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September 3, 2020

Oregon Occupational Safety and Health (Oregon OSHA)
Department of Consumer & Business Services
350 Winter Street NE, 3rd Floor
Salem, OR 97309-0405

Submitted via email to tech.web@oregon.gov

RE: Oregon OSHA's Draft COVID-19 Temporary Standard

To Whom It May Concern:

Public Citizen, a nonprofit consumer advocacy group with more than 18,300 members and supporters in Oregon and more than 500,000 members and supporters nationwide, supports Oregon OSHA's efforts to implement a COVID-19 Temporary Standard. However, we are concerned that the proposed Temporary Standard lacks key provisions that are essential for adequately protecting workers in Oregon from risk of infection with the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), the virus that causes COVID-19. We therefore recommend several additions, described below, to the proposed standard.

Implementation of a robust Temporary Standard for COVID-19 by Oregon OSHA is critical given the reckless refusal of the U.S. Occupational Safety and Health Administration to issue a mandatory federal Emergency Temporary Standard for protecting workers from COVID-19.

The ongoing COVID-19 pandemic, which continues to rage across the country, remains a national public health emergency that will continue for many more months, if not years, to pose a significant threat to the health and safety of workers at the forefront of exposure to the coronavirus, including health care workers, first responders, transportation workers, social service workers, farmworkers, and meat-processing plant workers, among many others.

An adequate and immediate mandatory standard for COVID-19 is critical to preventing the rapid spread of the disease in the workplace setting, as well as the broader community. This is particularly the case for health care workers and first responders. If these workers contract COVID-19 or are subject to prolonged quarantine because of potential exposure, they will not be available to assist and treat other infected patients, which would impede severely the ability of Oregon's health care system to stem the COVID-19 pandemic, as well as handle the usual flow of patients with other acute and chronic diseases. In addition, infected health care workers and first responders who have no or minimal symptoms could transmit the infection to vulnerable patients at high risk of dying from COVID-19. These factors together would exacerbate this ongoing public health crisis.

According to the Oregon Health Authority, 187 businesses with more than 30 workers have experienced COVID-19 outbreaks, more than 70 of which are considered currently active.¹ More than 1,600 COVID-19 cases have been linked to farmwork and food packing/processing, by far the largest percentage of workplace-related cases. More than 700 cases have been linked to correctional facilities. Interestingly, these numbers dwarf the number of cases associated with hospitals. This demonstrates that a heightened risk of SARS-CoV-2 transmission goes far beyond healthcare settings. A temporary rule must reflect the actual pattern of cases already seen in Oregon workplaces with farmwork, food packing/processing, and corrections work all considered “heightened risk” occupations.

The risk of SARS-CoV-2 transmission is particularly high when workers are forced to work and live in close proximity. Farmworkers living in employer-provided communal housing are one example. Although Oregon OSHA has a temporary rule in place to address COVID-19 safety in agricultural communal housing, the rule is set to expire on October 24, 2020.² That rule must be extended with the strengthened requirements for farmworker transportation delineated below. Moreover, the proposed temporary Oregon OSHA workplace standard must be designed to work in concert with the employer-provided housing standard in order to be effective in addressing COVID-19 in that worker population.

To adequately protect workers in Oregon from the risk of SARS-CoV-2 infection, we recommend that the proposed Temporary Standard be amended as follows:

- (1) The standard should be revised to clarify that different job tasks at the same place of employment can have different levels of exposure risk that may range from low to very high.
- (2) The standard should specify factors that should be considered in determining exposure risk level beyond those settings and activities listed under subsection (1)(c) that would be considered to present “exceptional risk.” Such additional factors should include the work environment (for example, indoors or outdoors); the number of employees and other persons in relation to the size of the work area; the duration and frequency of employee exposure through contact inside of six feet with other employees or persons; the potential exposure to the airborne transmission of SARS-CoV-2 virus; potential contact with contaminated surfaces or objects, such as tools, workstations, or break room tables; and the use of shared spaces such as shared workstations, break rooms, rest rooms, locker rooms, transportation vehicles, and entrances/exits to the facility.
- (3) The standard should prohibit the termination of an employee and any form of retaliation against an employee because they:

¹ COVID-19 Weekly Report: Oregon’s Weekly Surveillance Summary, Novel Coronavirus (COVID-19, Oregon Health Authority (Sep. 2, 2020), <https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/DISEASESAZ/Emerging%20Respiratory%20Infections/COVID-19-Weekly-Report-2020-09-02-FINAL.pdf>.

² 437-001-0749 Temporary rule addressing the COVID-19 emergency in employer-provided housing, labor-intensive agricultural operations, and agricultural transportation, <https://osha.oregon.gov/OSHArules/div1/437-001-0749.pdf>.

- (a) Have tested positive for SARS-CoV-2;
 - (b) Have been diagnosed with COVID-19;
 - (c) Report having symptoms associated with COVID-19; or
 - (d) Report contact with anyone who has tested positive for SARS-COV-2, has been diagnosed with COVID-19, or is awaiting results of a test for SARS-COV-2.
- (4) The standard should prohibit the termination of an employee and any form of retaliation against an employee for:
- (a) Communicating to any person, including other employees, government agencies, or the public about unsafe job conditions; or
 - (b) Refusing to work under conditions that the employee reasonably believes would expose him or her, other employees, or the public to an unreasonable threat of illness or injury on the job.
- (5) Subsection 1(b) of the standard should be revised to specifically include farmworkers, food packing/processing workers, and workers in correctional settings as employees at “heightened risk” of exposure to SARS-CoV-2 or COVID-19 disease.
- (6) The standard should require all vehicles designated for transportation of employees that contain three or more rows of seating to be equipped with impermeable barriers that provide a “droplet buffer” between seats.
- (7) Subsection 2(g)(B) should clarify that paid reassignment leave for piece rate workers should be paid at minimum wage or higher based on a 40-hour work week.
- (8) The “social distancing officer” under subsection 2(d) should be replaced with a worker liaison to Oregon OSHA who will communicate any unsafe conditions at the workplace or failure to comply with the COVID-19 Temporary Standard.
- (9) The standard should require ALL employers to do the following:
- (a) Assess their workplace for hazards and job tasks that can potentially expose employees to SARS-CoV-2 or COVID-19 disease.
 - (b) Classify each job task based on the level of exposure risk according to the hazards to which employees are potentially exposed.
 - (c) Inform employees of the methods of self-monitoring for signs and symptoms of COVID-19 if they suspect possible exposure or are experiencing signs of an oncoming illness and encourage implementation of such self-monitoring.
 - (d) Develop and implement policies and procedures for employees to report when they are experiencing symptoms consistent with COVID-19. To the extent that an employee is reliant upon employer-provided transportation, such policies must require employers to transport the employee to receive healthcare and/or testing for SARS-CoV-2.

- (e) Notify any of its own employees who may have been exposed, within 24 hours of discovery of their possible exposure, while keeping confidential the identity of the person known to be infected with SARS-CoV-2 in accordance with applicable laws.
 - (f) Ensure employee access to their own SARS-CoV-2 and COVID-19 disease-related exposure and medical records in accordance with the standard applicable to its industry.
 - (g) For employees who need to be isolated or quarantined because of known or suspected SARS-CoV-2 exposure or infection and for whom reassignment to other duties is not possible, develop and implement policies and procedures for such employees to return to work using either a symptom-based or test-based strategy, depending on local healthcare and testing circumstances, and based on guidance from the employees' medical providers or from the involved public health officials.
 - (h) Unless otherwise provided in the standard, ensure that employees observe physical distancing while on the job and during paid breaks on the employer's property, including policies and procedures that (i) use verbal announcements, signage, or visual cues to promote physical distancing; and (ii) decrease worksite density by limiting non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure.
 - (i) Control access to common areas, breakrooms, or lunchrooms.
 - (j) Ensure use of only disinfecting chemicals and products indicated in the Environmental Protection Agency List N for use against SARS-CoV-2.
 - (k) To the extent that industry standards are more protective than simple use of face coverings, ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. This applies when employees are at a workplace and when employees are occupying a vehicle for work purposes.
- (10) The standard should require employers with hazards or job tasks classified as heightened risk or exceptional risk to do the following:
- (a) Ensure appropriate air-handling systems are installed and maintained in accordance with manufacturer's instructions in facilities where there is a heightened or exceptional risk of SARS-CoV-2 exposure and comply with minimum applicable American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers standards.
 - (b) Prior to the commencement of each work shift, ensure prescreening or surveying to verify each covered employee does not have signs or symptoms of COVID-19.
 - (c) For healthcare and other facilities where there is a heightened or exceptional risk of SARS-CoV-2 exposure, follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.
 - (d) Limit non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure.
 - (e) Post signs requesting visitors to immediately report symptoms of respiratory illness on arrival at the facility and use disposable face coverings.
 - (f) Offer enhanced medical monitoring of employees during COVID-19 outbreaks.
 - (g) For employees classified as having "exceptional" exposure risk, provide and ensure use of gloves, a gown, a face shield or goggles, and a respirator when in contact with

or inside six feet of patients or other persons known to be, or suspected of being, infected with SARS-CoV-2.

Thank you for the opportunity to comment on this urgent public health matter.

Sincerely,

/s/

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/s/

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