



Oregon

John Kitzhaber MD, Governor

Department of Consumer and Business Services
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Sheriff Larry Blanton, President
Oregon State Sheriffs' Association
330 Hood Street NE
Salem, OR 97301

Hand Delivered

Dear Sheriff Blanton:

Thank you for the opportunity to address the association at its Annual Conference. I wish my own schedule allowed more opportunity for informal conversation regarding the sheriffs' concerns, but in any case I appreciate the opportunity to clarify certain issues regarding Oregon OSHA's jurisdiction over events that also result in concurrent criminal investigations by one or more law enforcement agencies.

The questions and concerns raised in recent years by representatives of the law enforcement community have generally focused on line-of-duty shootings or similar events where at least one law enforcement employer was the subject of an Oregon OSHA inspection. However, at least some concerns raised would apply whenever both Oregon OSHA and a law enforcement agency are both investigating a fatality or other workplace injury. In just the past year, for example, we have encountered workplace fatalities that also were being investigated as active homicides in at least two cases.

As I have indicated in previous conversations with representatives of both the sheriffs and the police chiefs, Oregon OSHA believes that we have a role under the Oregon Safe Employment Act (ORS 654) whenever a person is killed or injured in the workplace. At the same time, when there is an ongoing criminal investigation, that investigation and its legitimate needs unquestionably take priority over our activities (regardless of whether our inspection concerns a law enforcement agency or any other employer whose employees have been the target of criminal violence).

With that understanding, I am providing the following direction to the Oregon OSHA enforcement staff:

- Oregon OSHA staff will conduct themselves with an understanding of the needs of law enforcement, consulting with and seeking guidance from the incident commander in any active criminal investigation.
- Oregon OSHA staff will accommodate legitimate requests for delays in inspection activity – provided that such delays are measured in days, not in weeks and certainly not in months.
- Oregon OSHA staff will never seek to enter a scene of an active criminal investigation (unless invited to do so by the incident commander) and do not need to exercise control over any scene that is under the control of an investigating law enforcement agency.

- Oregon OSHA staff will, if requested, consult with and coordinate any witness interviews with the investigating law enforcement agency to minimize duplication and to ensure that Oregon OSHA's efforts do not interfere with the legitimate needs of the criminal investigation.
- Although Oregon OSHA staff will generally focus on issues regarding appropriate procedures, training and equipment, it will at times be necessary to determine whether actual practice is consistent with those expectations. However, such an evaluation will not become an evaluation of on-the-ground tactical or situation-specific decisions made by individual law enforcement officers or their supervisors.

In the event of any apparent conflict that cannot be readily resolved between Oregon OSHA's activities and those of an investigating law enforcement agency, the compliance officer will contact his or her supervising manager, who will consult with senior Oregon OSHA management to resolve any issues.

In addition to the need for Oregon OSHA to understand the unique aspects of the situation, it would be useful if law enforcement agencies recognize that Oregon OSHA does have a legitimate role in investigating workplace fatalities in Oregon, including those involving law enforcement employers.

The requirement to report fatalities to Oregon OSHA within eight hours and overnight hospitalizations within 24 hours applies to all employers in the state, including law enforcement employers. And a failure to timely report will necessarily result in an inspection and a cited violation carrying a penalty of between \$250 and \$7,000. The Oregon OSHA staff involved have no discretion regarding this issue (beyond some discretion over the size of any penalty, depending upon the circumstances involved).

Oregon OSHA will at times require records to complete our investigation. Oregon OSHA can generally provide flexibility regarding time frames and even the exact nature of the records requested. It is even possible for us to arrange to review certain sensitive records without taking possession of them (and therefore without subjecting them to a public records request concerning our files). However, a blanket refusal to provide records (or to provide them in a reasonable period of time) will necessarily result in an administrative subpoena and, if needed, legal action to enforce the subpoena.

I remain convinced that we will all be best served by a genuine effort on all of our parts to work through problems as they occur and with an understanding that both Oregon OSHA and the law enforcement agencies have legitimate interests. While there may be areas where we are unable to reach agreement, they are likely to be considerably fewer if both parties seek to resolve our differences constructively.

Toward that end, I am always personally available to discuss any such issues. I can be reached at 503-947-7400 (my direct office line) or 503-508-3682 (my personal cell phone), as well as via e-mail at Michael.wood@state.or.us.

Sincerely,



Michael Wood, Administrator
Oregon OSHA