Oregon OSHA

OSHSPA State Plan Report
January 2020

Michael Wood, Administrator

I. Significant Legislative/Programmatic Changes

Legislatively Mandated Rulemaking: Nothing to report.

Legislative Activity: Nothing to report.

Other Rulemaking Activity: 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.

Lead- Oregon OSHA’s Lead rulemaking stakeholder meetings are continuing, and potential rule language is being drafted. 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.

Manganese- Oregon OSHA’s Manganese rulemaking stakeholder meetings are ongoing, and the Advisory Committee has expanded to include additional stakeholders from affected industries that will be considering the economic impact of any proposed rule changes. Stakeholders are considering pre-draft language, and Oregon OSHA staff are making changes based on stakeholder suggestions before proposal.

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 continues to meet periodically to discuss this rulemaking.

Employer Knowledge. Oregon OSHA plans to propose 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. This rulemaking is ongoing, and due to requests from stakeholders, a small, separate fiscal impact advisory committee has been put together to allow stakeholders to examine the potential fiscal impact of this rulemaking.
**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. This year, Oregon OSHA determined it will initiate rulemaking to increase penalty amounts to better align the agency with federal OSHA. Due to requests from stakeholders, a small fiscal impact advisory committee has been put together to allow stakeholders to examine the potential fiscal impact of this rulemaking. This rulemaking is ongoing.

**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. Pre-proposal draft language will continue to be considered as rulemaking continues.

**Standards Improvement Project (SIP) IV.** Federal OSHA published a final rule for their SIP IV on May 14, 2019. Oregon OSHA filed proposed rulemaking, and had one public hearing on September 23, 2019. The agency received no public comment concerning this rulemaking. Oregon OSHA adopted the federal changes as proposed, with some changes being translated onto any Oregon-initiated rules that were affected (for example, Beryllium, Silica, and Agriculture rules). This is Oregon Administrative order 3-2019, and was adopted and effective as of October 29, 2019.

**Respirator Fit Testing Protocol.** Federal OSHA published final rules for adding two additional PortaCount® quantitative fit testing protocols to its respiratory protection standard (1910.134 Appendix A) on September 26, 2019. Oregon OSHA has filed proposed rulemaking to adopt these additional fit testing protocols. This rulemaking will not remove any existing fit testing protocols. Oregon OSHA proposed this rulemaking in December 2019, and will hold one public hearing on January 7, 2020. The public comment period for this rulemaking ends January 24, 2020. Potential adoption is expected by February 2020.


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

**New Publication:** Oregon OSHA published three new publications.

*Fighting farmland and rangeland wildfires:* A reference guide for employers engaged in Oregon OSHA’s agriculture activities (Division 4).

*Securing log loads when binders and wrappers are removed – hazard alert:* A depiction showing when binders and wrappers are properly in place, the risk of logs falling off of the load is greatly reduced.

*Fall protection in construction: requirements for competent persons:* Describes a competent person for fall protection in construction activities and explains the requirements in Division 3, Subdivision M that apply to them. Published in Spanish and English.

These are available at [https://osha.oregon.gov/pubs/Pages/index.aspx](https://osha.oregon.gov/pubs/Pages/index.aspx).
Oregon OSHA News Releases: Oregon OSHA Training Grants totaling more than $158,500: SEETAC and the DCBS Director approved four training grants to help develop workplace safety and health education and training programs.

Speak up. Work safe. video contest: The annual “Speak up. Work safe.” video contest is open for submissions. The top three entries will take home cash prizes ranging from $300 to $500, and students will earn a matching amount for their school. Students must create a video no longer than 90 seconds to inspire young workers to do at least one thing differently to stay safe on the job. The video must include the theme: “Speak up. Work safe.” The deadline for submissions is Friday, Feb. 7, 2020. Contest winners will be unveiled at a screening event in spring 2020.

Spanish-language safety conference: Oregon OSHA’s first Spanish-language conference was held on 11/19/17, and addressed workers and their needs. Topics included asserting their rights to a safe workplace, protecting their health and safety at work and at home, protecting against wage theft, and identifying and addressing common workplace hazards. Presentations included safety and health in agriculture, construction, food processing, logging and forest harvesting, and the role of the supervisor in workplace safety. Oregon OSHA plans to include a Spanish-language conference to their annual conference offerings.

Conference presenters included workplace safety and health professionals, medical providers, and government representatives. The event featured lunch, exhibits, and health screenings. Event supporters included the Oregon Columbia Chapter of the Associated General Contractors, the Oregon Bureau of Labor and Industries, SAIF Corporation, and Oregon Business & Industry.

Oregon OSHA new roofing safety training: The course, “Fall Protection for Roofing,” is the latest in a series of free online educational offerings created by the division to help address fall hazards across specific industries and different on-the-job situations. The roofing course includes the opportunity to receive a certificate of completion. It is the third of five planned online courses about fall protection. The other two that are available are “Fundamentals of Fall Protection” and “Ladder Safety.”

Oregon OSHA new ladder training courses: Oregon OSHA has launched a free online ladder safety training course featuring videos that walk employers and workers through everything from the types and dangers of ladders to safe practices and proper storage of ladders. The ladder safety training course – which includes the opportunity to receive a certificate of completion – is the second of five online courses about fall protection that Oregon OSHA released. The first one was “Fundamentals of Fall Protection.”

Workers’ Memorial Scholarship awards: Eight Oregon high school graduates are recipients of the 2019 Workers’ Memorial Scholarship awards given by Oregon OSHA. The awards program helps finance higher education for family members of Oregon workers who have been fatally injured or permanently disabled on the job.

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.
First Notable Case:
On May 29, 2019, at Bornstein Seafoods, a seafood processing company in Astoria, a worker died when she lost her balance on an elevated platform and fell through a ladder access opening, striking her head on concrete.

A general laborer was working at the company’s fish weighing-hoppers workstation about five feet above the ground when she attempted to push fish through a hopper with a shovel. She apparently lost her balance on the workstation platform when she stepped back and, unable to catch herself, fell through an unguarded fixed ladder access opening and struck her head on concrete. (A safety chain intended to guard the opening was available, but not secured.)

Company employees immediately called 911 and Port of Astoria Security, an ambulance, and the Astoria Fire Department arrived within minutes. The victim was taken to Columbia Memorial Hospital in Astoria then transported to Oregon Health Sciences University in Portland the following day. She died two days later as a result of her head injury.

Findings
The fish weighing-hoppers workstation
- The guardrail around the fish weighing-hoppers workstation was 38 inches above the workstation platform. (Oregon OSHA rules require guardrails to be 42 inches, plus or minus 3 inches, above a walking-working surface.)
- The victim was standing on the smaller of two temporary metal platforms at the time of the incident. The smaller platform was two inches high and rested on the larger platform, which measured 6 inches x 26 inches x 51 inches. The two temporary platforms reduced the effective guardrail height to less than 30 inches.
- The company’s maintenance staff thought that the safety committee was responsible for determining the height of the guardrail.
- A single chain was available to guard the fixed ladder access opening. When asked if employees were required to use the chain, the day supervisor said, “It’s required, we just don’t always connect the chain.”
- When asked if it was left up to each employee to decide whether to use the chain, the operations director, said that we talk to each person, but don’t enforce or have follow through, and there has been no discipline for not having gate closed.

The fish receiving-sorting workstation
- The bycatch chutes (“bycatch” means an unintentional catch) on the fish receiving-sorting workstation reduced the walkway and access-egress aisle width to 12 inches (Oregon OSHA rules require a minimum width of 22 inches).
- Two protruding 1.5-inch diameter by 2-inch long rotating shafts on the fish receiving-sorting workstation were not guarded. The unguarded shafts rotated at variable speeds and the nearest emergency shut-off switch was 44 inches away.

Safety committee
- The company’s safety committee did not conduct quarterly workplace safety inspections in 2017, 2018, or 2019. The improper guardrail height on the fish weighing-hoppers workstation and the narrow walkway on the fish receiving-sorting workstation could have been identified and corrected if the safety committee had conducted quarterly safety inspections.
- The safety committee did not meet in April 2019; February-December 2018; September-December 2017; and November 2016.
Violations

- **1910.28(b)(1)(i): Guardrails – Unprotected sides and edges.** The employer must ensure that each employee on a walking-working surface with an unprotected side or edge that is 4 feet or more above a lower level is protected from falling by guardrail systems, safety net systems, or personal fall protection systems. Penalty: $6,000.

- **437-002-0022(4)(a): Aisles, Passageways, Walkways, Inclines.** The employer did not ensure aisles, passageways, and walkways were of adequate width for their intended or actual use, and they were less than 22 inches wide. Penalty: $700.

- **1910.219(c)(4)(i): Shaft ends/projected.** Projecting shaft ends shall present a smooth edge and end and shall not project more than one-half the diameter of the shaft unless guarded by non-rotating caps or safety sleeves. Penalty: $300.


- **437-001-0765(5): Safety committee meetings.** The employer did not ensure that the safety committee met monthly. Penalty: $300.

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The fish receiving-sorting workstation (left), and the fish weighing-hoppers workstation (right, covered by the blue awning).

The victim was standing on these two temporary metal platforms when she stepped back and fell.

The bycatch chutes reduced the width of the walkway on the fish receiving-sorting workstation to 12 inches.

The access to the fish weighing-hoppers workstation (the company installed an additional chain to guard the access opening after the incident)
Second Notable Case:
A former Lowe's Home Centers employee called Oregon OSHA's Bend field office on September 3, 2019, alleging that the company was requiring its employees to take drug tests after they reported work-related injuries.

The former Lowe's employee said that his injury was a "low back strain," which happened after he lifted a shop vacuum off a shelf for a customer. He reported the injury to Lowe's management the following day; the company required him to take a drug test because of the injury and terminated him when the results came back positive for marijuana.

Oregon OSHA does not prohibit an employer from drug testing an employee who reports a work-related injury or illness if the company can show that the effect of the drug could have contributed to the injury.

Oregon OSHA compliance officer Greta Salvo visited Lowe's Bend store on September 6 to investigate the alleged complaint. The key issue was whether Lowe's drug policy - which required all employees to take a drug test after they reported any workplace injury - discriminated against employees whose injuries were unrelated to drug use. Such a policy could discourage an employee from "accurately reporting a workplace injury or illness" and would be a violation of Oregon OSHA rules.

Salvo interviewed 12 employees including the assistant store manager. All employees confirmed that:
- They had full knowledge of the company's drug testing policy, which requires the termination of any employee whose drug test results are positive
- The company's drug policy was explained to them during their job interviews
- They were drug tested before they were hired
- They were not aware of any other employees who were deterred or discouraged from reporting an injury because of the company's drug testing policy

Conclusions
- Although the employees told Salvo they were not aware of others who were deterred or discouraged by the company's drug testing policy, she determined that they might not answer that question honestly for fear of incriminating themselves or a coworker. Salvo noted, "It is reasonable to state that an automatic drug testing procedure based on an injury where an employee seeks or requires medical help would reasonably deter [that employee] from quickly or accurately reporting a workplace injury or illness."
- Salvo determined that Lowe's mandatory drug-test procedure was not reasonable because it required testing - even in cases such as repetitive strain injuries - where the effects of a drug could not have contributed to the injury.

Violation
437-001-0700(21)(a): ...Establish a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness. Penalty: $700.
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

III. Areas of Concern: Nothing new to report.

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

V. Administrative Changes: On 11/6/19, the Department of Consumer & Business Services, Director, Cameron Smith resigned his position, to launch his campaign for Oregon’s next Secretary of State. Governor Brown appointed Lou Savage, the DCBS Administrator of the Workers’ Compensation Division to serve as the DCBS Acting Director in the interim. The Governor will appoint a permanent director who will also need to be confirmed by the Oregon Senate. Oregon OSHA is a division of the Department of Consumer & Business Services.

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