published on January 29, 2021. The County appreciates the work that Oregon OSHA has done to protect workplaces during the pandemic, while providing opportunities for employers to provide comments on the Rule. The County's comments regarding the Rule primarily address the lack of a need for a permanent rule, the burden on the County as an employer and on all employers, and tailoring workplace requirements and restrictions to local risks.

A Permanent Rule is Unnecessary and Unreasonable, and Any Agency Action Should Be Adopted as a Temporary Rule or Include a Sunset Provision to Mitigate Its Burdens.

The County recognizes that the duration of the COVID-19 pandemic is uncertain; therefore, it is difficult for Oregon OSHA to assign a specific date for the repeal of the Rule. However, a permanent rule is not appropriate for a temporary public health emergency. All indications are that Oregon OSHA recognizes that the COVID-19 pandemic, and restrictions related thereto, are temporary; however, the title of the Rule includes the word "emergency" and the Rule states that "Oregon OSHA intends to repeal the rule when it is no longer necessary to address the COVID-19 pandemic." Further, infectious disease experts are reporting that the pandemic is temporary, cases are decreasing, and vaccine distribution is increasing. Under these circumstances, a permanent rule is not necessary or appropriate. Further, the proposed "no longer necessary," standard for repeal of the Rule presents significant operational challenges to all employers as it is vague, and it limits the ability of employers to plan for the administrative work and business opportunities that will be presented when the Rule is repealed.

Instead, Oregon OSHA should pursue issuing another temporary rule, if needed, similar to the existing temporary rule related to address the COVID-19 Public Health Emergency. Another temporary rule would meet the stated needs of Oregon OSHA to continue regulations to address the impacts of COVID-19 in the workplace, while not creating a new permanent rule for a temporary situation. In the alternative, Oregon OSHA should consider abandoning the subjective "no longer necessary," standard for repeal of the

proposed permanent Rule, and the Rule should instead add a sunset provision that automatically triggers repeal of the Rule when objective COVID-19 data indicates that the Rule is no longer necessary. This would allow employers to monitor the pertinent data trends and reasonably predict when they can return to operations that are no longer burdened by the onerous requirements in the Rule (physical distancing, occupancy limits, and contact tracing), when operational and economic activities can change, and when new business opportunities may be pursued.

The Proposed Rule is Unnecessary and is Unreasonable in Relation to Jackson County's Operations as an Employer.

The Jackson County Board of Commissioners support Oregon OSHA's objective to lower the risk of infection and spread of COVID-19 in the workplace. We are very concerned, however, about the duplicative and redundant documentation, communication, and training that Oregon OSHA's temporary and proposed permanent Rule puts onto owners, leaders, and workers in businesses and organizations in our community.

For example, as one of the larger employers in our County, Jackson County responded immediately to the Governor's declaration of emergency on March 8, 2020, and to the Board of Commissioners' local declaration of emergency on March 19, 2020, to ensure appropriate preparation and response to the pandemic for the protection of our workforce, and the citizens who access services in County facilities. In March 2020, Jackson County, as an employer, launched an extensive set of COVID-19 guidance for our employees and supervisors that aligned with guidance provided by the Governor, the Oregon Health Authority, Oregon OSHA, and public health officials. Communication and training channels, including an employee webpage of COVID-19 information accessible 24/7 from onsite and remote worksites, were created to distribute, educate, and remind the workforce of COVID-19 guidance and protocols. Throughout the pandemic, this information has been updated regularly to realign with evolving guidance and with the state of COVID-19 cases in the community.

To date, that due diligence has resulted in a very low number and spread of work-related infections in the County's workplace. In fact, 75 percent of the positive cases in our workforce have been through interactions in their personal life, not at the workplace, and, to the best of our knowledge, no member of the public has been infected while accessing services in a County facility. However, Oregon OSHA's current temporary, and now proposed permanent, Rule requires each of the County's 17 diverse departments to create and maintain separate individual assessments and infection control plans. The Oregon OSHA assessments and plans are redundant with the countywide and department-specific sector guidance and actions that are already in place, which led to a consistently low infection rate in the County's workplace throughout the pandemic.

Like Jackson County, employers in our community will continue to update and disseminate their guidance and information accordingly as it relates to their particular operations and services. We are concerned that, at this stage of the pandemic, the requirements in Oregon OSHA's temporary and proposed permanent Rule are more of an administrative exercise in duplication and updating redundancy of the information into Oregon OSHA's desired format.

To the extent that Oregon OSHA can focus its support resources and standard on achieving, and maintaining, low-risk level metrics tied to infections in the workplace versus personal life, this would offer employers some administrative relief and flexibility to continue what has proven most effective for COVID-19 infection control in their workplace, and for delivering services to the public that they serve.

The Rule Should Match Restrictions to Local Risks.

Unlike the Oregon Health Authority (OHA) and Governor's Office's practice of tailoring COVID-19 restrictions to county risk levels based on each county's data, Oregon OSHA's Rule has one-size-fits-all requirements that apply statewide regardless of local risks. This subjects all employers throughout the State to burdens that are not commensurate with local risks. If one isolated county in the State has COVID-19 data that make the burdens of the Rule necessary, but the rest of the State has significantly less risk, the Rule should permit the rest of the State to proceed with fewer restrictions. For example, occupancy limits, physical distancing requirements, and mask requirements in the Rule should automatically be modified, or eliminated, in counties when the data indicates that they are no longer necessary. This tailoring of restrictions to local risks will speed up the recovery process from the pandemic.

Oregon OSHA Should Redraft the Rule and Allow Further Comments After Issuance of a New Proposed Rule.

For the reasons identified above, Jackson County respectfully requests that Oregon OSHA redraft the Rule as a temporary rule that is less burdensome to employers. Further, Oregon OSHA should allow additional comments from employers before the redrafted rule is adopted.

Sincerely,

JACKSON COUNTY BOARD OF COMMISSIONERS

/s/ Rick Dyer
Rick Dyer, Chair

/s/ Dave Dotterer
Dave Dotterer, Commissioner

/s/ Colleen Roberts
Colleen Roberts, Commissioner

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