DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

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California's Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers California's programs ensuring the safety and health of government employees at the state and local levels.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140-49. It is approved and monitored by, and receives some funding from, the federal OSHA. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety orders which affect California government employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of two members from management, two from labor, one from the field of occupational health, one from occupational safety, and one from the general public.

The duty to investigate and enforce the safety and health orders rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil and criminal penalties for serious, willful, and repeated violations. In addition to making routine investigations, DOSH is required by law to investigate employee complaints and any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.

The Cal-OSHA Consultation Service provides on-site health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

The Appeals Board adjudicates disputes arising out of the enforcement of Cal-OSHA's standards.

MAJOR PROJECTS:

Hearing on Proposed Special Access Lift Regulations. On June 21, OSB held a public hearing on proposed revisions and additions to its Elevator Safety Orders in Titles 8 and 24 of the CCR; these regulatory changes would essentially classify "special access lifts" (including inclined stairway lifts and inclined/vertical wheelchair lifts) as elevators, making them subject to the inspection, issuance of permits, and inspection fee requirements as established for elevators. DOSH developed these regulations with the use of ASME/ANSI standards A17.1-1987 and A17.1a-1988, Part XX. Specifically, OSB proposes to amend existing sections 3000, 3001, and 3009, and add new Article 15.1 (sections 3094-3094.315) to Title 8 of the CCR; and incorporate those changes into the State Elevator Safety Regulations in section 7-3000 *et seq.* in Title 24 of the CCR. The revised regulations would apply to all special lifts installed to provide access for persons unable to use stairs in locations under the jurisdiction of DOSH.

Several aspects of the proposed regulations generated some controversy. Numerous witnesses commenting at the public hearing objected to two exceptions in the proposed regulations which would essentially "grandfather in" existing special access lifts for which a variance was granted before the effective date of the new article, existing wheelchair lifts having a rise of not more than five feet, and existing stairway chairlifts that have been installed (or installation was begun) before the effective date of the new article. Others objected to the proposed language of new sections 3094.1-.5, which would require that all special access lifts subject to the new regulations be equipped with lockable key controls. Although the intent of this section is to prevent unauthorized persons (that is, persons able to use stairs) from using the special access lift, this requirement would impose upon the disabled user the obligation to locate the holder of the key in order to gain access to the lift and the building in question. Several witnesses stated that this is an overly burdensome requirement which precludes a building from being "barrier free." Finally, a representative from the Office of the State Architect stated that the proposed regulations do not conform with the most recent national standards on this issue; this statement was echoed by a representative from the Architectural Access Committee for the California Association of the Physically Handicapped, who stated that his organization would probably sue to invalidate these regulations if they are adopted.

In response to the public testimony, OSB Chair Mary-Lou Smith stated that in developing the language of these proposed regulations, DOSH had worked with an advisory committee which included representatives from the Office of the State Architect, the Building Standards Commission, the Department of Rehabilitation, and several users of special access lifts. She stated that the Board welcomes public comment from all interested parties, and referred the proposed regulations back to the Division with instructions to work with all those who commented at the hearing in revising the regulations.

VDT Standards Still At Issue. In spite of recommendations by its own Ad Hoc Expert Advisory Committee to adopt exposure standards for video display terminals (VDTs) in the workplace, OSB refused to adopt them at its June 1989 meeting, and has subsequently refused to reconsider its decision in spite of public and legislative pressure. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 152; Vol. 10, No. 1 (Winter 1990) p. 115, and Vol. 9, No. 4 (Fall 1989) p. 102 for background information.) However, it continues to receive complaints from workers and has been forced to regulate some workplace VDTs.

In June, Cal-OSHA settled its case against the *Fresno Bee*, whose newsroom employee union filed a complaint with Cal-OSHA after 33 of the *Bee's* 100 Newspaper Guild members suffered repetitive eye strain injuries. Because the *Bee* agreed to install screens on VDTs to cut down on glare, VDTs which swivel, new office furniture with proper back

support, and training classes on safe VDT operation, Cal-OSHA agreed to withdraw its order issued against the *Bee* last September (see CRLR Vol. 9, No. 4 (Fall 1989) p. 115 for details), and the *Bee* agreed to withdraw its appeal of that order.

On July 16, Cal-OSHA ordered the San Diego Union-Tribune Publishing Company (U-T) to improve conditions for its reporters, editors, and other workers who use VDTs. The order requires U-T to allow VDT employees at least a five-minute break for every hour of continuous typing on a VDT; ensure that the height of VDT keyboards and screens can be adjusted; and maintain a committee to hear concerns about VDT-related injuries and to document its program for training employees on the terminals. U-T appealed Cal-OSHA's order; the Appeals Board expects to hear the appeal in January.

At a time when VDT injuries are on the rise, Cal-OSHA continues to study the problem (as it has for three years). The latest legislative attempt to require Cal-OSHA to adopt VDT exposure standards—AB 955 (Hayden)—was vetoed by Governor Deukmejian on September 13 (*see infra* LEGISLATION). In his veto message, the Governor noted that a law requiring employers to comply with ANSI's design and ergonomic standards for workplace VDTs "is undesirable. A law mandating standards will eliminate employers' flexibility to address with their employees the ergonomics of VDT usage in a manner most appropriate and cost- effective for their individual workplaces."

Asbestos Regulations. At its April 19 business meeting, OSB adopted its emergency revisions to section 5208 and its addition of new sections 1529 and 5208.1, Title 8 of the CCR, as permanent regulations, and submitted them to the Office of Administrative Law (OAL) on April 20. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 152; Vol. 10, No. 1 (Winter 1990) p. 115; and Vol. 9, No. 4 (Fall 1989) p. 101 for background information.) On May 21, OAL disapproved the proposed regulatory action on grounds it failed to satisfy the clarity, necessity, and consistency standards of Government Code section 11349.1, and because technical requirements of the Administrative Procedure Act were not met.

At its September 20 meeting, OSB readopted the asbestos regulations with the required technical changes and resubmitted them to OAL. Also at that meeting, OSB was forced to readopt the emergency regulations once again, since they were scheduled to expire on October 13.

Regulatory Change to Construction Safety Orders. At its July meeting, OSB held a public hearing on a proposed amendment to section 1604.12, Title 8 of the CCR. Section 1604.12 currently pertains to the location and guarding of construction personnel hoist (elevator) counterweights and pit areas, and addresses specific requirements such as location of counterweights, counterweight pit guards (including design), and construction and location of guards. The proposed revision would add a new subsection (d) to section 1604.12, to require employers to keep entryway doors locked for the purpose of controlling or securing the counterweight pit area from unauthorized employee access. This proposed revision, which is the result of Petition No. 216 submitted by Los Angeles Deputy District Attorney Fred Macksoud, would prevent persons from entering an extremely hazardous location where they could be struck and seriously injured or killed by a descending counterweight.

Staff received only one public comment on the proposed regulatory change; at this writing, OSB has not yet adopted the amendment.

Implementation of SB 198 (Greene). At its August 16 meeting, OSB held a public hearing on several proposed amendments to Title 8, section 1509(a) of the Construction Safety Orders, and section 3203 of the General Industry Safety Orders, to implement SB 198 (B. Greene) (Chapter 1369, Statutes of 1989). (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 152; Vol. 10, No. 1 (Winter 1990) p. 115; and Vol. 9, No. 4 (Fall 1989) p. 102 for background information.) SB 198 requires OSB to adopt standards requiring every employer to establish, implement, and maintain an effective injury prevention program with specified elements, including substantial compliance criteria for use in evaluating an employer's injury prevention program. Section 1509(a) would be retitled as "Injury and Illness Prevention Program" (IIPP), and would be amended to require employers to comply with requirements for injury and illness prevention programs contained in section 3203 of the General Industry Safety Orders.

Revised section 3203 would require employers to establish, implement, and maintain a written IIPP as mandated by Labor Code section 6401.7. The regulation will provide specific criteria by which to evaluate the program; requires identification of the person responsible for implementing the program; and identification of any system for communicating with employees on matters concerning safety and health, identifying and evaluating workplace hazards, scheduled inspections, procedures for injury/illness investigations, hazard mitigation, employee training, recordkeeping, and—where used—criteria for a labor/management safety committee.

The Board received numerous written and oral comments on its proposed regulations, including a suggestion that the Board delay implementation of the regulations for at least six months after their adoption, to give employers time to develop and complete their programs. Some comments generated lengthy discussion and debate: for example, several witnesses spoke in favor of exempting employers who have fewer than ten employees at a particular jobsite from the new requirements; adding language clarifying the duties and qualifications of the employer/agent responsible for implementing the IIPP; adding criteria for determining compliance with the regulatory requirements; and relaxing many of the mandatory requirements of the proposed regulations in favor of allowing employers to exercise discretion in deciding what is necessary in order to comply with the statute.

At this writing, staff is attempting to analyze and incorporate some of the comments into the language of the proposed regulations; OSB will take up this matter at a future meeting.

Seat Belt Requirement Debated. Also at its August meeting, OSB received comments on its proposal to amend Title 8, section 1596 of the Construction Safety Orders, and section 6309(h) of the Logging and Sawmill Safety Orders. In part, these amendments would make the use of seat belts optional in certain types of equipment outfitted with rollover protective structures (ROPS) under certain circumstances. Most witnesses expressed strong opposition to the "seat-belts-optional" provision; they noted that in accidents involving large construction equipment, injury occurs more often due to failure to wear a seat belt rather than to other occurrences used as "excuses" for some industries' desires to make seat belt use optional. Following the hearing, OSB Executive Officer Steven Jablonsky stated that the "seat- belts-optional" provision of the proposed regulations would be deleted, and the proposals would be released for a 15-day comment period.

Roof Perimeter Protection for Employees. At its September meeting, OSB received public comments on its proposal to amend section 3212(d), Title 8 of the CCR, and section 1711(h), Title

24 of the CCR, to require that guardrail protection be provided for employees working within six feet of the edge of a roof and when employees are required to approach within six feet of the edge of the roof.

Section 3212(d) currently requires guardrails on roofs in locations where there is a routine need for employees to approach within six feet of the roof's edge. The subsection also provides that when intermittent work is being done, safety belts and life lines or equivalent fall protection may be used in lieu of guardrails. The proposed amendment would define "routine need" and "intermittent work," specify where guardrails are to be located, require fall protection systems to be of the approved type, require the fall protection systems to be attached to roof tie-backs, and provide a safe access to the roof tie-backs. In addition, the amendment is intended to clarify when permanent fall protection is to be included in the design of a building.

OSB had received two written comments, and no oral comments were presented at the hearing. At this writing, OSB has not yet adopted the proposed amendments.

Occupational Exposure to Hazardous Chemicals in Laboratories. Also in September, OSB held a public hearing on its proposal to add new section 5191 to Title 8 of the CCR, to incorporate the provisions of a new federal regulation (29 C.F.R. Part 1910.1450) relating to control of occupational exposures to hazardous chemicals in laboratories. The federal regulation applies to all non-production types of laboratories and sets forth a comprehensive hazard communication standard, requiring a written chemical hygiene plan (CHP), employee information and training, medical consultations and exams, hazard identification, use of respirators, and recordkeeping. After hearing from a number witnesses, the Board decided to reopen the comment period until October 5 in order to receive further public reaction.

Update on Regulatory Changes. On July 11, OAL disapproved OSB's amendments to sections 3000, 3001, and 3009, and its repeal of Appendix 8, Title 8 of the CCR, which would have revised the requirements for elevator inspections and for obtaining a permit to operate an elevator. This proposed regulatory action would also adopt definitions of the terms "full maintenance service contract" and "qualified elevator service company." (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 155-56 for background information.) OAL found that the rulemaking file failed to comply with the clarity, necessity, consistency, and nonduplication standards of Government Code section 11349.1; and that OSB failed to summarize all public comments made at a November 1989 public hearing on the proposed rule changes. OSB plans to modify the rulemaking file on this regulatory action, readopt the regulatory changes, and resubmit the file to OAL.

On July 25, OAL disapproved OSB's adoption of section 5004, amendment of section 1718, and repeal of section 4999(g), Title 8 of the CCR, which would restrict persons from riding on loads, hooks, or slings of derricks, hoists, or crates, and regulate personnel platforms for cranes and derricks. This regulatory action was adopted by OSB at its June 21 meeting, following a public hearing on the proposed changes at its October 1989 meeting. OAL found that the rulemaking file failed to comply with the clarity section of Government Code section 11349.1, and that OSB failed to supply several required documents. OSB plans to resubmit this proposal.

On July 26, OAL partially disapproved the Board's amendment to section 5155, Title 8 of the CCR, which sets new limits on employee exposure to certain airborne contaminants in line with federal OSHA standards adopted in March 1989. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 116-17 for background information.) OSB plans to resubmit this action to OAL.

At OSB's July 19 meeting, the Board decided to send its proposed amendment to section 3657, Title 8 of the CCR (General Industry Safety Orders), back to staff for clarification of confusing language. This proposed amendment, which was the subject of a public hearing at OSB's April 1990 meeting, would require that all industrial trucks used to hoist employees be equipped with a means to prevent the raised platform from lowering at a rate in excess of 135 feet per minute, in case of a hydraulic system failure. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 155 for background information.) If staff's changes to the proposed language are substantive, the regulatory action will have to be entirely renoticed; if the changes are nonsubstantive, only a 15-day comment period is required.

At its September 20 meeting, OSB adopted proposed amendments to sections 1504(a), 1698(f), 1715, 1717, 1720, 1721, 1722, and 1722.1, Title 8 of the CCR (Concrete and Masonry Construction), which were the subject of a March 15 public hearing. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 155 for background information on these changes.) At this writing, OAL is considering the regulatory file on these changes.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 152-54:

AB 2249 (Friedman), as amended August 24, provides that a corporation or person who is a manager with respect to a product, facility, equipment, process, place of employment, or business practice, is guilty of a misdemeanor or felony if the corporation or manager has actual knowledge of a serious concealed danger that is subject to the regulatory authority of an appropriate agency and is associated with that product or a component of that product or business practice and knowingly fails to inform DOSH and warn its affected employees. This bill was signed by the Governor on September 30 (Chapter 1616, Statutes of 1990).

AB 3672 (Elder), as amended August 28, requires OSB, by no later than July 1, 1992, to adopt specified process safety management standards for prescribed refineries, chemical plants, and other manufacturing facilities; and requires certain employers to establish and implement an emergency action plan unless a prescribed business plan for emergency response meets the standards established by OSB. This bill was signed by the Governor on September 30 (Chapter 1632, Statutes of 1990).

AB 3826 (Hayden), as amended August 16, requires DOSH to establish a safety inspection program for all tower cranes, employ designated safety engineers trained to inspect tower cranes, and maintain sufficient personnel to conduct specified inspections; prohibits a tower crane from being operated at a worksite unless an employer obtains a permit from DOSH; requires DOSH to conduct an investigation for purposes of issuing a permit, to set a fee to be charged for those permits in an amount sufficient to cover the cost of funding, to promulgate specified regulations for the certification of certain tower cranes, and to assess penalties against the certificating agency, as defined, if certain conditions are met; establishes specific criteria for licensure as a certifier; and permits DOSH to suspend or revoke the permits of crane employers for a specified period in certain circumstances. This bill was signed by the Governor on September 18 (Chapter 1033, Statutes of 1990).

AB 3931 (Hayden), as amended August 27, would have required garment manufacturers to have minimum knowledge of OSHA regulations regarding occupational health and safety. This bill

passed both the Senate and the Assembly, but died before the Assembly concurred in Senate amendments.

AB 4006 (Cannella), which would have increased by 50% the civil penalties imposed on persons convicted of violating certain occupational safety and health provisions, was vetoed by the Governor on August 27.

AB 4259 (Epple) would have exempted county agricultural commissioners and their employees from existing state law which imposes an obligation on employers to furnish employees with information regarding hazardous substances used in the workplace. This bill was vetoed by the Governor on September 26.

SB 732 (Beverly), as amended August 27, provides for the certification of asbestos consultants and site surveillance technicians who meet qualifications specified by this bill and DOSH, including no financial or proprietary interest in an asbestos abatement contractor when they work on the same project within the same state; requires that state employees who perform asbestos consulting or site surveillance shall be certified; requires DOSH to propose, by July 1, 1991, additional regulations for the certification of asbestos consultants and site surveillance technicians for consideration and action by OSB; and requires OSB to adopt regulations by January 1, 1992. This bill was signed by the Governor on September 22 (Chapter 1255, Statutes of 1990).

AB 2537 (Burton), as amended August 14, would have created the Crane Operators Licensing Board consisting of three appointed members, and would have made it a misdemeanor for any employer to require any person to operate a crane without having a license issued by the board, with certain exceptions. This bill was vetoed by the Governor on September 13.

AB 2825 (Floyd), which would have required the Governor to appoint and the Senate to approve all new OSB members, was vetoed by the Governor on July 20.

AB 161 (Floyd), which, as amended June 25, would have imposed specific penalties on governmental entities for certain violations of occupational safety and health standards, was vetoed by the Governor on September 27.

AB 955 (Hayden, Bates), as amended June 14, would have required that on or after July 1, 1992, every computer video display terminal and peripheral equipment used in any place of employment be in conformance with standards adopted by the American National Standards Institute. This bill was vetoed by the Governor on September 13.

AB 1469 (Margolin), as amended June 25, would have required OSB to revise the CCR to include certain carcinogens or industrial processes, unless a substance or industrial process is covered by a separate comparable standard, or the OSB exempts a substance which presents no substantial threat to employee health pursuant to a specified provision. This bill was vetoed by the Governor on September 27.

The following bills died in committee: *AB 4263 (Johnson)*, which would have required DOSH to license operators of certain cranes; *SB 461 (Greene, B.)*, which would have modified existing law which requires the Industrial Welfare Commission to ascertain the wages, hours and conditions of labor and employment in various occupations, and consult with OSB before adopting new rules, regulations, or policies, to determine those areas and subject matters where the respective jurisdiction overlaps; *AB 138 (Floyd)*, which would have required immediate DOSH investigation of employee complaints of imminent hazards and serious accidents; *SB 478 (Greene, B.)*, which would have created a Crane Operators Licensing Board and would have made it a misdemeanor for any employer to require any person to operate a crane without a license; *AB 167 (Floyd)*, which would have provided that only qualified electrical workers, as defined, shall work on energized conductors or equipment connected to energized high voltage systems; and *SB 356 (Petris)*, which would have enacted the Agricultural Hazard Communication Act.

LITIGATION:

On July 12, in *California Labor Federation, et al. v. Cal- OSHA*, No. A048574, a panel of the First District Court of Appeal reversed OSB's July 1989 decision and unanimously held that the Safe Drinking Water and Toxics Enforcement Act of 1986 (Proposition 65) is a state law governing occupational safety and health pursuant to the State Occupational Safety and Health Plan Initiative (Proposition 97, passed in 1988). Thus, the court ordered Cal-OSHA to incorporate into its California State Plan for Occupational Safety and Health (State Plan) standards which provide for the protections of Proposition 65. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 154; Vol. 10, No. 1 (Winter 1990) p. 115; and Vol. 9, No. 4 (Fall 1989) pp. 101-02 for extensive background information on this case.)

In this suit brought by a coalition of labor, environmental, and public interest groups challenging OSB's determination (and the Deukmejian administration's persistent refusal to implement Proposition 65), the court held that "Proposition 65 requires that warnings be given to individuals. All employees are individuals and thus are entitled to Proposition 65 warnings in the workplace absent an exemption in [Proposition 65]....We cannot accept the premise that Proposition 65 is not a state law governing occupational safety and health within the meaning of Proposition 97 simply because it also applies outside the workplace and exempts certain employers from its requirements." The court also held that Cal-OSHA's State Plan is not consistent with Proposition 65, because it does not include all the protections of the initiative.

FUTURE MEETINGS:

January 24 in Los Angeles.
February 21 in San Francisco.

DEPARTMENT OF FOOD AND AGRICULTURE

DEPARTMENT OF FOOD AND AGRICULTURE
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The California Department of Food and Agriculture (CDFA) promotes and protects California's agriculture and executes the provisions of Food and Agricultural Code section 101 *et seq.*, which provides for CDFA's organization, authorizes it to expend available monies, and prescribes various powers and duties. The legislature initially created the Department in 1880 to study "diseases of the vine." Today the Department's functions are numerous and complex. Among other things, CDFA is authorized to adopt regulations to implement its enabling legislation; these regulations are codified in Chapters 1-7, Title 3,