

## Variations

### 437-001-0400 Application for a Variance

- (1) Any employer may apply for a variance from any rule which specifically affects working conditions. This application may be submitted:
  - (a) On a form provided by Oregon OSHA; or
  - (b) In any written form that includes all information required by OAR 437-001-0400(2) and (3).
- (2) An application for a variance must contain:
  - (a) The name and address of the employer;
  - (b) The address and location of the place of employment;
  - (c) The rule, identified by number, from which the variance is sought;
  - (d) The type of variance desired (see OAR 437-001-0015);
  - (e) The means by which employees will be protected from the hazard until final action is taken on the variance request;
  - (f) A description of the means proposed to be used to provide employment which is as safe and healthful as that obtained by compliance with the rule;
  - (g) Certification that all affected employees have been informed of the application and of their right to comment on it by:
    - (A) Giving a copy of the variance application to the authorized employee representative;
    - (B) Posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and
    - (C) By other appropriate means.
  - (h) A description of how employees have been informed of the application and of their right to comment on it to the Administrator, Oregon OSHA, 350 Winter St. NE, Room 300, Salem, Oregon, 97301, before it becomes final.
  - (i) A statement of whether the employer has previously filed an application for a similar variance with any state or federal agency.

- (3) If the employer is applying for a research variance, the application must contain the following additional information:
- (a) The purpose and contribution of the intended research;
  - (b) A discussion of the research methods;
  - (c) The research schedule, including the projected completion date;
  - (d) A description of the hazards to which employees may be exposed and the steps to be taken to protect the employees safety and health;
  - (e) Biographical information to indicate the competence of the research staff;
  - (f) Assurances that the project will be funded adequately; and
  - (g) Assurances that Oregon OSHA will be given a copy of the research report prepared under the variance. However, no trade secret, patented or patentable material, or data need be submitted by the employer.
- (4) If the employer is applying for a temporary variance, the application must contain the following additional information:
- (a) A statement of facts why the applicant is unable to comply with the rule by the effective date which is supported by representations from qualified persons having firsthand knowledge of the facts, and include data on:
    - (A) Unavailability of professional or technical personnel; or
    - (B) Unavailability of materials and equipment needed; or
    - (C) Inability to complete the construction or alteration of facilities by the effective date.
  - (b) An effective program including a timetable for complying with the rule; and
  - (c) The specific steps taken to protect employees against the hazard.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78;

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.

**437-001-0405 Interim Order Relating to a Variance**

- (1) An employer applying for a variance may request an interim order to be effective until final action is taken on the variance application. The request for an interim order:
  - (a) May be included in the variance application;
  - (b) Must include all information required by OAR 437-001-0400(2); and
  - (c) Must state the reasons why the interim order should be granted.
- (2) The Administrator, or designee, will decide whether to issue an interim order on the basis of information provided in the application.
- (3) If an interim order is granted, it will be sent to the employer. The employer must inform affected employees by posting a copy of the interim order for as long as the order is in effect.
- (4) If an interim order is granted, the action will be published in the manner required by OAR 437-001-0410(1).
- (5) If the interim order is denied, the employer will be given prompt written notice of, and the reasons for, the denial.
- (6) An interim order or a written denial must include notice of the employer's and employees' appeal rights as contained in ORS 654.056 and OAR 438-085-0006 through 438-085-0870.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12

**437-001-0410 Administrative Action on Variance Application**

- (1) After a variance request is determined to be complete and procedurally adequate, as provided in OAR 437-001-0400, Oregon OSHA will publish the request for one day in at least one daily newspaper with general circulation throughout Oregon. The notice will include:
  - (a) The name of the applicant;
  - (b) The rule, also identified by number, from which the variance is sought;

- (c) A brief description of the variance request;
  - (d) Notice of opportunity for public comment and hearing;
  - (e) Information on how interested persons may learn of Oregon OSHA's decision on the variance application; and
  - (f) The address of the Oregon OSHA office from which further information may be obtained.
- (2) Oregon OSHA may conduct an on-site review of the equipment or processes involved in the requested variance.
- (3) A variance, if granted, will have no retroactive effect. It will not be the basis for amending or withdrawing a citation.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order 33-1974, f. 9-5-74, ef. 9-26-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

## **437-001-0411 Hearings for Variance Applications**

Affected employers or employees will be given the opportunity to request a hearing on an application.

- (1) Request for hearings must be made in the following manner:
- (a) The request must be made within 30 days of publication of the application;
  - (b) A request must be made to Oregon OSHA and must contain:
    - (A) A concise statement of facts showing how the employer or employee would be affected by the relief applied for;
    - (B) A statement opposing any or all portions of the application, and a concise summary of the evidence supporting each item opposed; and
    - (C) Any views or arguments on any issue of fact or law presented.
- (2) A notice of hearing will be given to affected persons that contains:
- (a) Time, place, and nature of hearing;
  - (b) Legal authority under which the hearing will be held; and
  - (c) The issues to be discussed.

- (3) The hearing will be conducted in a manner that will allow all affected persons to submit information on the application.
- (4) All information submitted will be evaluated at the hearing and a determination made on the merits of the application.

Stat. Auth.: ORS 654.025(2) and 656.726(4).  
Stats Implemented: ORS 654.001 through 654.295.  
Hist: WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.  
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.  
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.  
OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.

### **437-001-0415 Criteria for Variance Approval**

- (1) An application for a permanent variance will be granted only if the applicant demonstrates, and Oregon OSHA determines, including consideration of employee or public comments, that the conditions, practices, operations, or processes proposed by the applicant will provide employment that is as safe and healthful as that obtained by compliance with the rule.
- (2) An application for a temporary variance will be granted only if the applicant demonstrates, and Oregon OSHA determines, including consideration of employee or public comments, that the applicant is unable to comply with a new rule by its effective date, that the applicant has an effective program for complying with the rule by the agreed upon timetable, and that all available steps are being taken in the interim to safeguard employees against the hazard covered by the rule.
- (3) An application for a research variance will be granted only if the applicant demonstrates, and Oregon OSHA determines, including consideration of employee or public comments, that the conditions, practices, operations, or processes used adequately safeguard employees against the hazards covered by the rule, while demonstrating or validating new or improved safety or health techniques or products.

Stat. Auth.: ORS 654.025(2) and 656.726(4).  
Stats Implemented: ORS 654.001 through 654.295.  
Hist: WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.  
WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.  
WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.  
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.  
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.  
OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.

**437-001-0420 Decision on Variance Request**

- (1) If a variance is granted, an order of variance will be issued. The order will include:
- (a) The name of the employer to whom the variance is granted;
  - (b) The place of employment where the variance is applicable;
  - (c) The type of variance granted;
  - (d) The specific rule to which the variance applies;
  - (e) The alternative methods or safeguards to be used by the employer while the variance is in effect;
  - (f) Notice that the employer may be cited for any violation of the conditions established by the variance;
  - (g) Information of employees' right to appeal the variance decision; and
  - (h) Information that if no appeal is filed within 30 days of receipt of the order, the variance approval becomes final and subject to review only as specified in OAR 437-001-0430.
- (2) If a variance is denied, a notice of denial will be issued. The notice will include:
- (a) The reasons for the denial;
  - (b) Employer and employees appeal rights;
  - (c) Information that if no appeal is filed within 30 days of receipt of the notice, the variance denial becomes a final decision without affecting the employer's right to submit another application; and
  - (d) Information advising the employer that a compliance inspection may be made within 30 days.
- (3) A copy of any variance order or denial must be posted for 20 days.
- (4) A variance that has been denied, or that has expired, may be followed by a compliance inspection within 30 days.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.326, 654.412 through .423, 654.991.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 10-2009, f. 10/5/09, ef. 10/5/09.

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

### **437-001-0425 Employer's Duty to Meet Variance Terms**

- (1) A variance is not effective until the employer has complied with its terms and requirements.
- (2) An employer may be cited for violating the terms of a variance. (See ORS 654.022)

Stat. Auth.: ORS 654.025(2) and 656.726(3).  
Stats. Implemented: ORS 654.001 through 654.295.  
Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.  
WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.  
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.  
WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.  
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

### **437-001-0430 Modification or Revocation of a Variance**

- (1) A variance may be modified or revoked after it has been in effect 6 months or longer upon:
  - (a) Receiving a request from the employer, an affected employee, or an employee representative containing:
    - (A) The name and address of the applicant;
    - (B) A description of the relief which is sought;
    - (C) A statement setting forth with particularity the grounds for relief;
    - (D) If the applicant is an employer, a certification that the applicant has informed affected employees of the application by:
      - (i) Giving a copy to their authorized representative;
      - (ii) Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and
      - (iii) Other appropriate means.
    - (E) If the applicant is an affected employee, they must provide a copy of the application to the employer; and
    - (F) Any request for a hearing, as provided for in these rules.
  - (b) Notification and confirmation that the alternative methods or safeguards required by the variance are not fully complied with; or

- (c) An Oregon OSHA review.
- (2) Oregon OSHA will post the proposed modifications or revocations on the Oregon OSHA web site at [osha.oregon.gov](http://osha.oregon.gov) for 30 days. The posting will include:
- (a) The name of applicant;
  - (b) The rule, also identified by number, from which the variance had been granted;
  - (c) A brief description of the variance and why relief is sought;
  - (d) Notice of opportunity for public comment and hearing and that a request for hearing will be made within 20 days of publication;
  - (e) Information on how interested persons may learn of Oregon OSHA's decision on the variance; and
  - (f) The address of the Oregon OSHA office from which further information may be obtained.
- (3) Oregon OSHA may conduct an on-site review of the equipment or processes involved in the proposed, revoked, or modified variance.
- (4) The employer and affected employees will be advised in writing of modification or revocation of the variance. The modification or revocation order will include:
- (a) The name and address of the employer;
  - (b) The address and location of the place of employment involved;
  - (c) The rule, identified by number, from which the variance was granted;
  - (d) The type of variance issued;
  - (e) The reasons for modification or revocation of the variance; and
  - (f) The employer's and affected employees appeal rights.
- (5) Any request for a hearing will be made within 30 days of publication and must include a short and plain statement of:
- (a) How the proposed modification or revocation would affect the requesting party; and
  - (b) What the requesting party would seek to show on the subjects or issues involved.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.



WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.  
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.  
OR-OSHA Admin. Order 6-2003, f. 11/26/03, ef. 11/26/03.  
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.  
OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.

## **437-001-0435      Effect of a Variance Granted by the U.S. Secretary of Labor**

- (1) If an employer requesting a variance from an Oregon rule submits proof that a variance from an equivalent federal rule has been granted by the U.S. Secretary of Labor, the federal variance will be accepted in lieu of the information required by OAR 437-001-0400, Application for a Variance.
- (2) If an employer is cited for violating an Oregon rule equivalent to a federal rule for which a variance has been granted by the U.S. Secretary of Labor, and all conditions of that variance are being met, the Administrator will consider the federal variance as a possible defense against the citation.

Stat. Auth.: ORS 654.025(2) and 656.726(4).  
Stats. Implemented: ORS 654.001 through 654.295.  
Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.  
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.  
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.  
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.