



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
Oregon Occupational Safety & Health Division (Oregon OSHA)

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Brad Nanke, Director of Safety & Training
Oregon Home Builders Association
2075 Madrona Ave SE, Suite 150
Salem, OR 97302

Dear Mr. Nanke:

David Davidson, on behalf of Oregon Home Builders Association, requested a clarification regarding the exception in Division 3/M Fall Protection 1926.500(a)(1):

“Exception: The provisions of this subpart do not apply when employees are making an inspection, investigation, or assessment of workplace conditions prior to the actual start of construction work or after all construction work has been completed.”

The following is Oregon OSHA’s interpretation of the rule exception applied to your questions.

Answers to the scenario questions:

- 1) *“A roofing estimator goes up on a roof to inspect the roof of a prospective customer and get a measurement of the roof to complete the estimate. Does this fit into the exception?”*

Yes, usually. Because the work involves a *prospective* customer and therefore roofing work has not begun, and assuming that no other construction activities are underway at the worksite location, then yes, the exception would apply.

- 2) *“A framing supervisor goes up on a roof during lunch when all workers are off the roof to inspect work. Does this task fit into the exception?”*

No. This inspection did not occur before the framing itself begun, nor has all construction work been completed. This supervisor would need to use fall protection in accordance with the standard.

- 3) *“An HVAC supervisor goes up on the roof to determine if the newly installed HVAC unit is functioning properly. Does this fit into the exception?”*

Yes. Assuming that all of the construction work is completed, including the construction work of other employers at the worksite location, and the supervisor is inspecting the final results of the installation, then the exception would apply.

- 4) *“A window estimator goes up on a roof to get the upper story window’s dimensions and to test to determine if the paint on the window frame has lead paint on it. Does this task fit the exception?”*

Yes, provided there are no other construction activities currently in progress at the worksite location.

In conclusion, should an employer intend to apply the exception to conduct an inspection, investigation, or assessment of workplace conditions before or after the start of their own work, they will not qualify for the exception when another employer’s construction activities are not completed in their totality. On a case-by-case basis, Oregon OSHA may consider a minimal (*de minimis*) violation when another employer’s construction activity occurs concurrently but there is clearly no risk created by that activity, based upon the circumstances of the exposure and the magnitude and proximity of the other employer’s construction activities. The exception in 1926.500(a)(1) will be evaluated based upon a narrow reading of the exception language, applicable to pre-work and post work situations.

Thank you for contacting Oregon OSHA with these questions. I hope this will serve as a guide for you when evaluating these scenarios in your workplaces.

Sincerely,



Trena VanDeHey, Standards & Technical Resources Manager
Oregon Occupational Safety & Health Division

cc: Dave Davidson

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