



Testimony opposing HB 2570 (2025) in its current form

Chair Grayber, Vice Chairs Elmer and Muñoz, and members of the House Labor and Workplace Standards Committee,

My name is Kate Suisman. I am an attorney at the Northwest Workers' Justice Project (NWJP). Thank you for the opportunity to provide testimony on this important bill. We represent workers in low-wage jobs when bad things happen to them at work: when they are not paid, or are discriminated against for being in a protected class or are retaliated against for speaking up. Finally, we engage in policy advocacy and try to bring the important perspectives of workers in low-wage jobs and immigrant workers to these policy discussions.

NWJP is glad that Oregon OSHA is addressing the current omission in protections for worker confidentiality. We have been talking to Oregon OSHA and DCBS about this issue for the last two years. This change is required by federal OSHA. Federal OSHA audits each state that is allowed to run its own state plan OSHA, and puts out an annual report about the state's performance called the FAME report- the Federal Annual Monitoring Evaluation. As I understand it from reading the annual FAME report on our state plan, the issue of worker confidentiality first came up in 2019 and has been included in each annual assessment since then. OSHA observed that, "The confidentiality of employees interviewed during inspections was not ensured during the appeal process." In its 2021 report, federal OSHA became more concerned about the disclosure of sensitive worker information and stated, "More concerning is that un-redacted enforcement case files are given to employers, upon request, prior to appeal proceedings..."¹ When advocates learned of this problem, it became more difficult for us to encourage workers to cooperate with Oregon OSHA during investigations.

¹ "The identity of employees interviewed or who otherwise participated in protected activities as not withheld under the informant privilege provided in Chapter 3 of Oregon OSHA's Field Inspection Reference Manual (FIRM) corresponding to Chapter 3, Section VII, I, 5c of OSHA's Field Operations Manual (FOM). The ability to interview employees privately is a protection afforded by the OSH Act in Section 8, paragraph A(2) and the corresponding provision of the Oregon Safe Employment Act under 654.067(b). The only employees who are afforded anonymity by Oregon OSHA are complainants. This has the potential to expose employees who participate in enforcement inspections to retaliation, and to have a chilling effect in their willingness to freely answer questions. More concerning is that un-redacted enforcement case files are given to employers, upon request, prior to appeal proceedings. Oregon public records law ORS 192.314(1) states that "every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided" by specific exemptions. The Oregon public records law, or current interpretation of the law, prohibits Oregon OSHA from protecting information that should be confidential. This is a concern, therefore, Observation FY 2020-OB-03 will be continued." [2021 FAME report.](#)

As you may know, government enforcement agencies can invoke something called the “informant’s privilege.” This is a privilege held by the government. It allows the government to prevent the disclosure of the identity and communications of its informants. This is an age-old, common law principle, and is embedded in how the federal government protects people who are willing to provide them sensitive information. Federal OSHA regularly relies on this privilege to protect worker confidentiality.

Oregon, however, does things differently. I am not an expert in government confidentiality protections, but I have learned a bit over the past few years while working on this issue with Oregon OSHA and consulting with former federal OSHA officials. Oregon places a high value on transparency and disclosure, which is a good thing in general. However, when workers are brave enough to speak up about abuses or dangers at their worksite, they should have a clear understanding of what may be disclosed during the process. While Oregon does have an informant’s privilege in our evidence code, Oregon OSHA’s stance is less clear.

ORS 192.355(4) lays out the general rule as to when confidential information can be disclosed.² ORS 192.314(1) lays out the general idea that people in Oregon have a right to public records.³ Oregon OSHA has erred on the side of disclosure, due to its reading of these and other relevant sections of law. The proposed fix goes part of the way to addressing the problem, but a few concerns remain.

Section 1(8)(a)(B) of HB 2570 gives the director wide discretion as to when confidential information may be revealed. Oregon OSHA has said in the past that they sometimes rely on workers’ testimony to prove violations. If the only proof Oregon OSHA has is the word of a worker who does not want to be a witness, NWJP believes strongly that justice is generally better served by protecting that worker’s information and letting the violation go unproven. Disclosing information against a worker’s will in order to potentially prove a violation does great damage to workers’ trust in Oregon OSHA and government more broadly. Workers need to know that Oregon OSHA will protect information they have asked be kept confidential, period.

However, I understand that there are times when Oregon OSHA may make the difficult choice to disclose confidential information nonetheless. I believe these times must be limited to situations involving egregious disregard for worker safety and health, and only during an appeal where witness testimony is needed, not during the course of a regular investigation. I suggest the following amendment to the language of Section 1(8)(a)(B):

² “Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.”

³ “Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by [ORS 192.338 \(Exempt and nonexempt public record to be separated\)](#), [192.345 \(Public records conditionally exempt from disclosure\)](#) and [192.355 \(Public records exempt from disclosure\)](#).”

“(B) In accordance with criteria established by rule, the director deems disclosure necessary after a worker is called to testify at appeal of an enforcement proceeding under the Oregon Safe Employment Act.”

This would limit the director’s ability to disclose information to the appeal process. In other words, a worker’s identity and statements would be absolutely confidential during the investigation and citation process, and could only be revealed if the citation is appealed by the employer. As written, disclosure can happen at any time and to carry out any provision of the Oregon Safe Employment Act. I trust the current Oregon OSHA and DCBS leadership, but I do not know who will be in charge of these agencies in the future.

I believe the rulemaking process referred to in Section 1(8)(b) will be instrumental in ensuring that worker confidentiality is preserved in all but the most egregious situations. I suggest adding a presumption against disclosure to this exception, or at least stating that protecting worker confidentiality is in the public interest and should be assumed unless there is a compelling reason for disclosure. It would be helpful to have legislative guidance on this balancing that can be taken into the rulemaking process.

After reading the Oregon Field Inspection Reference Manual (FIRM) which is used to train Oregon OSHA investigators, it’s clear that Oregon OSHA presents confusing information on the current status of worker confidentiality. I bring this up to highlight that while there is a statutory problem that Oregon OSHA is attempting to address, there is also a significant training issue. I hope that Oregon OSHA staff will receive robust training on the new, clearer protections that will result from this bill.

I also want to raise that HB 2570 changes a “should” to a “may” in line 11 of page 1, in the section has to do with consulting with workers during the inspection. This section is also known as the “walk-around rule” and was recently strengthened under the federal Biden administration. I do not think Oregon OSHA should weaken the language regarding talking to workers during inspections. I strongly oppose changing the current “should consult with a reasonable number of employees” to “may consult” as proposed here.

We look forward to continuing to work together to address this major problem with worker confidentiality during the very important OSHA enforcement process.