



**WHAT'S NEW IN
CALIFORNIA FOR 2017:
CAL/OSHA REGULATIONS,
ENFORCEMENT TRENDS,
AND MORE**



**YEAR IN REVIEW AND
WHAT'S NEW IN
CALIFORNIA
FOR 2017**

**CAL/OSHA REGULATIONS,
ENFORCEMENT TRENDS, AND MORE**

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Introduction

Over the past year, California has undergone a number of important workplace safety developments. Several rule updates took effect in 2016, and more are on the way in 2017. A new regulation for preventing workplace violence in health care was approved at the end of 2016 and is scheduled to take effect in April 2017. California employers should also keep an eye on several proposed rules in the works, including process safety management for oil refineries. The federal Occupational Safety and Health Administration (OSHA) has also adopted several major regulatory updates over the past year, including silica exposure, electronic recordkeeping, and walking and working surfaces for general industry, so California employers should expect to see corresponding activity at the state level in the coming year. Finally, the election of Donald Trump to the presidency raises questions about federal OSHA's priorities in the coming administration and how Cal/OSHA will respond.

This exclusive Special Report will walk you through these developments and give you a preview of what's coming your way in 2017 so you can prepare now.

A look back

Injury, illness, and fatality statistics

According to the federal Census of Fatal Occupational Injuries (CFOI), California workers experienced 388 fatal occupational injuries in 2015 (the most recent year for which data are available).

Transportation accidents accounted for over one-third (38 percent) of workplace deaths in California in 2015. Twenty percent resulted from violent acts; 19 percent resulted from slips, trips, and falls; 10 percent resulted from contact with objects and equipment; 9 percent resulted from exposure to harmful substances and environments; and 3 percent resulted from fires and explosions.

In 2015, California employers experienced a total recordable case rate of 3.8 nonfatal occupational injuries and illnesses per 100 full-time workers, which is essentially unchanged from the 2014 rate. The total number of workplace injuries and illnesses increased slightly, from 460,700 to 470,600, which corresponds to an increase in the state's employed labor force. California's rate of cases with days away from work, job restriction, or job transfer (DART) was 2.2 cases per 100 full-time workers. The DART rate also did not change from 2013 to 2014.

Enforcement trends

Cal/OSHA violations—FY 2016

Illness and injury prevention programs (IIPPs) continue to be a major source of Cal/OSHA violations. In fiscal year (FY) 2016, the general industry IIPP rule (8 CA Code of Regulations (CCR) 3203) was responsible for the single largest number of citations of any Cal/OSHA standard, while the construction IIPP rule (8 CCR 1509) ranked third. Rounding out the top three was another California-specific standard: the heat illness prevention rule (8 CCR 3395), which was the second most frequently cited Cal/OSHA standard in FY 2016. Other frequent citations unique to the California top 10 list involved injury reporting, air tank permits, portable fire extinguishers, and emergency eyewash and shower equipment.

The remaining three items on the list also make frequent appearances on federal OSHA's list of top 10 violations: lockout/tagout, hazard communication, and respiratory protection. But notably absent from Cal/OSHA's top 10 list is fall protection in construction, which has been the single most frequently cited federal OSHA standard for several years. Portable ladders, which made last year's top-10 list in California, finished just out of the top 10 in FY 2016, ranking 12th overall.

Top 10 frequently cited Cal/OSHA standards

Penalties shown reflect current rather than initial amounts.

2016

Ranking	Standard	# Cited	\$ Penalty	Description
1	8 CCR 3203	1,487	\$1,562,389	Injury and Illness Prevention Program—General Industry
2	8 CCR 3395	1,113	\$791,804	Heat Illness Prevention
3	8 CCR 1509	761	\$547,471	Injury and Illness Prevention Program—Construction
4	8 CCR 3314	575	\$2,837,112	Control of Hazardous Energy (Lockout/Tagout)
5	8 CCR 5194	429	\$163,330	Hazard Communication
6	8 CCR 342	376	\$1,718,550	Reporting Work-Connected Fatalities and Serious Injuries
7	8 CCR 6151	331	\$74,550	Portable Fire Extinguishers
8	8 CCR 5144	311	\$157,472	Respiratory Protection
9	8 CCR 461	284	\$65,536	Air Tanks, Permits to Operate
10	8 CCR 5162	260	\$521,695	Emergency Eyewash/Shower Equipment

Source: Occupational Safety and Health Administration. Data obtained from <https://www.osha.gov/pls/imis/citedstandard.html> and <https://www.osha.gov/pls/imis/industryprofile.html> on November 18, 2016.

Inspection and citation practices

In FY 2015, Cal/OSHA conducted a total of 7,575 inspections. Of those, 7,141 were inspections of private sector workplaces, while the remaining 444 were inspections of public sector workplaces. Target numbers for FY 2016 were similar. Cal/OSHA continues to focus its efforts on reaching the mobile workforce in construction and agriculture, multiemployer situations (including those involving temporary workers), vulnerable employee populations, and heat illness prevention, among other priorities.



Adult film industry

In 2016, Cal/OSHA cited several adult film producers for violating the blood-borne pathogens standard by not requiring performers to use condoms or other barrier protections on the job. The Occupational Safety and Health Standards Board (OSHSB) attempted to create a new General Industry Safety Orders (GISO) Section 5193.1, Sexually Transmitted Infections (STIs), which would have imposed specific requirements for preventing the spread of STIs among adult film performers and others involved in sexual activities on the job. However, in March, the decision was made to abandon the measure. In November, California voters rejected Proposition 60, a ballot measure that would have required adult film performers to use condoms. In January 2017, an advisory committee meeting will be held to discuss the applicability of the of bloodborne pathogens to the adult film industry and review rulemaking possibilities for the industry with an emphasis on stakeholder involvement.

Temporary workers and dual employment situations

Over the past year, Cal/OSHA has issued citations in a number of high-profile cases involving multiple employers, demonstrating its willingness to cite any party (host employers, staffing agencies, contractors, etc.) it considers to play a role in exposing workers to hazardous conditions. When temporary workers are involved, Cal/OSHA considers both the host employer and the staffing agency to be involved in a dual employer relationship that requires both parties to take steps to protect its workers.

Taylor Farms. In April 2016, the agency cited Taylor Farms Pacific, Inc., as well as two temporary employment agencies, in response to an October 2015 release of chlorine gas at the company's food production facility that sent 20 workers to area hospitals. According to Cal/OSHA, Taylor Farms failed to train workers on what to do in an emergency. As a result, the workers did not evacuate as quickly as possible to prevent sickness from the chlorine gas. Cal/OSHA issued 16 workplace safety citations to Taylor Farms, with proposed penalties of \$56,985.

Half of the injured workers worked for temporary employment agencies: Abel Mendoza Inc. and RSJ Admin Services Inc. Both staffing agencies were cited for failures to protect employees from safety and health hazards. The violations issued to both companies include failing to control exposure to chlorine and to provide effective training regarding hazardous chemicals in a language that the majority of the affected workers understood. Mendoza was also cited for failing to conduct periodic inspections to identify unsafe working conditions affecting its employees.

This decision reaffirms Cal/OSHA's commitment to holding both host employers and temporary staffing agencies responsible for ensuring worker safety. While federal OSHA has also focused its enforcement efforts on temporary worker safety over the past several years, Cal/OSHA provides more specific guidance regarding the particular responsibilities of each party in a dual employment relationship. Staffing agencies must:

- ◆ Take reasonable steps to evaluate conditions at the host employer's worksite by doing periodic inspections;
- ◆ Ensure their employees are covered by an effective IIPP and other necessary safety programs, and ensure they are properly trained and provided necessary personal protective equipment (PPE); *and*
- ◆ Inform employees that if they are assigned work they believe to be dangerous, they may refuse to do that work and may return to the staffing agency for reassignment without penalty.

Enforcement emphasis programs

High-hazard industries. Cal/OSHA's High Hazard Unit inspects employers with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses. The agency's annual High Hazard Industry List, available at <http://www.dir.ca.gov/dosh/documents/hhu-list-2016-2017.pdf>, is based on DART rates for private sector employers.

The 2016–2017 list includes many more industries than the previous year's list. Examples include residential building construction, framing and masonry contractors, food manufacturing, concrete product manufacturing, household appliance manufacturing, iron foundries, general merchandise retail stores, air transportation, transit and ground passenger transportation, landscaping services, waste management and remediation services, nursing and residential care facilities, hotels and motels, and many more. Employers in these high-hazard industries may be subject to inspection by the High Hazard Unit.



Underground economy. Cal/OSHA continues to work in cooperation with other agencies in the Labor Enforcement Task Force (LETF), a coalition of state

and local enforcement agencies working together to combat the underground economy. “Underground economy” refers to individuals and businesses that deal in cash or use other schemes to conceal their activities from government licensing, regulatory, and taxing agencies. Underground economy is also referred to as cash pay, tax gap, under-the-table payments, and off the books.

Cal/OSHA shares information and resources and conducts joint inspections throughout the state with other agencies in the LETF, which include the Labor & Workforce Development Agency, the Division of Labor Standards Enforcement, the Contractors State Licensing Board, and the Agricultural Labor Relations Board. Industries frequently inspected by LETF teams include agriculture, automotive, construction, and restaurants.

Regulatory developments

Recent final rules and effective dates

Confined spaces in construction

8 CCR 1950–1962

In May 2015, federal OSHA adopted a new regulation for confined spaces in construction (29 CFR 1926 Subpart AA). The standard resembles the general industry confined space standard with some differences and additional provisions for construction related to multiemployer worksites, worksite evaluation, continuous monitoring of hazards, and entry permit suspension. Cal/OSHA adopted a rule for confined spaces in construction that is the same as the federal regulation except for minor editorial and format differences. The rule took effect December 30, 2015.

Abatement of hazards

8 CCR Sections 333 and 336

A rule finalized in March 2016 modified the circumstances under which employers cited for safety and health violations can be eligible for penalty reductions for correcting the violations by a specified date, known as abatement credits. The revised rule no longer permits abatement credits for violations classified as “repeat general” or “willful general.” Abatement credits for serious violations may be granted only if the employer meets certain conditions, and they are not permitted for the following types of serious violations:

- ◆ Serious violations for which extent and likelihood are rated high;
- ◆ Serious violations designated as “repeat serious” or “willful serious”;
- ◆ Serious violations respecting the use of a carcinogen; *and*
- ◆ Serious violations causing death or serious injury, illness, or exposure.

Most of these provisions were already in effect in California as a result of emergency regulations the state adopted in February 2015 and later extended. Cal/OSHA has now made the changes permanent through the regular rulemaking process.

Hazard communication and GHS 8 CCR 5191 and 8 CCR 5194

June 1, 2016, was the final implementation date for full compliance with federal OSHA's 2012 revisions to its hazard communication standard, which aligned it with the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS). Cal/OSHA followed the same schedule for implementation as its federal counterpart. Therefore, all California employers that manufacture, import, distribute, or use hazardous chemicals should now be in full compliance with the revised standard.



As of June 1, employers were required to make any necessary revisions to their in-house labeling procedures and written hazard communication programs. In addition, training should have been completed on any newly identified physical or health hazards of chemicals to which workers could be exposed. Manufacturers, importers, and distributors should be in full compliance with GHS requirements for chemical labels and safety data sheets (SDSs), which replaced older material safety data sheets (MSDSs). Employers should have a system in place to keep track of new SDSs as they receive them from chemical suppliers, identify any new hazards or protective measures they describe, and communicate this information to employees.

California's hazard communication standard is stricter than that of federal OSHA. Among other differences, it requires employers to provide warning labels and other written information to employees for a specific list of chemicals determined by the state of California to cause cancer or reproductive harm under the state's Proposition 65. The list changes frequently, and employers should keep apprised of the updates, available at <http://oehha.ca.gov/proposition-65/proposition-65-list>.

Fall protection for work around skylights 8 CCR 3207 and 8 CCR 3212

New requirements for fall protection for work around skylights took effect July 1, 2016. The new requirements include specifications for skylight screens installed above and below skylights, nets used for fall protection, and skylights that meet the strength requirements of a cover. In order to qualify as fall protection, skylight screens mounted under the skylight must not be more than 2 feet below the working level, and they can't be used if workers could be impaled by broken portions of the skylight. They must also meet structural and strength requirements. This provision may enable employers to use existing burglar bars as fall protection if they meet the specifications. Skylight

nets are subject to several conditions, including inspections, worker training, following manufacturer directions, removing defective nets from service, limitations on the duration of use of nets, and ensuring sufficient clearance so that workers falling into the nets don't strike any object below. According to the OSHSB, the changes give employers increased flexibility to choose an appropriate fall protection method for work performed around skylights.

Definition of repeat violations 8 CCR 334

Cal/OSHA recently revised its definition of "repeat violation" to be more consistent with federal OSHA. Currently, California can cite an employer for a repeat violation only when the employer had violated the exact same standard, at the same worksite or within the same geographic region, within 3 years of the date that the previous violation became a final order. Under the new definition, which takes effect January 1, 2017, the time period during which an employer can be issued a repeat violation will be lengthened to 5 years from a previous violation. In addition, California employers will now be at risk of repeat citations for violating "a substantially similar regulatory requirement" to a previously cited violation, rather than the exact same standard. Finally, the state has removed the establishment and geographic restriction on repeat violations. Employers with multiple fixed locations will be able to receive repeat violations on the basis of violations that occurred at other establishments or locations they own, and employers without fixed establishments will be able to receive repeat violations on the basis of previous citations issued anywhere in the state.

A look ahead to 2017

Inspection priorities

Because Cal/OSHA cannot inspect every workplace in the state each year, the agency focuses its inspection resources on the most hazardous workplaces in the following order of priority:

- 1. Imminent danger, catastrophes, fatalities, media attention, and complaints from prosecutors.** Cal/OSHA's top priority inspection group consists of complaints about or observance of imminent hazards, catastrophes, fatalities, accidents involving significant media attention, and complaints from state or local prosecutors. Cal/OSHA will investigate complaints from state or local prosecutors alleging a serious violation within 24 hours of receipt.
- 2. Serious injuries, complaints, follow-up inspections, and strategic plan inspections.** The next priority group includes accidents involving a serious injury, formal complaints, informal serious complaints, serious referrals, follow-up to serious violations, and annual performance plan or strategic plan inspections.

3. **Tenth or fifth satisfactory response letter.** In some cases, Cal/OSHA responds to complaints by sending the employer a complaint notification letter, to which the employer is required to respond in writing with a description of corrective actions. The fifth satisfactory response letter for a serious complaint from an employer, or the tenth satisfactory response letter for a nonserious complaint, is subject to verification by inspection.
4. **Programmed inspections.** Programmed inspections, such as those conducted under emphasis programs, are Cal/OSHA's fourth priority group. The only exception is for inspections conducted by the High Hazard Unit, which are first-level priority for district offices in Region VI.
5. **Nonserious violations.** The final priority group consists of follow-up inspections of nonserious violations, informal nonserious complaints, and nonserious referrals.

Upcoming or new rule effective dates

Workplace violence prevention in health care 8 CCR 3342

In September 2014, the California Legislature passed and the governor signed Senate Bill (SB) 1299, which required the OSHSB, no later than July 1, 2016, to adopt standards requiring hospitals to implement workplace violence prevention plans as part of their IIPPs. The workplace violence prevention plans must be developed in conjunction with affected employees and their recognized collective bargaining agents, and temporary personnel must be trained on the plans.



In November 2015, the OSHSB submitted a proposal for new GISO Section 3342, Workplace Violence Prevention in Health Care. As originally proposed, the regulation would have applied not only to hospitals but also to other types of healthcare facilities such as outpatient medical offices and clinics; home health care and home-based hospice; paramedic and emergency medical services; field operations such as mobile clinics, dispensing operations, and medical outreach services; and drug treatment programs.

A public hearing on the proposed standard took place in December 2015. In response, the OSHSB made revisions to the standard to address comments received from stakeholders. Among the significant changes from the original proposal, the OSHSB deleted outpatient medical offices, clinics, and field

operations such as mobile clinics, dispensing operations, medical outreach services, and other off-site operations from the list of covered facilities, thus narrowing the application of the rule. Outpatient medical services provided to the incarcerated in correctional and detention settings, however, will still be covered; the OSHSB proposed adding this specific category to the rule because of the higher risk of workplace violence at these locations. The rule was approved by the Office of Administrative Law (OAL) on December 8, 2016, and will take effect on April 1, 2017.

Working area catwalk exception

8 CCR 3273

The OSHSB has proposed to amend the GISO Section 3272, Working Area, to create an exception to the requirements for working from a catwalk for employees working in finished attics or other ceiling spaces. Specifically, the OSHSB has proposed amending Subsection 3273(d) to add a third exception allowing work in an attic or other ceiling space to be performed without the use of a catwalk provided that certain conditions are met. The proposed regulation would make the general industry rules for this situation consistent with construction industry rules, which already include a similar exception. A public hearing took place in January 2016. The OAL approved the rule on December 5, 2016, and it is scheduled to take effect on April 1, 2017.

Respirable crystalline silica

8 CCR 1532.3, 8 CCR 5155, and 8 CCR 5204

Federal OSHA released its final rule on exposure to respirable crystalline silica on March 25, 2016. The rule lowered the permissible exposure limit (PEL) for silica and established two comprehensive standards to regulate silica exposure: one for construction and one for general industry and maritime. It requires employers to use engineering controls and work practices to limit worker exposure, provide respiratory protection when controls do not sufficiently limit exposures, limit access to high-exposure areas, train workers, and provide medical exams to highly exposed workers. As of October 17, the OSHSB adopted the federal OSHA standard with only minor clerical modification, creating new Construction Safety Orders Section 1532.3 and new GISO Sections 5155 and 5204. California employers have until June 23, 2017, to comply with the new requirements.

Improved tracking of workplace injuries and illnesses

Earlier this year, federal OSHA finalized a rule that will require certain employers to submit injury and illness data to OSHA on an annual basis. Covered employers with 250 or more employees will be required to submit data from OSHA 300 logs, 301 incident reports, and 300A annual summaries, while establishments with between 20 and 249 employees in designated high-hazard industries will be required to submit data from Form 300A only. OSHA plans to make these data, stripped of personally identifying

information, available on a publicly accessible webpage. In addition, the rule included provisions for ensuring that employees are aware of their right to report work-related injuries and explicitly prohibiting retaliation of any kind against any employees who exercise this right. Because of this provision, employers with postaccident drug testing programs or safety incentive programs that tie rewards to safety performance may come under increased scrutiny. Federal OSHA delayed the implementation date for the anti-retaliation provisions, originally scheduled for August 2016, to December 1, 2016. Cal/OSHA has 6 months from the federal regulation's effective date to implement its own equivalent standard, so keep an eye out for upcoming developments.

Proposed rules

Process safety management for oil refineries

8 CCR 5189.1

In the wake of a fire and chemical release at the Chevron oil refinery in 2012, Cal/OSHA has been working on a new Process Safety Management (PSM) standard that applies specifically to oil refineries. If approved, oil refineries would be required to comply with the new Section 5189.1 in place of the existing PSM standard at GISO Section 5189. In addition to the standard elements of a PSM program, the new standard would require refineries to apply a hierarchy of controls to implement first and second order inherent safety measures, conduct damage mechanism reviews, apply rigorous safeguard protection analysis, integrate human factors and safety culture assessment into safety planning, and conduct root cause analysis following significant incidents. A public hearing was held in September 2016. Oil refineries in California should watch for future developments in this proposed rulemaking.



Powered industrial truck operation exception

8 CCR 3650(t)(17)

This proposed rule would change the exception for leaving the forks in the raised position while loading and unloading the forklift. If approved, the forks may be in the raised position only during loading and unloading by the operator if the load engaging means (forks) are raised no more than 42 inches above the level on which the forklift is located. In addition, whenever the forks are raised, the operator must remain in the seat of the forklift except when actively loading or unloading materials. A public hearing on the proposal took place December 15, 2016.

New administration, new priorities?

The election of Donald Trump to the presidency will undoubtedly impact both enforcement and regulatory priorities at federal OSHA. Exactly what that impact will be remains to be seen. However, recent final rules could be at risk, including the new Walking and Working Surfaces and Personal Fall Protection Equipment rule for general industry. Under the Congressional Review Act (CRA), any rules that were enacted within 60 legislative session days before the next Congress being seated can be rescinded through an expedited process.

In practice, that means any final rules issued after mid-May 2016 could be on the chopping block in the new administration. The CRA has been used to overturn an OSHA rule once before, in 2000, when George W. Bush took office and signed a CRA disapproval resolution invalidating the OSHA ergonomics rule issued during the Clinton administration.

Even if OSHA's recent regulations are not rescinded under the CRA, the new administration can use a combination of Executive Orders, agency guidance, and enforcement strategies to strip them of any real power. Under the Obama administration, federal OSHA beefed up its enforcement and whistleblower protection efforts, implemented several National Emphasis Programs, and prioritized temporary worker safety, among other initiatives. Under the Trump administration, OSHA could shift its emphasis away from enforcement and focus more on compliance assistance and outreach efforts.

As a state-run program, of course, Cal/OSHA can choose to set different priorities than its federal counterpart. State-plan states must have occupational safety and health programs that are at least as strict as federal OSHA, but they can be stricter. If the Trump administration does, in fact, rescind any of the major OSHA rules finalized recently, or if it neglects to enforce them, it will be interesting to see how California and other states with their own occupational safety programs respond. Cal/OSHA could choose to retain regulations rescinded at the federal level or enforce more aggressively than its federal counterpart, thus widening the gap between Cal/OSHA and federal OSHA.



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