



Oregon

Tina Kotek, Governor



Department of Consumer
and Business Services

OSHSPA State Plan Report Renée Stapleton, Administrator

OSHSPA members meeting 2/6/2024

I. Significant Legislative/Programmatic Changes

Legislatively Mandated Rulemaking:

On November 22, 2023, Oregon OSHA amended 15 rules and adopted two new rules in Division 1 (AO 3-2023) to align with the changes made to Oregon Safe Employment Act by Senate Bill 592 and changes to ORS 654.062 by Senate Bill 907 in the 2023 Oregon legislative session. The rule changes are effective January 1, 2024. SB 592 created a new type of inspection, “Programmed Inspection for Cause.” It also required that Oregon OSHA increase its penalty amounts with annual updates, alter its penalty structure, and create a new violation type: “Caused or Contributed to a Work-related Fatality.” SB 907 required that Oregon OSHA update its Discrimination Complaint rule to align with federal OSHA.

As required by Senate Bill 592 and in line with the newly adopted OAR 437-001-0142 Annual Adjustment of Civil Penalties, Oregon OSHA published the first-ever Annual Adjustments to Penalties Bulletin (1-2024) to account for the percentage change in the Consumer Price Index for All Urban Consumers, West Region (West Region CPI-U), from October to October of each year as published by the Bureau of Labor Statistics of the United States Department of Labor; the percentage increase as of November 14, 2023 is 3.281%. The revised civil penalty amounts in the bulletin reflecting this increase are effective January 1, 2024.

Legislative Activity:

The Oregon Legislative Assembly will convene for its short session February 5 - March 10, 2024.

Other Rulemaking Activity:

Oregon OSHA adopted federal OSHA amendments to improve tracking of workplace injuries and illnesses (AO 4-2023) to keep Oregon OSHA in harmony with federal OSHA changes published in the July 21, 2023 Federal Register. The rulemaking was filed December 21, 2023, and effective January 1, 2024.

II. New Developments/Activities/Notable Cases Activities:

Oregon OSHA News Releases:

- [Workers’ Memorial Scholarship awards are open for applications; submissions to higher education office due April 1, 2024](#)
- [Central Oregon event puts spotlight on worker safety and health in construction industry, offering training opportunities in January 2024](#)

- [Contest promoting young worker safety in Oregon is open to high school students; submissions due Feb. 16, 2024](#)
- [Pulp, paper, and forest products industry safety and health conference coming to Portland with many learning opportunities](#)
- [Oregon OSHA cites Forest Grove contractor for repeatedly violating requirement to protect workers from fall hazards](#)

Newsletters:

Oregon OSHA published the [October issue of its Health and Safety Resource newsletter](#)

- Sign up for virtual workshops and mark your calendar for upcoming safety conferences.
- Oregon OSHA offers an online course on “Everyday Ergonomics.”
- Oregon OSHA’s top 10 workplace safety and health rule violations.
- Overdoses, opioids, and fentanyl – emerging issues in the workplace
- How do I make sure my employees are wearing the right protective footwear for the job?
- Oregon Farm Bureau Health and Safety Committee, Oregon OSHA to provide in-person pesticide training Dec. 5.
- Oregon OSHA proposes new rules affecting penalties, discrimination protection.
- Incident Alert! Working alone without emergency communication.

Oregon OSHA Conferences Update:

- Safety, Health, and Your Rights at Work Spanish-language Conference, October 16, 2023, Ashland, OR
- Southern Oregon Occupational Safety & Health Conference partnered with American Society of Safety Professionals (ASSP) – Southern Oregon Chapter, October 17-19, 2023, Ashland, OR
- Western Pulp, Paper, & Forest Products Safety & Health Conference partnered with Association of Western Pulp & Paper Workers (AWPPW) – Oregon Safety Council, November 28-December 1, 2023, in Portland, OR.

Notable Case:

On May 15, 2023, at 1:00 p.m., Portland Fire & Rescue notified Oregon OSHA that a 62-year-old equipment operator and supervisor had fallen more than 30 feet to the bottom of a narrow excavation and suffered multiple injuries as he was disconnecting a lifting device from a front-end loader.

The equipment operator was employed by Interlaken Inc., an excavation company that had a contract with the City of Portland to install 25 precast “leaching chambers” – underground structures that collect and filter pollutants from stormwater – for the city’s storm water management system. Each chamber was to be lowered into an excavation about 9 feet in diameter and 31 feet deep. Interlaken Inc. had taken some steps to protect its employees from falling into the excavation at the site, but did not use guardrail systems, fences, barricades, or covers to protect them. Oregon OSHA fined the company \$2,250 for violating its fall protection requirements under OAR [437-003-1501\(5\)\(b\)](#). At issue was the company’s failure to properly protect its employees *and* whether the excavation was a “well, pit, shaft, or other similar excavation.”

These underground structures are now frequently used throughout Oregon to filter and protect groundwater from pollutants. But contractors who install them may not be familiar with the specific requirements in 437-003-1501(5)(b) that apply to the installation.

How did the incident happen?

Interlaken Inc. had installed multiple 42-inch-high “candlestick” cones around the excavation, attached with a 1/2-inch diameter, yellow polypropylene rope and signs that read “DANGER, fall hazard beyond this point, please stay back.” The company designated the area as an “exclusion zone,” which meant that employees could not enter the area unless they were attached to a fall-restraint system anchored by concrete blocks that would prevent them from reaching the edge of the excavation. The company also said it had trained, instructed, and assigned a “top hand” competent person to enforce the use of the fall-restraint system when employees entered the exclusion zone.

The equipment operator entered the exclusion zone to disconnect one of the precast sections of a leaching chamber that had been lowered into the zone by a front-end loader, but he did not clip into the fall-restraint system. The top hand competent person designated to enforce the company’s fall-restraint requirement was on site doing another task and did not see the equipment operator enter the zone. Meanwhile, the front-end loader operator thought the equipment operator was “just going to walk up and unhook [the lifting device]” and would not be putting himself in danger.

The equipment operator climbed 5 feet to the top of the precast section and supported himself on the edge of the section on his lower abdomen to disconnect the device from front-end loader – then he suddenly “blacked out” and fell forward into the excavation.



The “observation area” that employees used to guide a precast chamber into the excavation



A concrete block the company used to anchor the fall-restraint system



The excavation – 31 feet deep and 9.5 feet in diameter – shown from the “observation area”

Was it a “well, pit, shaft, or other similar excavation?”

Although it was undisputable that the equipment operator fell into an excavation, the company argued that it was not a “well, pit, shaft, or other similar excavation” – which triggers Oregon OSHA fall protection requirements under OAR 437-003-1501(5)(b) – but rather a “sump maintenance manhole.” City of Portland

documents that described the project, however, noted the excavations were intended for “underground structures that filter pollutants out of stormwater” and thus were different from sump maintenance manholes. The compliance officer who investigated the incident also noted that “with no other connected excavated expansion having yet occurred” the excavation met commonly accepted dictionary definitions of “pits,” “shafts,” “wells,” “dry wells,” “absorbing wells,” and “waste wells.” Therefore, “OAR 437-003-1501(5)(b) appears to be applicable as the excavation was either a ‘well’, ‘pit’, ‘shaft’ or ‘other similar type of excavation’ at the time of the injury event.”

Why did the equipment operator ignore the company’s fall protection requirement when he entered the exclusion zone?

The equipment operator said he knew the company prohibited employees from entering the exclusion zone without first attaching to the fall-restraint system, but he had worked near “deep holes” all his life, he had no fear of them, and no one was going to “get in my face about it.” He added that he took advantage of an opportunity to “disconnect [the lifting device] real quick” and that didn’t think he was going to “pass out and fall in the hole.”

Why did the company not install a guardrail system, fence, barricade, or cover around the excavation?

The company considered the risk of an employee falling into the excavation and addressed the hazard with the exclusion zone, the requirement for employees to use fall-restraint gear inside the zone, and by constructing a 6-foot by 10-foot “observation area” protected with guardrails that employees could use to help guide the precast chamber into the excavation.

The compliance officer asked the top hand competent person, who was designated by the company to enforce the use of the fall-restraint system and was “in charge of safety” at the site, if he was aware of Oregon OSHA’s OAR 437-003-1501(5)(b) fall protection requirements. He said “No.”

[Oregon OSHA Online Training Resources:](#)

ONLINE COURSES:

Confined Space Safety

Currently in development, this online course will include 5 modules and cover Division 2 Confined Spaces rule, 437-002-0146, as well as the Division 4 Confined and Hazardous Spaces rule, 437-004-1250. The overall objective of the course is to explain the Division 2 and Division 4 confined spaces rule; permit-required confined spaces and the related program and permit requirements; equipment; rescue and training for personnel working with, around, and in confined spaces; and alternate entry.

Everyday Ergonomics (Spanish)

The English version was modernized in July 2023. On September 26, 2023 the [Spanish online](#) version was launched. As with the English course, this course is designed to provide an understanding of the basic principles of proper ergonomics in the workplace and while working at home. We start the course by explaining the dangers of musculoskeletal disorders and the purpose of ergonomics. We provide 3D animated representations of human anatomy and explain how ergonomic risk factors (ERF) affect our bodies. In the final module, we offer a certificate of completion after passing a short quiz, as well as offer links to additional resources including Oregon OSHA consultation.

Recordkeeping and Reporting (English and Spanish)

Although this [online course](#) was modernized in April 2023, the new 2024 year brings a new reporting requirement. The public education team is currently revising both the English and Spanish online courses to reflect the following rule changes:

1. A new requirement to report data from OSHA forms 300, 300A, and DCBS 801 to federal OSHA no later than March 2nd, for employers that had 100 or more employees the previous calendar year AND are listed (by NAICS code) in the new Table 8 (which is a subset of those industries listed by NAICS code in Table 7).
2. A new requirement that employers will now have to enter their legal company name into federal OSHA's ITA application.

Walking-Working Surfaces

This online course is the 5th and final course in the [Fall Protection Suite](#) and is currently under development. This course takes you through the general requirements to help keep employees safe on walking-working surfaces. We begin by taking a look at the reason for the rules, and then clearly identify responsibilities for employers to maintain safe conditions. We highlight a checklist of situations when fall protection is appropriate and delve into the many fall protection options available for different work environments, demonstrating how to apply each. Lastly, we cover the requirements of training.

Oregon OSHA Public Education Activity:

Social Media numbers & YouTube channel (English and Spanish combined)

Since its inception the Oregon OSHA YouTube Channel has amassed 4.4M views on [YouTube](#) and there are a total of 354 videos available. Since our last report, videos on Facebook have received 5,967 views and videos on Vimeo have received 101,160 views.

PowerPoints for online courses

A PowerPoint presentation download is a newer feature for instructors that Public Education includes with all online courses. We have now added this tool in Spanish for Everyday Ergonomics.

III. Areas of Concern: None

IV. Information Sought from Other State Programs: None

V. Administrative Changes: None

VI. Contact Information:

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