

COVID-19 Regulations

Where Are They Now?

by SEAN RAY — Barran Liebman LLP

The picture accompanying this article could very well be a “How It Started/How It’s Going” meme, with a photo of rows upon rows of empty bath tissue shelves juxtaposed with a cat unrolling every single square of an industrial-sized, three-ply roll of toilet paper on the bathroom floor. While you at one time in the not-so-distant past would have tried to salvage each square and impossibly roll it back onto that tiny cardboard tube, those days are gone. While many things, such as the great toilet paper shortage of 2020, are seemingly a thing of the past, others are less certain.

Despite the length of time the State of Emergency was in place here in Oregon, and the Governor’s announced wind-down of the state executive order weeks before its end, many questions remained once the State of Emergency was lifted. What exactly did that mean? What rules were still in place for employers after the order was rescinded on April 1, 2022 (and currently remain in place)?

The Oregon Safety and Health Administration, or “OR-OSHA,” is currently moving forward with repealing many rules related to COVID-19 safety in the workplace. While that likely will not formally happen until this summer due to bureaucratic red tape, OR-OSHA has stated it will not be enforcing the rules it is seeking to rescind even though they will officially remain on the books for several more months.

While the mask mandate was lifted a few months ago for the general public, the rescission of these OR-OSHA COVID-19 rules does away with requiring masks in the workplace in most instances other than those considered “exceptional risk.” However, employers are still required to allow workers to voluntarily wear face coverings, and the employers must provide facial coverings at no cost if desired by the employee and they cannot or choose not to provide their own. Hopefully no one discarded their mask stockpile just yet.

Employers must also cover the cost associated with employee COVID-19 testing, including time and travel, if the employer facilitates the testing. However, while there is no private requirement that employers maintain vaccination or testing policies in Oregon (though federal contractors are still bound by the federal mandatory vaccination policy), employers are free to voluntarily choose to implement or continue such policies if they instituted them during the State of Emergency in an effort to get employees back to work.

Furthermore, many of the COVID-19 restrictions that were previously in place, including masking and sanitation requirements, still apply to employers



in “exceptional risk workplaces.” Included under OR-OSHA’s definition of “exceptional risk workplaces” are those where employees perform direct patient care, environmental decontamination in a healthcare setting, aerosol-generating healthcare or postmortem procedures, direct client service in residential care or assisted living facilities, emergency first responder duties, personal care activities for another individual such as toileting or bathing, or handling or transporting human remains or tissue specimens of an individual known to have been infected with COVID-19. In these settings, employers must continue to implement mandatory masking policies, physical distancing requirements and enhanced sanitization procedures.

It is prudent to remember that OR-OSHA, despite withdrawing some of its COVID-era restrictions, still enforces the general duty clause of the Oregon Safe Employment Act, which requires every employer to “furnish employment and a place of employment which are safe and healthful for employees therein...” Therefore, it is still good practice to follow quarantine guidelines and protocols recommended by the Oregon Health Authority.

In California, a candy company was sued by an employee for failing to take adequate safety measures leading to her contracting COVID-19 in the workplace. While she was recovering at home, her husband caught the disease from her and unfortunately passed away. The company tried to argue that workers’ compensation provided the sole remedy for the worker as her husband’s injury was derivative of her work-related claim. However, the California court declined to dismiss the claim and allowed it to move forward in a civil suit outside of the workers’ compensation realm.

There is a lot to unpack in this case and, much like the toilet paper plight, a lot has changed since this poor woman’s husband passed away that may lead to a different result if the facts occurred today, or in a different circuit. Nonetheless, this case serves as a reminder to employers of the danger of not maintaining a safe working environment, even with respect to viral outbreaks.

Should you have any questions about your current COVID-19 policies, or want to discuss the pros and cons of keeping policies you implemented during the pandemic or rescinding them, move that excess toilet paper off your desk and give your favorite employment law attorney a call.

Sean Ray is a partner with Barran Liebman LLP, where he advises and represents employers in labor and employment matters, including those related to COVID-19. Contact him at 503-276-2135 or sray@barran.com.

barran.com