

# Oregon OSHA

## OSHSPA State Plan Report June 2017

**Michael Wood, Administrator**

### **I. Significant Legislative/Programmatic Changes**

#### Legislatively Mandated Rulemaking

Nothing to report.

#### Legislative Activity

Oregon OSHA's three DCBS requested bills have been formally submitted to the 2017 Legislative Assembly. The overall theme of the three legislative Senate bills is addressing changes in specified financial thresholds over time. These bills are moving through the legislative process.

Senate bill 92 aligns Oregon OSHA with the Federal Civil Penalties Act of 2015, which requires an increase to the maximum serious violation penalty and maximum repeat or willful violation. It would grant the agency the authority to set maximum penalties in accordance with federal guidelines.

Senate bill 93 would allow the agency to raise the Worker Memorial Scholarship fund from \$250,000 to \$1,000,000. The scholarships are allocated based on earnings by the fund and this fund has not been increased since 1993.

Senate bill 94 increases the cost of construction sites that require sanitary facilities with flushing toilets and warm water basins for employees. The current cost of these sites is \$1,000,000 and Oregon OSHA is asking that the cost be raised to \$1,750,000 with future increase being allowed by department in rule. The statute has not changed since 1993.

#### Other Rulemaking Activity

**Beryllium.** On January 9, 2017, federal OSHA adopted final rules for beryllium for general industry, construction, and maritime. Before these rules, the only specific rule for beryllium was an airborne permissible exposure limit (PEL) of 2 micrograms per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ). With the adoption of these rules, federal OSHA lowered the PEL from 2  $\mu\text{g}/\text{m}^3$  to 0.2  $\mu\text{g}/\text{m}^3$ , and instituted an action level of 0.1  $\mu\text{g}/\text{m}^3$ . These rules require an exposure assessment, with periodic monitoring under certain circumstances, requires engineering and work practice controls to reduce exposure levels, institutes a written exposure control plan, requires provisions for regulating employee access to certain areas, respiratory protection, medical surveillance, and employee training and information. Oregon OSHA proposes to combine the requirements of the general industry and construction rules into one set of rules applicable to both industries, as new Oregon-initiated rules. Oregon OSHA also proposes to update the air contaminants rules for

general industry and construction, to reflect the new beryllium rules. Oregon OSHA proposed this rulemaking mid-May 2017 with two public hearings scheduled late June and a tentative effective date in March 2018.

**Walking – Working Surfaces in General Industry.** These rule changes are based on federal OSHA’s Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) as published in the November 18, 2016 Federal Register. Proposed rulemaking was filed in mid-February 2017, with four public hearings held in March/April of 2017. Oregon OSHA received oral testimony at three of the public hearings in addition to written comments. Several comments received supported the overall rule making. Several comments opposed specific sections of the overall rulemaking. Major topics Oregon OSHA received comment on were; impacts of limiting acceptable standard guardrail heights to 42 inches +/- 3 inches, use of body belts in travel restraint systems, inspection of permanent mount lifeline systems, fall protection for fixed ladders and the associated inspections, duty to have fall protection when exposed to unprotected sides and edges, duty to have fall protection while exposed to walking-working surfaces not otherwise addressed by proposed 1910.28(b), and rope descent/access systems. Oregon OSHA, based on comments received, made adjustments to proposed 437-002-2027 Rope Descent & Rope Access Systems. Changes include separating the rules for rope descent from those for rope access with the exception of anchorages which both systems share in the final rule. Furthermore, the rope descent portion of the rule is no longer the foundation for the rope access portion. The proposed “assessment of need” for rope access work was removed, a rope access program administrator was added, a section listing minimum capacity requirements for rope access specific equipment was added, and a section establishing exceptions to 1910.140 Fall Protection was added when rope access work is conducted. Finally, Oregon OSHA added language to Division 2/I (Personal Protective Equipment) to permit general industry employers to use anchorages for travel restraint systems that meet the same capacity requirements previous afforded to construction employers in the construction regulations (Division 3/M). Oregon OSHA adopted final walking-working surfaces and PPE rules May 16, 2017, with an effective date of November 1, 2017.

**Recordkeeping Exemptions.** The Oregon School Employees Association (OSEA) has led a campaign to reduce the amount of preventable injuries sustained by its members that were a result of violent behavior from students. In January of this year OSEA petitioned Oregon OSHA to initiate rulemaking to remove NAICS 6111 (Elementary and Secondary Schools), 6116 (Other Schools of Instruction), and 6117 (Educational Support Services) from the exempt status of Table 1 in OAR 437-001-0700 Recording Workplace Injuries and Illnesses. Typically industries on the list that are exempted from recordkeeping are considered low hazard industries. In considering the petition to Oregon OSHA made by OSEA, it was discovered that industries covered by this rule have injury and illness rates that are significantly higher than would be expected in a low hazard industry. To illustrate: The DART rate (days away, restricted or transferred) for elementary and secondary schools from 2011 through 2015 are slightly higher than that of nonresidential construction. Recording injuries under the rule will enable the employer to identify causes and trends of injuries and create corrective actions to eliminate recurrence. Oregon OSHA proposed this rulemaking mid-April 2017 with two public hearings scheduled late May and a tentative effective date in January 2018.

**Pesticide Worker Protection Standard.** The Environmental Protection Agency adopted changes to the Worker Protection Standard. Oregon OSHA worked with an advisory group and the Oregon Department of Agriculture to look at these revisions and discussed rulemaking to update Oregon OSHA rules that contain the Worker Protection Standard. Oregon OSHA proposed rulemaking in October 2016 and conducted three public hearings in November and December 2016. Many comments were received during the comment period that closed on December 14, 2016. Oregon OSHA delayed a decision on the details of the adoption of its proposed changes to the Worker Protection Standard until January 31, 2017, in order to give the comments received due consideration. On February 14, 2017, Oregon OSHA adopted most of the proposed WPS revisions from 40 CFR 170.301 through 170.607 into our rules “by reference.” However, Oregon OSHA’s adopted rules do not include all sections of the EPA’s revised rules; and include six new Oregon Administrative Rules (OAR) that reflect specific requirements for employers in Oregon. The Small Agricultural Employer Advisory Committee was reconvened in March 2017 to discuss three rules proposed last year, but not adopted into Division 4/W, Agriculture/Worker Protections Standard with recent amendments adopted in February 2017. The committee is asked to consider possible changes to draft rules addressing compliance alternative for protected spaces, spray drift, and entry restrictions associated with pesticide applications. All three draft rules concern aspects of the application exclusion zone (AEZ). Three committee meetings have been held (March, April, May) with a fourth scheduled if needed. Oregon OSHA tentatively plans to file proposed rules with the Secretary of State mid-summer 2017, conduct public hearings, receive comments, and adopt rules to become effective January 1, 2018 (same effective date as the WPS rules adopted in February 2017.)

**Fall Protection and Slide Guard Use in Construction.** In response to federal OSHA, Oregon OSHA adopted revisions to fall protection in construction that includes changing the 10-foot general trigger height to 6 feet, effective January 1, 2017. We also adopted the elimination of the use of slide guards as a sole or primary fall protection system, effective October 1, 2017.

**Silica.** Oregon OSHA finalized rulemaking by adopting federal OSHA’s new Occupational Exposure to Respirable Crystalline Silica standard (March 25, 2016 Federal Register), as one rule that is applicable to both general industry and construction rather than two independent rules. The provisions in Oregon are the same as the federal standard. Oregon OSHA adopted final rules September 23, 2016, with an effective date of July 1, 2018.

**Permissible Exposure Limits (PELs).** Oregon OSHA is tackling the challenge of the outdated permissible exposure limits (PELs). We met with industry experts to determine which constituents have PELs that are under-protective and expose employees in Oregon. Three meetings were held in 2016. In March 2017, Oregon OSHA selected lead and manganese from the PEL advisory group’s list of suggested candidates. Lead and manganese are the first 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. The process for reducing the PELs will involve separate rulemaking efforts by Oregon OSHA. Each will have separate advisory committees, public hearings, comment periods, adoption dates, effective dates, and timelines for completion.

**Employer Knowledge.** Oregon OSHA plans to complete rulemaking that addresses 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. Oregon OSHA had initial discussions with a small group of stakeholders in July and August, 2015, and reconvened on April 28, 2016, at which we shared a pre-proposal discussion draft. Meetings were held May 20, 2016, and January 17, 2017, with more discussion around the proposed rule language.

*All adopted and proposed rules are available at our website <http://www.osha.oregon.gov>*

*- look under Rule Activity.*

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

### **Activities:**

#### **New Fact Sheets**

Safety for bicycle couriers – Provides hazard assessment and reporting requirements for employers of bicycle couriers and safety tips for the couriers.

Incentive programs – Clarifies how employers can effectively use incentive programs to promote workplace safety and health without violating Oregon OSHA's rules on recording workplace injuries and illnesses.

Post-incident drug and alcohol testing – Clarifies how employers can effectively use drug and alcohol testing policies without violating Oregon OSHA's rules on recording workplace injuries and illnesses.

Radiofrequency radiation - This fact sheet explains how to keep workers from being exposed to high levels of radiofrequency radiation when working near RF-generating antennas.

Using Sulfur Dioxide to Sanitize Wine Barrels and Corks - Sulfur dioxide is legally classified as a pesticide under federal and Oregon laws when it is used to sanitize wine barrels and wine corks. This fact sheet explains how to properly sanitize wine barrels and wine corks.

Lead Quick Facts – Spanish and English information about lead in the workplace and how to protect yourself from lead on the job.

### **New Hazard Alert**

Digger derricks – Digger derrick truck operators face hazards when climbing up and down the equipment when the boom is rotated. This hazard alert provides solutions to prevent an accident and keep the operator safe.

These are available at <http://www.osha.oregon.gov>



### **2017 Video Contest Winners**

Students at Parkrose High School in Portland won \$500 for their first-place video titled “Rewind” in an annual safety video contest that promotes young worker safety and the importance of speaking up.

The video takes a page from the Mannequin Challenge, a viral Internet trend, with young workers frozen in various scenes of workplace accidents. It imagines reversing time to eliminate hazards by wearing protective gloves, using a ladder safely, and handling electrical equipment properly.

Second- and third-place prizes also were awarded. Sponsored by the Oregon Young Employee Safety Coalition (O[yes]), the annual video contest focuses on teen workers, who are twice as likely to be injured on the job, according to federal studies. All of the winning videos, as well as the other finalists, are available for viewing on YouTube. For more information about the winners, contest, and sponsors visit: <http://osha.oregon.gov/news/2017/Pages/nr2017-14.aspx>

### **Ceremony honors fallen Oregon workers**

Government, labor, and religious leaders gathered on April 28, 2017 at the Fallen Workers Memorial outside the Labor and Industries Building to remember Oregon workers who died on the job in 2016 and to renew the call to maintain safe and healthy workplaces. The ceremony included the reading of the names of 66 Oregon workers who died on the job in 2016. Oregon AFL-CIO coordinated the event.

### **Oregon GOSH Conference in Portland, Oregon**

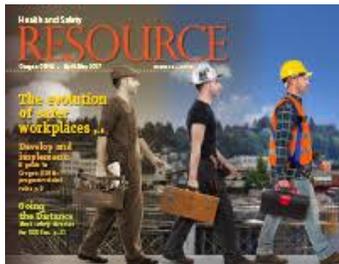
The 2017 Oregon Governor’s Occupational Safety and Health (GOSH) Conference in Portland attracted 1,500 attendees. The March 6-9 event at the Convention Center is the largest of its kind in the Northwest. It featured 150 workshops and sessions, an awards luncheon, and safety and health exhibits from more than 125 organizations.

National and regional speakers addressed numerous ways to improve workplace safety and health in the state. Keynote speaker Todd Conklin presented “Thinking Differently About Safety,” focusing on the human performance theory of safety, where investigations are conducted before accidents happen. “Safety is not the absence of events,” he said. “Safety is the presence of defenses.”

Nine leaders in safety and health were honored with awards at the conference. A panel of industry professionals judges the awards, which honor extraordinary contributions to the field of workplace safety and health. The categories include outstanding employers, individuals, associations, and teams. For more information about the conference, visit: <http://osha.oregon.gov/news/2017/Pages/nr2017-09.aspx>. For more information about the honorees, visit: <http://osha.oregon.gov/news/2017/Pages/nr2017-08.aspx>

### **Newsletters**

Oregon OSHA publishes three newsletters: The “Resource” (a general interest publication), the “Construction Depot” (for the construction industry) and the “Forest Activities News” (for the logging and forest industry). These are available at <http://www.osha.oregon.gov> .



The *Health and Safety Resource* newsletter is published every two months. The most recent was April 2017.

- The evolution of safer workplaces
- Develop and implement: A guide to Oregon OSHA's program-related rules
- Administrator's Message: We must not turn away from death in the workplace - the reality is too important
- Safety Notes: A worker was thrown from the basket of a boom lift
- Going the Distance: The City of Bend Fire Department

Some of the highlights in the issue are:

- Changes coming to Oregon OSHA's general industry Walking-Working Surfaces and Personal Protective Equipment rules
- Pay attention: April is National Distracted Driving Awareness Month
- Derrick truck operators face hazards when climbing up and down a derrick with the boom rotated

The *Forest Activities News* is published when significant and or interesting logging/forest activities arise. The most recent was February 2015.

### **Notable Case:**

On September 21, 2016, a State of Oregon Department of Fish & Wildlife employee was driving a Ford F 250 pick-up down an active BLM logging access haul road. As part of a wildlife study, the driver and victim were driving about 10-15 mph and actively spot lighting deer from their perspective windows on both sides of the road. As they entered a sweeping right curve the truck drifted to the right and the right front tire went off the abrupt edge of the road. The truck rolled several times and came to rest about 75 feet below the road. Both occupants were ejected as they were not wearing seat belts. One employee was pinned by the bed of the vehicle so the other employee crawled up to the road and hiked about a mile down to an elk camp to call for help. EMS responded to the site and transported the victim to a nearby hospital with head and spine injuries. The victim was then transferred to Riverbend Hospital in Springfield.

Interviews with the driver and other biologists involved in the study indicated that driving while spotlighting is a common practice. ODFW reported that they developed a "Safety Protocol for Spotlight Deer Surveys" which states that for safety and efficiency not to spotlight alone and that the passenger should record data so the driver can concentrate on driving. ODFW also has a Job Safety Analysis worksheet for Captured Deer Handling that includes a section on driving which states: "Stay focused on driving activity. Go slow when on non improved road."

The driver stated during his interview that he had not seen the Safety Protocols document. Other employees interviewed indicated that the practice of spot lighting while driving slowly was an accepted practice as they were trying to cover as much ground as possible to complete the survey.

Seat belts were not used by the driver or passenger. ODFW has a mandatory seat belt use policy and employees have completed defensive driver training where seat belt use was addressed. The driver stated during his interview that he was aware of the seat belt policy. He further stated that he was not wearing a seat belt at the time because "it was a personal choice" that allowed him to move more freely in the cab during darting activities when deer were spotted.

The driver and other biologists involved in the study have not had a ride along or performance evaluation by their supervisor during spot light surveys for over a year. The safety manager for

ODFW stated that seat belt use and safety protocols are not usually addressed during annual employee performance reviews.

ODFW has a comprehensive written safety and health program which is administered through a Safety Manager based in Salem, OR. The agency provides training to new and current employees related to their work. The agency has an active safety committee at this location and provided records of those meetings. Defensive driving was an included topic which contains the mandatory seat belt use policy and inside distractions while driving. Holding a spot light while driving is not specifically addressed in the document.

The agency has a check in system. Two way radios, a CB, and safety equipment was provided for the vehicle. A SPOT locating device was available at the office but was not taken into the field. The vehicle is not equipped with a GPS unit or roll over sensors.

The vehicle was inspected by the State Motor Pool after the crash. Vehicle maintenance records were provided. There was no indication of any unsafe conditions that would make the vehicle unsafe to drive.

List of Violations:

1) 437-01-760(1)(a):The employer did not see that workers were properly instructed and supervised in the safe processes and practices involved in spot lighting deer:

a) Employees routinely drive and spot light at the same time. The practice is contrary to instructions in the Safety Protocol for Spot Light Deer Surveys and job safety analysis for deer capture developed by the agency related to distracted driving.

Medium/Death \$3500

2) 437-02-224(4)(b): The employer did not require employees to comply with all applicable seat belt and traffic safety laws:

a) Interviews indicated that the two employees involved in the crash were performing spot light surveys while driving and did not wear seat belts.

Low/Death \$2100



## **Conferences**

Blue Mountain Occupational Safety & Health Conference  
Pendleton Convention Center  
Pendleton, OR  
June 5 & 6, 2017

Southern Oregon Occupational Safety & Health Conference  
Ashland Hills Hotel & Suites  
Ashland, OR  
October 17-19, 2017

Central Occupational Safety & Health Conference  
Riverhouse on the Deschutes  
Bend, OR  
September 19 & 20, 2017

**Questions?**  
Contact the Conference Section at  
(503) 378-3272  
*or* toll-free in Oregon at  
(888) 292-5247, option 1.  
*or* send e-mail 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:** Nothing new to report.

**VI. Contact Information:** Phone: (503) 378-3272, Fax: (503) 947-7461, Internet:  
[www.osha.oregon.gov](http://www.osha.oregon.gov), Federal Liaison: Pamela Lundsten, [pamela.g.lundsten@oregon.gov](mailto:pamela.g.lundsten@oregon.gov)