

Enrolled Senate Bill 592

Sponsored by Senator TAYLOR, Representative GRAYBER; Senators MANNING JR, PATTERSON, Representatives BOWMAN, NELSON, NOSSE, PHAM K, RUIZ, SOSA (Presession filed.)

CHAPTER

AN ACT

Relating to the Oregon Safe Employment Act; creating new provisions; amending ORS 654.067 and 654.086; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 654.067 is amended to read:

654.067. (1) In order to carry out the purposes of ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, the Director of the Department of Consumer and Business Services, upon presenting appropriate credentials to the owner, employer or agent in charge, is authorized:

(a) To enter without delay and at reasonable times any place of employment; *[and]*

(b) To inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein, and to question privately the owner, employer, agents or employees[.]; **and**

(c) To conduct a comprehensive inspection of any place of employment as deemed necessary by the department based upon the prior violation history of the place of employment regarding any state occupational safety or health law, regulation, standard, rule or order.

(2) Whenever an accident investigation reveals that a violation has caused or contributed to a work-related fatality at a place of employment, the director shall conduct a comprehensive inspection of the place of employment within one year following the date on which the closing conference associated with the work-related fatality was held.

(3) Whenever three or more willful or repeated violations occur at a place of employment within a one-year period, the director shall conduct a comprehensive inspection of the place of employment within one year following the date on which the closing conference associated with the most recent willful or repeated violation was held.

~~[(2)]~~ **(4)** No person shall give an owner, employer, agent or employee advance notice of any inspection to be conducted under ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 of any place of employment without authority from the director.

~~[(3)]~~ **(5)** Except in the case of an emergency, or of a place of employment open to the public, if the director is denied access to any place of employment for the purpose of an inspection or investigation, such inspection or investigation shall not be conducted without an inspection warrant obtained pursuant to ORS 654.202 to 654.216, or without such other authority as a court may grant in an appropriate civil proceeding. Nothing contained herein, however, is intended to affect the validity of a constitutionally authorized inspection conducted without an inspection warrant.

[4] (6) A representative of the employer and a representative authorized by the employees of the employer shall be given an opportunity to accompany the director during the inspection of any place of employment for the purpose of aiding such inspection. When there is no employee representative, or the employee representative is not an employee of the employer, the director should consult with a reasonable number of employees concerning matters of safety and health in the place of employment.

[5] (7) The representative of the employer may, at the employer's option, be an attorney retained by the employer.

(8) As used in this section:

(a) "Accident investigation" means an official examination of a place of employment conducted by a compliance officer who is responsible for carrying out inspections and investigations on behalf of the department, that includes a systematic appraisal of an accident sequence to determine causal factors, corrective actions and preventative measures.

(b) "Closing conference" means a process that informs the employer and the employee representatives, if any, of the findings resulting from an inspection of a place of employment and any other pertinent issues related to the inspection.

(c) "Comprehensive inspection" means a substantially complete inspection of a place of employment that, in the professional judgment of the inspector who conducts the inspection, may be deemed comprehensive although not all potentially hazardous conditions, operations and practices within the place of employment are inspected.

SECTION 2. ORS 654.086 is amended to read:

654.086. (1) The Director of the Department of Consumer and Business Services or the authorized representative of the director has the authority to assess civil penalties as provided by this section for violation of the requirements of a state occupational safety or health statute or the lawful rules, standards or orders adopted under the statute[. *In setting maximum penalties, the director or the director's representative shall consider, but may not exceed, the maximum penalties under the federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)*], as follows:

(a)(A) Any employer who receives a citation for a serious violation of such requirements shall be assessed a civil penalty of *[not less than \$50]* **not more than \$15,625, but not less than \$1,116, for each violation.**

(B) **If the serious violation caused or contributed to the death of an employee, the civil penalty amount shall be increased to not more than \$50,000, but not less than \$20,000, for each violation.**

(b) Any employer who receives a citation for a violation of such requirements, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty, **not to exceed \$15,625, for each violation.**

(c)(A) Any employer who willfully or repeatedly violates such requirements may be assessed a civil penalty of *[not less than the minimum penalty under the federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)]* **not more than \$156,259, but not less than \$11,162, for each willful or repeated violation.**

(B) **If an employer's willful or repeated violation caused or contributed to the death of an employee, the civil penalty amount shall be increased to not more than \$250,000, but not less than \$50,000, for each willful or repeated violation.**

(C) **In determining whether a violation is repeated for purposes of this subsection, the director shall consider the employer's history of violating the requirements of a state occupational safety or health statute or the lawful rules, standards or orders adopted under the statute.**

(d) Any employer who receives a citation, as provided in ORS 654.071 (4), for failure to correct a violation may be assessed a civil penalty, **not to exceed \$15,625, for each day during which the violation continues.**

(e) Any employer who knowingly makes any false statement, representation or certification regarding the correction of a violation shall be assessed a civil penalty of not less than \$100.

(f) Any employer who violates any of the posting requirements, as prescribed under the provisions of ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, may be assessed a civil penalty for each violation.

(g) Any person who violates the provisions of ORS 654.082 (2) or (3) shall be assessed a civil penalty of not less than \$100 for each violation.

(h) Notwithstanding paragraph (b) of this subsection, an employer who substantially fails to comply with ORS 654.174 (1) shall be assessed a civil penalty of not less than \$250 for each violation.

(i) 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. Each violation, or each day a violation continues, shall be considered a separate offense.

(2) For the purposes of ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 a serious violation exists in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) Civil penalties assessed by the Department of Consumer and Business Services against an employer for repeated violations of any of the following may not receive a penalty adjustment, based on employer size, that reduces the amount of the civil penalty assessed against the employer, unless the penalty adjustment is conditioned upon the employer agreeing to comply with additional abatement measures as determined by the department:

(a) A willful violation under subsection (1)(c) of this section; and

(b) A serious violation resulting in a work-related fatality.

(4) The director shall, not later than January 15 of each year, adjust the amount of civil penalties that may be imposed under this section to account for the percentage increase or decrease, if any, in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor or its successor.

~~[(3)]~~ **(5)** When an order assessing a civil penalty becomes final by operation of law or on appeal, unless the amount of penalty is paid within 20 days after the order becomes final, it constitutes a judgment and may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded shall become a lien upon the title to any interest in property owned by the person against whom the order is entered, and execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

~~[(4)]~~ **(6)** Except as provided in subsection ~~[(5)]~~ **(7)** of this section, civil penalties collected under ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 shall be paid into the Consumer and Business Services Fund.

~~[(5)]~~ **(7)** Civil penalties assessed under this section for a violation of ORS 658.750 shall be credited to the Agricultural Worker Housing Development Account of the Oregon Housing Fund.

(8) The director shall submit a report at least annually to the interim committees of the Legislative Assembly related to business and labor that summarizes:

(a) The total number and total amount of penalties assessed by the department;

(b) The total number of appeals of citations, violations and penalty assessments filed with the department; and

(c) The total number of inspections completed by the department, along with the scope of the inspections and the circumstances that led to the inspections.

SECTION 3. The Director of the Department of Consumer and Business Services shall submit the first report required under ORS 654.086 (8) no later than September 15, 2024.

SECTION 4. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by Senate March 8, 2023

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Lori L. Bocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 15, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

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Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State