

SEPTEMBER 27, 2024 | LEGISLATIVE & STANDARDS BOARD UPDATES

Cal/OSHA Solicits Comments on Draft Amendments Adding Enterprise-Wide and Egregious Violations

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Back in 2021, Governor Newsom signed Senate Bill 606 into law. We noted in our [blog post](#) that the law would “broadly expand[] Cal/OSHA’s enforcement authority and the penalty amounts employers may be assessed.” Cal/OSHA has now issued draft amendments to the Cal/OSHA regulations based on SB 606.

What Are the Proposed Regulatory Changes?

The draft contemplates amendments to Title 8 of the California Code of Regulations, Sections 332.4, 334, 335, and 336, which include posting requirements, classifications of violations, and penalties.

The draft amendments add a new category of “Egregious” violation to section 334. An egregious violation is a Willful violation where: (1) the employer has a prior egregious violation in the last five years; or (2) one or more of the following is true:

- “The employer, intentionally, through conscious, voluntary action or inaction, made no reasonable effort to eliminate the known violation.”
- “The employer has a history of one or more Serious, Repeat, or Willful violations or more than 20 General or Regulatory violations per 100 employees.”
- “The employer intentionally disregarded their health and safety responsibilities, such as by failing to maintain an effective and operative injury and illness program adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board, ignoring safety and health hazards, or refusing to comply with the Act.”
- “The employer’s conduct, taken as a whole, amounts to clear bad faith in the performance of their duties to comply with occupational safety and health standards.”
- Within the five years preceding a citation for an egregious violation, the employer committed more than five violations that became final determinations.
- “The violations resulted in worker fatalities, a worksite catastrophe, or five or more injuries or illnesses. For purposes of this paragraph, ‘catastrophe’ means the inpatient hospitalization, regardless of duration, of three or more employees resulting from an injury, illness, or exposure caused by a workplace hazard or condition.”
- “Within the 12 months immediately preceding the underlying violation, 10% of all employees at the cited

worksite sustained workplace injuries or illnesses..."

The draft amendments also provide for a rebuttable presumption that a violation is "enterprise-wide" when either of the following is true:

- The employer has a written policy or procedure that violates certain health and safety requirements in the Health and Safety Code or stemming from the Labor Code.
- The Division has evidence of "a pattern or practice of the same violation or violations involving more than one of the employer's worksites."

The draft amendments propose changes to section 336 to include penalties up to \$158,727 for enterprise-wide violations and separate daily penalties for failing to abate an enterprise-wide violation. Amendments to Section 336 would also require the Division to issue a separate citation and proposed penalty for "Egregious" violations, up to \$158,727, for each instance of an employee exposed to that violation. The proposed amendments also address circumstances when penalties are subject to adjustments, referencing new combinations of classification. For example:

- Penalties for enterprise-wide violations are only subject to adjustment based on the size of the employer.
- Penalties for violations classified as "Egregious General" are not subject to the 50% abatement credit afforded basic General violations.
- Serious violations classified as "Egregious Serious" are not subject to an abatement credit, consistent with other types of Serious violations.
- Penalties for violations classified as "Enterprise-wide General" are only subject to the 50% abatement credit if the employer abates within a certain time period specified in the regulation.

In sum, these amendments would create increased exposure for employers who are found to have committed such violations.

Advisory Meeting

Cal/OSHA conducted an advisory meeting on August 19 on these proposed amendments to solicit feedback from stakeholders.

Following comments by members of the public notifying Cal/OSHA representatives that many stakeholders were not aware of the meeting, Cal/OSHA confirmed that it would send out additional notice and extend the time to submit public comment.

Cal/OSHA representatives covered the rulemaking process for these amendments. They noted that these regulations are under the Director of Industrial Relations section of Title 8, so they do not need to go through the usual Standards Board approval process. That said, they are still required to comply with the California Administrative Procedures Act. Under the Act, there is no requirement to hold advisory meetings, but Cal/OSHA decided to open the initial drafting process to stakeholders. Cal/OSHA confirmed that there will still be formal notice and comment periods and a public hearing on the proposed amendments.

The meeting consisted of Cal/OSHA representatives sharing a Word document of the draft regulation and taking comments section by section from stakeholders. There was extensive, collaborative discussion between

stakeholders and the Cal/OSHA representatives, which went on for approximately four hours. At times, Cal/OSHA representatives even asked for specific language that stakeholders wanted to see in the regulation. There was particular attention paid to the factors for an egregious violation and general clarity of the language in the amendments.

What Happens Next?

Cal/OSHA will continue taking comments on this initial draft through October 3, 2024. The agency has indicated that it will issue a revised draft after reviewing all comments submitted.

This advisory meeting is a prime example of how important it is for employers to be involved in the rulemaking process early. This is often the time when stakeholders have the most direct access to the drafters of regulations.

We will continue to provide updates on these amendments as they go through the rulemaking process and can answer any questions you may have.

Join Conn Maciel Carey's Cal/OSHA Rulemaking Coalition

Although we are a little more than halfway through 2024, Cal/OSHA and the Cal/OSHA Standards Board have already had a jam-packed year. To date, the Board has adopted an Indoor Heat Illness Prevention standard and revisions to the Lead regulations. A slew of new standards and revisions to existing regulations are also on the horizon, including:

- "Enterprise-wide" and "egregious" citation classifications for General Industry.
- Workplace Violence Prevention Standard for General Industry (draft recently released).
- Permanent Infectious Disease Standard for General Industry.
- Updates to the Aerosol Transmissible Diseases Standard in Healthcare.
- Cal/OSHA adoption of the fed/OSHA Worker Walkaround Rule.

Because of the numerous regulatory actions the Cal/OSHA Standards Board is planning, **CMC's Cal/OSHA Practice is organizing a flat fee-based, company-anonymous coalition of employers and trade groups to advocate for the most reasonable outcomes across numerous Cal/OSHA rulemakings** throughout the remainder of the year, and renewed annually thereafter.

Check out the article on CMC's [Cal/OSHA Defense Report Blog](#) for more information about CMC's Cal/OSHA Rulemaking Coalition.

If your organization is interested in participating, please contact [Rachel Conn](#), Chair of CMC's California Practice. Also, let us know if you have any questions or if you would like to have a call to talk through our plans and strategy for this annual rulemaking coalition, the fee for participating, and the various value-add benefits of participating with our group.

In addition, CMC is hosting a [Cal/OSHA and California Employment Law Summit](#) on October 8th and 10th where we will cover these developments in detail. See below for more information and to register.



Cal/OSHA and California Employment Law Summit: The Latest Rulemaking and Enforcement Developments October 8, 2024 | October 10, 2024

Conn Maciel Carey LLP's [Cal/OSHA and California Employment Law Summit](#) is an in-person program presented by the California-based attorneys in CMC's national [OSHA • Workplace Safety](#) and [Labor • Employment](#) Practice Groups, to provide updates about the workplace safety and health regulatory landscape in California, as well as important developments in employment and labor law affecting California employers.

Two Dates and Locations to Choose From

Registrants have the opportunity to join the program in Northern California on October 8th, or in Southern California on October 10th. Continental breakfast, lunch, and program materials will be included with registration at both locations. **Tickets are \$150 per person.**

See the [agenda](#) below and [visit our site](#) for more information and to register.

2024 Summit - Working Agenda

8:00 AM PDT	Continental Breakfast/Networking
9:00 AM PDT	Opening Remarks
9:15 AM PDT	New Cal/OSHA Statutes and Regulations - Compliance Tips and Best Practices The California occupational safety and health landscape expanded significantly this year with new requirements impacting general industry and specific workplaces alike. With new requirements for workplace violence prevention, indoor heat illness prevention, silica, lead, and more, nearly all employers in California are impacted. Join our Cal/OSHA team for a review of new California occupational safety and health laws and regulations and best practices for improving your workplace safety and health programs today.
10:45 AM PDT	Break
11:00 AM PDT	Cal/OSHA Standards and Appeals Boards and Enforcement Updates: What to Expect in 2025 Cal/OSHA is showing no signs of slowing down on the rulemaking or enforcement fronts. This session will offer a preview of anticipated changes working their way through the rulemaking process, including the workplace violence prevention regulation. We will also share insight into the agency's personnel changes and enforcement priorities, including anticipated additions to Cal/OSHA regulations for "egregious" and "enterprise-wide" violations, as well as changes to the Severe Violator Enforcement Program. We will also provide updates on other West Coast state plans such as Oregon and Washington.
12:30 PM PDT	Lunch and Panel Discussion on the Interaction between OSHA and Labor Whether a workplace is unionized or not, compliance with California employment law and occupational safety and health requirements can implicate the National Labor Relations Act and other labor relations issues. We have seen the new California workplace violence prevention requirements and Cal/OSHA indoor heat illness prevention rules, for example, include specific requirements for active involvement from employees and employee representatives. With Cal/OSHA's stated intent to adopt its own version of the federal Worker Walkaround Rule, prescribed employee involvement in safety and health is likely to continue as a priority for the state plan. Join us for a lively lunchtime panel about how to manage the intersection between OSH, labor, and employment.
1:45 PM PDT	California Labor and Employment Update With the legislative session coming to a close at the end of September, our California labor and employment team will present an overview of key new laws that recently took effect or will take effect in 2025, including the significant PAGA reform bills signed into law in July. We will also discuss key decisions from the California courts and National Labor Relations Board impacting California employers on topics ranging from wage and hour to the scope of protected concerted activity among employees and more.
2:45 PM PDT	Q&A and Closing Remarks
<i>The agenda may be subject to change.</i>	