

Oregon OSHA - Confidentiality HB 2570

Background:

Under current Oregon law, the identity and information about employees who participate in Oregon OSHA inspections are releasable through a public records request or legal discovery. This issue was raised as an “observation” by federal OSHA during its 2020, 2021, 2022, and 2023 state plan evaluation of Oregon OSHA. Federal OSHA has instructed Oregon OSHA to reconcile this deficiency before this repeat observation becomes a “finding.” Generally, under this state plan evaluation process, any state OSHA plan will receive a “finding,” for any repeat observation not corrected within three evaluation periods. All findings must be corrected by the state plan. If a finding is not corrected, federal OSHA has the authority to take away jurisdiction of any state occupational safety and health plan, including Oregon OSHA.

Due to this lack of protection against disclosure, employees who participate in Oregon OSHA inspections are reluctant to be candid and forthcoming during interviews due to a fear of retaliation or discrimination from their employer. This can have a chilling effect on employees, especially those who come from more vulnerable populations, who are faced with providing factual information that could result in an alleged citation against their employer. The result of this dynamic can jeopardize Oregon OSHA’s ability to substantiate an alleged violation where employees are exposed to an occupational safety and health hazard.

Concept:

This concept proposes amendments to the Oregon Safe Employment Act to include protections against the release of identifiable information about those interviewed during inspections, investigations, or consultations. This concept directs the director to adopt rules and procedures to protect such identifiable information.

Contact: Theodore Bunch, Oregon OSHA Legislative Coordinator, 971.375.8001
Theresa Van Winkle, DCBS Legislative Director, 971.600.4595

Legislative Concept to be introduced (2025 session):

New sub-section of 654.067:

(8)(a) The director shall keep confidential and not disclose to the public any information obtained during the course of an investigation or inspection of any place of employment conducted under ORS 654.001 to 654.295, 654.412 to 654.423 or 654.750 to 654.780 that would permit the identification of an employee, other than an agent, who provided information for or participated in the investigation or inspection, unless:

(A) The employee consents to the disclosure; or

(B) In accordance with criteria established by rule, the director deems disclosure necessary to carry out the provisions of the Oregon Safe Employment Act.

(b) The director shall adopt rules and establish procedures necessary to carry out the provisions of this subsection.

-1 Amendment to LC 389 (bold and underlined to indicate additions):

654.067

(8)(a) The director shall keep confidential and not disclose to the public any information obtained during the course of an investigation, ~~inspection,~~ or consultation of any place of employment conducted under ORS 654.001 to 654.295, 654.412 to 654.423 or 654.750 to 654.780 that would permit the identification of an employee, other than an agent **of the employer**, who provided information for or participated in the investigation, ~~inspection,~~ or consultation unless:

(A) The employee consents to the disclosure; or

(B) In accordance with criteria established by rule, the director deems disclosure necessary to carry out the provisions of the Oregon Safe Employment Act.

(b) The director shall adopt rules and establish procedures necessary to carry out the provisions of this subsection.