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March 16, 2023
Senator Kathleen Taylor, Chair
Senator Daniel Bonham, Vice-Chair
Senate Committee on Labor and Business
900 Court St. NE
Salem, Oregon 97301

Re: SB 907, relating to employees' rights to refuse to perform certain work assignments.

Thank you for the opportunity to share our comments in support of Senate Bill 907, relating to employees' rights to refuse to perform certain work assignments. The National Employment Law Project (NELP) is a national nonprofit advocacy organization that for more than 50 years has sought to build a just and inclusive economy where all workers have expansive rights and thrive in good jobs. We work extensively with worker centers, labor unions, and other worker organizing groups. We recognize that a serious injury or workplace fatality can force workers and their families into poverty and takes an emotional and physical toll on entire communities, thus we see the fight for strong health and safety standards as part of our mission to build Black, immigrant worker power and advance transformative solutions to achieve racial and economic justice.

Current Oregon law regarding the right of workers to prioritize their own health and safety in a dangerous workplace situation (OAR 437-001-0295) is unclearly defined and compels a worker to cross reference other provisions in the state code and use definitions laid out in Section 13(a) of the federal OSH Act to draw conclusions about the nature of the harm and the likelihood that an enforcement agency could address it in a timely manner.¹ The worker is also compelled to notify both her employer and Oregon OSHA, "unless excused" using criteria that is not clearly laid out in the secondary law the regulation instructs her to reference.²

The provisions of SB 907 address these issues by giving workers a common-sense standard based on what a reasonable worker would think would cause a serious injury and by clarifying and simplifying the process by which a worker can exercise the right to refuse dangerous work. NELP strongly supports SB 907 and urges its rapid passage and implementation.

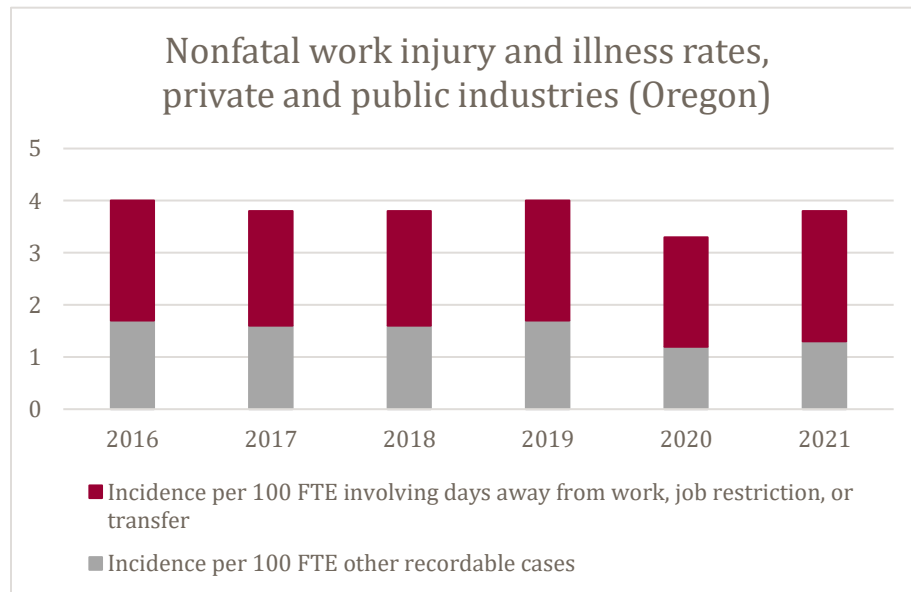
When workers cannot refuse dangerous work, they risk bodily harm and irreparable financial repercussions.

Data on the nature and volume of injuries and illnesses in Oregon reveal that reported incidences occur frequently in industries and occupations that are characterized by low pay and few healthcare benefits. These workers have the fewest resources to address the impacts on their bodies or the missing wages that may result from lost work hours or permanent injuries, making preemptive action to protect themselves critically important. According to the data, these workers are frequently in their peak earning years when they should be accumulating resources to support their families and when long-lasting physical harm can also result in long-term financial harm.

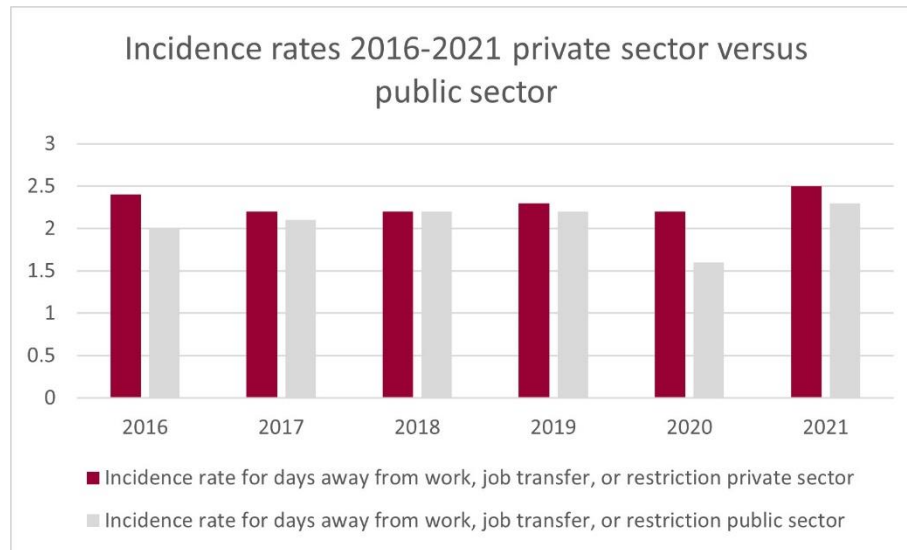
Many of these workers have significant tenure and experience on their jobs, the kind of experience that provides knowledge of when conditions are safe and when there are immediate dangers. Studies have shown that many workers stay silent about workplace dangers due to fear of retaliation or termination.³ If experienced workers are able to use their proficiency to responsibly exercise their right to refuse imminent dangers, they can be protecting not only themselves but also co-workers, and in some industries consumers, from harm.

Incidence rates for nonfatal injuries and illness in Oregon are high in industries characterized by low pay and few healthcare benefits.

With a slight dip in 2020, in Oregon the incidence rates of nonfatal occupational injuries per 100 full-time workers remained steady between 2016 and 2021.⁴ Since 2016, Oregon's overall incidence rate is consistently higher than the national average. For instance, in 2021, Oregon's incidence rate for cases with days away from work, job restriction, or transfer was nearly one- and one-half times that of the national incidence rate.



Further analysis of the data reveals the industries in which workers experience the highest rate of workplace risk and allows us to understand the increased challenges for those workers in exercising the right to refuse dangerous work as it currently exists. It is clear that a vigorously enforced right to refuse dangerous work would especially benefit undercompensated workers, workers of color, and workers in their peak earning years.



Within the private sector, several industries rise to the top for a high incidence of cases that require time off from work or in which the employee receives medical treatment beyond first aid.

Industry name	2-Digit NAICS code	Average incidence rate total recordable cases 2016-2021 (per 100 full-time employees)
Agriculture, forestry, fishing, and hunting	11	5.4
Healthcare and social assistance	62	5
Construction	23	4.4
Accommodation and food service	72	3.7
Wholesale Trade	42	3.6
Arts, entertainment, and recreation	71	3.6
Real estate rental and leasing	53	3.4
Administrative support and waste management and remediation services	56	3.2
Other services (except public administration)	81	2.8
Utilities	22	2.8
Mining, quarrying, and oil and gas extraction	21	2.6
Educational services	61	1.9
Professional, scientific, and technical services	54	1.6

Information	51	1.4
Management of companies and enterprises	55	1
Finance and Insurance	52	0.3

Many of the state’s workers who are paid less than \$15.00 per hour are employed in these industries including dishwashers and servers, agricultural graders and sorters, farmworkers, child care workers, occupational and physical therapists, home health care aides, meat packers, and shuttle drivers.⁵ For these workers who may live paycheck to paycheck, the fear of an employer cutting hours or changing schedules as retribution or firing the worker outright for refusing a clearly dangerous work assignment may be enough to keep her silent about imminent health and safety violations.⁶

Workers at risk are of both genders, in their peak earning years with significant job experience, and disproportionately are workers of color.

Using state-level data collected by the US Department of Labor we can examine demographic details for the workers who suffer nonfatal occupational injuries and illnesses that result in days lost from work.⁷ We analyzed the available data for the years 2016 to 2020 for Oregon industries with an incidence rate higher than the national average. This analysis reveals that the workers who report harm from workplace hazards are often experienced employees at the peak of their earning years. Depending on the industry both men and women are impacted, and in many of the industries workers of color are particularly at risk. Empowering these workers with clear, easily understood language to guide refusing dangerous work and compelling employers to include information about this right in their postings and communications to employees is critical to closing unjust gaps in labor protections for these groups of workers.

Gender:

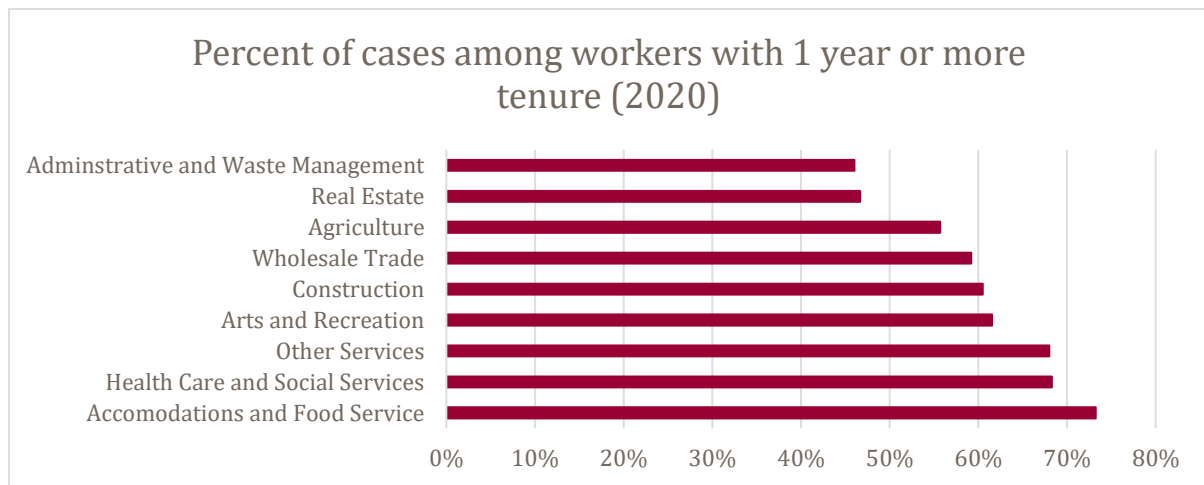
Men are generally more at risk than women in the industries with the greatest incidence rates, although many of these industries also mostly employ men. From 2016-2020, men accounted for just over 83 percent of nonfatal injuries and illnesses involving days away from work in agriculture, 96 percent of cases in construction, and nearly 86 percent in wholesale trade industries. But women accounted for almost 78 percent of reported cases in healthcare and social assistance, 62 percent in accommodation and food service, and 49.5 percent in arts, entertainment, and recreation.

Age:

Most workers experiencing these injuries and illnesses are in their peak earning years, making lost time from work or debilitating injuries that prevent them from returning to work potentially catastrophic for them and their families. In agriculture, almost 74 percent of injuries impact workers between 25 and 54 years of age. In construction, nearly 68 percent harm workers in this age cohort, in healthcare and social services it is 65 percent and in accommodation and food service it is 64 percent. Workers in their peak years employed in wholesale trade experience over 69 percent of reported nonfatal injuries and illnesses that require time off from work, as do nearly 63 percent of their peers employed in arts, entertainment, and recreation.

Job Experience:

Workers impacted by on-the-job injury or illness that requires they miss work are often long-term employees who have the knowledge to recognize impending risk but not necessarily the confidence to report it without strong retaliation protections. In 2020, even in industries characterized by high turnover like food service or health care, significant proportions of workers who were harmed had one year or more on the job. Oregon’s workplaces will be safer for all workers if employees with accumulated knowledge and experience feel protected in putting worker safety ahead of productivity or profit when they see danger is imminent.



Race and Ethnicity:

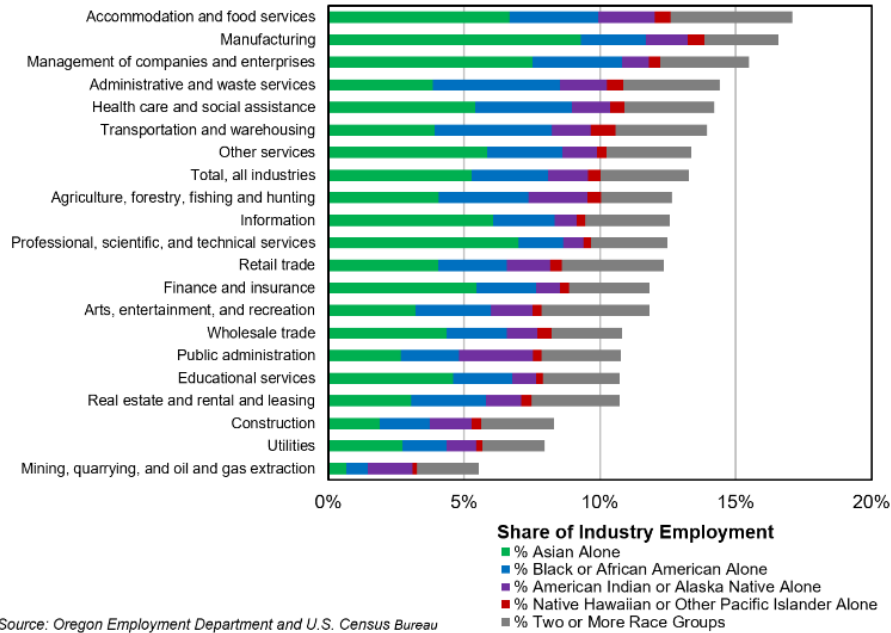
Oregon industries with the highest average rate of incidence are among its most diverse. According to the State of Oregon Employment Department, in 2021 the accommodation and food services industry workforce was 17.5 percent people of color; manufacturing was 17.1 percent; and administrative and waste services was 14.2 percent.⁸ Similarly, workers classified in the Census as “Hispanic or Latino” also make up significant proportions of the workforce in industries with high rates of incidence. (See charts from the Oregon Employment Department website reproduced on the next page.)

Workers of color are targeted for workplace injuries and illnesses at a rate that is disproportionate to their representation in the workforce. For example, while the Oregon Employment Department states the healthcare and social assistance workforce is just under 15 percent workers of color, injury data for that industry shows that between 2016 and 2020 over 29 percent of the recorded cases were among Black, Latinx, Asian, and American Indian workers (of those for whom race and ethnic information was recorded). Similarly, in construction over 29 percent of recorded cases were among Latinx and Black workers, while the Oregon Employment Department’s chart shows less than 10 percent of the construction workforce is comprised of workers of color.

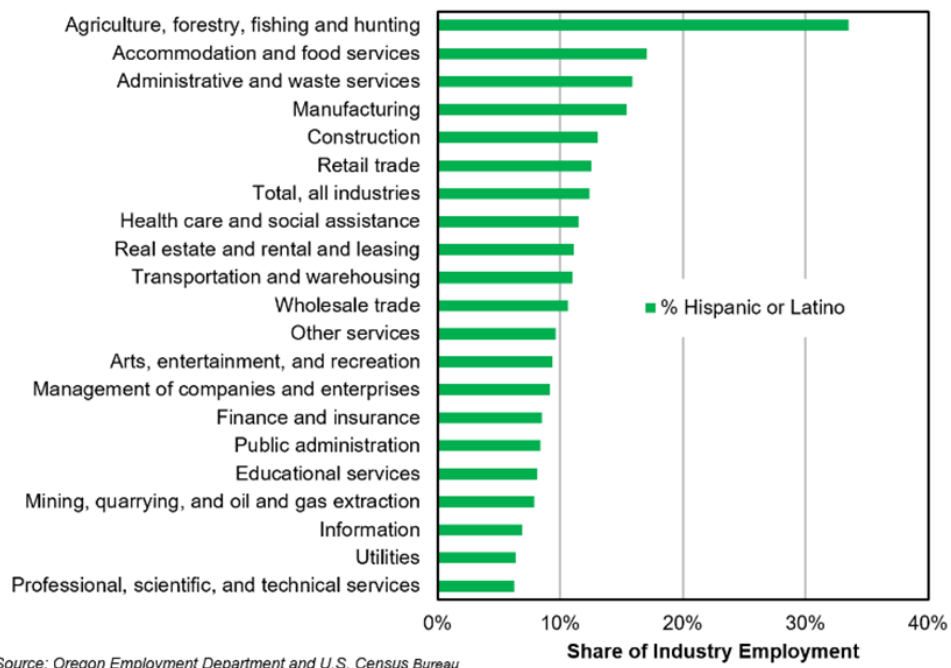
This comports with what we know nationally: workers of color suffer greater workplace injury due to occupational segregation into jobs that have more exposure to hazards, systemic racism that imputes suitability for work in hard physical conditions, or because racial pay gaps require working more hours to make ends meet.⁹ According to

the U.S. Department of Labor, white workers suffer 3.3 fatal injuries per 100,000 full time workers while Black workers have a rate of 3.5 and Latinx workers suffer fatalities at a rate of 4.5 per 100,000.¹⁰ Similarly, among male workers, Latinx immigrants have a workplace injury rate of 13.7 percent per 1,000 workers, US-born Latinx and Black men have rates of nearly 12 percent, white men are injured at a rate of 11.8 percent, and Asian men at nearly 10 percent.¹¹ To end this unjust disparity, workers of color must have the power to keep themselves safe at work.

Industries with the Greatest Racial Diversity



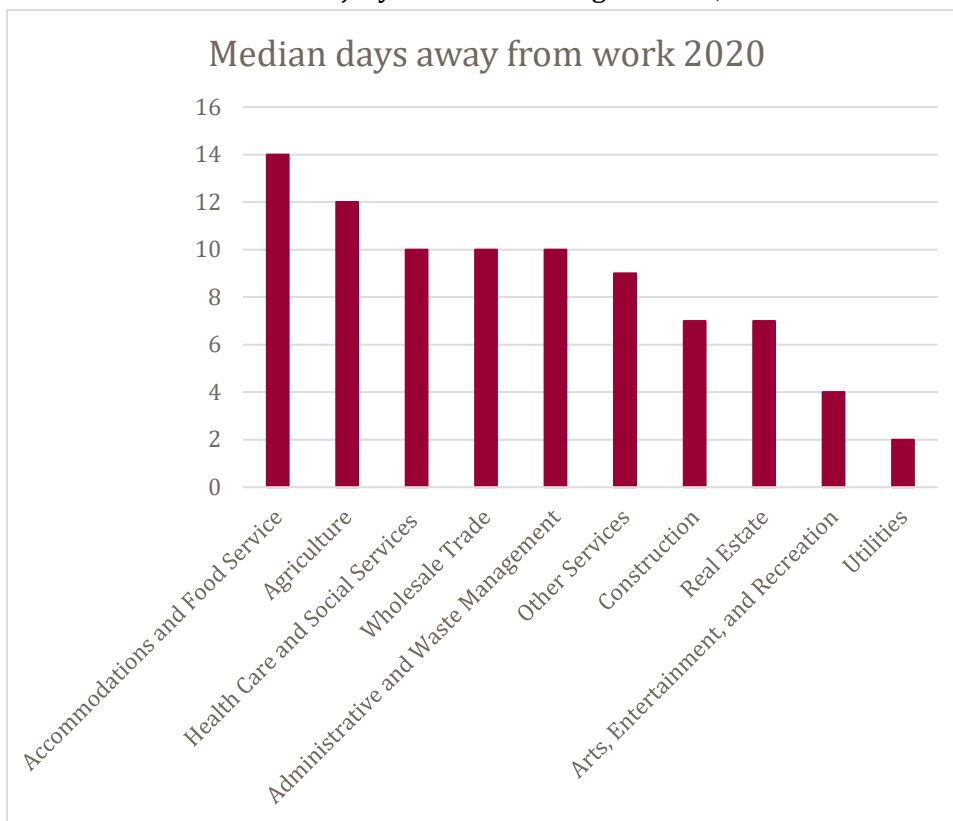
Industries with the Greatest Ethnic Diversity



Workers lose significant work time after incidents that may have been prevented by a right to refuse dangerous work.

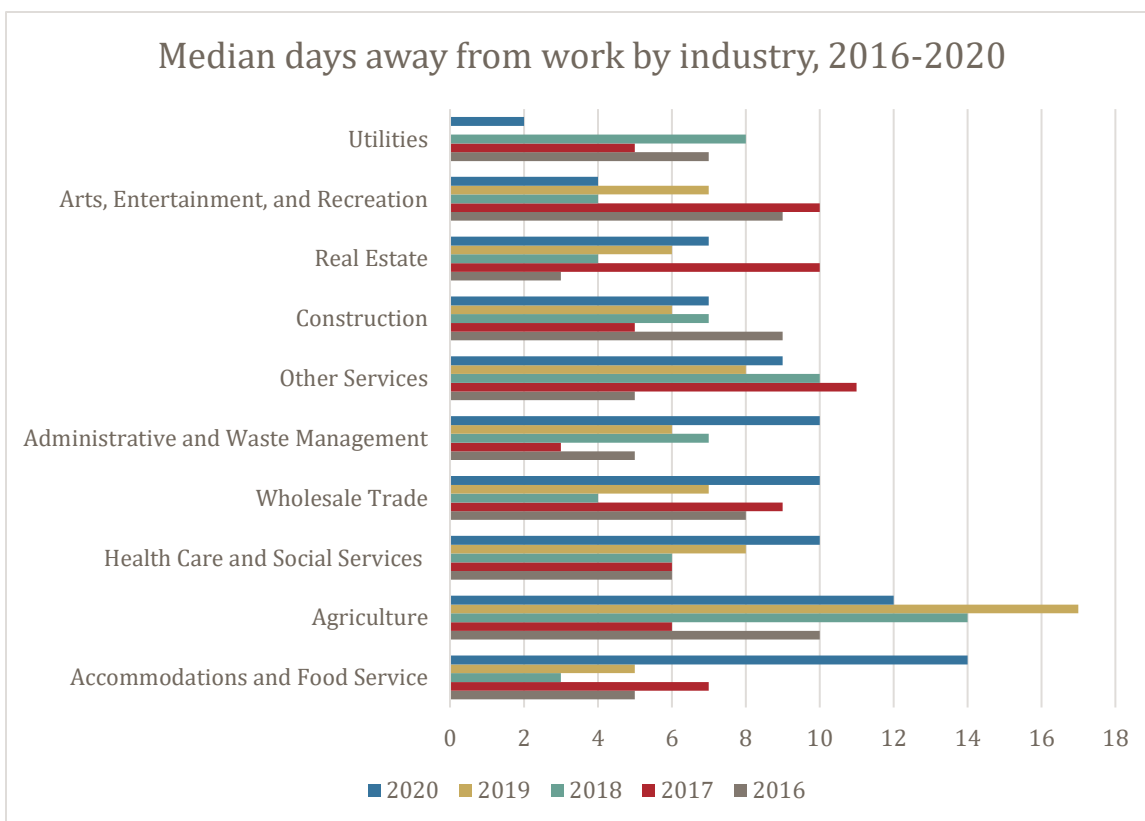
Time lost to injuries and illnesses can be a significant danger to the well-being of workers and their families, and a problem for business operations. If workers could refuse dangerous work without fear of retribution, there is a distinct possibility that lengthy recuperation periods could be avoided. For those in underpaid occupations, or who are paid by the piece, losing work time can be catastrophic to family finances. Businesses who struggle to fill vacancies may find themselves temporarily understaffed. Everyone benefits when a worker sees an imminent danger and refuses to continue work until it is remediated.

For instance, in 2020 accommodations and food service lost the equivalent of two weeks' worth of work to injury and illness. In agriculture, workers lost 12 days.



While the 2020 data may reflect some effects of the COVID-19 pandemic, the years before the public health crisis were also marked by significant median absences from work due to illness and injuries. A clearly defined right to refuse dangerous work may not mitigate all these lost days, but coupled with the savings in health care bills and pain and suffering every lost day that can be avoided is important to Oregon's working families.

Median days away from work by industry, 2016-2020



Conclusion

It is imperative that when facing imminent danger workers be able to put their safety first. Both their bodies and their livelihood are on the line, and the lengthy processes inherent in OSH regulations may come too late for them. In these situations, workers must have a clear sense of their rights and the confidence to exercise them without fear of retribution. NELP strongly supports this proposed legislation which will provide workers with an important tool to improve the health and safety of the state's workers.

Thank you for this opportunity to share our thoughts on SB 907.

Sincerely,
Anastasia Christman
Senior Policy Analyst
National Employment Law Project

Endnotes

¹ Section 13(a) of the Act defines an imminent danger as “...any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.”

<https://www.osha.gov/workers/danger>

² OAR 437-001-0295 states in Section (1)(b) that the conditions to be excused from the notification requirements are stated in OAR 839-003-0025, however that code does not in fact address such conditions.

³ Van Derlyke, P., Marin, L., and Zreiqat, M. “Discrepancies between implementation and perceived effectiveness of leading safety indicators in the US dairy product manufacturing industry,” *Safety and Health at Work*, September 2022, 13:3.

<https://www.sciencedirect.com/science/article/pii/S2093791122000567>

⁴ State data presenting the number and frequency of work-related injuries, illnesses, and fatal injuries are available from two BLS programs: nonfatal cases of work-related injuries and illnesses that are recorded by employers under the Occupational Safety and Health Administration's (OSHA's) recordkeeping guidelines are available for participating States and Territories from the BLS Survey of Occupational Injuries and Illnesses (SOII); fatal cases of work-related injuries are available for all States, Territories, and New York City under a separate program, the BLS Census of Fatal Occupational Injuries (CFOI).

⁵ US Bureau of Labor Statistics, Occupational employment and wage statistics, May 2021 state occupational employment and wage estimates, Oregon. Accessed March 8, 2023.

https://www.bls.gov/oes/current/oes_or.htm

⁶ For a compelling argument that to meet basic needs Oregon’s workers need pay at over \$20 per hour, see Oregon Center for Public Policy, “Poor Quality Jobs Predominate in Strong Economy,” September 1, 2021. <https://www.ocpp.org/2021/09/01/poor-quality-jobs-oregon/>

⁷ US Bureau of Labor Statistics, Occupational Injuries and Illnesses and Fatal Injuries Profiles, State of Oregon, 2016-2020. <https://data.bls.gov/gqt/ProfileState>

⁸ Oregon Employment Division charts [available here](#).

⁹ Seabury, S, Terp, S. and Boden L (2017) “Racial and Ethnic Differences in the Frequency of Workplace Injuries and the Prevalence of Work-Related Disability, *Health Affairs* 36(2): 266-273.

¹⁰ U.S. Department of Labor, “Expanding Efforts to Ensure the Health and Safety of Hispanic Workers,” Blog dated September 27, 2021.

¹¹ Gersema, E “Minorities, Latino Immigrants Face the Greatest Risk of Workplace Injuries,” USC Leonard D. Schaeffer Center for Health Policy & Economics Press Release, February 13, 2017.