

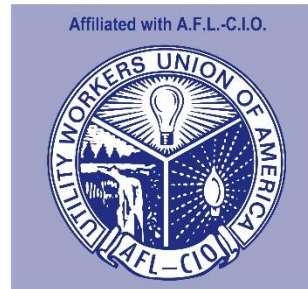
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September 4, 2020

Michael Wood, Administrator, Oregon OSHA  
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VIA: [tech.web@oregon.gov](mailto:tech.web@oregon.gov)

Re: *Oregon OSHA's Draft COVID-19 Temporary Standard*

Administrator Wood,

The Oregon Occupational Safety and Health Administration having announced an opportunity to provide input on an enforceable workplace temporary standard on infectious disease (the 'standard') addressing COVID-19, the Utility Workers Union of America (UWUA) is pleased to provide input below, as requested in the solicitation.

The UWUA represents around 50,000 workers in the electric, gas and water utility sectors. Our members maintain and operate utility infrastructure throughout the United States. In the state of Oregon UWUA members work in the natural gas and electric utility industries maintaining and constructing physical systems for these sectors.

There are a number of areas in which the UWUA believes the proposed standard can, and should, be improved:

**1) The Temporary Standard's Scope Should Cover All Oregon Workplaces**

Currently the proposed Oregon standard covers some workplaces with a number of mandatory requirements, exempts some workforces – such as educators – from coverage if they follow guidelines from other government entities, but also adds additional requirements for workforces characterized as being at 'heightened' or 'exceptional' risk.

Rather than taking a patchwork approach, the UWUA believes the standard should cover all Oregon workplaces within a single, uniform jurisdiction – that of Oregon OSHA - to avoid confusion and provide uniform guidance across the state economy. A large part of the failed national response to COVID-19 to date can be attributed to

a lack of central, uniform standards and information leading countless jurisdictions to take misleading, and sometime contradictory approaches to the issue.

## **2) The Standard Should Set Core Requirements Applicable to All Workplaces and Recognize the Primacy of the Hierarchy of Controls**

Currently, the standard contains no core requirement for all employers to conduct risk assessments, only heightened and exceptional risk workplaces would have these under the proposal as drafted. Further, there is no requirement for most employers to have a procedure for notifying employees of COVID-19 exposure, except for exceptional risk workplaces, nor a requirement for most employers to have a written infection control plan.

We believe the standard should include core requirements that apply to all employers who are covered. While there can and should be additional requirements for workplaces with higher levels of risk (e.g. healthcare and meat packing), there should be basic requirements that all employers must follow.

If the standard uses risk categories, any 'low' risk category should be narrowly defined to prevent employers from using the category for workers who may normally be a lower risk, such as in office spaces or call centers, but who are at risk for infection because of the number of employees, airborne exposure potential, etc. A 'low' risk category for infectious disease should truly be low to no risk, such as employees who work alone or work from home.

Further, where the standard requires an employer to design workplaces to ensure 6-foot distancing between all individuals whenever practical, that face coverings are worn and that impermeable barriers – droplet buffers – are used if distancing cannot be maintained, the standard must not allow employer discretion regarding feasibility to be overly controlling. Face coverings are not PPE, do not provide respiratory protection and, as such, the hierarchy of controls must always be the preferred approach to risk mitigation.

## **3) Workplace Risk Assessment Must Be Required of All Employers**

Currently, the standard contains no requirement for most employers to conduct workplace risk assessments outside of heightened and exceptional risk workplaces. Rather, the standard requires employers with 25 or more employees to designate a social distancing officer to identify and implement distancing, sanitation, and face covering use in lieu of requiring an employer to develop a risk assessment. This lack of risk assessment for most workplaces appears to be based on an erroneous assumption that COVID-19 is spread primarily through droplet transmission, therefore implying 6-foot distancing is generically appropriate in many workplaces.

This is an inappropriate abdication of employer responsibility as evidence of airborne transmission is growing and must be addressed by the standard. All employers must be required to conduct a systematic assessment of risk factors in their particular workplace.

Risk factors that should be minimally considered when conducting a risk assessment include:

- Job tasks
- Work environment (indoor/outdoor)
- Known or suspected presence of the virus
- Number of persons in relation to the size of the work area
- Working distance
- Duration and frequency of employee exposure

It is most important to require each employer to assess the risk and control the hazards using the hierarchy of controls, requiring more specific provisions and a higher level of protections for high exposure tasks. Finally, there should be employee and employee representative input into the risk assessment to prevent the inappropriate exercise of discretion by employers in determining risk.

#### **4) Compliance with Guidelines From Other Jurisdictions Must Not Substitute for Compliance with an Oregon OSHA Standard**

Currently, for example, the proposed standard exempts any educational establishment that develops and fully implements a written program consistent with guidance issued by the Oregon Department of Education. Due to the nature of the Oregon Dept. of Ed., however, such guidance does not adequately address occupational health risks and cannot be effectively enforced – this is the function of Oregon OSHA.

It is not protective to allow employer reliance on, or compliance with, other public health guidelines, such as from the National Center for Disease Control (CDC) or other states' guidelines, in lieu of the requirements in an Oregon OSHA standard. We do not recommend including any provision to allow reliance on CDC or other states' guidelines in place of the requirements of the Oregon standard, in order to avoid the inevitable 'forum shopping' that has plagued the national response to this crisis.

Minimally, the Oregon OSHA standard must take precedence and set the floor for the level of protection employers must comply with. Any guidelines allowed to be followed by employers must provide equivalent or greater protection than provisions of the Oregon OSHA standard; employers must document the elements of each guidance being followed; and employers must train workers on which guidance is being relied on in certain situations.

#### **5) Key Definitions Must be Improved**

Two key definitional issues exist within the current proposal. First, 'exposure risk level' is not specifically defined at all. The definition of exposure risk level should include all risks and modes of transmission. It is important that employers consider all modes of transmission when performing a risk assessment, for example, especially airborne transmission.

Second, the proposal defines 'face covering' to mean "a cloth face covering, face shield, respirator, or facemask that covers the nose and mouth of the wearer and that can be used to reduce the risk that the wearer will transmit COVID-19. Face coverings with an exhalation valve do not meet this requirement."

This definition should be changed as grouping respirators, face shields, facemasks and cloth face coverings into one category is misleading and dangerous as it confuses the nature, function and limits of each of these items.

For example, respirators and face shields are true personal protective equipment, or PPE. Respirators protect the wearer from airborne transmission. Face shields only offer droplet protection and are intended to protect the eyes and mucous membranes. Facemasks are solely for control of the source of droplets and, further, the effectiveness of cloth face coverings as source control cannot be reliably validated. Face coverings are not PPE and are not intended to protect the wearer, but it may reduce the spread of the virus from the wearers' droplets to others (i.e., source control).

Here again, to avoid the confusion and misinformation that has permeated the failed national response to COVID-19, these various tools must not be conflated, giving the incorrect and dangerous impression that they are interchangeable when they, in fact, are not.

## **6) Reporting and Notification of Infections Must be Required**

Currently, the proposed standard fails to include an employer duty to notify workers of exposure, except for those at exceptional risk and fails to include an employer duty to notify Oregon authorities of workplace infections. We believe employers must be required to notify employees of exposure or likely exposure within 24 hours of becoming aware of the exposure, while maintaining the confidentiality of the infected person as per the federal requirements of the *Health Insurance Portability and Accountability Act* (HIPPA).

Employers must be required to report all COVID-19 cases to the Oregon Departments of Health and OSHA, and should include the employer name, work location, employee job title and occupation, and must be required to notify employees and facility owners when there is a positive case or a potential exposure.

## **7) Return to Work Procedures Should be Grounded in Testing, Not Symptoms**

Currently, the proposed standard requires that decisions regarding testing and return to work must be made in accordance with the direction of public health officials and consistent with guidance from an employee's medical provider.

We believe this should be strengthened by requiring science-based employer return to work policies based on negative test results regardless of whether a worker is symptomatic, asymptomatic, or suspected to be infected.

Minimally, given the lack of widely available tests, and rapid test results, the standard should include some symptom-based or time-based strategies as an alternative to a test-based strategy where local healthcare and testing circumstance may be sub-optimal. While this is not ideal, it does reflect the reality of the failed national response to the COVID-19 crisis.

## **8) Mere Physical Distancing Practices Alone Cannot Replace Systematic Risk Assessments nor the Hierarchy of Controls**

Currently, the proposed standard relies heavily on a single control – requiring employers to design workplaces so as to ensure six-foot distancing between all workers. This control assumes that COVID-19 is spread primarily through droplet transmission.

While we agree that physical distancing is an essential administrative control for all workplaces and that addressing the need for physical distancing and cleaning in common spaces is essential for all workplaces it is also the case that distancing requirements, and even physical barrier requirements do not fully address airborne transmission vectors.

Social distancing officers, who should receive proper training and be present in all workplaces, should be given the authority to conduct a systematic workplace risk assessment, not just assessment around distancing, face coverings and sanitation.

## **9) Workers in Shared Vehicles Must Have Proper Respiratory Protection and PPE**

Many workers are required to share vehicles during the course of their work and addressing exposures in this particular job setting is essential, especially given the airborne nature of this virus. Workers in the same vehicle must be provided with respiratory protection and the appropriate PPE to ensure safety even during times when they may simply be transporting to and from work sites as this is an integral part of their ability to perform their jobs.

## **10) Sanitation and Disinfection Standards Should be Improved**

It is a truism that sanitation procedures are essential to keeping workplaces as clean as possible and that they must include frequency requirements in order to be effective over time. Currently, however, the draft proposal only requires that high touch objects used by multiple employees (door handles, phones, cash registers, for example) are cleaned at the beginning of a shift, rather than more regularly. Further, the proposal only mentions cleaning, not disinfection, which are distinct practices.

We believe the standard should require use of disinfecting products on the federal EPA's List N for use against COVID-19; that workers should be trained on the use of these products; and that manufacturers' instructions on use are complied with regarding concentration, application method, contact time, PPE, and the need to avoid mixing products, for example.

## **11) The Full Hierarchy of Controls Should be Implemented in Combination**

Currently the hierarchy of controls for hazard mitigation is not applied or even referenced in the draft proposal. The only engineering control mentioned is droplet buffers—impermeable dividers. The only work practice control included is physical distancing. It is, however, axiomatic in the practice of workplace safety that use of the full hierarchy of controls is essential to control workplace hazards.

A fuller list of effective controls would include:

Engineering controls, such as improved ventilation. Ventilation requirements are a critical engineering control for all workplaces. Fresh, clean air is essential to good health.

Work practice controls, such as staggered work times, telework where possible, limiting the number of customers or clients present at one time, or creating screening systems.

Personal Protective Equipment (PPE) - respiratory protection beyond mere droplet control.

Although the installation of physical barriers should be required, ideally the standard should require physical barriers only in addition to physical distancing, ventilation considerations and other practices from the hierarchy of controls. Not all barriers are equally effective, and some barriers that are floor to ceiling may actually interfere with ventilation in some locations.

Based on risk assessment, in many instances face coverings, for example, should be a requirement for all indoor areas until workers or members of the public can leave a particular workplace. Where respirators or PPE are not required under this standard, and where physical distancing cannot be maintained or the job task is customer facing, employers need to provide face coverings for employees.

In short, wherever feasible, a combination of practices from the hierarchy of controls should be used for each worksite based on a systematic risk assessment.

## **12) Infection Preparedness Plans Must be Created for all Workplaces**

Currently, the proposed standard only requires a written infection control plan for exceptional risk workplaces. However, as discussed throughout our comment, such practices should be present in all workplaces, and simply modified based on systematic workplace risk assessments.

In this instance, written infection control plans should be created and implemented by all employers where assessment determines there to be a risk of exposure.

Such a written plan, developed with input from workers and worker representatives, would include:

The name or title of the person responsible for administering it;

A list of all job assignments or tasks requiring PPE, including respirators;

A list and description of the specific hazard control measures that the employer has installed, implemented, or developed;

A description of face covering requirements for individuals entering the workplace;

A procedure for notifying employees of exposure to an individual known or suspected to be infected with COVID-19;

A procedure for ensuring there is an adequate supply of PPE, including respirators;

The procedures the employer will use to provide training.

Such a plan must be accessible to employees and be evaluated and updated as frequently as necessary to reflect changes in work operations, OSHA guidance, or technologies.

### **13) Safety Training Standards Should Exist for all Workplaces**

Currently, the draft proposal only specifies that COVID-19 safety training take place in workplaces with heightened or exceptional risk. Training is not mandatory in all workplaces. We believe that training should be applied to all employers and that training can simply be adapted based on the particular workplace and risk assessment.

Minimally, such training should be conducted in-person and training instruction and materials should be provided in the languages necessary to be understood by all employees. Additionally, all employers should be required to keep a record of the training they actually perform in order to document compliance. Finally, retraining procedures should exist for all workplaces based on the passage of time, but also when job tasks and other factors change.

### **14) Workers Must be Protected from Retaliation and Discrimination**

Currently, the draft proposal fails to adequately address workers' right to report safety concerns and, further, compounds this problem by failing to prohibit employer retaliation against workers for exercising their right to raise or report safety concerns.

It is axiomatic that employers must not be allowed to discriminate against an employee for raising safety concerns, for wearing their own PPE, or for refusing unsafe work. Particularly to the extent such protections are already rights under existing law, the standard should expand upon or, minimally, be more specific about the parameters of these rights.

A second issue of concern regarding discrimination is that serological testing to determine the presence of antibodies should not be included in a workplace safety standard to address working or returning to work as it is not currently reliable or well understood. Both the CDC and EEOC have warned against permitting it in connection with any return to work policies. For this reason, workers should not be discriminated against, nor provided with fewer safety precautions because of a positive serological test.

Finally, we are concerned with the potential removal of the requirement to provide compensation to employees who receive medical removal orders. Workers should not be penalized for doing what is necessary to stop the spread of this deadly virus. Rather, all Oregon workers should have access to sufficient paid medical leave to protect their health, that of their co-workers, and the public.

### **15) Conclusion**

In conclusion, we thank the Department for this opportunity to provide public comment and urge that action be taken, to the fullest extent necessary, to protect all Oregon workers from the hazards of infectious disease.

Sincerely,

John 'Scotty' MacNeill, CUSP  
National Safety Director  
Utility Workers Union of America, AFL-CIO