



Oregon
Kate Brown, Governor

Department of Consumer and Business Services

Oregon Occupational Safety and Health Division
350 Winter St. NE, Room 430
P.O. Box 14480
Salem, OR 97309-0405
503-378-3272
Toll free: 800-922-2689
Fax: 503-947-7461
www.orosha.org

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House Committee On Judiciary Subcommittee On Civil Law
Oregon State Capitol
900 Court Street NE, Room 331,
Salem, Oregon 97301
Rep. Karen Power, Chair
Rep. Kim Wallan, Vice-Chair

RE: HB 2205

Committee Members:

As requested, I plan to attend this afternoon's work session on behalf of Oregon OSHA, with the Department of Consumer & Business Services, to provide any information I can related to the Committee's consideration of HB 2205 and the amendments that have been proposed to it. As you also requested, we are providing the following written responses in advance of the meeting.

Can you please provide an overview of the statutes you enforce that would be impacted by HB 2205?

Oregon OSHA enforces the Oregon Safe Employment Act, which is found in ORS 654.001-654.991 and the rules that we have adopted under that act.

What other tools do you use in enforcement, other than civil penalties?

The Department of Consumer & Business Services, Oregon OSHA uses several additional tools to ensure that Oregon employers are able and willing to fulfill their obligation to provide a safe and healthful workplace for their employees. Oregon OSHA has consultative service, outreach and education services, public education services, online training and education, alliances and partnership with business and labor, and collaborative processes with other safety and health organizations (ASSP, OSHU Oregon Institute of Occupation Health Sciences, SAIF) for employers and employees. In addition, our enforcement program handles some complaints using non-formal inquiries where no penalties are issued if the situation can be resolved. If we conduct a formal inspection and identify one or more serious violations – those that create a meaningful risk of serious physical harm to an employee – we will cite such violations and issue penalties. Penalties for repeated and willful violations, as well as for a failure to correct violations that we have already cited, can be much more substantial.

What kinds of ways do employers improve safety in response to investigations or complaints?

Employers often make needed changes based on an initial complaint inquiry. If an inspection is conducted and violations are identified, the citation will include a requirement that the employer correct such violations within a specified time frame.

Do you see complaints filed by competitors or people who have issues with businesses?

Not that often, but yes. In such cases, we follow the same basic investigatory approach to evaluate the complaint and conduct an inspection, if warranted. If an inspection is conducted, and the prima facie elements of the violative condition are substantiated – a citation will be issued without regard to the source of the original complaint.

Does employer education factor into your enforcement or investigation activities and how does that work?

We do provide educational opportunities, as noted previously, using a number of methods. Even the enforcement visit itself provides such an educational opportunity. In determining whether a violation itself exists, the employer’s awareness of the applicable requirements is not a central issue. However, such awareness will be reflected in any penalty calculation. Consideration is made for the employer policies, methods of communicating the policy, the supervisor process to determine if employees are following the process, and appropriate discipline of instances found when the policy is not adhered to. The employer’s good faith effort to comply with Oregon OSHA’s requirements is assessed, and penalties (if assessed) can be adjusted based on this effort. As noted previously, an employer who is aware of Oregon OSHA requirements and willfully disregards them is likely to receive a much higher penalty for such violations.

How much time do you typically spend on an investigation?

The time needed to complete an investigation that results in an inspection varies widely, depending upon the circumstances. Some can be resolved within a week or two, although any inspection that results in a citation will typically take at least a month to complete. The law allows Oregon OSHA up to 180 days to issue citations based on an inspection – although few cases take that long, some do (particularly investigations of more complex accidents or fatalities).

How would this bill impact on your staff workloads?

This requires us to make several assumptions based upon projections that are, at best, uncertain. But we believe the impact would be substantial. Based on an expected workload for 1,250 cases per year, of which 20 percent would need to be managed to completion, Oregon OSHA believes we would ultimately need to add four staff members to manage this additional work and Oregon OSHA’s response to it -- an Operations and Policy Analyst 4, two Operations and Policy Analysts 3, and an Administrative Support Person. In addition, there would be additional costs related to administrative and information technology processes, as well as certain costs for legal advice and necessary legal activity.

Would staff resources be diverted away from current enforcement activities to claims filed by relator agencies?

Based on the assumptions in our fiscal analysis, Oregon OSHA would expect to add new staff to handle the workload, rather than diverting additional staff to address that work.

How would the process change with HB 2205?

Oregon OSHA would continue to operate the existing enforcement program the same way, but the possibility of a new type of case will be inserted with the new process. The components related to assessing the case and managing it through the Department of Justice will be a new workstream. Oregon OSHA would need to engage in rulemaking to address our processes, and we would expect to participate in the rulemaking required by the Bureau of Labor and Industries under the bill.

If an enforcement action were filed by a relator, can you tell us how the process would work, the decision points for your agency and timeframe for making those decisions?

Ultimately, that is a determination that would be based on the new law, including any amendments. As Oregon OSHA currently understands it, the agency would receive a notice with details of the allegation and basic supporting facts and would have 30 days to determine if it would take action. If Oregon OSHA took action, the agency would have up to 180 days total (including any time that had already elapsed) to complete the inspection.

If Oregon OSHA does not take the case, the relator would pursue the case in County Circuit Court. Oregon OSHA will have the option of taking the case back at any time but will be responsible to reimburse the relator for any attorney's fees incurred.

Where do civil penalties assessed by OSHA currently go?

Penalties are a relatively minor source (between two and three percent in most years) of revenue to the Premium Assessment Operating Account (PAOA), which funds workers compensation related activities, including the state share of Oregon OSHA's funding.

How might this bill, which provides up to 40% of civil penalties to these relator entities, impact programs or funds that currently receive civil penalties?

Oregon OSHA believes that the impact on Oregon OSHA revenue would be minimal because we would expect that Oregon OSHA's existing activity would continue to generate roughly the same level of penalty income.

I understand that OSHA penalties can be higher for "willful" violations. Under HB 2205, would there be a differentiation between willful and not willful violations?

The bill does not appear to make such a differentiation. In any case, it seems likely that the cases most likely to generate willful violations would often be the cases upon which Oregon OSHA would be most likely to act.

Please let me know if you have any additional questions.

Sincerely,

Michael Wood, Administrator
Oregon OSHA
Department of Consumer and Business Services