

Let the equity map help guide decisions for future planning of Bend transportation

Where is the best place to spend transportation dollars in Bend?

You could pick based on safety, congestion, supporting more alternative transportation, such as biking, walking and transit or some mix of all of them.

Or what about based on equity? Equity has many meanings and levels. But the city of Bend has an equity mapping tool that overlays census data. There are tabs for looking at residents with disabilities, minority residents, limited English proficiency, residents living below the poverty line and seniors.

It's much easier if you look at the maps of the city yourself. They are available here: tinyurl.com/Bend-equitymap. You can click on the tabs and it will color in the maps.

The results aren't too much of a surprise. Awbrey Butte doesn't light up no matter what category you look at. Most of the concentrations are on Bend's east side, particularly centered near Third Street. The area along SE 15th Street also shows up, depending

on the category.

This mapping data is based on census data. It's limited by how good that data is. And it changes as people move in and out. But it's one of the best tools we have of suggesting where people live that may be struggling more than in other areas.

How do we use this data? The city, which has the link we mentioned earlier, set it up so you can click on projects from the GO transportation bond and see how they fall in the highlighted areas. The Bend Park & Recreation District has talked about using the equity tool.

This week, the Bend Metropolitan Planning Organization, a regional group that makes decisions about transportation, will be looking at it. When federal money is involved there must be a commitment to nondiscrimination.

The city's equity mapping data should act as a moral beacon. Without it, the light is off.

What the settlements mean for Deschutes County Sheriff's Office

A jury in federal court found a few weeks ago in favor of former Deschutes County Sheriff's Office deputy Eric Kozowski. He was awarded \$1 million. Sheriff Shane Nelson was also ordered to personally pay Kozowski \$10,000.

Then more recently the sheriff's office and the county announced a settlement with former deputy Crystal Jansen. She would resign and drop her claim in federal court. In return, she would be awarded \$527,000.

When you read those recent stories, it makes you wonder. Is there a problem at the sheriff's office?

Kozowski's case seems clearer.

There was a verdict in a trial. The county — or rather the county's insurer and risk management fund — and the sheriff have to pay up. The sheriff's office, at least from the trial transcript, seems to have bungled how it handled personnel and campaign issues with Kozowski.

But even that gets complicated.

What if you have a possible personnel issue with somebody in your department and you are an elected official and he or she is running against you? Do you think that is going to end well?

Jansen's settlement is somewhat less clear — only because there was never a court decision and the parties agreed in the settlement not to comment further.

Her complaints of gender discrimination are public record. She said she was singled out for unequal treatment as the only female deputy supervisor. She also said she did not like the way Sheriff Nelson touched her.

Kozowski and Jansen are presumably the winners. But what about the residents of Deschutes County? We see this only from the outside. We don't see the day-to-day work inside the sheriff's office. We see big price tags on settlements on personnel matters. Those cases are resolved. What's not resolved is what it means.

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Mandates are causing uncertainty for businesses

BY EUGENE SCALIA

Special to The Washington Post

The vaccine mandates President Joe Biden announced recently are causing uncertainty for workers and employers — and that's likely to persist as legal challenges are filed that could result in the mandates being set aside.

For private-sector companies, the president announced two principal actions: First, an emergency temporary standard (ETS) from the Labor Department's Occupational Safety and Health Administration (OSHA), which reportedly will require employers with 100 employees or more to mandate vaccines for workers, or require them to present a negative coronavirus test weekly. Employers will have to provide paid time off for employees to get vaccinated and to recuperate from the vaccination, if needed.

Still unclear: What documentation of vaccination and testing will OSHA require? Will it order employers to pay for coronavirus tests for workers who choose that route? Will those working from home, or those with "natural" immunity, have to be vaccinated? Will vaccinated workplaces be exempted from mask mandates? And what role will unions play in negotiating implementation? OSHA's rule is expected within weeks. A swift judicial stay of the rule is possible, followed by months — at least — of litigation.

Second, the president directed a White House task force to develop, by Sept. 24, COVID-19 requirements for employers that contract or subcontract with the federal government. What the task force will order is even less clear, though one would expect its requirements to be harmonized with OSHA's.

Unlike some presidential directives, the forthcoming OSHA rule has a legal toehold: Emergency temporary standards are statutorily authorized when "necessary" to address "grave danger" in the workplace. (The rule may be in place for six months, during

which time OSHA must develop and issue a "permanent" rule.) OSHA already issued a COVID-related emergency temporary standard in June, imposing special protocols on the health-care sector. I decided against a COVID-19 ETS when I was labor secretary, not because I concluded there was no legal authority but because I thought there were superior ways to address the pandemic in the workplace. Biden retained that approach, except for the health-care sector, until the Pfizer-BioNTech vaccine received full FDA approval.

Of course, having a legal toehold doesn't mean a rule will survive in court. OSHA historically has a poor record of defending emergency temporary standards.

That's partly due to procedural concerns. Unlike most rules by government agencies, an ETS is issued without prior public review and comment. A public comment period confers more democratic legitimacy on administrative rules. It also improves the rules substantively. Courts appropriately review purportedly "emergency" rules more skeptically.

So, in the case of the vaccine ETS, courts will ask why it was "necessary" to preclude public comment, and in one obvious practical sense, it's not: To help shield its rule from legal challenge, OSHA can release a proposed rule and let the public comment, even if it doesn't conduct full-blown notice-and-comment rulemaking. Doing so may not satisfy courts' procedural concerns but would produce a substantively better and more defensible rule, informed by the insights of those who must live under it.

Expect procedural objections to the OSHA rule to be accompanied by substantive challenges. No one can assess all of a rule's legal vulnerabilities before release; we have to see what OSHA requires and the evidence it offers in support. OSHA must demonstrate "grave danger" that can be addressed only by an immedi-

ate vaccination mandate. And it must explain why this grave danger doesn't require the same response for workplaces with 99 workers or, if costs are the reason, why those costs are tolerable for companies with 200 workers.

Other potential vulnerabilities abound, including how the president rolled out the rule: He presented it as a nationwide public health initiative in which employers, in effect, would be dragged via OSHA as a means of boosting overall vaccination rates. OSHA's authority is for grave workplace dangers, not nationwide public health campaigns. In litigation, OSHA will find itself walking back the president's explanation.

Meanwhile, the mandate for government contractors faces potentially higher hurdles. The president is using his authority under the Procurement Act to promulgate COVID-19 requirements for employers doing business with the government. And it won't even be the president who sets the requirements but a White House task force. This simply is not how law is made in this country; this particular overreach could bring an overdue judicial rebuke to Republican and Democratic presidents' use of the procurement power to set employment policy.

I join Biden in urging Americans to protect themselves and others through a vaccination program that is one of President Donald Trump's most important achievements. OSHA has a valuable role in preventing COVID-19 transmission at work, and many employers have reasonably decided to require that their employees be vaccinated. But in upbraiding unvaccinated Americans, and telling them that he will put their employer and OSHA on their back if they don't get in line, the president gave a shaky launch to an initiative that was already bound for litigation headwinds.

■ Eugene Scalia, a Washington lawyer, served as labor secretary under President Donald Trump and as Labor Department general counsel under President George W. Bush.

Private companies should hurry up and require coronavirus vaccines

BY TIMOTHY L. O'BRIEN

Bloomberg

It's been less than two weeks since President Joe Biden said the federal government would throw its weight behind new COVID-19 vaccine and testing mandates for corporate America. And there are already signs of progress.

Last week, Biden hosted some of the country's top business leaders at the White House to discuss the push. Afterward, Walgreens Boots Alliance and Raytheon Technologies said all their employees in the U.S. — about 250,000 and 130,000 workers, respectively — would have to get vaccinated. (Walgreens, like some of its corporate counterparts, is allowing workers to enroll in a testing program if they choose not to get a jab.)

Other companies instituted stricter vaccine guidelines even before Biden said the Labor Department's Occupational Safety and Health Administration would craft the new workplace safety rules, which will require vaccinations or weekly testing for companies with 100 or more employees. Delta Air Lines imposed a \$200

monthly health-plan surcharge for its unvaccinated employees, prompting about a fifth of them to get a shot. The move led few Delta workers to quit, a rebuke to naysayers who have said tougher corporate vaccine requirements would spark worker revolts. United Airlines, the first airline company to mandate vaccinations, gave its 67,000 employees until Sept. 27 to get shots, after which they'll be fired. The airline said employees granted religious exemptions and the like will be placed on unpaid, temporary leave on Oct. 2. Southwest Airlines, which doesn't have a mandate, is offering 16 hours of extra pay to workers who get vaccinated. Vanguard Group and Whirlpool, also mandate-less, give their employees \$1,000 to get jabbed.

The stakes in this battle are obvious. The U.S. has been in a footrace against COVID-19, which has taken advantage of unvaccinated Americans to become a persistent danger. If private employers mandate vaccines, that might help shift the national response into overdrive and let us catch up. Yet the hodgepodge of corporate

approaches, and some of the bureaucratic and logistical challenges accompanying Biden's push, make it difficult to move quickly. Perhaps that won't be a problem — if delta subsides and isn't replaced by an equally infectious variant. But only 54.5% of the U.S. population is fully vaccinated, and moving too slowly raises the risk of a brutal fall and winter.

Raytheon should be lauded for embracing mandates. But the company is giving its employees until Jan. 1 to get vaccinated. That's almost four months from now — ages in coronavirus time. Some in the business community say they're waiting for OSHA to promulgate Biden's new rules before they roll out vaccination and testing regimes. Separate guidelines from the government for federal contractors are expected to land by Sept. 24.

No matter how quickly OSHA releases its rules, a large universe of companies and workers won't be subject to them. There are 170,400 businesses or so that employ 100 or more workers, accounting for about 65% of the U.S. workforce — approximately 80 million people. The remaining 44

million U.S. workers are employed by 17.5 million or so smaller businesses that won't have to follow OSHA's new rules.

What's more, the rules will be enforceable only in 29 states where OSHA has jurisdiction. Other states with their own federally approved safety agencies will have up to 30 days after OSHA's guidelines arrive to adopt similar measures of their own. And even where OSHA's emergency rules apply, they will last only six months. After that, permanent workplace guidelines will be needed. Some companies and states are expected to wage legal battles against OSHA. All of this may make the pace of corporate mandates more glacial than it should be.

Of course, companies can go ahead and mandate vaccines without OSHA, as others have done. But some face resistant workforces. Others worry that valued employees might head for the exits. Even though Biden's push has given companies added cover to impose mandates, it's still not clear how many will do so. While the Business Roundtable, a

group representing chief executives, signaled its support for Biden, two other trade groups, the U.S. Chamber of Commerce and the National Association of Manufacturers, were lukewarm.

Consider how the Consumer Brands Association, a trade group representing heavy hitters in the packaged-goods industry, responded to Biden's announcement about the OSHA rules: with a detailed letter asking for specifics about how the plan would be implemented and demanding answers "immediately — not in the weeks federal agencies have signaled it may take or in the months industry has experienced throughout the pandemic."

There's no question OSHA should act as fast as possible and give companies the clarity they seek. But companies don't need the government's blessing to mandate vaccinations and tests right away. Maybe complaining about how slowly government moves actually means you don't want to move too quickly yourself.

■ Timothy L. O'Brien is a senior columnist for Bloomberg Opinion.