

COVID-19: Oregon OSHA Enforcement & Consultation

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Oregon OSHA Enforcement of “Stay Home/Stay Safe” and “Reopening a Safe and Strong Oregon”

Oregon OSHA has continued to apply the Oregon Safe Employment Act, so our enforcement jurisdiction remains limited to the workplace

Oregon OSHA is enforcing guidance in the various Governor’s Executive Orders, in most cases by applying general rules related to employer obligations to provide a safe and healthful workplace, such as the following:

- Personal Protective Equipment
- Health Hazard Controls
- Supervision and Training
- Extraordinary Hazards

Oregon OSHA Enforcement of “Reopening a Safe and Strong Oregon”

As part of the reopening, Oregon OSHA will continue to look to the Governor’s Executive Orders and related guidance from the Oregon Health Authority.

The OHA guidance includes both mandates and recommendations. To the degree workers are exposed, Oregon OSHA will enforce the mandatory language of the OHA guidance. Oregon OSHA will not enforce the recommendations -- except in the context where they provide guidance about appropriate ways to address hazards that can otherwise be documented in the workplace (relying upon a fact-specific assessment of the nature of any “recognized hazards” to which workers are exposed).

Oregon OSHA COVID-19 Complaint Workload

During the 3 months of March through May, Oregon OSHA will have received between 4600 and 4700 complaints specific to COVID-19 issues. In a typical year, Oregon OSHA receives about 2,000 complaints, or fewer than 40 per week.

This dramatic increase in the workload (including a noticeably higher than normal level of “non-COVID” complaints) caused our complaint handling system to bend, but - perhaps surprisingly - it did not break.

We used an “all hands on deck” approach, particularly during the peak, and we were able to manage the complaint intakes in the vast majority of cases with less than 24 to 48 hours of delay. We have “settled down” to a volume of complaints that is still more than 7 times the normal volume.

While we managed the intakes successfully, the volume of complaints - and the need to minimize unnecessary workplace visits in the face of the pandemic where possible - has forced us to rely upon methods other than formal inspections in many more cases than would normally be the case.

Oregon OSHA COVID (and other) Complaint Activity

Data current as of May 28 2020

Intake date	COVID		Other		Total
	#	%	#	%	#
March 2nd through March 8th	12	17.6	56	82.4	68
March 9th through March 15th	11	18.6	48	81.4	59
March 16th through March 22nd	45	59.2	31	40.8	76
March 23rd through March 29th	1,288	92.2	109	7.8	1,397
March 30th through April 5th	1,121	94.5	65	5.5	1,186
April 6th through April 12th	481	89.9	54	10.1	535
April 13th through April 19th	313	87.7	44	12.3	357
April 20th through April 27th	234	85.7	39	14.3	273
April 28th through May 3rd	252	84.6	46	15.4	298
May 4th through May 10th	248	88.9	31	11.1	279
May 11th through May 17th	250	82.2	54	17.8	304
May 18th through May 24th	228	77.6	66	22.4	294
May 25th through May 31st	103	74.6	35	25.4	138
Total	4,586	87.1	678	12.9	5,264

Breakdown by Selected Industry/Activity

Data current as of May 28 2020

Most Frequent Industry/Activity Types	Number	% COVID Complaints
Retail (not otherwise listed)	642	14%
Manufacturing (other than Food & Forest Products)	490	11%
Service (not otherwise listed)	463	10%
Restaurants, Bars & Food Service	383	8½%
Grocery Stores (including convenience and combination)	343	7½%
Health Care (not otherwise listed)	280	6%
Construction	229	5%
Offices (including Call Centers)	224	5%
Forest Products Manufacturing	152	3½%
Agriculture and/or Food Processing/Manufacturing	137	3%

Source of COVID-19 Complaints

Based on analysis of data through 4/17

Of the complaints Oregon OSHA has received related to COVID-19...

- nearly 37 percent of them are from current employees
- another 13 percent of them are from former employees or employee representatives
- more than 29 percent of them were from unknown complainants
- the remaining roughly 21 percent were from other concerned individuals

The Nature of the Complaints

Most complaints continue to fall into one or more broad categories:

- business is not enforcing social distancing;
- business (particularly those involving offices) is not maximizing telework opportunities;
- business is not closed or is requiring employees to work even though “not essential;” (these have declined during reopening)
- business is failing to act or to share information about one or more people complainant believes have COVID-19

Complaint Results

In the overwhelming majority of the cases, the employer has taken some steps to address COVID-19, but the complainant either indicates that the rules are not being enforced or that the employer's response is inadequate or was tardy.

Resolving the Cases

Oregon OSHA has been able to resolve many - again, the overwhelming majority - of the complaints by communicating with the employer - as well as communicating with the complainant about what is and is not expected.

Use of non-inspection “spot checks”

- “Spot check” visits do not involve presenting one’s credentials and initiating a formal inspection.
- Use time more efficiently by allowing us to be more selective with formal inspections, use additional available staff from throughout the division, and minimize unnecessary contact within businesses.
- As of May 29, completed more than 4650 such visits -- roughly 15% of those at sites where we had received at least one complaint.
- Overwhelming majority determined employer was taking reasonably effective steps to maximize social distancing, limit interpersonal contact, and maximize cleaning/sanitation.

Responding to Complaints

- Oregon OSHA's formal onsite enforcement activity continues to be limited; because of the volume and the level of understandable uncertainty about what employers must do, we opened 34 inspections to date.
- We have completed 19 - with 7 of those resulting in a citation.
- Consultants have done more than 125 coronavirus intakes and have completed more than a dozen as "abatement assistance" in relation to enforcement complaints and more than three dozen other "virtual" coronavirus consultations

Formal Inspection Results

(not all public, pending acknowledgment of employer receipt)

- Securities Broker (complaint re: telecommuting). 1 unrelated non-serious safety committee violation. No penalty
- Adult entertainment club. Operating in violation of EO 20-12. Penalty: \$100
- Furniture store. Operating in violation of EO 20-12. Penalty: \$175
- Restaurant operating in willful violation of EO 20-12. Refusal to honor Red Warning Notice. Total penalty: \$13,900
- Salon operating in willful violation of EO 20-12. Total penalty: \$14,000
- Food processor not fully implementing social distance even with positive cases. Penalty: \$2,200
- Forest products manufacturer not fully implementing social distance. Penalty: \$630

Oregon OSHA Appeal Process

- Employer has 30 calendar days to appeal an Oregon OSHA citation
- Most appeals are resolved (settled) following informal conference to discuss issues and consider additional employer information
- If appeals cannot be resolved, they are heard by an Administrative Law Judge (ALJ) at the Workers Compensation Board, who issues an independent decision that represents the final decision of the Board (and cannot actually be reviewed by the Board itself).
- The ALJ's decision can be appealed to the Oregon Court of Appeals.

Next steps in addressing COVID-19 in the workplace

We will be enforcing Phase 1 Reopening Guidance using the same basic approach used for Stay Home/Stay Safe - increased coordination with other agencies with enforcement responsibility through Governor's Office.

We will continue to be the primary intake on a statewide level for COVID-19 enforcement; we will be referring public health complaints to others rather than simply taking no action on them

We will be referring issues where employer-employee relationship is not explicitly implicated or is uncertain to other enforcement agencies with jurisdiction when possible.