



# Oregon

Kate Brown, Governor

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## Oregon OSHA

### OSHSPA State Plan Report September 2021

Michael Wood, Administrator

#### Virtual OSHSPA members meeting 9/28/2021

#### I. Significant Legislative/Programmatic Changes

**Legislatively Mandated Rulemaking:** Nothing to report.

**Legislative Activity:** Nothing to report.

#### **Other Rulemaking Activity:**

##### **[COVID-19 Workplace Requirements for Employer-Provided Labor Housing](#)**

This rule protects vulnerable workers in employer-provided labor housing from the health risks created by the current COVID-19 public health emergency, especially those who spend both their working and their off-work hours at the employer's location. Oregon OSHA's temporary rule: COVID-19 Public Health Emergency in Labor Housing and Agricultural Employment (OAR 437-001-0749) expired on October 24, 2020. On October 23, 2020, Governor Brown issued an Executive Order 20-58 extending employer-provided housing requirements (Section 2) of OAR 437-001-0749. Given the public health emergency remained a substantial concern in Oregon, it was necessary for Oregon OSHA to extend the provisions from the Executive Order with a permanent rule – adopted and effective April 30, 2021.

- On June 30, 2021, Oregon OSHA made [temporary amendments](#) (AO 4-2021) to remove masking requirements, and remove requirements around physical distancing monitors and physical distancing in dining areas or at mealtimes. The rule retains sleeping density parameters.
- Oregon OSHA is considering what appropriate next steps to take for permanent amendment of the rule to be proposed October 2021.

##### **[COVID-19 Public Health Emergency in All Oregon Workplaces](#)**

This rule protects workers throughout the state from COVID-19 in the context of the current public health emergency, which has persisted into 2021. Oregon OSHA adopted a temporary rule on November 6, 2020 that expired on May 4, 2021. The temporary rule included significant public discussion that was used to refine the rule through multiple drafts. In addition, two Rulemaking Advisory Committees, one for the general workplace and one for exceptional risk

workplaces, including healthcare, engaged in the rule development. The public health emergency remains a significant concern in Oregon and it was necessary for Oregon OSHA to extend many of the provisions from the temporary rule to protect against illness and prevent the spread of COVID-19. In replacing the temporary rule with a permanent rule, some provisions were changed as more information became available about the transmission of the virus.

- On June 30, 2021, Oregon OSHA made [temporary amendments](#) (AO 5-2021) to remove physical distancing (section (3)(a)) and mask, face covering, or face shield (section (3)(b)) requirements for most employers. Appendix A (Mandatory Workplace Guidance for Industry-Specific and Activity-Specific Situations) was heavily revised accordingly, notable exceptions to these changes being healthcare as well as transit.
- On August 13, 2021 Oregon OSHA made [temporary amendments](#) (AO 10-2021) so that employers with employees who are exposed to other individuals in indoor workplaces must implement the requirements of Oregon Health Authority's OAR 333-019-1025: Masking Requirements for Indoor Spaces and OHA's OAR 333-019-1015: Masking Requirements in Schools.
- On September 14, 2021, Oregon OSHA adopted another [temporary amendment](#) (AO 12-2021) to this rule regarding medical relief benefits for workers in healthcare settings, and added masking provisions for outdoor spaces.
- Oregon OSHA is considering what appropriate next steps to take for permanent amendment of the rule to be proposed October 2021.

### [Cranes and Derricks in Construction: Railroad Roadway Work](#)

On June 2, 2021, Oregon OSHA adopted this permanent rule in response to a federal OSHA rule adoption on September 15, 2020. That rule revised the standard for cranes and derricks in construction to provide specific exemptions and clarifications for cranes and derricks used in railway roadway work.

**Excessive Heat and Outdoor Smoke Permanent Rulemaking.** On March 10, 2020, Governor Brown issued [Executive Order 20-04 \(EO 20-04\)](#) that provides directives to certain state agencies in an effort to reduce greenhouse gas emissions (GHGs) and mitigate the impacts of climate change. EO 20-04 includes a directive to the Oregon Health Authority (OHA) and Oregon OSHA to jointly develop a proposal for standards to protect employees from workplace exposures to excessive heat and wildfire smoke. In response to EO 20-04, Oregon OSHA, in collaboration with the OHA, advisory committees, and stakeholders, is working towards developing two separate proposed standards: Preventing Outdoor Heat-related Illness and Protection from Unhealthy Levels of Wildfire Smoke. Three temporary rules were adopted in July and August 2021 to provide immediate employee protections against heat and smoke; the permanent rulemaking process continues.

### [Temporary Rules to Address Employee Exposure to High Ambient Temperatures](#)

On July 8, 2021 Oregon OSHA adopted a temporary rule to enact protections to ensure the health and safety of workers in the face extreme heat. The rule requires that when the heat index temperature in the work area equals or exceeds 80 °F, employers must provide access to shade and drinking water for workers. In addition, by August 1, 2021, the rule called for employers to ensure that employees exposed to such conditions have training on heat-related illness and how to prevent it. The rule specifies additional high-heat practices that employers must follow once the ambient heat index exceeds 90 °F. They must also have an emergency

medical plan in place describing procedures to be followed if a heat illness happens. Lastly, employers must develop and implement effective acclimatization practices.

### **[Temporary Amendment OAR 437-004-1120 to Address High Ambient Temperatures in Labor Housing](#)**

Extreme hot weather in Oregon made it necessary to enact protections for occupants of employer-provided labor housing. The current labor housing rules do not have provisions for occupants to escape and recover from high ambient temperatures. The new provisions took effect August 9, 2021. They require that when the heat index is at or above 80 degrees Fahrenheit, housing without suitable temperature control (able to keep indoor temperatures under 78 degrees Fahrenheit) must include common areas to provide some relief from the heat. Employers can provide indoor cooling rooms (using air conditioners, evaporative coolers, air purifiers with coolers, or other reliable means) or shaded outdoor rest areas open to the breeze. They also need to equip outdoor rest areas with misters or provide individual cooling measures that won't be shared without washing. Thermometers are now required in all housing units, and humidity gauges are encouraged. Employers must also ensure windows can be shaded or protected from radiant heat and fans are available for occupant use. Lastly, the new provisions call for employers to ensure that labor housing occupants have information about heat illness, how to avoid it, and how to contact emergency medical care in the event of serious illness.

### **[Temporary Rules to Address Employee Exposure to Wildfire Smoke](#)**

On August 3, 2021, Oregon OSHA adopted temporary rules that apply to public and private employers whose employees will be exposed to wildfire smoke when the Air Quality Index (AQI) is at or above 101. The rules do not apply to intermittent exposure of less than 15 minutes in an hour or short-duration exposure of less than two hours in a single 24 hour period. The rules also do not apply to buildings or enclosed vehicles with a mechanical ventilation system. The temporary rules are in Division 2 - General Occupational Safety and Health and Division 4 - Agriculture. The rule requires specific employee protections when the AQI equals or exceeds certain thresholds of 101, 201 and 501. With the exception of the training component, the rules became effective August 9, 2021.

**Permissible Exposure Limits (PELs).** In March 2017, Oregon OSHA selected lead and manganese from the PEL advisory group's list of suggested candidates as the first two of approximately four to six candidates to undergo a PEL reduction through the rulemaking process. These substances were selected because of their broad exposure to workers in Oregon across a wide range of industries. Both lead and manganese rulemakings have formed separate advisory committees who are meeting and beginning the rulemaking process.

**Manganese-** Oregon OSHA adopted new manganese rules on September 1, 2021 with a delayed effective date of September 1, 2022. The rulemaking [reduces manganese permissible exposure limit; clarifies, cross-references welding rules with other standards including confined spaces.](#)

**Lead-** While delayed by the COVID-19 pandemic response, Oregon OSHA's lead rulemaking stakeholder meetings will continue sometime in the future. Oregon OSHA is working with WA-DOSH in this rulemaking as they are addressing the same issue at the same time. The rules may be different, but stakeholders and technical specialists involved are going to both Oregon and Washington rulemakings. It is expected that meetings may resume in 2022.

**Penalties.** Oregon OSHA reviews its penalty rules yearly to determine compliance with federal penalties and determine if Oregon OSHA's penalties are as effective or more effective than the federal penalty amounts. In 2020, Oregon OSHA proposed new rules to increase penalty amounts to better align the agency with federal OSHA. The public hearings were postponed due to COVID-19. Virtual hearings took place in September and October 2020. Final filing will likely occur in 2021.

**Employer Responsibilities.** Oregon OSHA proposed language in February 2020 to address the issue of employer knowledge and the role of reasonable diligence in determining whether an employer has "constructive knowledge" of a violation in the worksite. The public hearings were postponed due to COVID-19. Virtual hearings took place in September and October 2020. Final filing will likely occur in 2021.

**Agricultural Labor Housing.** Oregon OSHA has begun the process of consulting stakeholders regarding updating and improving rules around agricultural labor housing (ALH). Oregon OSHA has put together a stakeholder group consisting of the small agricultural employer advisory committee, as well as members of other interested parties, including worker advocates. The ALH advisory committee had their first meeting in November 2018, and met again in May and August 2021. The group will continue to meet in 2021 and 2022 to discuss the rule revision.

**Non-Structural, Non-Wildland Firefighting.** During the 2019 legislative session, state legislators began discussions with Oregon OSHA regarding rules for employers who have limited resources and may not have the level of equipment available as traditional firefighters because of the rural communities that they serve. The agency and stakeholders are looking to balance protections for these workers with the reality that these workers are often in rural areas, and work with fire suppression equipment that is donated and older than equipment contained in urban fire departments. Oregon OSHA began the rulemaking process by consulting a small stakeholder task force group in early 2019, and now the agency is consulting with stakeholders within the Fire Service Advisory Committee as well. A draft rule is under development. The non-entry firefighting stakeholders have met multiple times in 2019, and continue to bring draft language and suggestions to the fire services advisory committee. These groups will begin to meet again in 2022 before proposing potential rule changes.

*Adopted and proposed rules are available at our [Rules webpage](#).*

## **II. New Developments/Activities/Notable Cases Activities:**

### **Oregon OSHA News Releases:**

During federal fiscal year 2021, Oregon OSHA issued 50 press releases to help publicly communicate its activities across a variety of topics.

The press releases highlighted everything from enforcement actions to rulemaking efforts to educational and training resources. To expand the reach of certain targeted releases, the division translated seven of the 50 press releases for Spanish-speaking audiences.

Given Oregon OSHA's involvement in several high-profile issues in the state, it was important for the division to publicly communicate key decisions.

Examples included press releases about the proposal and adoption of temporary and permanent requirements for COVID-19 in all workplaces; a temporary rule concerning prevention of heat illness, including temperature thresholds and specific steps; and a temporary rule encompassing protective measures against wildfire smoke.

Meanwhile, Oregon OSHA continued to carry out its press release enforcement policy, which is intended to highlight certain cases with an eye toward magnifying the deterrent effect of the division's enforcement actions.

With respect to violations of COVID-19 requirements, Oregon OSHA issued press releases focusing on cases in which employers committed willful violations. The division issued 12 such releases during FFY 2021.

Oregon OSHA also issued four enforcement releases involving construction contractors who committed serious violations of fall protection standards. Plus, the division issued a press release calling attention to a winery's serious violations of confined space rules. That case involved the death of a worker.

### **Notable Case:**

#### ***Corus Estates and Vineyards***

- Business: Winery
- When did it happen? Feb. 1, 2021, at 10:30 a.m.
- Where did it happen? Dundee
- What happened? A worker was asphyxiated after he entered a 30,000-gallon wine tank.

#### ***How it happened***

The day before the incident, winery employees had pumped wine from a primary 30,000-gallon wine tank (28 feet high and 13 feet in diameter) into another tank, leaving 500 gallons of wine and residual dead yeast, grape skins, seeds, and stems – called “lees” – in the primary tank. To prevent the remaining wine in the primary tank from oxidizing, they pumped low-pressure nitrogen gas into the tank from its top.

After determining the production schedule at 8 a.m. on the day of the incident, supervisor and cellar master Pedro Moreno asked cellar worker Armando Yanez to pump the remaining lees out of the primary tank because a customer had requested a secondary filtration of the lees to recover the remaining wine.

Yanez usually worked in the winery's barreled wine area and had not done that job before, but he set up equipment to filter and pump the lees out of the 30,000-gallon tank. He also needed to enter the tank so that he could push any remaining lees closer to the pump with a squeegee. But he did not realize that nitrogen gas was still being pumped into the tank from the top.

At 10:30 a.m., Moreno heard an unusual noise coming from the pump inside the tank. When he looked through the opening at the bottom of the tank, he saw Yanez lying down and not moving.

Moreno radioed for help and used a pike pole to pull Yanez closer to the opening. Other winery employees helped Moreno pull Yanez out of the tank and began resuscitation until emergency responders arrived 10 minutes later. The nitrogen in the tank had displaced the oxygen and Yanez had died from asphyxiation.

## ***Key findings***

- The winery had a written permit-space program that identified the wine tanks, the wastewater pit, the transfer line vault, and the inground auger pit and wine presses as permit spaces; however, the winery did not ensure that employees were following the alternate entry procedures described in the program.
- Armando Yanez entered the 30,000-gallon tank without testing it for an atmospheric hazard. Because there was no testing for an atmospheric hazard, an entry supervisor and entry attendant were not present during permit-entry conditions.
- Entry permits were not reviewed annually to ensure that the procedures for issuing them were still effective.
- Entry documentation did not identify rescue service providers or how to contact them.
- The winery discussed entry-rescue with employees but did not require practice entry-rescue training for its permit spaces within the last 12 months.
- Armando Yanez's primary language was Spanish; however, training was not offered or provided in his primary language, standard operating procedures were not written in his primary language, and confirmation of his competency was not conducted in Spanish.

## ***What the winery did to ensure that similar incidents would not happen***

- The winery completed an initial investigation within 24 hours of the incident.
- The winery reassessed its procedure for removing lees from wine tanks to strengthen the importance of entry procedures and to make them safer.
- The winery provided staff with additional permit-space safety and entry-procedures training.

## ***Violations***

The winery was cited with nine alleged violations because of the incident; penalties totaled \$11,100. Violations were grouped as follows:

Three violations (penalty: \$7,500):

- Permit-space entry and permits – 437-002-0146(6)(c): Initial testing for atmospheric hazards was not performed when necessary before entry.
- Personnel – 437-002-0146(8)(a): The winery did not ensure that an attendant and entry supervisor were present during permit-space entry.
- Alternate entry – 437-002-0146(10)(d)(l): The winery did not ensure that employees followed alternate-entry procedures when they entered permit spaces under alternate-entry conditions.

Two violations (penalty: \$1,200):

- Permit space entry and permits – 437-002-0146(5)(g)(A): Permits were not reviewed within one year after they were cancelled.
- Permit entry – 437-002-0146(6)(b)(M): Entry permits did not include information about available rescue services and how to contact rescue service providers.

Two violations (penalty: \$1,200):

- Rescue – 437-002-0146(9)(a)(A): The winery did not have permit-entry rescue procedures that included a procedure for summoning rescue services.



- Rescue – 437-002-0146(9)(d): The winery did not conduct practice entry rescues for presses, tanks and underground permit spaces.

Two violations (penalty: \$1,200):

- Training – 437-002-0146(11)(a)(A)(iii): The winery did not provide training after the employee’s assigned duties changed.
- Training – 437-002-0146(11)(b): The winery did not ensure the employee was proficient in his assigned duties; the winery’s permit space program, operating procedures and proficiency quizzes were not provided to the employee in his primary language.

### **Oregon OSHA – Consultation Services**

During federal fiscal year 2021, [Oregon OSHA’s Consultation Services](#) deployed numerous measures to help employers navigate the health and safety challenges of COVID-19, including re-opening operations as the pandemic – and regulations addressing it – changed over time.

Although it was launched well before FFY 2021, a team of state agencies – of which the division’s consultation services played a critical part – focused on rapidly responding to COVID-19 outbreaks in food processing facilities to protect and preserve the food supply in Oregon.

[This intervention program – known as Interagency Facility Support Teams \(IFST\)](#) – conducted work through the end of 2020. By that time, the team’s consultations with employers in the food processing industry totaled 146. These employers included grocery stores, farms, processors, warehouses and distributors, and retailers. Oregon OSHA consultants helped them address sanitation, physical distancing, personal protective equipment, facial coverings, ventilation, and training and supervision.

Of the employers who requested IFST visits, none were cited by regulatory agencies for alleged violations of Oregon’s COVID-19 requirements.

Employers in the food processing industry were not the only beneficiaries of the division’s free and confidential help with health and safety programs. From October 2020 through August 2021, for example, Oregon OSHA conducted 787 consultations (494 in safety; 289 in health) addressing on-the-job concerns about the coronavirus.

Consultants were available, too, for employers who did not necessarily want a full consultation. For example, from March 2020 to the beginning of 2021, division consultants fielded 2,416 calls from Oregon businesses, lasting anywhere from a few minutes to an hour.

And showing its nimbleness in providing services during the pandemic, the division’s consultation program introduced [virtual consultations](#) to help employers build up their defenses against COVID-19 hazards.

**Newsletters:** Oregon OSHA publishes two newsletters: The “Resource” (a general interest publication which includes construction) is published every two months, and the “Forest Activities News” (for the logging and forest industry) is an occasional newsletter from Oregon OSHA covering topics of interest to the logging and forest activities employers. These are available at <http://www.osha.oregon.gov>.

**Conference dates and locations can be found at:**

<http://osha.oregon.gov/conferences/Pages/index.aspx>

**Questions?** Contact the Conference Section at (503) 378-3272 *or* toll-free in Oregon at (888) 292-5247, option 1. *or* send email to: [oregon.conferences@state.or.us](mailto:oregon.conferences@state.or.us)

**III. Areas of Concern:** Nothing new to report.

**IV. Information Sought from Other State Programs:** Nothing new to report.

**V. Administrative Changes:** Penny Wolf-McCormick was selected as the new Oregon OSHA Statewide Health Enforcement Manager, replacing Chris Ottoson, who retired in early 2021. She has been with the Oregon OSHA health enforcement program for 34 years as a field manager of the Portland office and as a Senior Industrial Hygienist.

It is with great sadness that we also announce the passing of a dear colleague, Roy Kroker, our Statewide Consultation and Public Education and Outreach Manager. Roy served with Oregon OSHA for over 21 years and will be deeply missed by all of us and the workers and employers his work touched.

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