

Penalties Advisory Committee, SB 592 Implementation

June 20 2023, 3:00 pm – 5:00 pm

ZoomGov Meeting

Attendees

Oregon OSHA: Dave McLaughlin, Greig Lowell, Jennifer Stewart, Julie Love, Kate Ryan, Linda Pressnell, Lisa Appel, Matt Kaiser, Renee Stapleton, Theodore Bunch, Tom Bozicevic

Amanda Dalton, Betsy Earls, Brian Clarke, Catie Theisen, Derek Sangston, Elmer Dickens, Erin Seiler, Garrett Mosher, Jackie Hernandez, Kate Suisman, Kevin Lyons, Kirsten Adams, Liz Marquez Guterrez, Maggie Gerlicher, Malinda Polk, Maria Venegas, Mike Jacobs, Mike Salsgiver, Nargess Shadbeh, Nicole Mann, Odalis Aguilar, Shannon Phillips, Theodore Bunch, Tony Howard, Wayne Oja, Whitney Perez, Zimmercl

Jennifer Stewart started the meeting at 3:03pm.

SB592 Implementation

Oregon OSHA website: <https://osha.oregon.gov/rules/advisory/penalty/Documents/SB592-enrolled.pdf>

Oregon State Legislature website:

<https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB592>

Normal process for rulemaking

- Have an advisory committee and come up with language
- Have a 49-day window that a proposed rule must remain open
- Generally have one or more hearings in that 49-day window
- Decide if we move forward, adopt with modifications, or start over from scratch
- The intention is to start the new year with these rules in place

Resources:

Oregon OSHA: <https://osha.oregon.gov/rules/advisory/penalty/Pages/default.aspx>

Color Coding: Green, some orange and blue – comprehensive inspection requirements;

Purple, some orange and blue – civil penalties. Teal – annual penalties adjustment. Red – 907.

Both bills were passed by the Oregon Legislature and had a lot of prescriptive language on how the rules need to be adjusted. Discussion is needed on some areas that may conflict or where terminology needs expanded. The bill states the floor and the ceiling for penalty structure, and it is everything in the middle that we need to work through in this rulemaking. Both bills 592 and 907 will be in rulemaking at the same time, with 592 as primary focus due to the emergency clause.

Two options on Consumer Price Index (CPI) process changes

<https://osha.oregon.gov/rules/advisory/penalty/Documents/SB592-CPI-adjustment.pdf> – 1) do a formal rulemaking process each year 2) put out a bulletin to reflect the changes each year in advance to the effective date. Process we use to calculate the formula would be outlined in the rule. Bulletin would align with Fed OSHA's process, announced approximately 30 days in advance.

- Comments on CPI approach

- Bulletin feels like more expedient than formal rulemaking, with RAC feedback on that process.
- If after a year or two of the bulletin route, if something is not favorable with the calculation, what are the options? Renee Stapleton: It would require us to do rulemaking. Our goal would be to get it right the first time, but there may be unattended consequences.

Draft language will be started with the intent to send to RAC the week of July 10 for feedback. Poll will go out to group asking for best times/days to meet during the week of July 17.

Penalty reduction for employer size

Should there be a calculation based on size of employer? Should the floor just be at \$1116 for all employers or should there be a calculation to reduce to that floor? There is a minimum and a maximum currently in our rule. Our rules currently lay these out in a tiered approach. Currently our rules have up to a 75% small business reduction based on statewide employment. Also currently have good-faith reductions, history reductions, onsite substantial compliance abatement efforts reductions – base penalty is higher but reductions apply. In new rule wording, no penalty would be reduced below the floor (\$1116 for a serious violation). There is a different penalty structure for a willful and a different penalty structure for violation that contributed to a death of a worker.

<https://osha.oregon.gov/OSHAPubs/5632.pdf>

Comments/questions on penalty reduction for employer size

- Opposed: This would be increasing penalties even further for larger contractors.
- Prefer that there are not further reductions. Size of the business is not the concern; safety of the workers is the concern.
- Seems regressive to the smaller businesses. Doesn't incentivize the larger employers to care about safety as much as to the smaller businesses that the penalty may be their week's profit. Second member: Adjustment for small businesses needs to continue. This could put an employer out of business.
- As a starting point, track percentages in between minimum and maximum or look at federal schedules. Consider adding a Medium OTS.
- Pointing out Page 3 of 4 orange section (3) Civil Penalties...for repeated violations, in connection.
- We will need to come up with a procedure for additional abatement measures because we already require all serious hazards to be abated.
- How is this integrated in how Oregon OSHA currently does comprehensive inspections?
- For general industry, we look at the national average and look at Oregon. We look at the most hazardous places and rank them based on history. We need to look at the comprehensive component as it relates to page 1 of 4 (c) in green, what is a comprehensive inspection? We need to define "caused or contributed" to a work-related fatality at a place of employment.
- Does Fed OSHA have a definition on "caused or contributed"?
- They use "gravity" so it may not be helpful. Can be a starting point to look at.
- Is additional abatement the employer doing something above and beyond OSHA standards to improve safety in the industry or workplace?
- Yes, but we need to define that in a process.

SB907

Oregon OSHA website: <https://osha.oregon.gov/rules/advisory/penalty/Documents/SB907.pdf>

Federal OSHA website: <https://www.osha.gov/workers/right-to-refuse>

- Oregon State Legislature website:
<https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB907>

Oregon OSHA has an obligation to do a fiscal impact statement which shows cost of compliance. In general, if employers are in compliance, the potential adjustments to the rule will not have a fiscal impact. However, if there is an area that has a cost to compliance, then please raise the issue.

General member agreement to start with Fed OSHA bullets: <https://www.osha.gov/workers/right-to-refuse>

Comments/questions

- First bullet – 1) “where possible” needs to be clarified (is this based on it being possible for the employer to eliminate the danger or that it is possible for the employee to have asked the employer to eliminate the danger?) 2) Don’t include advice to the worker, “You should take the following steps.”
- This is the discrimination part of the rule. The Whistleblower law will continue to be under the process with BOLI. BOLI will be brought into the conversation.
- Consider both the employee and employer side to these bullets.
- Combine/condense two sections in the Oregon rule.

Jennifer Stewart: will work on some language for the changes. Draft language out the week of July 10th. Get poll out for week of July 17.

Meeting adjourned at 4:44pm