

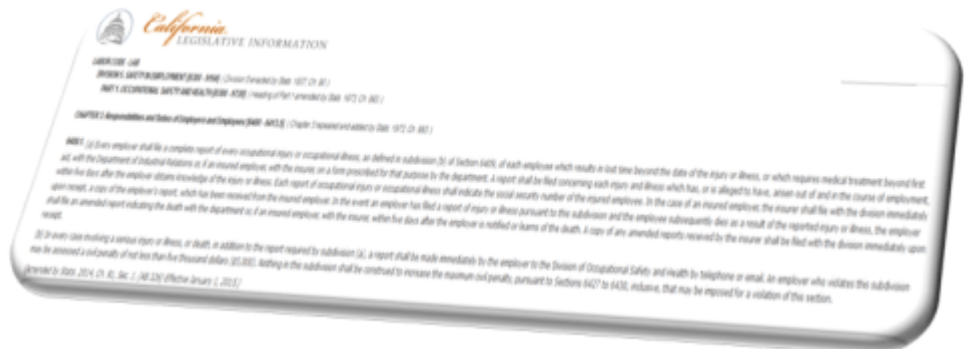
SEPTEMBER 6, 2019 | CAL/OSHA INSPECTIONS, CITATIONS & ENFORCEMENT

BREAKING: Cal/OSHA Overhauls Reporting Requirements for Serious Injuries

By [Andrew Sommer](#) and [Megan Shaked](#)

The California Division of Occupational Safety and Health (Cal/OSHA) just announced major changes to the definition of “serious injury or illness” for purposes of California employers’ duty to report certain serious workplace injuries to Cal/OSHA. Pursuant to [Cal. Labor Code Sec. 6409.1\(b\)](#), in every case involving a work related death or a serious injury or illness, the employer must “immediately” make a report to Cal/OSHA.

Employers may be cited and subject to penalties for failure to make such reports, and reporting such incidents almost always leads to a site inspection by Cal/OSHA, which in turn most often results in Serious or Serious Accident-Related citations.



Cal/OSHA's prior, longstanding reporting rule defined "serious injury or illness" as any injury or illness occurring in a place of employment or in connection with any employment that requires in-patient hospitalization for a period in excess of 24 hours for treatment other than medical observation, or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement. The old definition excluded injuries or deaths caused by the commission of a Penal Code violation (e.g., an intentional assault and battery), or an auto accident on a public street or highway.

On August 30, 2019, California passed [Assembly Bill \(AB\) 1805](#) to revise the definition of a “serious injury or illness” for reporting purposes. The changes appear to be designed to bring Cal/OSHA’s reporting requirement more (but not entirely) in line with [fed OSHA’s hospitalization and amputation reporting rule](#). Specifically,

Cal/OSHA's new reporting requirement



1. Eliminate the old 24-hour minimum time for a stay at the hospital for an inpatient hospitalization to become reportable;
2. Specify for reporting purposes that an inpatient hospitalization must be required for something "other than medical observation or diagnostic testing";
3. Replace "loss of a member" with the term "amputation";
4. Expressly include loss of an eye as a specific type of reportable injury;
5. Delete the old exclusion for serious injuries or deaths caused by a violation of the Penal Code; and
6. Narrow the exclusion for injuries caused by auto accidents on a public street, so that such accidents that occur in a construction zone are now reportable to Cal/OSHA.

The new reporting rule goes into effect on January 1, 2020.

Tips for Complying with this New Reporting Standard

California employers must report by phone or email to the nearest District Office of Cal/OSHA any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment. A serious injury or illness now includes any injury or illness:

- requiring inpatient hospitalization, for other than medical observation or diagnostic testing; or
- resulting in an amputation, loss of an eye or any serious degree of permanent disfigurement

The report must be made within 8 hours of when the employer knew, or with diligent inquiry should have known, about the fatality or the serious injury or illness. Due to the "diligent inquiry" component, it is advisable that employers monitor an injured employee's condition and hospitalization following an incident to determine whether the injury or illness is or becomes reportable. It is important to note that any qualifying injury or illness, or a fatality, is reportable if it occurs in the workplace, even if the cause is non-occupational, such as a heart

attack.

Determining whether an injury or illness should be reported to Cal/OSHA is not always clear and the consequences of getting this wrong are serious. Failing to timely report a reportable in-hospitalization or other qualifying injury can be cited, and could set up an employer for costly Repeat violations. On the other hand, over-reporting has its own significant consequences resulting in an on-site enforcement inspection. Accordingly, it is important to educate management representatives, particularly those charged with the responsibility to make reports to Cal/OSHA, about the nuances of Cal/OSHA's reporting rule.

And, of course, be sure to reach out to the OSHA and Cal/OSHA specialist [attorneys in Conn Maciel Carey's national OSHA Practice Group](#) if you have questions about:

1. Whether a specific incident or injury is reportable to Cal/OSHA;
2. When the report is actually due;
3. How to make the report;
4. What information to share with Cal/OSHA in the report; and/or
5. How to manage Cal/OSHA's response to the report.

We would love to be a resource for you, and would be happy to provide some free advice around the often tricky reporting issue.

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