

CAL/OSHA UPDATE AND A BIT OF FEDERAL OSHA

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Phylmar Group®

Environmental
Health & Safety
Social Responsibility

RECORDKEEPING

- April 2018, OSHA clarified that employers in all states had to report 300As by 7/1/18
- 2018 data must have been uploaded by March 2.
- 20 – 249 employers in [high risk industries](#) (utilities, construction, manufacturing, etc.)
 - starting in 2019 and every year thereafter, must be submitted by March 2
- 211,000 submissions by 12/31/17; preamble anticipated 500,000-but only large employers & none in State Plan states; 251,500 submissions by 7/1/18. Any filed after 7/1/18, flagged as “late.”
- California Emergency Regulations effective 10/26/18 requiring employers to file 300As by 12/31/18.

RECORDKEEPING - AMENDED

- 7/30/18 – OSHA [proposed rule](#) to rescind requirement for establishments with 250 or more employees to electronically submit info from OSHA Forms 300 and 301.
- These establishments are still required to submit info from their Form 300A summaries.
- OSHA amended its recordkeeping regulations to protect sensitive worker information from potential disclosure under the Freedom of Information Act (FOIA).
- OSHA proposed requiring employers to submit their Employer Identification Number (EIN) electronically along with their injury and illness data submission.
- PRR filed comments 9/25/18 in support, including scenarios from members re PII and SPII.
- 1/25/19 - OSHA published in the [Federal Register](#) its revisions-no 300s or 301 & include EIN
- 2/28/19 – House Joint Resolution to disapprove 1/25/19.

DRUG TESTING AND INCENTIVE PROGRAMS

- [Memo](#) 10/11/18 re 29 CFR 1904(b)(1)(iv) which prohibits discharging or discriminating against an employee for reporting an injury or illness. May 2016 rule “does not prohibit safety incentive programs or post-incident drug testing.”
- “...evidence that the employer consistently enforces legitimate work rules ... would demonstrate that the employer is serious about creating a culture of safety, not just the appearance of reducing rates. Action taken under a safety incentive program or post-incident drug testing policy would only violate [the rule] if the employer took the action to penalize an employee for reporting a work-related injury or illness rather than for the legitimate purpose of promoting workplace safety and health.”

DRUG TESTING -CONT'D

- Not in violation of 1904(b)(1)(iv):
 - Random drug testing.
 - Drug testing unrelated to the reporting of a work-related injury or illness.
 - Drug testing under a state workers' compensation law.
 - Drug testing under other federal law, such as US DOT.
 - Drug testing to evaluate the root cause of a workplace incident that harmed or could have harmed employees. If the employer chooses to use drug testing to investigate the incident, the employer should test all employees whose conduct could have contributed to the incident, not just employees who reported injuries.

INCENTIVE PROGRAMS

- “Any inadvertent deterrent effect of a rate-based incentive program on employee reporting would likely be counterbalanced if the employer also implements elements such as:
 - An incentive program that rewards employees for identifying unsafe conditions in the workplace;
 - A training program for all employees to reinforce reporting rights and responsibilities and emphasizes the employer’s non-retaliation policy;
 - A mechanism for accurately evaluating employees’ willingness to report injuries and illnesses.”

CALIFORNIA

- Heat Illness Prevention in Indoor Places of Employment
- Workplace Violence Prevention in General Industry
- Access to Employer Injury & Illness Prevention Program (IIPP)
- Electronic Filing of 300 Logs and 301 Incident Forms
- Protecting Outdoor Workers from Wildfire Smoke
- Naturally Occurring Asbestos
- Health Care Workers – Protection from Surgical Plume
- HEAC – Michael Cooper will address

INDOOR HEAT ILLNESS PREVENTION

- 6th [Draft](#) issued 1/29/19; comments filed 2/22/19; no Advisory Committee meeting expected (five drafts issued in 2017 and 2018)
- Advisory Committee meetings - 2/28/2017, 5/25/2017 and 2/8/2018; legislative deadline - 1/1/19.
- Juliann Sum, Chief of DOSH ; Eric Berg, Amalia Neidhardt
- Minimum of 50 present at each Advisory Committee meeting-management reps and reps from unions and worker groups. Some wanted amazingly complicated approach: light, moderate, heavy work; light, moderate, heavy clothing, STELs, etc.

INDOOR HEAT – LATEST DRAFT – CONT'D

- Scope: where temperature equals or exceeds 82° F; except for indoor work areas subject to any of these conditions, employer must comply with Subsection (e), Assessment & Control
 - Temperature or heat index equals or exceeds 87° F
 - Where employees wear clothing that restricts heat removal and the temp equals or exceeds 82° F
 - Employees work in a high radiant heat work area and the temperature equals or exceeds 82° F
 - Applies to all other indoor work areas where the temperature equals or exceeds 82° F.
- Definitions added: administrative controls, clothing that restricts heat removal, engineering controls, personal heat-protective equipment, union representative
- Effective Emergency Response procedures, including voice communication, ability to contact emergency medical services.
- Close Observation during Acclimatization during first 14 days of employment when temperature equals or exceeds 87° F.
- Effective training – topics are listed.
- Establish, implement and maintain an effective heat illness prevention plan:
 - Procedures for providing water & access to cool-down areas;
 - Procedures to measure & record temperature or heat index and implement control measures
 - Emergency response procedures
 - Close observation during acclimatization.

PRR COMMENTS

- Outreach – if such a serious problem, develop educational materials NOW to those industries where heat illness is experienced: commercial kitchens & laundries, etc.
- Limit scope to 9 industries with elevated risk.
- Carefully delineate which employees are indoor v. outdoor to help employers
- Outdoor employees trained under 3395 who also work indoors
- Don't require employer to ask and employee about symptoms during break; may intimidate employees.
- Isolated, unstaffed structures built to protect equipment, esthetics, etc.

PRR COMMENTS – CONT'D

- Previous draft – maintain temperatures as “exposure record” under Sec. 3204 – support deletion
- Trigger temperature should be 85, not 82 – ASHRAE, NIOSH, etc.
- Employees working alone – who will “observe” and “encourage”
- Procedures for active involvement of EEs in “performing” design, conduct & recording temperatures, identification & evaluation of all risk factors for heat illness – input, yes

DRAFT PROPOSAL FOR WORKPLACE VIOLENCE IN GENERAL INDUSTRY

- New [draft](#) issued 10/24/18 & comments filed 12/14/18
- Scope – all employers except health care, service categories & operations covered by 3342 (or Corrections, where potential for violence is very high)
- Kevin Graulich lead staff person, Eric Berg, Deputy Chief for Research and Standards, Chris Kirkham and Amalia Neidhardt

WORKPLACE VIOLENCE – ADVISORY COMMITTEE MEETING

- Advisory Committee held meetings 1/12/17 and 1/25/18
- ~ 80 in attendance (labor reps, industry reps, and consultants)
- Worker Advocates-more detail is needed: in-person training (and who is qualified to present), engineering controls, work practice controls, risk factors, worker involvement, need incident log, active shooter, annual program review, access to all records essential, sufficient staffing.

WORKPLACE VIOLENCE PREVENTION PLAN

- Workplace Violence Prevention Plan (WVPP); Effective procedures to:
 - Obtain active involvement of EES & reps
 - Coordinate implementation with other employers at site
 - Accept & respond to reports of workplace violence, prohibiting retaliation
 - Ensure supervisory & non-supervisory employees compliance
 - Communicate with employees, how to report incident, threat, concern & employee notification of results
 - Violent Incident Log - new element in October 2018 draft
 - Training, including Active Shooter
 - Identify & evaluate WV hazards & correct them & conduct post-injury response & investigation

WORKPLACE VIOLENCE-10/24/18 DRAFT-BIG CHANGES

- Violence Incident Log- every incident and post-incident response & investigation, solicited from employees who experienced the violence – maintained for 5 years. Omit “any element of personal identifying information sufficient to allow identification of any person involved”
 - Date, time, location; type of violence,
 - Nature of incident - physical attack, weapon, threat of physical force or threat of weapon, sexual assault or threat, unwanted verbal/physical sexual contact, animal
 - Consequences of incident-medical treatment, who provided assistance, security & law enforcement involvement, lost time, corrective actions taken, info about person completing log.

BIGGEST CHANGES, CONT'D - INVESTIGATIONS

- Previous draft – injury investigations only needed to be maintained and provided access to (injury was defined as recordable)
- This draft – “incident investigations” – significant expansion

WORKPLACE VIOLENCE–PRR COMMENTS-3/29/18

- Generally support performance-oriented requirements
- Definition “threat of violence” – use ANSI “threat” definition
- Personally-identifiable information – add definition “or any other information that, alone or in combination with other publicly available information, reveals the person’s identity”
- Recordkeeping – (e)(3) “Records of workplace violence injury investigations shall be maintained for a minimum of 1 year” – PRR recommended that the language state that a summary of a workplace violence injury investigation, rather than the investigator notes, employee interview reports and other materials due to highly sensitive and confidential information.
- Subsection (e)(5) “All records required by this subsection shall be made available to the employees and their representatives... in accordance with title 8, section 3204(e)(1).
- Broadened record maintenance from injury investigation to incident investigation.

INJURY AND ILLNESS PREVENTION PROGRAM (IIPP) ACCESS

- Petition No. [562](#)-allow employee access to Injury and Illness Prevention Program [3203](#)
- Hearing on this proposed regulation will be 3/21/19
- Elements:
 - EEs and “designated representative” (any person)
 - Written authorization to employer containing employee name, date of request, designated rep, date authorization expires (if less than 1 year)
 - Access at reasonable time, place & manner within 5 biz days
 - Copy – one free of charge
 - OR provide unobstructed access to review, print & email through website. Unobstructed means EE, as part of regular work duties, predictably & routinely uses electronic means to communicate w/workers
- Industry has been opposed to this legislation because of the requirement that an actual copy of the employer’s IIPP be provided to each requester:
 - if the IIPP is updated, an old version will be circulating providing misleading information
 - maintaining records on who requested and when delivered would be burdensome, with little employee benefit

INJURY AND ILLNESS PREVENTION PROGRAM (IIPP) ACCESS

- Program need not include any of records of steps taken to implement & maintain written program
- If employer has distinctly different & separate operations with different & separate programs, employer may limit access to the Program (or Programs) applicable to employee requesting it.
- Employer shall communicate right & procedure to access IIPP to all employees.

INJURY AND ILLNESS PREVENTION PROGRAM (IIPP) ACCESS

- March 21, 2019 - CA OSH Standards Board Hearing [Proposal](#) to clarify to employers that employees have the right to access the IIPP as an integral part of an effective IIPP.
 - [General Industry Safety Orders, Section 3203\(a\)](#)
 - comment period: Feb.1, 2019 - Mar. 21, 2019
- IIPP requirements to establish, implement, and maintain an effective IIPP, consisting of the following elements:
 - identify and correct workplace hazards;
 - develop a means to communicate hazards to employees;
 - ensure employee compliance with provisions of the IIPP;
 - investigate injuries and illnesses; and
 - provide training and instruction to affected employees.
 - the employer must also identify a person (or persons) with the authority and responsibility to implement the IIPP.

CALIFORNIA LEGISLATION

- 2018 - AB [2334](#) – Occupational Injuries & Illness – Recordkeeping violations continue until abated. Also, empowers Cal/OSHA to evaluate how to protect goals of May 2016 Fed OSHA rule, since requirement to efile 300s & 301sis gone; Advisory Committee Meeting 5/9/19.
- 2019; AB [203](#) – Construction Employers to provide “effective” awareness training for Valley Fever
- 2019; AB [457](#) – CA OSH Standards Board to complete rulemaking for revised lead PEL by 2/1/20
- 2019; [SB 1](#) – CA agencies to take emergency action where needed to keep protections existing 1/19/17 in place for environment & workers; right of private judicial action

ELECTRONIC FILING-300 LOGS & 301 FORMS

- Fed OSHA rescinded this requirement in January, 2019; Board Member Stock very concerned
- Advisory Committee Meeting Scheduled for May 9, 2019; purpose:
 - To evaluate how to implement the changes necessary to protect the goals of the Improve Tracking of Workplace Injuries and Illnesses rule, as issued May 12, 2016
- <https://www.dir.ca.gov/dosh/calosha-updates/log300-reporting.html>
- Goals of Rule: improve OSHA's ability to identify establishments experiencing high rates of injuries & illnesses & interact with establishments through outreach and enforcement. Improve accuracy of data by ensuring that workers will not fear retaliation for reporting injuries & illnesses
- Useful to researchers to identify injury & illness trends & reduce injuries & illnesses

OCCUPATIONAL EXPOSURE TO SURGICAL PLUME

- October 10, 2017 – proposal was submitted to OSH Standards Board, [petition 567](#)
- November 8, 2018 – Cal/OSHA held first surgical plume and smoke advisory meeting
- January 15, 2019 – comments on draft proposal were due
- Rulemaking package underway for internal agency review

WILDFIRE SMOKE

- Nov. 9, 2018 - Cal/OSHA issued an [advisory](#) on worker safety in regions of wildfire smoke
- Petition to the OSH Standards Board (OSHSB) for emergency regulation to protect outdoor workers from wildfire smoke from California Labor Federation – petition [573](#)
- January 17, 2019 OSHSB meeting – discussion of Emergency Regulation Rulemaking Process so that staff could rapidly move through the process of a regulation to protect workers from wildfire smoke hazards before the next fire season.
- February 21, 2019 OSHSB meeting – DOSH [evaluation](#) & Board [staff](#) Evaluation
- Vote 3/21/19: Emergency Regulations, not regular rulemaking, which allows one year to be completed from date proposed; emergency rulemaking becomes effective 10 days after publication

LEAD

- Revised [drafts](#) available on website from November 2016
- The Standardized Regulatory Impact Analysis-completed and at Department of Finance for review
- After approval, staff to revise initial statement of reasons, expected in late 2018
- Proposed rule expected in mid 2019

MARIJUANA SMOKING

- Cal/OSHA to commence rulemaking to prohibit marijuana smoking in enclosed spaces in places of employment
- Will add to existing 8 CCR 5148 - <https://www.dir.ca.gov/title8/5148.html>

NATURALLY OCCURRING ASBESTOS

- Board adopted Petition No. [568](#), in May 2018
- DOSH to convene an advisory committee to develop recommendations to protect workers exposed to naturally occurring asbestos in work environments.
- NOA Task Group members recommended elements for the rule:
 - classification of work
 - methods of compliance
 - hygiene facilities and practices
 - training
 - competent person requirements.
- The petition seeks to have any project involving asbestos as a natural constituent be covered by 8 CCR 1529.
- DOSH expected to convene Advisory Committee “soon.”

THANK YOU

