



What is Cal-OSHA and How Is It Structured

Written by Alex Miller, ARM, OHST

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When we are talking about safety in California, we cannot discuss it without talking about OSHA in general and how Cal-OSHA sprouted from the Federal Occupational Safety and Health Administration (OSHA) program.



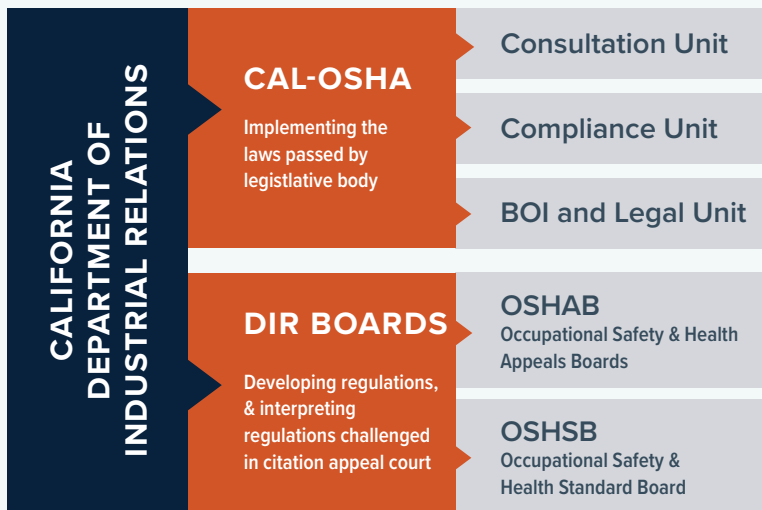
When the federal government created OSHA, they recognized our nation is so diverse that the states needed latitude to do their own thing. California is one of 26 “state plan” states that were allowed to create their own state agency to take the place of the federal OSHA program. As long as California regulations were at least as stringent as the federal rules, the state government would be allowed to create and enforce their own regulations. Cal-OSHA is that regulatory agency which was created under the umbrella of the California Department of Industrial Relations.





Cal-OSHA's Organizational Structure

The Division of Occupational Safety and Health (otherwise known as the Division) is comprised of three separate units as well as governor-appointed boards to help the Division achieve their overall safety objective. It looks something like the chart below.



Consultation Unit

The Consultation unit provides workplace safety and health guidance and assistance to California employers without the worry of violation of any regulation. The objectives are to assist employers to identify and promote safety and health benefits, with a particular focus on small high hazard employers.

This unit provides a variety of programs, such as outreach assistance and partnership programs (Cal/VPP and SHARP). The unit also generates educational materials and conducts research.

The program the Consultation unit is known most for is their on-site visits. This visit is typically initiated by letters being sent to companies that are considered “high-hazard” because their insurance experience modification number is 1.25 or greater. If the company accepts the offer, the consultation unit will conduct a full enforcement-type inspection without the consequence of citations. It should be noted that the letter received by the company is phrased as a mandatory requirement to contact the Consultation unit. However, it is not. A company could ignore the letter and take it’s chances. Contact your local Leavitt Risk Management Professional for assistance in making that decision. In return for receiving this assistance, the employer

There are three separate units that make up Cal-OSHA's core organization:

- ▶ Consultation Unit
- ▶ Compliance Unit
- ▶ Legal or Criminal Unit (otherwise known as the Bureau of Investigations or BOI)

must agree to make timely corrections of the hazard(s) identified by the Consultation unit representative. If the employer does not correct the hazard(s) identified in a timely manner, the consultation unit has the ability and obligation to notify the enforcement branch to make sure the recommendations are implemented through threat of a citation for not complying.

Compliance (or Enforcement) Unit

The Cal-OSHA Compliance or Enforcement unit is exactly what its title implies. This unit investigates, inspects, and issues citations and orders.

There are several different ways you will find Cal-OSHA at your front door: inspections can be generated by complaints in general, reports of serious violations received from law enforcement, or reports from a company of an incident resulting in serious injury or death.

The Compliance unit conducts targeted program inspections as part of their general administrative plan; these can also be as simple as a Cal-OSHA inspector driving by and observing something that might be out of compliance. Once the compliance officer has begun the inspection, it will consist of an opening conference where the inspector will

explain the reason for the inspection and what they will be looking for. They will then conduct an inspection that usually starts with a Document Request form provided by the inspector, and then they will move on to the actual physical inspection.

Upon completion of the inspection, the inspector is obligated to hold a closing conference where they will end the inspection. Sometimes the inspector will outline what citations may be given, but they are not required to and lately it has been occurring less and less because many of the citations are being reviewed by the Division Managers before being issued. The inspector has six months to issue any citations written. Once they are received by the company, the company receiving the citation has 15 days to act.

The three actions a company can take include the following:

- ▶ Pay the fine as outlined on the citation.
- ▶ Request an “Informal Conference” with the inspector and the Division manager.
- ▶ File a formal appeal which will result in an administrative hearing where both parties will present their claims.

One last item of importance: if a citation is affirmed, it will stay on the company’s record for five years. If the company has another inspection (which is likely because Cal-OSHA will check up on them) which results in another citation for a substantially similar issue, Cal-OSHA will tag the citation with a “repeat” classification which creates quite a few very bad options for the Division to use against the company. This could include exponentially increased fines, classifications of “willful” violation, and even civil prosecution – not a good path to go down.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

www.dir.ca.gov/DOSH

DOCUMENT REQUEST

EMPLOYER: _____ DATE: _____ Postmark by: _____
EMPLOYER CONTACT: _____ Cal/OSHA Inspector: _____

As discussed during the inspection on _____, it has been determined that copies of the following documents are required for review. Please provide the Cal/OSHA inspector with the required copies by the "postmark" date noted above. If the copies are not provided by that date, it will be interpreted as an admission that the documents do not exist, and possible citations and monetary penalties could result.

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| <input type="checkbox"/> Licenses & Permits: <input type="checkbox"/> Business License <input type="checkbox"/> State ER Tax ID No. <input type="checkbox"/> CSLB <input type="checkbox"/> Current Reg. <input type="checkbox"/> Farm Labor Contractor | Rec'd _____ |
| <input type="checkbox"/> Facility Layout (floor plan, evacuation routes, etc.) | Rec'd _____ |
| <input type="checkbox"/> OSHA Log 300 (from _____ to _____) § CCR 14001 | Rec'd _____ |
| <input type="checkbox"/> OSHA 5020 (Employer's First Report of Injury) | Rec'd _____ |
| <input type="checkbox"/> DWC Form 1 (Worker's Compensation Claim) | Rec'd _____ |
| <input type="checkbox"/> Worker's Compensation Insurance Carrier | Rec'd _____ |
| <input type="checkbox"/> Injury and Illness Prevention Program (written safety program) § CCR 3203 | Rec'd _____ |
| <input type="checkbox"/> Safety Inspection Records | Rec'd _____ |
| <input type="checkbox"/> Employee Training Records | Rec'd _____ |
| <input type="checkbox"/> Safety Committee Meeting Minutes | Rec'd _____ |
| <input type="checkbox"/> Heat Illness Prevention Program § CCR 3395 | Rec'd _____ |
| <input type="checkbox"/> First Aid Kit approval § CCR 3400 | Rec'd _____ |
| <input type="checkbox"/> Emergency Action Plan § CCR 3220 | Rec'd _____ |
| <input type="checkbox"/> Fire Prevention Plan § CCR 3221 | Rec'd _____ |
| <input type="checkbox"/> Hazard Communication Program § CCR 5194 | Rec'd _____ |
| <input type="checkbox"/> Material Safety Data Sheets, for _____ | Rec'd _____ |
| <input type="checkbox"/> Respiratory Protection Program § CCR 5144 | Rec'd _____ |
| <input type="checkbox"/> Hearing Conservation Program (Noise) § CCR 5097 | Rec'd _____ |
| <input type="checkbox"/> Exposure Control Plan / Bloodborne Pathogens § CCR 5193 | Rec'd _____ |
| <input type="checkbox"/> Workplace Exposure Records/Monitoring Results | Rec'd _____ |
| <input type="checkbox"/> Chemical Hygiene Plan § CCR 5191 | Rec'd _____ |
| <input type="checkbox"/> Carcinogen Registration § CCR Article 110 | Rec'd _____ |
| <input type="checkbox"/> Permits / Variances, for _____ | Rec'd _____ |
| <input type="checkbox"/> Maintenance Records of Equipment | Rec'd _____ |
| <input type="checkbox"/> Safety Instructions / Equipment Manuals | Rec'd _____ |
| <input type="checkbox"/> _____ | Rec'd _____ |
| <input type="checkbox"/> _____ | Rec'd _____ |

If you require an extension of time in order to satisfy this request, please contact the Cal/OSHA inspector identified with your inspection at the phone numbers above before the deadline.

INSPECTION NO. _____ INSPECTOR ID. _____ OPT RPT NO. _____ Cal/OSHA 1A(08/05)

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Legal Unit and Bureau of Investigations

This is the least talked about and the most fearsome unit within the division. These are the individuals you never want to meet, especially in the workplace. If these people are at your workplace, then something has gone seriously awry. As part of the law that created Cal-OSHA, accommodations were made for criminal prosecution of employers, managers, and supervisors who were proven to be negligent and/or willful violators of safety regulations. Although the unit does not criminally prosecute themselves, the Bureau of Investigations (otherwise known as the BOI) is Cal-OSHA's criminal investigation unit and will investigate all occupational deaths in California. This may result in a recommendation by the BOI to the local district attorney's office for prosecution.

The language of the labor code is very specific with respect to who may be subject to penalties:

“Except where another penalty is specifically provided, every employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee” who “knowingly or negligently” violates a safety order deemed to be a serious violation can be subject to fines and imprisonment of up to \$250,000 and/or three years in the state penitentiary, depending on the circumstances of the violation. (California Labor Codes 6423 and 6425)

As you can see, there are significant consequences in play here and quite a bit of exposure on the line.

Occupational Safety & Health Appeals Board (OSHAB)

Cal-OSHA has set up an adjudication process for employers to appeal citations issued by the Division, and it is the mission of the Appeals Board to fairly, timely, and efficiently resolve appeals and to provide clear, consistent guidance to the public.

A three-member, judicial body appointed by the governor and confirmed by the senate handles appeals from employers regarding Cal-OSHA citations. These appeals are generated from initial legal proceedings that are presided over by administrative law judges during the initial administrative proceedings. These judges' decisions are binding on the parties in the case and will create legal precedent for future legal proceedings. After the initial administrative legal hearing and decision of the administrative law judge, if the employer would like to appeal that decision, they would go to the three-member Appeals Board.

Occupational Safety & Health Standards Board (OSHSB)

The mission of the Occupational Safety & Health Standards Board is to adopt reasonable and enforceable standards that will ensure a safe and healthful workplace for California workers.

The Standards Board is a seven-member body appointed by the governor that creates the regulations found in Title VIII. These regulations must be at least as effective as federal standards and can be created by anyone who petitions the board for a specific regulation to be changed or created. The board itself can and does create regulations as it sees fit, including Emergency

Regulations like we have seen recently with wildfire smoke and COVID-19 regulations. This seven-member panel will hear public comment on every proposed regulation action. Many special interest groups participate frequently in these sessions to hopefully provide good information to the board and help them make good decisions.

Next Steps

Now we know a little bit about Cal-OSHA's structure and responsibilities, what do you do if one of their representatives decides to knock on your door and state, "I am with Cal-OSHA and I'm here to do an inspection of your facility"? What are your next steps? Would you do immediately? What is the best way to handle the inspector?

There are quite a few different ways of addressing a Cal-OSHA inspection, but there's only one way that will typically result in a positive outcome for the organization.

For more information about how to handle these investigations, please contact Alex Miller, your Leavitt Pacific Director of Safety Services, or your contact at Leavitt Pacific. We will help prepare you for the visit, or we'll help you strategize if you are facing the results of a visit from Cal-OSHA.