

Oregon OSHA
Construction Advisory Committee
Tuesday, September 1, 2020

Meeting Minutes

Attendees:

Al Lee	Dennis Cox	Lynn Craig
Alta Schafer	Diana Lowe	Mary Lou Wilson
Amee Standing	Doug Pettyjohn	Matt Kaiser
Anna Kelly	Eden Berestoff	Michael Wood
Barb Epstien	Emily Crews	Nathan Taylor
Barbra Hanley	Eric Bongen	Nevin Mclain
Barry Moreland	Eric Fullan	Paul Magrone
Bill Haskins	George Goodman	Phil Wentz
Braxton Chambers	Holt Andron	Renee Stapleton
Bryan Ortiz	Jared Ottinger	Robert Miller
Bryon Snapp	Jeff Hooper	Roy Shwago
Chris Grover	Jenna Shoemaker	Ryan Leffel
Chris Ottoson	Jeremy Lawson	Sara Curie
Clark Vermillion	Joaquin Diaz	Sean Tinker
Connie Graybeal	Julie Love	Soren Bjerregaard
Dale Lindstrom	Kailyn Tacy	Stephen Heaven
Dave McLaughlin	Kelton Hague	Steve Huson
David Davidson	Kirsten Adams	Tosha Gilpin
Dede Montgomery	Lane Ellison	Tosha Gilpin
Dennis Barlow	Lisa Pickert	Troy Stroud
Denis Bonin	Lisa Wisler	

The meeting was called to order by Nathan Taylor.

The August meeting minutes were approved as amended.

It was asked if AGC can record the meetings. The group discussed and decided that only the rulemaking discussion will be recorded, and we would move the rulemaking discussion to the top of the agenda.

Continuing Business:

Status of Rule Making:

[Employer Knowledge](#) and [Penalty Updates](#)

The public hearings have been moved to September 2020. Public comment is open until October 30, 2020.

This open comment period will have been open for eight months by the October deadline. The public hearings will be held virtually with the option of in person comments being made by appointment and in a controlled setting to limit the spread of Covid-19.

~ When looking up the Hearing and Public Comment dates for the "Employer Knowledge Rule" I found the OR OSHA website to be confusing as the "Employer Knowledge Rule" is titled "General Administrative Rules to Clarify Employer's Responsibilities". Perhaps this should be renamed to include "Employer Knowledge" in the title.

Renee responded, Thank you for raising the concern. Unfortunately, we had to title the rule to match the section title that the rule is affecting. When we are discussing the rule, we often reference it as "Employer Knowledge" and that is something we should be more precise about.

Manganese has an effective delay date of July 1, 2021.

Infectious Disease Rule Making:

Oregon OSHA is in the process of creating an emergency temporary rule and a permanent rule on Infectious Diseases. [Matt Kaiser](#) is the contact person for this rule. The public comment period for the temporary rule closes on September 7.

Discussion~

George expressed some of the concerns that he has heard on the Employer Knowledge, and Penalty, and Covid rulemaking. These concerns included: Oregon OSHA's temporary Infectious Disease for all workplaces has a public comment period that is totally alien to the regulated community and that it is on a fast track, because it is an emergency rule, and has the most controversial paid leave and benefits continuation. For comments to be useful people need to understand the thoughts on what it means.

Michael added that because it is not a permanent rulemaking we have more latitude and we have scheduled a series forums to answer any questions, and we did answer a number of these questions in the forums, and to allow the regulated community to understand our thinking behind it the draft.

George asked why Oregon OSHA needs to regulate paid leave and benefit continuation?

Michael said the rational is if employees to be protected in the worksite, it is important for employees who have been exposed or who are sick and are subject to isolation or quarantine orders from a medical provider or public health official share that information with their employer because we are trying to prevent workplace outbreaks. And the best way to prevent these outbreaks is to identify the potential cases and keep them out of the work place. Employees aren't likely to report if they are feeling good but a medical provider said they need to quarantine. They don't get paid, so that creates a disincentive to their reporting. The purpose of the requirement is to ensure that that potential safety and health hazard is reported. For the most part employers are covered by the FFCRA which provides sick leave benefits, and we aren't requiring those employers to do more. For those employers who are not covered by the FFCRA they would be required to provide up to 80 hours of sick leave if ordered by a doctor or public health official. There is an exemption for employers who experience a 20% significant revenue drop in a certain time frame.

Dede shared a link about paid leave policies: <https://www.kff.org/coronavirus-covid-19/issue-brief/coronavirus-puts-a-spotlight-on-paid-leave-policies/>

Tony added paid time off to quarantine could be an incentive not to follow the COVID-19 guidelines outside of the workplace

Dale added the FFCRA Act Michael referred to expires on 12/31/20. If that is not extended does the OR-OSHA temporary rule expire?

Dave said no, our rule is not tied to the FFCRA. But it is something to look into.

Dennis shared that the proposed COVID rule is presumptive and I don't believe employers should bear the burden for an exposure which - most likely - occurred away from the workplace. Workplace exposure, if evident, is a Workers Compensation issue and should be managed through that channel.

Bryan added that in his opinion, if the paid leave portion remains in the temporary rule it should be contingent on the FFCRA act so that if it expires on 12/31/2020 so will that section of the rule.

George is concerned that if they get Covid again, won't they not say anything to their employer that time? Oregon OSHA is stepping into BOLI territory. What authority does OSHA have to do this?

Michael said that to protect employees in the workplace we believe we have the authority. There is a limit of how much we are prepared to ask the employers to cover.

George added that by ordering employers to pay leave, you are triggering a workers compensation claim.

Michael said that we do intend this to trigger a workers comp claim, it doesn't depend on a finding of work relatedness.

Andy said that what bothers him is that OSHA can dictate that employers give 2 weeks off for people who may have gotten it at the beach and not at work.

Michael clarified that it is not based on a determination that it happened on the job, it is based on a determination that they present a potential risk to their co-workers on the job.

Eric added that just because you have the authority, doesn't mean you should use it.

George asked why do your rules say individuals and employees limited to employees in the workplace.

Michael clarified that individuals is a source of exposure.

George added that in 2aA: workplaces, you say worker and individual and you don't say employee anywhere.

Kristen asked if general contractors are responsible for the subcontractors.

Michael said that it is in our existing rules- requirements multi-employer worksite guidance.

Kristen asked if the general contractor would need to have their social distancing officer monitor the subcontractors?

Michael said no, they would need to have their own social distancing monitor.

*Michael had to leave the meeting for another meeting.

Eric B. said that he didn't see any language of when this is in effect and they are no longer active.

Dave said that the temporary rule can only be in effect for 180 days and we can't do another temp rule after with similar rules in it. We can replace it with a permanent rule, or we can pull the temporary rule. We are starting the process of creating a permanent rule.

Eric asked if the rule be removed if this Covid-19 goes away?

Dave said no, because this is for an infectious disease, not covid-19 specific. The temporary rule can be repealed if the COVID-19 pandemic is no longer an issue. In regards to the permanent rule that will begin development will be on a broader perspective of infectious disease. If there are provisions relating specific to COVID-19 in the permanent rules, they can be repealed when the public emergency subsides.

George asked if we received input from the Department of Justice as to the authority of the agency to order paid leave and benefit continuation?

Dave did not know the answer and referred him to Michael.

George asked with regard to the employer knowledge rule, can you explain to the group whether the hearings that you are going to have will have give-and-take opportunities for members of the regulated community to state their positions.

Dave said when we do public hearings we are there to receive comments from our stakeholders. While we have a brief explanations at the beginning we have those Q&A's and discussions. But we are there to listen and not to talk.

George asked so employers don't get a say in anything? And will they not say why the agency's thoughts have changed?

Dave: We have had multiple discussions, with multiple groups, on multiple occasions in the time since we first proposed these rules. We have talked about our thinking. We do answer all the questions/comments in a document called the summary of agency decisions.

George said that in 2014 Michael wrote a memo on his goals and specifically says that supervisors knowledge will be imputed to employers where appropriate, but only where appropriate. And I believe that is a quote. So from 2014 to 2020 and actually only in the last year, that approach has changed from the knowledge of supervisors will be attributed to employers where appropriate but only where appropriate to the knowledge of supervisors will always be attributed to the employer, and that change is one that has never been discussed in any meeting that I have been in. It was not in the previous versions.

Dave said that as far as additional changes it has not changed significantly in the last few years. There were some changes in the earlier various and we made those changes as requested. We are taking input until October 30, 2020.

Eric asked a question on facial coverings

Dave said to mask up if only working within 6 feet for more than 5-30 minutes.

George asked about the penalty rule, giving Michael Wood authority to issue maximum penalties, what is the rational for going beyond what Federal OSHA is doing?

Dave said that this rule has been going on for so long, and we have had turn around with in the unit that he doesn't remember the history.

In the occasions where the discretionary has been used, it has not been used to the maximum penalty amount.

Lessons Learned:

[Triax Trace Tags](#)- there is a company using these onsite and have modified it to each person. It notifies with an audible sound if the get within 6 feet of each other and it tracks data for contact tracing. The original design of the product was for falls, but they modified it for Covid-19.

AIHA – created a document that helps identify high exposure tasks and come up with a plan. https://aiha-assets.sfo2.digitaloceanspaces.com/AIHA/resources/Guidance-Documents/Focus-on-Construction-Health-COVID-19_AIHAGuidanceDocument.pdf

Monthly Accidents and Fatalities Report:

If there is an accident or fatality incident that you would like more information on let Nathan and Jeff know so we can track it and can discuss once the case is able to be discussed.

The following is preliminary information as reported at the time of the accident intake.

Accidents

1. August 28th Bend. The employee was standing on bottom cord of a truss (approx. 3 feet off the ground) attempting to apply rigging onto the roofing section. The employee slipped off the bottom cord of the truss and it is believed that the employee's leg struck the bottom cord resulting in a broken femur.
2. August 27th, Eugene. While using a boom truck to pull a pump and pipe from a well, the boom made contact with a 12,000 volt overhead electrical line resulting in burns to the left hand and foot.
3. August 11th, Medford. While rolling trusses on a new hotel, a worker fell when the worker's rope grab or lanyard came undone from anchor point or snapped causing worker to fall to ground resulting in broken ribs and a collapsed lung.
4. August 24th Oregon City
The employee fell of 10 ft ladder working at a residential house. He broke his right shoulder and 3 ribs on his right side.
5. August 17th, Hillsboro
Iron Worker making a connection with a cross beam got his left thumb caught between two pieces of steel I beams, crushing his thumb.
6. August 11th, Tigard
Employee was tightening an awning cable doing warranty work and fell approximately 17 feet from a ladder resulting in a broken leg.

7. August 4th, Hillsboro

An employee was hit in the head with a 200 pound beam. The beam fell from 10-12 feet and struck the employee in the head. The employee was found unconscious and was unconscious when first responders arrived.

8. August 13th, Salem

Employee fell through the roof at a 22' to a lower level while going to lunch resulting in broken bones.

9. August 12th Forest Grove

A loaded dump truck was driving from the rock pit. The vehicle may have lost brakes, the vehicle entered a roadside ditch, the vehicle then crossed the road and tipped onto the passenger side sliding and rolling onto its driver side resulting in head lacerations.

Fatalities

1. August 25th Tillamook

Timber falling. Accident occurred while falling an alder tree. It snapped, the victim ran and fell, tree hit him in the head. Cutting partner witnessed the accident. Radio was used to call Dept of Forestry which was able to make contact first responders. Hard hat was worn. 30 year old male.

2. August 23th, Salem

Employee was unloading newspapers and the truck started to pull away. The employee grabbed a hanging rope and did not fall. He did not seek treatment. Subsequently he passed away on the morning of 8/25 and the employer was advised by the medical examiner that incident was a factor in the death. 58 year old male.

3. August 24th, Mt Hood National Forest

Victim was flying a K-Max Helicopter hauling a water bucket to dump water on a wildland fire. During the operation the helicopter crashed. Victim died in the crash. 40 year old male.

4. August 28th, Hillsboro

Employer is assuming the employee had a possible heart attack while on the job. The employee had started yawning excessively and suddenly collapsed. AED/CPR were administered, the employee was revived and transported to the hospital. After the employee left the work site, they are unable to get any more information. At this time it is not confirmed that the employee was admitted, but it is assumed based on the severity of the condition of the employee while on site. UPDATE: 08/28/20 employee passed away. 41 year old male.

5. August 19th, Tigard

Employee slipped while walking and fell to the ground. Employee hit his head during fall. He was transported to OHSU. He lost consciousness and was diagnosed with a subdural hematoma and subarachnoid hemorrhage. Employee never recovered. 66 year old male

6. August 18th, Gresham
Employee was homeless and lived in his car, he had called in for his shift on 8/17 that was from 10am to 7pm and stated that he was sick and told a co-worker that he might go to the hospital, at approximately 12:31am on 8/18, when employee(s) got off of work in the early morning, the victim was discovered unresponsive in his vehicle and 911 was called. Victim was pronounced deceased on scene. Male Age unknown.
7. August 29th, Gresham
EE was up approximately 6 feet on a ladder doing a demolition job on a deck when he fell from a 8ft ladder to concrete below. There were no witnesses to the actual fall, just those who found him unconscious and called 911. He was taken to OHSU. UPDATE: Employee was taken off life support 08/29/20. 25 year old male.
8. August 11th, Boardman
Worker in food processing plant was found on the ground. EMT responded, unable to revive. 63 year old male.
9. August 7th, Beaverton
One employee, business Owner, climbed a dead tree to top off the tree and after making the first cut the tree trunk below him split away and he fell tied to the section of the tree to a creek below with a fall of approx. 30 feet to creek below. Deceased at scene. 51 year old male.
10. August 5th, Hood River
Employee was walking in the Columbia River with youth group, stepped off a ledge into a deep hole, swept away by current, 4 youth were able to get out, 1 youth and employee (Youth Pastor) drowned. 44 year old male.
11. August 5th, Salem
The victim was operating a Harvester or a picker. The crew went to check on him and found him deceased. 59 year old male.
12. August 4th, Bend
A roofing contractor fell 40 feet to concrete when a rubber tire cart, loaded with 14 sheets of 5/8 cross vent plywood , pulled by the victim, lost control and pulled the victim off a 3:12 sloped roof. The victim was pronounced deceased at the commercial construction site due to injuries sustained from the fall. 38 year old male.
13. August 1st, Salem
Employee was stacking hay bales and unrolling plastic sheeting to start another new row, when the previous row fell over striking the employee, fatally crushing him. 60 year old male.

Anonymous Questions:

If you have anything you would like to bring up at the meetings and would like to stay anonymous, let Mark Tobiasson or Nathan Taylor know and they will bring it up for you.

There was a question asked last month about new forklifts being stored with the forks up in the air. Jeff Wilson looked into this and found that the manuals, and talking to companies to find the answer to this, because nothing had changed in the regulations that he could find.

Per the manuals, it stated you needed to leave them down. He even looked at the boom lifts to see what they recommended and the manuals stated that boom lifts should be left down, not up. The hydraulics could fail so being down was safer.

Andy Collins suggested that they look at the local union rules too.

Round table:

Construction Safety Summit is September 22, 2020. It will be held virtually again and it will be on leading edge.

-George commented that a number of cases that he has seen (not in Oregon) where fatalities of failures of the SRL's- leading edge is a misnomer. Leading edge is a moving edge and the equipment is thought to be for any edge and there is a disconnect on what the piece of equipment is for.

-Bryon added that for leading edge, equipment is only tested for a certain edge. Make sure that you read the small print on the equipment you are using.

-Joaquin added that certain manufacturers don't have the testing data showing they meet the criteria.

ASSP- Santiam Section, September 8th is on Compassion fatigue and mental health

If you have any topics that you would like Oregon OSHA to talk about to the group, please let [Alta Schafer](#) or [Mark Tobiasson](#) know.

Next Meeting:

October 6, 2020

Zoom Meeting