

July 15, 2008

## Oregon OSHA - Proposed Changes To Division 1, General Administrative Rules Safety Committees - With House Bill 2222

### **Public Hearing Scheduled for:**

<u>Date</u>	<u>Time</u>	<u>Location</u>
August 28, 2008	9:30 am	Labor and Industries Building Basement – Conference Room F 350 Winter Street NE Salem OR 97301

Oregon OSHA is reopening the proposed amendments to the Oregon Administrative Rules for Workplace Safety Committees. A need to further amend the proposed rule was recognized once the public hearings were adjourned. Comments received at the public hearings warranted further review and the Advisory Committee reconvened to discuss the issue of centralized safety committees and the current penalty structure for failure to comply with safety committee rules. As a result of those meetings, additional amendments to the rule are being proposed.

Oregon OSHA proposes to amend Oregon Administrative Rules for Workplace Safety Committees. The proposed rule change will require every public and private employer subject to OR-OSHA jurisdiction to establish and administer an effective safety committee or conduct safety meetings. The changes will apply to Division 1, General Administrative Rules, OAR 437-001-0765 Rules for Workplace Safety Committees. The changes are required as a result of the passing of House Bill 2222 by the 2007 Oregon Legislative Regular Session. House Bill 2222 also amended ORS 654.176 and 654.182.

**ORS 654.176** was amended to read:

654.176. To promote health and safety in places of employment in this state, **every public or private employer shall**, in accordance with rules adopted pursuant to ORS 654.182, establish and administer a safety committee or hold safety meetings.

All language contained in ORS 654.176 (1)(a), (b), (b)(A) and (b)(B) was removed.

**ORS 654.182** was amended in the following areas:

654.182. (1) In carrying out ORS 654.176, the Director of the Department of Consumer and Business Services shall **adopt rules that** include, but are not limited to, provisions that:

**(f) Prescribing alternate forms of safety committees and safety meetings to meet the special needs of small employers, agricultural employers and employers with mobile worksites.**

These legislative changes remove the specific and detailed requirements for the formation and conduct of safety committees and authorize Oregon OSHA to develop rules that provide options for small employers. These proposed rules maintain most of the existing safety committee requirements for larger employers.

For employers with 10 or fewer employees, mobile worksites, or with primarily office environments, they will now have the option to hold safety meetings with a significant reduction in paperwork burden.

Oregon OSHA proposes to amend OAR 437-001-0203, Determination of Penalty – Relating to Violations Which Have No Probability. The proposed rule change removes paragraph (7) which will eliminate the minimum penalty of \$100 if an employer fails to establish a safety committee as required by OAR 437-001-0765. The proposal will allow Oregon OSHA to set penalties for failure to have an effective safety committee or hold effective safety meetings based on the hazards that the employer actually has.

Oregon OSHA also proposes to amend OAR 437-002-0182, Oregon Rules for Fire Fighters in Division 2/L. The proposed rule change will allow fire service activities to establish a separate fire service safety committee or opt for safety meetings based on employee numbers. The intent of this change is to clarify that every employer that does fire service work must have a separate safety committee and allows those companies that have 10 or fewer employees the option to simply hold effective safety meetings in accordance with the proposed amendments to OAR 437-001-0765 in Division 1.

***When does this happen:*** Adoption tentatively will be September 2008

***To get a copy:*** Our web site – [www.orosha.org](http://www.orosha.org) Rules/Compliance, then Proposed Rules  
Or call the OR-OSHA Resource Center at 503-947-7447

***To comment:*** Department of Consumer and Business Services/Oregon OSHA  
350 Winter Street NE  
Salem OR 97301-3882  
E-mail – [tech.web@state.or.us](mailto:tech.web@state.or.us)  
Fax – 503-947-7461

***Comment period closes:*** **September 3, 2008**

***OR-OSHA contact*** Ron Haverkost, Central Office @ 503-947-7421;  
or email at [Ronald.I.haverkost@state.or.us](mailto:Ronald.I.haverkost@state.or.us)

Note: In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats by calling 503-378-3272.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***

A Statement of Need and Fiscal Impact accompanies this form.

Department of Consumer and Business Services/Oregon OSHA

Agency and Division

OAR 437

Administrative Rules Chapter Number

Sue Joye

Rules Coordinator

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Address

503-947-7449

Telephone

**RULE CAPTION**

Proposed changes to Division 1, Safety Committees with House Bill 2222.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Labor and Industries Building  
Basement – Conference Room F  
350 Winter Street NE  
Salem OR 97301

August 28, 2008

Hearing Date

9:30 am

Time

Location

Sue Joye

Hearings Officer

*Auxiliary aids for persons with disabilities are available upon advance request.*

**RULEMAKING ACTION**

**AMEND:** OAR 437-001-0203, 437-001-0765, 437-002-0182

ORS 654.025(2) and 656.726(4)

Stat. Auth.

Other Authority

ORS 654.001 through 654.295

Stats. Implemented

**RULE SUMMARY**

Oregon OSHA is reopening the proposed amendments to the Oregon Administrative Rules for Workplace Safety Committees. A need to further amend the proposed rule was recognized once the public hearings were adjourned. Comments received at the public hearings warranted further review and the Advisory Committee reconvened to discuss the issue of centralized safety committees and the current penalty structure for failure to comply with safety committee rules. As a result of those meetings, additional amendments to the rule are being proposed.

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**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services/OR-OSHA

Agency and Division

OAR 437

Administrative Rules Chapter Number

**In the Matter of:** Amending OAR 437-001-0203, 437-001-0765, 437-002-0182.

**Rule Caption:** (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Proposed changes to Division 1, Safety Committees with House Bill 2222.

**Statutory Authority:** ORS 654.025(2) and 656.726(4)

**Stats. Implemented:** ORS 654.001 through 654.295

**Need for the Rule(s):**

House Bill 2222 requires Oregon OSHA to amend the current safety committee rules, OAR 437-001-0765, Rules for Workplace Safety Committees, to include all public and private employers in this state with the purpose of bringing workers and management together in a non-adversarial, cooperative effort to effectively promote safety and health in each workplace.

OAR 437-001-0203, Determination of Penalty – Relating to Violations Which Have No Probability. The proposed rule change removes paragraph (7) which will eliminate the minimum penalty of \$100 if an employer fails to establish a safety committee as required by OAR 437-001-0765. The proposal will allow Oregon OSHA to set penalties for failure to have an effective safety committee or hold effective safety meetings based on the hazards that the employer actually has.

OAR 437-002-0182, Oregon Rules for Fire Fighters, will be amended to allow the fire service industry to have the same option that other companies will have for holding safety meetings. This will clarify that if fire service employers have 10 or fewer employees more than half of the year (including seasonal and temporary) or they have satellite or auxiliary offices with 10 or fewer employees at a location, they will have the option to hold effective safety meetings.

**Documents Relied Upon, and where they are available:**

Oregon Safe Employment Act, Chapter 654 Occupational Safety and Health 2005 Edition.

Workers' Compensation Law Chapter 656 Workers' Compensation 2005 Edition

74th Oregon Legislative Assembly--2007 Regular Session; House Bill 2222

Research conducted and documents used may be found in the OR-OSHA Resource Center.

**Fiscal and Economic Impact, including Statement of Cost of Compliance:**

According to Oregon Employment Department, Oregon Labor Market Information System (OLMIS), of more than 1.6 million wage records reported by Oregon's private employers in 2006, approximately 33% had an average wage of less than \$10 per hour and worked in low paying industries such as gasoline stations, food and drink services, sporting goods, book and music stores and other miscellaneous store retailers; 41% of jobs paid between \$10 and \$20 per hour while 14% paid between \$20 and \$30 per hour; 15% had an average wage of \$30 per hour or more.

The 14% with higher wages were workers in utilities, paper manufacturing, computer and electronics production, providing internet services, wholesale electronics and financial investment industries.

The fiscal and economic impact of these amendments will vary depending upon the size of the employer and the option chosen as jobs at all wage levels are held across all industries. According to the most recent Employment Division data most firms in Oregon employ fewer than five workers. Companies that are currently required to establish and administer a safety committee will have little to no fiscal or economic impact unless they decide to exercise the option for conducting safety meetings requiring that all available employees be in attendance. The safety committee rules have been amended mostly for clarity. In terms of intent, the safety committee rules are mostly unchanged with the exception of centralized safety committees.

The safety committee rules are amended to give employers the option to hold safety meetings if a majority of their employees report to construction work sites, a majority of their employees move frequently from place to place, their staff is mostly engaged in office work or they have employees at satellite or auxiliary offices with 10 or fewer employees at a location.

According to the Oregon Employment Division, small businesses, employing fewer than ten employees, represent 80% of Oregon employers which accounts for 16% of the total workforce in Oregon. Many of the businesses that were previously not required to do anything, will now need to establish and administer safety committees or hold safety meetings. In the past, some small employers needed to comply and some did not with the requirement changing yearly.

For those employers who were administering safety committees in the past, there will be little impact if they continue the status quo with the exception of those companies that may choose to centralize their safety committees. The change to the centralized committee rules may provide a cost savings for those employers with satellite and auxiliary locations. Multiple locations can meet as one committee which would reduce the amount of representatives and in turn reduce the cost. All other employers will be impacted to varying degrees by the amendments to this rule. Financial impacts to those choosing safety meetings may include, wages of available employees in attendance which do not directly contribute to the productivity levels of a company, costs attributed to providing training on hazard identification to a larger number of employees and costs associated with documenting requirements such as paper and distribution, etc.

Small employers that choose to hold safety meetings will have a maximum yearly cost of approximately \$600 for low-wage industries identified by the Oregon Employment Division. This is based on a 30 minute meeting of all available employees with an average wage of \$10 dollars per hour.  $10 \text{ employees} \times \$10 \text{ per hour} \times .5 \text{ hrs} \times 12 \text{ mos.} = \$600$ . An average cost for a 1/2 hour meeting for a company with five employees would be \$300 annually.

The following figures represent approximate costs for construction employers who previously were not required to establish safety committees. Construction employers typically pay from \$10-\$30 per hour, with a median wage per hour at \$20. Construction employers, on average, are small employers with fewer than ten employees. Using the same basic calculation  $10 \text{ employees} \times \$20 \text{ per hour} \times .5 \text{ hrs} \times 12 \text{ months} = \$1,200$  as the annual cost for a 1/2 hour meeting. Construction employers must have an additional meeting prior to the start of those jobs that last more than a week, which would not necessarily increase the costs. The meeting prior to the start of the project would take the place of that month's meeting. Language that requires a meeting at least monthly thereafter for the duration of the job may or may not represent additional costs using the same formula used above.

The fiscal and economic impact for those employers choosing to hold safety meetings that are not engaged in the construction, utilities or manufacturing industries will be the time spent for the meeting and the requirement for all available employees to attend. The figures will vary depending upon the wage levels of the employees and the time spent in the meetings. Across all industries, based on size of employer, the average annual costs for having meetings will be \$600 for 30-minute meetings.

Documentation or recordkeeping costs will not change from their current requirements for safety committees. Companies that currently administer safety committees who opt to hold safety meetings will have less cost based on the minimal recordkeeping requirements. They may experience more lost production time as a result of including all available staff.

**How were small businesses involved in the development of this rule?**

Oregon OSHA convened an advisory committee, specifically for this rule making effort, that reached across a wide spectrum of industries. Representatives included members of a number of manufacturing businesses, the construction industry, City/County Services, small businesses, temporary/leasing agencies, and union leaders. Specific organizations or associations represented residential building, electrical contractors, local government, dental offices and injured workers. These organizations represent businesses both small and large. A special emphasis was put in the proposed safety meeting rule to make it less of a burden on those employers that have had no requirement for safety and health meetings thus far. The emphasis was to have no documentation requirements **for employers with no employees engaged in construction, utility work, or manufacturing, no safety meeting records are needed provided that all affected employees attend the meetings.** The standard will provide more flexible and efficient options for stakeholders, including small businesses, while improving safety for employees.

**Administrative Rule Advisory Committee consulted? Yes.**

**If not, why?**

Mentioned above.

/s/Michael D. Wood  
Authorized Signer

Michael D. Wood  
Printed name

7/10/08  
Date