

**Oregon OSHA**  
Employer Knowledge Stakeholder  
Meeting Minutes  
Friday, January 25, 2019

**Location:** Oregon OSHA  
350 Winter St. NE Salem, OR 97301

**Attendees:**

Alta Schafer Bryon Snapp Michael Wood Renee Stapleton Kyle Martin Tawnya Swanson	George Goodman Jessica Giannettino Villatoro Paloma Sparks Tony Howard
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Self-introductions were made.

Michael welcomed the group.

A [pre-proposal draft](#) was sent to the group in November. Michael would like to have a conversation and get feedback from the group. Oregon OSHA would like to move forward with a formal proposal at the beginning of this year.

Michael gave a summary of CBI Services Background. Michael had given testimony on interpretation. The [court wrote a decision](#).

The language that was in the pre-proposal draft, “if the inspector could find it then the employer could have found it.” has been taken out of the document.

We can adopt a rule or do a case by case basis. A rule would be productive, but George thinks it should not be in a rule. Tony is in favor of a rule, but not the November draft.

George said after the CBI case the Supreme Court suggested that the agency define ‘reasonable diligence’. George has serious questions about the agency defining for its self since the agency has the burden of proof and is case by case. It would be helpful to advise what reasonable diligence is and doing it in a policy statement would be more helpful. [A handout was given on George’s suggestions. From the November 7<sup>th</sup> rule draft, \(f\)\(A\) and \(B\) are definitions and should be moved to a separate section labeled Definitions, preferably in a policy statement or program directive.](#)

Tony and Paloma like George’s suggestion; Michael will look at it and take it into consideration.

The group discussed reasonable diligence and employee misconduct. Michael said employee misconduct can be easy to prove, an employer could not have known with reasonable diligence that the employee would have ...

George added that if you put it in the rule it would be unforeseeable, and you can't satisfy your own burden of proof. George wants the burden of proof off of the employer.

Tony asked what is the compliance officers definition of appropriate or adequate?

Paloma added that she was not comfortable with the terms appropriate or adequate, but would be comfortable with prudent and foreseeability, because the courts are comfortable with these terms too.

Meeting adjourned.

Next meeting:  
TBD