



**Clarifying the Relationship between Oregon OSHA's Temporary COVID-19 Rulemaking  
and other Ongoing Oregon OSHA Rulemaking Activities**

Oregon OSHA has received requests to clarify the relationship (if any) between the current public health emergency, our current temporary rulemaking activities to address that emergency, and at least two other rule proposals that are currently in the final days of a formal public comment period.

**COVID-19 Temporary Rulemaking**

With the draft made available later today, Oregon OSHA will have circulated a total of four public drafts over the four-month period since we announced that we would be pursuing temporary rules to address the COVID-19 public health emergency. We plan to take written stakeholder comments on that final draft between now and the end of the day on Friday, October 30, and to adopt the rule some time the week of November 2. That rule will take effect 10 days after adoption (although several specific items must be completed between one or two months after adoption, depending upon the specific issue). It will remain in effect 180 days from adoption, unless it is repealed sooner. We will immediately begin working on a permanent infectious disease rule that will include intermediate requirements specific to COVID-19 – that rulemaking will be subject to the full permanent rulemaking process required by the Administrative Procedures Act, including public comment and public hearings before a final decision is made.

Information about that rulemaking – including today's draft, when it is finalized– can be found at <https://osha.oregon.gov/rules/advisory/infectiousdisease/Pages/default.aspx>.

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**Penalties – Increasing Minimum and Maximum Penalties**

At the same time – and completely unrelated to the COVID-19 pandemic or the COVID-19 temporary rulemaking, Oregon OSHA is coming to the end of an eight-month period of public comment on changes to the existing penalty rules, including a modest increase in the maximum penalties that aligns those penalties with federal OSHA as directed by both Congress and the Oregon Legislative Assembly.

These rules were first proposed on February 26, 2020, with public hearings scheduled in March and April. As the COVID-19 emergency unfolded, Oregon OSHA issued a new proposal that was identical to the first but that extended the comment period. On July 30 and July 31, 2020, Oregon OSHA yet again issued the same proposal and extended the comment period through October 30, 2020 (and that scheduled hearings in late September and early October). That rule record remains open and will be open through October 30.

Both the rulemaking notice and the text of the rule can be found under the notice labeled “\*Re-Proposed\* Increase of Certain Minimum and Maximum Penalties for Alleged Violations.” <https://osha.oregon.gov/rules/making/Pages/proposed.aspx>.

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**Employer Knowledge/Employer Responsibility**

The Employer Knowledge rulemaking has been on a similar time frame as the Penalties Rulemaking, but they are actually two distinct rulemaking proposals.

In this rulemaking, Oregon OSHA proposes to add two definitions and a paragraph to the Division 1 rules. The Oregon Supreme Court in *CBI Services v. Oregon OSHA* determined that Oregon OSHA needs to more clearly define how “reasonable diligence” and “unpreventable employee misconduct” are interpreted and applied in enforcement activities and Oregon OSHA believes that such guidance is most appropriately provided through an administrative rule. The proposed additions to the rules are to clarify in general how Oregon OSHA assesses an employer’s reasonable diligence, what constitutes unpreventable employee misconduct, how Oregon OSHA assesses an employer’s knowledge of a violation, and when an employer is and is not responsible for a violation that has occurred on its worksite.

After spending several years developing the proposal, Oregon OSHA is coming to the end of an eight-month period of public comment on these proposed changes.

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Both the rulemaking notice and the text of the rule can be found under the notice labeled “\*Re-Proposed\* Amendments in General Administrative Rules to Clarify Employer’s Responsibilities.”

<https://osha.oregon.gov/rules/making/Pages/proposed.aspx>.