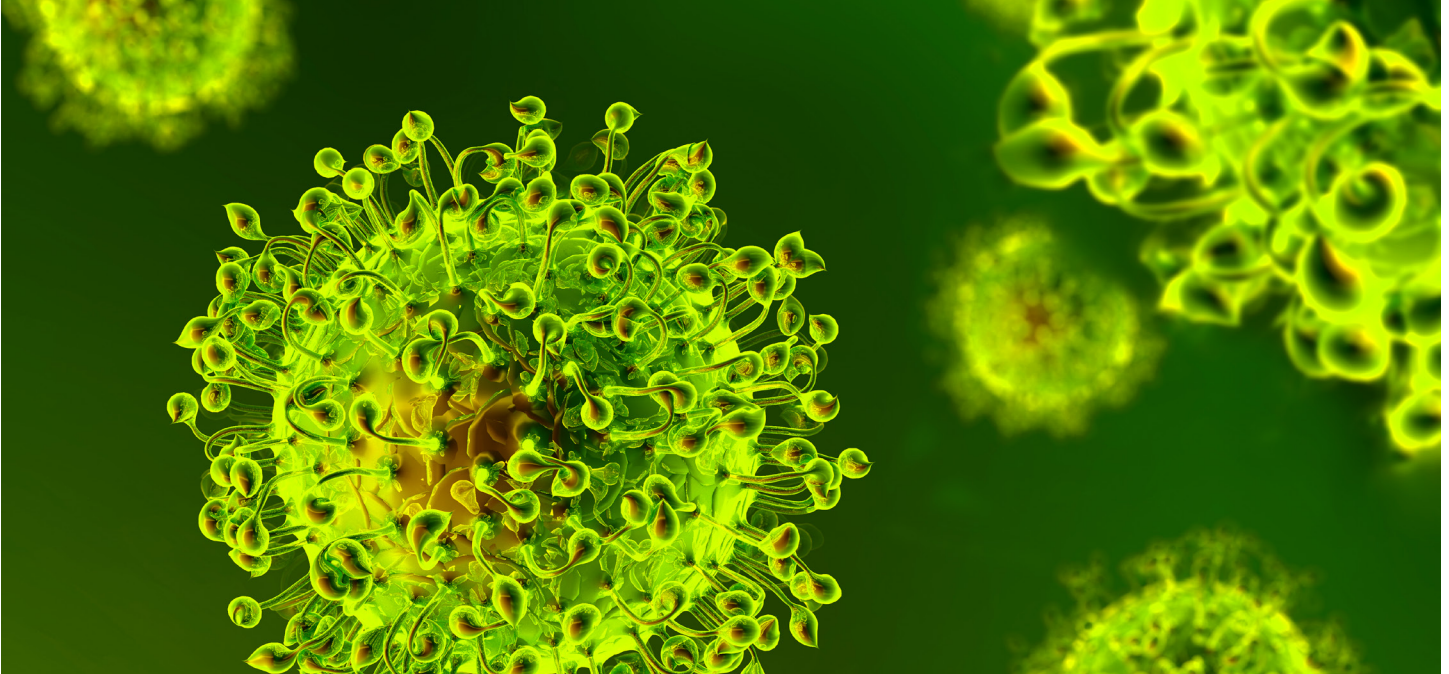




# Real-Time Risk



TIMELY NEWS AND TIPS TO HELP REDUCE RISK

March 2020

## Coronavirus (COVID-19) Update for Oregon Public Employers

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Consultant**

Ever since the Worldwide Influenza Pandemic of 1918, public health officials have been concerned of another pandemic outbreak. An outbreak that would pass readily through the population infecting and possibly killing millions.

Over the past 100 years, much has changed worldwide in terms of public health, sanitary conditions, medicine and communication during times of international health emergencies. In the past two decades we've witnessed SARS (2003-2004), Swine Flu (2009-2010) and Ebola (2014-2016) — which devastated certain regions of the world but did not reach the level of lethality expected due to proper planning, response and communication.

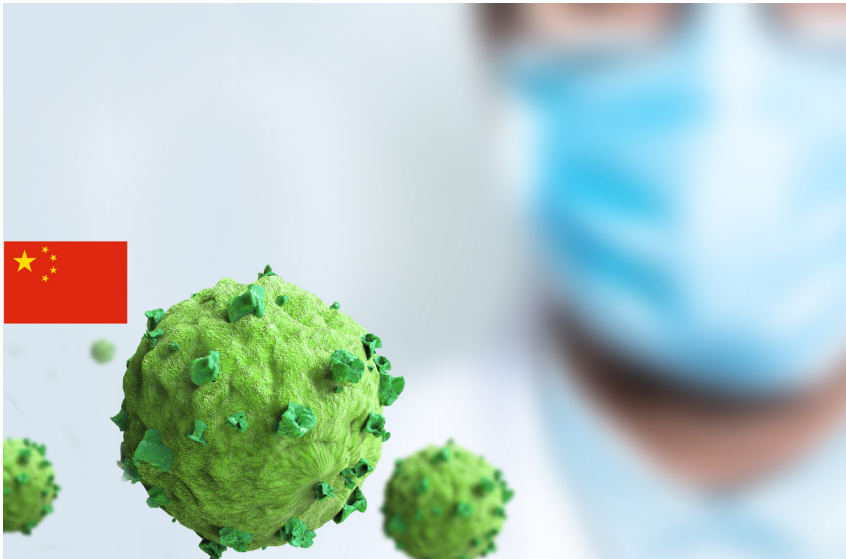
Just as with other world virus and pandemic threats, CIS recommends proper planning and communication with employees. It's also a very good time to review Pandemic and Emergency Response planning that should have taken place during the H1N1 pandemic of 2009-2010.

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The Coronavirus (COVID-19) appears to be another such potential pandemic. Originating in the Hubei Province of China in mid-December 2019, it currently is estimated to have infected more than 90,000 (mostly in China) and resulted in over 3,000 deaths. The World Health Organization (WHO) has labeled COVID-19 as a Public Health Emergency of International Concern and the U.S. Centers for Disease Control (CDC) has stated that they're currently in aggressive containment mode outside of the United States.

As of March 2, 2020, the Oregon Health Authority has identified a third presumptive case of COVID-19 coronavirus in Oregon; this time in Umatilla County. The other two cases are in the Portland Metro area (Washington and Clackamas Counties). There were 86 diagnosed cases of COVID-19 and six deaths in the U.S. (from Washington state). Almost all were people who had recently traveled to/from the Hubei province recently or were close family members to someone who traveled there and became infected.

The jump in confirmed cases late last week is due to three known cases and five waiting for a definitive diagnosis of COVID-19 in Oregon. These numbers are expected to change as this disease process continues developing, however both the CDC and Oregon Health Authority OHA state the chance for infection remains low for Oregon residents. For contrast, the 2019-2020 flu season in the U.S. has already resulted in 250,000 hospitalizations and 14,000 deaths according to the CDC.

The CDC has stated that the risk of contracting COVID-19 is currently dependent upon exposure. Some people, such as health-care professionals dealing directly with COVID-19 patients, and other in close personal contact with COVID-19 patients have an elevated risk. At this time, the CDC suggests that the general public in the U.S. are unlikely to be exposed to this virus and are at low risk for an immediate health

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risk from COVID-19. Still, good personal hygiene, frequent handwashing, cleaning surfaces with disinfectant and covering your mouth when sneezing or coughing are recommended.

## What about public employers?

It's expected that Oregon employers and employees have several valid questions about this virus. Public employers are faced with the delicate balancing act of providing a safe workplace and an individual employee's rights to be free from discrimination. There are many questions the reasonable and prudent employer may have, and some are outlined below and as always, CIS recommends reviewing your CBA's for all represented employees as well.

Oregon public employers also may have some pertinent questions as they balance their obligation to provide a safe and healthy workplace with an employee's right to be free from discrimination.

## What are the most pressing questions?

### 1. Can an employer require employees testing positive for COVID to disclose test results?

Yes, the ADA permits an employer to require that an employee disclose health information in this instance due to the direct threat to health/safety of themselves or others. The employer must be careful, however, to deal specifically with the threat of this virus and no other personal identifying characteristics of the employee that may be a protected class.

### 2. Can an employer require that an employee disclose confidentially if they have been exposed to others testing positive for COVID-19?

Yes, this requirement would fall under the same provision in the ADA regarding a potential direct threat to safety/health of self or others and the direct threat analysis: 1. Duration of the risk, 2. Nature and severity

## Resources

The CDC have an excellent webpage set up to answer questions that may be important to all of our employees and family members such as: Symptoms, Testing, Personal Hygiene, How the COVID-19 virus spreads and other FAQ's. The links are provided:

- <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- <https://www.cdc.gov/coronavirus/2019-ncov/about/share-facts.html>

Oregon Health Authority (OHA) also have a very good website for FAQ's, tracking state approaches and Best Practices, [https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/DISEASESAZ/Pages/emerging-respiratory-infections.aspx?fbclid=IwAR1cs8zmGZWCvnLC2xpO-gHD0CbHrvFooJ\\_9aHAEIWW5-ie4e2Jagl](https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/DISEASESAZ/Pages/emerging-respiratory-infections.aspx?fbclid=IwAR1cs8zmGZWCvnLC2xpO-gHD0CbHrvFooJ_9aHAEIWW5-ie4e2Jagl)

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of the risk, 3. Likelihood of potential risk, and 4. The imminence of the potential harm to self or others.

### **3. Can an employer require employees with symptoms of COVID-19 be tested?**

Yes, again under the ADA direct threat analysis. However, employers may have to notify CBA covered employees of intent and meet, confer and potentially negotiate before moving forward with mandatory testing. Consult your Labor Attorney before proceeding.

### **4. May an employer direct an employee to leave or stay away from work if there is a reasonable belief that the employee has recently returned from China and/or been exposed or contracted COVID-19?**

Yes, if the employer has a truly reasonable belief that an employee has been exposed or contracted COVID-19; and they should contact their County Public Health. However, the potential for a discrimination claim exists if the employee believes that they have been singled out for any protected status, activity or characteristic. Before proceeding, call CIS Pre-Loss.

### **5. Is an employee with COVID-19 eligible for OFLA/FMLA Leave?**

Yes, they would also be eligible under Oregon Sick Leave Law if they had not already expended those hours. This protected leave status would also extend to an employee required to provide care to an eligible family member with COVID-19. Again, if in doubt, contact CIS Pre-Loss.

### **6. Must the employer pay an employee who refuses to come to work out of fear of COVID-19?**

No, an otherwise symptom and diagnosis free employee would be expected to be at work for their regularly scheduled shift. Should they decide to not come to work, pay may be dependent on the employer's current policies and procedures for vacation, comp time or personal day pay.

So far, Oregon and the U.S. have not experienced significant issues from COVID-19. That does not mean that a potential issue does not exist.

If you need assistance in this matter please contact your Risk Management Consultant or Kurt Chapman, [kchapman@cisoregon.org](mailto:kchapman@cisoregon.org).

