



Rebecca Dixon
Executive Director

www.nelp.org

NELP National Office
90 Broad Street
Suite 1100
New York, NY 10004
212-285-3025

Washington DC Office
1350 Connecticut Avenue NW,
Suite 1050
Washington, DC 20036
202-887-8202

California Office
2030 Addison Street
Suite 420
Berkeley, CA 94704
510-982-5945

February 14, 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 592, the "Keeping Oregon Workers Safe Act," Relating to the Oregon Safe Employment Act

Thank you for the opportunity to share our comments in support of Senate Bill 592, the Keeping Oregon Workers Safe Act. 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. With these partners we have created policy solutions to ensure that all workers have safety and health protections, especially in dangerous low-paying jobs where workers of color are disproportionately represented. 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.

All workers should be able to go to work each confident that they will return home safe, healthy, and alive. An Occupational Safety and Health Division has three crucial roles to play in bringing this basic human right to fruition: crafting and enforcing strong worker-informed standards anchored in agency-collected data that establish minimum health and safety policies, making certain that employers understand their obligation to provide a health and safe workplace and ensuring that workers know they have the right to a safe workplace and can effectively enforce that right. The provisions of SB 592 improve the abilities of Oregon Occupational Safety and Health Division (OR OSHA) in all three of these areas. SB 592 would give the agency the authority to: increase penalties to deter workplace violations and ensure workers are safe and healthy, mandate agency scrutiny following egregious workplace violations, and improve agency reporting for transparency and government accountability.

Oregon OSHA should be a leader in valuing human life and safety.

Oregon OSHA's current penalty schedule ranks among the lowest in the nation

In an ideal world, workplace health and safety dangers would be preemptively remedied voluntarily by the employer as part of fulfilling their duty to provide a workplace free of hazards. Because this is not always the case, penalties become an important part of a compliance regime creating incentives both for the business with the violation to remedy it quickly and for other firms in the same industry to proactively ensure that they are not also in violation. This is particularly the case when an OSH agency does not have enough inspectors to visit all worksites with significant frequency. While Oregon OSHA can visit sites more often than in many states, it is still estimated that it would require 112 years to visit the workplaces of all workers in the state. Oregon OSHA currently levies penalties that place the state in the bottom rankings nationally, below the medians for states with their own plans, and at a level insufficient to adequately reflect the value of the lives changed and lost due to workplace injuries and illnesses or to fatalities on the job.

Since 2015, Federal OSHA has consistently increased the average penalties it levies on violators, and while many argue they should be still higher to properly value workers' health and lives, these rates nonetheless far outpace those levied by Oregon OSHA. In fact, the \$615 average penalty levied by Oregon OSHA in 2021 is **lower** than the 2017 average when adjusted for inflation. This speaks to the value of establishing an automatic annual increase based on regional Consumer Price Index increases.

	2017 Average Penalties	2018 Average Penalties	2019 Average Penalties	2020 Average Penalties	2021 Average Penalties	Percent change 2017- 2021
Federal OSHA	\$2633	\$2729	\$2819	\$2973	\$3315	25.9%
Oregon OSHA	\$547	\$587	\$579	\$599	\$615	12.4%

(Data source: AFL-CIO, "Death on the Job: The Toll of Neglect, a National and State-by-State Profile of Worker Safety and Health in the United States," April 2022)

Oregon OSHA's average total penalty per fatality investigation in 2021 was less than one-tenth that of the national average (\$1,077 versus \$11,626). While averages can be skewed by a few very large penalties, the 2021 *median* penalty issued per fatality by federal OSHA was \$9,753, while the median for all state OSHA plans was \$5,825 and that of Oregon OSHA was \$2,150.¹

Additionally, this year federal OSHA announced it would permit "instance-by-instance citations" for "high-gravity" serious violations. Rather than group violations it finds in workplace inspections, the agency will cite each violation separately. OSHA recognizes the importance of meaningful violations to deter non-compliance, as Assistant Secretary for Occupational Safety and Health Doug Parker notes, "Smart, impactful enforcement means using all the tools available to us when an employer 'doesn't get it' and will respond only to additional deterrence in the form of increased citations and penalties."²

Meaningful penalties are a critical element of a successful enforcement strategy.

Several studies have examined the role of penalties on a variety of labor standards compliance, including worker injury rates. Business compliance with regulatory standards is the result of multiple factors, including a desire to protect corporate reputation, a perception that industry norms include compliance, management belief in the principle behind the standards, and economic motivations when compliance is less costly than fines and penalties. But at the same time, legal rules and the enforcement mechanisms behind them are key components for creating the social and normative beliefs that underlie the motivations for compliance.³ As researchers note, “Enforcement is important first of all in communicating regulatory norms and threatening credible levels of monitoring and legal sanctions for noncompliance; second, for its reminder effect (‘check your speedometer!’); and third, for its reassurance effect (‘you’re not a fool to comply; we are really looking for and finding the bad apples’).⁴

Other researchers who have examined compliance across industries state, “[A]ll industries in the U.S. are currently facing a very weak penalty and enforcement regime, which in our view results in a high overall rate of noncompliance, around which industries then vary based on their particular demand- and supply-side characteristics.”⁵ Even a business-side research institution has concluded that for businesses to comply with workplace regulations the probability of being inspected multiplied by the expected cost if their violation is detected must outweigh the profits from noncompliance. “To ensure that all companies have an incentive to comply with the law,” they write, “substantially higher penalties...are necessary.” They believe that even the incentive for managers to *learn* about labor and employment protections is driven by the extent of penalties they would face for violations.⁶

Regarding occupational health and safety in particular, researchers estimate that a 10 percent increase in average penalties reduces worker injuries by almost 1 percent, and a 10 percent increase in inspection frequency reduces injuries by 1.63 percent.⁷ Given Oregon’s 43,400 workplace injuries and illnesses reported in 2020, the more just penalty levels proposed in SB 592 would result in at least 400 workers’ lives saved or injuries and illnesses avoided. Other studies have found that when OSHA penalties were levied for one type of violation, many firms came into compliance not just for that hazard but improved their broader safety programs.⁸

Furthermore, deterring workplace health and safety hazards has a positive economic effect for workers and for public revenues. A 2015 report issued by federal OSHA found that work-related injuries have devastating and long-lasting financial repercussions for workers; even after accounting for workers’ compensation benefits, injured workers earn incomes nearly \$31,000 lower over the course of a decade than they would have had they not suffered the injury.⁹ By diminishing workers’ earnings and spending power for years at a time, health and safety violations impact the wellbeing of workers, families, communities, and local tax bases.

The proposed increases to civil penalties are important to bring Oregon’s penalties into line with those assessed by Federal OSHA and to serve as a true incentive to employers to prevent injuries and fatalities on the job. Proposing to peg penalty levels to the regional consumer price index will further ensure that Oregon OSHA’s penalty schedule remains at a level to serve as a true deterrent and allow workers and businesses alike to understand a predictable trajectory of penalties for non-compliance.

Willful or repeated violations and those resulting in a worker death should trigger increased scrutiny by regulators.

Workplace safety inspections improve employee health and safety. One study found that random inspections resulted in a 9.4 percent decline in injury rates for workers, and a 26 percent reduction in injury costs, including medical treatment and lost wages.¹⁰ Another determined that a combination of inspections and meaningful penalties reduced injuries by between 19-24 percent annually for two years following the inspection.¹¹

Using data available from the US Department of Labor, we can see that between 2016 and 2021, the number of willful violations citations in Oregon jumped significantly during the COVID-19 pandemic but had been relatively stable over the previous three years. The number of repeat violations dipped in 2020, but in 2021 returned to a level just below that of previous years. Indeed, during the two hardest years of the pandemic, the number of repeated violations dropped by more than half.

However, in 2021 both willful and repeated violations increased significantly, and combined constituted almost 12 percent of all violations reported by Oregon OSHA. This may indicate that post-pandemic management knowledge about safety measures has atrophied or that its commitment to compliance has been overshadowed by a drive for greater profit and productivity to the detriment of workers and points to the need for these proposed comprehensive inspections.

Year	Sum of Willful Violations	Average of Willful Penalties	Sum of Repeat Violations	Average of Repeat Violations	Willful and Repeat Violations as Percent of Total Violations
2016	0	\$0	96	\$16720	2.6%
2017	1	\$1400	177	\$18369	5.3%
2018	1	\$3125	179	\$27464	5.5%
2019	5	\$7000	204	\$39399	6.7%
2020	18	\$12702	84	\$14815	8.1%
2021	33	\$19718	123	\$24478	11.7%
Grand Total	58	\$7324	863	\$23541	5.7%

The proposal to conduct comprehensive inspections after three or more willful or repeated violations in one year and after those resulting in a worker death is also important given the industries that are most often cited for health and safety violations in Oregon and the typical employment patterns in those industries. Of the 69 reported workplace fatalities in Oregon in 2020, 20 percent occurred in transportation and warehousing, followed by agriculture and forestry (17%), construction(17%), waste management and remediation (10%), crop production (8%), manufacturing (8%), and retail (3%).¹²

Many of these industries are characterized by high turnover and the use of temporary labor, meaning that the workers who were educated about the nature of a willful or repeat violation or who were informed of mitigation measures after a workplace death may soon leave and new employees may lack this knowledge about measures their employer is supposed to be taking. A follow-up inspection can thus simultaneously check on ongoing compliance by the employer and serve to ensure that workers are getting the information they deserve to stay safe and vigilant about possible future hazards.

Improving compliance with health and safety standards is an equity issue.

Workers of color may be more exposed to 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.¹³ In Oregon, workers of color have a labor force participation rate 9 percentage points higher than their non-Hispanic white counterparts (69.2 percent versus 60.7 percent in 2020). Significant proportions of the state's workers of color are employed in agriculture, accommodation and food services, construction, retail trade, and manufacturing¹⁴ all of which are industries with significant numbers of health and safety citations.¹⁵ Nationally, Latinx workers also comprise large proportions of workers in other dangerous industries, including truck driving and transportation (21 percent) and freight and material movers (23 percent).¹⁶

According to the 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 100,000.¹⁷ 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.¹⁸

The US National Institute for Occupational Safety and Health also warns with climate change, workers in construction, agriculture, tourism, recovery work, fishing and forestry, utilities, and transportation are likely to suffer increased exposure to outdoor workplace dangers including heat waves and air pollution, while indoor workers in spaces without adequate temperature controls or ventilation may also suffer heat exhaustion or exposure to vector-borne diseases.¹⁹

Increased transparency is key to evaluating OR OSHA effectiveness and maintaining strong health and safety standards.

Finally, we write in strong support of the proposal to require annual reporting of Oregon OSHA data to lawmakers, and additionally urge that these reports be presented in a forum where lawmakers have the opportunity to ask clarifying questions and that they be easily accessible to workers and the general public. These annual reports would serve multiple purposes to improve workplace safety and health: they would give lawmakers who are responsible for designing or updating OSHA laws the necessary information to make data-informed decisions and to gain a greater understanding of the efficacy of Oregon's workplace safety laws; they would hold Oregon OSHA

administrators accountable to lawmakers and give an additional incentive to administer the agency using best practices; and they would allow outside researchers, academics, and worker advocates to better understand the state of worker safety in Oregon.

In addition to making the annual report public, Oregon OSHA should also continue to issue press releases upon levying major penalties on employers or finding willful, serious, or repeat violations. Studies have shown that this practice can complement the effectiveness of inspections and penalties by encouraging firms to be compliant in order to preserve their public image and reputation. A single press release can have the same impact on general compliance within a geography or an industry as 210 inspections.²⁰ Federal OSHA posts press announcements to its website, makes data searches by firm name simple on its website, and uses social media platforms like Twitter to publicize corporate noncompliance. According to David Michaels, the former OSHA administrator, these tactics “‘nudge’ employers to prevent worker injuries and illnesses to demonstrate to investors, job seekers, customers, and the public that they operate safe and well-managed facilities.”²¹

Conclusion

In many situations, Oregon is held up as a model for labor standards and working conditions, which makes the drastically low level of Oregon OSHA penalties all the more alarming. NELP strongly supports this proposed legislation which will provide Oregon OSHA with important tools to improve enforcement and compliance, demonstrate a commitment to the health and safety of the state’s workers, and improve good governance with increased levels of transparency.

Thank you for this opportunity to share our thoughts on SB 592.

Sincerely,
Anastasia Christman
Senior Policy Analyst
National Employment Law Project

Endnotes

¹ AFL-CIO (2022) “Death on the Job, the Toll of Neglect: A National and State-by-State Profile of Worker Safety and Health in the United States.”

² “Department of Labor announces enforcement guidance changes to save lives, target employers who put profit over safety,” US Department of Labor News Release, January 26, 2023.

³ Kagan, Robert, et al., (2011) “Fear, Duty and Regulatory Compliance: Lessons from Three Research Projects,” in *Explaining Compliance: Business Responses to Regulation*, ed. By Christine Parker and Viebke Lehmann Nielsen (Northampton, MA: Edward Elgar Publishing), 37-58.

⁴ *Ibid*, 52.

⁵ Bernhardt, A., Spiller, M., and Theodore, N (2013) “Employers Gone Rogue: Explaining Industry Variation in Violations of Workplace Laws” *ILR Review* 66(4), 808-832.

⁶ Stansbury, A (2021) “Do US Firms Have an Incentive to Comply with the FLSA and the NLRA?” Working Paper 21-9, Peterson Institute for International Economics.

⁷ Scholz JT, Gray WB (1990) “OSHA Enforcement and Workplace Injuries: A Behavioral Approach to Risk Assessment.” *Journal of Risk and Uncertainty* 3(3), 283–305.

-
- ⁸ Haviland, A, et. al., (2010) "What kinds of injuries do OSHA inspections prevent?" *Journal of Safety Research* 41: 339-345; Mendeloff, J, Gray, W (2005) "Inside the Black Box: How do OSHA Inspections Lead to Reductions in Workplace Injuries?" *Law & Policy* 27(2): 219-237.
- ⁹ Occupational Safety and Health Administration, United States Department of Labor (2015) "Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job." See also Leigh, J.P. and Marcin, J. (2012) "Workers' Compensation Benefits and Shifting Costs for Occupational Injuries and Illnesses." *Journal of Occupational and Environmental Medicine* 54(4).
- ¹⁰ Norton, E (2012) "It's official: random inspections improve workplace safety," *Science* 336(6083).
- ¹¹ Haviland, A, et. al., (2012) "A New Estimate of the Impact of OSHA Inspections on Manufacturing Injury Rates, 1998-2005" *American Journal of Industrial Medicine*.
- ¹² U.S. Bureau of Labor Statistics, Western Information Office (2023) "Employer-reported Workplace Injuries and Illnesses in Oregon – 2021," webpage, and (2022) "Fatal Work Injuries in Oregon – 2020" webpage, both accessed February 11, 2023.
- ¹³ 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.
- ¹⁴ State of Oregon Employment Department, "Race and Ethnic Diversity in Oregon's Workforce," webpage dated April 28, 2022.
- ¹⁵ Industry profile for OSHA Standard OAR 437-, available at US Department of Labor, Occupational Safety and Health Administration, at https://www.osha.gov/ords/imis/industryprofile.stand?p_stand=OAR%20437-&p_state=OROregon&p_type=2&p_esize=
- ¹⁶ Cumming, C (2022) "Latino workers are often segregated into bad jobs, but a strong U.S. labor movement can boost job quality and U.S. economic growth," Washington Center for Equitable Growth.
- ¹⁷ U.S. Department of Labor, "Expanding Efforts to Ensure the Health and Safety of Hispanic Workers," Blog dated September 27, 2021.
- ¹⁸ 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.
- ¹⁹ Levy, B and Roelofs, C (2019) Impacts of Climate Change on Workers' Health and Safety," *Global Public Health*.
- ²⁰ Johnson, M (2020) "Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws" *American Economic Review* 110(6): 1866-1904.
- ²¹ Quoted in Yadin, S (2019) "Saving Lives Through Shaming" *Harvard Business Review Online* 9.