



## OSHA REGULATION AND COVID-19

Since March 2020, the AGC Safety and Public Affairs teams have worked together to ensure that the construction industry was able to continue working, despite many other industries and sectors being shuttered in response to COVID-19. Our focus on safety and best practices has kept Oregon's construction industry as a model to other industries of how to implement safety measures and keep workplaces safe. We have to keep up this dedication to safety and required precautions, to make sure that our industry can stay open for business.

AGC has been actively engaged in the rulemaking process at Oregon OSHA for the COVID-19 temporary and permanent rules, to ensure that OSHA considers the realities of construction jobsites when making these rules. We have been able to eliminate some of the worst provisions of the rules, including:

- 80 hours of leave paid by the employer for workers who had been exposed to COVID, *in addition* to all other leave programs offered by the state or employer
- Increased distancing requirements to 12 feet for forceful exertion
- Onerous vehicle restrictions that would have prevented multiple employees in the same vehicle

The temporary COVID-19 rule has been in place for several months now, and our industry has done a great job of complying and ensuring that we remain limited in our number of workplace outbreaks. OSHA has released a draft permanent rule and is accepting comments on this rule. AGC is raising the following concerns to OSHA:

- End date for permanent rule – during the rulemaking, OSHA made clear that this rule will be rescinded when the declared state of emergency ends. The rule as currently written does not reflect that, so we are urging OSHA to include that in the language. So it won't be forever – the rule will likely only be in effect until the Governor declares an end to the state of emergency.
- Vaccination documentation – the draft rule requires employers to document whether an employee declined a vaccine when offered. We are urging OSHA to remove this requirement, as such documentation should not be required for employers.



There have been additional concerns expressed about the requirements of the draft permanent rule. Here is what we know about masks and vaccines at this time, based on the best available information and how we interpret the proposed rule:

- There are concerns that masks are going to be required permanently. Based on our communication with OSHA, the masking mandate is intended to phase out once the state of emergency ends. AGC is working to make sure that OSHA makes this very clear in the permanent rule.
- There are other concerns that employers will be required to track whether their employees are vaccinated, or will have to force their employees to get vaccinated. While under the law employers do have the right to mandate vaccine, there are questions about their ability to track. Employers are not responsible for ensuring that their employees are vaccinated, nor are they responsible for tracking the vaccination history of their employees. Under the proposed rule, the only time when an employer needs to document their employee's vaccinations is if the employee is offered a vaccine and turns it down. We are pushing back on even that requirement.

To keep the construction industry and your businesses open, it is important to continue following OSHA rules and guidance. This will help us ensure that construction can stay open through the end of the pandemic, with no interruptions to work. The industry has done a magnificent job of being a leader in response to the pandemic. As we see a light at the end of the tunnel, it is critical that we maintain our vigilance so that there are no interruptions to business.

If you have any questions about either the temporary or proposed permanent OSHA rules, please contact Dennis Barlow ([dennisb@agc-oregon.org](mailto:dennisb@agc-oregon.org)) or Kirsten Adams ([kirstena@agc-oregon.org](mailto:kirstena@agc-oregon.org)).