



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.

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.

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.

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/>.

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/WHI/OST/Pages/index.aspx>.

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.



OSP Enforcement
FAQ[2].pdf

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.

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.

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

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.

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.

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 policies, 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.

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).

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.

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.

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.

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.

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.

How should we address social distancing when Personal Protective Equipment (PPE) is being used?

Oregon OSHA expects workplaces to comply with the governor’s emergency order 20-12 to maintain social distancing. Production modifications should be made to maintain appropriate social distancing among employees while at work.

Furthermore, N95 respirators (filtering facepiece respirators) should not be used as a means to allow close contact (less than six feet of social distancing).

Please keep in mind, there is a severe shortage of N95 respirators in Oregon. It is imperative that hospitals have an adequate supply of N95 respirators to treat ill patients and prevent infecting our healthcare providers. The governor has issued Executive Order No. 20-10 to conserve PPE. It **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. The Order provides a phone number, 971-900-9952, to arrange for delivery of surplus PPE to the PPE coordinator.

Do construction businesses and 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.

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.

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 on the following site:

<https://osha.oregon.gov/Pages/topics/infectious-disease.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>

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