



VOLUME 3 | ISSUE 9



Cal-OSHA High Hazard Program

HOW DOES CAL-OSHA FOCUS ON YOUR COMPANY?

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As a business owner, you are aware Leavitt Pacific places your policy with an insurance broker who will adjust or modify your premium with what is known as an “Experience Modifier.” This Experience Modifier, otherwise known as the “ex-mod,” is used to adjust your premium cost based on your historical performance.

Example

EX-MOD OF 0.75

Base Premium	\$	100,000
Ex-Mod	*	0.75
Adjusted Premium	\$	75,000

EX-MOD OF 1.25

Base Premium	\$	100,000
Ex-Mod	*	1.25
Adjusted Premium	\$	125,000

Essentially, your premium is adjusted based on your company’s performance over the last three years compared to the average premium of similar businesses in the state.

Cal-OSHA's Old Tactic: Targeted Inspection & Consultation Fund Assessment

Cal-OSHA had a program called the Targeted Inspection & Consultation Fund Assessment. This was a program in which all companies with an ex-mod greater than 1.25—among other criteria—would receive a letter from Cal-OSHA telling them two things were going to be the consequence of high ex-mod determination.

- ▶ First, the company would be fined based on their payroll size.
- ▶ Second, the company would be STRONGLY encouraged to call Cal-OSHA Consultation and set up a visit with them so Consultation could help the company improve their safety effort.

The program was optional, although there were benefits to participating (primarily exemption from Enforcement inspections while they were working with Consultation). Typically, the wording of the letter was heavily biased to have companies participate.

This program was abolished in 2015 (as evidenced by the document from the California Dept. of Finance in Figure A on the right), but parts of this program were incorporated into another program in the Department of Industrial Relations family, namely the Cal-OSHA High Hazard program. The primary difference is there are no longer any specific fines based on payroll like before, but the program itself is much larger and more industry focused.

Figure A

Legal Title	
Cal-OSHA Targeted Inspection and Consultation Fund	
Legal Citation/Authority	
Chapter 28, Statutes of 2013 (SB 71) Section 34 Labor Code section 62.5 (d) (1)	
Fund Classification	Fund Classification
GAAP Basis Governmental/Special Revenue Funds	Local Basis Governmental/General fund Special Accounts
Purpose	
To provide funding for: <ol style="list-style-type: none"> The Cal-OSHA Targeted Inspection Program as provided in Labor Code section 6314.1, The Cal-OSHA Targeted Consultation Program as provided in Labor Code section 6354 (a), and Certifying loss control consultation services of workers' compensation insurers pursuant to Insurance Code section 11745. 	
Administering Agency/Organization Code	
Department of Industrial Relations (Org 7350)	
Major Revenue Source	
Assessments and fees from high hazard employers.	
Disposition of Fund (upon abolishment)	
Pursuant to Labor Code section 62.5 (d) (2), any moneys, assets, liabilities, revenues, expenditures, and encumbrances less than \$5 million shall be transferred to the Occupational Safety and Health Fund (Fund 3121).	
Appropriation Authority	
Upon appropriation by the Legislature.	
State Appropriations Limit	
Excluded— Revenues in this fund are not proceeds of taxes, however, when transferred, may become proceeds of taxes. These revenues are used to regulate the activities engaged in by the payers.	
Comments/Historical Information	
Chapter 121, Statutes of 1993 created this fund. Chapter 28, Statutes of 2013: <ul style="list-style-type: none"> Section 35 renumbered the Labor Code that created this fund from Section 62.7 (a) to 62.5 (d) (1) effective June 27, 2013. Section 34 repealed this fund January 1, 2015. Section 35 added Labor Code section 62.8 effective June 27, 2013 that appropriated a \$5 million loan repayable to Fund 3121 by June 30, 2015. 	
Abolished June 2015	FUND 0096a

Abolished June 2015

Cal-OSHA's New Tactic: High Hazard Target Lists

Cal-OSHA's new tactic has been putting companies on different "High Hazard Targeted" focus lists that the area Division Managers use to prioritize inspections. The following are the different ways Cal-OSHA now divides California businesses:

PRIORITIZING BY SPECIFIC ESTABLISHMENT:

- a. Establishments are identified based on quite a few different models. When prioritizing by specific establishment, they select individual establishments by:
 - i. **Identifying employers within the prioritized industry groups with high ex-mods (greater than 125%).**
 - ii. Identifying physical sites of these employers in California and prioritizing based on ex-mod rates.
 - iii. Assembling target list and allocating portions of this list to district and regional offices.
- b. This "High Hazard Target" list will be cycled through using the typical Federal fiscal year, and the list will be split up to fit the logical geographic locations of the Cal-OSHA district offices.
- c. There are ways of receiving an exemption or a deferral of being on the list. They are as follows:
 - i. The establishment received VPP (Voluntary Protection Program) status. This exemption lasts three years.
 - ii. The establishment is current in the SHARP (Safety and Health Achievement Recognition Program). This exemption lasts two years after initial certification.
 - iii. **The establishment has received a "full service" consultation recently or has scheduled or is in the process of a "full service" consultation. This is the letter clients might receive if their ex-mod is over 125%.**
 - iv. The establishment has received a comprehensive enforcement inspection within the last three years. A programmed inspection will be deferred for three years from the previous opening conference.
 - v. The establishment is currently undergoing an unprogrammed inspection. A programmed inspection will be postponed until after the closing conference.

Note

This information was taken from the Cal-OSHA Policies and Procedures Manual – C-19
<https://www.dir.ca.gov/doshpol/P&PC-19.pdf>

**This information is current as of the writing of this article.*

Figure B

HIGH HAZARD CONSULTATION PROGRAM, 2013-2020



As you can see, the exemption criteria outlined above in (1)(c)(iii) is where most employers become aware of their placement on the High Hazard List. The notification letter regarding the company's high ex-mod sent from Cal-OSHA's Consultation division will usually read like the company must schedule a Consultation visit.

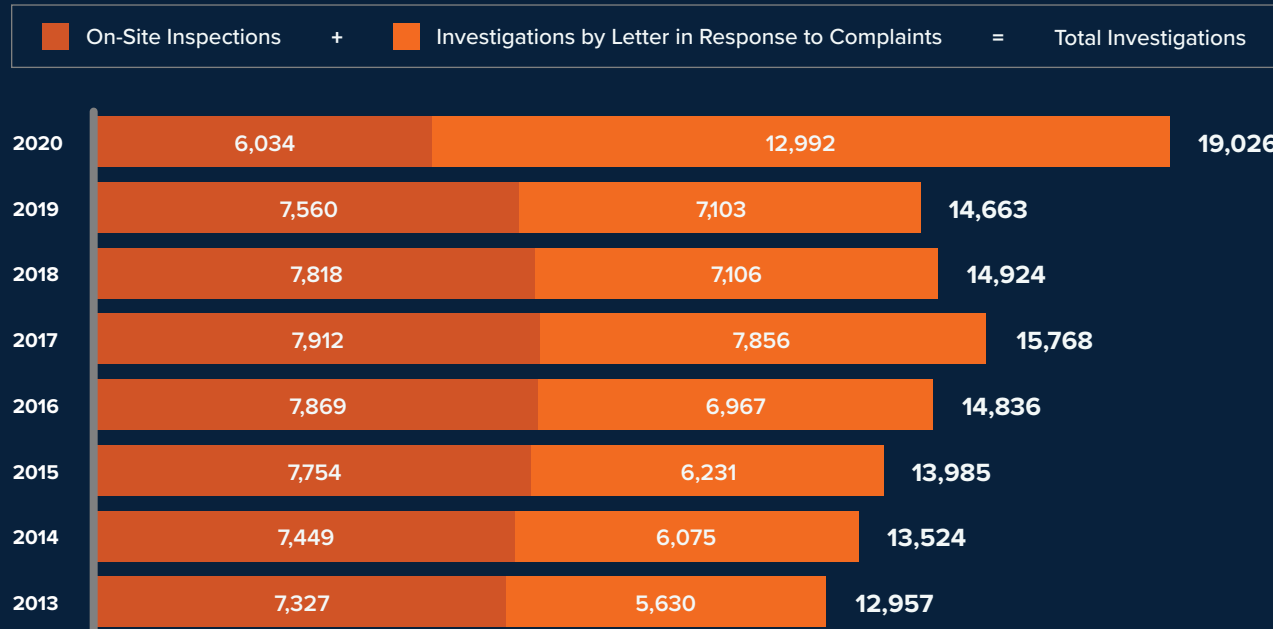
In reality, the process is optional for the company, and they can opt to forgo the Consultation visit. Politely declining Cal-OSHA's offer of Consultation assistance simply results in the company being placed on the Cal-OSHA High Hazard List. This means you will be added to the list of employers to be inspected in the State's fiscal year. Using the information from Figures B and C, in 2019, there were a little more than 1,500 employers on the list while Cal-OSHA conducted almost 15,000 inspections. The question is, will they get to you?

In deciding whether to take advantage of Cal-OSHA's offer of Consultation assistance, there are a couple of self-examination topics you should consider.

- ▶ If a company has quite a few issues and is struggling to comply with Cal-OSHA regulations, then a visit from Consultation might be a good choice (unless, of course, the company is working with Leavitt Pacific Safety Services).
- ▶ If a company is doing very well with Cal-OSHA compliance, and there are no real concerns, then politely declining the offer by ignoring the letter and choosing to be on the list might be a better choice. (One example might be a company has a small payroll and one incident has pushed the ex-mod over the limit.)

Figure C

DOSH ENFORCEMENT ACTIVITIES, 2013-2020



Important Note

One issue to keep in mind regarding Cal-OSHA Compliance is that they take great pride in promoting their policy where they have no interaction with the Enforcement side of the house, which is true. However, during the Consultation inspection, if there is a change they recommend and say must be made, the company must comply and make the change. If the company chooses not to or disagrees with the recommendation, Consultation will notify Enforcement and the company could be cited as a way to force the company to comply.

One of the decision points is there are more establishments on the focus lists than there are inspectors to conduct the inspections. Therefore, the company's chances of being inspected are low, which gives them time to fix the issues or let older injuries fall off their record, which will obviously lower the company's ex-mod. In any event, the more information we can provide to the client, the more informed decision they can make if they receive a letter.

I hope this clarifies things for you, and helps you better understand how Cal-OSHA transitioned from the Targeted Inspection & Consultation Fund Assessment to their current program, simply called the Cal-OSHA High Hazard program. I know it is a question about a very small part of Cal-OSHA's program, but this program might be the only interaction many of our clients have with Cal-OSHA, and we want to make sure you have as much information possible to make the most informed decision you can.

Resources

<http://www.dwc.ca.gov/dosh/high-hazard-unit.html>

The High Hazard Unit inspects employers with the highest incidence of preventable occupational injuries and illnesses and workers compensation losses. Employers may also be selected and targeted by utilizing data sources such as, but not limited to, workers compensation loss data, history of Cal/ OSHA citations, and other data sources as provided in Labor Code section 6314.1

<https://law.justia.com/codes/california/2011/lab/division-5/6300-6332/6314.1/>

All targeted inspections shall be conducted on a priority basis, targeting the worst employers first.