

Cal/OSHA Penalties

Proposed Rules Take Aim at ‘Egregious’ Violators

CAL/OSHA is working on new rules that would crack down on and step up enforcement and penalties against California employers that commit “egregious” and “enterprise-wide” workplace safety violations.

To enforce the impending rules, the agency is ramping up hiring of investigators to identify egregious violators and to refer more employers for criminal prosecution. The forthcoming rules would impose substantial penalties on companies that have shown a disregard towards California workplace safety regulations and the wellbeing of their employees.

Employers that are cited for egregious violations could be fined up to \$158,000 “per instance,” meaning it can be applied for each employee exposed to the violation.

Here’s what’s on tap:

Enterprise-wide violation

Under the proposed rules, a violation is enterprise-wide if an employer has multiple worksites and either of the following is true:

- The employer has a written policy or procedure that violates occupational safety and health regulations; or
- The Division of Occupational Safety and Health has evidence of a pattern or practice of the same violation or violations involving more than one of the employer’s worksites.

Egregious violation

The proposed rules define an egregious violation as a willful violation where the employer has had a previous egregious violation in the past five years. One or more of the following must apply:

- The employer intentionally made no reasonable effort to eliminate a known violation.
- The employer has a history of one or more serious, repeat or willful violations or more than 20 general or regulatory violations per 100 employees.
- The employer intentionally disregarded its health and safety responsibilities, such as by failing to maintain an Injury and Illness Program, ignoring safety hazards or refusing to comply with regulations.
- The employer’s conduct amounts to clear bad faith in the performance of their duties to comply with occupational safety and health standards.
- Within the five years preceding a citation for an egregious violation, the

See ‘Employers’ on page 2

TWO NEW PENALTY STRUCTURES

Enterprise-wide Violation

The proposed penalty is multiplied by the number of worksites covered at inspection, up to a maximum of \$158,727 per exposed worker, and will be adjusted each year for inflation.

Egregious Violation

The proposed maximum penalty for egregious violations will be \$158,727. Importantly, each employee that is exposed to a violation would be considered a separate violation. The penalty can be assessed on a per-instance basis.



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OSHA Updates HazCom Standard

NEW CHANGES have been made to Fed-OSHA's Hazardous Communications Standard, which governs the handling of chemicals and other dangerous substances.

OSHA's final rule, which took effect July 19, brought the standard in line with the latest update to the United Nations' Globally Harmonized System of Classification and Labelling of Chemicals.

The update revises criteria for the classification of certain health and physical hazards, as well as updating labeling requirements and safety data sheets (SDSs), among other changes.

Affected firms will need to update their HazCom program, and provide additional employee training for newly identified physical, health or other hazards.

It's important for employers to stay up to date on the HazCom standard to protect their workers. Labels and SDSs are often the first indication to a worker that they are handling a hazardous chemical, so it is imperative that they be as accurate and complete as possible.

Staggered Compliance Deadlines

First: Chemical manufacturers, importers or distributors evaluating substances will have to comply by Jan. 19, 2026, while those that evaluate mixtures will have to comply by July 19, 2027.

Second: Other employers will have to comply six months after those dates: July 19, 2026 for those that handle, store or use substances, and Jan. 19, 2028 for mixtures.

What the rule does

The new rule ensures that OSHA's HazCom standard jibes with the Global Harmonized System, which is used in most developed and many developing countries around the world.

It provides consistent definitions of hazards, specific criteria for labels, and a specific format for safety SDSs.

The new classification criteria only affect SDSs and labels for certain products (aerosols, desensitized explosives and flammable gases). If your firm handles any of these, you will have to ensure that your labels and SDSs for select hazardous chemicals are updated accordingly.

Rule highlights

Labeling — It updates labeling requirements for certain very small containers and bulk containers to ensure the labels are comprehensive and readable.

Manufacturers must only provide the updated label for each individual container with each shipment once the product reaches its customer. Warehousing employees will not be required to open sealed pallets and boxes of containers to relabel them or repackage the product in preprinted bags.

Flammable gas addition — The Flammable Gas hazard class gets a new hazard class (desensitized explosives), as well as new hazard categories:

- Unstable gases in the Flammable Gases class
- Pyrophoric gases in the Flammable Gases class, and
- Nonflammable aerosols in the Aerosols class.

New and revised definitions — There are a number of definitions that are being revised or which are new altogether.

Employer takeaway

HazCom citations are one of the most common citations that OSHA issues. If your operations handle chemicals, you should take the opportunity now to review your HazCom program and plan for compliance by the deadline that affects your company. ❖



Continued from page 1

Employers Should Double Down on Workplace Safety

employer has committed more than five violations of any Title 8 standard that has become finalized.

- The violations resulted in worker fatalities, a worksite catastrophe or five or more injuries or illnesses. Catastrophe is defined as inpatient hospitalization of three or more workers from a workplace hazard.

- Within the 12 months immediately preceding the underlying violation, 10% of all employees at the cited worksite sustained workplace injuries or illnesses.

The takeaway

The proposed regulations pose the largest risk for companies with multiple locations. Fines will be adjusted each year to account for inflation.

You should double down on your workplace safety efforts and ensure that there is buy-in to the program from top management down to supervisors and line workers at all locations. ❖

Four Really Good Reasons to Invest

THIRTY-NINE percent of Americans do not own any stocks or stock-related investments, according to a recent Gallup poll.¹

Individuals may cite different reasons for not investing, but with important long-term financial goals, such as retirement, in the balance, the reasons may not be good enough.

Why Invest?

Make Money on Your Money

You might not have a hundred million dollars to invest, but that doesn't mean your money can't share in the same opportunities available to others. You work hard for your money; make sure your money works hard for you.

Achieve Self-Determination and Independence

When you build wealth, you may be in a better position to pursue the lifestyle you want. Your life can become one of possibilities rather than one of limitations.

Leave a Legacy to Your Heirs

The wealth you pass to the next generation can have a profound impact on your heirs, providing educational opportunities, the capital to start a business, or financial support to your grandchildren.

Support Causes Important to You

Wealth can be an important tool for impacting the world in a meaningful way. So whether your passion is the environment, the arts, or human welfare, you can use your wealth to affect positive changes in your community or around the world.

A Framework for Investing

The decision to invest is an acknowledgment that it comes with certain risks. Not all investments will do well, and some may lose money. However, without risk, there would be no opportunity to potentially earn the higher returns that can help you grow your wealth.

To manage investment risk, consider maintaining a broad diversification of your investments that reflects your personal risk tolerance, time horizon and the nature of your financial goal. Remember, diversification is an approach to help manage investment risk. It does not eliminate the risk of loss if security prices decline.

Because investing can be complicated, consider working with a financial professional to help guide you on your wealth-building journey.

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1. Gallup.com, May 24, 2023



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Proposed Workplace Violence Rules Sow Confusion

CAL/OSHA has proposed new regulations that would incorporate California’s new workplace violence prevention law — which took effect July 1 — into Title 8, the set of regulations that covers workplace safety in the Golden State.

However, the proposed rules add a number of new requirements that some safety observers say would be unworkable in many workplaces and may create burdensome new standards for employers to follow. Here’s how the new rules add to those requirements.

Workplace controls

The proposed regulations list acceptable procedures and rules that can be used to effectively reduce workplace violence hazards:

- Appropriate staffing levels,
- Hiring dedicated security personnel,
- Effective means to alert employees of the presence, location and nature of a security threat, and
- Control of visitor entry.

Engineering controls

Suggestions for engineering controls that can help prevent violence:

- Electronic or mechanical access controls to employee areas,
- Weapon detectors (installed or handheld),
- Enclosed workstations with shatter-resistant glass,
- Deep service counters,
- Spaces configured to optimize employee access to exits, escape routes and alarms,
- Separate rooms or areas for high-risk persons,
- Locks on doors,
- Affixing furniture to the floor,
- Opaque glass windows (which can protect privacy, but allow employees to see where potential risks are),
- Improving lighting in dark areas, sight-aids, enhancing visibility and removing sight barriers,
- Video monitoring and recording, and
- Personal and workplace alarms.

Workers most at risk

The proposed rules list situations or locations that have a higher risk of workplace violence. These include:

- Employees working alone or in locations isolated from other staff,
- Areas with poor illumination or blocked visibility,.
- Work locations that lack effective escape routes,
- The presence of money or valuable items,
- Frequent or regular contact with the public,
- Working late at night or early morning, and
- Selling alcohol, marijuana or pharmaceutical drugs.

Response procedures

The draft rules outline steps employers can take when responding to and then investigating a case of workplace violence, post-incident:

- Provide immediate medical care or first aid to workers who have been injured in the incident,
- Identify employees involved in the incident,
- For employers with more than 25 employees, make available individual trauma counseling to those staff affected by the incident,
- Conduct a post-incident debriefing as soon as possible after the incident with employees and supervisors involved in the incident,
- Identify hazards that may have contributed to the incident,
- Identify and evaluate whether appropriate corrective measures developed under the firm’s workplace violence prevention plan were effectively implemented, and
- Solicit opinions from employees involved in the incident about the cause of the incident, and what could have prevented it.

The takeaway

The proposed rules are just the first step. They still have to go through a public comment period and the Division of Occupational Safety and Health, which writes new regulations.

However, the rules have already received plenty of pushback from employers. ❖

HI-TECH SOLUTION: *Electronic entry systems can reduce the chances of workplace violence.*

