



Cal/OSHA Update

by Chris Lee, WACA Safety Consultant

Indoor Heat Illness Prevention

Labor Code § 6720 (enacted by Senate Bill 1167) requires the Division of Occupational Safety and Health (DOSH, better known as Cal/OSHA) to develop a proposed regulation for minimizing heat-related illness among workers in indoor places of employment.

Current provisions include:

- Application to all indoor work areas where the temperature is at least 80°F when employees are present.
- Any exception that would not apply to professional administrative offices where the employer can demonstrate that the temperature does not exceed 85°F.
- Any measures required in this proposal that may be integrated into the employer's Injury and Illness Prevention Plan, the employer's written Heat Illness Prevention Plan (Title 8, § 3395) or maintained as a separate document.
- Cool-down areas – a term that describes an area that is indoor, shielded from high radiant heat sources, open to the air or provided with ventilation or cooling, and provided with a supply of cool drinking water.
- Indoor – a term referring to a space that is under a ceiling or overhead covering, and is enclosed along its entire perimeter by walls, doors, windows, dividers or other physical barriers.
- Control measures – measures to be implemented when the temperature equals or exceeds 90°F, with the employer being required to assess environmental risk factors for heat illness. (Certain engineering controls would include isolation of hot work processes, air conditioning, cooling fans, local exhaust ventilation, etc.)
- Close observation when a newly assigned employee begins work in an area where the temperature or heat index equals or exceeds 90°F shall be closely monitored by a supervisor or designee for the first 14 days.

Regulatory Actions Expected In 2018

Cal/OSHA is expected to take action on the following issues of interest/concern to the construction industry in 2018:

- *Occupational Exposure to Lead in Construction* – Cal/OSHA has held several advisory meetings over the last few years and will be preparing a package to submit to the Standards Board for review and action. DOSH wants to lower the Permissible Exposure Limit (PEL) to lead significantly. The existing PEL is several decades old, and research from the California Department of Public Health (CDPH) suggests serious health effects at much lower levels than when the existing standard was initially adopted. As there is a potentially significant cost to industry, this proposed revision has triggered a Standard Regulatory Impact Analysis. This analysis must receive approval from the California Department of Finance. Once approval is received, the

package goes back to Cal/OSHA for revisions to the Initial Statement of Reasons, if appropriate. Cal/OSHA plans on submitting the draft package to the Standards Board in 2018.

- *First Aid Kits* – Following considerable debate, the employer community may see an update to the requirements for first aid kits — perhaps in 2018. The proposed text has been sent by Cal/OSHA to the Standards Board. Aside from bringing the contents current, the proposal will eliminate the requirement that a physician approve the kit. Employers will be expected to evaluate the contents of their kits and ensure that adequate replacement supplies are available.

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New Injury and Illness Prevention Program Access Rules

To address ongoing controversies of how and whom to provide access to an employer's IIPP, the Cal/OSHA Standards Board has released a draft revision to the standard. (A regulatory consultant petitioned the Board in 2017. He filed the petition on behalf of employer groups who became concerned about organized labor's attempts through the legislature to create access rules.) Interestingly, Section 3203 does not address an employee's right to access their employer's IIPP.

The draft would give employers 15 days to provide an IIPP, limits access to information required for compliance with the IIPP and requires that authorized representatives must be authorized in writing by the employee on an employer-provided form.

Revised Civil Penalties for Cal/OSHA Violations in Effect

Following action by federal OSHA (prompted by congressional action), Cal/OSHA adopted a revised penalty structure, effective September 14, 2017:

- *Regulatory violations* – for permit, posting, recordkeeping and reporting requirements, a maximum penalty of \$12,471, although a minimum penalty of \$500 will be proposed. Adjustments to the penalty will be made for size, good faith and history.

- *General violations* – for a violation that is specifically determined not to be of a serious nature but has a relationship to occupational safety and health of employees, a maximum of \$12,471 adjustments to a penalty may be made for severity, extent and likelihood.



- *Serious violations* – exist if Cal/OSHA demonstrates that there is a realistic possibility that death or serious physical harm could result. A maximum penalty of \$25,000 may be proposed with an initial base penalty of \$18,000, also subject to adjustment factors.
- *Repeat violation* – exists where an employer has abated or indicated abatement of an earlier violation occurring within the state for which a violation was issued, and upon a later inspection, Cal/OSHA finds a violation of a substantially similar requirement. On the first occasion of a repeat violation, the initial penalty shall be multiplied by two; the second repeat carries a multiplication factor of four; and the third occasion will carry a multiplication factor of 10. The resultant penalty shall not exceed \$124,709.
- *Willful violation* – exists where evidence shows that the employer committed an intentional and knowing, as contrasted with inadvertent, violation, and the employer is conscious of the fact that what he or she is doing constitutes a violation of a safety law. Such violations will carry a proposed penalty of not less than \$5,000 nor more than \$124,709.

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