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FOR IMMEDIATE RELEASE

May 10, 2022

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Oregon OSHA raises the bar for worker protections from climate extremes, though advocates note loopholes

Final rules make protections from heat and smoke permanent

SALEM, OR – After a year and a half of rulemaking, collaboration, and staunch advocacy by workers and environmental, health, small businesses, and labor activists, the Oregon Occupational Safety and Health Administration (OR OSHA) adopted and published permanent rules to protect Oregon's frontline workers from the increasingly frequent and extreme conditions being driven by climate change today.

These landmark rules are currently the strongest and most protective in the nation, building upon the [emergency rules](#) passed last summer. They provide a strong model for federal standards, though a few critical loopholes that ultimately prioritize profit over people remain. These permanent rules are a response to Governor Brown's Executive Order 20-04, which mandated OR OSHA develop standards to protect Oregonians from excessive heat and smoke.

The [heat rules](#) will be effective on June 15, 2022. OR OSHA will begin immediate enforcement and will continue their [heat emphasis program](#) which brings additional enforcement capacity and clear guidance to heat inspections. Specifically, the heat standard provides common-sense solutions such as:

- Access to shade, cool drinking water, and increased paid breaks at 80F and 90F
- Additional high heat protections at 90F, which include a buddy system, increased communications between employers, supervisors, and employees, and a requirement for employers to measure heat and humidity levels in indoor structures.
- Employers must provide annual training, an acclimatization plan, heat illness prevention plan, and emergency medical plan.

However, the heat rule leaves some critical measures requested from advocates to be desired:

- The tiered rest/work schedules in high heat are confusing, hard to implement, and give employers too much discretion to decide when workers can rest. The rules provide three charts/choices, including an option for an “employer self-designed schedule,” which could potentially lead to difficulty in enforcement, and to workers knowing their rights.
- The weakest of the tiered rest/work schedules does not consider whether a worker is exposed to direct sun.
- The heat protections in labor housing remain incomplete, and OR OSHA plans to fully address these protections in another separate rulemaking.

The [smoke rules](#) will be effective **Jul 1, 2022** . The standard addressing smoke inhalation requires:

- Employers to provide N95 respirators for voluntary use at 101 AQI (“unhealthy for sensitive groups”).
- Feasible administrative or engineering controls be implemented at the workplace to reduce the level of smoke to below 101 AQI (“unhealthy for sensitive groups”) (e.g. changing work locations; using HVAC system to filter smoke)
- Mandatory respirator use at 251 AQI. A complete respiratory protection program is required at 500 AQI (“hazardous”).

OEC:

Jamie Pang, Environmental Health Program Director for Oregon Environmental Council, said, “We know that extreme heat and wildfire smoke are killers. We’re hopeful that the worst effects of climate change can still be avoided but extreme heat and wildfires will certainly be in Oregon’s immediate future. We are thrilled that Oregon

finally has official rules addressing the effects of climate change on worker safety. The success of these rules will depend on a strong enforcement program that prioritizes human health despite big business pushback.”

PCUN:

“We are happy to see Oregon OSHA adopt some of the strongest heat and smoke standards in the country. Concerns remain regarding some areas of these rules, but it is a good start to improving conditions for farmworkers. Our union will be in close communication with workers and OSHA to ensure the rules are being enforced.” said Reyna Lopez, Executive Director and President of PCUN, Oregon’s Farmworkers Union.

Frontline worker:

Ezequiel from Mollala said, “I am 51 years old and I have been a farmworker in Oregon for over 20 years. I didn't know there were rules and I find it necessary to have heat and smoke trainings because we workers don't know about these rules. Just like we need protection against retaliation training because we don't know our rights. Our bodies have limits and we have to take care of them as much as possible.”

NWJP:

NWJP Attorney Kate Suisman said, “These final rules are a huge improvement over the first draft OR OSHA brought to stakeholders- and over the historical lack of regulation. Workers and their advocates showed up over the past year and a half to make sure the rules offer meaningful protection. We are disappointed in the loopholes around rest breaks and indoor air quality but on the whole, these rules will bring greatly increased protections for all Oregon workers.”

Climate Jobs:

“Thanks to the strong and compelling testimony from workers, health experts, and environmental and social justice advocates from around the state, the OSHA rules on heat and smoke include some very important protections,” said Leslie Kochan of Climate Jobs PDX. “At the same time, they leave out some critical protections which will weaken the ability of the rules to prevent acute and chronic disease and even death. For instance, employers, rather than OSHA, will decide how long workers can rest when Oregon's heat index is at its most extreme. OSHA also failed to include a smoke illness prevention plan, which would identify health concerns prior to workers worsening and needing emergency medical care.”

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“For farmworkers who call labor housing their home during the harvest months in Oregon, it is painful to watch yet another season go by with little relief offered in their rooms against heat,” said Nargess Shadbeh of the Oregon Law Center. “This is particularly true since there are inexpensive cooling air purifiers machines with low energy draw widely available that would help reduce potential for heat stroke, wildfire smoke and airborne disease. Oregon OSHA's priority should include the most vulnerable workers now with viable reasonable solutions until adoptions of more robust measures.”

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