

February 21, 2003

Deborah Bogart
Oregon Department of Forestry
State Forester's Office
2600 State Street
Salem, OR 97301

Dear Deborah:

This is Oregon OSHA's response to your letter about the application of recordkeeping requirements to prisoners.

The next to last paragraph in your letter states that our inspectors' interpretations require you to record inmate injuries and illnesses on your OSHA 300 log. A careful reading of our letter on the subject finds this language:

"The outside employer must record all injuries and illnesses for prisoners. . ."

There are no circumstances where the Department of Corrections will record injuries and illnesses of prisoners on their OSHA 300.

When Department of Corrections allows a prisoner to work for an outside employer, they give up part of their direction and control over that prisoner to the outside employer. This furthers the idea that an employment relationship, although severely limited may exist between the prisoner and the outside employer because although Oregon law requires prisoners to work, it does not require them to work outside the prison. Your contention that no employer/employee relationship exists is partly erroneous because the outside employer has direction and control over the inmates for the time of their employment and there is at least a limited contractual relationship because the inmates are not required to work outside the prison and the outside employers are not required to hire them, so the entire arrangement is consensual. While this is not sufficient to cover them under the OSEA, we think it is sufficient for the collection of data.

Further, the Oregon Attorney General Opinion you cite does not mention recordkeeping. The intent of the federal recordkeeping standard is to build a database about the relative status of industries regarding worker safety and health. Having the outside employer include prisoner injury and illness incidents on their 300 log only furthers that intent and has no impact on the Department of Corrections. When prisoners work in an outside industry they are subject to the same hazards as other

workers, thus including their incidents in that industry's statistics only strengthens the relevance of the statistics.

Sincerely,

Marilyn K. Schuster, Manager
Standards & Technical Resources Section
Oregon Occupational Safety & Health Division

