

OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

PROGRAM DIRECTIVE

Program Directive: [A-231](#)
Issued: [December 29, 1998](#)
Revised: [February 3, 2011](#)

SUBJECT: Jurisdiction: independent contractors, limited liability companies (LLCs), partnerships, corporate officers and corporate family farms.

PURPOSE: This directive provides inspection assistance related to Oregon OSHA jurisdiction over independent contractors, LLCs, partnerships, corporate officers, and corporate family farms. This program directive replaces PD-210.

SCOPE: This instruction applies to all of Oregon OSHA.

ACTION: Field office managers will ensure that all safety compliance officers and health compliance officers performing inspections are aware of these guidelines and follow them when appropriate.

RESOURCES: [ORS 701](#) Construction Contractors
[ORS 656](#) Workers' Compensation
[ORS 654](#) Safety and Health Regulations
[OAR 437](#) Division 1, General Administrative Rules

DEFINITIONS: The following definitions are found in OAR 437-001-0015.

Employee includes [ORS 654.005(4)]:

1. Any individual, including a minor, whether lawfully or unlawfully employed, who engages to furnish services for remuneration, financial or otherwise, subject to the direction and control of an employer.
2. Salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts, and other public corporations.
3. Any individual who is provided with workers' compensation coverage as a subject worker according to ORS chapter 656, whether by operation of law or by election.

Employer includes [ORS 654.005(5)] :

1. Any person who has one or more employees.
2. Any sole proprietor or member of a partnership who elects workers' compensation coverage as a subject worker according to ORS 656.128.
3. Any corporation in relation to the exposure of its corporate officers except for corporations without workers' compensation coverage under ORS 656.128 and whose only employee is the sole owner of the corporation.
4. Any successor or assignee of an employer.

Note: For purpose of this definition, as found in OAR 437-001-0015 and ORS 654.005(5)(c), successor means a business or enterprise that is substantially the same entity as the predecessor employer if both of these conditions apply:

1. A majority of the current business or enterprise is owned by the former owners or their immediate family members.
2. One or more of the following criteria exist for both the current and predecessor business or other enterprise.
 - a. Substantially the same type of business or enterprise.
 - b. Similar jobs and working conditions.
 - c. A majority of the same machinery, equipment, facility, or methods of operation.
 - d. Similar product or service.
 - e. A majority of the same supervisory personnel.
 - f. A majority of the same officers and directors.

Place of employment includes [ORS 654.005(8)(a)]:

1. Every fixed, movable, moving, indoors, outdoors, or underground place, and the accompanying premises and structures, where an employee temporarily or permanently works or is intended to work.
2. Every place with an operation or activity related, either directly or indirectly, to an employer's industry, trade, business, or occupation. This includes a labor camp provided by an employer or another person who provides living quarters or shelters for employees.

Place of employment – does not include [ORS 654.005(8)(b)]:

1. Any place where the only employment involves nonsubject workers employed in or around a private home.
2. Any corporate farm where the only employment involves the farm's family members.

**INDEPENDENT
CONTRACTOR:**

Independent contractors are not normally considered employees of the contracting agent, so businesses that hire only independent contractors normally are not employers under the Oregon Safe Employment Act (OSEAct). Two key requirements for determining the existence of an independent contractor relationship include:

1. Freedom from someone else's direction or control
2. An independently established business

Oregon OSHA rules may apply when two or more persons working together claim they are independent contractors but have developed an employer/employee relationship under the OSE Act, as evidenced by one or more of the following:

1. The agreement for the work is usually with only one of the persons.
2. Payment for the work is usually made to one person who then pays the other(s). Considerations include how wages are established and who workers believe their employer is.
3. One of the persons generally controls or has the right to control the manner, means, or method in which the work is done by the other person(s).
4. One of the persons is primarily in charge of or responsible for the completion and quality of the work.
5. The materials for the work are purchased primarily by one of the persons.
6. Equipment is often provided, shared, or owned primarily by one person.
7. One person usually coordinates work schedules so that they are on the job at the same time.
8. The persons usually work together on the same task at the same location.

Please note that the above list is not exclusive and that while no single factor is determinative, the right to control is generally given the most weight.

**SOLE PROPRIETORS
AND MEMBERS OF
PARTNERSHIPS:**

Sole proprietors and partnerships that elect worker's compensation coverage are clearly within Oregon OSHA jurisdiction, but that is not the sole factor to be considered. Direction, control, and other relevant factors must also be considered when determining whether members of a partnership are employees for Oregon OSHA's purpose.

Be aware that other agencies may have rules that exempt partnerships from their jurisdiction, but that does not necessarily mean they are exempt from Oregon OSHA's jurisdiction. For example, according to ORS 656.027(23)(a), if the partnership is registered with the Landscape Contractors Board or Construction Contractors Board and all partners are members of the same family (parents, spouses, sisters, brothers, daughters or sons, daughters-in-law, sons-in-law, or grandchildren), they may elect to be nonsubject workers. However, Oregon OSHA would still evaluate whether they are subject to Oregon OSHA's jurisdiction.

CORPORATE OFFICERS:

See ORS 654.005 (5) and OAR 437-001-0015(c) under definition of “employer” for a complete explanation of when and which corporate officers are subject to Oregon OSHA jurisdiction. In general, corporate officers and directors who only perform corporate administrative duties do not fall under the rules and jurisdiction of Oregon OSHA.

LIMITED LIABILITY COMPANIES:

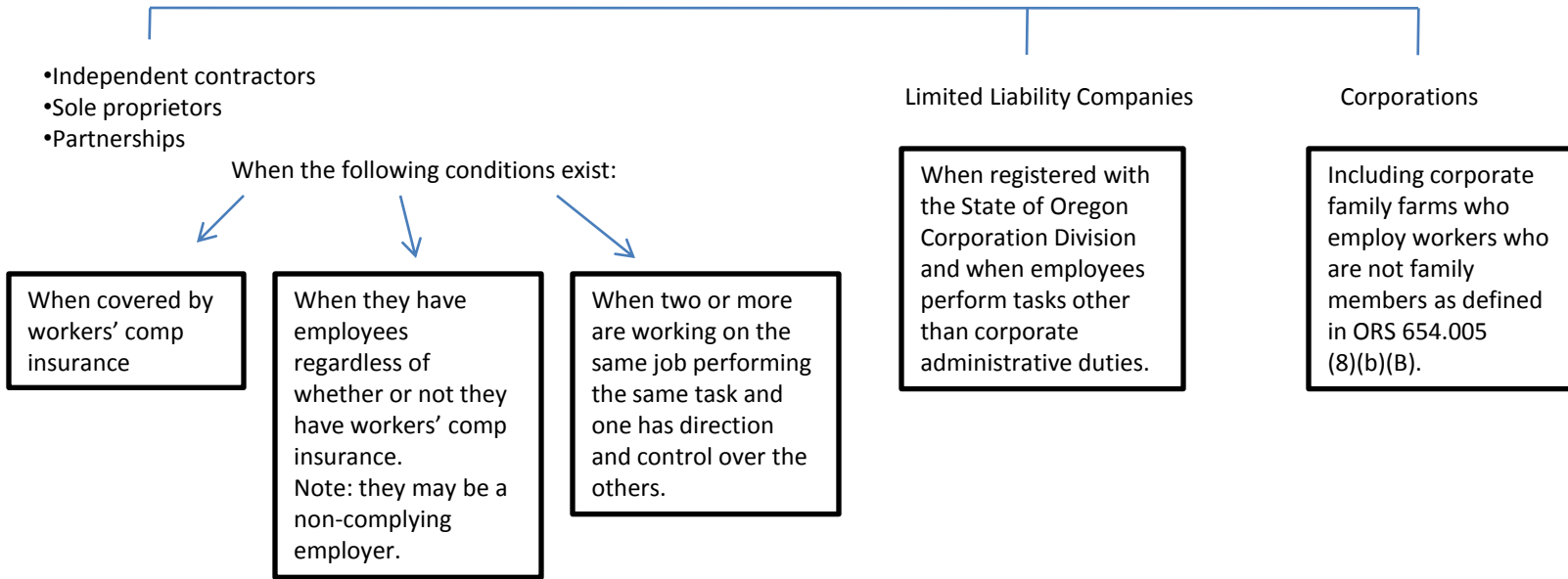
Oregon OSHA will treat LLCs and their members the same as corporations and corporate officers.

CORPORATE FARMS:

See ORS 654.005(8)(b)(B) Corporate farms where the only employment involves the farm’s family members, including parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, nieces, nephews, grandchildren, foster children, stepparents, and any blood relative living as a dependent of the core family do not fall under the rules and jurisdiction of Oregon OSHA whether or not they elect workers’ compensation coverage. On corporate farms that also hire non-family workers, Oregon OSHA will only cite for violations where the non-family workers are or could be exposed to the hazard.

APPENDIX A

Oregon OSHA has jurisdiction over



Oregon OSHA does not have jurisdiction over

