

**SB592 & SB907 Rulemaking and Policy Updates Rules Advisory Committee  
Meeting  
ZoomGov Meeting  
August 10, 2023, 2:00 pm - 4:00 pm**

**Attendees**

Oregon OSHA: Dave McLaughlin, Greig Lowell, Jennifer Stewart, Jenny Downen, Julie Love, Kate Ryan, Matt Kaiser, Penny Wolf-Mcormick, Renee Stapleton, Tracy Brown, Trena VanDeHey

Ashley Dubisar, Betsy Earls, Catie Theisen, Derek Sangston, Doug Buman, Erin Seiler, Garrett Mosher, George Goodman, Hayley Porter, Hayley Watson, Ira Cuello-Martinez, Jamie P, Jason Schweitzer, Jean Jablonski, Jenny Dresler, Jesse Neilson, Jim Anderson, Kate Suisman, Kevin Lyons, Kirsten Adams, Leslie, Mark Dvorscak, Mike Jacobs, Nargess Shadbeh, Nicole Mann, Rob Nichols, Sabrina Riggs, Sammi Teo, Wayne Oja

**2:00-2:05 Opening, Welcome and General Information**

- Introductions
- We are forming another RAC for reporting - 300 Injury Tracking Application Rulemaking facilitated by technical specialist, Theodore Bunch. If you are interested in participating in this RAC, information will be shared.

**2:05-2:50 Civil Penalties – SB592**

- There has been no final decision on the penalty matrix option. Penalty matrix Option C is being used as a reference to demonstrate the mechanics of how the complete penalty structure works.
- Lime, Turquoise, Blue options (Repeat Matrix) all have a small-business reduction for employers with 1-25 employees.
- Lime: Multiplier of base serious – x5, x7, x9, with discretion of Administrator to increase beyond third repeat. Employers with 1-25 employees receive a \$7000 reduction for serious and \$14,000 for death in each category with the penalty not decreasing below \$11,116.
- Turquoise: Multiplier of base serious – x4, x6, x8, with discretion of Administrator to increase beyond third repeat. Employers with 1-25 employees receive a \$7000 reduction for serious and \$14,000 for death in each category with the penalty not decreasing below \$11,116.
- Blue: Multiplier of base serious – x4, x6, x8, with discretion of Administrator to increase beyond third repeat. Employers with 1-25 employees receive a \$7000 reduction in each category with the penalty not decreasing below \$11,116.
  - RAC comments and feedback
  - Q. How were the reduction amounts of \$7000 and \$14,000 decided? Also odd that there is a larger reduction for a violation that could have resulted in death than for the serious violation. Support the blue option.
  - A. We want to have room within the options at the top end for administrator discretion. In case there is a fourth or greater repeat, then there is a meaningful difference between the fourth and the third repeat. Those amounts were chosen to be meaningful impact amounts in each category and that was still impactful for that business size. These numbers also worked well in our overall matrix. There has to be a stair-step approach in all of the tables. We are open to feedback.
  - Comment. Support of turquoise option.
  - Q. Will \$7000 and \$14,000 be tied to inflation?
  - A. We have not linked that to the CPI at the moment, but that is something we want to have a conversation about with this RAC.
  - Comment. It looks odd that it's technically possible for a fourth or greater serious, repeat violation to result in a fine of \$11,162, especially if the intent is to be able to go higher as violations are repeated.
  - A. A fourth or greater repeat would be at discretion of the administrator and would be in line with

the range. Rule language and policy would have to balance that.

- Comment. Clarify that a fourth or greater could not be below the third row.
  - A. This is true for an initial penalty. In settlement agreements, it may be lower than the dollar value on the matrix. This is after citation has been issued, appealed, and for the right reasons for settlement.
  - Comment. Clarify the situation of greater reduction when there is a probability of death.
  - A. This is a recognition that the penalties jump up considerably between serious and death. This is not when someone has died. This is when a potential violation could have been the predictable injury would be death.
  - Q. Could language be tweaked to say “up to” \$7000 reduction or up to \$14,000 reduction?
  - A. We are trying to make this as clear and as simple as possible for our compliance officers in the field to describe to employers during a closing conference. It is not the intention that a fourth serious repeat violation would be less than a third.
  - Comment. Instead of focusing on the amount of the reduction, focus on the final penalty amount. The low death penalty is 20% more than the high serious penalty after the reductions. That meets the policy goal.
- Caused or Contributed Tables
    - Serious Violation Caused or Contributed to Death of an Employee/Workplace Fatality: Two options
    - Repeated Serious Causes or Contributed to Death of an Employee/Workplace Fatality
    - Willful: Two options
    - Willful Caused or Contributed to Death of an Employee/Workplace Fatality
  - RAC comments and feedback
  - Comment. For example a high death is an egregious violation and it should go all the way to the top of the range.
  - A. Egregious is a different term that is not reflective of what a high death violation means – it is not actually a willful but there seems to need to be an additional penalty. A high-death violation means that a person could have died based on the conditions on site. Such as, a metal steep pitched roof in the rain with no fall protection – it means there is a high probability that a death *could* occur. A high-death violation does not mean that the employer was being more negligent. There should be room built into the tiers for the administrator to add in more if the situation is warranted.
  - Comment. Support of the red option.

## **2:50-3:30 Division 1 Changes SB592**

- Review Division 1 changes SB592
  - SB592 Color coded categories
    - Green – Comprehensive inspections
    - Purple – Penalties
    - Teal – Annual penalty increases
    - Orange and Blue - Penalties, work related fatalities and willful violations
- Violation that caused or contributed to a workplace death
- Programmed Inspections for Cause
  - Comment. Definition of “pervasive” requested.
  - Q. What does one year period mean throughout this section? This language is confusing.
  - A. For example, in 365 days, we have three closing conferences with the same employer on the same repeat violation or willful violation. The third violation would trigger a third comprehensive inspection within one year of that. For example, three willfuls in one inspection would have an inspection 12 months after that.
  - Section (d) does not have a timeframe associated with it.
  - Comment. Suggestion to break section (d) out and reword the rest of the section to be clearer.

- (iii) Consultation
  - Q. If consultation report is confidential to enforcement, how is (iii) met?
  - A. Policy is that the employer is asked if consultation has been conducted and suggestions corrected. Report is not given or asked for. Needs to meet the other requirements for ag establishment exemption.
  - Comment. Suggest clarifying this in the rule.
  
- Base amounts will be in the rule but bulletin will update amounts each year.
  - RAC comments and feedback
  - Q. How can a penalty be issued when there is no probability or severity of injury?
  - There is a portion in a rule about issuing a violation when there is no probability or severity of injury.
  - Q. Why can't it be a citation with an order to correct? Wording is complicating.
  - A. Likely not at least as effective as Federal OSHA. We will look further into how Federal OSHA approaches this.
  
  - Comment. Suggest defining group or combined violations.

### **3:30-3:50 Division 1 Changes SB907**

- Review Division 1 changes SB907 (table shown highlighting the different aspects between Federal OSHA and Oregon OSHA rule language in Protected Work Refusal)
  - SB907 Color coded categories
    - Red – Refusal of work
  - RAC comments and feedback
  
- Use of “clear” vs “real”
  - One member preference for real, two for clear.
  
- Possible, Feasible, Practicable
  - Comment. Suggestion to use “practicable.” Or practical.
  - Practical may not be as protective for workers, may not be as easily defined from an employee’s perspective.
  - Comment. Some workers may not be sure of the meaning of these words or have difficulty or hesitancy in contacting their supervisor.
  - Questions on words “reasonable person.” Should be an addition that says when a perceived hazard has been abated or agency has deemed the workplace to be safe, then worker can return to work.
  - Comment. Replace imminent danger with real or clear risk of death to be consistent.
  - A. Imminent danger is defined in other Oregon OSHA rule and Federal OSHA rule/language.
  - Comment. Confused about creating a tool for people to walk off the job but not end it.
  - Comment. People are reluctant to walk off jobs at risk of losing pay or not getting rehired (especially day workers).
  - Suggestion to include language about when an entire work area is unsafe, for all employees.
  - Comment. Burden should be put on the employer rather than the employee. Currently as written this is putting a significant burden on the employee who may be facing serious injury or death.
  
- Feedback has been requested by Monday of next week. We cannot make substantive changes to the rules from when it is proposed to the time it is adopted.
- Next meeting is August 23 at 9 a.m.