

**Oregon OSHA**  
Employer Knowledge Stakeholder Committee  
**Meeting Minutes**  
Oregon OSHA v. CBI Services, Inc. / Supreme Court decision  
Thursday, April 28, 2016 2:00pm- 3:30pm

**Location:** PFO Conference Room  
16760 SW Upper Boones Ferry Road, Suite 200, Tigard OR 97224

**Attendees:**

Michael Wood, Dana Hefty, Bryon Snapp, Chris Ottoson, Gary Beck, Peggy Munsell, Kevin Weatcroft, John Mohlis, Manish Gooneratne

Self-introductions were made.

Because of the passage of time since the group had met previously, Michael Wood opened the meeting with a review of the reason for the group, including the *CBI Services* Oregon Supreme Court decision (<http://static.legalsolutions.thomsonreuters.com/pdf/341P3d701.pdf>). The Court found that it was up to Oregon OSHA to make the determination as to what constitutes “reasonable diligence” in the context of the statute’s statement that an employer is not accountable for a violation if the employer could not, with the exercise of reasonable diligence, have known of the violation. This encouraged Oregon OSHA to provide more explicit guidance as to when an employer would be protected from citation because the employer would be unable to know of a violation even with the exercise of reasonable diligence.

Although the Supreme Court did not tell OSHA explicitly to address reasonable diligence by rule, the group has previously agreed that Oregon OSHA can best meet its responsibility to articulate what *could not have known with reasonable diligence* means by adopting a rule addressing the issue. A pre-proposal discussion draft of such a rule (attached) was presented.

In essence, the draft takes the approach that a reasonably diligent employer will identify any hazards that could be expected based on the work activity and/or the worksite and then to implement appropriate measures to address those hazards. In keeping with the guidance Oregon OSHA has provided its enforcement staff for many years, the rule effectively presumes that if Oregon OSHA could identify a violation then the employer could have done so. The rule excludes employer responsibility if the employer can demonstrate that the violation was isolated an unpredictable, normally by demonstrating that the violation was the result of unpreventable employee misconduct.

In closing we discussed then next employer knowledge meeting date and location. Attendees were asked to bring both real-life and hypothetical scenarios to the meeting to see how they would be addressed by the draft rule. They also were asked to bring suggested changes to the language of the draft rule.

The next meeting will be in May.