

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

PROGRAM DIRECTIVE

Program Directive A-292
Issued January 27, 2014
Revised December 3, 2014

SUBJECT: Insurers, Self-Insured Employers and Self-Insured Group Inspections

AFFECTED STANDARDS/

DIRECTIVES: ORS 654.097 and OAR 437-001-1005 through 1065. [Oregon OSHA Field Inspection Reference Manual \(FIRM\)](#).

PURPOSE: Insurers, self-insured employers and self-insured groups will be inspected to ensure compliance with ORS 654.097 and OAR 437-001-1005 through 1065. This policy provides guidelines for conducting the inspections.

BACKGROUND: The Oregon legislature first enacted Senate Bill 440 in the 1975 session that in part required insurers to furnish occupational safety and health consultative services to their insureds. In 1991 the Workers' Compensation reform strengthened the law to include requirements for insurers to conduct workplace surveys, review injury and illness records, and develop plans for improvement based on loss records. It also required insurers to provide an annual notification of services.

ACTION: Compliance officer should evaluate compliance with these rules when done in conjunction with a routine comprehensive inspection. When an inspection is initiated on the basis of a complaint or referral, the compliance officer will limit the scope of the inspection to the complaint or referral items. For general inspection procedures refer to the Oregon OSHA Field Inspection Reference Manual (FIRM).

A. INSURERS

1. Insurer Inspections.

The compliance officer may inspect active insurance companies doing business in Oregon. The inspection should include interviews with targeted employers of the insurer to verify services provided, OAR 437-001-1025 through 1040.

Besides the normal inspection procedures in the Oregon OSHA FIRM, the compliance officer will:

- a. Explain that some of the insurers' employers may be called and questioned regarding the effectiveness of the insurers' loss prevention services and notifications sent to the employer by the insurer.

- b. Review the insurer's notification of services letter.
- c. Randomly review employer files to determine if the service provided was timely, adequate and fulfilled the scope of the rules. This includes the qualifications of the personnel conducting the consultation, what type of recommendations were made, if there was an offer to provide a follow-up consultation, and if there was a written report with an agreed upon implementation schedule.

B. SELF-INSURED GROUP

1. Self-Insured Group Employer Inspections.

During routine self-insured group inspections, it will be established by the compliance officer if loss prevention services were offered to its members, OAR 437-001-1050 through 1060. If services were offered, the compliance officer will determine if the services were adequate.

Besides the normal inspection procedures in the Oregon OSHA FIRM, the compliance officer will:

- a. Ensure loss prevention assistance is made available to each group location.
- b. Randomly review employer files to determine if loss prevention services were provided timely.
- c. Ensure the self-insured group has assisted each member of the group in developing and implementing their loss prevention effort.
- d. Ensure the group maintains records that document the assistance provided to each member of the group.

C. SELF-INSURED AND GROUP MEMBERS

1. Self-Insured and Group Member Inspections.

When conducting a scheduled, comprehensive inspection of a self-insured employer or a member of a self-insured group, an inspection will be conducted and an evaluation of the requirements of OAR 437-001-1050 through 1060.

During the inspection, the compliance officer will:

- a. Ensure the self-insured employer or group member has established and implemented a written occupational health and safety loss prevention program for each establishment. (See appendix A for sample program) Note: A loss prevention program encompasses safety and health components, similar to those required in the standards. The compliance officer should look at employer efforts to identify and control safety and health hazards. At a minimum, those efforts are listed in 437-001-1060, see c. 1 thru 10.
- b. Ensure managers and workplace locations are informed of the availability and the process for requesting loss prevention assistance.
- c. Ensure the self-insured employer or group member has implemented a loss prevention effort for each location, which identifies and controls all reasonably

discoverable occupational safety and health hazards and items not in compliance with occupational safety and health laws, rules and standards. Note: It is acceptable for a Corporation to establish and implement a corporate wide written occupational health and safety loss prevention program that applies to each establishment. What compliance officers should look for is how the loss prevention program is communicated and implemented at each establishment/location and whether hazards are identified and controlled.

The loss prevention effort must include the following:

1. Management commitment to health and safety.
2. An accountability system for employer and employees.
3. Training practices and follow-up.
4. A system for hazard assessment and control.
5. A system for investigating all recordable occupational injuries and illnesses that includes corrective action and written findings.
6. A system for evaluating, obtaining, and maintaining personal protective equipment.
7. On-site, routine industrial hygiene and safety evaluations to detect physical and chemical hazards of the workplace, and the implementation of engineering or administrative controls.
8. Evaluation of workplace design, layout and operation, and assistance with job site modifications utilizing an ergonomic approach.
9. Employee involvement in the health and safety effort.
10. An annual evaluation of the employer's loss prevention activities based on the location's current needs. Note: OAR 437-001-1060(10) requires an annual evaluation. It does not require that evaluation to be in writing, therefore a document is not required. The rule is also silent about who can do the evaluation. The annual evaluation of the employer's loss prevention activities depends on the location's (establishment's) safety and health issues, what has been put in place to prevent injuries and illness, and if these prevention efforts are in compliance with safety and health standards. How the evaluation takes place and the complexity of the evaluation is up to the entity.

D. PENALTY CRITERIA

ORS 654.086(1)(i) states, "Any insurer or self-insured employer who violates any provision of ORS 654.097, or any rule or order carrying out ORS 654.097, shall be assessed a civil penalty of not more than \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three-month period. Each violation, or each day a violation continues, shall be considered a separate offense."

The compliance officer will recommend penalty amounts (see table below) after reviewing the findings of the inspection based on the criteria listed in 1 thru 9 on page 4.

	First Instance	Second Instance	Third Instance
437-001-1020(1)-(4)	\$250	\$ 5 0 0	\$2,000
437-001-1020(5)	\$500	\$1,000	\$2,000
437-001-1025	\$500	\$1,000	\$2,000
437-001-1025(1)(a)-(e)	\$250	\$ 5 0 0	\$2,000
437-001-1030	\$500	\$1,000	\$2,000
437-001-1035(1), (3)-(5)	\$500	\$1,000	\$1,000
437-001-1035(2)(a)-(j)	\$100	\$ 5 0 0	\$1,000
437-001-1040	\$500	\$1,000	\$2,000
437-001-1050	\$500	\$1,000	\$2,000
437-001-1055	\$500	\$1,000	\$2,000
437-001-1060(1)-(9)	\$100	\$ 5 0 0	\$1,000
437-001-1060(10)	\$250	\$ 5 0 0	\$2,000
437-001-1060(11)	\$500	\$1,000	\$2,000

1. Violations of registration by an insurer or self-insured employer, OAR 437-001-1020(1) through (4). \$250 first instance, \$500 second instance, \$2,000 third instance.
2. Violations of availability of loss prevention, loss control, or related records, OAR 437-001-1020(5). \$500 first instance, \$1,000 second instance, \$2,000 third instance.
3. Violations of notification of services, OAR 437-001-1025. When no notification of services were provided, \$500 first instance, \$1,000 second instance, \$2,000 third instance. When elements of 1025(1)(a) through (e) are lacking or omitted, the penalty will be \$250 for first instance violations.
4. Violations of request for services, OAR 437-001-1030. \$500 first instance, \$1,000 second instance, \$2,000 third instance.
5. Violations for loss prevention services, OAR 437-001-1035. For violations of 1035(1), (3), (4), and (5), \$500 first instance, \$1,000 second instance, \$2,000 third instance. For violations of 1035(2)(a) through (j), \$100 first instance, \$500 second instance, \$1,000 third instance.
6. Violations for required loss prevention services, OAR 437-001-1040. \$500 first instance, \$1,000 second instance, \$2,000 third instance.
7. Violations of self-insured and group self-insured loss prevention assistance, OAR 437-001-1050. \$500 first instance, \$1,000 second instance, \$2,000 third instance.
8. Violations of self-insured and group self-insured employer loss prevention programs, OAR 437-001-1055. \$500 first instance, \$1,000 second instance, \$2,000 third instance.
9. Violations of self-insured and group self-insured employer loss prevention effort, OAR 437-001-1060. For each element of the program lacking, (1) through (9), \$100 first instance, \$500 second instance, \$2,000 third instance. For the annual review, 1060(10), \$250 first instance, \$500 second instance, and \$2,000 third instance. For groups maintaining records, 1060(11), \$500 first instance, \$1,000 second instance, \$2,000 third instance.

All penalty amounts are used as a guide. The compliance officer may recommend a different penalty amount. The reason must be documented and approved by the field office manager. Rules which are violated but not listed in this guide will have the penalty established by the field office manager with a recommendation by the compliance officer.

Recommendations to the director for revoking or suspending certifications as self-insured employers or workers' compensation insurers may be made if repeated violations continue or if no intent to comply is established by the compliance officer. Any recommendation to revoke or suspend certification will first be discussed with the safety field operations manager.

E. OTIS Coding

For insurers, make the following entries in OTIS:

Related Activity: If the inspection is related to another inspection enter "I" and the OTIS number of the other inspection.

Optional Information: S 18 INSURER

For groups, make the following entries in OTIS:

Related Activity: If the inspection is related to another inspection enter "I" and the OTIS number of the other inspection.

Optional Information: S 18 GROUP

For self-insured and group members, make the following entries in OTIS:

Related Activity: If the inspection is related to another inspection enter "I" and the OTIS number of the other inspection.

Inspection Type: Programmed Related

Scope: Partial

Optional Information: S 18 SELF INSURED

EFFECTIVE

DATE: This directive is effective immediately and will remain in effect until canceled or superseded.

History: Issued 1-27-2014 Revised 8-14-14 and 12-3-2014

Appendix A Oregon OSHA Sample Written Program
Occupational Health and Safety Loss Prevention Program

The safety and health of employees is this company's foremost business consideration. No employee will be required to do a job that he or she considers unsafe. The company will comply with all applicable Oregon OSHA workplace safety and health requirements and maintain occupational safety and health standards that equal or exceed the best practices in the industry.

The company will establish a safety committee, consisting of management and labor representatives, whose responsibility will be identifying hazards and unsafe work practices, removing obstacles to accident prevention, and helping evaluate the company's effort to achieve an accident and injury free workplace.

The company pledges to do the following:

- Strive to achieve the goal of zero accidents and injuries.
- Provide mechanical and physical safeguards wherever they are necessary.
- Conduct routine safety and health inspections to find and eliminate unsafe working conditions, control health hazards, and comply with all applicable Oregon OSHA safety and health requirements.
- Train all employees in safe work practices and procedures.
- Provide employees with necessary personal protective equipment and train them to use and care for it properly.
- Enforce company safety and health rules and require employees to follow the rules as a condition of employment.
- Investigate accidents to determine the cause and prevent similar accidents.
- Evaluate workplace design, layout, and operation using an ergonomic approach.
- Conduct an annual evaluation of the company's loss prevention activities based on the location's current needs.

The company recognizes that managers, supervisors, and all other employees share responsibility for a safe and healthful workplace.

- Management is accountable for preventing workplace injuries and illnesses. Management will consider all employee suggestions for achieving a safer, healthier workplace. Management will also keep informed about workplace safety and health hazards and regularly review the company's safety and health program.
- Supervisors are responsible for supervising and training workers in safe work practices.
- Supervisors must enforce company rules and ensure that employees follow safe practices during their work.
- Employees are expected to participate in safety and health program activities including immediately reporting hazards, unsafe work practices, and accidents to supervisors or a safety committee representative; wearing required personal protective equipment; and participating in and supporting safety committee activities.

For loss prevention assistance contact _____ at phone:

Company owner's signature: _____