Chapter 654

1985 REPLACEMENT PART

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SAFETY AND HEALTH CONDITIONS IN PLACES OF EMPLOYMENT GENERALLY

654.001 Short title. ORS 654.001 to 654.295 and 654.991 may be cited as the Oregon Safe Employment Act. [1973 c.833 §2]

654.003 Policy declaration. The purpose of the Oregon Safe Employment Act is to assure as far as possible safe and healthful working conditions for every working man and woman in Oregon, to preserve our human resources and to reduce the substantial burden, in terms of lost production, wage loss, medical expenses, disability compensation payments and human suffering, which is created by occupational injury and disease. To accomplish this purpose the Legislative Assembly intends to provide a procedure which will:

(1) Encourage employers and employes to reduce the number of occupational safety and health hazards and to institute new programs and improve existing programs for providing safe and healthful working conditions.

(2) Authorize the Director of the Workers' Compensation Department and the designees of the director to set reasonable, mandatory, occupational safety and health standards for all employments and places of employment.

(3) Provide an effective program, under the Director of the Workers' Compensation Department, to enforce all laws, regulations, rules and standards adopted for the protection of the life, safety and health of employes.

(4) Establish appropriate reporting and research procedures which will help achieve the objectives of the Oregon Safe Employment Act, identify occupational hazards and unsafe and unhealthy working conditions, and describe the nature of the occupational safety and health problem.

(5) Assure that Oregon assumes fullest responsibility, in accord with the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), for the development, administration and enforcement of safety and health laws and standards. [1973 c.833 §3]

654.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Administrative Fund" means the fund created by ORS 656.612.

(2) "Board" means the Workers' Compensation Board created by ORS 656.712.

(3) "Department" means the Workers' Compensation Department created by ORS 656.708.

(4) "Director" means the Director of the Workers' Compensation Department.

(5) "Employe" means any individual, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, financial or otherwise, subject to the direction and control of an employer, and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, or any individual who is provided with workers' compensation coverage as a subject worker pursuant to ORS chapter 656, whether by operation of law or by election.

(6) "Employer" means any person who has one or more employes, or any sole proprietor or member of a partnership who elects workers' compensation coverage as a subject worker pursuant to ORS 656.128.

(7) "Owner" means and includes every person having ownership, control or custody of any place of employment or of the construction, repair or maintenance of any place of employment.

(8) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons, and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations or subdivisions.

(9) "Place of employment" means and includes every place, whether fixed or movable or moving, whether indoors or out or underground, and the premises and structures appurtenant thereto, where either temporarily or permanently an employe works or is intended to work and every place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including a labor camp provided by an employer for employes or by another person engaged in providing living quarters or shelters for employes, but "place of employment" does not include any place where the only employment involves nonsubject workers employed in or about a private home. [Amended by 1973 c.833 §4; 1975 c.102 §2; 1977 c.804 §34]

654.010 Employers to furnish safe place of employment. Every employer shall furnish employment and a place of employment which are safe and healthful for employes therein, and shall furnish and use such devices and safe-

guards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably necessary to render such employment and place of employment safe and healthful, and shall do every other thing reasonably necessary to protect the life, safety and health of such employes. [Amended by 1973 c.833 §5]

654.015 Unsafe or unhealthy place of employment prohibited. No employer or owner shall construct or cause to be constructed or maintained any place of employment that is unsafe or detrimental to health. [Amended by 1973 c.833 §6]

654.020 Interference with safety devices or methods prohibited; civil penalty. (1) No person shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employe in such employment or place of employment.

(2) If an employe is injured as a result of an employer's violation of the provisions of subsection (1) of this section, the employer shall be assessed a civil penalty under ORS 654.086 (1)(c).

(3) If removal or the rendering inoperative of a safety device or safeguard is necessary for repair or maintenance work, injuries sustained while the repair or maintenance work is being performed are exempted from this section. [Amended by 1973 c.833 §7; 1977 c.869 §1]

654.022 Duty to comply with safety and health orders, decisions and rules. Every employer, owner, employe and other person shall obey and comply with every requirement of every order, decision, direction, standard, rule or regulation made or prescribed by the department in connection with the matters specified in ORS 654.001 to 654.295, or in any way relating to or affecting safety and health in employments or places of employment, or to protect the life, safety and health of employes in such employments or places of employment, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, standard, rule or regulation. [Formerly 654 060; 1977 c.804 §35]

654.025 Jurisdiction and supervision of Workers' Compensation Board, director and other state agencies over employment and places of employment. (1) The director is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws, regulations, rules, standards and lawful orders requiring such employment and place of employment to be safe and healthful, and requiring the protection of the life, safety and health of every employe in such employment or place of employment.

(2) The director and the board may make, establish, promulgate and enforce all necessary and reasonable regulations, rules, standards, orders and other provisions for the purpose of carrying out their respective functions under ORS 654.001 to 654.295, notwithstanding any other statutory provisions which may be to the contrary. Nothing in ORS 654.001 to 654.295, however, shall authorize or require medical examination, immunization or treatment for those who object thereto on religious grounds, except where such is necessary to protect the health or safety of others.

(3)(a) The director may enforce all regulations, rules and standards duly adopted by any other state agency for the safety and health of employes.

(b) This grant of concurrent jurisdiction and authority to the director shall not be construed, however, as repealing or amending, or as derogating in any respect from, the statutory jurisdiction and authority of any other state agency to promulgate and enforce regulations, rules and standards and to conduct inspections and investigations, except that no other state agency shall issue the citations or assess the civil penalties provided in ORS 654.001 to 654.295.

(c) In the event a state of facts or condition constitutes a violation of more than one rule, regulation, standard or order of the director or any other agency pertaining to occupational safety or health, the state of facts or condition shall be the basis for the issuance of only one citation and proceeding or the assessment of only one penalty unless the statute specifically provides that a continuation of a state of facts or a condition constitutes a new violation.

(d) Where another state agency, pursuant to its statutory authority, proposes to adopt a regulation, rule or standard relating to occupational safety or health, such agency shall accord the director an opportunity to review such regulation, rule or standard prior to its adoption for the purpose of assuring that employers will not be asked to comply with contradictory or inconsistent requirements or be burdened with an unnecessary duplication of occupational safety and health codes, inspections or reports.

(4) The board and the director may subpena witnesses, administer oaths, take depositions and

fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state, and the board and the director shall provide for defraying the expenses thereof.

(5) The director and the board may do and perform all things, whether specifically designated in ORS 654.001 to 654.295 or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction conferred upon them by ORS 654.001 to 654.295. The director's authority under this section shall include but is not limited to:

(a) Designating by order or rule any named state employe or category of state employes who shall have authority to exercise any of the duties and powers imposed upon the director by law and whose act as authorized by the order or rule shall be considered to be an official act of the director. The director may designate local government employes with public health administration or enforcement duties to exercise duties and powers imposed upon the director with respect to ORS 654.174 (1) and (2).

(b) Instituting any legal or equitable proceeding which would assist in the enforcement of any state occupational safety or health law or any regulation, rule, standard or order promulgated thereunder, including but not limited to seeking injunctive relief to enjoin an employer from operating the place of employment until the employer has complied with the provisions of such law, regulation, rule, standard or order. Upon the filing of a suit for an injunction by the director, the court shall set a day for hearing and shall cause notice thereof to be served upon the employer. The hearing shall be not less than five nor more than 15 days from the service of such notice. [Amended by 1973 c.833 §9; 1977 c.804 §36; 1979 c.839 §23; 1985 c.423 §6]

Note: Chapter 696, Oregon Laws 1981, as amended by section 1 and 8, chapter 423, Oregon Laws 1985, provides:

Sec. 1. (1) Except as provided in section 2 of this 1985 Act, no portion of any moneys appropriated or otherwise made available by law or from other sources to the Workers' Compensation Department may be expended to prescribe, issue, administer or enforce any rule, order or standard pursuant to ORS 654.001 to 654.295 that applies to a person engaged in farming who does not maintain a temporary labor camp and who employs 10 or fewer employes, except as provided in subsection (2) of this section.

(2) Nothing in subsection (1) of this section prevents the department from expending moneys to conduct inspections, investigations or other enforcement proceedings:

(a) In response to a complaint made pursuant to ORS 654.062;

(b) Relating to an accident; or

(c) Relating to the issuance of a citation. [1981 c.696 §1; 1985 c.423 §7]

Sec. 2. The Director of the Workers' Compensation Department shall report to the Sixty-second and Sixty-third Legislative Assemblies on the number of inspections, violations and accidents occurring in activities described in subsection (1) of section 1 of this Act. [1981 c.696 §2]

Sec. 3. Sections 1 and 2, chapter 696, Oregon Laws 1981, are repealed July 1, 1987. [1981 c.696 §3; 1985 c.423 §8]

654.030 [Amended by 1973 c.833 §24; renumbered 654.130]

654.031 Duty to order correction of unsafe or unhealthy conditions. Whenever the director has reason to believe, after an inspection or investigation, that any employment or place of employment is unsafe or detrimental to health or that the practices, means, methods, operations or processes employed or used in connection therewith are unsafe or detrimental to health, or do not afford adequate protection to the life, safety and health of the employes therein, the director shall issue such citation and order relative thereto as may be necessary to render such employment or place of employment safe and protect the life, safety and health of employes therein. The director may in the order direct that such additions, repairs, improvements or changes be made, and such devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or place of employment safe and healthful, in the manner and within the time specified in the order. [Formerly 654.045]

654.035 Scope of rules and orders. The director may, by general or special orders, or by regulations, rules, codes or otherwise:

(1) Declare and prescribe what devices, safeguards or other means of protection and what methods, processes or work practices are well adapted to render every employment and place of employment safe and healthful.

(2) Fix reasonable standards and prescribe and enforce reasonable orders for the adoption, installation, use and maintenance of devices, safeguards and other means of protection, and of methods, processes and work practices, to be as nearly uniform as possible, as may be necessary to carry out all laws relative to the protection of the life, safety and health of employes.

(3) Fix and order such reasonable standards for the construction, repair and maintenance of places of employment and equipment as shall render them safe and healthful.

(4) Fix standards for routine, periodic or area inspections of places of employment which are

reasonably necessary in order to determine that all occupational safety and health laws and the regulations, rules and standards promulgated thereunder are being complied with.

(5) Require the performance of any other act which the protection of the life, safety and health of employes in employments and places of employment may demand. [Amended by 1973 c.833 §11]

654.040 [Repealed by 1973 c.833 §34 (654.290 enacted in lieu of 654 040, 654.065, 654.070, 654.075 and 654.080)]

654.045 [Amended by 1973 c.833 §10; renumbered 654.031]

654.047 [Formerly 654.225; 1965 c.285 §82; repealed by 1973 c 833 §15 (654.067 enacted in lieu of 654.047, 654.222 and 654.232)]

654.050 [Amended by 1953 c 387 §2; 1957 c.436 §1; 1965 c.285 §69d; 1969 c.534 §1; 1971 c.251 §1; repealed by 1973 c.833 §19 (654.082 and 654.086 enacted in lieu of 654 050)]

654.055 [Repealed by 1973 c.833 §12 (654.056 and 654.078 enacted in lieu of 654.055)]

654.056 Variance from safety or health standards; effect of variance on citations. (1) Any employer may apply to the director, pursuant to regulations and procedures adopted by the director, for an order granting the employer a variance from a particular safety or health regulation, rule or standard.

(2) The director may grant a temporary variance only if the employer demonstrates by a preponderance of the evidence that:

(a) The employer is unable to comply with a new regulation, rule or standard by its effective date;

(b) The employer has an effective program for complying with the law as quickly as practicable; and

(c) The employer is taking all available steps in the interim to safeguard the employes of the employer against the hazards covered by the regulation, rule or standard.

(3) The director may grant a permanent variance only if the employer demonstrates by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by the employer will provide employment and a place of employment which are as safe and healthful as those which would prevail if the employer complied with the regulation, rule or standard.

(4) Where the director proposes to deny a request for a variance, the employer shall be given an opportunity for a hearing before the board in which the employer may contest the proposed denial.

(5) Where the director proposes to grant a variance, the affected employes shall be given an opportunity for a hearing before the board in which they may contest the proposed variance.

(6) A request for a variance which is filed after an inspection or investigation by the director will not act to stay or dismiss any citation which may result from such inspection or investigation, and an order granting the requested variance shall have no retroactive effect.

(7) An order granting a variance may be modified or revoked by the director upon the director's own motion or upon the application of the employer or an affected employe or representative of the employe, in the manner prescribed for its issuance at any time after six months from its issuance. [1973 c.833 §13 (enacted in lieu of 654.055); 1977 c.804 §37]

654.060 [Amended by 1973 c.833 §8; renumbered 654.022]

654.062 Notice of violation to employer by worker; complaint by worker to director; inspection; protection of complaining employes. (1) Every employe should notify the employer of any violation of law, regulation or standard pertaining to safety and health in the place of employment when the violation comes to the knowledge of the employe.

(2) However, any employe or representative of the employe may complain to the director or any authorized representatives of the director of any violation of law, regulation or standard pertaining to safety and health in the place of employment, whether or not the employe also notifies the employer.

(3) Upon receiving any employe complaint, the director shall make such inquiries, inspections and investigations as the director considers reasonable and appropriate. Where an employe has complained in writing of an alleged violation and no resulting citation is issued to the employer, the director shall furnish to the employe or representative of the employe, upon written request, a statement of reasons for the decision.

(4) The director shall establish procedures for keeping confidential the identity of any employe who requests such protection in writing. Where such a request has been made, neither a written complaint from an employe, or representative of the employe, nor a memorandum containing the identity of a complainant shall be construed as a public writing or record under ORS 192.001 to

192.170, 192.210 to 192.500 and 192.610 to 192.990.

(5)(a) It is an unlawful employment practice for any person to bar or discharge from employment or otherwise discriminate against any employe or prospective employe because such employe has opposed any practice forbidden by ORS 654.001 to 654.295, made any complaint or instituted or caused to be instituted any proceeding under or related to ORS 654.001 to 654.295, or has testified or is about to testify in any such proceeding, or because of the exercise of such employe on behalf of the employe or others of any right afforded by ORS 654.001 to 654.295.

(b) Any employe or prospective employe who believes that the employe has been barred or discharged from employment or otherwise discriminated against in compensation, or in terms, conditions or privileges of employment, by any person in violation of this subsection may, within 30 days after the employe has reasonable cause to believe that such a violation has occurred, file a complaint with the Commissioner of the Bureau of Labor and Industries alleging such discrimination under the provisions of ORS 659.040. Upon receipt of such complaint the commissioner shall process the complaint and case under the procedures, policies and remedies established by ORS 659.010 to 659.110 and the policies established by ORS 654.001 to 654.295 in the same way and to the same extent that the complaint would be processed by the commissioner if the complaint involved allegations of unlawful employment practices based upon race, religion, color, national origin, sex or age under ORS 659.030 (1)(f). The affected employe shall also have the right to bring a suit in any circuit court of the State of Oregon against any person alleged to have violated this subsection. The commissioner or the circuit court may order all appropriate relief including rehiring or reinstatement of the employe to the employe's former position with back pay.

(c) Within 90 days after the receipt of a complaint filed under this subsection the commissioner shall notify the complainant of the commissioner's determination under paragraph (b) of this subsection. [Formerly 654.235; 1973 c.833 §14; 1983 c.275 §1]

654.065 [Repealed by 1973 c.833 §34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.067 Inspection of places of employment; denial of access; warrants; safety and health consultation with employes. (1) In order to carry out the purposes of ORS 654.001 to 654.295, the director, upon presenting appropriate credentials to the owner, employer or agent in charge, is authorized:

(a) To enter without delay and at reasonable times any place of employment; and

(b) To inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein, and to question privately the owner, employer, agents or employes.

(2) No person shall give an owner, employer, agent or employe advance notice of any inspection to be conducted under ORS 654.001 to 654.295 of any place of employment without authority from the director.

(3) Except in the case of an emergency, or of a place of employment open to the public, if the director is denied access to any place of employment for the purpose of an inspection or investigation, such inspection or investigation shall not be conducted without an inspection warrant obtained pursuant to ORS 654.202 to 654.216, or without such other authority as a court may grant in an appropriate civil proceeding. Nothing contained herein, however, is intended to affect the validity of a constitutionally authorized inspection conducted without an inspection warrant.

(4) A representative of the employer and a representative authorized by the employes of the employer shall be given an opportunity to accompany the director during the inspection of any place of employment for the purpose of aiding such inspection. Where there is no employe representative, or the employe representative is not an employe of the employer, the director should consult with a reasonable number of employes concerning matters of safety and health in the place of employment. [1973 c.833 §16 (enacted in lieu of 654.047, 654.222 and 654.232)]

654.070 [Repealed by 1973 c.833 §34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.071 Citation for safety or health standard violations; effect of failure to correct violation; posting of citations and notices by employer. (1) If the director or an authorized representative of the director has reason to believe, after inspection or investigation of a place of employment, that an employer has violated any state occupational safety or health law, regulation, standard, rule or order, the director or the authorized representative shall with reasonable promptness issue to such employer a citation, and notice of proposed civil penalty, if any, to be assessed under this chapter, and fix a

reasonable time for correction of the alleged violation.

(2) Each citation and notice required by subsection (1) of this section shall be in writing, shall be mailed to or served upon the employer or a registered agent of the director, and shall contain:

(a) The date and place of the alleged violation;

(b) A plain statement of the facts upon which the citation is based;

(c) A reference to the law, regulation, rule, standard or order relied upon;

(d) The amount, if any, of the proposed civil penalty;

(e) The time, if any, fixed for the correction of the alleged violation;

(f) Notice of the employer's right to contest the citation, the proposed civil penalty and the period of time fixed for correction of the alleged violation; and

(g) Notice of any affected employe's right to contest the period of time fixed for correction of the alleged violation.

(3) No citation or notice of proposed civil penalty may be issued under this section after the expiration of 180 days following the director's knowledge of the occurrence of a violation, but this shall not prevent the issuance, at any time, of an order to correct that violation or the issuance of a citation for a subsequent violation.

(4) If the director has reason to believe that an employer has failed to correct a violation within the period of time fixed for correction, or within the time fixed in a subsequent order granting an extension of time to correct the violation, the director shall consider such failure as a separate and continuing violation and shall issue a citation and notice of proposed civil penalty, if any, to be assessed pursuant to ORS 654.086 (1)(d).

(5) The director may prescribe procedures for the issuance of a notice in lieu of citation to inform an employer and employes of a minimal violation which has no direct or immediate relationship to occupational safety or health.

(6) Each citation and notice, or copies thereof, issued under ORS 654.001 to 654.295 shall be posted by the employer, immediately upon receipt, in a conspicuous manner in a sufficient number of locations in the place or places of employment to reasonably inform employes of such citation and notice.

(7) Notwithstanding any other provision of this section, the director or authorized representative of the director shall deliver to the operator of a farm labor camp a copy of any notice, evaluation report or citation resulting from the inspection. [1973 c.833 §17; 1981 c 696 §4]

654.074 [1973 c.833 §17a; repealed by 1977 c.804 §55]

654.075 [Repealed by 1973 c.833 §34 (654 290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.078 Contesting violations; hearing; admissibility in criminal or civil proceedings of stipulations involving violations. (1) An employer may contest a citation, a proposed assessment of civil penalty and the period of time fixed for correction of a violation, or any of these, by filing with the department, within 20 days after receipt of the citation, notice or order, a written request for a hearing before the board. Such a request need not be in any particular form, but shall specify the alleged violation that is contested and the grounds upon which the employer considers the citation or proposed penalty or correction period unjust or unlawful.

(2) An affected employe or representative of such employes may contest the time fixed for correction of a violation by filing with the department, within 20 days after the receipt by the employer of the citation, notice or order which fixes such time for correction, a written request for a hearing before the board. Such a request need not be in any particular form, but shall specify the violation in question and the grounds upon which the employe considers the correction period to be unreasonable.

(3) A hearing on any question relating to the validity of a citation or the proposed civil penalty to be assessed therefor shall not be granted unless a request for hearing is filed by the employer within the period specified in subsection (1) of this section. If a request for hearing is not so filed, the citation and the assessment of penalty as proposed shall be a final order of the department and shall not be subject to review by any agency or court.

(4) A hearing relating to the reasonableness of the time prescribed for the correction of a violation shall not be granted, except for good cause shown, unless a request for hearing is filed within the period specified in subsections (1) and (2) of this section. If a request for hearing is not so filed the time fixed for correction of the violation shall be a final order of the department and shall not be subject to review by any agency or court.

(5) Where an employer contests, in good faith and not solely for delay or avoidance of penalties, the period of time fixed for correction of a nonserious violation, such period of time shall not run between the date the request for hearing is filed and the date the order of the department becomes final by operation of law or on appeal.

(6) Where an employer or employe contests the period of time fixed for correction of a serious violation, any hearing on that issue shall be conducted as soon as possible and shall take precedence over other hearings conducted by the board under the provisions of ORS 654.001 to 654.295.

(7) Where informal disposition of a contested case is made by stipulation, agreed settlement or a consent order, such stipulation, settlement or order shall not be pleaded or admissible in evidence as an admission or confession in any criminal prosecution or in any other civil proceeding that may be instituted against the employer, except in the case of a civil proceeding brought to enforce such stipulation, settlement or order. [1973 c.833 §18 (enacted in lieu of 654 055); 1977 c.804 §38]

654.080 [Repealed by 1973 c.833 §34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.082 Prohibiting use of equipment involved in violation; red warning notice. (1) The director, or an authorized representative of the director with the approval of the director or, pursuant to such rules and procedures as the director may prescribe, with the approval of the director, to preclude exposure to a condition which, if such exposure occurred would constitute a violation of any statute, or of any lawful regulation, rule, standard or order affecting employe safety or health at a place of employment, may preclude exposure by prohibiting use of the machine, equipment, apparatus or place of employment constituting such condition. When use is prohibited a red warning notice shall be posted in plain view of any person likely to use the same, calling attention to the condition, defect, lack of safeguard or unsafe or unhealthful place of employment and the fact that further use is prohibited.

(2) No person shall use or operate any place of employment, machine,, device, apparatus or equipment, after the red warning notice required by this section is posted, before such place of employment, machine, device, apparatus or equipment is made safe and healthful, and the required safeguards or safety appliances or devices are provided, and authorization for the removal of such red warning notice has been obtained from the director. However, nothing in this subsection prohibits an employer from directing employes to use or operate any such place of employment, machine, device, apparatus or equipment exclusively for the purpose of remedying the violation as specifically designated by the director in the red warning notice.

(3) No person shall deface, destroy or remove any red warning notice posted pursuant to this section until authorization for the removal of such notice has been obtained from the director. [1973 c.833 §20 (enacted in lieu of 654.050); 1975 c.102 §3; 1977 c.804 §39; 1977 c.869 §2a]

654.085 [Amended by 1973 c.833 §33; renumbered 654.285]

654.086 Civil penalty for violations; classification of violations; payment and disposition of penalty moneys. (1) The director or the authorized representative of the director is hereby granted the authority to assess civil penalties as provided by this section for violation of the requirements of any state occupational safety or health statute or the lawful rules, standards or orders adopted thereunder.

(a) Any employer who receives a citation for a serious violation of such requirements shall be assessed a civil penalty of not more than $1,000 for each such violation.

(b) Any employer who receives a citation for a violation of such requirements, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of not more than $1,000 for each such violation. However, a civil penalty shall not be assessed against a farm labor camp operator when such a violation is a first-time violation.

(c) Any employer who wilfully or repeatedly violates such requirements may be assessed a civil penalty of not more than $10,000 for each violation.

(d) Any employer who receives a citation, as provided in ORS 654.071 (4), for failure to correct a violation may be assessed a civil penalty of not more than $1,000 for each day during which such failure or violation continues.

(e) Any employer who knowingly makes any false statement, representation or certification regarding the correction of a violation may be assessed a civil penalty of not more than $1,000.

(f) Any employer who violates any of the posting requirements, as prescribed under the provisions of ORS 654.001 to 654.295, shall be assessed a civil penalty of not more than $1,000 for each violation.

(g) Any person who violates the provisions of ORS 654.082 (2) or (3) may be assessed a civil

penalty of not more than $1,000 for each such violation.

(h) Notwithstanding paragraph (b) of this subsection, an employer who substantially fails to comply with ORS 654.174 (1) shall be assessed a mandatory minimum fine of $250.

(2) For the purposes of ORS 654.001 to 654.295 a serious violation exists in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) When an order assessing a civil penalty becomes final by operation of law or on appeal, unless the amount of penalty is paid within 10 days after the order becomes final, it constitutes a judgment and may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded shall become a lien upon the title to any interest in property owned by the person against whom the order is entered, and execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(4) Civil penalties collected under ORS 654.001 to 654.295 shall be paid into the Administrative Fund. [1973 c.833 §21 (enacted in lieu of 654.050); 1981 c.696 §5; 1983 c.696 §22; 1985 c.423 §4]

654.090 Occupational safety and health activities; voluntary compliance; consultative services. In order to carry out the purposes of ORS 654.001 to 654.295 and encourage voluntary compliance with occupational safety and health laws, regulations and standards, the director may:

(1) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through (a) research, conferences, lectures and the use of public communications media, (b) the collection and dissemination of accident statistics and (c) the publication and distribution of training and accident prevention materials, including audio and visual aids.

(2) Appoint advisers who shall, without compensation, assist the director in establishing standards of safety and health. The director may adopt and incorporate in its regulations, rules and standards such safety and health recommendations as it may receive from such advisers.

(3) Provide consultative services for employers on safety and health matters and prescribe procedures which will permit any employer to request a special inspection or investigation, focused on specific problems or hazards in the place of employment of the employer, which will not directly result in a citation and civil penalty. [Amended by 1965 c.285 §69h; 1973 c.833 §22]

654.092 [Formerly 654.255; repealed by 1965 c.285 §95]

654.093 [Formerly 654.265; repealed by 1973 c.833 §48]

654.094 [Formerly 654.270; repealed by 1965 c.285 §95]

654.095 [Amended by 1965 c 285 §69e; repealed by 1973 c.833 §48]

654.096 [Formerly 654 275; repealed by 1967 c 92 §5]

654.100 [Repealed by 1973 c.833 §31 (654.251 enacted in lieu of 654.100)]

654.105 [1957 c.156 §1; 1959 c.684 §1; repealed by 1973 c.833 §29 (654 241 enacted in lieu of 654.105 and 654.226)]

654.110 [1957 c.156 §2; 1959 c.684 §3; repealed by 1971 c 251 §2]

654.120 Records of proceedings; confidentiality of certain information; federal reporting requirements. (1) The department shall maintain, for a reasonable time, records of all inspections, investigations, employe complaints, employer reports, citations, hearings, proceedings and any other matters necessary for achieving the purposes of ORS 654.001 to 654.295.

(2) Each employer shall keep records, in the manner prescribed by the director, of work-related deaths and serious injuries and illnesses, and of such other relevant occupational safety and health matters as are reasonably necessary for achieving the purposes of ORS 654.001 to 654.295. Each employer shall notify the director forthwith of the work-related death of any employe of the employer, and shall make such other reports as the director may reasonably prescribe by rule or order.

(3) All information reported to or otherwise obtained by the department in connection with any matter or proceeding under ORS 654.001 to 654.295 which contains or which might reveal a trade secret referred to in section 1905, title 18, United States Code, shall be considered confidential for the purposes of that section, except that such information may be disclosed to other

officers or employes of the department or other agencies concerned with carrying out their duties under ORS 654.001 to 654.295 or when relevant in any proceeding under ORS 654.001 to 654.295 or 654.991. In any such matter or proceeding the department, the other state agency, the referee, the board or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(4) The director will make reports to the Secretary of Labor of the United States in such form and containing such information as the Secretary of Labor shall from time to time require pursuant to the Occupational Safety and Health Act of 1970 (Public Law 91-596).

(5) Nothing contained in ORS 654.001 to 654.295 shall relieve an employer from making such reports to the Secretary of Labor of the United States as may be required by federal law. [1973 c.833 §23, 1977 c.804 §40]

654.130 Proceedings against unwilling witnesses. (1) The director or the board, or the authorized representative or designee of the director or the board before whom testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers as required by subpena, may report to the circuit court in the county in which the inquiry, investigation, hearing or other proceeding is pending, by petition setting forth that due notice has been given of the time and place of attendance of the witness, or the production of the papers, and that the witness has been subpenaed in the manner prescribed and that the witness has failed and refused to attend or produce the papers required by the subpena or has refused to answer questions propounded to the witness in the course of such proceeding, and ask an order of the court to compel the witness to attend and testify or produce said papers.

(2) The court, upon receiving the petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order, the time to be not more than 10 days from the date of the order, and then and there show cause why the witness has not attended and testified or produced the papers.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpena was regularly issued, the court shall thereupon enter an order that the witness appear before the director or the board or the authorized representative or designee of the director or the board at a time and place to be fixed in such order, and testify and produce the required papers and upon failure to obey the order the witness shall be dealt with as for contempt of court. [Formerly 654.030; 1979 c.839 §24]

654.150 Sanitary facilities at construction projects; standards; exemptions. (1) At the site of every construction project estimated to cost $500,000 or more the employer or owner of such place of employment shall provide toilet facilities and facilities for maintaining personal cleanliness for the use of employes on the construction project. Flush toilets shall be provided and the washing facilities shall consist of warm water, wash basins and soap. A building or a mobile, self-contained unit may be provided for such facilities. The number, types and maintenance of facilities shall conform to minimum standards set by the director.

(2) Subsection (1) of this section does not apply to highway construction or maintenance projects or to electricity, water, sewer or gas transmission facility construction or maintenance projects.

(3) The director may, by order, exempt or partially exempt, individual or classes of construction projects from the requirements of subsection (1) of this section when conditions are such that compliance is impractical or impossible. [1975 c.751 §2]

654.155 [Repealed by 1973 c.833 §48]

654.160 Applicability of ORS 654.150 to be included in contracts; liability for cost of compliance. (1) A statement as to whether or not ORS 654.150 applies at the construction site shall be included in the contract for a construction project. If the contract states that ORS 654.150 applies, the owner shall also include in the contract documents a provision designating which party to the contract is responsible for any costs that may be incurred in complying with ORS 654.150 and the rules adopted pursuant thereto.

(2) The owner of a construction site is liable to any contractor who is an employer at the site for costs incurred by the contractor if:

(a) Representatives of the director decide that ORS 654.150 applies to the construction project, and the contract documents did not designate which party to the contract for the project was responsible for complying with ORS 654.150 and the rules adopted pursuant thereto; and

(b) The contractor incurs additional costs in complying with ORS 654.150.

(3) In addition to being liable for the amount of the additional costs incurred, as provided by subsection (2) of this section, the owner is liable

for interest on the amount at the rate of one percent per month from the date such contractor makes demand upon the owner to reimburse the contractor for such costs until the contractor is paid. [1977 c.129 §2]

654.170 Stairway railings and guards not required for certain public and historic buildings. Nothing in ORS 654.001 to 654.295 requires the installation of railings or guards on exterior stairways providing access to and egress from the State Capitol Building or the grand staircases to the chambers of the Senate and House of Representatives in the rotunda of the State Capitol Building or any staircase in any public monument or memorial or building of historic significance. [1977 c 780 §2]

654.174 Sanitation facilities for workers harvesting food crops; employer to post notice; rules. (1) Employers of workers who are engaged in field activities for the growing and harvesting of food crops intended for human consumption shall provide for such workers at convenient locations, and in accordance with such rules as the director may prescribe:

(a) Toilet facilities that are maintained in clean and sanitary condition, of such design and construction as to provide privacy and to prevent crop contamination and, where practicable, one toilet for each sex.

(b) Handwashing facilities that provide clean water, soap or other suitable cleansing agent, paper towels and a method for disposal of used towels and wash water to avoid crop contamination.

(c) Clean, potable drinking water served in a sanitary manner, which may include but is not limited to containers with spigots and tight fitting lids and disposable cups sufficient in number for each worker.

(2) Every employer required to comply with subsection (1) of this section shall keep conspicuously posted a notice describing the requirements of that subsection and advising where complaints may be filed. The notice must be in the English language and in the language spoken by the majority of the employes.

(3) The director shall promulgate rules to implement subsections (1) and (2) of this section which shall not be less protective than the rules on those subjects that are operative on July 9, 1985. [1985 c.423 §§2, 3, 5]

654.175 [Repealed by 1969 c.534 §2]

WORKPLACE SAFETY COMMITTEES

654.176 Authority to require employer to establish safety committees. In carrying out the provisions of ORS 654.001 to 654.295, the director may require any public or private employer of 10 or more employes to establish and administer a safety committee if the employer has a lost workday cases incidence rate greater than the rate the director determines is consistent with reasonable workplace health and safety for employes of that particular occupational classification. In determining such a rate, the director shall utilize the most recent department statistical survey regarding Oregon occupational injuries and illnesses. [1981 c.488 §2]

654.180 [Repealed by 1969 c.534 §2]

654.182 Rules for ORS 654.176; contents. In carrying out ORS 654.176, the director shall promulgate rules which include, but are not limited to provisions:

(1) Prescribing the membership of the committees to insure equal numbers of employes and employer representatives and specifying the frequency of meetings.

(2) Requiring employers to make adequate written records of each meeting and to file and maintain the records subject to inspection by the director.

(3) Requiring employers to compensate employe representatives on safety committees at the regular hourly wage while the employes are attending safety committee meetings.

(4) Prescribing the duties and functions of safety committees, which include, but are not limited to:

(a) Establishing procedures for workplace safety inspections by the committee.

(b) Establishing procedures for investigating all safety incidents, accidents, illnesses and deaths.

(c) Evaluating accident and illness prevention programs. [1981 c.488 §3]

654.187 Exceptions to application of ORS 654.176 to 654.192. Nothing in ORS 654.176 to 654.192 applies to:

(1) An employer operating under a collective bargaining agreement that contains provisions regulating the formation and operation of a safety committee.

(2) An employer that is otherwise required by or pursuant to law to have a safety committee. [1981 c.488 §4]

654.192 Labor organization not liable for injury resulting from absence of safety

or health provision. When an employe incurs an injury compensable under ORS chapter 656, the discussion or furnishing, or failure to discuss or furnish, or failure to enforce any safety or health provision to protect employes against work injuries, in any collective bargaining agreement or negotiations thereon, shall not subject a labor organization representing the injured employe to any civil liability for the injury. [1981 c 488 §5]

HAZARD COMMUNICATION AND HAZARDOUS SUBSTANCES

654.194 Legislative policy; review of employes not covered by federal rules. The Legislative Assembly finds that biennial public review of the hazard communication rules of the State of Oregon is essential. The director shall conduct such a review and biennially report the findings of the review to the Governor and Legislative Assembly. The review shall specifically include an assessment of employers not covered by hazard communication rules. The director shall conduct public hearings pursuant to the provisions of ORS 183.310 to 183.550 to determine whether classes of employes not required to be covered by federal rules should be covered under rules of the State of Oregon. If the director concludes that noncovered employers or class or classes of employers should be subject to hazard communication rules, the director shall propose rules to extend hazard communication coverage to such employers or class or classes of employers. [1985 c.683 §2]

654.196 Rules on contents of piping systems; posting notice on right to be informed of hazardous substances; withholding of information under certain circumstances. (1) The director may by rule require employers to provide information to employes relating to the contents of piping systems. The rules shall include, but need not be limited to requirements for:

(a) Labeling piping systems to provide notice about hazardous chemicals contained in the system; and

(b) Labeling a piping system that uses asbestos as a pipe insulation material.

(2) Every employer shall post a sign in the location where notices to employes are normally posted, to inform employes that they have a right under this section, ORS 453.317 (7) and 654.194 to information from the employer regarding hazardous substances found in the place of employment.

(3) The sign required under subsection (2) of this section shall include, but need not be limited to, the following information and shall be substantially in the following form:

NOTICE TO EMPLOYES

You have a right under state law to information about hazardous substances found in your place of employment. For this information, contact your employer.

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(4) Notwithstanding any other provision of this chapter or ORS 192.410 to 192.500, an employer may withhold the precise chemical name of a chemical only if the employer can substantiate that:

(a) The chemical name is a trade secret with commercial value that can be protected only by limiting disclosure; and

(b) The commercial value of the product cannot be preserved by withholding the processes, mixture percentages or other aspects of the production of the product instead of its chemical constituents.

(5) A trade secret designation claimed under subsection (4) of this section may be subject to yearly review.

(6) Notwithstanding any other provision of this chapter or ORS 192.410 to 192.500, if a treating physician or health professional concludes that the chemical identity of a hazardous chemical used in an employer's place of employment is necessary to prescribe necessary treatment for a patient, the employer may not require the physician or health professional to sign a confidentiality agreement as a condition to the release of the information by the employer, manufacturer or importer. [1985 c.683 §§3, 4, 5]

HEALTH AND SANITATION INSPECTIONS

654.202 Issuance of warrants for safety and health inspections. Magistrates authorized to issue search warrants may, upon application of the director, or any public officer, agent or employe of the director acting in the course of official duties, issue an inspection warrant whenever an inspection or investigation of any place of employment is required or authorized by any state or local statute, ordinance or regulation relating to occupational safety or health. The inspection warrant is an order authorizing the safety or health inspection or investigation to be conducted at a designated place of

employment. [1971 c 405 §1; 1973 c 833 §25; 1977 c 804 §41]

654.205 [Repealed by 1959 c 516 §6]

654.206 Grounds for issuance of inspection warrants; requirements of affidavit. (1) An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant hereunder, the statute, ordinance or regulation requiring or authorizing the inspection or investigation, the place of employment to be inspected or investigated and the purpose for which the inspection or investigation is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused or facts or circumstances reasonably showing that the purposes of the inspection or investigation might be frustrated if entry were sought without an inspection warrant.

(2) Cause shall be deemed to exist if reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to the particular place of employment, or there is probable cause to believe that a condition of nonconformity with a safety or health statute, ordinance, regulation, rule, standard or order exists with respect to the particular place of employment, or an investigation is reasonably believed to be necessary in order to determine or verify the cause of an employe's death, injury or illness. [1971 c 405 §2, 1973 c.833 §26]

654.210 [Repealed by 1959 c.516 §6]

654.212 Procedure for issuance of inspection warrant by magistrate. (1) Before issuing an inspection warrant, the magistrate may examine under oath the applicant and any other witness and shall satisfy himself of the existence of grounds for granting such application.

(2) If the magistrate is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, the magistrate shall issue the warrant, particularly describing the name and title of the person or persons authorized to execute the warrant, the place of employment to be entered and the purpose of the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the magistrate has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night. [1971 c.405 §3; 1973 c 833 §27]

654.215 [Repealed by 1959 c.516 §6]

654.216 Execution of inspection warrants. (1) Except as provided in subsection (2) of this section, in executing an inspection warrant, the person authorized to execute the warrant shall, before entry, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the place of employment designated in the warrant and show the occupant or person in possession of the place of employment the warrant or a copy thereof upon request.

(2) In executing an inspection warrant, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in subsection (1) of this section, but may promptly enter the designated place of employment if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition.

(3) A peace officer may be requested to assist in the execution of the inspection warrant.

(4) An inspection warrant must be executed and returned to the magistrate by whom it was issued within 10 days from its date, unless such magistrate before the expiration of such time, by indorsement thereon, extends the time for five days. After the expiration of the time prescribed by this subsection, the warrant unless executed is void. [1971 c.405 §4; 1973 c 833 §28]

654.220 [Repealed by 1959 c 516 §6]

654.222 [1971 c.405 §5, repealed by 1973 c 833 §15 (654.067 enacted in lieu of 654.047, 654.222 and 654.232)]

654.225 [Amended by 1959 c 516 §1; renumbered 654.047]

654.226 [1971 c.405 §6; repealed by 1973 c.833 §29 (654.241 enacted in lieu of 654.105 and 654.226)]

654.230 [Repealed by 1959 c.516 §6]

654.232 [1971 c.405 §7; repealed by 1973 c.833 §15 (654.067 enacted in lieu of 654.047, 654.222 and 654.232)]

654.235 [Amended by 1959 c.516 §2; renumbered 654.062]

654.240 [Repealed by 1959 c.516 §6]

654.241 [1973 c.833 §30 (enacted in lieu of 654.105 and 654.226); repealed by 1975 c.102 §4]

654.245 [Repealed by 1959 c.516 §6]

654.250 [Repealed by 1959 c.516 §6]

654.251 Assistance to board from other state agencies; inspection of farm labor camps and facilities. (1) The Bureau of Labor and Industries, the Department of Commerce and any other state agency which is vested under separate statute with the authority to make

inspections of places of employment, or to promulgate regulations, rules or standards relating to particular areas of occupational safety and health, shall render such advice and assistance to the director as the director may reasonably request or prescribe in order to carry out the purposes of ORS 654.001 to 654.295. When any state agency completes an inspection of a place of employment, it shall promptly notify the director and the affected employer of any condition that may violate any occupational safety or health law, regulation, rule or standard.

(2) In addition to the inspection authority granted to the director and the representatives and designees of the director by ORS 654.001 to 654.295, the Bureau of Labor and Industries may inspect farm labor camps, fields and facilities prior to occupancy and as reasonably necessary or appropriate thereafter, and shall report any violation of occupational safety or health laws, regulations, rules or standards to the director or the designees of the director. [1973 c.833 §32 (enacted in lieu of 654.100)]

654.255 [Amended by 1955 c.643 §1; 1957 c.492 §1; 1959 c.516 §3; renumbered 654.092]

654.260 [Amended by 1955 c.643 §2; repealed by 1959 c.516 §6]

654.265 [Amended by 1955 c.644 §1; renumbered 654.093]

654.270 [Renumbered 654.094]

654.275 [Amended by 1959 c.516 §4; renumbered 654.096]

654.285 Admissibility of rules and orders of department in evidence in proceedings under ORS 654.001 to 654.295. Except as provided in ORS 654.078 (7), every regulation, rule, standard, finding, decision and order of the department, general or special, made and entered under the provisions of ORS 654.001 to 654.295 and which has become final by operation of law or on appeal, shall be admissible as evidence in any hearing, civil proceeding or criminal prosecution conducted under the provisions of this chapter and shall, in every such hearing, proceeding or prosecution, be conclusively presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirement of safety and health. [Formerly 654.085; 1977 c.804 §42]

654.290 Applicability of Administrative Procedures Act; referee qualifications. (1) Promulgation by the director or board of regulations, rules and standards authorized by ORS 654.001 to 654.295, and any judicial review thereof, shall be as provided in ORS 183.310 to 183.550.

(2) Notwithstanding of ORS 183.315 (1), the issuance of orders pursuant to ORS 654.001 to 654.295, the conduct of hearings in contested cases and the judicial review thereof shall be as provided in ORS 183.310 to 183.550, except that:

(a) The board shall employ referees to hold hearings in contested cases.

(b) The order of a referee in a contested case shall be deemed to be a final order of the board.

(c) The director shall have the same right to judicial review of the order of a referee as any person who is adversely affected or aggrieved by such final order.

(d) Affected employes or their authorized representative shall be accorded an opportunity to participate as parties in hearings.

(3) Referees shall be members in good standing of the Oregon State Bar and possess such other qualifications as the board may prescribe, and shall be employed in accordance with ORS 656.724. [1973 c.833 §35 (enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080); 1975 c.759 §18; 1977 c.804 §43]

654.293 Representation of employer by attorney permitted. Neither ORS 9.320 nor any provision in the Oregon Safe Employment Act shall be construed to deny an employer the right to be represented by an attorney or any other authorized representative designated by the employer in any proceedings under ORS 654.001 to 654.295. [1975 c.370 §2]

654.295 Application of Oregon Safe Employment Act. (1) Nothing contained in ORS 654.001 to 654.295 shall invalidate any existing occupational safety or health regulation, rule, standard or order which is not clearly inconsistent with the purposes and provisions of ORS 654.001 to 654.295.

(2) Where any part of a law, regulation, rule, standard or order is found to be clearly inconsistent with ORS 654.001 to 654.295 and declared to be invalid, it is the intent of the Legislative Assembly that the remaining provisions of such law, regulation, rule, standard or order remain in effect as fully as if the invalid part had not been adopted. [1973 c.833 §36]

EMPLOYER LIABILITY LAW

654.305 Protection and safety of persons in hazardous employment generally. Generally, all owners, contractors or subcontractors and other persons having charge of, or responsible for, any work involving a risk or danger to the employes or the public, shall use every device, care and precaution which it is

practicable to use for the protection and safety of life and limb, limited only by the necessity for preserving the efficiency of the structure, machine or other apparatus or device, and without regard to the additional cost of suitable material or safety appliance and devices.

654.310 Places of employment; compliance with applicable orders, rules. All owners, contractors, subcontractors, or persons whatsoever, engaged in the construction, repairing, alteration, removal or painting of any building, bridge, viaduct or other structure, or in the erection or operation of any machinery, or in the manufacture, transmission and use of electricity, or in the manufacture or use of any dangerous appliance or substance, shall see that all places of employment are in compliance with every applicable order, decision, direction, standard, rule or regulation made or prescribed by the Workers' Compensation Department pursuant to ORS 654.001 to 654.295. [Amended by 1975 c.148 §1; 1977 c.804 §44]

654.315 Persons in charge of work to see that ORS 654.305 to 654.335 are complied with. The owners, contractors, subcontractors, foremen, architects or other persons having charge of the particular work, shall see that the requirements of ORS 654.305 to 654.335 are complied with.

654.320 Who considered agent of owner. The manager, superintendent, foreman or other person in charge or control of all or part of the construction, works or operation shall be held to be the agent of the employer in all suits for damages for death or injury suffered by an employe.

654.325 Who may prosecute damage action for death; damages unlimited. If there is any loss of life by reason of violations of ORS 654.305 to 654.335 by any owner, contractor or subcontractor or any person liable under ORS 654.305 to 654.335, the surviving spouse and children and adopted children of the person so killed and, if none, then the lineal heirs of that person and, if none, then the mother or father, as the case may be, shall have a right of action without any limit as to the amount of damages which may be awarded. If none of the persons entitled to maintain such action reside within the state, the executor or administrator of the deceased person may maintain such action for their respective benefits and in the order above named.

654.330 Fellow servant negligence as defense. In all actions brought to recover from an employer for injuries suffered by an employe, the negligence of a fellow servant shall not be a defense where the injury was caused or contributed to by any of the following causes:

(1) Any defect in the structure, materials, works, plant or machinery of which the employer or the agent of the employer could have had knowledge by the exercise of ordinary care.

(2) The neglect of any person engaged as superintendent, manager, foreman or other person in charge or control of the works, plant, machinery or appliances.

(3) The incompetence or negligence of any person in charge of, or directing the particular work in which the employe was engaged at the time of the injury or death.

(4) The incompetence or negligence of any person to whose orders the employe was bound to conform and did conform and by reason of having conformed thereto the injury or death resulted.

(5) The act of any fellow servant done in obedience to the rules, instructions or orders given by the employer or any other person who has authority to direct the doing of said act.

654.335 Contributory negligence. The contributory negligence of the person injured shall not be a defense, but may be taken into account by the jury in fixing the amount of the damage.

654.405 [Repealed by 1973 c 833 §48]

654.410 [Repealed by 1973 c.833 §48]

654.415 [Repealed by 1973 c.833 §48]

654.420 [Repealed by 1973 c.833 §48]

654.425 [Repealed by 1973 c.833 §48]

654.430 [Repealed by 1973 c.833 §48]

654.505 [Repealed by 1961 c.485 §29]

654.510 [Amended by 1953 c.514 §5; 1957 c.201 §1; 1959 c.515 §1; repealed by 1961 c.485 §29]

654.515 [Repealed by 1961 c.485 §29]

654.520 [Amended by 1953 c.514 §5; repealed by 1961 c.485 §29]

654.525 [Amended by 1959 c.657 §1; repealed by 1961 c.485 §29]

654.530 [Amended by 1953 c.514 §5; 1957 c 201 §2, repealed by 1961 c.485 §29]

654.532 [1953 c.514 §5; 1957 c.201 §3; repealed by 1961 c.485 §29]

654.535 [Amended by 1953 c.514 §5; 1957 c.201 §4; repealed by 1961 c.485 §29]

654.540 [Amended by 1957 c.465 §11; repealed by 1961 c 485 §29]

654.545 [Amended by 1953 c.514 §5; repealed by 1961 c 485 §29]

654.550 [Amended by 1953 c.514 §5; 1957 c.201 §5; repealed by 1961 c.485 §29]

654.605 [Repealed by 1973 c.833 §48]

654.610 [Repealed by 1973 c.833 §48]

654.705 [Repealed by 1967 c.150 §2]

654.710 [Repealed by 1967 c 150 §2]

REPORTS OF ACCIDENTS TO PUBLIC UTILITY COMMISSIONER

654.715 Report of accidents to Public Utility Commissioner; investigation; supplemental reports. (1) Every railroad and public utility shall give immediate notice by telegraph, telephone or personally, to the Public Utility Commissioner of Oregon whenever any accident occurs within this state upon its premises, line of railroad, depot grounds or yards, or directly or indirectly arises from or connected with its maintenance or operation, if the accident is attended by loss of human life or limb or serious injury to person or property.

(2) Every railroad shall also give notice, within 30 days, to the Public Utility Commissioner of Oregon of all other accidents occurring at public highway and private road crossings in which collision occurs between the person or vehicle of a user of the highway and any locomotive, motor, car, train or other vehicle using the railroad, whether resulting in personal injury or not.

(3) The Public Utility Commissioner may, if the commissioner deems the public interest requires it, investigate each such accident forthwith, after giving the railroad or public utility involved reasonable notice of the time and place of such investigation.

(4) The Public Utility Commissioner may adopt and amend rules and regulations governing the form and content of reports to enable the commissioner to ascertain relevant facts and circumstances attending such accident and the causes thereof. Whenever the original report is insufficient, in the opinion of the commissioner, the commissioner may require the railroad or public utility to file supplemental reports of accidents. [Amended by 1965 c.462 §2]

654.720 Public inspection or use of reports as evidence prohibited. No report, or any part thereof, required by ORS 654.715, shall be open to public inspection or be used as evidence in any action for damages in any suit or action arising out of any matter mentioned in the report.

PENALTIES

654.990 [Amended by 1959 c.516 §5; 1961 c.485 §28; 1967 c.150 §1; repealed by 1973 c.833 §37 (654.991 enacted in lieu of 654.990)]

654.991 Penalties. (1) Any employer who wilfully violates any provision of, or any regulation, rule, standard or order promulgated pursuant to, ORS 654.001 to 654.295, and that violation is found to have caused or materially contributed to the death of any employe, shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both. For the purposes of this subsection, a violation is wilful if it is committed knowingly by an employer or supervisory employe who, having a free will or choice, intentionally or knowingly disobeys or recklessly disregards the requirements of a regulation, rule, standard or order. ORS 161.085 shall apply to terms used in this section.

(2) Any person who gives advance notice of any inspection to be conducted under ORS 654.001 to 654.295, without authority from the director or the designees of the director, shall, upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or by both.

(3) Whoever knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to ORS 654.001 to 654.295 shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both.

(4) Punishment under this section does not affect or lessen the civil liability of the offender. [1973 c.833 §38 (enacted in lieu of 654.990); 1977 c.455 §1]