Oregon OSHA

OSHSPA State Plan Report
January 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.

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

Senate bill 93 will 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 increased since 1993.

Senate bill 94 will increase the financial threshold for construction projects to need sanitary facilities with flushing toilets and warm water basins for employees. The current threshold is $1,000,000 and Oregon OSHA is asking that the threshold be raised to $1,250,000 with future increases being allowed by department in rule. The statute has not changed since 1993.

Other Rulemaking Activity
Walking – Working Surfaces in General Industry. The rulemaking advisory committee is tasked with significant rulemaking for Oregon OSHA’s Division 2 rules. This advisory committee will be looking at the language and fiscal impact of the following subdivisions: Division 2/A, General, Division 2/D, Walking-Working Surfaces, Division 2/F, Adoption & Extension of Established Federal Standards, Division 2/I, Personal Protective Equipment, Division 2/L, Fire Protection, Division 2/N, Material Handling and Storage, Division 2/R, Special Industries, Division 2/RR, Electrical Power Generation, Transmission, and Distribution. 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. We expect to have proposed rules filed mid-February and public hearings scheduled in late March and early April, 2017.
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 is delaying 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.

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. Another meeting was held May 20, 2016, with more discussion around the proposed rule language. The latest meeting is scheduled for January 17, 2017.

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. We plan to reconvene mid-2017.

Improve Tracking of Workplace Injuries and Illnesses. Oregon OSHA proposed rulemaking September 2016 to adopt federal OSHA changes published in the May 12, 2016 Federal Register. Oregon OSHA amended the state-initiated rule for recording workplace injuries and illnesses to include the provision for electronic submission of injury and illness data to federal OSHA for certain industries. Four public hearings were conducted in October and November. Oregon OSHA adopted these changes on November 10, 2016 with an effective date in Oregon of May 1, 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.

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
Oregon OSHA published a new fact sheet, Overview of Oregon OSHA’s Silica Rules for General Industry and Construction that describes the main elements of the silica standard, including an exposure control plan, workplace exposure assessment, permissible exposure limit, restricted areas, engineering and work practice control, Table 1 for construction activities, respiratory protection, housekeeping, medical surveillance, information and training, and recordkeeping.

Oregon OSHA published a new fact sheet, Crystalline Silica: Specified Exposure Control Methods (Table 1). Most employers must evaluate employee exposures to crystalline silica to ensure that employees are not overexposed. Table 1 is a flexible alternative that identifies 18 common construction tasks that generate high exposures to respirable crystalline silica and specifies engineering controls, work practices, and respiratory protection for each task.

Safety and Health Poster
Oregon OSHA revised the English and Spanish version of the “It’s The Law” poster. Revisions included added information on employee rights to report work-related injury or illness without retaliation and when workers can request a worksite inspection and/or a workplace injury and illness log.

Excavation Safety: Requirements for Competent Persons:
Oregon OSHA published a new safety standard excavation fact sheet that reviews OAR 437 Division 3, Subdivision P, establishes competent person duties.

Publication
Oregon OSHA published the new Evaluating Your Computer Workspace How to make it work for you.

Oregon OSHA Training Grant
Oregon OSHA awarded three grants totaling more than $92,000 to help develop workplace safety and health education and training programs for forest workers, firefighters, and construction workers.

On-line Courses: Oregon OSHA created an online course that includes videos, interactive scenarios, and a quiz to help employers protect workers from bloodborne pathogens in health care, emergency response, housekeeping, and other industries. It can also help employers build an effective exposure-control plan, refresh their knowledge of the topic, or check whether their existing plans meet current rules.

Created by the nonprofit Oregon Young Employee Safety Coalition (O[yes]), the interactive training program – accessible by smartphone and tablet – covers...
everything from finding and controlling hazards, and young worker rights and responsibilities of how to speak up for safety and how to prepare for emergencies at work. The program, which includes a student workbook, can be completed in about 45 minutes. Designed to be flexible, the program does not have to be finished all at once. It features ongoing questions to test participants’ knowledge. Participants who successfully complete the program receive a certificate.

The annual “Speak up. Work safe.” video contest is now open for submissions. The deadline for submissions is Wednesday, Feb. 1, 2017.

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 December 2016.

Some of the highlights in this issue are:
- Heads up - Fall protection requirements for construction are about to change
- You feel unsafe at work - now what do you do?
- Administrator's Message: Workplace protection begins with the recognition that the unlikely will happen
- Safety Notes: A painter fell eight feet to concrete while on the roof of a two-story house
- Going the Distance: Meet Craig Hamelund, Oregon OSHA's safety training specialist

CONSTRUCTION DEPOT

The Construction Depot newsletter is published monthly. The most recent was December 2016.

Some of the highlights in the issue are:
- OSHA publishes safe practice guide for construction-industry employers
- Seven ways to prevent falls at your site
- Mid-Oregon Construction Safety Summit returns to Bend in January
- Construction Q & A - asbestos-containing material in wallboard or drywall
- Infographic: Initial reports of the top 10 workplace fatality causes in Oregon

Forest Activities News from Oregon OSHA

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

Excavation Company Fined in Fatal Trench Collapse

Oregon OSHA fined TC Excavating LLC $142,800 for four violations, including two willful violations, after investigating a May 2016 trench collapse that killed an employee during an installation of a sewer line for a house in southwest Portland.

TC Excavating LLC was installing a new sewer line for a house with an existing sewer line and a pump that was utilized in the basement. The new line was to allow the home owner to remove the pump. The new sewer line was going to be about 160 feet in length. The company started the work on May 4th when they hand dug the part of the excavation under the deck and near the house. This section was about 6 feet deep and they were unable to install any form of shoring. The spoils pile was right next to the excavation.

On May 5th, TC Excavating LLC returned to the jobsite to continue working on the sewer line in front of the house and a small water line in the back of the house. Around 11:40 A.M. two employees were working in the improperly shored excavation that was about 10 feet deep. The victim was in between two pieces of shoring that were spaced 15 feet apart when the wall collapsed. Approximately 6 feet of dirt covered him. The foreman and one of the owners were within 15-20 feet of the two employees working in the improperly shored excavation. The owner stated he saw the two employees working and they were both next to the shoring closest to the house. He stated he thought the employee stepped about 18 inches out of the shoring to help grade the pipe when the wall collapsed.

After the collapse the other employee in the trench yelled and began digging by hand where he thought the victim was located. The foreman and owner moved the excavators and started digging to make the excavation wider. Another employee came from the back of the house and also started digging trying to locate the victim. At this time someone called 911 to report that there was a collapse in the excavation.

When fire and rescue showed up they moved from rescue to recovery and called in the city of Portland to help in shoring up the excavation.

Findings and Justifications:
1. Two employees were working in an unprotected excavation that was over 5 feet deep.
   a. One employee was buried and killed when the wall of the excavation collapsed.
   b. The owner stated that he was approximately 20 feet away and observed the employees in the unprotected excavation.
   c. The owner stated that he is the competent person for the company and has over 16 years of excavation experience. During interviews he stated “I know the rules” and proceeded to state “5 feet down before shoring is required, spoils piles need to be 2 feet back, classify the soil as A, B, or C.”
   d. The owner stated that he saw that the shoring was set up about 15 feet apart and he knew it was not set up correctly. He stated that he allowed the employees to work in the 10 foot deep excavation due to his negligence.
e. The tabulated data for the shoring being used shows in Table 1 that shoring should not have a maximum horizontal spacing more than 8 feet in Type B soil. For Type C soil the maximum spacing is no more than 6 feet.

List of Violations:

1-1: 29 CFR 1926.651(k)(1): An inspection of the excavations, the adjacent areas, and protective systems was not conducted by the competent person prior to the start of work and as needed throughout the shift; a) A competent person did not inspect the excavation and protective system prior to employees working. Probability: Medium, Severity: Death, Penalty Amount: $1,400.00

1-2: 29 CFR 1926.651(j)(2): Protection was not provided by placing and keeping excavated or other materials or equipment at least 2 feet (.61m) from the edge of excavations, or by the use of retaining devices that were sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary: a) The spoils pile was placed on the edge of the excavation that was located under the deck of the house. This exposed 2 employees to possible falling material. Probability: Medium, Severity: Death, Penalty Amount: $1,400.00

2-3: 29 CFR 1926.652(a)(1): Each employee in an excavation was not protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section: a) Three employees were exposed to a cave in hazard while working in an unprotected excavation. One employee was killed after the excavation collapsed. Probability: High, Severity: Death (Willful), Penalty Amount: $70,000.00

2-4: 29 CFR 1926.651(c)(2): A stairway, ladder, ramp or other safe means of egress was not located in trench excavations that were 4 feet (1.22m) or more in depth so as to require no more than 25 feet (7.62m) of lateral travel for employees: a) Employees working in an excavation did not have a ladder for egress. Probability: High, Severity: Death, Penalty Amount: $70,000.00 (Willful)
Recent or Upcoming Occupational Safety and Health Conferences
Mid-Oregon Construction Safety Summit
Riverhouse on the Deschutes
Bend, OR
January 30 & 31, 2017

Oregon Governor’s Occupational Safety & Health Conference
Oregon Convention Center
Portland, OR
March 6-9, 2017

Northwest Safety & Health Summit by Region X
VPPPA
Davenport Grand Hotel
Spokane, WA
May 16-18, 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:
noregon.conferences@state.or.us

III. Areas of Concern: Nothing new to report.

IV. Information Sought from Other State Programs:

V. Administrative Changes: Trena VanDeHey, accepted the Standards and Appeals Manager position on November 1st 2016. This position oversees technical, appeals, internal training, and the resource center. Trena has worked for Oregon OSHA for 16 years, with experience as a health compliance officer, industrial hygienist in technical, health analyst, and a consultation manager for the last 3 years. She has a wide array of experience within Oregon OSHA and with Occupational Safety and Health. Trena replaces Peggy Munsell the previous Standards and Appeals Manager.

VI. Contact Information: Phone: (503) 378-3272, Fax: (503) 947-7461, Internet:
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