

Oregon-OSHA Inspection Guidance

*The process of inspections, what to expect from enforcement officers,
and your rights as an employer.*



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INTRODUCTION

Employers often are told to know and exercise their rights during an OSHA inspection. What exactly are employers' rights during an inspection?

Federal OSHA rules apply in all states not covered by a "state plan." In a state-plan state, most authority for workplace safety regulation falls to state government. Oregon is a state-plan state and manages its own OSHA program through an administrative agency called Oregon OSHA (OR-OSHA). As a state-plan state, Oregon does not have identical rules to those in the federal system. Oregon is permitted to promulgate its own rules, and must only ensure that its rules are as effective as the federal counterparts. Sometimes Oregon's companion rules differ markedly from their federal counterparts. *Compliance with a federal rule is not necessarily compliance with Oregon's companion rule!*

Under the Oregon Safe Employment Act (OSEA), compliance officers may generally conduct inspections during regular working hours or other reasonable times, within reasonable limits, and in a reasonable manner (ORS 654.067; OAR 437-001-0065). Before starting an inspection, compliance officers must present their credentials and inform the employer of the purpose and scope of the inspection (OAR 437-001-0075). The compliance officer should also allow a reasonable amount of time for a supervisory or management employee, or other designated person, to arrive to accompany the compliance officer during the inspection as the "employer representative." OR-OSHA generally allows employers up to 45 minutes for an appropriate employer representative to arrive before it will proceed with the inspection. If you plan to identify an attorney as the designated employer representative, which is permissible, contact the attorney as soon as practicable.

Except in limited situations, compliance officers MAY NOT begin an inspection without either getting consent from the employer or obtaining an inspection warrant (ORS 654.067(5)). Employers have the right to deny access to the workplace and require the compliance officer to obtain a warrant prior to conducting an inspection (ORS 654.067(5); OAR 437-001-0070). Further, if an employer consents to an inspection, the employer may withdraw that consent at any time and require the compliance officer to obtain a warrant prior to continuing the inspection.

GENERAL GUIDANCE

Request Information About the Inspection

Prior to consenting to an inspection, it is important to have a good understanding of why the compliance officer is there. Some common reasons an inspection may be initiated include: **a complaint, a referral, or a programmed inspection.** When asked, a compliance officer should inform the employer why they are on the worksite and of the scope of the inspection. It is important to know whether the compliance officer intends to conduct a **comprehensive or partial inspection.** A comprehensive inspection is a complete and thorough inspection of all potentially hazardous areas of the establishment, and may include a review of all required safety and health programs. A partial inspection is limited to specified potentially hazardous areas/operations/conditions. Partial inspections may arise due to an OSHA-established national or local emphasis program or when there has been a complaint or reportable injury.

Control the Pace of the Inspection

Many times, employers may try to hurry through an inspection in an attempt to get OSHA in and out as quickly as possible. While this is understandable, doing so rarely works in favor of the employer. The best course of action an employer can take to control potential exposure to a citation, and provide the best opportunity for defense should a citation issue, is to take time to move through the process carefully and with a plan.

As part of that plan, employers may want to consider immediately stopping all work and removing employees from any potentially hazardous areas for the duration of the inspection.

When applicable, the compliance officer should be notified that a designated company representative will be contacted and the inspection is NOT to begin until that person arrives. While there is no specific timeframe for this in the rules, compliance officers should allow a "reasonable" amount of time for a company representative to arrive onsite. As noted above, OR-OSHA generally allows up to 45 minutes for the representative to arrive.

Opening Conference

At the outset of the inspection, compliance officers **MUST** conduct an opening conference with an employer representative and employee representative prior to conducting substantial inspection activities (OAR 437-001-0075).

During an opening conference, employer/employee representatives should be informed of the purpose and scope of the inspection, and of the employer/employee representatives' ability to participate in the walkaround inspection. OR-OSHA compliance officers should **NOT** enter a workplace and conduct inspection activities, including interviewing employees, prior to conducting an opening conference absent exigent circumstances.

There have been reports of compliance officers attempting to skip the opening conference, let themselves onto farms, and begin interviewing employees straightaway. In general, this is not permissible. An abbreviated opening conference is appropriate only if "the holding of an opening conference will prevent timely evaluation of the workplace" (OAR 437-001-0075(4)). See the section on Opening Conferences for additional information.

Stay with the Compliance Officer at All Permissible Times

Employers are entitled to identify one or more employer representatives to accompany the compliance officer through the inspection process (OAR 437-001-0075(1)(d)). Typically, compliance officers will consider available on-site supervisory employees to be the employer representative unless notified otherwise. But it is not up to the compliance officer to identify the employer representative. The employer has the right to decide who to designate as an employer representative for OSHA inspections. To plan in advance, employers should decide who will act as the employer representative in any inspection and disseminate this information among employees, to avoid any confusion at the time OR-OSHA opens an inspection.

During the walkaround inspection activities, employers should document the following:

- Any questions asked by the compliance officer and answers provided by the employer.
- Areas the compliance officer examine.
- Who the compliance officer interviews (the names of employees you know are interviewed); generally, the employer does not have the right to participate in employee interviews, but noting which employees were interviewed is important, if possible.

It is also good practice for employers to take their own duplicative photographs of any photographs taken by the compliance officer. If the compliance officer takes any sampling, employers can also take their own physical evidence samples.,

You can also take photographs and, potentially, video of OSHA compliance officers as they conduct the inspection, where appropriate. **If taking video, you should obtain consent before doing so, especially if the video is accompanied by sound recording of a conversation.** Oregon law requires all parties' consent to record an in-person conversation, unless all parties know or should know they are being recorded (phone calls, however, only require one-party consent and can be recorded without the other party's consent).

Observe the compliance officer carefully during the inspection; if you feel that he/she is veering outside the stated scope, you can – at any time – ask whether the scope is being expanded and on what basis. You can also withdraw consent for an inspection if it appears to go outside the stated scope and inform the compliance officer of the need to obtain a warrant to proceed.

Employee Interviews

It is important that employers understand that any statements made by employees, particularly supervisory or management-level employees, or an employer representative can be used against the employer. It is worthwhile for employers to educate employees on OR-OSHA's interview process and policy on "private" interviews.

- Employers are generally permitted to sit in on interviews of management or supervisory employees, since statements made by supervisory employees may be legally binding on the company. However, OR-OSHA typically tries to prevent employers from sitting in on interview of non-supervisory employees.

- Non-supervisory employees may request that an employer representative be present during their interviews and/or decline to participate in an interview if the compliance officer refuses the request for an employer representative. This is up to the individual employee. If an employee refuses to participate in an interview, OR-OSHA's remedy is to subpoena the employee.
 - Employee statements are NOT confidential and are part of the public record. Compliance officers should inform employees of this before the interview.
 - Note, however, that new legislation is being considered in the 2025 legislative session that would make employee identifying information confidential and not subject to public disclosure. Further, employers may even be prevented from obtaining the identities of employees who have provided statements.)

In general, employee interviews should occur during regular working hours. Compliance officers may ask for contact information for employees, however. There is no strict prohibition on the compliance officer contacting an employee off working hours. The employee does not need to agree to talk at that time, however. The employee has the right to refuse to be interviewed at home or at any other time (as noted above, OSHA's remedy in case of refusal is to subpoena the worker to give a statement. This is done exceedingly rarely.)

Interview Best Practices

It is important that the interviewee ensure that they understand the question prior to providing an answer. If questions are ambiguous, employees should ask for clarification. If an employee does not know the answer to a given question, they should say so. Employees should be careful not to guess or speculate when answering questions. Do not volunteer information outside the scope of the question. Answers should be honest, but limited to what the interviewee knows, did, saw, or heard. Share this information with your employees so they will know how to answer question from compliance officers.

Local Emphasis Programs

Field Sanitation, Ag Labor Housing, Pesticides, and Heat Illness Prevention are all Local Emphasis Programs (LEPs). The scope of an LEP is to address hazards that pose a specific risk to workers in a local area (Oregon). These programs are developed for specific industries and hazards and therefore should be limited to only the rules within the applicable standard; they should not be treated as comprehensive inspections.

We have heard of OR-OSHA compliance officers attempting to conduct a hybrid of LEP and comprehensive inspections, claiming they are conducting "comprehensive ALH inspections." Instead of being limited to the ALH checklist (which has historically defined the scope of an ALH inspection), compliance officers are requesting items such as safety committee meeting minutes, Form 300 logs, training records, written safety programs completely unrelated to labor housing, etc. OR-OSHA inspectors have been attempting to conduct a hybrid of LEP and comprehensive inspections, claiming that they are conducting "comprehensive ALH inspections." Instead of being limited to the ALH checklist (which has historically defined the scope of an ALH inspection), inspectors are requesting items such as safety committee meeting minutes, Form 300 logs, training records, written safety programs completely unrelated to labor housing, etc. It is questionable the extent to which this is permissible.

It is the current policy of OR-OSHA to review certain documents, including Form 300 Logs, during any inspection (there is a specific rule requiring an employer to make a 300 Log available for inspection if requested, OAR 437-001-0700(22)). However, if you feel a compliance officer is requesting materials that are outside the scope of the emphasis program, you may say so and ask whether the compliance officer is expanding the scope of the inspection. If you refuse to submit certain documents because you believe the request to be outside the scope of the inspection, document that in writing to the compliance officer and ask the compliance officer to get a subpoena to compel the production of the documents if the compliance officer believes the documents to be relevant to the scope of the inspection.

Oregon-OSHA Inspection Process

BEST PRACTICES BEFORE THE INSPECTION

Prepare Documents

[Field Inspection Reference Manual](#) (Pages 86-87: Records Review)

Have documents updated. OSHA records requests may include (but are not limited to):

- OSHA Form 300/300A (from previous 3 years)
- Safety Meeting Minutes
- Heat Illness Prevention Plan
- Hazard Communication Plan
- Emergency Action Plan
- Training Records: Heat Illness, Wildfire Smoke, Hazard Communication, etc.
 - Heat Illness and Wildfire Smoke Training Records: The most recent annual training record for each employee must be maintained for one year.
- SAIF Insurance Policy Information (proof of insurance, policy number)
- Worker Protection Standard Training Records

Small Farm Exemption

[Field Inspection Reference Manual](#) (Pages 119: Small Agriculture Employer Exemption)

[OR-OSHA's Program Directive for the Agricultural Small Employer Exemption \(A-214\)](#)

See also *OAR 437-001-0057(12)*

Small farms can be exempt from SOME inspections. The small farm exemption **DOES NOT** include inspections for valid complaints, accidents resulting in death or serious disabling injury, and local emphasis programs (LEPs) such as ALH, Pesticide Emphasis Program, Field Sanitation, Heat Illness Prevention, etc. Employers may still be inspected for these things even with the small-farm exemption.

For those employers that qualify for the Small Farm Exemption, it is important to **have the following documents available** in the event of an inspection:

1. OR-OSHA Program Directive 214: Inspection Guidance for Agriculture Small Employer Exemption
[OR-OSHA Small Farm Exemption Program Directive 214](#)

Due to lack of consistent training, many compliance officers are not aware this exemption exists and may insist on continuing with the inspection. If this occurs, provide them with the OR-OSHA Program Directive 214. This is evidence of this program and includes how compliance officers should verify your exemption. You have the right to inform them you are exempt, provide necessary documentation to prove your exemption, and ask OSHA to stop any further inspection and leave your property.

2. Documentation of Safety Training
Your certificate from SAIF's Ag Safety Seminar or other comparable training serves as evidence of required safety training.
3. Documentation of Comprehensive Consultation
You must provide documentation showing the date of the comprehensive consultation and name of the provider, but you ARE NOT required to provide a copy of the report. See additional details below.

To meet the Small Farm Exemption requirements, you must have:

1. 10 or fewer permanent year-round employees.
 - Exclude members of employer's immediate family from the number of employees; including parents, spouses, siblings, children, daughters and sons-in-law, nieces/nephews, grandchildren, foster children, stepparents, and any blood relative living as a dependent of the core family.

2. No accidents in the preceding 2-year period that resulted in death, in-patient hospitalization, or injury that resulted in more than 3 days of lost work.
 - Compliance officers **must rely on information provided by the employer at the opening conference and review of Form 801 to determine if accidents were the result of rule violations.**
 - Compliance officers **are NOT to conduct an accident investigation to make this determination.** If there is uncertainty, the employer will be given the benefit of the doubt.
 3. Four hours of agricultural safety/health training completed annually by the employer and principal supervisors.
 - The employer must have documentation that includes date of training, name and signature of training provider, length of training, and subjects covered.
 - Training may be completed in any venue or media, including self-study courses, videos, webinars, in-person, etc.
 4. A comprehensive consultation completed within the last 4 years.
 - The time period begins when the consultation happens.
 - OSHA compliance officers:
 - **CAN ask the employer if they have had a consultation during the previous 4 years and if all problems identified in the report were corrected.** If the employer says “yes, all problems identified have been corrected”, enforcement CANNOT do an inspection to determine if this is true. They must trust the employer’s answer and discontinue the inspection.
 - **CAN ask to see documentation showing the date of the consultation and name of the provider.** However, the employer **DOES NOT need to provide a copy of the report.** (In general, reports from voluntary safety consultants may be withheld as privileged (ORS 654.101(2)).
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OR-OSHA Consultation Deferral

[Field Inspection Reference Manual](#) (Pages 82-83: OR-OSHA Consultation Deferral)

If an OR-OSHA consultation is in progress, or scheduled to start within 7 days, you should receive an inspection deferral. This means that OR-OSHA cannot conduct certain inspection activities (described further below) until the deferral period has passed. This deferral **ONLY** applies to random inspections; if OR-OSHA is there to investigate an accident, injury, or a complaint, the consultation deferral generally does not apply and OR-OSHA will proceed with the inspection.

The deferral applies to the following inspection activities for the following time periods:

- A programmed inspection from 7 days prior to the date of the consultation through 60 days after receipt of the written consultation report.
- A programmed inspection for Ag Labor Housing from 7 days prior to the date of the consultation through 30 days after receipt of the written consultation report.

DURING THE INSPECTION

Refusal of Entry or Inspection

[Field Inspection Reference Manual](#) (Page 76: Refusal of Entry or Inspection)

See also *ORS 654.067(5)*

Employers have the right to deny entry at the outset of the inspection and request that compliance officers obtain an inspection warrant to proceed any further. Employers also have the right to withdraw consent at any time during the inspection and require that an inspection warrant be obtained.

OSHA compliance officers can obtain a warrant, but will need to consider the following factors when deciding to pursue a warrant:

- Warrant processing time
- How long your employees will be working at this location (seasonal migrant labor, etc.)
- Impact on compliance
- Violations already documented

In cases where denial of entry is a known policy of the employer, OR-OSHA may obtain a pre-inspection warrant. In these circumstances, if the employer requests the presence of an employer representative when it is presented with the inspection warrant, the compliance officer should give the employer representative up to 45 minutes to arrive before beginning the inspection.

Non-Employee Third Party Representatives

The following rule was finalized by federal OSHA but has not yet been adopted by OR-OSHA and therefore does **NOT** apply in Oregon:

The Worker Walkaround Designation Process (informally called the “Worker Walkaround Rule”) allows employees to designate a third-party to accompany OSHA during workplace inspections, even if this third-party is not an employee of the business (such as a union representative at a non-union workplace or a farmworker advocate representative). The federal OSHA rule says that the third-party representative must have the “relevant knowledge, skills, or expertise with hazards or conditions in the workplace or similar workplaces, or language or communication skills” that can aid OSHA during inspection. A non-employee third party representative may be allowed to participate in the inspection with the inspector’s approval, but the inspector must find that the representative is reasonably necessary to aid the inspection.

Time of Inspection

[Field Inspection Reference Manual](#) (Page 80: Time of Inspection)

See also *OAR 437-001-0065*

Inspections should be made during regular working hours of the business, except when special circumstances indicate otherwise. Employers have the right to deny inspections at unreasonable times.

Limit Where Compliance Officers Go

OSHA inspections may be expanded based on additional hazards or violative conditions in the “plain view” of a compliance officer. This means employers may be cited for violations outside the scope of the initial investigation, based on a compliance officer’s observations while at the workplace. During limited or partial inspections, employers can minimize risks in this regard by limiting areas of the workplace available to a compliance officer. One way this may be accomplished is by taking the compliance officer directly to the area at issue in the inspection and directly from the area at the end of the inspection, and nowhere else. There is nothing in the rules which prevents employers from taking compliance officers through a remote area to view only pertinent areas and bypass other areas. The goal here is not to hide anything, but rather to exercise your right to maintain limits on the scope of inspection activities when possible.

This is one reason it is critical to establish the scope of the inspection during the opening conference and to have a member of management stay with the compliance officer throughout the inspection. Should a compliance officer attempt to investigate areas unrelated to the initial scope, employers may ask them to explain the basis for expanding

the scope and/or stop the inspection and, at that point, demand that the compliance officer obtain an inspection warrant before continuing further.

Note: The Heat Illness Program Directive can expand the inspection scope as compliance officers can add heat illness prevention to any inspections occurring from June 15 – September 30 each year. The heat rules also apply anytime the heat index equals or exceeds 80° F. When the heat index is 79°F or less, the compliance officers may still evaluate heat illness prevention methods used, and if there are areas where employers are not compliant, they can receive a hazard letter. If heat illness is a complaint item, workers complain of heat-related symptoms during interviews, or if the inspection is related to an accident, failure to comply with the rules may result in a citation.

Opening Conference

[Field Inspection Reference Manual](#) (Pages 80-82: *Conducting an Opening Conference*)

See also OAR 437-001-0075

There are reports of OR-OSHA compliance officers skipping or cutting short the opening conference procedure and instead letting themselves onto farms and immediately initiating contact with employees. Barring the compliance officer's possession of a warrant or the presence of exigent circumstances, opening conferences should be performed at the beginning of all inspection activities.

Before beginning the physical inspection of the premises (walkaround), the compliance officers **MUST** present their credentials and conduct an opening conference. Prior to conducting an opening conference, compliance officers should provide an opportunity for an employer and employee representative to be contacted and be present.

During the opening conference, the compliance officer is to do the following (OAR 437-001-0075):

- Introduce themselves and provide credentials.
- Explain the reason, purpose, nature and intended scope of the inspection.
- Discuss records the compliance officer will request be reviewed.
- Give information related to the employer's rights during the inspection and expectations regarding employees' interviews.
- Describe the general inspection process, including whether the compliance officer intends to take photos, videos, or collect data samples (such as temperature measurements, etc.).
- Explain that all violations that would normally result in a citation can have a penalty reduction if corrected before the end of the inspection.

If the basis of an inspection is a complaint, get a copy of the complaint from the OSHA compliance officer. To the extent practicable, limit the scope of the inspection to the complaint items. As noted above, the compliance officer is authorized to broaden the inspection to include anything that is observed in plain view.

During the opening conference, employers can:

- Discuss the extent to which the employer will consent to the inspection and, in the process, attempt to negotiate to narrow the scope of the investigation. (If the employer does not give consent to for the inspection, the compliance officer must generally obtain an inspection warrant to proceed, particularly if the inspection involves entry onto the employer's property.)
- Ask questions about the purpose and probable cause justifying the inspection.
- Try to establish ground rules about how the inspection may proceed, from the collection of documents (through written requests only), to interviews (scheduled in advance), and physical access to the facility (only with a management escort).
- Request that the compliance officer inform you prior to taking a photo or video so you can capture the same shot during the inspection.
- Discuss any issues concerning confidentiality or proprietary information/equipment/processes and take steps to limit OR-OSHA's access to these.
- Request a copy of the complaint, if the inspection was initiated by a complaint from an employee or former employee before consenting to the inspection.

Employee Participation

[Field Inspection Reference Manual](#) (Pages 77-78: *Interference with Employee Right to Participate*)

If your employees are represented (by a bargaining unit representative, an employee member of a safety and health committee who has been chosen by employees, or an individual selected by employees who serves as their spokesperson), that representative is allowed to accompany the compliance officer during the inspection.

When an official employee representative cannot be identified, employee interviews will suffice to obtain employee input. Compliance officers **DO NOT have the authority** to select an employee to represent the employees during the inspection.

Scope of Inspection

[Field Inspection Reference Manual](#) (Page 69: *Scopes of Inspections*)

In the opening conference, the compliance officer should outline the general terms of the scope of the inspection and explain what will be included. This can include physical inspection of work area, review of safety/health records, employee interviews, a closing conference, etc.

While outlining the scope, the compliance officer should clarify if this is a **comprehensive or partial inspection**. A comprehensive inspection is a complete and thorough inspection of the workplace, and includes a review of all required safety and health programs. A partial inspection is limited to certain potentially hazardous areas/operations/conditions.

Field Sanitation, Ag Labor Housing, Pesticides, and Heat Illness Prevention are all Local Emphasis Programs (LEPs). The scope of an LEP is to address hazards that pose a specific risk to workers in a local area (Oregon). These programs are developed for specific industries and hazards and therefore should be limited to only the rules within the applicable standard; they should not be treated as comprehensive inspections.

Observe compliance officers carefully during the inspection. If you feel that the inspection is veering outside of the stated scope, you can – at any time – ask whether the scope is being expanded and on what basis. You can also withdraw consent for the inspection if it appears to go outside of the stated scope and inform the compliance officer of the need to obtain an inspection warrant to proceed further.

Compliance officers are trained to collect information to make referrals to other agencies (for example, documentation of spray application records for referral to OSHA's pesticide emphasis program; concerns about public/private water systems, information about wage and hour requirements to refer to BOLI, etc.). While they can ask for this information, employers may be able to push back by arguing the requested information is outside the scope of the inspection.

Physical Inspection (Walkaround)

[Field Inspection Reference Manual](#) (Pages 91-96: *Walkaround Inspection*)

The purpose of the walkaround inspection is to identify safety and health hazards in the workplace and discuss effective safety and health practices with the walkaround representatives. **Employers have the right to accompany the compliance officer throughout the inspection, except when interviewing non-managerial employees who have agreed to be interviewed in private.**

During this part of the inspection, the compliance officer may:

- Visually inspect the work area
- Interview employees
- Take measurement, photos and/or videos
- Collect data or samples (for example, measuring indoor temperature for heat illness prevention standards, etc.)

If compliance officers take photos or videos, **employers should take side-by-side photos/videos of the same views and of the same activities.** If you believe that the compliance officer is photographing conditions from a misleading

perspective, you can photograph the same conditions from the compliance officer's perspective and other perspectives that more accurately depict the actual conditions. If OSHA takes any sampling, employers can also take their own physical evidence samples.

You can also take photographs and, potentially, video of OSHA compliance officers as they conduct the inspection, where appropriate. **If taking video, you should obtain consent before doing so, especially if the video is accompanied by sound recording of a conversation.** Compliance officers are not to expose themselves to hazards; OR-OSHA will be hard-pressed to argue that a condition is hazardous or that a violation is intentional if the compliance officer exposed themselves to the same cited hazard at the property.

During the walkaround, you are allowed to take notes, documenting statements made by the compliance officer during the inspection, questions they ask, areas they examine, which employees they speak to during employee interviews, etc.

If the compliance officer wants to conduct sampling or testing during the inspection (such as noise monitoring, air samples, chemical exposure analysis), the employer has the right to do its own side-by-side testing, sampling, or monitoring. OSHA should explain the tests to be conducted and methods to be used, and give the employer a reasonable opportunity to arrange for side-by-side testing/sampling/monitoring. Employers can inform the inspector that the tests will not occur until you have an industrial hygienist or other expert present; otherwise, you will never be able to duplicate the conditions captured by OSHA. In the event OR-OSHA attempt to press on without giving you an opportunity to arrange for an industrial hygienist or other expert, you may revoke consent for the ongoing inspection and request that the compliance officer obtain an inspection warrant to continue. Documentation of the reason consent was revoked, e.g. by email to the compliance officer, is a very good idea in situations such as this.

During the walkaround, compliance officers will ask you questions. Anything you say can bind the company and be used by OSHA to issue citations. Discourage substantive interviews from happening during the walkaround inspection. Instead, request that questions be asked during formal interviews.

Ask for Evidence of Rules

If a compliance officer refers to a specific rule or standard that you are unfamiliar with when discussing potential corrective actions or citations, employers can ask to see the written rule for reference. Employers should take notes on how the inspector is interpreting the rule in the event that a citation is filed.

Document Review

[Field Inspection Reference Manual](#) (Pages 86-90: Records Review)

Compliance officers will typically review required safety/health records and should communicate which records they want to see during the opening conference. **Any request for documents should also be made in writing so you have a record of it; do not provide any documents to compliance officers until you have received a formal request in writing.** If a compliance officer verbally communicates a records request, ask them to send you a written request as well so you have a time-stamped record.

Taking time to review OR-OSHA's request and responding within a reasonable amount of time will allow you to email the documents to OR-OSHA, creating a time-stamped electronic paper trail of the transmission. If you hastily hand over your documents, you may open the door to additional questions or concerns from the compliance officer.

Examine the list of documents carefully. Compliance officers may ask for documents that are unrelated to the purpose of the inspection or documents that may otherwise be privileged (for example, certain reports of consultations need not be disclosed to the agency (ORS 654.101)). Employers can object to any document requests that exceed the scope of the inspection. OR-OSHA can subpoena the records if they believe it is necessary, but employers have the ability to challenge such a subpoena in circuit court.

If you have proprietary or confidentiality concerns about providing documents, those concerns should be communicated to the compliance officer. OR-OSHA has a duty to ensure all confidential materials are maintained appropriately and not

disclosed publicly. Employers may also seek other means to prevent disclosure of such materials such as a protective order or other means of protection.

Requested records may include (but are not limited to):

- OSHA 300 Log and/or OSHA 300A Form for the previous 3 years
- Form 801 associated with any injury/illness records on OSHA 300 Log
- Safety Committee Meeting Minutes
- Hazard Inspection Reports (including corrective action items)
- Accident Investigation Reports
- Written Safety Programs: Hazard Communication Program, Heat Illness Prevention Program, Emergency Medical Plan, etc.)
- Training Records (employee training for heat and smoke rules, hazard communication, etc.)
- Relevant Safety Data Sheets (for chemicals related to a complaint, referral, or accident that forms the basis of the inspection)

Employers are sometimes given a short time to respond to document requests; **read any written request carefully for the requested documents and due date.** If the due date is unreasonable, you can request an extension. OR-OSHA has up to 6 months to close an inspection, so they should not need to receive the documents immediately. **Note, however, that there is a rule requiring that employers provide OSHA 300 Logs within 4 hours of an agency request. Delaying in providing those logs could be grounds for issuance of a citation.**

Always document any extension request and the response you receive in writing, e.g., via email to the compliance officer. For additional privacy measures, send the documents as PDF documents instead of Word documents or Google Docs so compliance officers cannot view the history of document editing and revisions.

Employee Interviews

[Field Inspection Reference Manual](#) (Pages 93-97: Right to Interview Employees)

See also *ORS 654.067(1)(b)*

Compliance officers have the right to privately question any non-managerial employee during the course of an inspection.

Employees may request to have another person present for the interview as moral support, to have a representative in the room, or to refuse to participate in the interview. Employees can ask for a manager/employer representative to be present, but the agency may not agree to this. In that case, the employee's recourse would be to refuse the interview. Refusing to participate in an interview could result in the issuance of subpoenas to compel an interview (ORS 654.130). Employee statements are NOT confidential and are part of the public record. Compliance officers should inform employees of this before the interview. Note that if proposed legislation passes in the 2025 legislative session, the identities of employees providing information during interviews may become confidential.

In general, employee interviews will be conducted in private without the employer present. Compliance officers are taught that these interviews should occur during regular working hours, be conducted in a reasonable manner, must be kept as brief as possible, and should NOT include leading questions. Compliance officers generally do not attempt to contact employees at their homes or outside of work hours, but may do so if circumstances warrant it.

Employers should inform employees that they have the right to decline to speak to compliance officers outside of work hours (e.g., if contacted at home), should this happen.

Questions may include:

- Hazards employees have observed and/or reported
 - Employer-provided training for how to protect from workplace hazards
 - Potential gaps between workplace policies and practices
 - Amount of appropriate supervision
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Management/Supervisor Interviews

Unlike non-supervisor interviews, employers generally have the right to be present during the compliance officer's interviews of supervisory or management personnel, particularly if statements from the supervisors/management will be attributed to the employer, i.e., if the agency intends to consider the person a speaking agent of the employer. In general, "supervisors" do not include crew leaders or some orchard foremen. Rather, supervisors generally have greater authority to take action for the company, e.g., to hire/fire employees, and therefore may be viewed by state agencies as a type of management employee.

If your foremen or supervisors meet this definition, then employers, counsel, or anyone else designated by the company should be permitted to attend inspection interviews regardless of whether the employee being interviewed wants you there. If the agency pushes back, you may want to clarify with the compliance officer in writing if the agency intends to consider the person to be a speaking agent of the employer. For non-management type foremen or supervisors, employers may not be allowed to be present for their interviews.

Why Are Supervisor Interviews So Important?

For nearly every citation, OSHA must generally prove four things:

- There was a health/safety standard that addressed the cited circumstances;
- that the standard was violated;
- that employees were exposed to the cited condition; and
- that the company, through either actual or constructive knowledge, had knowledge of the exposure.

The most difficult of these elements for OSHA to prove is often employer knowledge. OSHA can satisfy this requirement by attributing the knowledge of a supervisory employee to the employer. As such, if a supervisory employee admits to knowing of the violative condition, or admits to facts that reflect he/she should have known of the violative condition, then that employee's knowledge may be imputed to the employer.

Take some time to prepare supervisors and management for interviews before the interviews happen. In cases involving accidents/injuries, it may also be appropriate to determine in advance if the supervisor/management employee may need their own counsel.

Referrals to Other State Agencies

[Field Inspection Reference Manual](#) (Page 20: *Interagency Agreements*)
[Inter-Agency Agreement Between OSHA and BOLI Wage & Hour Division](#)
[OR-OSHA Interagency Agreements](#)

OR-OSHA has cooperative agreements with other state agencies that allow them to make referrals for investigation of violations related to pesticides (Oregon Department of Agriculture), water quality (Oregon Health Authority), wage and hour rules (BOLI), and H-2A labor standards (Oregon Employment Department). During inspections, they may interview employees about these topics and refer observed hazards to other agencies.

OSHA compliance officers may ask employees about wages, including:

- Minimum wage or other pay violations (unlawful deductions, failure to receive scheduled paychecks, etc.)
- Child labor (underage minors, minors operating farm machinery, other hazardous employment)
- Farm labor contractor issues (unlicensed contractor, violations of workers' rights, etc.)
- Failure to post the required agricultural minimum wage poster
- Access not provided to a working telephone for emergency use (Phone must be provided within 1/10th of a mile, or approximately 500 feet, of the housing and available at any time). Note: Employee personal phones do not count for this purpose; the phone must be a company-provided phone.
- Any other apparent unsafe or unfair working conditions

Under this same agreement, BOLI enforcement may refer observed violations to OSHA in situations such as:

- Problems with drinking water, toilets, bathing facilities, living/sleeping areas, and/or building structure
- Garbage improperly stored
- Pesticide application or over-spray where workers are present

CLOSING THE INSPECTION

Joint Closing Conferences

At the conclusion of an inspection, a joint closing conference must be held with the employer and the employee representatives whenever practicable. Either party can request a separate conference, and OR-OSHA should cooperate with the request.

Closing Conference

[Field Inspection Reference Manual](#) (Pages 97-100: Closing Conference)

A closing conference is conducted at the conclusion of all inspection activities. During the closing conference, compliance officers will generally discuss hazards and violative conditions identified during the inspection and proposed violations. OR-OSHA has up to 180 days from the start of an inspection to close the inspection and issue a citation. Typically, compliance officers try to close the process within 60 days of the inspection so employers may receive a request for a closing conference within that timeframe.

Closing conferences can be conducted on-site, by telephone or via letter. While, historically, closing conferences have been conducted on-site, they are now often conducted via telephone or video conference. Employers may request that closing conferences take place on-site, but OR-OSHA is under no obligation to agree to such a request. The compliance officer should only resort to conducting a closing conference by email or mail if unable to schedule a phone call or video conference.

Oregon law allows one party to record a phone call without the other party's consent; employers can record a closing conference via phone if they think it will be helpful to refer to later.

During the closing conference the compliance officer will typically:

- Explain any alleged violations and other issues found during the inspection.
- Discuss proposed citation items and associated penalties and the results of penalty adjustment factors that may apply.
- Discuss strengths/weaknesses of the employer's safety and health management systems and programs.

During the closing conference, write down each apparent violation that the compliance officer identifies, listing the specific OSHA standard and the machines, employees, or work areas in question.

While OR-OSHA is not required to comply, it is completely reasonable for employers to request information related to anticipated corrective actions, proposed citation items, or penalties during the inspection, prior to the closing conference, or during the closing conference.

Since there is now a longer delay between the inspection and the closing conference due to compliance officers taking additional time to review requested documents and conduct the closing conference via phone or video conference, employers are encouraged to request that compliance officers share anticipated corrective actions and citation items prior to the closing conference so that they can be prepared for conversation. This may allow employers an opportunity to provide evidence to refute an alleged violation and/or consider any follow-up questions or discussion items you want to address during the closing conference.

Written summaries of closing conferences are included in the inspection file, and these notes can be obtained by employers through public records requests following issuance of a citation or other inspection file closure.

CITATIONS, PENALTIES & APPEALS

Citations

If violations are found, OSHA may issue citations alleging the specific standards violated and proposed penalties.

If a citation is received after the inspection, you must:

- Post the citation at a central posting location and/or near the location of the violation for 3 days, or until the violation is corrected (whichever occurs last).
- Post all amendments or withdrawals to a citation with the original citation for 3 days or until the violation is corrected (whichever occurs last).

Abatement Period

[Field Inspection Reference Manual](#) (Page 99: Abatement Assistance)

[Field Inspection Reference Manual](#) (Pages 158-159: Abatement of Violations Pending the Outcome of an Appeal)

The employer is given a specific period, known as the abatement period, to correct the identified violations. The length of this period depends on the severity of the violation, among other factors. After correcting the cited violations, the employer may be required to provide documentation to OR-OSHA as proof of abatement, unless the compliance officer notes that the alleged violation was corrected during the course of the inspection. For proof of abatement, it is generally not recommended that photos be sent to the agency unless the agency specifically requests such documentation.

OR-OSHA may recommend or require additional employee training or improvements in safety procedures to prevent future violations. These additional steps are typically referred to as “enhanced abatement” and may be used when negotiating a reduced citation.

Inspection Files

[Field Inspection Reference Manual](#) (Page 157: Release of Inspection Information)

OR-OSHA will not provide copies of the inspection file to employers unless the employer makes a public records request. The content of the inspection file is important for evaluating potential defenses to a citation, and should be requested every time a citation is appealed.

Even if you did not receive any citations, the inspection file and the compliance officer’s report in the inspection file can provide insight into what OSHA thinks of your operation and may give you information on how to prepare for the future and it is suggested that you request a copy of the inspection file for your records.

To submit a public records request, employers can make a request via written letter or submit via the online request form: <https://www.oregon.gov/dcb/media/pages/public-records-requests.aspx>

Informal Conference

[Field Inspection Reference Manual](#) (Page 160-163: Informal Conferences)

Employers have the option to request an informal conference with OR-OSHA to discuss the inspection results, proposed penalties, abatement measures, and potentially a proposed solution through settlement or other means. Whether or not an informal conference may be helpful when appealing a citation is heavily dependent on the facts of the case and desired resolution. Note that if the employer intends to appeal the citation (discussed further below), it is important for the employer to timely file a formal appeal and not just request an informal conference. An informal conference may be requested in the absence of an appeal, or it may be requested in connection with an appeal. In an appeal context, whether or not an informal conference may be helpful is heavily dependent on the facts of the case and desired resolution.

Penalties

[Field Inspection Reference Manual](#) (Pages 127-143: Penalty Assessment)

See also OAR 437-001-0135 through -0203

If you are assessed a penalty, there are various factors that may be applied to influence the amount, including:

- Severity of the violation
- Immediate correction of the violation
- Employer size
- Employer's history of compliance
- Employer's good faith

If no appeal is filed, penalties technically become due on the date the citation becomes a final order. Payments must be made either by mail or online within 20 calendar days of that date if you do not file an appeal. If an appeal is filed, penalties (as potentially modified subject to the appeal) must be paid within 20 days after there is a final order in connection with the appeal.

Penalty Structure

[Field Inspection Reference Manual](#) (Pages 127-143: Penalty Assessment)

Penalty structures for each year are published in the Oregon OSHA Civil Penalties Bulletin.

On January 1, 2024, Oregon Senate Bill 592 went into effect, resulting in dramatic increases in OR-OSHA penalties. The new law also requires follow-up inspections in certain circumstances. For example, within a year after a serious injury or fatality, OR-OSHA must conduct a comprehensive inspection. The new penalty structure now ranks among the top three highest in the nation.

Violations fall into two primary categories: Serious violations or Other than Serious violations.

An **Other than Serious** violation is typically something that needs to be corrected but has less potential to lead to a severe injury or death. Examples include not displaying required postings, or forgetting to initial some of the monthly inspections on your fire extinguishers.

A **Serious** violation has a higher potential for severe injury or death. Examples include having a damaged PTO shield on a tractor, not having an eyewash station available at your mixing/loading station, etc.

There are additional penalty structures for repeated and willful violations, as well as situations where an alleged violation caused or contributed to a work-related fatality.

First-Instance Penalty Table

First-Instance Violation: An employer's first violation cited within the previous 3 years of a particular statute, regulation, rule, standard, or order. The civil penalty amount for an initial other than serious violation is not annually adjusted.

<i>Other than Serious Violation</i>	
Probability	Other than Serious
Low	\$0
High	\$300

<i>Serious Violation</i>		
Probability	Serious Physical Harm	Death
Low	\$3,530	\$11,769
Medium	\$7,060	\$14,123
High	\$9,415	\$16,475

Repeat Violations Penalty Table

Repeat Violation: A violation of the same statute, regulation, rule, standard or order repeated within 3 years.

<i>Repeat Occurrence</i>	<i>Other than Serious Violation</i>
1 st Repeat	\$11,769
2 nd Repeat	\$11,769
3 rd Repeat	\$11,769

<i>Serious Physical Harm</i>			
<i>Probability</i>	<i>1st Repeat</i>	<i>2nd Repeat</i>	<i>3rd Repeat</i>
Low	\$14,120	\$21,181	\$28,241
Medium	\$28,241	\$42,361	\$56,482
High	\$37,659	\$56,488	\$75,318

<i>Death</i>		
<i>1st Repeat</i>	<i>2nd Repeat</i>	<i>3rd Repeat</i>
\$47,077	\$70,615	\$94,153
\$56,490	\$84,735	\$112,981
\$65,900	\$98,850	\$131,799

** Note: The above penalty amounts are for 2025. Each year, OR-OSHA increases the penalties 2-4% based on the cost-of-living adjustment in the Consumer Price Index for All Urban Consumers, West Region.

Some reductions in these penalty amounts may be possible depending on factors such as the employer's size and considerations of "good faith." In general, reductions for "repeat" violations are relatively less than reductions allowed for first-instance violations.

Appealing a Citation

[Field Inspection Reference Manual](#) (Page 158: Employer Notification of Appeal Rights)

[Overview of the Citation Process & Additional Information](#)

Employers have the right to appeal any citations and/or penalties issued. Historically, the agricultural industry has rarely appealed citations.

- An employer has **30 calendar days** after receiving a citation to file an appeal. An appeal is filed once received by OR-OSHA, DCBS, or the Worker's Compensation Board.
- Employers may appeal specific citation items or the entire citation.

You may request an appeal by completing the online form on OR-OSHA's website: [Online Appeal Request](#)

For assistance, please call 503-378-3272

Alternatively, you may request an appeal by sending a written request for an appeal to OR-OSHA, the Department of Consumer and Business Services, or the Workers' Compensation Board.

The appeal request must:

- Be in writing (but does not need to be in any particular form or format).
- Include the employer's name, address, and telephone number.
- State the citation's inspection number or optional report number.
- Specify each cited item/violation that is contested and the reason for each item's appeal. The reason need not be detailed or particularly specific. It may be simple, e.g., a statement that the employer disagrees that there was any citable violation of the Oregon Safe Employment Act as alleged.