



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
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Oregon OSHA

OSHSPA State Plan Report June, 2020

Michael Wood, Administrator

Virtual OSHSPA members meeting 6/24/20

I. Significant Legislative/Programmatic Changes

Legislatively Mandated Rulemaking: Nothing to report.

Legislative Activity: Nothing to report.

Other Rulemaking Activity:

[Rule Addressing the COVID-19 public health emergency in labor housing and agricultural Employment.](#) In response to the current COVID-19 crisis, emergency rules were adopted on April 28, 2020 and took effect June 10, 2020. The emergency rules cover field sanitation for labor intensive work, agricultural housing, and the transportation of workers related to the labor intensive work. The emergency rules will remain in effect until October 28, 2020.

[Infectious Disease Rules.](#) The COVID-19 emergency has highlighted the risks that any infectious disease, particularly one that is airborne, can create for a wide variety of workplaces. As a result of both the immediate and long-term risks highlighted by the current public and occupational health crisis, Oregon OSHA is responding to the request that the state adopt an enforceable workplace health rule on an emergency basis this summer, to be replaced by a permanent rule. This high-level timeline treats these as two essentially different projects, in both nature and scope, recognizing that an ongoing infectious disease rule would not be as closely tailored to the current crisis as would a temporary rule. It also assumes health care (and related activities) and the general workplace would require distinct (although interrelated) sets of requirements. In both cases, Oregon OSHA plans to rely upon as much collaboration and consultation with experts and with stakeholders as the timeframes involved and other circumstances allow. In the case of the temporary rule(s) this will primarily be through targeted virtual forums and the circulation of a draft prior to a decision on adoption. In the case of the permanent rule(s), Oregon OSHA will be empaneling two rulemaking advisory committees in addition to employing targeted virtual forums and circulation of preproposal drafts.

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 proposed language in January and accepted public comment through May 4, 2020. A decision has not been on the final rule.

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 proposed language in February to address 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. The public hearings were canceled due to COVID-19. The hearings are rescheduled for August and September of 2020.

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 proposed new rules to increase penalty amounts to better align the agency with federal OSHA. The public hearings were canceled due to COVID-19. The hearings are rescheduled for August and September of 2020.

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.

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

II. New Developments/Activities/Notable Cases Activities:

New Publication: Oregon OSHA published 13 new publications along with other resources related to COVID-19.

What employers need to know about hazards associated with homelessness.
English version 6/18/20

COVID-19 Temporary rules regarding field sanitation, housing, and transportation related to agriculture. English version 6/18/20

Transporting workers on agricultural vehicles and farm equipment over public roadways
English version 5/29/2020

Field Sanitation Notice for COVID-19. English and Spanish versions 5/4/20

COVID-19 Guidance for Retail Workers. English and Spanish versions 4/8/20

Oregon Guidance for Healthcare Personnel on Use of Personal Protective Equipment in Resource-Constrained Settings. English 4-6-20

Ten Steps All Workplaces Can Take to Reduce Risk of Exposure to Coronavirus. English version 4/6/20

Guidance on Preparing Workplaces for COVID-19. English 3/25/20 and Spanish 3/19/25 versions

Worker Protection Standard reference guide. English version 3/11/20

Machine safeguarding at the point of operation: A guide for finding solutions to machine hazards. English 2/10/20

COVID-19 Temporary rules fact sheet regarding field sanitation, housing, and transportation related to agriculture. English version 1/18/20

Foundation for a safe workplace. English version 1/2/20

Workplace violence: Can it happen where you work? English version 1/2/20

These are available at <https://osha.oregon.gov/pubs/Pages/index.aspx>.

Oregon OSHA News Releases:

06/18/2020 Portland contractor fined for not protecting workers against fall hazards

06/05/2020 Oregon OSHA offers free educational video on COVID-19 requirements in farm operations. English and Spanish versions

05/15/2020 Sisters High School students win safety video contest

05/11/2020 Finalists named in high school safety video contest

05/11/2020 Oregon OSHA cites Albany food processor for violation linked to COVID-19

05/08/2020 Oregon OSHA delays to June 1 enforcement of temporary rule addressing farm operations

05/07/2020 Portland-area general contractor fined nearly \$235K for continued job safety violations

04/28/2020 Temporary Oregon rule addresses COVID-19 in employer-provided housing, farm operations. English and Spanish versions. Oregon OSHA rules can be found at <https://osha.oregon.gov/OSHArules/adopted/2020/ao2-2020-text-emergency-rules-ag-covid.pdf> and at the Oregon OSHA COVID-19 page <https://osha.oregon.gov/covid19/Pages/default.aspx>

04/27/2020 Video ceremony honors Oregon workers who died on the job in 2019

04/13/2020 Oregon OSHA to formally begin spot-checks in ramped up effort against COVID-19

04/02/2020 Don't be fooled by scams involving job safety inspections related to COVID-19

03/19/2020 Oregon OSHA cancels rule hearings in light of coronavirus outbreak

03/13/2020 Oregon OSHA offers Spanish-language online fall protection training. English and Spanish versions

03/05/2020 Preventing workplace violence, other topics featured in Oregon OSHA newsletter

02/25/2020 Oregon OSHA cites Madras facility for safety violations following accident

02/19/2020 Oregon OSHA cites Albany foundry for safety violations in 2019 explosion

02/14/2020 Corvallis company earns safety, health recognition

02/12/2020 Oregon OSHA faults, fines companies in fatal accident at site of music festival

02/06/2020 Event in Eugene puts spotlight on workplace safety, health

01/29/2020 Oregon employers, workers invited to take a 'Safety Break' May 13

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>.

Oregon OSHA, COVID-19 Enforcement Complaints:

Oregon OSHA COVID-19 Enforcement Complaints Received 3/1/20 through 6/24/20

Actions	Safety Enforcement Complaints			Health Enforcement Complaints			Safety & Health Enforcement Complaints		
	All Safety	N-16- COVID-19 Safety	Percent of Safety N-16- COVID-19	All Health	N-16- COVID-19 Health	Percent of Health N-16- COVID-19	All Safety & Health	N-16- COVID-19 Safety & Health	Percent of Safety & Health N- 16-COVID- 19
Enforcement Complaints Received 3/1/20 - 6/24/20	321	81	25.2%	4071	3743	91.9%	4392	3824	87.1%
Closed	76	51	67.1%	2574	2417	93.9%	2650	2468	93.1%
Inspected	73	12	16.4%	106	84	79.2%	179	96	53.6%
Phone/Fax	148	32	21.6%	2027	1847	91.1%	2175	1879	86.4%
No Action	2	0	0.0%	14	12	85.7%	16	12	75.0%
Letter	96	37	38.5%	1917	1795	93.6%	2013	1832	91.0%
Referred	0	0	0.0%	3	2	66.7%	3	2	66.7%

Source: OTIS, complaint queries
 Note: Only one N-16-COVID-19 health complaint 20943214 was received by Oregon OSHA between 10/1/2019 and 2/29/20. No N-16-COVID-19 safety complaints were received during this time period. All the safety and health complaints in this table were received by Oregon OSHA 3/1/20 through 6/24/20. This table doesn't include complaints "in progress".

Notable Case:

Oregon OSHA cited Albany food processor for violation linked to COVID-19

Oregon OSHA cited National Frozen Foods in Albany, Ore., for failing to implement physical distancing measures to protect workers from the spread of the coronavirus.

The citation was issued for violation of OAR 437-001-0760(1)(c): The employer did not provide the health hazard control measures necessary to protect the employees' health from harmful or hazardous conditions. The citation carried a proposed penalty of \$2,000.

The citation stemmed from a complaint inspection launched April 20, 2020, in response to multiple complaints about the facility, which produces frozen fruits and vegetables. The complaint items were substantiated, and the citation was issued to the employer for the alleged serious workplace hazard.

Oregon OSHA conducted this complaint inspection following newly-established safety guidelines for compliance officers handling complaint inspections related to COVID-19.

Indeed, the compliance officers who tackled the National Frozen Foods inspection strictly adhered to all of the guidelines. They both wore face coverings and maintained at least six feet of distancing during the entire inspection process. The compliance officers contacted the employer, who met them outside the facility. They carried out all of the interviews outside. They made no contact with surfaces.

At the time of this inspection, National Frozen Foods was a union employer. Oregon OSHA notified The Teamsters local Union 670 agent of the site inspection at the time of the inspection. Also, a copy of the inspection report was forwarded to the union agent.

Under a state executive order aimed at slowing the COVID-19 pandemic – issued by Oregon Gov. Kate Brown - employers are required to maintain physical distancing policies to keep workers at least six feet apart.

The practices at National Frozen Foods ran counter to those requirements, based on documentation from the inspection, which included interviews of employees. Eighteen employees were stationed at frozen packaging lines nine at a time during day and swing shifts and worked at a distance of two feet to four feet from each other. Employees worked across a 24-inch wide conveyor belt and retrieved approximately 70 packages a minute to place in cardboard boxes. Employees worked adjacent to each other during this process. Three employees worked side by side on a 10-foot long conveyor. Packaging conveyor lines #2 and #4 ran parallel to each other, requiring employees to work back-to-back yet on separate conveyors.

Before April 16, 2020, employee-required personal protective equipment and food handling gear for the packaging lines included smocks, hair nets, boots, gloves, and arm sleeves. After April 16, 2020, employees were required to wear a mask or a face shield for all activities on the packaging line. Starting April 24, an employee was designated to monitor employee response to social distancing measures.

Interviewed employees stated that face shields and/or masks were not required on the packaging lines until April 16. The employer was notified by Linn County Health of multiple packaging line employees testing positive for COVID-19 on April 14, 2020. All interviewed employees stated that employees on the packaging lines work closer than six feet to each other. Employees continued to work within six feet of each other after packaging line employees tested positive for COVID-19.

The inspection determined a High probability: Employees working on the packaging line had tested positive for COVID-19 and worked within the six foot social distancing area for approximately eight hours for two work shifts prior to masks or face shields being required. The severity was assessed as Serious: Employees contracting COVID-19 could be expected to encounter serious health issues.

Gov. Brown's executive order – issued to address the public health crisis triggered by the coronavirus pandemic – tasked Oregon OSHA with enforcing requirements with respect to employers and potential worker exposures. The division continues to screen complaints, conduct spot checks, and initiate inspections.

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: Andrew Stolfi was appointed as the new DCBS director. His first day on the job was 4/6/20. Andrew has served for over two years as administrator of the Division of Financial Regulation and as Oregon's insurance commissioner.

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