

After the Quarantine: Employer Issues to Consider

June 11, 2020

Presented by:

Laura Salerno Owens

Kyle Busse

What We're Going to Discuss



THE PROCESS OF
REOPENING



FREQUENTLY ASKED
QUESTIONS



LEGAL
CONSIDERATIONS

A 3D rendering of a complex maze made of light blue walls. The maze consists of many interconnected rectangular paths of varying widths. In the bottom right corner, a small, stylized yellow figure of a person is standing, looking towards the maze. The background is a plain white surface.

The Process of Reopening:
Unfamiliar Territory

Timeline of Reopening

May 1
Governor lifts
order delaying
non-urgent
medical
procedures

May 5
Reopening
guidelines
announced

May 15
31 of 36 counties
begin Phase 1
reopening

June 5 Governor issues Executive Order
for reopening
26 counties given the go-ahead to enter
Phase 2. Limited return to office work,
although remote working remains
recommended

June 5
Multnomah County
applies for reopening
If approved it will be the
last county to open, set
for June 12

June 8
OHA announced new
cases top 100 for the
second straight day

June 10
As of today 2,655
COVID-related suits have
been filed

September
Earliest possible
entry to Phase 3



Phase One

Timeline of Reopening

May 1
Governor lifts
order delaying
non-urgent
medical
procedures

May 5
Reopening
guidelines
announced

May 15
31 of 36 counties
begin Phase 1
reopening

June 5 Governor issues Executive Order
for reopening
26 counties given the go-ahead to enter
Phase 2. Limited return to office work,
although remote working remains
recommended

June 5
Multnomah County
applies for reopening
If approved it will be the
last county to open, set
for June 12

June 8
OHA announced new
cases top 100 for the
second straight day

June 10
As of today 2,655
COVID-related suits have
been filed

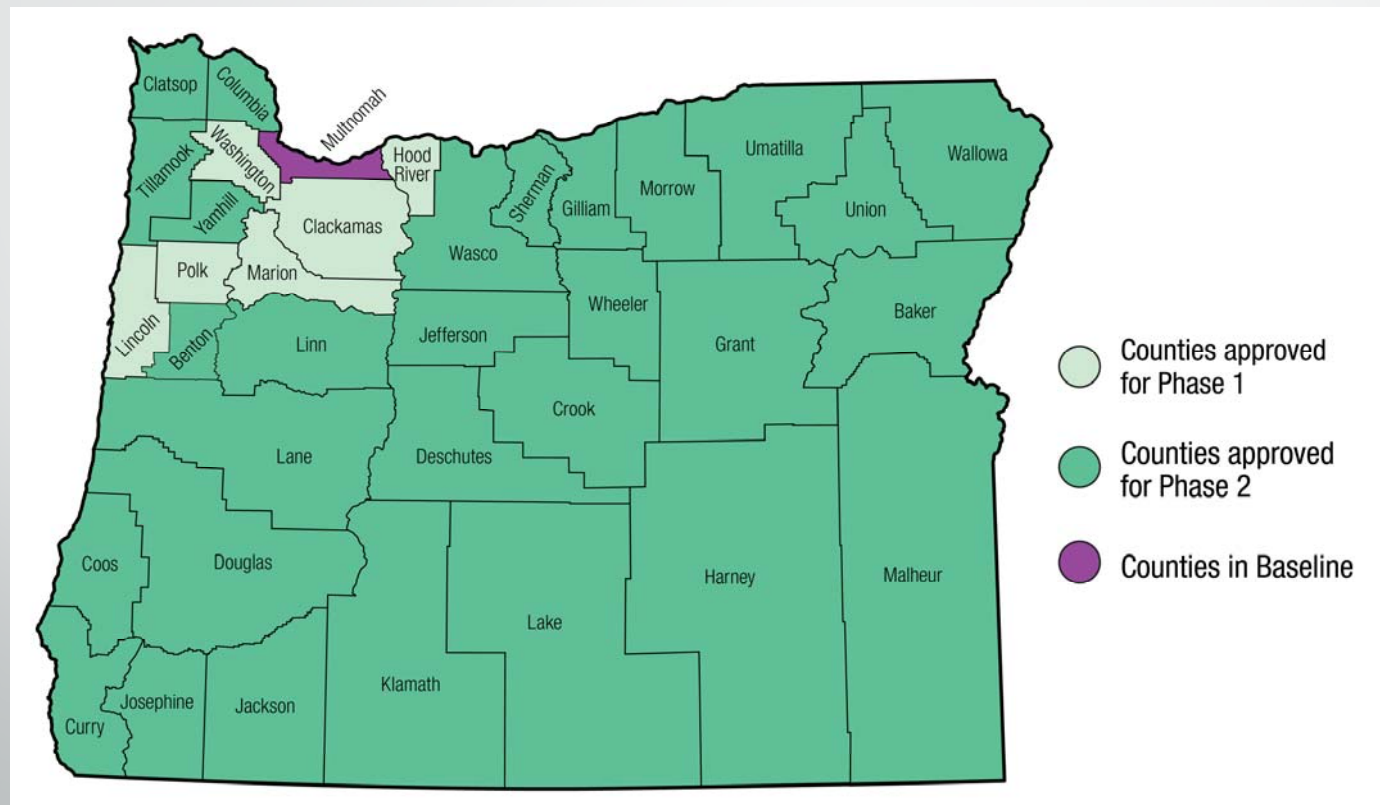
September
Earliest possible
entry to Phase 3

BACK
TO
THE OFFICE



Phase Two

Phases of Reopening for Oregon Counties



Timeline of Reopening

May 1
Governor lifts
order delaying
non-urgent
medical
procedures

May 5
Reopening
guidelines
announced

May 15
31 of 36 counties
begin Phase 1
reopening

June 5 Governor issues Executive Order
for reopening
26 counties given the go-ahead to enter
Phase 2. Limited return to office work,
although remote working remains
recommended

June 5
Multnomah County
applies for reopening
If approved it will be the
last county to open, set
for June 12

June 8
OHA announced new
cases top 100 for the
second straight day

June 10
As of today 2,655
COVID-related suits have
been filed

September
Earliest possible
entry to Phase 3

The Process of Reopening: How Far Do I Take This?





The Process of Reopening: How Should I Reopen?

- Testing
- Update Policies
- Educate Employees
- Consider Including Stakeholders in Decision making Process

Employee Issues to Consider As We Reopen

- **Notification to employees**
 - Do you want them to return to the office? When?
- **Employees who don't want to return:**
 - Like working remotely on own schedule
 - Fear of contracting COVID-19



Hypothetical

Jane, a healthy employee who is needed to handle front desk inquiries, says that she cannot report to work because she has a baby and does not want to be exposed to COVID-19 and possibly bring the virus home.



Hypothetical (cont'd)



Does Jane fall into one of the six categories of FFCRA leave?



Does Jane or her baby have a disability or a serious health condition? (ADA/FMLA)



Is Jane subject to “imminent danger” if she reports to work? (OSHA)



If the answer is no to all the above, not legally required to accommodate request to work remotely


Fall into Six Categories of FFCRA?




Subject to a federal, state, or local quarantine or isolation order related to COVID-19;




Under advice from health care provider to self-quarantine due to COVID-19 concerns;



Experiencing COVID-19 symptoms and seeking a medical diagnosis;



Caring for an individual subject to a government order or medically advised self quarantine as described above;



Caring for a child whose school or place of care is closed (or childcare provider is unavailable)



Experiencing any other substantially similar condition

Social Distancing

- Elevator protocols/“safe zones” demarcating spots to stand in
- Desk configurations/moving furniture
- Social distancing signage in lobbies and waiting areas
- Floor directional signage
- Create work zones
- Hold fewer in-person meetings/staggered shifts
- Establish maximum capacities for restrooms
- Close common areas and breakrooms?
- Enforce social distancing policies



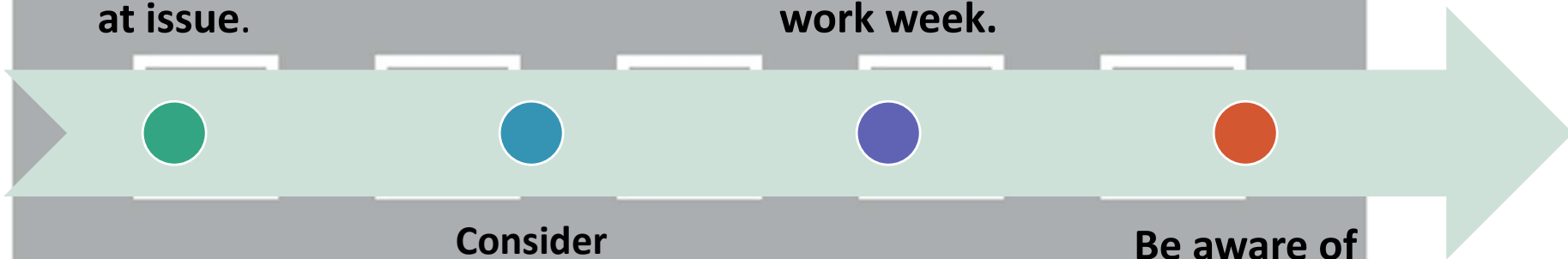
Modified Scheduling

Develop a scheduling system that fits the workplace at issue.

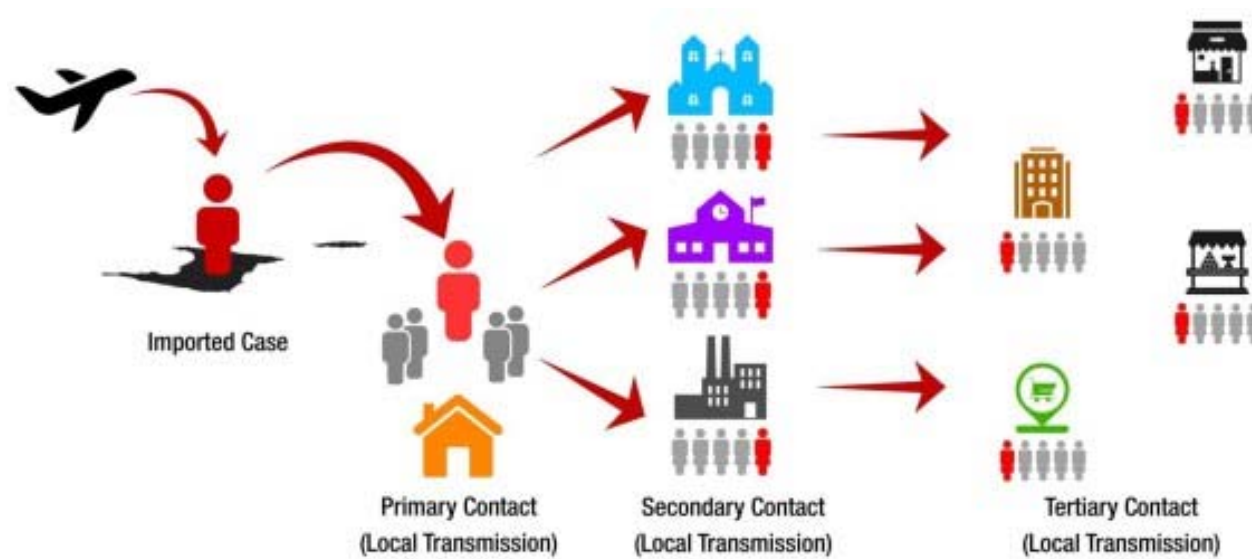
Revisit the work week.

Consider utilizing teams for tasks, staggered shifts, or telework.

Be aware of wage and hour implications.



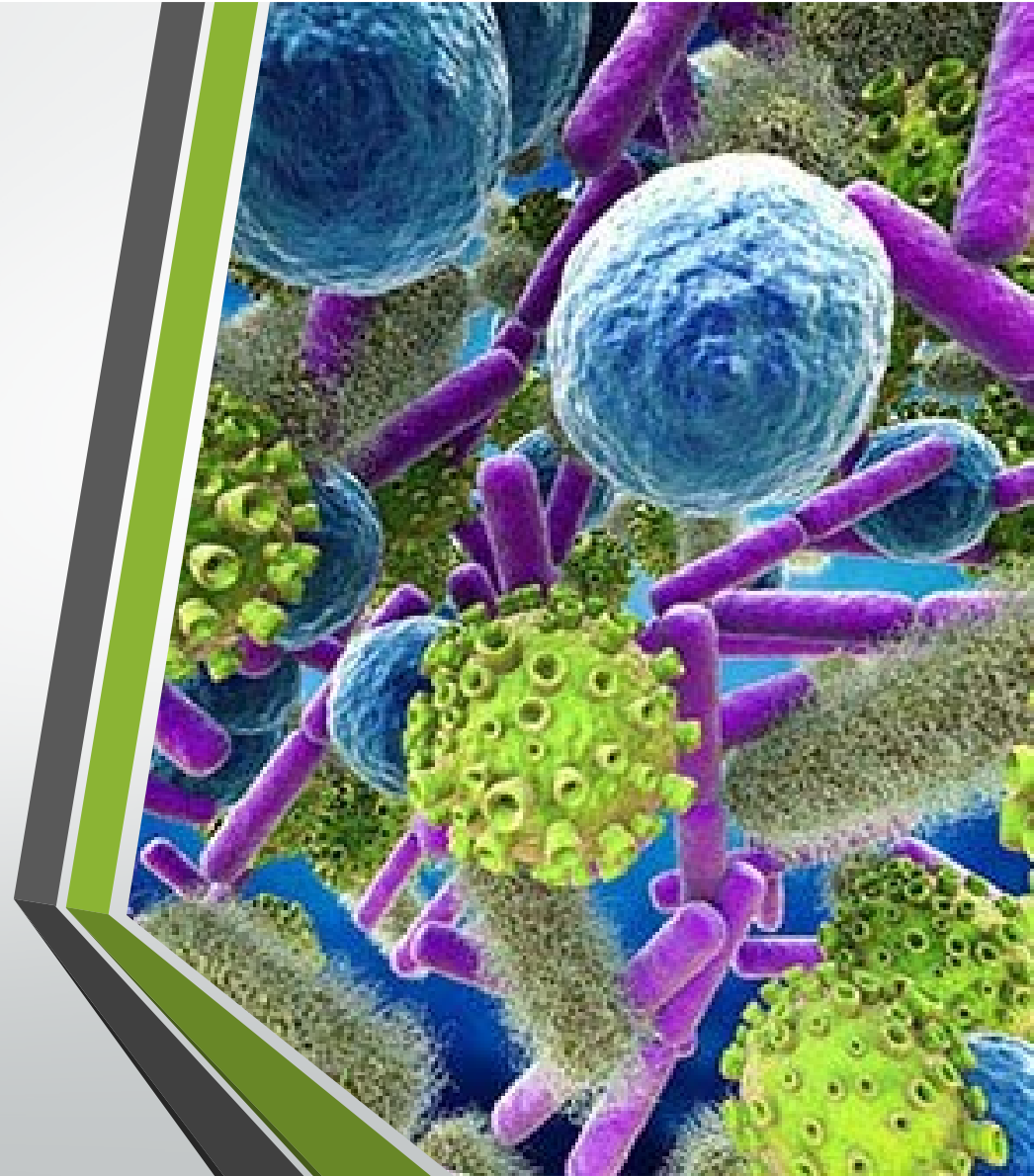
FAQ: Contact Tracing



FAQ:

Cleaning and sanitation timing and procedures

- Daily Cleaning?
- Public Facilities?



A black and white photograph of three business professionals (two men and one woman) sitting at a conference table. They are all wearing white surgical face masks. The man on the left is looking towards the camera. The man in the center is looking at the camera and has a pen in his hand. The woman on the right is looking at the camera. There are papers, a folder, and glasses on the table in front of them. The background shows a window with a view of a city.

Personal Protective Equipment

- May Require Masks
- Must Provide PPE If You Require It
- Non-Discriminatory Policy
- Train Workers on Policies

Establish a Protocol for Sick Employees and their Co-workers





What to Consider Before Reopening:
Nuts and Bolts in the New Frontier

What to
consider before
reopening?

Remote Work Policy



What to
consider before
reopening?



- Flexible Scheduling
- Home Office Hardware



The Legal Landscape: New Law

Families First Coronavirus Response Act (FFCRA)

- For employers with fewer than 500 employees, provides up to 12 weeks of public health emergency leave to eligible employees
- Provides up to 80 hours of emergency “paid sick leave”
- Up to 10 weeks of “expanded family and medical leave” at 2/3 pay
- Not in addition to FMLA/OFLA leave
- Very useful FAQ
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>



The Legal Landscape: New Considerations for Existing Laws

- Americans with Disabilities Act (ADA)
- Family Medical Leave (OFLA/FMLA)
- OSHA and Safety Issues
- Workers' Compensation
- Whistleblower Claims
- Limitation of liability laws?

Hypothetical

Joe refuses to report to work because he has asthma and he is concerned he may be at high risk of a severe infection if exposed to COVID-19. He demands to work from home, but his job requires him to handle documents that can only be accessed at work via the employer's computers.



Hypothetical
(cont'd)

First, does the FFCRA apply?
Required documentation?

If FFCRA does not apply, does
FMLA?

If neither applies, or if protected
leave is exhausted, does the ADA
apply?

Thank you!



Laura Salerno Owens
laurasalerno@markowitzherbold.com



Kyle Busse
kylebusse@markowitzherbold.com