

Cal/OSHA Regulatory Roundup

Highlights of What's Coming for Businesses in 2020

The California Division of Occupational Safety and Health (Cal/OSHA) has been busy in the last few years and shows no signs of slowing down in 2020, which means every business in California needs to monitor Cal/OSHA's activity to ensure compliance. Below is a brief primer on some of the recent high-profile regulations coming out of Cal/OSHA that employers should be aware of heading into 2020—but, to be clear, this is by no means a full summary of the items that may be voted upon or commented upon in 2020.

WILDFIRE SMOKE PROTECTION

On July 29, 2019, new emergency regulations for protecting workers from wildfire smoke went into effect (the “Emergency Wildfire Smoke Regulation,” California Code of Regulations, Title 8, Section 5141.1) and created new and somewhat ambiguous obligations for employers when wildfire smoke drifts into a workplace. Generally speaking, when the Air Quality Index (AQI) for particulate matter with a diameter of 2.5 micrometers or smaller (PM_{2.5}) rises due to smoke, employers generally are required to:

- Monitor the AQI at any worksite that their employees will visit and be outside for more than one hour.
- AQI of 150: Provide information to outdoor employees regarding wildfire smoke hazards and provide the option of protection (N95 respirators) to outdoor employees at 150.
- AQI of 500: Compel all outdoor employees to be medically evaluated, fit-tested, and wear respiratory protection—or shut down.

The California Chamber of Commerce was vocal during the emergency rulemaking process to raise the business community's

concerns about ambiguities and infeasible requirements. Notable concerns included:

- Ambiguous triggering mechanism for the regulation to take effect, making it harder for businesses to know when to comply with the regulation.
- Ambiguous definition of which workplaces qualified as “outdoor” versus “indoor,” making it difficult to know which employees needed to receive protection.
- Failure to exempt emergency-related personnel from the regulation's more onerous requirements, potentially slowing utilities and other businesses from assisting emergency response personnel.

Unfortunately, many of these ambiguities were not addressed in the emergency rule, leaving businesses to speculate on the best way in which to comply. Heading into 2020, CalChamber will continue to weigh in to address these issues in the permanent regulation, which is expected in late 2020.

INDOOR HEAT ILLNESS PREVENTION

In 2005, California became the first state to adopt a heat illness prevention standard to protect outdoor workers (California Code of Regulations, Title 8, Section 3395). The heat illness prevention standard requires employers to provide agricultural workers, construction workers, landscapers and others who work outdoors with water, shade, rest breaks and training. Known as the high heat provisions, additional requirements apply when the outdoor temperature exceeds 95 degrees.

In 2016, SB 1167 (Mendoza; D-Artesia, Chapter 839) passed and required Cal/OSHA to propose to the Standards Board a similar heat illness and injury prevention standard applicable to workers working in indoor places of employment. CalChamber and a large coalition of businesses opposed the legislation as unnecessary because current regulations (Title 8, Section 3203 Illness and Injury Prevention Program) require employers to identify and address workplace hazards, including the risk of heat illness in indoor workplaces.

Since SB 1167 passed and was signed into law, CalChamber has worked with Cal/OSHA and affected stakeholders to find

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consensus for a reasonable and rational regulation. As with the wildfire smoke regulation, the CalChamber and business allies have raised a range of issues relating to clarity and feasibility during the advisory process. Presently, rulemaking documents are being prepared, and the business community's next opportunity to weigh in will be when formal rulemaking begins with the Cal/OSHA Standards Board (the rulemaking body for Cal/OSHA), likely in 2020.

GENERAL INDUSTRY AND CONSTRUCTION LEAD EXPOSURE STANDARDS

California's lead exposure standards in construction and in general industry have been creeping through the Cal/OSHA regulatory process since 2011 (California Code of Regulations, Title 8, Sections 1532.1, 5198). In 2019, the standardized regulatory impact analysis (SRIA) was finally completed, allowing the standard to move to formal rulemaking. This is not a moment too soon given the enactment of 2019 legislation imposing a September 30, 2020 deadline for the Standards Board to act (SB 83; Committee on Budget and Fiscal Review; Chapter 24).

Generally speaking, the draft regulation will greatly lower thresholds for testing and medical removal related to blood lead levels, and consequently greatly expand the number of workplaces and employees that will fall under blood lead monitoring.

Businesses working with even small amounts of lead—potentially even lead contained in other metals, such as brass—should keep an eye on this process as it heads to the Standards Board in 2020.

AGRICULTURAL WORK IN DARKNESS

Agriculture in California should be aware of pending changes to the required lighting in agricultural workplaces in the early morning/evening hours (California Code of Regulations, Title 8, Sections 3441, 3449). As presently drafted (and likely to be adopted), the proposed changes create new requirements for lighting around vehicles and while harvesting, as well as requiring measurement of light levels in the workplace.

Although the CalChamber is supportive of safe lighting requirements, it has ongoing concerns that the proposed text is vague and will lead to uncertainty in compliance. This regulation is currently with the Standards Board, and should have a final vote no later than early 2020.

CALCHAMBER POSITION

California employers take the safety and health of their employees very seriously. The CalChamber supports effective workplace safety policies and believes that such policies must be based on sound science, clearly drafted, and feasible to implement. The CalChamber will continue to advocate for sound, effective and feasible policy at Cal/OSHA in all rulemaking processes.



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