

A Roadmap for Reopening Workplaces in Washington and Oregon During COVID-19

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Many businesses throughout the Pacific Northwest will soon start the process of phased reopening or have already reopened to some extent. This requires employers to take new measures to protect their employees, their operations, and their customers.

Whether, when, and how a particular business can reopen will largely depend on where the business is located and what industry it is in. In all cases, however, employers must remember that they have an overarching obligation under state and federal workplace health and safety laws to provide a workplace that is free from recognized hazards that cause or are likely to cause death or serious physical harm to their employees. This means that employers, now more than ever, need to remain vigilant in staying informed about potential risks and proactive in adopting proper procedure to reduce them. To help with that effort, we have compiled below a summary of the current state of reopenings in Washington and Oregon, as well as a list of key considerations and links to the resources that employers will want to take into account when reopening their operations. In order to cover the breadth of content and provide the depth of substantive resources that we hope will be useful as a reference for going forward, we are providing hyperlinks to a host of applicable guidance and additional resources on the substantive items covered by this overview.

DIVERGENT APPROACHES IN WASHINGTON AND OREGON TRIGGER DIFFERENCES IN REOPENING PLANNING

Washington's approach to the pandemic was to initially impose a blanket closure that applied to most businesses, except those operations that were specifically excluded because they were deemed "essential." On May 5, Washington began allowing certain industries (including existing construction, auto dealerships, car washes, landscaping and lawn care, pet walking, drive-in religious services, curbside pickup retail, and some forms of outdoor recreation) to reopen subject to [specific guidelines](#) as part of Phase 1 of the state's [Safe Start](#) phased reopening plan. As of June 29, all of Washington's counties, except for Benton, Franklin, and Yakima, have moved out of Phase 1 and into subsequent phases of the state's reopening process. And the state has issued additional guidance for certain industries in the second and third phases of reopening. This includes a [template Safety Plan](#), which may be used to satisfy the requirements to maintain a written copy on premises to be made available to regulatory agencies or public health officials upon inspection.

Alternatively, Oregon initially closed only [specific businesses](#) (for example, restaurants and bars (except for takeout/delivery), recreational facilities, arcades, salons, gyms, malls, jewelry shops, spas, tanning salons, and yoga studios). The state also strongly encouraged telework wherever possible, but allowed most businesses to continue operating, so long as they could meet physical distancing requirements. On May 15, Oregon began allowing businesses in 31 of the state's counties to begin Phase 1 reopening, subject to specific [health and safety protocols](#). Independent from the Phase 1 reopenings, and also beginning on May 15, Oregon eased restrictions

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and implemented specific statewide requirements for [child care facilities](#), [summer schools](#), [day camps](#), and [stand-alone retail operations](#). As of June 29, Multnomah, Washington, Clackamas, and Lincoln Counties are in Phase 1 of reopening, while all of the other counties in the state have progressed to Phase 2.

GENERAL GUIDELINES AND RESOURCES

While a business's ability to reopen is generally governed by proclamations from the governors, the contingencies and prescribed reopening procedures themselves primarily flow from guidance issued by public health authorities and occupational safety and health agencies. Given that, it is important that employers know and consult the relevant resources from these authorities in preparing for and resuming operations:

- The [Guidance on Returning to Work](#) and [Guidance on Preparing Workplaces for COVID-19](#) by the federal Occupational Safety and Health Administration (OSHA) sets out the basic standards for all workplaces, and incorporates specific guidance from the Centers for Disease Control ("the CDC").
- The CDC's [Interim Guidance for Businesses and Employers](#) addresses preventive measures as well as protocols excluding COVID-19-positive, symptomatic, and potentially exposed workers. There is also a new [reopening toolkit](#) and [flowchart](#) to assist employers in making reopening decisions.
- State-Specific Resources:
 - » Washington's Department of Health has issued "[Safe Start Plans and Guidance for Reopening](#)" in partnership with the Department of Labor and Industries and other state agencies, as well as specific guidance about [when masks are recommended](#) or required.
 - » The [Oregon Health Authority](#) has also issued applicable guidance, including links to additional workplace postings and [guidance for businesses regarding mask and face-covering](#) requirements.

Additionally, it is important to recognize that these guidelines merely establish broad obligations on the part of employers; state and industry-specific guidelines may impose additional, and often more onerous, requirements for many businesses. For example, [Washington's Department of Labor & Industries](#) and [Oregon's Occupational Safety and Health Division](#) have both published their own COVID-19 guidance. The American Industrial Hygiene Association has also published a resource, "[Back to Work Safely](#)." And both states have published a range of industry-specific guidelines as well ([Oregon](#) and [Washington](#)).

A CHECKLIST OF COMMON REQUIREMENTS AND BEST PRACTICES FOR REOPENING

Employers will need to adopt and follow a host of protocols and practices to reopen safely, ideally memorialized in a written Pandemic/COVID-19 Preparedness Plan. Based on the published guidance available thus far, a well-developed plan will include a number of common details across virtually all industries that we expect will apply to nearly all employers in [Oregon](#) and [Washington](#):

- Have a plan and clear protocols in place for addressing employee illness.**
 - ✓ Educate all employees on the potential symptoms of COVID-19. The list of symptoms was recently [updated by the CDC](#) and now includes cough, shortness of breath/difficulty breathing, fever (over 100.4 degrees Fahrenheit), chills, muscle pain, sore throat, and new loss of taste or smell.
 - ✓ Make sure that employees know not to come to work if they are ill, have been exposed to someone who is ill, or are experiencing any symptoms of COVID-19.

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- ✓ Have a well-developed and clearly communicated protocol for employees to follow if they become ill, including removal from the workplace and a separate area where they can be isolated until they leave the workplace.
- ✓ Temporarily close off any areas where an individual with probable or confirmed COVID-19 worked or touched surfaces, until the areas and surfaces are cleaned and disinfected.
- ✓ Designate a qualified supervisor to monitor employees' health and enforce the company's COVID-19 protocols and policies.
- ✓ Do not punish or otherwise take adverse action against an employee for reporting workplace safety concerns, including concerns related to COVID-19. Consider whether additional policies or supervisory trainings may be needed to ensure that this expectation is followed.

□ **Take appropriate steps to help prevent the virus from spreading and keep the workplace safe and healthy.**

- ✓ Consider appropriate screening measures for employees and visitors. Some industries may mandate temperature and symptom checks upon arrival; others may rely on employee affirmations that they have not exhibited symptoms.
 - Don't forget to abide by applicable [recordkeeping obligations](#), and comply with additional pay requirements that may be triggered under existing policies or practices, applicable union contracts, or wage and hour laws.
 - Be sure also to consider [privacy implications](#) that may apply.
- ✓ Consider appropriate physical distancing measures and personal protective equipment (PPE) that may be needed.
 - Some employers may be required to ensure that all personnel are at least six feet apart at all times and may need to install partitions.
 - Some employers may be required to mandate that employees wear masks as a condition of reopening. Other employers may choose to voluntarily implement such a mandate. At a minimum, employers must generally permit employees to wear masks in the workplace. Both [Oregon](#) and [Washington](#) have issued guidance in this regard.
 - Employers may be required or choose to provide employees with additional PPE, such as gloves, gowns, goggles, and face shields.
 - Consider adjusting shifts and workplace conditions to minimize the potential for contamination and unnecessary contact. For example, employees may be scheduled in shift-specific "teams," or assigned specific restrooms and/or break areas, so as to minimize the amount of overlap and contact among employees.
- ✓ [Ensure and maintain sanitation of workspaces, equipment, and tools](#). The CDC has also published a "[Disinfecting Decision Tool](#)" to aid in this effort. Also be sure to use [appropriate disinfectants](#) known to combat the virus.

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- ✓ [Ensure that employees exercise rigorous personal hygiene.](#)
- ✓ Be sure to consider whether any new protocols or policies might implicate any collective bargaining obligations, and reach out to union leadership in advance if so.

☐ **Be aware when protections may entitle certain employees *not* to return to work upon reopening.**

- ✓ [Emergency Family and Medical Leave](#) and [Emergency Paid Sick Leave](#) remain available under the Families First Coronavirus Response Act (FFCRA) until December 31, 2020.
- ✓ State sick leave mandates in [Oregon](#) and [Washington](#) are triggered when employees may need to be out ill themselves, are needed to care for family members who are ill, or can't work due to the closure of a child's school/daycare.
- ✓ Federal Family Medical Leave Act and state equivalent leaves may be available if an employee or a family member becomes seriously ill or requires care.
 - By [emergency rulemaking](#), Oregon expanded the Oregon Family Leave Act to include leave needed by an employee as the result of closure of the employee's child's school or place of care due to a public health emergency. This change is in effect from March 18, 2020, until September 13, 2020.
 - In Washington, this may include the new [Paid Family and Medical Leave](#) that is administered by the Employment Security Department.
- ✓ The [Americans with Disabilities Act](#), and related state disabilities laws, may entitle an employee with a health condition that makes the person vulnerable to, or potentially triggered by, COVID-19 to additional periods of leave or other accommodations, such as remote work or schedule adjustments.
- ✓ Some states, such as [Washington](#), have enacted additional protections for employees deemed to be at high risk of COVID-19 complications.

☐ **Make sure that policies, practices, training, and posters are up to date.**

- ✓ All employees and new hires should be trained on the company's policies related to COVID-19. In Washington, reopening will be expressly conditioned on having a written plan and/or policies available at each location and available for inspection by state and local authorities. See, for example, the [Phase 2 requirements for Manufacturing](#) and for [Professional Services](#).
- ✓ Develop policies, or update existing policies as appropriate, to address the additional leaves outlined above, as well as flexible scheduling and/or [telework](#) (if feasible) so that employees can stay home to care for sick family members or care for children whose schools or places of care are closed.
- ✓ Be sure to post the [mandatory poster](#) regarding the new FFCRA leave entitlements.
- ✓ The CDC has also published helpful [workplace posters](#) about proper hygiene and physical distancing to avoid spreading the virus.

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- **Stay proactive about educating on and enforcing nondiscrimination protections.** Consider whether this should include additional training or policy updates related to certain stigmas that may be associated with the pandemic. For example, the Washington Department of Health has published resources intended to address [stigma reduction](#) associated with misperceptions about the virus and its causes, including a [toolkit](#) for use with education and outreach.

We hope this is a helpful compilation as employers engage in their own efforts to prepare to get back to work, whatever that may look like. Of course, this is just a small snapshot of the available resources and guidance that is available, and employers are encouraged to check out our [COVID-19 landing page](#) in particular for more.

As always, employers should call on us if they have questions or need assistance with their reopening efforts.

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