



From Now to Normal: Reopening Oregon

May 13, 2020

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Our Plan Today

- Assess Governing Law
- Making and Implementing Recall Decisions
- Navigating Workplace Health and Safety Concerns
- Leave and Benefits Issues
- Opportunities to Improve Efficiency

Assess Governing Law

Sarah Ames

Review Relevant Laws

Executive Order No. 20-12 “Stay Home, Save Lives”

- [Link to full text](#)
- Still generally in effect, slight changes to childcare, medical procedures, state parks
- Requires remote working to maximum extent possible
- All businesses must enact social distancing policies for employees and visitors

General Guidance for Employers Issued May 7, 2020

- [Link to full text](#)
- Non-binding guidance, detailing “best practices”
- Contains many helpful links to CDC, OSHA, and other guidelines

Step One: Review Relevant Laws

Phase One Reopening - as early as May 15, 2020

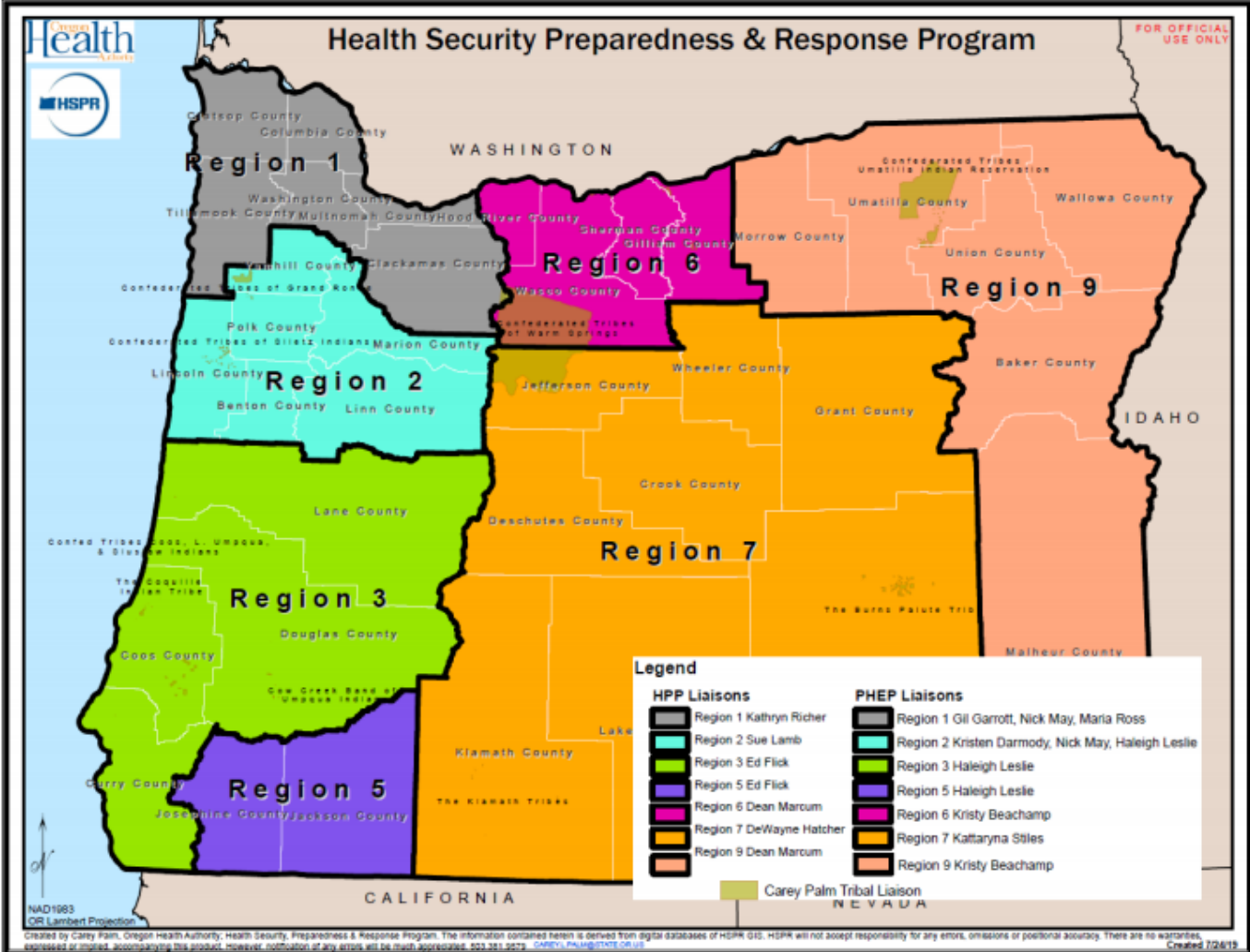
County-by-County

- New Covid-19 infections decreasing for 2 weeks OR less than 5 Covid-19 hospitalizations
- Isolation facilities
- Contact tracing system

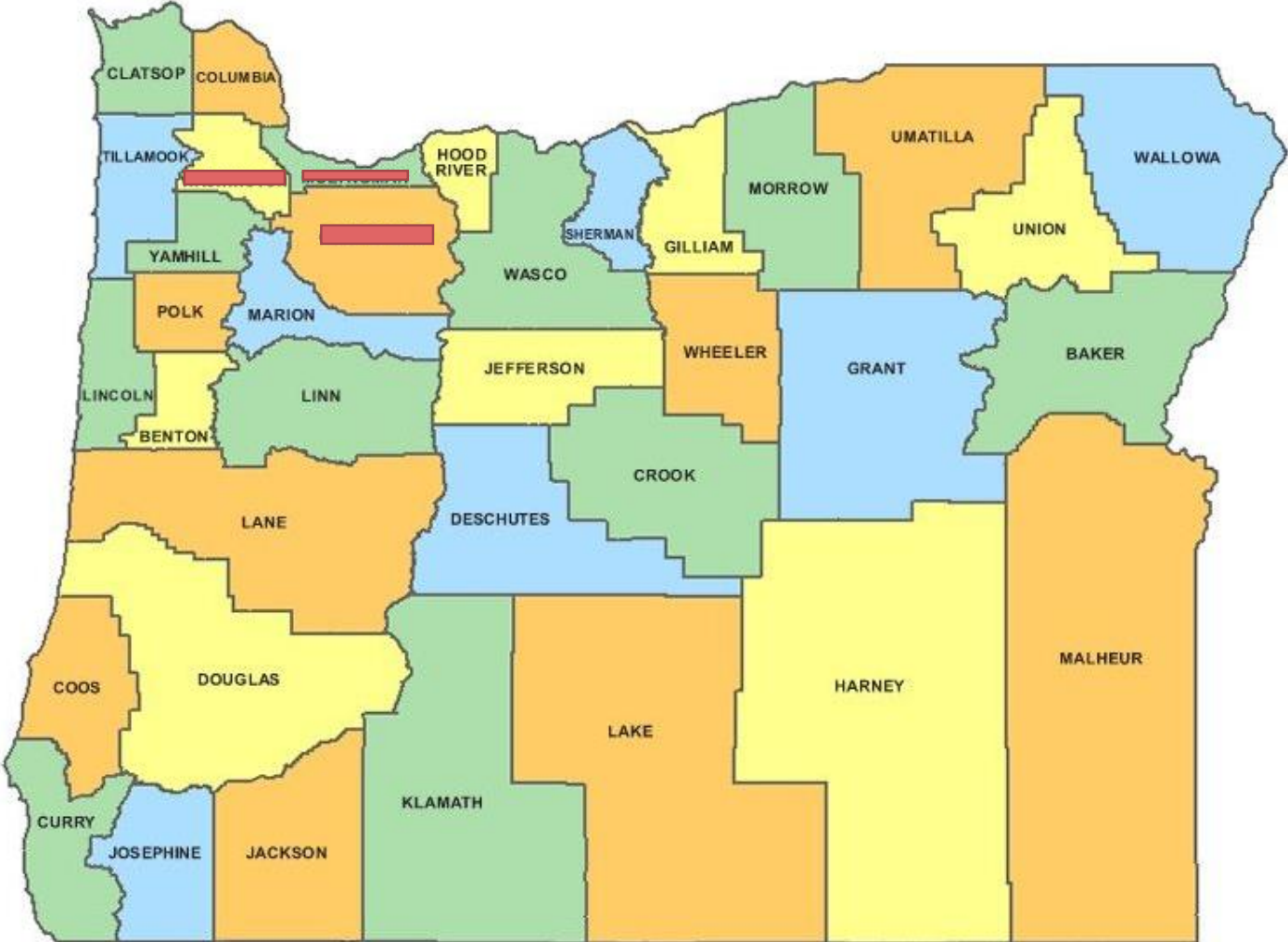
Health Region

- Sufficient PPE for health care workers
- Sufficient hospital capacity
- Minimum testing regime

Health Regions



May 15, 2020 Reopening Proposals



Phase One Reopening – 21+ days



Bars and restaurants - Mandatory and Suggested Criteria

- 6' distance at all times – including entrances, booths, outdoor areas, etc.
- Groups of 10 or fewer; no combining unrelated parties
- All employees must wear face masks, businesses must provide
- All employees must wear gloves *when cleaning*
- End onsite consumption by 10pm
- No self-service
- No bar seating
- No pre-set tables
- Video lottery machines may be used by request only and subject to cleaning

Phase One Reopening – 21+ days



Personal care services – Mandatory and Suggested Criteria

- By appointment only
- Contact prior to appointment and ask health screening questions
- Maintain customer lists for contact tracing
- Physical distancing – 6 feet; wait outside; one-to-one contact
- Post signs listing Covid-19 symptoms
- Remove magazines, service menus, snacks, etc.
- Employees must wear masks during client services
- Clean surfaces such as telephones, computers, etc. after each touch
- Regularly disinfect surfaces that are not single-use

Phase One Reopening – 21+ days



Shopping Centers and Malls – Mandatory and Suggested Criteria

- Common areas (e.g. food courts) configured at least 6 feet between parties
- Signage to discourage groups
- Determine maximum occupancy and limit accordingly

Retail – Mandatory and Suggested Criteria

- Limit number of people based on 6 feet of separation
- Post signs listing Covid-19 symptoms
- Frequently clean and sanitize high touch areas
- Require all employees wear employer-provided face masks

Phase One Reopening – 21+ days

Gyms – Guidance Forthcoming

- Limits on capacity
- Sanitation requirements
- Physical distancing

Gatherings – Guidance Forthcoming

- Possible increase in group size to 25 (from 10) of locals only





Making and Implementing Recall & Return to Work Decisions

Christie Totten

Communication is Key

- Plan communication – what will you say?
- Consider timing – how much notice will you give?
- Wording matters



Mapping Out A Plan



1. Who will return?
2. How will the job look the same or different?
3. How and when will you communicate information?

Mapping Out a Plan – Who Will Return?



- What workplace positions are permitted for your industry/location?
- What work/positions do you need?

Options for Which Individuals Return

Let employees
volunteer

- Unemployment issues
- Morale/dispute issues

Exercise
employer choice

- PPP loan
- Objective criteria
- Past performance?
- Qualifications for the position today and going forward
- Beware of assumptions

Mapping Out a Plan – What is the Job Today?

- Some jobs change
- Remote work – ongoing?
 - Before Phase I
 - During & After Phase I
- Job descriptions
- Pay reductions
- Exempt status – salary and duties
 - Salary minimum
 - Salary basis
 - Duties
 - See [Fact Sheet](#)
- Unemployment benefits
- Contractors and employees



Return to Work – Nuts and Bolts

- Onboarding and new hire documents
 - Consistency with prior furlough/layoff/etc.
 - Form I-9
 - Handbook and new policies
 - Clean up prior issues
- Timekeeping
 - Meals & Rest Periods
- Schedule staggering



Return to Work – Nuts and Bolts

- Health and Temperature Checks
 - Legal issues
 - Practical implementation
 - [CDC Guidance](#)
- Safety
- PTO, Sick Leave, and Protected Leaves of Absence



Handling Tough Questions & Comments

I prefer to stay on unemployment and not return.

I'm calling OSHA.

I'm afraid to be in the workplace.

I don't think you can _____ under the law.



Navigating Workplace Health and Safety Concerns

Ame Lewis

EO No. 20-12 and Guidance on Reopening Oregon

Executive Order No. 20-12's hierarchical approach

- Remote working to maximum extent possible
- Social distancing policies for employees and visitors
- Use of personal protective equipment ("**PPE**") when unable to maintain 6' distance

Reopening will require businesses to incorporate (or continue) social distancing in the work environment

- Changes to physical layouts and structures ("**engineering controls**")
- Changes to policies and practices ("**administrative controls**")
- PPE

Preparing Your Business for Reopening

Have a plan! Key elements of your reopening plan should include:

1. Social distancing
 - Engineering controls
 - Administrative controls
 - PPE
2. Sanitization
3. Communication and Training
4. Personal hygiene
5. Health monitoring
6. Specific requirements for certain industries – restaurants, personal care, construction, health care, transit



Social Distancing

***Planning should consider the flow of work within the individual workspace to identify the points of contact between employees, vendors and customers.*

1. Engineering Controls

Physical barriers – dividers

Physical markings – taping floor at 6' intervals or other illustrations of 6' distance

Limiting access to or closing certain areas - e.g., lunchroom, restrooms limited to 1 at a time

Reconfigure workspaces – spacing cubicles or desks, open workspaces

Reconfigure traffic flow within workplace – one-way routing in hallways

No-contact deliveries

Social Distancing

2. Administrative Controls

Rotating shifts to limit the number of employees at any one time

Rethink staffing of certain work tasks

Staggering lunch and rest breaks

Social distancing supervisors/captains

Limiting meetings, virtual meetings where possible



PPE and Face Coverings



PPE can include N95 respirators, single-use nitrile gloves, eye protection, gowns. Face masks covering nose and mouth may also be used in some circumstances but are not technically PPE.

The State of Oregon's reopening plan specifies the use face masks in certain businesses where social distancing is not feasible: restaurants, grocery stores, pharmacies, public transit, salons/personal services, and ridesharing services.

- Working within 6' distance
- Can we require employees and visitors to wear face masks/coverings?

Communication

Signage to employees, customers, other visitors

- Stay home if sick
- Know the symptoms of COVID-19
- Social distancing
- Handwashing, use of hand sanitizer
- Use of PPE
- Visitors experiencing symptoms
- Cleaning/sanitizing
- Cover mouth/nose when sneeze or cough

Safety meetings/safety committee meetings

Written procedures and email communications

Encourage communication with management related to COVID-19

What to do if employees came into contact with another employee with COVID-19?

Sanitization and Personal Hygiene

- High-touch areas
 - Doorknobs
 - Counters
 - Restroom fixtures
 - Phones
 - Microwaves
- Shared equipment (pens, phones, computers, office supplies), vehicles
- Common areas
- Availability of sanitizer, sanitizing wipes
- Handwashing



Work-related Travel

- Think about work-related travel –
 - Limit to only necessary travel
 - Disinfecting wipes
 - Protocols for social distancing with 3rd parties, gloves and face masks
 - Takeout or delivery meals



Health Monitoring

Employee self-monitoring and reporting; supervisor monitoring for displayed symptoms

“At the front door” policies:

- Health screening checklists – COVID-19 symptoms per the CDC; confirmed COVID-19 within the home
- Temperature screenings
 - Infrared (non-touch) readings
 - Training of health screeners, PPE, and social distancing
 - Where will screenings be conducted?
 - Privacy concerns
 - Contact tracing?





Leave and Benefits Issues

Sarah Ames and Stuart Harris

Families First Coronavirus Response Act (FFCRA)



- April 1, 2020 – December 31, 2020
- Employers with under 500 employees – very limited exceptions for small employers
- Emergency Family Medical Leave Expansion Act – up to 12 weeks
 - Paid at lesser of \$200/day or 2/3 regular rate
- Emergency Paid Sick Leave Act – up to 80 hours
 - Some leave paid at lesser of \$511/day or regular rate; some leave paid at lesser of \$200/day or 2/3 regular rate
- Post FFCRA Notice
 - https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- Develop FFCRA Leave Request Form
 - <https://www.dwt.com/blogs/employment-labor-and-benefits/2020/04/ffcra-leave-documentation>

Leaves Relevant to Covid-19

FMLA and/or OFLA

Oregon Sick

ADA

Workers' Compensation

Use of PTO

Group Health Plan Issues

- Ensure returning employees' coverage is reinstated, to the extent possible—check plan document and with insurer
- Were benefits continued during absence?
 - If employment technically continued (furlough/leave of absence), and new hours less than required minimum, check for insurer's special treatment of reduced hours and how long treatment lasts
 - If COBRA triggered upon prior termination of employment, may be able to automatically reinstate or waive new eligibility period
- If returning employees triggered COBRA, any COBRA gap?



Group Health Plan Issues, cont'd

- State emergency order (May 5, 2020) effective for health insurers through June 3, 2020
 - Added 30-day grace period for submitting claims and filing appeals
 - Added 60-day grace period for paying premiums
- DOL extended deadlines, including for COBRA elections, by ignoring time during National Emergency and for 60 days following its end
- Address any recoupment of employer paying employee's share of premium during absence

Group Health Plan Issues, cont'd.

- New IRS guidance allows greater flexibility under Section 125 cafeteria plans
- Increased ability for mid-year elections to add or drop coverage, or increase or decrease dollar elections under flexible spending accounts (FSAs) and dependent care accounts (DCAs)
- Extended grace periods for using amounts in FSAs and DCAs after the end of the plan year
- New rules permissive, not required, but will require retroactive plan amendments (amendment deadline December 31, 2021)

Retirement Plan Issues

- General rule: count all service for eligibility and vesting
 - Eligibility: once a participant, always a participant – rehired participants join immediately
 - Vesting: focus on “year of service,” which is a 12-month period in which they have 1,000 (or fewer, as specified in the plan) hours of service, or just continued service for elapsed time method
- Exception to general rule applies if plan uses “break in service” rules, but that is rare, particularly for 401(k) plans



Retirement Plan Issues, cont'd

- Timely delivery of notices regarding plan changes (eliminated match, etc.)
- Follow applicable employee deferral elections, but alert employees of option to change
- Partial plan termination requires accelerated vesting of affected participants
- Partial plan termination rule of thumb looks at drop in 20% of participants, but wait until year end to evaluate
- CARES Act allows (but does not require) more liberal distribution and loan rules (will require retroactive plan amendment, generally by 12/31/2022)



Opportunities to Improve Efficiency

Sarah Ames

Opportunities

- Reexamine job descriptions
- Adjust exemption classifications
- Revise PTO policies – eliminate “unlimited” and “cash out”
- Prepare and implement a Work from Home policy
- Open additional lines of communication

Q&A



Thank you



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