

JULY 25, 2023 | LEGISLATIVE & STANDARDS BOARD UPDATES

Latest Cal/OSHA Updates: Prepare for a Packed Fall

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During last week's California Occupational Safety and Health Standards Board meeting, the spotlight was on silica. But an equally clear message was front and center throughout the meeting – Cal/OSHA has a packed rulemaking agenda.

Here's the latest on Cal/OSHA rulemaking and what to expect in the coming months:



Silica Emergency Temporary Standard

The Standards Board granted, in part, [Petition 597](#), to amend the current regulation on Occupational Exposures to Respirable Crystalline Silica (section 5204) via Emergency Temporary Standard (ETS) to address the growing number of reported cases of advanced silicosis among workers exposed to silica in engineered stone fabrication.

Following extensive public comment, Cal/OSHA argued that an ETS would be more effective at protecting workers and would be easier for employers to implement than the current regulation (the 2019-2020 special emphasis program found widespread non-compliance with the regulation). The current performance-based standard requires the employer to conduct sophisticated exposure assessment as the basis for implementing silica exposure controls, but that a prescriptive approach should be taken instead to ensure effective exposure controls are implemented. Cal/OSHA also specified that the ETS would be narrow and only cover artificial stone, acknowledging that studies show working with artificial stone is more problematic than natural stone.

In contrast, the Board staff found that an ETS may be unnecessary to protect workers in the industry as many of the Petition requests were duplicative of the existing regulation. Board staff highlighted that the Petition appeared to be based on non-compliance with the current regulation and that it is "difficult to conclude that the current requirements are insufficiently protective of worker health." They also recommended that the Petition be denied and that instead the Board request that Cal/OSHA consider updating the existing regulation.

The Board, after considering the recommendations of Cal/OSHA and Board staff, granted the Petition to adopt a silica ETS. Cal/OSHA is now tasked with preparing another emergency temporary standard. Cal/OSHA appeared prepared to hold its first advisory committee meeting in August and indicated that it has already been working on language for the ETS. It estimated that it would take approximately three to four months to have a draft proposal. Since the ETS would only be in effect for 12 months, we can expect the silica ETS to pave the way for permanent rulemaking.

The Board is not the only state body concerned with silica, this vote comes on the heels of a Los Angeles County Board of Supervisors vote to consider a ban on the sale, fabrication, and installation of silica fabricated stone in the County.

Workplace Violence

The California Legislature and Cal/OSHA are currently in a race to finalize parallel workplace violence prevention rules for general industry.

Five years after releasing the first draft, and multiple public comment periods later, Cal/OSHA's regulation on Workplace Violence Prevention in General Industry (WPV Standard) finally appears to be nearing the last stages of the rulemaking process. In a surprising move, the California Legislature is now also close to potentially passing its own, more expansive, Workplace Violence Prevention Bill (SB 553). Given that many employers have already been preparing to implement the Cal/OSHA regulation, this development leaves many concerned that they will need to quickly change course and prepare to implement the more onerous law.

Cal/OSHA first convened an advisory meeting on the Workplace Violence Standard in January of 2017, releasing its initial draft the following year. Since then, Cal/OSHA has released two additional drafts, most recently in May of 2022. Currently, the draft requires employers to:

1. Establish, implement, and maintain an effective workplace violence prevention plan;
2. Record information about every workplace violence incident in violent incident log;
3. Provide training to employees on general awareness and, under some circumstances, training on specific workplace violence hazards; and
4. Maintain training records for one year and violent incident logs for five years, among other various recordkeeping requirements.

This current version comes after years of input from stakeholders to help finalize an operational standard. Specifically, while the current draft of the standard applies to all California employers not subject to the current Cal/OSHA Violence Prevention in Health Care standard (8 CCR 3342), it does include carve outs to certain provisions if an employer has not had a violent incident in the past five years.

Despite the years of work from Cal/OSHA and stakeholders, SB 553 was introduced earlier this year and passed in the California Senate on May 31, 2023. This move by the Legislature appears to be spurred by frustration with the speed of the Cal/OSHA rulemaking process as well as a desire to require more extensive requirements that mirror the current Health Care standard (8 CCR 3342).

SB 553 opponents are concerned that a general industry standard that tracks the Health Care standard is misplaced given that the health care industry tends to have higher workplace violence rates than most general industry employers. While both rules have many similar programmatic elements, SB 533 includes more expansive and prescriptive requirements for environmental risk factors that must be included in assessment procedures, corrective measures, and post incident response. Further, it also includes retail-specific provisions on shoplifter training and a prohibition on requiring workers to confront suspected active shoplifters.

During last week's Standards Board meeting, Cal/OSHA did not volunteer any update on Workplace Violence.

When asked about it, Cal/OSHA said it is working on it and has no update. When pressed further on the possible hurdles to completing the next draft, Cal/OSHA acknowledged that workplace violence is a more difficult hazard to address because it can be random and unpredictable.

With the California Legislative session coming to a close at the end of September, we expect to have a further update on SB 553 in the coming weeks.

Indoor Heat Illness

The proposed Indoor Heat Standard, which has been in the works since early 2017, continues working its way through the formal rulemaking process. Following the notice of proposed rulemaking in March of 2023, the initial 45-day comment period closed in May of 2023. At last week's Standards Board meeting, Cal/OSHA indicated that we can expect the next draft to be issued for the 15-day comment period soon.

The Indoor Heat Standard is expected to have requirements including provision of water, access to cool-down areas, assessment and control measures, emergency response procedures, close observation during acclimatization, training and a heat illness prevention plan. It remains to be seen whether Cal/OSHA will make any changes to the temperature at which the standard is triggered (currently 82 degrees for most requirements and 87 degrees for select requirements), following extensive public comment at the May Standards Board meeting.

We will stay tuned for the 15-day notice and provide a further update on the proposed regulation when the next draft is issued.

Lead

In March, the Cal/OSHA Standards Board published proposed revisions to California's standards on lead in both construction and general industry. Cal/OSHA stated the catalyst for these proposed revisions was that existing requirements are based on more than 40-year-old lead toxicity information and medical and epidemiological data. Recommendations from the California Department of Public Health also spurred this latest rulemaking.

Currently, the permissible exposure limit (PEL) for lead is 50 micrograms per cubic meter of air ($\mu\text{g}/\text{M}^3$), as an eight-hour time-weighted average, with an action level of 30 $\mu\text{g}/\text{M}^3$.

The proposal lowers the PEL to 10 $\mu\text{g}/\text{M}^3$, with an action level of 2 $\mu\text{g}/\text{M}^3$ for construction and general industry.

After the 45-day comment period and the April 20th public hearing, Cal/OSHA released a revised draft of the lead standards. With public comment on the revised drafts closing on July 24, 2023, there continues to be a push from stakeholders for more revisions to address major concerns in the proposals. We will continue to monitor any changes and provide a further update.

COVID-19 Outbreak Definition

Finally, last month, the California Department of Public Health (CDPH) changed the definition of outbreak for non-healthcare settings to be *at least three COVID-19 cases during a 7-day period* (as opposed to a 14-day period). Since the definition of outbreak under the COVID-19 Prevention Non-Emergency Regulations track the

CDPH definition, this new definition applies to employers covered by the non-emergency regulations.

Cal/OSHA's FAQs on the COVID-19 non-emergency regulations were also updated to clarify that "[e]ffective June 23, 2023, CDPH has adopted the following definition of 'outbreak,' which now applies to the COVID-19 Prevention regulations: at least three COVID-19 cases within an exposed group during a seven-day period. The definition of 'outbreak' will change if CDPH again changes its definition in a regulation or order."

This shorter time period does not alter the requirements once a workplace is in an outbreak status. The outbreak provisions will still apply until there are one or fewer new COVID-19 cases detected in the exposed group for a *14-day period*.

In addition, a major outbreak remains triggered if there are 20 or more employee COVID-19 cases in an exposed group, who visited the worksite during their infectious period within a 30-day period.

Takeaways

With the breadth of Cal/OSHA's rulemaking efforts, most employers stand to be impacted by at least one new standard. Now is a good time to assess whether new or updated policies/procedures are needed to comply with the anticipated regulations. In addition, employers can update their COVID-19 Prevention Plan/procedures to account for the new definition of outbreak.

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