



MEASURE: HB 2976
EXHIBIT: 34
H BUSINESS & LABOR
DATE: 3-13-2013 PAGES: 11
SUBMITTED BY: Duane R. Grange

HARMFUL EFFECTS OF HB 2976

Dear Representative Doherty, Chair,
and Committee on Business & Labor

My name is Duane R. Grange and I am the Safety Director for Selectemp Employment Services. I recently celebrated eighteen year with the company and my department's roll is to ensure safe work environments for our employees and clients and assists with safety training and compliance with the ever changing Oregon OSHA rules and regulations.

Staffing firms such as ours are playing a critical role in this state's still fragile economic recovery by providing workers with jobs, training, a choice of assignments and work, flexibility, and a bridge to permanent employment. Staffing firms such as mine also help businesses in virtually every sector grow and remain competitive by affording them the flexibility to access talent when they need it.

Selectemp Employment Services

- Been doing business in Oregon for over 26 years (Founded in 1987 in Eugene, Oregon)
- 7 locations (Albany, Bend, Clackamas, Medford, Roseburg, Salem and Springfield).
- Our internal staff consists of 36 employees (only 3 of which are male). Our staff is primarily women, and a large percentage is single mothers, providing the sole household income.
- **4,168 individuals were employed as temporary workers through our company in 2012** – many of these individuals had been unsuccessful in securing employment on their own, before coming to Selectemp. We actually had some household where both the husband and wife were working through Selectemp.
- Selectemp staffs for the Construction Industry, Manufacturing Facilities, Production Facilities as well as Clerical and Professional positions.

Supporters of HB 2976 argue that the legislation is needed to address abuses committed by a relatively few bad apples in the staffing industry. The problem is there is no evidence that the bill would actually correct the abuses. What the supporters either do not know or choose to ignore is that, as employers, staffing firms are already subject to all of the laws and regulations that apply to every other employer, including laws governing

- Equal employment opportunity
- Wage and hour
- Workplace safety
- Worker's compensation
- Unemployment insurance

Corporate Headquarters

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Springfield, OR 97477
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www.selec-temp.com

Other Locations:

- Albany/Corvallis
- Bend
- Clackamas
- Medford/Southern Oregon
- Roseburg
- Salem



On the Mark, On the Job

HARMFUL EFFECTS OF HB 2976

It is illegal for staffing firms to retaliate against workers for complaining about violations of these laws and, in fact, most temporary employees of staffing firms have even *greater* protection than regular employees, since they have legal recourse against *both* their staffing firm and the staffing firm's client. For example, Oregon OSHA considers staffing firms and their clients co-employers and both are responsible for workplace safety. Oregon OSHA recognizes that the best way to assure proper Personal Protective Equipment (PPE) and proper use of PPE is to have the employer/client who has direction and control of the workers activities provide and pay for the temporary employees PPE under the same terms as if they were their own employees.

In addition to having nothing to do with any alleged abuses the bill purportedly is designed to address, the wage mandates imposed by HB 2976 would be bad for businesses in Oregon and would adversely impact workers. Requiring staffing firms to pay temporary employees wages equal to those paid to clients' permanent employees, *plus a 30% surcharge*, would increase clients' cost of doing business with staffing firms, discourage their use of temporary workers, and thus undermine the benefits of a flexible labor force. Requiring day labor service firms to pay the prevailing wage of the clients' permanent employees would lead to the same result. Such wage mandates would violate free market principles and chill the use of flexible staffing arrangements, depriving both workers and businesses of critical flexibility.

This legislation would also prohibit staffing firms from charging clients fees for placing certain candidates in permanent jobs, thus wiping out a large part of the staffing industry. Specifically, the bill would prohibit staffing firms from charging clients what are commonly referred to as "conversion fees," which are reasonably designed to discourage clients from using the staffing firm as a free employment agency. These fees, which are imposed in what are commonly known as "temp-to-hire" arrangements, cover staffing firms' cost of recruiting, screening, training, and placing applicants. Such a prohibition would be unprecedented, as no other state prohibits direct hire or conversion fees.

HB 2976 would require staffing firms to provide temporary employees with written detailed information including, among other things, the expected duration of the work to be performed, an accurate job description, accurate information on any health and safety hazards, and other information, and would impose a crushing administrative burden on staffing firms.

Selectemp already provide this information to workers verbally. Requiring this information to be given in writing would place an unnecessary administrative burden on firms. The volume and variety of temporary jobs and the fact that most job assignments must be filled on very short notice, make it impractical if not impossible to provide job-specific written job descriptions to workers placed on jobs. Requiring the employees to come to the office to get the written information would be a financial hardship on the employees, having to use their gas to drive here, when often they are already financially strapped.

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Furthermore, there is no evidence that employees are not being adequately informed about their jobs before going on assignments and after they get there. Without such evidence, there is no basis for even considering legislation such as HB 2976.

If that were not enough, here are more examples of what this bill would do:

- It would prohibit staffing firms from charging nominal fees when offering voluntary services to their employees, such as transportation and check cashing services.
- It would not allow day labor firms to adjust a worker's pay rate if their job duties change during an assignment.

The plain fact is that there is no evidence of abuses that could not be addressed by vigorous enforcement of existing employment laws. No matter what the bill's supporters claim, more than adequate tools to do so already are in place -- just as there are more than adequate tools to go after bad employers in every other industry. Enforcing existing governing agency, such as BOLI, Worker's Compensation, the Oregon Construction Contractors Board and Oregon OSHA's, rules and regulations.

What we need are more enforcement resources devoted to weeding out the bad actors. A bill that simply imposes new rules and costs on legitimate staffing firms is not the answer. The legislature should reject this bill, as it would stifle job creation and increase unemployment.

We need to get Oregonians working, and keep them working! Construction is critical in growing our economy. Passing this bill would cripple many contractors that rely on Staffing Services to supply the additional workforce they need, and could put Selectemp and other Staffing Services out of business.

For these reasons, I urge you to oppose HB 2976.

Sincerely,

Duane R. Grange | Safety Director
Selectemp Employment Services
P.O. Box 71250
Springfield, OR 97475
541-746-6200

On the Mark, On the Job

PROGRAM DIRECTIVE

Program Directive: A-246
Issued: February 28, 2001
Revised December 18, 2009

- SUBJECT** Inspection Criteria: Temporary Employment and Leasing Agencies
- PURPOSE:** To provide guidance to Oregon OSHA staff when working with Temporary Service Providers and Worker Leasing Companies
- SCOPE:** This instruction applies all Oregon OSHA.
- ACTION:** Managers will ensure that all Oregon OSHA staff working with Temporary Service Providers and Worker Leasing Companies are aware of and follow these guidelines when appropriate.
- DEFINITIONS:**
- Administrative Service Organization (ASO) - A company that provides administrative services as they relate to a host employer's responsibilities regarding their employees. ASO services outsource payroll and human resource departments for businesses that use host employer tax identification numbers, which is different from a worker leasing company that use the worker leasing company's tax identification numbers. **Note:** There is no further discussion about ASOs within the document. ASO is defined here to highlight their existence.
- Host employer - The client of a Worker Leasing Company or a Temporary Service Provider who is using leased or temporary employees.
- Temporary basis - Providing workers to a client in situations such as employee absences, professional skill shortages, seasonal workloads, special assignments, and projects with the expectation that the position(s) will be terminated after the situation ends. Workers are also on a temporary basis if they are provided as probationary new hires with a reasonable expectation of transitioning to permanent employment and the client uses a pre-established probationary period in its overall employment selection program.
- Temporary Service Provider – A staffing provider that provides workers to a client by contract and for a fee, having current written documentation describing the work being provided on a temporary basis (defined above). Temporary service providers are not required to be licensed.

Worker Leasing Company - A licensed company, commonly known as a professional employer organization (PEO) that provides workers by contract and for a fee to work for a client. It **does not** include a company that provides workers to a client on a temporary basis. (See Temporary Service Provider definition)

BACKGROUND: Clarification and standardization of Oregon OSHA policy is needed regarding the expectation and citation of the following:

- Host employers using leased or temporary workers under contract from Worker Leasing Companies or Temporary Service Providers.
- Worker Leasing Companies and Temporary Service Provider agencies.
- Oregon OSHA and the Workers' Compensation Board and courts place the greater burden of protection on the party exercising direction and control at the workplace.

POLICY:

- A. Host Employer Responsibilities. In general, the assumption is that the host employer directs and controls the workers. Based on this assumption, citations for safety and health hazards associated with conditions at the workplace that workers are exposed to will normally be issued to the host employer.
1. Hazard Control. The host employer is responsible for controlling and correcting all hazards at the workplace that workers are exposed to. They have supervisory direction over the workers and control of the workplace conditions. Normally citations for hazards at the workplace will be issued to the host employer.
 2. Training. The host employer is responsible for site-specific training of all workers at the workplace. This includes, but is not limited to, training on the following:
 - a. Site-specific hazard communication program, including the location of the written program and MSDS.
 - b. Control of hazardous energy (lockout/tagout) procedures for equipment and machinery that they work with at the workplace.
 - c. The personal protective equipment (PPE) required to be used, worn, and maintained at the workplace.

3. PPE. The host employer is responsible for conducting a hazard assessment of the workplace and ensuring the use and maintenance of PPE for all workers. They are also required to provide PPE to leased/temp workers, unless the contract states the leasing company or temporary service provider will provide it.
4. Safety Committee and Safety Meetings. Leased/temp workers must be included in the employee count when determining the employer's options according to OAR 437-001-0765.
5. Accident Reporting. The host employer is required to report accidents to Oregon OSHA according to OAR 437-001-0700.
 - a. Fatality or catastrophe must be reported to Oregon OSHA within 8 hours of the employer's knowledge of the event.
 - b. Accidents requiring hospital admission and treatment must be reported to Oregon OSHA within 24 hours of the employer's knowledge of the event.
6. Recordkeeping. The host employer is responsible for medical record retention and injury and illness record keeping. This includes the OSHA 300 log, 300-A, and the first report of injury. An OSHA 300 log is required if they had more than 10 employees at any one time during the previous calendar year, unless they are in an exempt SIC according to OAR 437-001-0700(3)(b). When counting the number of employees, leased/temp employees are included. Injuries to them must be recorded on the OSHA 300 Log.
7. Accident Investigation. This is a joint responsibility of the host employer and the leasing/temp agency. All lost time injuries must be investigated to determine how to prevent recurrence. OAR 437-001-0760(3)

- B. Worker Leasing Companies and Temporary Service Providers Responsibilities. In those cases when the Worker Leasing Companies or Temporary Service Providers have direction and control of the workplace and workers, they have all the responsibilities as the host employer, listed above in A.

Where they do not have direction and control, the Worker Leasing Company must assure that the host employer provides adequate training, supervision, and instruction for those workers to meet the requirements of ORS chapter 656.850 compliance with workers' compensation and safety laws.

1. Recordkeeping. When the leasing/temp agency has direct workers' compensation coverage for the host employer, the leasing/temp agency is responsible for completing and filing the DCBS Form 801 for all injuries to leased/temp workers within seven calendar days after knowledge of an injury.
2. Accident Investigation. This is a joint responsibility of the leasing/temp agency and the host employer. All lost time injuries must be investigated to determine ways to prevent recurrence.

Any questions concerning worker leasing or temporary services providers should be referred to the Worker Leasing Program, within the Workers' Compensation Division.

E-mail: WCD.employerinfo@state.or.us

Phone: 503-947-7815

Toll free: 888-877-5670

Read more about [Worker Leasing vs. Temporary Staffing](#)

Oregon OSHA

FACT SHEET

Personal Protective Equipment — Who Pays?

Division 2/I
Division 3/E
Division 4/I
Division 7/D

Personal Protective Equipment — Who Pays?

Web site:
www.orosha.org

Salem Central Office
350 Winter St. NE, Rm. 430
Salem, OR 97301-3882

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Oregon
OSHA

With few exceptions, employers must pay for all personal protective equipment (PPE) required by Oregon OSHA standards. The rule and this fact sheet apply to all employers subject to Oregon OSHA rules.

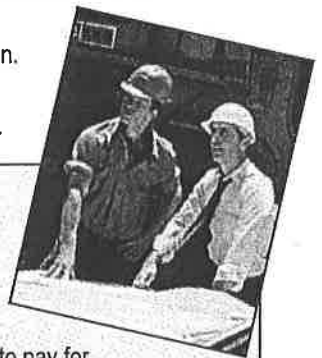
This fact sheet will acquaint you with the details of our new rule and to answer most of your questions about when and how you must pay for PPE for your workers.

The Basics

You, the employer, must pay for PPE if a rule or law requires PPE or states you must pay.

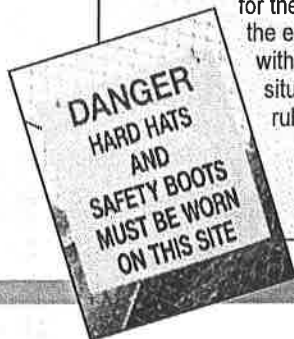
You, the employer, do not have to pay for PPE if it is:

- Personal in nature and can be worn off the job. Examples might be ordinary safety-toed shoes and prescription safety eyewear.
- Integrated metatarsal footwear and you provide attachable metatarsal protective devices.
- Needed to replace PPE lost or damaged by the employee.
- Regular clothing that may be worn off the job that also provides protection.
- Upgraded or has been personalized over and above what you provide.
- Doctor's exams related to prescription lenses for required eye protection.



The Details

- The rule lists examples of PPE that are personal and thus exempt from employer payment. One example is non-specialty daily clothing. If you require pole climbing workers to wear long sleeve shirts and heavy pants to avoid splinters and abrasions, that does not make the pants and shirts PPE even though they provide some protection. It is assumed the workers would have to wear pants and shirts anyway and they can wear them away from the job so the employer does not have to pay for them.
- Heavy coats worn in cold storage are considered PPE and you must pay for them. The rule exempts clothing worn just to protect from the weather, like a flagger wearing rain gear, but it does not exempt clothing needed in an artificial environment like cold storage.
- When the employee loses or intentionally damages PPE, you are not required to pay for the replacement. PPE is lost if the employee shows up for work without it. You may handle such situations with your own work rules and disciplinary policies.
- When you provide required PPE and the employee wants to use something else, you don't have to pay for the elective PPE if it costs more than what you provide. If you allow the employee to use the more expensive upgraded or personalized PPE you are not obligated to pay for it. This applies to original issue and replacement PPE. If you use an allowance system for your PPE you only have to provide the employee with the amount they would have received if they had chosen to use the PPE you recommended. If they buy something more expensive, they must pay the difference. You must assure that any alternate PPE the employee selects provides the required protection and is kept in good condition.
- You do not have to pay for dust masks or respirators that you allow employees to use, according to the voluntary use rules in the respiratory protection standard, if they are not required by an Oregon OSHA standard.
- If the employee needs prescription lenses in a full-face respirator, you must pay for them but not for the medical examination to determine the prescription.



Personal Protective Equipment — Who Pays? continued

Not Your Employees

If you get your workers from an employment agency, temporary staffing firm or employee leasing company, and you direct and control worker activities, you are responsible for providing and paying for their PPE under the same terms as if they were your own workers. Oregon OSHA recognizes that the best way to assure proper PPE and proper use of PPE is to have the employer with direction and control over the workers and the work, provide it. Agreements between the temporary or leasing agency and the employer are allowed as long as PPE is provided at no cost to the worker.

There is a special application for multi-employer construction worksites like those often found on construction sites. Normally, a host-employer/general contractor does not have to provide or pay for PPE for sub-contractors' employees.

Method

Employers may devise their own means of providing PPE. You can issue vouchers or purchase orders, keep your own stock and issue the equipment, provide a cash allowance or any other method as long as the employee does not have to pay for things that are your responsibility. This applies to the initial issue and replacements.

Multiple Rules

If other Oregon OSHA standards specify payment requirements for PPE, that standard will prevail.

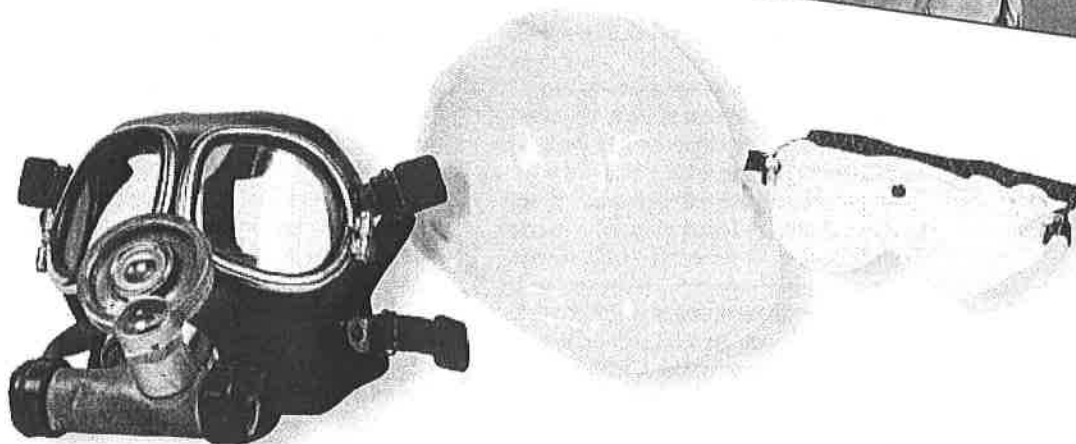
LINKS:

General Industry: www.cbs.state.or.us/osha/pdf/rules/division_2/div2_i.pdf

Construction: www.cbs.state.or.us/osha/pdf/rules/division_3/div3e.pdf

Agriculture: www.cbs.state.or.us/osha/pdf/rules/division_4/div4i.pdf

Forest Activities: www.cbs.state.or.us/osha/pdf/rules/division_7/div7_d.pdf



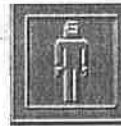
Division 2/
Division 3/E
Division 4/I
Division 7/D

Personal Protective Equipment — Who Pays?

Oregon
OSHA

The Standards and Technical Resources Section of Oregon OSHA produced this fact sheet to highlight our programs, policies, or standards. The information is from the field staff, research by the technical resources staff, and published materials. We urge readers to consult the actual rules as this fact sheet information is not as detailed.

Personal Protective Equipment



OAR 437
Division 2/1

Personal Protective Equipment

General Requirements

Oregon OSHA standards require employers to assess the workplace to determine if hazards are present or likely to be present that necessitate the use of personal protective equipment (PPE). Employers must provide workers with appropriate PPE and require them to use and maintain it in a sanitary and reliable condition when, based on the hazards, there is reasonable probability that an injury or illness can occur.

Personal Protective Equipment

PPE is designed to protect employees from serious workplace injury or illness resulting from contact with chemical, radiological, physical, electrical, mechanical, or other workplace hazards that cannot be eliminated. PPE is a supplementary form of protection when hazards have not been controlled through engineering or administrative controls. PPE includes a variety of garments and equipment such as goggles, coveralls, gloves, vests, earplugs, and respirators. PPE, when used properly, protects against hazards but does not eliminate them. Individual standards may require specific PPE.

Employer Responsibility

Survey your workplace
Conduct a hazard assessment to identify hazards and determine if employees need personal protective equipment. OAR 437-002-0134(1) requires a **written document that certifies that the workplace has been evaluated, the date(s) of the hazard assessment, and who performed the evaluation.** Hazard assessments should be re-evaluated whenever there are changes to equipment, processes, or chemicals in the workplace. See an example of a hazard assessment in Table 1, below. The hazard assessment document can be in any format as long as it meets **written-document** requirements.

PPE Hazard Assessment (Example)			
Department: Building maintenance		Job Title: Maintenance helper	
Job Duty Location: Plant-wide.			
Analysis performed by: John Black		Date: December 19, 2001	
Activity/Tools	Potential hazards	Body part(s)	PPE required
Replace glass	1,7	c,g,h	III,VII (cut resistant)
Remove trash	7	c	III
Replace light bulbs	1,4,7	c,h	III,VII (cloth/leather)
Welding	3,7,8	c,e,f,g,h	X (welding helmet/lens) IX (fume) X (welding vest) VII (welding gloves)
	Hazard Key	Body Part Key	PPE Required
	1. Cut	a. Head	I. Hard hat
	2. Abrasion	b. Face	II. Chemical goggles
	3. Burn	c. Eye(s)	III. Safety glasses
	4. Fall	d. Ear(s)	IV. Ear plugs
	5. Flying object	e. Respiratory	V. Ear muffs
	6. Noise	f. Trunk	VI. Body harness
	7. Flying particles	g. Arm(s)	VII. Gloves (list type)
	8. Inhalation	h. Hand(s)	VIII. Shoes/boots (list type)
	9. Slip	i. Finger(s)	IX. Respirator
	10. Splash	j. Leg(s)	X. Other
	11. Other	k. Foot/feet	
		l. Toe(s)	
		m. Other	

Table 1

Website:
www.orosha.org
Salem Central Office
350 Winter St. NE, Rm. 430
Salem, OR 97301-3882
Phone: 503-378-3272
Toll-free: 800-922-2689
Fax: 503-947-7461



Personal Protective Equipment – continued

OAR 437
Division 2/1

Personal Protective Equipment

Select appropriate equipment

Provide appropriate PPE to employees who need protection from the hazards. Select PPE that properly fits workers and ensure equipment is inspected and maintained. Communicate the PPE selection decision to employees. Require that employees use the equipment and use it correctly.

Hazards that cannot be eliminated through engineering or administrative controls are the ones to control with personal protective equipment. Table 2 matches appropriate personal protective equipment with common workplace hazards. The list is not intended to be exhaustive.

Body Part	Hazard	Appropriate PPE
Eyes and Face	Flying particles or dust	Safety glasses with side shields, goggles, face shields, sand-blasting helmets
	Molten metal	Splash goggles, face shields
	Liquid chemicals	Gas-tight goggles, face shields
	UV or IR light	Laser-safety lens with appropriate filter
Head	Falling or overhead objects	Hard hat, helmet
	Electrical conductors	Class B hard hat or helmet
	Power-driven machinery	Head covering or caps that completely cover hair
	Molten metal	Heat resistant hood & neck covering
Feet	Falling/crushing objects	Steel-toed shoes/boots, metatarsals,
	Puncture hazards	Puncture resistant soles
	Electrical conductors	"Electrical-hazard" shoes
	Hot substances	Leggings or leg or foot guards
	Chemicals	Chemical-resistant footwear
Hands	Chemicals	Select according to vendor glove charts, standard industry practices, process knowledge, etc. Consider dexterity requirements and fit.
	Cuts and lacerations	
	Punctures	
	Temperature extremes	

Table 2

Train employees

Although not required, employers should keep a record of employees who receive PPE training. The record should document the worker's name, the type of training, and the training date. Employees must receive the following training:

- What PPE is necessary
- When PPE must be worn
- How to put on, adjust, wear, and remove PPE
- The limitations of PPE
- Proper care, maintenance, and useful life of PPE
- When to replace worn-out PPE
- How to discard contaminated PPE

Employees must demonstrate an understanding of the training topics and the ability to use PPE before being allowed to perform work requiring the use of PPE. When an employee does not demonstrate an understanding or exhibit an adequate skill level, the employer is responsible for retraining. Retrain when changes in the workplace or PPE make previous training obsolete.

The Respiratory Protection Standard, 1910.134, has an annual training requirement with specific training topics. Review application standards to ensure training requirements are being met.

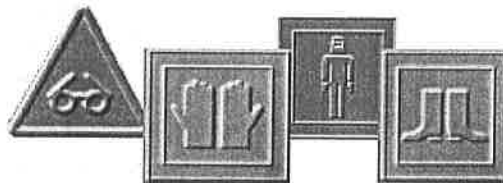
Resources

Oregon OSHA primary PPE standards are in OAR 437, Division 2/1, **General Industry/Personal Protective Equipment**. However, you can find PPE requirements in General Industry, Construction, Agriculture, Maritime Activities, and Forest Activities. For the full text of the rules adopted by Oregon OSHA, refer to OAR 437 rules at www.orsosha.org (Rules/Laws).

www.osha.gov/Publications/osha3151.pdf

www.osha.gov/SLTC/personalprotectiveequipment/index.html

American National Standards Institute (ANSI) standards



OR-OSHA (R-2/12) FS-03

Oregon
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