



## Cal/OSHA 101: Understanding and Complying with the Nation's Strictest Workplace Safety Laws

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## Introduction to Cal/OSHA

- Established by the California Occupational Safety & Health Act of 1973.
- Cal/OSHA's Mining and Tunneling Unit regulates mining sites in the state.
  - California is unique in that it is the only state which has concurrent jurisdiction at mine sites with MSHA and a state-run OSHA program.
- Cal/OSHA and MSHA may exercise their jurisdiction over California mines concurrently. That concurrent jurisdiction may be exercised by the state to the extent that state standards are the equivalent of federal standards, are more stringent than federal standards, or cover topics not addressed by federal standards.



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## Injury and Illness Prevention Program (IIPP)

- This program, which became effective July 1, 1991, requires every employer to have a safety and health program tailored to their specific workplace.
- Regulation: 8 California Code of Regulations 3203 (8 CCR 3203).

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## Injury and Illness Prevention Program

- Required elements:
  - Management commitment/assignment of responsibilities;
  - Safety communications system with employees;
  - System for assuring employee compliance with safe work practices;
  - Scheduled inspections/evaluation system;
  - Accident investigation;
  - Procedures for correcting unsafe/unhealthy conditions;
  - Safety and health training and instruction; and
  - Recordkeeping and documentation.

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## Injury and Illness Prevention Program

- Management commitment/assignment of responsibilities:
  - Must identify person or persons with the authority and responsibility for your safety and health program.
  - Must also identify a safety coordinator at each facility.
  - Management must be well versed in the IIPP and must set a good example.
    - Management violating Cal/OSHA regulations will result in willful citations—which can result in criminal penalties where a violation causes death or permanent or prolonged impairment of the body of any employee.

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## Injury and Illness Prevention Program

- Safety communications system with employees:
  - You must include a system for communicating with employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.
  - Must be readily understandable by all affected employees.
  - Methods of communication include meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, or any other means that ensures communication with employees.
  - Can also comply with the communication requirements by using a labor/management safety and health committee (see later slide).

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## Injury and Illness Prevention Program

- Labor/management safety and health committees:
  1. Meets regularly, but not less than quarterly;
  2. Prepares and makes available to the affected employees written records of the safety and health issues discussed at the committee meetings and maintained for review by the Division upon request;
  3. Reviews results of the periodic, scheduled worksite inspections;
  4. Reviews investigations of occupational accidents and causes of incidents resulting in occupational injury, occupational illness, or exposure to hazardous substances, and where appropriate, submits suggestions to management for the prevention of future incidents;
  5. Reviews investigations of alleged hazardous conditions brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspection and investigation to assist in remedial solutions;
  6. Submits recommendations to assist in the evaluation of employee safety suggestions; and
  7. Upon request from the Division, verifies abatement action taken by the employer to abate citations issued by the Division.

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## Injury and Illness Prevention Program

- Hazard assessment and control:
  - Required to perform a hazard assessment survey of your establishment when first developing your Injury and Illness Prevention Program, which must be made by a qualified person.
  - Hazard assessment must also be performed whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and whenever you are made aware of a new or previously unrecognized hazard.
    - Document! Document! Document!
  - Employees should be encouraged to tell you or their supervisors of possibly hazardous situations.
  - Hazards should be corrected as soon as they are identified. Or removed from service!

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## Injury and Illness Prevention Program

- Accident investigation:
  - Accident investigations should be conducted by trained individuals, and with the primary focus of understanding why the accident or near miss occurred, and what actions can be taken to preclude recurrence.
  - Elements:
    - What happened?
    - Why did the incident happen?
    - What should be done?
    - What action has been taken?
  - Consult with an attorney before completing accident report—do not want to give Cal/OSHA a roadmap to citations and/or make admissions against interest.
  - If you use a safety and health committee to comply with the communication element of the IIPP, its members should review investigations of all accidents and near-miss incidents to assist in recommending appropriate corrective actions to prevent a similar recurrence.

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## Injury and Illness Prevention Program

- Safety planning, rules, and work procedures
  - Each workplace should have:
    - Rules addressing PPE, SOPs/hazard analyses, and emergency procedures.
    - Documentation to show that you are enforcing rules. This includes workplace assessments and disciplinary records.
    - A written plan for emergency situations. Your plan must include a list of emergencies that could arise and a set of procedures in response to each situation. Some emergency procedures, such as those covering medical emergencies or fire evacuation, are mandated by Cal/OSHA regulations.

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## Injury and Illness Prevention Program

- Safety and health training
- Training must be provided:
  - To all employees when your IIPP is first established.
  - To all new employees.
  - To all employees given new job assignments for which training has not been previously received.
  - Whenever new substances, processes, procedures, or equipment are introduced to the workplace and present a new hazard.
  - Whenever you or your supervisors are made aware of a new or previously unrecognized hazard.
  - For all supervisors to assure they are familiar with the safety and health hazards to which employees under their immediate direction and control may be exposed.
- Training must be in a language and manner that employees understand.

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## Injury and Illness Prevention Program

- Employee access to the injury and illness prevention program
- You must allow employees to exercise their right to access your IIP Program. You can provide access by doing one of the following:
  - Provide access to the written IIP Program in a reasonable time, place, and manner, but in no event later than five (5) business days after you receive a request for access from an employee or designated representative.
    - Only if the requestor agrees are you allowed to provide an electronic copy of the IIP Program.
    - Absent such an agreement, you must provide a paper copy.
  - Provide unobstructed access to the IIP Program through a company server or website that allows an employee to review, print, and e-mail the current version of the IIP Program.
    - “Unobstructed access” means that the employee, as part of his or her regular work duties, predictably and routinely uses the electronic means to communicate with management or coworkers.
- The document provided to the employee or designated representative need not include any of the records of the steps taken to implement and maintain the written IIP Program—you are only required to provide a copy of the IIP Program itself.

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## Cal/OSHA Does Not Utilize the General Duty Clause

- However, an inspector who finds a hazard not covered by a specific Cal/OSHA regulation may cite the employer for violating the Injury and Illness Prevention Program standard, which requires employers to identify workplace hazards, abate those hazards, inform workers about hazards, and train workers in safe work practices.

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## Cal/OSHA's Silica Rule

- In response to the Federal OSHA standard on respirable crystalline silica, Cal/OSHA adopted a rule that is substantially similar to the Federal OSHA rule.
- Cal/OHSA's rule went into effect for General Industry (including mining) on June 23, 2018.



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## Cal/OSHA's Silica Rule

- Important provisions:
  - Reduction of the Permissible Exposure Limit (PEL) from 100  $\mu\text{m}^3$  to 50  $\mu\text{m}^3$  over an 8-hour time weighted average.
  - A requirement for engineering controls (such as water or ventilation) to limit worker exposures.
  - Limiting worker exposure to high exposure areas.
  - Development of a written exposure control plan.
  - Restrict housekeeping activities that may expose workers to respirable silica.
  - Provision of respirators to workers when engineering controls do not limit respirable silica below the required levels.
  - Offering medical exams to highly exposed workers, and training workers on silica risks and how to limit exposures.

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## Heat Illness Prevention

- Cal/OSHA promulgated an emergency standard to protect outdoor workers from the hazards of working in high heat environments in 2006.
- The standard's provisions apply at all times when employees work outdoors.
- Heat Illness Procedures can be integrated into the IIPP.

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## Heat Illness Prevention

- **Training:** Train all employees and supervisors about heat illness prevention.
- **Water:** Provide enough fresh water so that each employee can drink at least 1 quart per hour, or four 8-ounce glasses of water per hour and encourage them to do so.
  - Additionally, 8 CCR §6975 specifically requires that mines provide water suitable for drinking to all employees during working hours.
- **Shade:** Provide access to shade and encourage employees to take a cool-down rest in the shade for at least 5 minutes. They should not wait until they feel sick to cool down.
- **Planning:** Develop and implement written procedures for complying with the Cal/OSHA Heat Illness Prevention Standard.

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## Ergonomics

- There is no Federal OSHA ergonomic standard.
  - Cal/OSHA adopted a Repetitive Motion Injury (RMI) standard in 1997.
  - The standard applies to a job, process, or operation where an RMI has occurred to more than one employee under certain conditions.
    - Every employer subject to this section must have a program that includes worksite evaluation, control of exposures and training of employees.
  - Work-related RMIs, as defined by the Cal/OSHA ergonomics standard, are musculoskeletal disorders that are caused predominantly (at least 50%) by a repetitive job, process, or operation.

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## Injury and Illness Records

- All employers in California covered by the Cal/OSHA regulations, except those with no more than 10 employees at any one time during the year or those in some low-hazard industries, are required to keep records of injuries, also known as the Log 300, Log 300A and Log 301.
- Employers must:
  - Prepare a supplementary record of each recordable workplace fatality, injury, and illness – Log 301.
  - Enter each recordable injury or illness on the Log of Work-Related injury and illnesses form – Log 300.
  - Enter totals on the Annual Summary of Work-Related Injuries and Illnesses form. Post the completed form no later than February 1, keep it posted where employees can see it through April 30, and provide copies as required – Log 300A.
  - Maintain these records in employer files for 5 years.

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## Reporting Injuries

- Exemption for MSHA regulated sites:
  - § 14300.47: Employers covered under the Federal Mine Safety and Health Act (MSHA) of 1977 are not required to comply with Cal/OSHA recordkeeping requirements subject to certain provisions.
  - Do not need to submit a 300 log.
- Exemption does not apply to immediately reportable requirements.
  - Must report any serious injury or illness, or death of an employee "as soon as practically possible but not longer than 8 hours after the employer knows."
  - "Serious injury or illness" means any injury or illness occurring in a place of employment or in connection with any employment that requires inpatient hospitalization for other than medical observation or diagnostic testing, or in which an employee suffers an amputation, the loss of an eye, or any serious degree of permanent disfigurement.

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## Employee Rights

- If an employee believes that working conditions are unsafe or unhealthy, the first step should be to notify the employer of the problem.
  - If the employer does not correct the hazard or agree on its extent, the employee has the right to file a complaint with Cal/OSHA and request an inspection of the workplace.
- Cal/OSHA will conduct an inspection of the complaint, if they determine there are reasonable grounds for believing a violation of a standard exists, they will issue citations.
- Complainants who identify themselves to Cal/OSHA are notified of the results of the investigation.
- If Cal/OSHA determines that no violation exists, written notification of this determination is given to the complainant, who then has the right to request a review by Cal/OSHA.

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## Protection from Discrimination

- Labor Code section 6310 prohibits an employer from discharging, punishing, or discriminating against an employee in any way for filing a bona fide complaint concerning unsafe or unhealthy working conditions or work practices in a place of employment, or for exercising other rights granted in.
- Employees who believe they have been discriminated against may file a complaint about the discrimination within 6 months with the nearest office of the Department of Industrial Relations' Division of Labor Standards Enforcement (State Labor Commissioner).
- If the charge of discrimination is determined to be valid, the Labor Commissioner will grant appropriate relief to the employee, including rehire, reinstatement, and reimbursement for lost wages and work benefits.
  - If the employer does not voluntarily comply, the Labor Commissioner may bring action in any appropriate court against an employer who has taken a retaliatory action against an employee.

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# Employee Access to Medical and Exposure Records

- Workers and their designated representatives may see and copy:
  - Their own medical records.
  - Records of exposure to toxic substances and harmful physical agents measured either by workplace monitoring or by biological monitoring to gauge absorption of a substance or agent by body systems.
  - Records of exposure to toxic substances and harmful physical agents for employees with similar jobs or working conditions.
  - Safety data sheets or equivalent information that the employer has for chemicals or substances used in the workplace.

# Ca/OSHA's COVID ETS

- Cal/OSHA's COVID-19 Emergency Temporary Standards originally issued November 30, 2020, updated June 17, 2021.
- The ETS applies to all employers, employees, and to all places of employment with the following exceptions:
  - Work locations where there is only one employee who does not have contact with other people.
  - Employees who are working from home.
  - Employees who are covered by the Aerosol Transmissible Diseases regulation.
  - Employees working from a location chosen by the employee, which is not under the control of the employer (for instance, an employee teleworking from a café or a friend's home).

## Ca/OSHA's COVID ETS

- Each employer must develop a written COVID-19 Prevention Program or ensure its elements are included in an existing IIPP. The employer must do the following in accordance with their written program:
  - Communicate to employees about the employer's COVID-19 prevention procedures.
  - Identify, evaluate, and correct COVID-19 hazards.
  - Require and provide face coverings and respirators in the manner and in the circumstances specified in the ETS.
  - Advise employees they can wear face coverings at work, regardless of their vaccination status, without fear of retaliation by the employer.
  - Use engineering controls, administrative controls, and personal protective equipment (PPE) under certain circumstances.
  - Follow procedures to investigate and respond to COVID-19 cases in the workplace.
  - Provide COVID-19 training to employees.

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## Ca/OSHA's COVID ETS

- COVID-19 Prevention Program Requirements (cont'd)
  - Make testing available at no cost to employees who have had a “close contact” with a person with COVID-19, and in the case of multiple infections or a major outbreak, make testing available at no cost on a regular basis for employees in the exposed work areas.
    - This requirement does not apply to exposed employees who are fully vaccinated and have no symptoms, except during major outbreaks.
  - Exclude COVID-19 cases and exposed employees from the workplace until they are no longer an infection risk. Exposed employees who are fully vaccinated and have no symptoms do not need to be excluded.
  - Follow return to work criteria.
  - Maintain records of COVID-19 cases and report serious illnesses to Cal/OSHA and to the local health department when required.

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# Cal/OSHA Inspections

- When to expect an inspection:
  - Complaint
  - Accident
  - Programmed
    - May target a specific industry or result from a weather specific incident
  - Cal/OSHA does not have mandatory inspections; MSHA has mandatory twice a year inspections of surface mines.
  - Cal/OSHA does not have warrantless inspection authority like MSHA; however, there is a relaxed proof requirement for obtaining an OSHA search warrant (administrative probable cause rather than criminal probable cause).
  - It is Cal/OSHA policy to secure an inspection warrant when permission to inspect a place of employment is refused, or when circumstances reasonably justify the Division not seeking permission to inspect a place of employment.

# Cal/OSHA Inspections

- Document requests:
  - Cal/OSHA will likely request to review your IIPP as well as your Heat Illness Prevention Plan, these are required documents.
  - The IIPP must be provided within a reasonable time to the inspector.
  - Will provide a document request sheet, these are primarily documents that you are required to maintain and provide to Cal/OSHA.

## Ca/OSHA Inspections

- Citation classifications:
  - **Regulatory violation**—Other than one defined as Serious or General that pertains to permit, posting, recordkeeping, and reporting requirements as established by regulation or statute.
    - For example, failure to obtain permit; failure to post citation, poster; failure to keep required records; failure to report industrial accidents, etc.
  - **General violation**—Specifically determined not to be of a serious nature but has a relationship to occupational safety and health of employees.
  - **Serious violation**—There is a rebuttable presumption that a “serious violation” exists in a place of employment if Cal/OSHA demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation.
    - The employer may rebut the presumption and establish that a violation is not serious by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation.

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## Ca/OSHA Inspections

- Citation classifications:
  - **Repeat violation**—The employer has abated or indicated abatement of an earlier violation occurring within the state for which a citation was issued, and upon a later inspection, the Division finds a violation of a substantially similar regulatory requirement and issues a citation within a period of 5 years.
    - 5-year period starts immediately following the latest of:
      1. The date of the final order affirming the existence of the previous violation cited in the underlying citation; or
      2. The date on which the underlying citation became final by operation of law.
  - **Willful violation**—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/she is doing constitutes a violation of a safety law; or even though the employer was not consciously violating a safety law, he/she was aware that an unsafe or hazardous condition existed and made no reasonable effort to eliminate the condition.

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## Ca/OSHA Inspections

- Criminal prosecutions:
  - Section 6425 of the California Labor Code authorizes penalties for supervisors who have responsibility for the direction, management, control, or custody of others where there is a willful violation of any occupational safety or health standard or order which results in the death of any employee or caused permanent or prolonged impairment of the body of any employee.
  - For a first offender, the statute authorizes a penalty of a 1-year jail sentence as well as a fine of up to \$100,000.



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## Handling Inspections

- Train multiple individuals to accompany inspectors.
- All employees should be aware of their rights.
- Do NOT volunteer information that could be used against yourself or the company.

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## Handling Inspections

- Anything you say CAN and WILL be used against you!
- Right to counsel.
- Remember: Nothing is ever “off the record” with Cal/OSHA!
- Do not tell employees that they cannot speak to Cal/OSHA, “obstruction of justice charges.”
  - Do not discipline workers who cooperate with Cal/OSHA, lodge complaints. or testify against company.

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## Handling Inspections

- No false statements or documents, EVER.
- Ask the inspector to tell you if he sees a violation—Write down what he/she says.
- Look up all potential citations in the CCR and in Cal/OSHA policy.
- Get the inspector to explain his allegations.
- Challenge his/her findings ONLY IF you can do so without self-incrimination.

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## Contesting a Citation

- Informal conference:
  - The District Manager shall give any affected employer, or another affected person, the opportunity for an informal conference.
    - If the employer has not filed an appeal, the informal conference shall be held no more than 10 working days following issuance of the Citation.
    - If the requesting employer has filed an appeal with the Occupational Safety and Health Appeals Board, the District Manager, or his or her designee, shall conduct the informal conference as soon as possible after the employer requests a conference, but a conference can be held anytime prior to the day of the hearing.

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## Contesting a Citation

- Filing an appeal:
  - Employers may appeal a citation and notification of penalty, notification of failure to abate, special order, or order to take special action.
  - An employer has 15 working days from receipt of one of these documents within which to appeal.
  - Now online, using OASIS: <https://caldir-production-portal.ecourt.com/public-portal/>
  - After registering, users can submit or download documents in, and may obtain case scheduling information about the appeals in which they are a participant.



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## Contesting a Citation

- Filing an appeal:
  - Must include grounds for appeal, including:
    - The safety order was not violated; the classification of the violation (i.e., serious, willful, repeat) is incorrect ; the abatement requirements are unreasonable; the proposed penalty is unreasonable.
  - Additionally, must list affirmative defenses:
    - Independent employee action defense.
    - The safety order did not apply to the work activity that is the subject of the citation.
    - A different safety order applied to the work activity that is the subject of the citation, and appellant was in compliance with that other safety order.
    - The inspection that gave rise to the citation was invalid because the Division employee who inspected the appellant's worksite failed to comply with laws governing administrative searches.

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## Contesting a Citation

- Independent employee action defense
  - In order to establish the defense of independent employee action an employer must show all of the following elements:
    - The employee was experienced in the job being performed,
    - Employer has a well-devised safety program which includes training employees in matters of safety respective to their particular job assignments,
    - Employer effectively enforces the safety program,
    - Employer has a policy which it enforces of sanctions against employees who violate the safety program, and
    - The employee caused a safety infraction which he or she knew was contrary to the Employer's safety requirement.

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## Contesting a Citation

- **Mandatory participation notice:**
  - An employer must notify employees of an appeal and of the employees' right to participate in the appeal.
  - The participation notice and a copy of the docketed appeal form must be posted at or near the site of the alleged violation or other conspicuous place where it will be readily observed and easily read by employees
- **Discovery:**
  - A party to a proceeding has the right to obtain the names and addresses of witnesses known to an opposing party, including the names of those intended to be called to testify at a hearing.
  - A party to a proceeding also has the right to review and copy records including photographs held by an opposing party.
  - Cal/OSHA also has the same right to discover names and addresses of witnesses and records and documents held by an employer or other party.

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## Contesting a Citation

- **Settlement:**
  - During and following the informal conference, Cal/OSHA will be open to discussing settlement.
  - The Division may provide a settlement offer to the company before you provide defenses.
  - Review the relevant cases and the Division's discovery response before providing a settlement proposal to the Division.
- **Hearing:**
  - Hearsay evidence is admissible on a limited basis.
  - A party should have available at the hearing all witnesses, documentary evidence, or other proof needed to support its position.
  - Each party should produce witnesses with first-hand knowledge of the key events.
    - If documents, photographs, or business records are to be introduced, there must be a witness who can authenticate and explain them and their relevance to the proceedings.

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## Variations

- Where infeasible to comply with a specific regulation, employers may apply for a variance to the Standards Board if you can demonstrate that an alternative method, device, or process provides equal or superior safety for workers.
- Infeasibility is not a defense to citations.

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## Thank you. Questions?

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In order to receive your continuing education certificate(s) for this program, you must complete the online evaluation. The link can be found in the continuing education section of the program guide.



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