



## DEPARTMENT OF INDUSTRIAL RELATIONS

### CAL-OSHA

Director: Ronald T. Rinaldi  
(916) 322-3640

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.

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 (DOSHS). DOSHS 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, DOSHS 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:

*Implementation of Proposition 97.* As of September 30, federal OSHA's private sector enforcement was totally phased out, and Cal-OSHA regained full control over the enforcement of private sector worker safety standards in California. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 80 and Vol. 8, No. 4 (Fall 1988) p. 91 for background information.) Due to the dismantling of Cal-OSHA's safety and health regulations in 1987 and the need to reinstate those standards at a level at least as effective as federal OSHA standards, the Board has endeavored to speed up the rulemaking process in an attempt to provide immediate protection to workers from unsafe and hazardous work conditions. This has been done primarily through the Board's use of emergency rulemaking pursuant to Government Code section 11346.1. Since emergency regulations are only effective for 120 days from the date of filing with the Secretary of State, the Board typically has formalized the regulation by adopting the regulation through conventional rulemaking procedures during the 120-day period.

*Emergency Asbestos Regulations.* At OSB's June 22 business meeting, the Board adopted emergency revisions to Title 8, Article 4, Section 1529 and Article 110, Section 5208 of the General Industry Safety Orders. The goal of this emergency rulemaking was to bring Cal-OSHA's asbestos standards in line with the present asbestos federal standards. Among other things, it changed the asbestos permissible exposure limit (PEL) from 2 fibers to 0.2 fibers per cubic centimeter of air

and established a one-fiber-per-thirty-minute excursion limit. In addition, the revision establishes new sampling and analytical procedures and asbestos consultant certification requirements. These emergency regulations were approved by the Office of Administrative Law (OAL) and became effective on July 10. The Board then proposed permanent adoption of the emergency regulations. Extensive public comment regarding these proposed regulations was considered by the Board during its public hearing held on August 24; the Board deferred decision on the permanent regulations until a later meeting.

*Proposition 65 Rulemaking Petition Denied.* At its June 22 business meeting, OSB entertained Petition No. 268 brought by the California Labor Federation, AFL-CIO; Natural Resources Defense Council; Environmental Defense Fund; Public Citizen, Inc.; Campaign California; and Bernardo Huerta. The petitioners requested that OSB amend its regulations to assure that the California State Plan for Occupational Safety and Health (State Plan) includes and is consistent with the "clear and reasonable warning" requirement and other pertinent provisions of Proposition 65, the Safe Drinking Water and Toxics Enforcement Act of 1986. In their petition, the groups argued that Labor Code section 50.7(a), as amended by Proposition 97 in November 1988, requires the incorporation of Proposition 65 and the regulations adopted by the Health and Welfare Agency to implement Proposition 65, because it provides that the State Plan must be consistent with state laws governing occupational safety and health.

In analyzing the petition, OSB staff concluded that—even though Proposition 97 does not mention Proposition 65—Proposition 65 can be construed as a "state law governing occupational safety and health," because its warning requirement applies specifically to employers with ten or more employees. On the issue of whether the current State Plan is consistent with the requirements of Proposition 65, staff concluded that Cal-OSHA's Hazard Communication Standard, which requires warnings regarding hazardous substances which exceed established levels and employee training regarding these hazards, generally replicates Proposition 65's warning requirements, with several notable exceptions in which Proposition 65 provides more stringent protections than does the State Plan. Staff concluded that a liberal interpretation of the word "consistent" in Labor Code section 50.7(a), as is



## REGULATORY AGENCY ACTION

required by the California Supreme Court, dictates that OSB grant the petition and amend its regulations to include the added protections of Proposition 65. Toward this end, staff recommended that OSB convene an ad hoc advisory committee to further study the petition and make recommendations on how best to incorporate the requirements of Proposition 65 into the State Plan.

OSB member David W. Smith expressed disagreement with petitioners and with staff's recommendation, arguing that Proposition 97 does not refer to Proposition 65; that Cal-OSHA's Hazard Communication Standard is consistent with Proposition 65; and that the approach advocated by petitioners and staff would soon require the Board to incorporate the requirements of other statutes and regulations which are tangentially related to occupational health and safety. The Board voted to reject staff's proposed petition decision, and instructed staff to prepare a new petition decision indicating that there is no inconsistency between Proposition 65 and the occupational safety and health standards for presentation to OSB at its July meeting.

At OSB's July meeting, Clifford Rechtschaffen of the Attorney General's Office addressed the Board and conveyed the Attorney General's opinion that Proposition 65 should be incorporated into the State Plan. He noted that the Health and Welfare Agency (the lead agency responsible for coordinating the statewide implementation of Proposition 65) has interpreted Proposition 65 provisions as applying to the workplace, and that the intent of Proposition 97 is to extend state jurisdiction over the workplace to the maximum extent possible. He opined that the Board's focus on whether its Hazard Communication Standard is an effective regulation avoids the issue that Proposition 65 is an existing state statute which must, under Labor Code section 50.7(a), be reconciled with the State Plan. In response to questioning by OSB members, Mr. Rechtschaffen noted that the position of the Attorney General's office on this issue might prevent it from defending Cal-OSHA should Cal-OSHA be sued on this matter. He urged OSB to reverse its decision on Petition No. 268. However, the Board adopted the amended petition decision prepared by staff, which concludes that Proposition 65 is not a law governing occupational safety and health, and that the Board's regulations in Title 8 are not inconsistent with Proposition 65.

*Proposed VDT Exposure Standards*

*Rejected.* At its June meeting, OSB considered the final report of the Ad Hoc Expert Advisory Committee on its study of visual display terminals (VDTs) to determine whether exposure standards are warranted. In response to three petitions, DOSH had convened the Ad Hoc Committee, which spent two years studying the potential adverse effects of VDTs on vision, musculoskeletal system, stress, reproduction, and effects of indoor environment. A majority of the committee had concluded that standards concerning the use of VDTs are necessary to protect workers from a variety of health problems.

After analyzing the committee's findings and recommendations, DOSH concurred with the committee that some problems need to be addressed, but had reservations about the need for specific VDT regulations. DOSH recommended that an ergonomics regulation be developed, which would include workstation design and flexibility as well as training; this regulation would apply to all workers, not just those working with VDTs. Further, the Division recommended training regulations to ensure appropriate worker training for effective use of flexible workstations, and asked to be kept apprised of new developments in the VDT issue which would warrant convening another advisory committee.

In spite of several public comments urging the Board to reject DOSH's evaluation and follow the recommendations of the Ad Hoc Expert Advisory Committee, OSB voted to accept the Division's report. DOSH will apprise the Board of any further developments on the VDT issue at OSB's February meeting.

### LEGISLATION:

*AB 161 (Floyd)* would impose specified penalties on governmental entities for certain violations of occupational safety and health standards. This bill is a two-year bill pending in the Senate Committee on Industrial Relations.

*AB 955 (Hayden, Bates)*, as amended July 19, would require that every computer video display terminal used in any place of employment be in conformance with American National Standards Institute standards. This is a two-year bill pending in the Senate Appropriations Committee.

The following is a status update on bills described in detail in CRLR Vol. 9, No. 3 (Summer 1989) at pages 93-94:

*SB 1180 (Royce)* requires DOSH to provide certain services by interagency agreement with Department of Health Services (DHS) or another public entity, by contract with a private sector labora-

tory, or by establishment of a laboratory within DOSH, or a combination thereof. This bill was signed by the Governor on September 6 (Chapter 299, Statutes of 1989).

*SB 1371 (Petris)* would have permitted any person to petition OSB to adopt a new occupational safety and health standard or modify an existing standard. This bill was vetoed by the Governor on September 16.

*SB 198 (B. Greene)*, as amended September 11, requires every employer to establish, implement, and maintain an effective written injury prevention program including specified elements, and to provide specified training of employees in general safe work practices. This bill also requires OSB to adopt standards setting forth the employer's duties with regard to the injury prevention program, including, among other things, requiring an employer and employee occupational health and safety committee with specified duties for specified size and types of employers. SB 198 prohibits an employer from discharging or discriminating against an employee for participating in an occupational health and safety committee. This bill was signed by the Governor on October 2 (Chapter 1369, Statutes of 1989).

*SB 1190 (Marks)*, as amended September 13, would have specified that each campus of the California State University system is an employer for purposes of classifying employers engaging in specified asbestos-related work who must register with DOSH and meet other specified criteria. This bill was vetoed by the Governor on October 1.

*AB 1564 (Connelly)*, as amended September 8, requires the owner of any building constructed prior to 1979, which is known to contain asbestos-containing construction materials, to provide employees with a summary of asbestos-related inspections. This bill was signed by the Governor on September 26 (Chapter 948, Statutes of 1989).

*AB 148 (Floyd)*, as amended September 6, would have required the owner of a public building to make an effort to determine the presence of asbestos, and would have permitted DOSH to apply for an injunction against an employer who does not have a valid asbestos registration. This bill was vetoed by the Governor on September 29.

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: *AB 138 (Floyd)*, which would require immediate DOSH investigation of employee complaints of imminent hazards and serious



accidents; *SB 478 (B. Greene)*, which would create the Crane Operators Licensing Board and require all crane operators to be licensed under penalty of misdemeanor; *AB 167 (Floyd)*, which, as amended July 12, would provide that only qualified electrical workers, as defined, shall work on energized conductors or equipment connected to energized high voltage systems; *SB 356 (Petris)*, which, as amended September 14, would enact the Agricultural Hazard Communication Act requiring the Director of Food and Agriculture, in cooperation with the Department of Industrial Relations, to adopt regulations setting forth an employer's duties towards its agricultural laborers and requiring the Director to enforce these regulations; *AB 1469 (Margolin)*, which would require OSB, within a specified period of time, to revise the CCR to include any carcinogen on the Governor's list of those chemicals known to cause cancer or reproductive toxicity, unless a substance 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; and *AB 750 (Roos)*, which would require OSB to adopt occupational safety and health standards concerning work involving contact with bodily fluids so as to protect the safety of health care workers.

#### LITIGATION:

On March 23, the California Supreme Court dismissed *Ixta, et al. v. Rinaldi*, No. C002805 (Third District Court of Appeal), the administration's appeal of the Third District's unanimous ruling that Governor Deukmejian exceeded his authority when he vetoed \$7 million in Cal-OSHA funding from the state budget. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 85 for background information.) The court dismissed the appeal on grounds of mootness; the passage of Proposition 97 in November 1988 restored Cal-OSHA's private sector enforcement program.

#### RECENT MEETINGS:

At its June 22 business meeting, OSB granted permanent variances to the following entities: Arechiga, Graham, and Fylke, Inc. from section 3000(d)(11), Title 8 (installation of a private residence elevator); Awdeh and Company from section 3292(f), Title 8 (forty-seven foot building without roof tie-backs); and University of California Regents from section 3000(c)(13), Title 8 (installation of a vertical wheelchair lift with vertical rise of nine feet, three inches).

During its July 27 public hearing, OSB considered public comments on a proposal by Associated General Contractors of California, Inc. (AGC) to amend section 1717(d) of the Construction Safety Orders to permit employees to work underneath formwork if other required safeguards are provided. At this writing, OSB has not yet voted on whether to approve the amendment.

During its July 27 business meeting, OSB granted permanent variances to the following entities: The Chimneys Condominiums Homeowners Association from sections 3021(a), 3035(a), 3036(a), 3038, and 3042(f) of the Elevator Safety Orders (installation of two private residence elevators in Carmel); Anomil Enterprises, Inc. from section 462(m)(3) of the Unfired Pressure Vessel Safety Orders (compressed air systems using plastic pipe); County of Santa Clara from sections 3040(b)(5), 3040(d)(5), and 3041(c)(1)(B)2(D)3 of the Elevator Safety Orders (three inmate elevators); Ocean Park Partnership from section 3000(c)(13) of the Elevator Safety Orders (installation of a vertical wheelchair ramp with a rise of nine feet, two inches); Building Management Services from section 3000(c)(13) (installation of a vertical wheelchair lift with a rise of eight feet, nine inches); Fred Arkenberg from section 3272(b) of

the General Safety Orders (car stacking equipment with less than six feet, eight inches clear head room for egress); and Delta Airlines, Inc. from section 3000(c)(13) of the Elevator Safety Orders (installation of an inclined wheelchair lift with a rise of fourteen feet).

During its August 24 business meeting, OSB granted permanent variances to the following entities: City of Fairfield from section 3000(c)(13) of the Elevator Safety Orders (installation of a vertical wheelchair lift with a rise of eight feet); Solano County from section 3040 of the Elevator Safety Orders (lockable covers installed over elevator emergency stop switches in jail); and Loyola Law School from section 3000(c)(13) of the Elevator Safety Orders (installation of a vertical wheelchair lift with a rise of six feet, six inches). Also during the August 24 business meeting, OSB granted a petition requesting a modification of section 3212(d) of the General Industry Safety Orders (Petition File No. 271) to require guardrails around roof-mounted equipment and roof access areas. The Board will now conduct formal rulemaking proceedings on the proposed regulatory change.

#### FUTURE MEETINGS:

To be announced.



## DEPARTMENT OF FOOD AND AGRICULTURE

#### DEPARTMENT OF FOOD AND AGRICULTURE

Director: Henry Voss  
(916) 445-7126

The Department of Food and Agriculture (CDFA) promotes and protects California's agriculture and executes the provisions of the Agriculture Code which provide for the Department's organization, authorize it to expend available monies and prescribe 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.

The Department works to improve the quality of the environment and farm community through regulation and control of pesticides and through the exclusion, control and eradication of pests harmful to the state's farms, forests,

and gardens. The Department also works to prevent fraud and deception in the marketing of agricultural products and commodities by assuring that everyone receives the true weight and measure of goods and services.

The Department collects information regarding agriculture, and issues, broadcasts and exhibits that information. This includes the conducting of surveys and investigations, and the maintenance of laboratories for the testing, examining and diagnosing of livestock and poultry diseases.

The executive office of the Department consists of the director and chief deputy director who are appointed by the Governor. The director, the executive officer in control of the Department, appoints two deputy directors. In addition to the director's general prescribed duties, he may also appoint committees