Memorandum

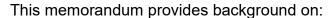
PREPARED FOR: Rep. Valderrama

DATE: February 27, 2025

BY: Tyler Larson, Research Analyst Monica Cox, Research Analyst

RE: Background for Farmworkers Standards

Workgroup



- Wage and Hour Requirements for Farmworkers,
- H-2A Temporary Agricultural Workers (page 4),
- Oregon Farmworker Wages (page 6).
- Oregon Farmworker Workplace Protections, Violations, and Injuries (page 7), and
- Oregon Agriculture Industry Economic Data (page 11).

Wage and Hour Requirements for Agricultural **Workers**

Both federal and state law establish minimum wage and maximum hour requirements. Oregon agricultural workers are generally subject to minimum wage and overtime requirements.

Federal Fair Labor Standards Act (FLSA)

FLSA establishes federal minimum wage, overtime pay, recordkeeping, and child labor standards for public and private employers and employees nationwide. FLSA expressly allows state and local government to establish a higher minimum wage and lower maximum work week.² "Agriculture" is defined broadly for the purposes of FLSA:

"'Agriculture' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141i(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."3



¹ <u>29 U.S.C. 201 et seq.</u> ² <u>29 U.S.C. 218(a).</u> ³ <u>29 U.S.C. 203(f).</u>

Agriculture workers are generally entitled to the federal minimum wage.

FLSA contains an exemption from the minimum wage for the following agriculture employees:

- Employees of an employer who did not, during any calendar quarter during the preceding year, use more than 500 man-days of agricultural labor. "Man day" means any day during which an employee performs any agricultural work for at least one hour.4
- Immediate family members of their employer.
- Those principally engaged on the range in the production of livestock.
- Local hand harvest laborers who commute daily from their permanent residence. are paid on a piece rate basis in traditionally piece-rated occupations and were engaged in agriculture less than thirteen weeks during the preceding calendar year.
- Non-local minors, 16 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 16.5

Agriculture workers are exempt from federal overtime laws.

FLSA generally requires wages of not less than one and one-half times the regular rate of pay for a workweek longer than forty hours. 6 Employees employed in agriculture are exempt from FLSA's maximum hours requirement and are not entitled to overtime rates for hours worked in excess of forty per week.⁷

Oregon Wage and Hour Laws

Oregon law grants the Commissioner of the Bureau of Labor and Industries (BOLI) broad rulemaking authority to prescribe the minimum conditions of employment, including minimum wage and maximum hour requirements, as necessary for the preservation of the health of employees. 8 Maximum hour requirements may not be less than eight hours per day or 40 hours per workweek, and overtime mandates may only apply after 40 hours a week and be no more than one and one-half times the regular

⁴ <u>29 U.S.C. 203(u)</u>.
⁵ <u>29 U.S.C. 213(a)(6)</u>.
⁶ <u>29 U.S.C. 207(a)(1)</u>.
⁷ <u>29 U.S.C. 213(b)(12)</u>.
⁸ <u>ORS 653.261(1)(a) (2023)</u>.



rate of pay. 9 Minimum wages are established in statute and adjusted annually for inflation 10

Agriculture workers are generally entitled to the state minimum wage.

Agricultural employees are owed at least the applicable Oregon minimum wage for all hours worked unless an exemption exists. 11 A piece rate employee's total earnings must equal or exceed the minimum wage for all hours worked. 12

Similar to FLSA, Oregon law contains an exemption from the minimum wage for certain agricultural employees:

- Hand harvest and pruning laborers who are paid on piece-rate basis in traditionally piece-rate occupations for an employer who did not during any calendar guarter during the preceding year use more than 500 piece-rate-workdays of agricultural labor.
- Immediate family members of the employer.
- Local hand harvest or pruning laborers who commute daily from their permanent residence, are paid on a piece-rate basis in traditionally piece-rated occupations and were engaged in agriculture less than thirteen weeks during the preceding calendar year.
- Non-local minors, 16 years of age or under, who are hand harvesters, paid on a piece-rate basis in traditionally piece-rated occupations, and paid the same piece-rate as those over 16.
- An individual principally engaged in the range production of livestock who earns a salary and is paid on a salary basis. 13

Agriculture workers are generally entitled to overtime.

House Bill 4002 (2022) established maximum hour and overtime wage requirements for Oregon agricultural workers. Oregon agricultural workers are entitled to one and onehalf times the regular rate of pay for hours worked in excess of the weekly maximum.¹⁴ Maximum hour requirements for agricultural workers are currently being phased in:

- 55 hours per workweek for 2023 and 2024,
- 48 hours for 2025 and 2026, and
- 40 hours per workweek for 2027 and each year thereafter.

¹⁵ ORS 653.272(1) (2023).



⁹ *Id*.

¹⁰ ORS 653.025 (2023).

¹¹ Presentation by the Oregon Bureau of Labor and Industries to the Agricultural Overtime Workgroup (November 18, 2021).

¹³ ORS 653.020(1) (2023). ¹⁴ ORS 653.272(2) (2023).

Agriculture workers who are exempt from the minimum wage and salaried workers whose duties are primarily administrative, executive, or professional are exempt from maximum hour and overtime requirements.¹⁶

H-2A Temporary Agricultural Workers

The H-2A program allows U.S. employers or U.S. agents who meet specified regulatory requirements to bring foreign nationals into the U.S. to fill temporary agricultural jobs. Employers seeking H-2A workers must receive certification from the U.S. Department of Labor (DOL). The Oregon Employment Department (OED) operates a Foreign Labor <u>Certification</u> Program through a contract with DOL. Seasonal worker applications are filed first with OED, then with DOL.

Certification

The Immigration and Nationality Act allows for the admission of temporary H-2A workers once the employer has received certification from DOL or a state certifying on behalf of DOL. H-2A employer certifications are generally valid for 3 years. 17 DOL or a participating state must certify that:

- there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and
- the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 18

Minimum Benefits and Working Conditions

Employers seeking certification must offer and provide the following minimum benefit and working conditions to both U.S. and H-2A workers:

- housing at no cost to the worker that is certified by Oregon's Occupational Safety and Health Administration (OR-OSHA) or rental housing that meets local rental standards, including accommodations for families if family housing is the prevailing practice in the area of employment,
- workers compensation or equivalent insurance coverage at no cost to the worker.
- all tools, supplies, and equipment required to perform the duties assigned at no cost to the worker,



¹⁶ ORS 653.273 (2023). ¹⁷ 8 U.S.C. 1188(c)(3)(B). ⁸ U.S.C. 1188(a).

- three meals a day or free and convenient cooking and kitchen facilities that enable workers to prepare their own meals,
- transportation to and from the place of employment and between living quarters and worksite,
- guaranteed work hours equal to at least three-fourths of the workdays of the total period of employment,
- hours and earning statements for each pay period, which must be at least twice a month, and
- a copy of the work contract between the employer and employee in a language understood by the worker.¹⁹

Minimum Wages

An employer seeking to employ foreign workers under the H-2A program is required to offer, advertise in its recruitment, and pay a wage that is at least equal to the Adverse Effect Wage Rate (AEWR) when it is the highest applicable wage rate among the wage sources applicable to the employer's job opportunity.²⁰

The <u>U.S. Department of Labor</u> establishes a national monthly AEWR for range occupations annually based on the <u>Employment Cost Index (ECI)</u> for wages and salaries published by the U.S. Bureau of Labor Statistics (BLS).²¹ Effective January 1, 2025, the AEWR for range occupations in all states is \$2,058.31 per month.²²

Hourly AEWRs for non-range field and livestock workers are established annually for each state based on the annual average hourly gross wage in the state or region as reported in either the <u>U.S. Department of Agriculture's Farm Labor Survey</u> or the <u>BLS Occupational Employment and Wage Statistics survey</u>.²³ Effective December 16, 2024, the Oregon AEWR for non-range field workers and livestock workers is \$19.82.²⁴

H-2A Utilization

Data published by the <u>U.S. Department of State</u> shows the number of H-2A visas issued nationally each year increased from 89,274 in 2014 to 310,676 in 2023.

²⁴ U.S. Dept. of Labor, *H-2A Adverse Effect Wage Rates*, https://flag.dol.gov/wage-data/adverse-effect-wage-rates#current-aewrs (last visited February 13, 2025).



¹⁹ 20 C.F.R. 655.122.

²⁰ 20 C.F.R. 655.120(a).

²¹ 20 C.F.R. 655.200 et seq.

²² U.S. Dept. of Labor, *H-2A Adverse Effect Wage Rates*, https://flag.dol.gov/wage-data/adverse-effect-wage-rates#current-aewrs (last visited February 13, 2025).
²³ 20 C.F.R. 655.120(b).

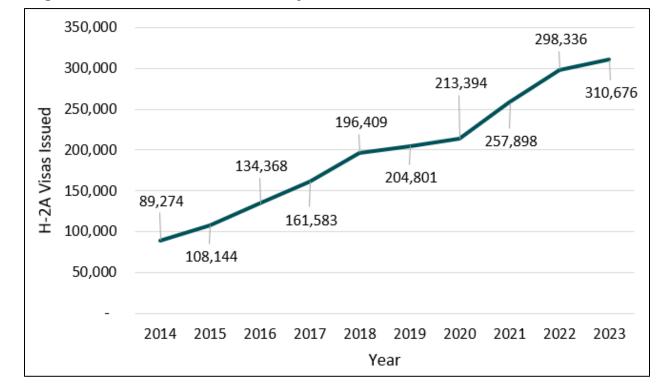


Figure 1: Total H-2A Visas Issued by Year, 2019-2023

Source: LPRO

Data: U.S. Dept. of State

Oregon Farmworker Wages

Limited public data is available on Oregon farmworker wages.

OED's Workforce and Economic Research Division provides industry and occupation profiles for the state's labor market. OED data for 2023 estimates 25,269 farmworkers were employed in crop production (NAICS 452092) and 3,499 in animal production and aquaculture (NAICS 452093). DED also publishes median hourly wages for these occupations, but those estimates are based on a smaller subgroup of farmworkers for which the agency has more data. The 2023 median hourly wage for 7,980 of the estimated 25,269 farmworkers employed in crop production was \$16.65. The 2023 median hourly wage for 1,170 of the estimated 3,499 farmworkers in animal production and aquaculture was \$16.45.

²⁵ Occupational employment estimates are created through the <u>Occupational Employment and Wage Statistics</u> (<u>OEWS</u>) <u>program</u>, a federal-state cooperative program between the Bureau of Labor Statistics and state workforce agencies like the Oregon Employment Department. OEWS surveys exclude most farming industries, meaning OED must do additional analysis to estimate the number of farmworkers in the state.



As noted in the section on H-2A workers, the minimum hourly rate for Oregon H-2A workers is \$19.82.²⁶ The U.S. Department of Labor annually establishes the Adverse Effect Wage Rate (AEWR) for H-2A workers based on the annual average hourly gross wage in the state or region as reported in either the <u>U.S. Department of Agriculture's Farm Labor Survey</u> or the <u>BLS Occupational Employment and Wage Statistics survey</u>.²⁷

Oregon Farmworker Workplace Protections, Violations, and Injuries

The Oregon Safe Employment Act (<u>ORS 654.001 to 654.295, 654.412 to 654.423, 654.750 to 654.780 and 654.991</u>) allows the Director of the Department of Consumer and Business Services (DCBS) to adopt and enforce "reasonable, mandatory, occupational safety and health standards for all employments and places of employment." Agriculture safety and health standards adopted by the Oregon Occupational Safety and Health Division of DCBS (OR-OSHA) can be found in <u>OAR chapter 437 division 4</u>. "It is the responsibility of the employer to assure that their workers, facilities and equipment comply" with the rules established in that division.²⁹

OR-OSHA establishes over 100 workplace safety requirements for the agriculture industry including:

- 437-004-0350 Orchard Ladders,
- <u>437-004-0630</u> Noise Exposure,
- <u>437-004-0950</u> Hazardous Waste Operations and Emergency Response,
- 437-004-1041 Respiratory Protection,
- 437-004-1120 Agricultural Labor Housing and Related Facilities,
- 437-004-1131 Heat Illness Prevention,
- 437-004-1680 Storage of Hazardous Chemicals,
- 437-004-6405 Restrictions Associated with Outdoor Production Pesticide Applications,
- 437-004-9000 Oregon Rules for Air Contaminants, and
- <u>437-004-9791</u> Protection from Wildfire Smoke.

Federal rules establish worker protection standards for pesticide application and chemical hazard communication.³⁰

³⁰ 40C.F.R. sect. 170 et seq. and 29 C.F.R. sect. 1910.1200.



²⁶ U.S. Dept. of Labor, *H-2A Adverse Effect Wage Rates*, https://flag.dol.gov/wage-data/adverse-effect-wage-rates#current-aewrs (last visited February 13, 2025).

²⁷ 20 C.F.R. 655.120(b).

²⁸ ORS 654.003 (2023).

²⁹ OAR 437-004-0001.

Workplace Health and Safety Violations

In 2022, the most common health and safety violations in Oregon's agriculture industry were related to field sanitation for hand labor work, safety committees and meetings, employee training and information, the provision of personal protective equipment (PPE), and heat illness prevention planning.³¹ Violations are classified as *serious* if they pose a risk of serious injury or death.³²

Table 1 shows the top 10 most common violations in 2022, including the number of violations classified as *serious*; a full list of the top 25 violations published by DCBS is available in the Appendix (Table A.1).

Table 1: Top 10 Health and Safety Violations by Agriculture Industry Employers in Oregon, 2022

Standard	Violated Subject	Total Violations	Serious Violations
OAR 437-004-1110(6)	Toilet and handwashing facilities for hand labor work	9	4
40 CFR 170.311(b)	Pesticide application & hazard information	8	0
OAR 437-004-0251(2)	Safety committees/safety meetings - general requirements	8	2
OAR 437-004-9800(7)	Employee information and training	8	1
40 CFR 170.501(a)	Training requirements for handlers	7	5
40 CFR 170.507(b)	Employer provided PPE	7	5
OAR 437-004-0251(3)	Safety committees - general requirements	7	1
OAR 437-004-1131(8)	Heat illness prevention plan	7	7
OAR 437-004-9800(4)	Written hazard communication program	7	2
29 CFR 1910.1200(e)	Written hazard communication program	6	0

Source: LPRO

Data: Oregon Department of Consumer and Business Services Enforcement Data OIS8052

Workplace Injuries

The most recent publicly available Workers' Compensation data shows 367 claims were filed in 2022 from employees in the Farmworkers and Laborers, Crop, Nursery, and

³² U.S. Dept. of Labor, *Occupation Health and Safety Administration Regulations, Standard 1960.2 – Definitions* https://www.osha.gov/laws-regs/regulations/standardnumber/1960/1960.2 (last visited February 21, 2025).



³¹ Oregon Department of Consumer and Business Services, Enforcement Data OIS8052, *Oregon OSHA Top 25 Violations Reports*, https://dcbs-reports.cbs.state.or.us/index.cfm?fuseaction=dir&ItemID=28 (last visited February 21, 2025). OR-OSHA tracks agriculture labor housing violations separately.

Greenhouse occupation. This was the 12th highest number of claims by occupation in Oregon that year (Table 2).³³ The most common injuries were sprains and strains (39%), and bruises and contusions (10%) (Table 3). Heat and pesticide/chemical exposure were cited in 2 (<1%) claims.³⁴ The most common causes of injury were falling (25%), overexertion (16%), and being struck by an object (10%) (Table 4).

Table 2: Occupations with the highest number of workers' compensation claims in Oregon, 2022

	Occupation	Number of Claims (2022)	Percent of Employees (Est.)
1.	Laborers and Freight, Stock, and Material Movers, Hand	1635	5%
2.	Truck Drivers, Heavy and Tractor-Trailer	1033	4%
3.	Nursing Aides, Orderlies, and Attendants	974	2%
4.	Truck Drivers, Light or Delivery Services	822	6%
5.	Stock Clerks and Order Fillers	739	2%
6.	Registered Nurses	735	2%
7.	Carpenters	481	2%
8.	Retail Salespersons	456	1%
9.	Janitors and Cleaners, Except Maids and Housekeeping Cleaner	450	2%
10.	Maintenance and Repair Workers, General	448	3%
11.	Construction Laborers	433	2%
12.	Farmworkers and Laborers, Crop, Nursery, and Greenhouse	367	1%

Source: LPRO

Data: Oregon Employment Dept.; Oregon Dept. of Consumer and Business Services, Workers' Compensation Claims. The estimate represents the number of claims as a percentage of employees; it does not represent the percentage of employees who filed claims because it does not account for the possibility of multiple claims by a single employee.

³⁴ Oregon Dept. of Consumer and Business Services, *Worker's Compensation Claims*. Dataset retrieved from https://www.oregon.gov/DCBS/reports/compensation/Pages/wc-claims.aspx (last visited February 20, 2025).



³³ Oregon's Workers' Compensation Law (<u>ORS chapter 656</u>) generally requires each Oregon employer to provide subject workers, including H-2A workers, with compensation for compensable workplace injuries. Because it is the exclusive legal remedy for most injured workers, Workers' Compensation data is an important metric for evaluating the risks associated with a given occupation.

Table 3: Most common injuries in workers' compensation claims filed by employees in the Farmworkers and Laborers, Crop, Nursery, and Greenhouse occupation in Oregon, 2022

Injury Code ³⁵	Injury	Number of Claims (2022)	Percent of Claims
1232	Sprains, strains	143	39%
143	Bruises, contusions	37	10%
111	Fractures	30	8%
1829	Sprains and other injuries, n.e.c.	21	6%
1821	Sprains and bruises	19	5%
9	Multiple - traumatic injury plus illness	16	4%
132	Cuts, lacerations	14	4%
1839	Fractures and other injuries, n.e.c.	14	4%

Source: LPRO Analysis

Data: Oregon Dept. of Consumer and Business Services, Workers' Compensation Claims

Table 4: Most common causes of injuries in workers' compensation claims filed by employees in the Farmworkers and Laborers, Crop, Nursery, and Greenhouse occupation in Oregon, 2022

Event Causing Injury	Number of Claims	Percent of claims
Falling	90	25%
Overexertion	60	16%
Struck by object	36	10%
Caught in equipment	22	6%
Tripping	20	5%

Source: LPRO Analysis

Data: Oregon Dept. of Consumer and Business Services, Workers' Compensation Claims. For this analysis, multiple similar event injury codes were collapsed into single categories. Table A.2 in the appendix describes the codes used to create each category.

³⁵ Bureau of Labor Statistics, *Occupational Injury and Illness Classification Manual, Version 2.01, Section 2.1*, https://www.bls.gov/iif/definitions/oiics-manual-2010-section-2-1.pdf (last visited February 21, 2025).

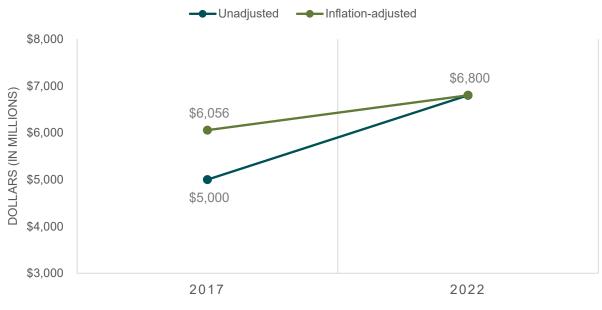


Oregon Agriculture Industry Economic Data

Agricultural Census data shows Oregon's total agricultural sales increased from \$5 billion in 2017 to nearly \$6.8 billion in 2022, a 36% increase, unadjusted for inflation.³⁶ Adjusted for inflation using the Consumer Price Index (CPI-U) base year June 2022, Oregon's total agricultural sales increased by an estimated 12% from about \$6 billion in 2017 to nearly \$6.8 billion in 2022 (Figure 2).³⁷ In that same time period, the number of farms in Oregon decreased nearly 6% from 37,616 to 35,547 and the average total sales per farm increased from \$133 million to \$190 million, a 43% increase unadjusted for inflation. Adjusted for inflation, average total sales per farm increased 18% from nearly \$161 million in 2017 to \$190 million in 2022 (Figure 3).

Figure 2: Change in total agricultural sales in Oregon from 2017 to 2022, unadjusted and adjusted for inflation (CPI-U base June 2022).





U.S. AGRICULTURAL CENSUS SURVEY YEAR

Source: LPRO

Data: USDA National Agricultural Statistics Service

⁽last visited February 19, 2025).

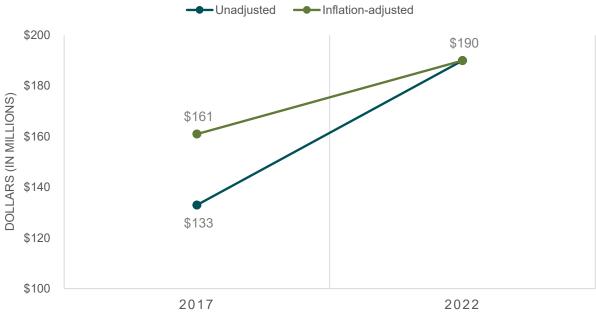
37 Bureau of Labor Statistics, *Consumer Price Index Inflation Calculator*, https://www.bls.gov/data/inflation_calculator.htm (last visited February 19, 2025).



³⁶ USDA National Agriculture Statistics Service, *2022 Census Volume 1, Chapter 1: State Level Data (OR), Table 2*, https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1, Chapter_1_State_Level/Oregon/ (last visited February 19, 2025).

Figure 3: Change in average total agricultural sales per farm in Oregon from 2017 to 2022, unadjusted and adjusted for inflation (CPI-U base June 2022).

AVERAGE SALES PER FARM



U.S. AGRICULTURAL CENSUS SURVEY YEAR

Source: LPRO

Data: USDA National Agricultural Statistics Service

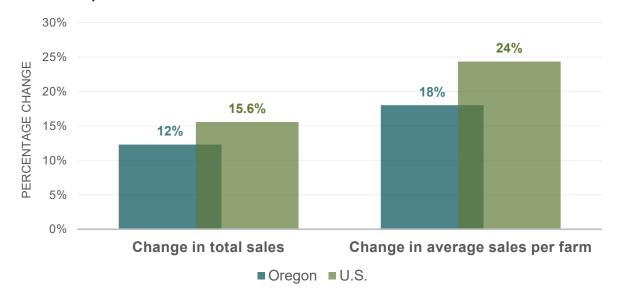
National Comparison

By these same measures, adjusted for inflation, Oregon did not keep pace with growth nationally. For total sales, Oregon increased 12% compared to 15.5% nationally. For average sales per farm, Oregon increased 18% compared to 24% nationally³⁸ (Figure 4). The number of farms in Oregon and nationally decreased at a similar rate (6% and 7%, respectively).

³⁸ USDA National Agriculture Statistics Service, *2022 Census Volume 1, Chapter 1: U.S. National Level Data, Table* 2, https://www.nass.usda.gov/Publications/AgCensus/2022/Full Report/Volume 1, Chapter 1 US/ (last visited February 20, 2025).



Figure 4: Percentage change in total agricultural sales and average sales per farm in Oregon and the U.S., 2017 to 2022, adjusted for inflation (CPI-U base June 2022)



Source: LPRO

Data: USDA National Agricultural Statistics Service



Appendix

Table A.1: Top 25 Health and Safety Violations by Agriculture Industry Employers in Oregon, 2022

Standard	Violated Subject	Total	Serious
Stalluaru	Violated Subject	Violations	Violations
OAR 437-004-1110(6)	Toilet and handwashing facilities for hand labor work	9	4
40 CFR 170.311(b)	Pesticide application & hazard information	8	0
OAR 437-004-0251(2)	Safety committees/safety meetings - general requirements	8	2
OAR 437-004-9800(7)	Employee information and training	8	1
40 CFR 170.501(a)	Training requirements for handlers	7	5
40 CFR 170.507(b)	Employer provided PPE	7	5
OAR 437-004-0251(3)	Safety committees - general requirements	7	1
OAR 437-004-1131(8)	Heat illness prevention plan	7	7
OAR 437-004-9800(4)	Written hazard communication program	7	2
29 CFR 1910.1200(e)	Written hazard communication program	6	0
OAR 437-004-0251(4)	Requirements for safety meetings	6	0
40 CFR 170.311(a)	Display of Pesticide Safety Information	5	0
40 CFR 170.401(a)	Training requirements for workers	4	4
OAR 437-004-1105(5)	Washing facilities - requirement for adequate facilities/supplies for cleaning	4	2
OAR 437-004-1110(7)	Hand labor work - general maintenance requirements	4	3
OAR 437-004-1305(5)	Emergency eyewash and shower facilities	4	4
29 CFR 1910.1200(g)	Safety data sheets	3	0
OAR 437-001-0704(4)	Reporting requirements	3	0
OAR 437-001-0765(1)	Rules about safety committees or safety meetings	3	0
OAR 437-004-1041(3)	Respiratory protection program	3	3
OAR 437-004-1041(5)	Respiratory protection program - medical evaluation	3	3



OAR 437-004-1131(4)	Drinking water	3	3
OAR 437-004-1131(9)	Supervisor and employee training	3	3
OAR 437-004-1700(8)	Training program required for operators of powered industrial trucks	3	0
29 CFR 1910.106(e)	Flammable liquids - Industrial plants	2	2

Source: LPRO

Data: Oregon Department of Consumer and Business Services Enforcement Data OIS8052

Table A.2: Description of event injury codes included in the analysis of most common events leading to injuries in workers' compensation claims filed by employees in the Farmworkers and Laborers, Crop, Nursery, and Greenhouse occupation in Oregon, 2022

Event Causing Injury Categories	Event injury codes ³⁹ included the analysis
Falling	420, 422, 424, 429, 430, 2734, 4212, 4213, 4214, 4211, 4330, 4331, 4332, 4333
Overexertion	70, 78, 710, 718, 719, 7110, 7111, 7112, 7121, 7122, 7131, 7132, 7141
Struck by object	620, 629, 6214, 6223, 6230, 6231, 6233, 6239, 6240, 6241, 6242, 6249
Caught in equipment	640, 649, 6211, 6410, 6412, 6419
Tripping	4121, 4122, 4123, 4125, 4129

Source: LPRO

Data: Bureau of Labor Statistics

³⁹ Bureau of Labor Statistics, *Occupational Injury and Illness Classification Manual, Version 2.01, Section 2.4*, https://www.bls.gov/iif/definitions/oiics-manual-2010-section-2-4.pdf (last visited February 21, 2025).

