

**OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

PROGRAM DIRECTIVE

Program Directive: A-287

Issued: October 9, 2013

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- SUBJECT:** Victim's Family Communication: Oregon OSHA Fatality Inspection Procedures
- PURPOSE:** To provide guidance to ensure Oregon OSHA communicates its fatality inspection procedures to the victim's family and facilitates the exchange of information throughout the entire inspection process.
- SCOPE:** This applies to all of Oregon OSHA.
- REFERENCES:** CPL 02-00-153, Communicating OSHA Fatality Inspection Procedures to a Victim's Family, April 17, 2012.

Oregon OSHA Field Inspection Reference Manual (FIRM)
- BACKGROUND:** This document provides guidance for communication with the next of kin following a workplace fatality. Oregon OSHA places a high priority on fatality inspections, which demand a high degree of sensitivity and investigative accuracy. Only trained and experienced Oregon OSHA representatives should be assigned to interact with families of the deceased.
- DEFINITIONS:** Fatality: A worker death resulting from a work-related incident or exposure; in general, from an accident or an illness caused by or related to a workplace hazard.

Next of Kin: Individual, often a family member, listed as the emergency contact on the victim's employment records; another person identified by the employer if an emergency contact is not identified on the employment records or no such record exists; or a representative designated by the next of kin.

**COMMUNICATION WITH
THE NEXT OF KIN:**

Oregon OSHA places a high priority on communicating with families after a workplace fatality. Care must be taken to ensure sensitivity and tact is exercised during all communications. Interactions with the next of kin can

typically be accomplished by using a “three-phase approach,” which includes initial communication, follow-up communications throughout the inspection, and post-inspection communications. This will ensure that Oregon OSHA receives the necessary information about the victim, job history, co-workers, and keeps the next of kin informed from the beginning of the inspection and through the progression of the inspection until the case is closed or becomes a final order.

NOTE: Where Oregon OSHA is not able to identify the victim’s next of kin, fully document all attempts in the case file.

If the victim’s next of kin does not want to speak with Oregon OSHA, their wishes should be respected. However, the Oregon OSHA representative should notify their supervisor of the next of kin’s wishes and make a notation in the case file. The Oregon OSHA representative should provide the next of kin with their point of contact information.

NOTE: All communication with the next of kin, including the Statewide Safety/Health Enforcement Manager condolence letter, will be **contained or noted** in the case file.

A. Initial communication with the next of kin

Prior to any initial communication (written or verbal), Oregon OSHA will verify, through interviews with the employer and/or local authorities, that the next of kin has been previously notified of the fatality.

1. Condolence letter: The first Oregon OSHA contact with the family should be the initial condolence letter, (Appendix A). After receiving next of kin information, the Statewide Safety/Health Enforcement Manager Condolence Letter, will be sent within 10 calendar days after notification of a fatality.

NOTE: In some circumstances, it may not be appropriate to follow these procedures (e.g., in the case of a small business, the owner or supervisor may be a relative of the victim). The form letter should be modified to take any special circumstance into account or a form letter should not be sent. If a letter is not sent, explain the rationale in the case file.

2. Contacting the next of kin: After the condolence letter is sent, Oregon OSHA will contact, by telephone, the next of kin to request work-related information concerning the fatality and encourage the next of kin to contact Oregon OSHA with any additional information.

The Oregon OSHA representative should ensure the following is explained to the next of kin:

- a. Oregon OSHA inspects the worksites where fatalities have occurred to determine whether a violation of Oregon OSHA safety and health standards has occurred and what effect the alleged violation had on the accident.
- b. These inspections are most often limited to safety and health hazards associated with the fatality. The inspection may take up to six months to complete.
- c. If Oregon OSHA finds that the employer violated safety and health standards, the agency may issue citations against the employer. Oregon OSHA does not issue citations solely because there was a workplace fatality.
- d. Oregon OSHA will explain that the case file, after received and processed in Oregon OSHA's central office, will be made available to the next of kin after the employer has received their citation or if there is a determination there were no violations and a citation was not issued.
- e. Once a final order is issued, the next of kin will be afforded the opportunity to discuss the case with an Oregon OSHA representative.
- f. At any time during the inspection and throughout the inspection process, the next of kin may contact the local Oregon OSHA office to inquire about the status of the case or to ask questions.

An Oregon OSHA representative will contact the next of kin early in the inspection process. The representative will respond in a professional, courteous and timely manner regarding any questions or concerns raised by the next of kin during the investigation. The fatality inspection investigative process will be explained so that the next of kin understands the role of Oregon OSHA.

NOTE: During the initial conversation with the next of kin, Oregon OSHA must determine if it is the appropriate time to explain Oregon OSHA's fatality inspection process. If it is not the appropriate time, Oregon OSHA will inquire if there

might be a better time to talk and provide the next of kin with point of contact information, while briefly explaining the nature of future communications with the agency.

B. Follow-up communication with next of kin

Follow-up communications are vital to the exchange of information. These communications allow Oregon OSHA to provide updates on the status of the inspection and provide the next of kin with an opportunity to ask questions. This exchange should occur periodically until the inspection is completed and findings are communicated to the next of kin.

NOTE: Oregon OSHA may not divulge any privileged information (such as the names of potential witnesses) during the course of these discussions.

Oregon OSHA's commitment to exchange information with the next of kin will be as follows:

1. Updated information will continue on a periodic basis, as the Oregon OSHA representative deems appropriate.
2. Oregon OSHA will explain various aspects of the inspection, Oregon OSHA citations and penalties, the informal conference process, and Oregon Public Records Law issues.

C. Post-inspection communications

After the inspection, Oregon OSHA will make every effort to contact the next of kin by telephone to explain findings and address questions.

Depending on the case, Oregon OSHA may issue a press release. If a press release is planned, Oregon OSHA will make every attempt to notify the family before the information is released to the public. The public information officer will inform the appropriate statewide enforcement manager who will coordinate the attempt to notify the family by telephone. Oregon OSHA will also provide a copy of the press release to the family.

1. No Proposed Citations.

If citations are not issued, the Oregon OSHA representative will explain the findings of the inspection during the post-inspection communication. Additionally, the representative should be prepared to discuss and explain the following:

- a. Oregon OSHA does not issue citations solely because there was a workplace fatality.
- b. Oregon OSHA inspected the worksites to determine whether a violation of Oregon OSHA safety and health standards had occurred. The workplace inspection found no alleged violations of safety and health standards and, as a result, no citations were issued to the employer.
- c. Oregon OSHA should make the next of kin aware of the Oregon Public Records Law, as it pertains to Oregon OSHA's inspection file.
- d. Within ten calendar days of the closing conference, the case closure letter should be sent to the next of kin.

2. Proposed Citations.

After Oregon OSHA has received confirmation that the employer has received the citations, Oregon OSHA should begin post-inspection communications with the next of kin to explain the alleged violations, proposed penalties, any reduction factors, violation classification, abatement requirements, settlement procedures, and the Oregon Public Records Law requests as it pertains to Oregon OSHA's inspection. Oregon OSHA should explain that communications between Oregon OSHA and the next of kin will continue until the case becomes a final order. Periodic communications with the next of kin should reflect a time agreed to between the Oregon OSHA representative and the next of kin.

NOTE: Oregon OSHA should emphasize that although civil penalties were proposed, penalties under the Oregon Safe Employment Act are not based on the occurrence of a fatality. Instead, severity of injury and probability of occurrence are considered in determining the penalty amount.

3. Final Order or Settlement Agreement.

Upon receipt of a final order resulting from a signed settlement agreement, Oregon OSHA should inform the next of kin of the settlement and explain the outcome if there were changes to the original citation. Issues

associated with the settlement agreement (i.e., amended abatement dates, reclassification of violations, and the modification or withdrawal of a penalty, a citation, or a citation item) may be discussed.

History: Issued 10-9-2013 Revised 6-3-2014

APPENDIX A

INVESTIGATION: STATEWIDE SAFETY/HEALTH ENFORCEMENT MANAGER CONDOLENCE LETTER

Dear _____:

On behalf of the Oregon Occupational Safety and Health Division (Oregon OSHA), I would like to express our sympathy to you, the family, and the friends of (victim name).

Our (specific field office) is conducting an investigation. If you have any questions, or if you or someone else has information pertinent to the investigation, please call (investigating officer) at (field office phone number).

The final report can be released after the report is received in our Central Office and there are no violations or (employer name) has received the citation. A citation is issued if the investigation determines statutes and/or administrative rules governing safety and/or health in the workplace have been violated. Please call the Records Management Unit at (503) 378-3272 if you desire a copy of the report, appeal letters, results of informal settlements, or any other actions taken as a result of this investigation.

Oregon OSHA inspects the worksite(s) where fatalities have occurred to determine whether a violation of Oregon OSHA safety and health standards has occurred and what effect the alleged violation had on the accident. These inspections are most often limited to safety and health hazards associated with the fatality and may take up to six months to complete. If we find that the employer violated safety and health standards, the agency may issue citations against the employer. Oregon OSHA does not issue citations solely because there was a workplace fatality. At any time during the inspection and throughout the inspection process, the next of kin may contact the local Oregon OSHA office to inquire about the status of the case or to ask questions. Upon issuance of a final order, the next of kin will be afforded the opportunity to discuss the case with an Oregon OSHA representative.

In addition, beneficiaries may be entitled to workers' compensation benefits. If you wish to initiate a claim, please contact the employer or their workers' compensation insurer. There are time limits for filing a claim. For assistance in understanding your rights, you may contact the Ombudsman for Injured Workers at (503) 947-7031 or (800) 927-1271 ext. 7031 to discuss your rights.

Again, I offer my sincere condolences.

Sincerely,

Statewide Safety/Health Enforcement Manager

cc: Ombudsman for Injured Workers

**NO INVESTIGATION: STATEWIDE SAFETY/HEALTH ENFORCEMENT MANAGER
CONDOLENCE LETTER**

Dear _____:

On behalf of the Oregon Occupational Safety and Health Division (Oregon OSHA), please accept my sympathy in the accident of (victim name).

Because of the nature of the fatality, it does not appear that the cause was a direct violation of our occupational safety and health rules. Therefore, an investigation will not be conducted at this time.

Beneficiaries may be entitled to workers' compensation benefits. If you would like to initiate a claim, please contact the employer or their workers' compensation insurer. There are time limits for filing a claim. For assistance with understanding your rights, you may contact the Ombudsman for Injured Workers at (503) 947-7031 or (800) 927-1271 Ext. 7031.

If you have any questions or if you or another family member has information pertinent to the accident, please call me at (503) 378-3272.

Again, I offer my sincere condolences to you and your family.

Sincerely,

Statewide Safety/Health Enforcement Manager

cc: Ombudsman for Injured Worker

APPENDIX B

INSPECTION FINDINGS AND NEXT OF KIN CLOSURE LETTER – NO PROPOSED CITATIONS

Dear _____:

We are writing to share with you the findings of the recent Oregon Occupational Safety and Health Administration (Oregon OSHA) inspection into the death of [victim's name].

Oregon OSHA inspects the worksites where these tragedies have occurred to determine whether a violation of Oregon OSHA safety and health standards occurred. These inspections are most often limited to the area in which the fatality occurred. If OR-OSHA finds that the employer violated safety and health standards, the agency may issue citations against the employer. However, OR-OSHA does not issue citations solely because there was a workplace fatality.

Oregon OSHA inspected the worksite(s) of [**name of company**] to determine whether a violation of Oregon OSHA safety and health standards related to the accident had occurred. The workplace inspection found that no alleged violation(s) of safety and health standards had occurred related to the accident, and therefore, no citations or proposed penalties were issued to the employer.

I would like to express to you my deepest sympathy. If you have any questions about our inspection please contact:

Local Field Office Manager
Street Address
City, State ZIP
Telephone:
E-Mail:

The Oregon Public Records Law governs the release of information concerning accident inspections conducted by Oregon OSHA. The releasable portions of the file will be made available to you upon request.

Sincerely,

Statewide Safety/Health Enforcement Manager

INSPECTION FINDINGS LETTER – PROPOSED CITATIONS

Dear _____:

We are writing to share with you the findings of the recent Oregon Occupational Safety and Health Administration (Oregon OSHA) inspection into the death of [victim’s name].

Enclosed is a copy of the citations and proposed penalties against **[name of company]**. Oregon OSHA citations state the alleged violations of safety and health standards at the worksite.

We would like to emphasize that under the Occupational Safety and Health Act, penalties that Oregon OSHA imposes are not based on the occurrence of a fatality. Instead, the gravity of the violation, which factors in severity of injury and probability of occurrence, is one consideration in penalty calculation. Penalties may be reduced from the maximum allowable by law based on the company's size.

I would like to express to you my deepest sympathy. If you have any questions about our inspection or any of the information enclosed, please contact:

Local Field Office Manager
Street Address
City, State ZIP

Telephone: _____

E-Mail: _____

The Oregon Public Records Law governs the release of information concerning accident inspections conducted by OR-OSHA. The case file will be made available to you upon request.

Sincerely,

Statewide Safety/Health Enforcement Manager

APPENDIX C

CLOSURE LETTER – PROPOSED CITATIONS

Dear _____:

We are writing to share with you the post-inspection and abatement results of the Oregon Occupational Safety and Health Administration (Oregon OSHA) inspection of (COMPANY NAME), and to inform you that the case has been closed as of the (FINAL ORDER DATE). (INSERT FINAL ORDER/ABATEMENT SUMMARY)

We would like to emphasize that under the Occupational Safety and Health Act, penalties that Oregon OSHA imposes are not based on the occurrence of a fatality. Instead, the gravity of the violation, which factors in severity of injury and probability of occurrence, is one consideration in penalty calculation.

The Oregon Public Records Law governs the release of information concerning accident inspections conducted by Oregon OSHA. The case file will be made available to you upon request.

If you have any questions about the inspection, please contact me.

Sincerely,

Statewide Safety/Health Enforcement Manager