



Oregon

Kate Brown, Governor

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Oregon OSHA
OSHSPA State Plan Report
Louis Savage, Interim Administrator

Virtual OSHSPA members meeting 2/8/2022

I. Significant Legislative/Programmatic Changes

Legislatively Mandated Rulemaking: Nothing to report.

Legislative Activity: The biannual Oregon Legislative short session began February 1, 2022 and will be in session until March 8, 2022

Other Rulemaking Activity:

Administrative Order 13-2021: Adopted Increase of Certain Minimum and Maximum Penalties for Alleged Violations

Issue: In November of 2015, Congress passed legislation requiring federal OSHA to increase maximum and minimum penalties for alleged violations by up to 78%. Federal OSHA had not raised these penalties since 1990, reducing their effectiveness as a deterrent for noncompliance. Under federal law, states that operate their own Occupational Health and Safety plans are required to adopt maximum penalty levels that are at least as effective as federal OSHA's. Oregon must adopt similar standards as federal OSHA to maintain state plan authority. Effective in January of 2021, the federal maximum penalty for a violation that is not classified as willful or repeat was increased to \$13,653 and the maximum penalty for willful or repeated violations was increased to \$136,532.

Oregon OSHA originally proposed the rule change February 26, 2020. Due to COVID-19 pandemic restrictions, the agency canceled in-person hearings and extended the comment period. The rule change was re-proposed April 24, 2020, and again, due to the extension of COVID-19 pandemic restrictions, Oregon OSHA canceled in-person public hearings and extended the comment period. The rule was re-proposed July 31, 2020, and four virtual hearings occurred in September and October 2020. Overall, Oregon OSHA received comment from February 26, 2020 through October 30, 2020 on the proposed rule amendments.

In general, stakeholder comments focused on the language describing the Administrator's ability to use his or her discretion to assess penalties on a willful violation, as well as the language used to describe the determination of probability assessments. Oregon OSHA considered all comments received. Oregon OSHA, based on the comments received, adjusted the proposed rules and left others as proposed.

The rules are adopted as follows:

OR 437-001-0060 Advance Notice.

OR 437-001-0096 Red Warning Notice

OR 437-001-0135 Evaluation of Probability to Establish Penalties.

OR 437-001-0145 Penalty for Other than Serious or Serious Violation.

OR 437-001-0155 Determination of Penalty – Failure to Correct.

OR 437-001-0160 Penalty Criteria – Repeat Violation.

OR 437-001-0165 Determination of Penalty – Repeat Violation

437-001-0170 Determination of Penalty – Failure to Report an Occupational Fatality, Catastrophe, or Accident.

437-001-0171 Determination of Penalty – Failure to Register a Farm Labor Camp/Facility.

437-001-0175 Determination of Penalty – Willful or Egregious Violation..

437-001-0180 Determination of Penalty – Relating to Red Warning Notice.

437-001-0225 Penalty for Falsification.

437-001-0740 Falsification or Failure to Keep and Post Records or Make Reports.

Status of Issue: Adopted November 1, 2021. Effective December 1, 2021

Decision points and milestones:

Rule Proposals filed: 2/26/2020, 4/24/20, 7/31/20 (multiple filings due to cancellation of in-person hearings)

Comment Period ended: October 30, 2020

Rule Adopted: November 1, 2021

Rule Effective: December 1, 2021

Administrative Order 14-2021: Amended Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces

Issue: This rulemaking adopted permanent amendments to OAR 437-001-0744: Rule Addressing COVID-19 Workplace Risks to protect workers throughout the state given the current COVID-19 public health emergency, which has not abated in 2021.

Since it was first adopted as a permanent rule on May 4, 2021 (AO 2-2021), Oregon OSHA has filed three temporary amendments to the COVID-19 rule. The first of these changes (AO 5-2021), which occurred June 30, 2021, greatly reduced requirements as well as simplified the appendix given the low case load and high vaccination numbers at the time. Additionally, On July 19, 2021, Oregon OSHA published a Workplace Advisory Memo reducing requirements related to sanitation and physical distancing, with an additional update on August 13, 2021. After the surge of summer infections, the Governor and Oregon Health Authority (OHA) re-instated masking requirements with the adoption of OHA’s OAR 333-019-1025: Masking Requirements for Indoor Spaces and OAR 333-019-1015: Masking Requirements in Schools; Oregon OSHA updated its COVID-19 rule accordingly (AO 10-2021). The third and most recent change (AO 12-2021) adopted Medical Removal Protection Benefits for healthcare workers to ensure Oregon OSHA’s COVID-19 rule is as effective as federal OSHA’s COVID-19 Healthcare Emergency Temporary Standard (ETS). In the absence of adopting these temporary amendments as permanent provisions of OAR 437-001-0744, the rule would have reverted back to its original May 2021 requirements which are no longer in alignment with OHA public health guidance and federal OSHA requirements.

Status of Issue: Adopted December 21, 2021. Effective December 21, 2021

Decision points and milestones:

Rule Proposal filed: September 30, 2021

Comment Period ended: November 12, 2021

Rule Adopted: December 21, 2021

Rule Effective: December 21, 2021

Administrative Order 15-2021: Amended Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing

Issue: This rule protects vulnerable workers in employer-provided labor housing from the current COVID-19 public health emergency, which has not abated in 2021. The unique exposures created in the labor housing environment, particularly in working situations requiring large numbers of workers, make this rule necessary to reduce risk. Many workers face unique challenges in situations where housing is provided as part of the employment relationship. It is within this public health context that Oregon OSHA adopted these permanent amendments to the OAR 437-004-1115: COVID-19 Workplace Requirements for Employer-Provided Labor Housing.

This rule was first promulgated as a temporary rule, OAR 437-001-0749: COVID-19 Public Health Emergency in Labor Housing and Agricultural Employment ([AO 2-2020](#)), which subsequently expired on October 24, 2020. On October 23, 2020, Governor Brown issued Executive Order ([20-58](#)), which extended the employer-provided housing requirements (Section 2) of OAR 437-001-0749. Oregon OSHA then engaged in rulemaking activities and adopted a permanent rule on April 30, 2021 ([AO 1-2021](#)). On June 30, 2021, Oregon OSHA filed a temporary amendment to the rule ([AO 4-2021](#)), which updated its requirements to better align with current information concerning COVID-19 transmission.

Status of Issue: Adopted December 21, 2021. Effective [December 21, 2021](#)

Decision points and milestones:

Rule Proposal filed: October 11, 2021

Comment Period ended: November 29, 2021

Rule Adopted: December 21, 2021

Rule Effective: December 21, 2021

Amendments in General Administrative Rules to Clarify Employer's Responsibilities

Issue: Oregon OSHA is adding two definitions and a paragraph to the Division 1 rules. The Oregon Supreme Court determined that Oregon OSHA needs to more clearly define how “reasonable diligence” and “unpreventable employee misconduct” are interpreted and applied in enforcement activities and Oregon OSHA believes that such guidance is most appropriately provided through an administrative rule. The proposed additions to the rules are to clarify in general how Oregon OSHA assesses an employer’s reasonable diligence, what constitutes unpreventable employee misconduct, how Oregon OSHA assesses an employer’s knowledge of a violation, and when an employer is and is not responsible for a violation that has occurred on its worksite. This rulemaking will amend: OAR 437-001-0015 and 437-001-0760.

Status of Issue: Proposed

Decision points and milestones:

Rule Proposal filed: 7/30/2020

Public Hearings: 9/28/2020, 9/30/2020, 10/7/2020 (Spanish), 10/28/2020

Comment Period ended: 10/30/2020

Next Steps: Resolve Comments, Finalize Language, and Adopt and Publish Certificate and Order of Filing

Consultation for Public Entities

Issue: Currently, the Consultation Program does not require abatement of serious violations (except for 21d funded consultations), including those consultations provided to public entities. This is not inline with the 23g grant provisions required by Federal OSHA. The rulemaking would provide specific details around the expectations of public employers to correct serious hazards identified by Oregon OSHA consultants. In addition, it would adopt into rule other consultation procedures related to protecting employer confidentiality.

Status of Issue: The technical specialist has been assigned and work is beginning to bring together stakeholders. The COVID19 pandemic has delayed this process, but it is anticipated to get going once the pandemic has stabilized.

Excessive Outdoor Heat & Wildfire Smoke

Issue: On March 10, 2020, Governor Brown issued [Executive Order 20-04 \(EO 20-04\)](#) that provides directives to certain state agencies in an effort to reduce greenhouse gas emissions (GHGs) and mitigate the impacts of climate change. EO 20-04 includes a directive to the Oregon Health Authority (OHA) and Oregon OSHA to jointly develop a proposal for standards to protect employees from workplace exposures to excessive heat and wildfire smoke. In response to EO 20-04, Oregon OSHA, in collaboration with the OHA, advisory committees, and stakeholders, will work towards developing two separate proposed standards:

Preventing Outdoor Heat-related Illness

Outdoor workers who are exposed to sudden or excessive heat are at risk of developing heat-related illness. Heat-related illnesses include, heat rash and cramps, heat exhaustion, and heat stroke. As temperature and humidity increase, so does the level of risk to workers of developing potentially a life-threatening condition, especially when the body is generating its own heat when performing physical work. This situation is particularly serious when hot weather arrives suddenly or early in the season, before workers have had time to adjust to warm weather.

Protection from Unhealthy Levels of Wildfire Smoke

Smoke from wildfires is composed of harmful gases and fine particles that can present a significant health hazard to workers exposed to it. These health hazards can continue after fires have been extinguished and cleanup activities begin. The potentially detrimental health effects from exposure to unhealthy levels of wildfire smoke can affect anyone, but workers with asthma, Chronic Obstructive Pulmonary Disease (COPD), or heart disease are at higher risk of serious or fatal health effects when their condition is exacerbated from exposure to wildfire smoke.

Status of Issue: Oregon OSHA held virtual meetings for both rulemaking efforts with advisory committees and stakeholders to gather information and drafted new occupational health standards on both preventing outdoor heat-related illness and protection from unhealthy levels of wildfire smoke. The stakeholder meetings helped inform the basis for the temporary rules on smoke and heat which were effective through the high heat and smoke season of 2021. Oregon OSHA continued to meet and proposed permanent rules on January 28, 2022. The [Outdoor Workplace Exposures to Excessive Heat](#) and [Wildfire Smoke Exposure](#) webpages have meeting minutes and rule proposals.

Status of Issue: Proposed

Decision points and milestones:

Rule Proposal filed: 1/28/2022

Public Hearings for Heat: 2/23/22, 2/24/22 (Spanish), 2/25/22

Public Hearings for Smoke: 3/2/22, 3/3/22 (Spanish), 2/4/22

Comment Period ends: 3/18/22

Employer Provided Housing (ALH)

Issue: Oregon OSHA has been engaged in the process of engaging and consulting stakeholders regarding updating and improving rules around agricultural labor housing (ALH). Oregon OSHA put together a stakeholder group with the core consisting of the small agricultural employer advisory committee, as well as members of other interested parties, including worker advocates.

Status of Issue: The first stakeholder meeting was 2018. The stakeholder group met multiple times in 2019. This rulemaking had been temporarily on hold due to the COVID-19 public health emergency, but resumed meetings in May, August, and November of 2021. The RAC will continue to meet 2022 to engage on amendments to the rule. The [Agricultural Labor Housing Advisory Committee](#) webpage has meeting minutes and information about the stakeholder group.

Lead (PEL)

Issue: As part of Oregon OSHA's initiative to address outdated exposure limits, a stakeholder group was convened to address outdated limits for lead. The committee is comprised of representatives from a wide variety of businesses and organizations. Oregon OSHA is working with the State of Washington Department of Occupational Safety and Health (WA-DOSH) for this rulemaking. In June 2019, WA-DOSH released an updated draft rule; visit the [WA-DOSH rulemaking page](#) for additional details.

Status of Issue: The first stakeholder meeting was July 12, 2017. The stakeholder group met multiple times in 2017. The [Lead Advisory Committee page](#) has meeting minutes and information about the stakeholder group. Currently, this rulemaking is temporarily on hold due to the COVID-19 public health emergency.

Non-Entry Firefighting - Division 2

Issue: 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.

Status of Issue: A draft rule is under development. The non-entry firefighting stakeholders have met multiple times in 2019, and continue to bring draft language and suggestions to the fire services advisory committee. Currently, this rulemaking is temporarily on hold due to the COVID-19 public health emergency.

Adopted and proposed rules are available at our [Rules webpage](#).

II. New Developments/Activities/Notable Cases Activities:

Oregon OSHA News Releases:

- [Oregon OSHA offers free Spanish online training for prevention of bloodborne pathogens in the workplace](#)
- [Oregon OSHA ofrece capacitación gratuita en línea y en español para la prevención de patógenos transmitidos por la sangre en el lugar de trabajo](#)
- [Contest promoting young worker safety in Oregon opens to high school students](#)
- [Oregon OSHA fines Canby contractor for fall protection, ladder safety violations](#)
- [Oregon OSHA fines Wilsonville company following investigation into death of worker in Klamath Falls](#)
- [Oregon OSHA administrator to leave post for position with State of Washington](#)

Newsletters:

For the October/November 2021 issue of Resource, Oregon OSHA published seven stories that addressed issues related to high-hazard industries and vulnerable or hard-to-reach workers. None involved workplace violence. The stories were:

- Confined spaces and permit spaces – not just empty places
- Rule updates to maintain protections for workers against COVID-19
- New rules adopted to address overexposure to manganese
- Free online program offers training to help employers protect workers from confined-space hazards
- Oregon OSHA and Oregon Farm Bureau partner to provide virtual pesticide training workshops
- Incident Alert!: A focus on lessons learned based on a fatality investigation involving a confined space at a winery
- Going the Distance: A feature about Woodfold Manufacturing – a SHARP employer – focusing on what the company has learned about worker safety during the pandemic

Notable Case:

What happened? A 21-year-old groundsman (employed for six months by employer) was struck by a falling tree as he was removing vegetation only 26 feet from a coworker who was cutting down standing trees.

When did it happen? June 14, 2021, at 2 p.m.

Where did it happen? Near Detroit (a small community 50 miles east of Salem).

What does the company do? The employer specializes in residential and commercial tree removal.

How did it happen?

Four employees of the tree trimming company – two cutters and two groundsman – met at a gas station in Detroit before driving to the jobsite where they were going to do right-of-way cutting for the local electric company's powerlines.

After arriving at the site at 7 a.m. the employees held their daily routine meeting for 30 minutes, then cut down standing trees along the right-of-way until they took a lunch break at 1:30 p.m.

After lunch, the four employees resumed cutting down standing trees along the right-of-way, working in two-person teams: one cutter and one groundsman went to the south end of the cutting line while the other cutter and groundsman worked a short distance away, to the north.

Both teams were cutting trees so that the trees would fall to the east. However, there was one 103-foot-tall tree that the cutter working at the south end of the cutting line was worried about; he thought it might strike the powerlines when it fell.

He asked his groundsman to attach a "furball" (a temporary rope line used to guide the direction that a tree falls) to the tree to help prevent it from striking the power lines. Once the line was established in the tree, they secured the other end to a nearby tree at a 35-degree angle as an anchor.

The cutter "face cut" (removed a section of the tree's base) from the tree so that it would fall to the east then completed a "back cut" on the other opposite side of the tree. His groundsman assisted by placing a wedge in the back cut but the tree fell to the southeast, striking another tree, which uprooted and fell toward the team working nearby to the north.

The cutter yelled "watch out!" as the uprooted tree fell toward the other team. The other cutter saw the tree falling and ran for cover, but his groundsman did not hear the warning; he was still removing vegetation about 20 feet away when the tree struck him.

The cutter called 911 and Marion County sheriffs, who arrived first, helped stabilize the groundsman until paramedics arrived. The employees and the paramedics took him to the Detroit Ranger Station where a Life Flight helicopter transported him to Salem Hospital; he was treated for a broken shoulder blade and a head laceration that required eight staples.

Findings

- The injured groundsman was 26 feet from the team at the south end of the cutting line when the uprooted tree struck him.
- The team at the south end of the cutting line was cutting down a tree that was 103 feet high. The injured groundsman should have been at least two tree lengths – 206 feet – away while they were cutting down the tree.
- The employees said they knew they were cutting down trees and not keeping a minimum two-tree-length distance from each other.
- Employer's company policy stated that employees not actively assisting in the cutting of a tree should stay at least two tree lengths away.
- The employees' supervisor said the employees had been trained to stay at least two tree lengths away from a tree being cut unless they were actively involved in the cutting.

Alleged violations

- Division 7, Forest Activities – 437-007-0800(3): The minimum distance between any worker(s) manually falling trees and any other personnel must be twice the height of the trees being felled. Penalty: \$6,000.
- Division 7, Forest Activities – 437-007-0810(1): Falling cuts must not be made in a standing tree while anybody is in the area where the tree could fall. Penalty: \$6,000.

[Oregon OSHA online training resources:](#)

During federal fiscal year 2021, Oregon OSHA rolled out seven free online training resources aimed at helping employers protect their workers from a variety of potential on-the-job hazards. Four of the resources were specifically designed for Spanish-speaking audiences. The resources were announced in press releases, framed in newsletters, and highlighted on social media. The division continues to develop more training and education resources. Here is what it published during FFY2021:

Residential Construction Building Safety

Launched as a new tool of PESO – a long-running bilingual program that helps English-speaking employers train and talk about workplace safety and health with Spanish-speaking workers – this resource encompasses six training modules in a bilingual format that makes it simple for employers to train their employees. The training can be conducted in about an hour.

COVID-19 Training Requirements

This multimedia course helps employers meet certain employee training requirements found in Oregon OSHA's temporary COVID-19 workplace rule, which was adopted to address the risks of exposure to the coronavirus in the workplace.

Fall Protection for Roofing

This Spanish-language course helps employers and workers address fall hazards and increase safety in the roofing industry.

Wildfire Smoke Training Requirements

This online training course is designed to help employers comply with certain training requirements found in Oregon OSHA's temporary rule addressing the potential impacts of wildfire smoke in the workplace. It covers several topics, including symptoms of wildfire smoke exposure, the potential health effects of wildfire smoke, and the importance, limitations, and benefits of using a filtering facepiece respirator, and how to properly wear one.

Fall Protection for Construction

With this online training course, employers and workers who speak Spanish gained another tool to improve their understanding of fall protection. It is designed to help Spanish-speaking employers and workers meet the requirements of Oregon OSHA's fall protection standards.

Bloodborne Pathogens

This Spanish-language online training course helps employers protect workers from bloodborne pathogens in emergency response, health care, hospitality, and other industries. It features videos, interactive scenarios, a quiz, and a certificate of completion. It is designed to boost the ability of employers to meet the requirements of Oregon OSHA's bloodborne pathogens standard. Topics covered include assessing the potential for exposure in your workplace, understanding the elements of an exposure-control plan, preventing and reducing exposures, and managing your exposure control plan.

Silica Safety

This online course helps employers put protective measures in place for workers against the potential hazards of breathing in airborne crystalline silica dust. Featuring powerful visuals, personal stories, instructional videos, links to resources, and a certificate of completion, the course is designed to boost the ability of employers to meet the requirements of Oregon OSHA's silica rules. It offers a tool to employers and workers to bolster their existing training programs.

New updates included in "It's the Law!" poster:

Oregon OSHA's long-running "It's the Law!" safety and health poster – required to be displayed at workplaces – now includes updated information reflecting changes in state law that strengthened anti-retaliatory provisions. The poster – and related online content – are available in both English and Spanish. The poster now includes the

fact that, under a new law that took effect on Jan. 1, 2022, the filing deadline has been extended to one year for reporting unlawful practices or exercising certain rights relating to safe and healthy workplaces. Previously, state law required those alleging retaliation or discrimination to file a complaint within 90 days of reporting unlawful practices. Meanwhile, the poster also now features a “quick response” code – or QR code – that takes you to online pages with more information. That information includes rights against retaliation and how to file a complaint with Oregon OSHA. The information concerning rights against retaliation includes the fact that yet another change in state law created a “rebuttable presumption” regarding retaliation. Under that change, which became effective June 15, 2021, there is a “rebuttable presumption” that an employer has engaged in unlawful retaliation against an employee or prospective employee if the employer takes adverse action against the person within 60 days after the person engaged in protected activities, such as making a claim of unsafe working conditions. The presumption may be rebutted through a preponderance of the evidence. Previously, the burden was on the employee to prove the employer’s action was retaliatory.

To obtain a copy of the “It’s the Law!” poster or learn more about workplace safety rights and rights against retaliation, use the following links:

Poster (English): <https://osha.oregon.gov/OSHAPubs/1507.pdf>

Poster (Spanish): <https://osha.oregon.gov/OSHAPubs/1507s.pdf#>

Ordering posters, publications, cards, and other printed resources:

<https://www4.cbs.state.or.us/exs/osha/film/hard/index.cfm>

Protect against retaliation: <https://osha.oregon.gov/workers/Pages/Protect-against-retaliation.aspx>

Worker rights and responsibilities: <https://osha.oregon.gov/workers/Pages/Worker-rights-and-responsibilities.aspx>

III. Areas of Concern: Nothing new to report.

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

V. Administrative Changes: Louis Savage is filling in as the Interim Administrator of Oregon OSHA, while The Department of Consumer and Business Services begins recruitment for a replacement for Michael Wood. Holt Andron was selected as the new Oregon OSHA Statewide Consultation Manager. Holt has been with the Oregon OSHA consultation program for 3.5 years as a consultation manager of the Portland office.

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