



# 2015 SAFETY REVIEW

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This safety article reviews the following:

1. Standards-related actions taken by Cal/OSHA in 2015
2. A proposal to change the definition of “repeat” violation
3. California work-related injury and illness trends

## 1. Standards-Related Actions Taken by Cal/OSHA in 2015

### Heat Illness Prevention

After considerable discussion and debate, the Cal/OSHA Standards Board took action to revise Title 8, Section 3395, Heat Illness Prevention. The revisions became effective as of May 1, 2015. The changes described below are a few examples where new requirements are now in effect or where pre-existing requirements were revised.

- **Water** – Drinking water is now required to be “fresh, pure, and suitably cool.” Efforts to impose maximum distance requirements were defeated, and drinking water must be “as close as practicable.”
- **Shade** – Shade must be present at 80 degrees Fahrenheit. This temperature trigger was lowered from 85 degrees Fahrenheit. No obstacles or barriers may prevent employees from accessing shade, and it should be large enough to accommodate the number of employees who could take a preventative cool-down rest period or meal period.

- **High heat** – Trigger temperature remains at 95 degrees. A proposal to lower it by 10 degrees was not supported by a wide array of stakeholders. Supervisors or their designees must observe employees, and a “buddy” system must be used. Regular communications must be ensured, and pre-shift meetings must occur.
- **Written heat illness prevention plan** – A written plan is required. It must be translated into a language understood by a majority of non-English speaking employees.
- **Emergency response plan** – When needed, emergency medical services must be summoned as quickly as possible. Employees with signs/symptoms of heat illness must not be left alone or sent home without first aid or emergency medical services being provided.
- **Acclimatization** – During periods of high heat when new employees are working, employers must remain extra vigilant, and those employees must be observed

by a supervisor or their designee. New employees in high heat areas must be observed for the first 14 days.

- **Training** – Training must be provided before work begins, and the issues of water, shade, cool-down rests and access to first aid must be covered. Also, the concept, importance and methods of acclimatization must be addressed.

These are a few of the key changes. To ensure your heat illness prevention plan is consistent with the changes, see Cal/OSHA’s “Employer Sample Procedures for Heat Illness Prevention” at [www.dir.ca.gov/dosh/dosh\\_publications/ESPHIP.pdf](http://www.dir.ca.gov/dosh/dosh_publications/ESPHIP.pdf).

### Lead in Construction

Since 2010, Cal/OSHA has been working on a proposal to lower the permissible exposure limit (PEL) and the action level (AL) for exposure to lead in construction. Several advisory meetings and requests for comment occurred including the most recent meeting in November 2015. Cal/OSHA hopes to have a package submitted to the Cal/OSHA Standards Board in early 2016.

Most significantly, the proposal reduces the PEL by 80 percent (from 50 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to  $10 \mu\text{g}/\text{m}^3$ ) and the AL by 93.3 percent (from  $30 \mu\text{g}/\text{m}^3$  to  $2 \mu\text{g}/\text{m}^3$ ). Other proposed changes include:

- Basic hygiene protections for all employees with occupational exposure
- A definition regarding presumed lead-containing coatings
- Elevated blood lead level investigation requirements
- Changed criteria for medical removal protection (MRP)
- Protection of employee reproductive health

Under this proposal, employers conducting abrasive blasting such as in bridge work would have a five-year phase-in period to meet the new, lower PEL.



Recognizing the potential negative impact of this proposal, I drafted a position letter endorsed by the Wall And Ceiling Alliance, United Contractors, the Associated General Contractors, the Southern California Contractors Association, the National Electrical Contractors Association and the Northern California Allied Trades. This letter has been submitted to Cal/OSHA and is now part of the official record.

To review documents related to the most recent advisory meeting and to obtain more information, visit [www.dir.ca.gov/dosh/DoshReg/5198Meetings.htm](http://www.dir.ca.gov/dosh/DoshReg/5198Meetings.htm).

### **Confined Space Rule for Construction**

In November 2015, the Cal/OSHA Standards Board held a meeting to adopt verbatim federal OSHA's rule establishing a separate confined space standard for the construction industry. The rule will take effect as soon as the Office of Administrative Law completes its final review and approves it. It is important to note the Board's action is not the end of the process. Cal/OSHA has announced its intention to convene advisory meetings in 2016 to discuss stakeholder concerns expressed during the comment period.

The Board adopted the federal rule verbatim as it is unable, in some instances, to adopt a federal change within the statutory six-month time frame. The Board then convenes advisory meetings to discuss concerns raised by stakeholders and consider modifications.

The California version creates a new standard, Construction Safety Orders Sections 1950 through 1962. The basics remain the same as in the general industry standard, including requirements for employers to identify and evaluate the hazards of permit-required confined spaces. Prior to employee entry, employers must develop and implement safe practices for entry, prevent unauthorized entry, and develop effective procedures for summoning rescue and emergency personnel.


Recognizing that construction sites will have multiple employers on-site, there are a number of multi-employer requirements. Employers must inform employees exposed to such potential hazards using warning signs. They must also notify employers and authorized representatives through several means.

Before a confined space entry, the manager must provide specific information to the employer about the location of each known space and potential hazards. Then the employer must provide this information

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to each entity that will enter the space. Information about the precautions being used to protect workers must be provided by the employer.

For additional information on confined spaces, visit [www.dir.ca.gov/oshsb/Confined\\_Spaces\\_in\\_Construction\(Horcher\).html](http://www.dir.ca.gov/oshsb/Confined_Spaces_in_Construction(Horcher).html).



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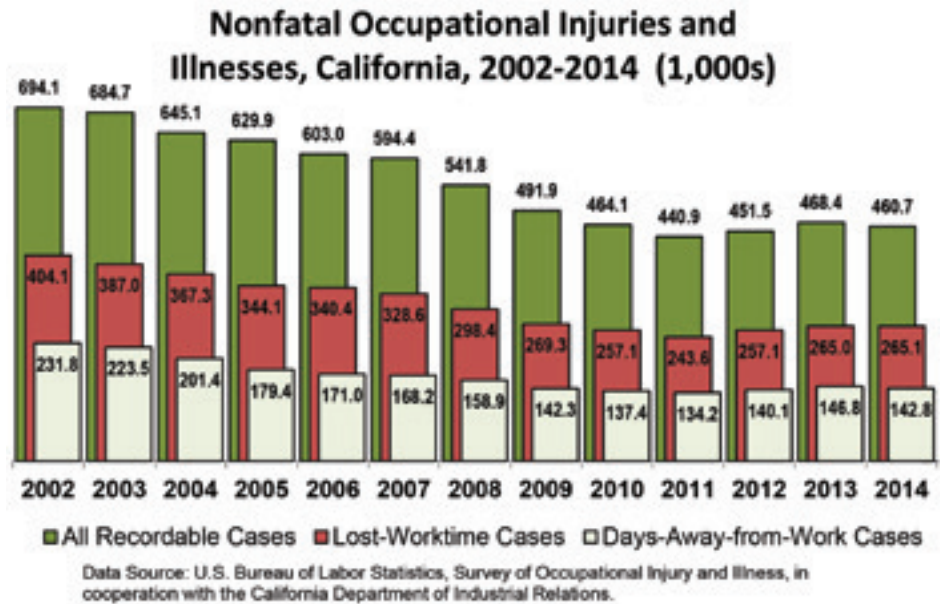
## 2. Proposal to Change the Definition of “Repeat” Violation

According to federal OSHA regulations, “state plans” (such as Cal/OSHA’s) must enforce safety and health regulations that are “at least as effective as” comparable federal standards. As a result of an enforcement action, Cal/OSHA may issue citations and notification of penalties with a classification of “regulatory,” “general,” “serious,” “willful” or “repeat,” or as a combination of such classifications (per 8 California Code of Regulations, Section 334).

As a result of annual federal monitoring of the Cal/OSHA program in 2013, federal OSHA indicated that California’s enforcement program’s rate of “repeat” violations was lower than the federal average and recommended that California consider employer history statewide when issuing such violations instead of limiting them to the boundaries of the regional office in which the original citation was issued. In response, Department of Industrial Relations (DIR) Director Christine Baker initiated rulemaking dated August 14, 2015, to alter the “look back” period from three to five years and to eliminate the regional office boundary geographical restriction.

Subsequent to the August rulemaking, a proposed modification was made by DIR that contains an additional proposal that should be disconcerting to members. DIR has proposed that a second violation would be classified as “repeat” if it involves a “hazard” or “condition” that is “similar” to the hazard or condition affirmed in a previous violation.

An opposition letter has been drafted and circulated to several stakeholder organizations for submission to DIR for the official record. In that letter, the signatory organizations disagreed with the proposals to lift the geographic restriction and extension of the time frame as burdensome, particularly for larger employers with multiple job sites in California. We strongly disagreed that similar hazards or conditions should constitute the basis for a repeat violation. As the terms “similar,” “hazard” and “condition” are not defined in Title 8, California Code of Regulations, the proposed amendment would leave an open interpretation of the proposed standard in the hands of each of the approximate 200 individual compliance



officers in California. We believe this would violate the constitutional due process rights of employers.

As an example, representatives of Cal/OSHA have publically acknowledged that a hazardous use of a ladder and failure to use fall protection (when required) would both involve a “similar hazard” — a fall hazard. An employee’s hazardous use of a ladder is clearly not the same as an employee’s failure to use fall protection — on a roofing job, for example — even though each activity may involve a “similar” hazard. The proposed amendment would seem to inappropriately treat two completely unrelated activities as the same.

For additional information, go to [www.dir.ca.gov/dosh/doshreg/Definition-of-Repeat-Violation](http://www.dir.ca.gov/dosh/doshreg/Definition-of-Repeat-Violation).

## 3. California Work-Related Injury and Illness Trends

Working with the California DIR, the U.S. Bureau of Labor Statistics collected data for its Survey of Occupational Injuries and Illnesses (SOII) that reflected a total of 460,000 reportable injury and illness cases in 2014, of which 265,000 cases involve lost work time, job transfer or restriction from duty cases. The DIR has posted California’s 2014 occupational injury and illness data, which shows that the incidence of occupational injuries continues to decline.

Key findings of the report include the following:

- In those cases involving days away from work, Latino workers continue to experience the highest incidence of occupational injuries, comprising 59 percent of all reported days away from work cases.
- In private industry, new hires and young workers have higher rates of injury. Twenty-five percent of workers whose injury or illness at work involved days away from work in private industry had been on the job less than a year. Teenagers from 16 to 19 years of age suffered the highest incidence of days away from work compared to all other age groups.
- Sprains, strains and tears are the largest injury category involving days away from work. For private sector workers, the greatest number of injuries or illnesses requiring days away from work were caused by overexertion and bodily reaction; contact with an object or piece of equipment; and falls, trips and slips.

I will continue tracking the Standards Board’s actions on this new regulation and monitor the status of the proposal, and report on further action by DIR to membership.

*Chris Lee has extensive experience in the field of occupational safety and health, having spent more than three decades working for both the federal Occupational Safety and Health Administration (OSHA) and Cal/OSHA.*