



Oregon

John Kitzhaber MD, Governor

Department of Consumer and Business Services

Oregon Occupational Safety & Health Division (OR-OSHA)

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Brophy, Mills, Schmor, Gerking & Brophy, LLP
P O Box 128
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Dear Mr. Weaver:

Regarding your question about ORS 654.005(8)(b), there are three sources that we rely on to answer your question. They are: ORS 654.025(2) that empowers us to make rules, OAR 437-001-0025 that allows us to liberally construe our authority to accomplish the purposes of ORS 654 and Oregon OSHA Program Directive A-231 (NOTE: Originally this letter referenced Program Directive A-210 which has since been rescinded and accompanied this letter).

Oregon OSHA interprets ORS 654.005(8)(b) to apply only if the farmer is without employees for the entire year. If the legislature had intended further qualification based on time, we are confident they would have so stated. Instead, they chose the word "only" and we construe that to be a word indicating a certain degree of permanence. Further, there is a sound practical reason for this interpretation. Extrapolating your client's contention to the extreme, an employer who loses their only employee on Monday and can't hire a replacement until the following week would be exempt during that period of recruitment. This would create an intolerable situation for Oregon OSHA to meet its statutory obligation to assure employers provide a safe and healthy workplace.

You also asked a question about ORS 654.172 on inspection exemptions for agricultural employers under specified circumstances. We again interpret this to mean that exceeding the specified employment levels (10 or fewer permanent, year round employees, both fulltime and part-time, OAR 437-001-0057(2)) any time during the year disqualifies you for the exemption for that year.

For further information contact Oregon OSHA, Technical section at (503)378-3272. You're invited to see Oregon OSHA web pages at www.orosha.org.

Sincerely,

Marilyn K. Schuster, Policy Manager
Oregon Occupational Safety & Health Division