



Oregon

Kate Brown, Governor

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Oregon OSHA

OSHSPA State Plan Report September, 2020

Michael Wood, Administrator

Virtual OSHSPA members meeting 9/22/20

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), Oregon OSHA engaged in targeted virtual forums prior to draft development and posted the draft mid August for public comment. Oregon OSHA anticipates finalizing the draft of the temporary rule(s) in late September and adopting sometime around October 1, 2020. 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. The decision to adopt the proposal has been made but the process is delayed due to a vacancy in the rules coordinator position.

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 virtually for September and October 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 virtually for September and October 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 6 new or revised publications since the Oregon OSHA, OSHSPA June 2020 report.

Bloodborne pathogens: questions and answers about occupational exposure, English version 8/13/20

It's not just dust! What you should know about silicosis and crystalline silica, English version 8/13/20

Lead in construction quick guide, English version 8/13/20

Oregon Dental Office Respiratory Protection Program, English version 7/24/20

Respiratory Protection Program Required Elements Checklist, English version 7/24/20

Use of Personal Protective Equipment by Dental Personnel in Resource-Constrained Settings, English version 7/24/20

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

Oregon OSHA News Releases: Oregon OSHA published nine news releases since the OSHSPA June 2020 report.

09/02/2020 [Scholarship awards boost student achievement](#)

08/19/2020 [Oregon OSHA launches free online training for fall protection in construction](#)

08/17/2020 [Oregon OSHA proposes temporary rule to address COVID-19 in all workplaces](#)

08/10/2020 [Oregon OSHA accepting grant applications for training, education addressing infectious disease](#)

07/30/2020 [Oregon OSHA offers Spanish-language online training for ladder safety](#) English version and Spanish version 07/30/2020 [Oregon OSHA ofrece curso de capacitación en línea en español para seguridad en el trabajo con las escaleras](#)

07/24/2020 [Prevent heat illness for workers in hot weather](#) English version and Spanish version

07/24/2020 [Prevenga que sus trabajadores sufran enfermedades causadas por el calor](#)

07/10/2020 [Online reporting form urged for filing COVID-19 complaints with Oregon OSHA](#)

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>.

Notable Cases:

Casey's Restaurant

Business: Casey's Restaurant is a diner that has nine non-union employees.

When did it happen? May 8, 2020

Where did it happen? Roseburg

Issue: Workplace inspection responding to several complaints alleging that the employer was allowing customers to sit and eat inside the diner despite Governor's *Executive Order 20-07* that prohibited on-premises consumption of food and drink.

Two compliance officers visited the diner May 8 and saw customers seated and eating inside the restaurant. Business owner Laura Mounts was also greeting, seating, and serving customers.

Employees serving the customers were not wearing facial coverings and were interacting with customers well within six-foot physical distancing requirements.

The compliance officers posted a Red Warning Notice on the diner's entrance at 12:30 p.m. Mounts was present but continued to seat and serve customers inside the restaurant.

On May 11, Mounts phoned one of the compliance officers and told him that the Red Tag notice had been removed from the entrance, but she did not know who removed it. The next day, one of the compliance officers returned to the restaurant and saw customers seated and being served inside.

Two alleged violations were issued as a result of this inspection.

- 437-001-0096(3)(a), *Red Warning Notice*. Penalty: \$5,000.
- 654.022, *Duty to comply with safety and health orders, decisions and rules*. Penalty: \$8,900.

Cafe 22 West

Business: Cafe 22 West is a restaurant and a retail fruit stand that has 18 non-union employees.

When did it happen? July 1, 2020

Where did it happen? Salem

Issue: Workplace inspection responding to several complaints alleging the employer was not following *Oregon's Statewide Mask, Face Shield, Face Covering Guidance* (Executive Order 20-27).

After listening to the investigating compliance officer's statements on July 1 about the nature of the complaints and about *Oregon's Statewide Mask, Face Shield, Face Covering Guidance*,

owner Clyde Aspinwall said that he would not require his employees to wear masks, face shields, or face coverings in the restaurant or at the fruit stand. He added, however, that he would not prohibit any of his employees from wearing them either.

The next day (July 2, at 9:45 a.m.) the compliance officer returned and posted a Red Tag notice on the restaurant and a Red Warning Notice on the fruit stand.

On July 13, Aspinwell agreed to follow the *Statewide Mask, Face Shield, Face Covering Guidance* and the compliance officer removed the Red Warning Notices.

Two alleged violations were issued as a result of the inspection.

- 437-001-0096(3)(a), *Red Warning Notice*. Penalty: \$5,000.
- 437-001-0760(1)(c), *Employer's Responsibilities*. Penalty: \$8,900

Howard's Pharmacy

Business: Howard's Pharmacy is a retail store and pharmacy that has nine non-union employees.

When did it happen? Aug. 3, 2020

Where did it happen? Lakeview

Issue: Workplace inspection responding to nine complaints alleging that the employer was not following *Oregon's Statewide Mask, Face Shield, Face Covering Guidance* (Executive Order 20-27).

While preparing for inspection outside the pharmacy on Aug. 3, the compliance officer saw four customers enter the store who were not wearing facial coverings and two customers leaving who were wearing facial coverings.

During the opening conference, the pharmacy owner, Jeff Howard, said that the pharmacy did not want to discriminate against customers who said they could not wear a mask for medical reasons.

The compliance officer pointed out that face coverings needed to be worn by all employees in the pharmacy who were public-facing and by all customers. Howard reiterated he would not discriminate against customers who said they could not wear a mask for medical reasons.

On Aug. 10, the compliance officer and Oregon OSHA's deputy administrator returned to the pharmacy and met with Howard, who said he would not require employees or customers to wear face coverings.

Howard insisted that only allowing people to enter the pharmacy with masks on discriminated against those who said they could not wear a mask for medical reasons –and he could not provide “full and equal access to everyone” as required by the Equal Opportunity Employment Commission and the Oregon Health Authority.

The compliance officer and the deputy administrator made several attempts to explain that EEOC follows OHA guidance and the Oregon Board of Pharmacy required him to follow the OHA guidance. Howard replied that he would not discriminate and would continue to allow those who chose to not wear masks to enter the pharmacy.

At 3:32 p.m., the compliance officer gave Howard two Red Warning Notices and asked him to post them on the inside glass of the store window and the other on the inside of the glass door. Howard posted the notices and began helping customers outside the store, curbside, and asked other customers to exit building.

Two days later, the deputy administrator returned to the pharmacy; she took photos and a video of her observations from a public area and did not approach the pharmacy. Howard and his employees were still providing curbside service, but were not wearing masks or other face coverings. Most customers were also not wearing masks or other face coverings. The pharmacy's front windows were covered with paper so it was not possible to determine if anyone was in the store.

Two alleged violations were issued as a result of this inspection.

- 437-001-0096(3)(a), *Red Warning Notice*. Penalty: \$500.
- 437-001-0760(1)(c), *Employer's Responsibilities*. Penalty: \$8,900.

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: Nothing new to report.

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