



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 California workers.

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 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 currently comprised of occupational health representative Jere Ingram, Board Chair; occupational safety representative Gwendolyn Berman; management representative William Jackson; public member James Smith; management representative Sopac Tompkins; and labor representative Kenneth Young, Jr. At this writing, OSB is functioning with a labor representative vacancy.

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 abate-

ment 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

Despite Legislative Mandate and Litigation, No Ergonomics Standard in Sight.

In keeping with its years of refusal to adopt workplace standards to prevent cumulative trauma disorders (CTDs) (injuries caused by poor workplace design for jobs that require long periods of repetitive physical movement, such as typing or assemblyline work), OSB failed to comply with the legislative mandate set forth in AB 110 (Peace) (Chapter 121, Statutes of 1993), which added section 6357 to the Labor Code and required it to develop a statewide ergonomics standard by January 1, 1995.

In November 1994, OSB unanimously rejected a watered-down version of section 5110, Title 8 of the CCR, the ergonomics standard it proposed in November 1993. As originally proposed, the standard would have applied to all employers and established minimum requirements for preventing and controlling exposure to the risk of developing CTDs. It would have required employers to engage in worksite evaluations of CTD risk and establish a reporting procedure which encourages employees to report CTD symptoms or CTD risk; implement engineering controls, administrative controls, and personal protective equipment as necessary to reduce or eliminate CTD risk; provide a medical evaluation at the first signs of injury; and provide two types of employee training programs (general and job-specific) on CTD prevention and detection. Following a number of public hearings and a deluge of

complaints from management, OSB modified the language of the proposed rule to eliminate the key medical management requirement, relax the job-specific training requirement, and add an "economic feasibility" standard that would allow individual employers to avoid correcting hazards if doing so would cause any "undue hardship." Labor activists argued that the modified language would permit employers to balance worker health and safety with the corporate bottom line, and place a tremendous burden on Cal-OSHA to evaluate the truth of every employer's claim that a company is unable to afford to correct job hazards. However, OSB refused to adopt even this substantially less stringent version of the ergonomics standard. [15:1 CRLR 119-20; 14:4 CRLR 136; 14:2&3 CRLR 144-45]

On January 18, a coalition of labor organizations and injured workers filed a petition for writ of mandate in the Third District Court of Appeal, asking the court to require OSB to comply with Labor Code section 6357 and adopt an ergonomics standard as soon as possible. At its January 19 meeting, OSB refused to publicly discuss its failure to adopt the ergonomics standard—or make any plans to reinstate efforts to do so—in light of the pending litigation. In late January, OSB filed a statement in opposition with the Third District, contending that the petitioners' action is unnecessary, and that OSB had already done all it could to comply with section 6357. Although claiming that it would continue its attempt to adopt an ergonomics standard, OSB asked the court to take note of AB 50 (Johnson), pending legislation—which OSB supports—which would repeal section 6357 (see LEGISLATION). On February 2, the Third District denied the petition without prejudice.

On February 14, the labor organizations refiled their action against OSB, this time in Sacramento County Superior Court (see LITIGATION); in this proceeding, the California Labor Federation seeks a court order mandating OSB to comply with section 6357 and adopt an ergonomics standard as soon as possible. On February 16, Sacramento County Superior Court Judge James Ford ordered OSB to adopt the regulation or show cause on April 21 why he should not order it to do so.

At its February 23 meeting, OSB discussed a proposal to send out a questionnaire to interested parties in order to survey the regulated community, both labor and industry, to solicit suggestions on how OSB should revise its ergonomics proposal. After discussion, the Board generally agreed that it would prefer to hold a one-day special hearing, at which inter-



REGULATORY AGENCY ACTION

ested parties could each present the Board with no more than five minutes of testimony regarding the ergonomics proposal; the Board would also receive written comments. OSB directed staff to arrange the details for the meeting, and asked that staff provide 60-day notice to the public of the hearing date and location.

At OSB's March 23 meeting, staff reported that the hearing was set for May 16 at a Holiday Inn in Sacramento. Staff also reported that it had received requests for OSB to hold an additional hearing in southern California, and that it had heard reports that the AFL-CIO had concerns about the chosen location for the Sacramento hearing and would probably not attend; according to OSB staff, the selected Holiday Inn is not a union shop and it was believed that the AFL-CIO would not participate in a hearing held in a nonunion facility. Following discussion, OSB decided to hold the Sacramento hearing as planned, and directed staff to schedule an additional hearing in San Diego. Staff subsequently scheduled the second hearing for May 31 in San Diego.

Meanwhile, at the April 21 court hearing, Judge Ford ordered the parties to provide the court with reasonable estimates on how long it would take to adopt an ergonomics standard. Judge Ford ordered both sides to submit declarations on or by May 22 setting forth the time estimate and the foundation for that estimate; at this writing, Judge Ford is scheduled to hear further argument on the matter on May 26.

Fall Protection in the Construction Industry. In December 1994, OSB held a public hearing on its proposed amendments to Articles 7, 12-14, 16, 19, 21-24, 29, and 30, Title 8 of the CCR, concerning safety standards for fall protection in the construction industry. The amendments would specify requirements for guardrail design, installation, and use; design of personal fall arrest systems; the establishment of controlled access zones; use and development of a written fall protection plan; use of safety monitors; requirements for establishing fall protection training programs; and a reduction in the current general fall criteria from 7.5 feet to 6 feet. After listening to extensive testimony criticizing the proposed amendments, OSB ordered its staff to convene an advisory committee to prepare a side-by-side comparison of the corresponding state and federal regulations in an attempt to identify those areas that should not be adopted and why. [15:1 CRLR 120]

At OSB's March 23 meeting, staff reported on the status of its research on the fall protection regulatory proposals; among other things, staff noted that an advisory

committee meeting was scheduled for April 27 in Sacramento, and that staff hoped to use feedback from the committee to develop an alternative fall protection regulation for the residential roofing industry.

At OSB's May 18 meeting, staff reported on the April advisory committee meeting, and noted that it is currently developing the side-by-side comparison of the state and federal regulations requested by the Board; staff will present its findings and recommendations to OSB at a future meeting.

Logging Operations. On January 6, OSB published notice of its intent to amend sections 6283, 6309, and 6328, Title 8 of the CCR, regarding logging operations. Among other things, the proposed changes would require that chain saws placed in service after the effective date of the regulation be equipped with a chain brake and labeled as meeting the requirements of the American National Standards Institute (ANSI) B175.1-1991 standard for gasoline-powered chain saws; require that chain saws placed in service before the effective date of the regulation be equipped with a device to protect the employee from chain saw kickback; prohibit the disabling of chain saw anti-kickback devices; and require all yarding equipment which is towed by logging machines to be attached together in a manner which will allow a full 90-degree turn. [15:1 CRLR 121] According to OSB, these changes will make California law substantially the same as the federal standard. On February 23, OSB held a public hearing on the proposed changes; on March 23, OSB adopted the amendments. On May 5, the changes were filed with the Secretary of State.

Occupational Exposure to Asbestos. On February 3, OSB published notice of its intent to amend sections 1529 and 5208 and adopt new section 8358, Title 8 of the CCR, regarding occupational exposure to asbestos. The changes would amend standards for occupational exposure to asbestos in general industry and the construction industry, and would include a separate standard covering occupational exposure to asbestos in the shipyard industry; a reduced time-weighted average permissible exposure limit of 0.1 fiber per cubic centimeter for all asbestos work in all industries; a new classification scheme for asbestos construction and shipyard industry work which ties mandatory work practices to work classification; a presumptive asbestos identification requirement for "high hazard" asbestos-containing building materials; limited notification requirements for employers who use unlisted compliance methods in high-risk asbestos abatement work; and mandatory methods of control for brake and clutch repair.

According to OSB, the rulemaking action is being taken pursuant to Labor Code section 142.3, which mandates OSB to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues, and which exempts OSB rulemaking from the requirements of the Administrative Procedure Act (including review and approval by the Office of Administrative Law (OAL)) when adopting or amending a standard substantially the same as a federal standard. On March 23, OSB held a public hearing on the proposed changes; following the hearing, OSB adopted the amendments to sections 1529 and 5208. On May 1, the changes were filed with the Secretary of State. At this writing, OSB has not yet adopted new section 8358.

Respiratory Protective Equipment. On March 3, OSB published notice of its intent to amend sections 1531 and 5144, Title 8 of the CCR, regarding respiratory protective equipment. Currently, the sections provide minimum requirements for the use of respiratory protective equipment to control harmful exposures to dusts, mists, fumes, and vapors; the sections specify where and when respiratory protective equipment is to be used for control of harmful exposure, acceptable types of equipment, employee education and training, respirator maintenance and sanitation, breathing air quality, required elements of a respiratory protection program, requirements for use in atmospheres immediately hazardous to life and health, and medical limitations. Section 1531(e) and 5144(e) require that breathing air compressors which supply air to supplied air respirators be equipped with compressor failure alarms and receiver tanks. OSB's proposed changes to these sections would allow the use of compressors without such features to supply respirators used in atmospheres not immediately dangerous to life or health.

On April 20, OSB held a public hearing on these proposed changes; at its May 18 meeting, OSB adopted the amendments, which await review and approval by OAL.

Recordkeeping Retention Requirements. On March 3, OSB published notice of its intent to amend section 3203, Title 8 of the CCR, which requires all employers to establish, implement, and maintain an effective Injury and Illness Prevention Program (IIPP), and specifies time periods for which IIPP records are to be maintained. Specifically, the section requires that records of scheduled and periodic inspections, documentation of safety and health training, and written records concerning labor/management safety and health committees be maintained for three years. OSB's proposed amendments would



instead require that these documents be maintained for at least one year.

On April 20, OSB held a public hearing on these proposed changes; at its May 18 meeting, OSB adopted the amendments, which await review and approval by OAL.

Tree Workers' Saddles. On March 31, OSB published notice of its intent to amend section 3422, Title 8 of the CCR, which requires employers to use tree workers' saddles designed, manufactured, and certified to meet the provisions of ANSI A10.14 (1975); OSB's proposed change would require all tree workers' saddles to be approved for their intended use as defined in section 3206, Title 8 of the CCR. OSB held a public hearing on this proposed change on May 18; at this writing, the amendment awaits adoption by OSB and review and approval by OAL.

Lint Cleaner Saws. On March 31, OSB published notice of its intent to amend section 4640, Title 8 of the CCR, which requires that access doors to rotating saws of lint cleaners be guarded by interlocked barriers, bolts, padlocks, or the equivalent. Among other things, OSB's proposed revision would require that before accessing lint cleaner saws, the saw cylinder rotation must be stopped; require a vision panel in the lint cleaner's side drive covers/guards, to permit viewing the lint cleaner's drive pulley, unless the pulley can be viewed through the guard/drive covers; require a spoke of the drive pulley to be a contrasting color to improve the employee's ability to readily detect saw cylinder rotation; require the covers, doors, panels, and plates which guard the access openings on lint cleaners to be secured in place by one or more specified methods; provide the employer with methods of effectively guarding the different types of saw access openings found on lint cleaners; require that all tools, specialized tools, and keys to locks or padlocks be kept in the custody of the qualified person who will provide the tools to the employee who requires access into the lint cleaner's saw only after the qualified person verifies the machine is deenergized, locked out, and the saw rotation has stopped; require employers to implement additional safety policy and procedures and provide additional employee training and instruction; require cotton gin employers to have employees work under the direct supervision of a qualified person whenever the employee removes covers, plates, doors, or barriers to gain access to the lint cleaner's saw; require warning signs to be posted at each lint cleaner stating that employee access to lint cleaner saws is prohibited until equipment deenergizing/lockout have taken place and the saw has stopped rotating; and require em-

ployers to purchase or field-fabricate legible placards or signs bearing the required warning statement and place them at each lint cleaner.

OSB held a public hearing on these proposed changes on May 18; at this writing, the amendments await adoption by OSB and review and approval by OAL.

Passenger Tramway Safety Orders. On May 5, OSB published notice of its intent to amend section 3150, Title 8 of the CCR, which specifies where its passenger tramway safety orders are applicable, when they become effective, and which tramways are not included, and defines the term "major alterations." OSB's proposed changes would insert the date which specifies when existing tramways are to be brought into compliance with these safety orders; also, OSB's changes would allow existing tramways installed before 1988 to continue to operate without fully complying the safety orders. At this writing, OSB is scheduled to hold a public hearing on these proposed amendments on June 22 in San Francisco.

Periodic Inspection of Cranes. On May 5, OSB published notice of its intent to amend section 5031, Title 8 of the CCR, which contains specific requirements for the inspection and maintenance of cranes and derricks, and which addresses—among other things—visual inspections by qualified persons, frequency of inspections, specific criteria for visual inspection of crane and/or derrick components, proof load testing, inspection of hooks and rope assemblies, and use of nondestructive testing methods. OSB's proposed changes would require periodic inspections of cranes and derricks at least four times per year, and provide that the annual inspection (certification) may serve as one of the required periodic inspections. At this writing, OSB is scheduled to hold a public hearing on this proposed change on June 22 in San Francisco.

OSB Rulemaking Proposal Disapproved. On January 11, OSB submitted to OAL a proposed nonsubstantive action to amend regulations concerning employee training on respiratory protective devices used with exposure to coke oven emissions; specifically, OSB proposed to delete a sunset date contained in the current regulation. On February 27, OAL disapproved OSB's action, on the basis that the proposed nonsubstantive change is substantive in nature. OAL noted that the regulation in issue currently provides that "training regarding...the purpose, proper use, and limitations of respiratory protective devices [in regard to coke oven emissions] shall be provided at least quarterly until January 20, 1978"; according to OAL,

after that date, quarterly training is, presumably, no longer required. OSB proposed to delete the phrase "until January 20, 1978"; however, OAL found that this action would in essence resurrect the training requirement and extend it indefinitely. According to OAL, "[t]his change would have a substantive effect upon employers who must provide the training as well as employees who must take the training."

Rulemaking Update. The following is a status update on other OSB rulemaking proposals discussed in detail in previous issues of the *Reporter*:

• **Rubber-Tired Gantry Crane Wheel Guards.** On April 20, OSB adopted its proposed amendment to section 4906(c), Title 8 of the CCR, regarding rubber-tired gantry crane wheel guards. [15:1 CRLR 120] Existing section 4906(c) requires that gantry truck wheels be guarded in such a manner as to push a person out of the way to prevent that person from being run over. Makers of wheel guards argue that because people are not fixed objects and have great degrees of movement, it is impossible to design a wheel guard that will always be capable of preventing a person from being run over; thus, OSB's proposed amendment would delete that requirement. At this writing, the amendment awaits review and approval by OAL.

• **Demolition Standards.** On January 19, OSB held a public hearing on its proposed amendments to sections 1504, 1734, 1735, 1736, and 4941, Title 8 of the CCR, regarding demolition work. [15:1 CRLR 120-21] OSB's proposed amendments to section 1504 would revise the definition of the term "qualified person" to be consistent with the same term as defined in section 3207 of OSB's general industry safety orders. The proposed amendments to section 1734 would provide that employees performing demolition work be under the immediate supervision of a qualified person.

Among other things, OSB's proposed amendments to section 1735 would require employers to check and/or test for the presence of hazardous substances and, if found, have them eliminated before demolition work is started; require employers to survey for the presence of asbestos and, if found, comply with section 1529, Title 8 of the CCR; require that weakened or unsafe floors be shored to safely support the imposed loading; and provide that wood floor beams which brace interior walls or free-standing exterior walls be left in place until other equivalent support can be provided. The Board's proposed amendments to section 1736 would permit the use of fences or barricades as a method of protecting employees from the hazard



of falling debris from a chute discharge end.

OSB's proposed amendments to section 4941, regarding cranes used in demolition work, would limit employee exposure to the hazards associated with demolition operations being performed by cranes using balling or clamming techniques; provide that cranes used on demolition sites need not be certified as required by section 5021, Title 8 of the CCR; allow cranes used exclusively for demolition purposes to be moved from jobsite to jobsite without requiring them to be certified as specified in section 5021; and require all cranes used for clamming or balling operations, regardless of whether they have a current annual certification, to be recertified or certified if used for lifting operations not associated with a demolition project.

At its April 20 meeting, OSB adopted these proposed changes; at this writing, the changes await review and approval by OAL.

• **Electrical Safety Orders.** On February 23, OSB held a public hearing on its proposal to amend section 2540.8(b)(6), Title 8 of the CCR, and section 515-1(a) and (b), Title 24 of the CCR, regarding docks for the loading and unloading of tanker ships. Among other things, OSB's amendments would require that the hazardous location classification around docks used for the loading and unloading of tanker ships be consistent with the California Electrical Code, and eliminate an existing inconsistency between Title 8 and Title 24 of the CCR. [15:1 CRLR 121] At its April 20 meeting, OSB adopted the changes, which await review and approval by OAL.

• **Prevention of Occupational Tuberculosis.** OSB's proposed new section 5197, Title 8 of the CCR, would specify protective measures designed to control tuberculosis (TB) and the spread of TB in occupational settings. Section 5197 would apply to specifically enumerated categories of employment in which employees are known to have a significant risk of developing occupational TB. Under the proposed regulation, covered employers would be required to develop and implement an exposure control plan; provide TB surveillance, preventive therapy, and medical evaluation where appropriate; implement appropriate engineering and work practice controls and respiratory protection; provide employee training; and fulfill recordkeeping requirements. [15:1 CRLR 122; 14:4 CRLR 138] At this writing, section 5197 awaits approval by OSB and OAL.

• **Respiratory Protective Equipment.** At its February 23 meeting, OSB adopted its proposed amendments to sections 1531,

3409, and 5144, Title 8 of the CCR, which provide minimum requirements for the use of respiratory protective equipment to control harmful exposures to dusts, mists, fumes, and vapors; each of those sections prohibits the use of contact lenses in atmospheres where a respirator is required. OSB's proposed changes to those sections would eliminate that prohibition and add a training requirement regarding employees using contact lenses in atmospheres requiring respiratory protection. [15:1 CRLR 122; 14:4 CRLR 138; 14:2&3 CRLR 146] OAL approved these changes on March 20.

• **Drilling and Production Regulations.** On March 23, OSB adopted its proposed amendments to sections 6500-6693 (non-inclusive), Title 8 of the CCR, which would make a number of changes to its regulatory provisions concerning drilling and production in the petroleum industry. Among other things, the proposed changes would permit smoking only in areas designated by the employer, and require each employer to identify all areas—including areas of flammable liquids and gases—which are safe for smoking at production or oil well sites; require an employer's written employee emergency plan to include evacuation procedures; and require the regulated public to install the appropriate type of electrical equipment and wiring at petroleum production facilities or at oil drilling and servicing locations in accordance with the provisions of the Electrical Safety Orders, and require that the electrical equipment be maintained in accordance with the area classifications as defined in the Electrical Safety Orders. [15:1 CRLR 122; 14:4 CRLR 139; 14:2&3 CRLR 146] OAL approved these changes on May 8.

• **Tunnel Safety Orders.** Following a November 17 public hearing, OSB created an advisory committee to review the extensive commentary provided by industry on its proposal to amend sections 8400-8568 and Appendices A, B, and C, Title 8 of the CCR, its tunnel safety standards. The proposed amendments include increased tunnel illumination standards, air quality regulations, standards for testing for dangerous or explosive gases, requirements for a fixed system of continual automatic monitoring equipment within specified places in tunnels using mechanical elevators, standards for the testing of communications systems, reporting requirements for employees working underground, and numerous nonsubstantive changes and reorganizations. [15:1 CRLR 120]

At OSB's March meeting, staff reported that the advisory committee had conducted a four-day meeting at the end of January, and had produced a modified ver-

sion of the proposal. OSB held another public hearing on the modified version of the proposed regulatory changes on March 24, and numerous witnesses—including members of the advisory committee—presented further testimony. Following the March 24 hearing, OSB Chair Jere Ingram closed the public record on the proposed changes; at this writing, OSB has yet to adopt the regulatory amendments.

LEGISLATION

AB 50 (Johnson), as introduced December 13, would repeal existing law which requires OSB, on or before January 1, 1995, to adopt minimum standards for ergonomics in the workplace designed to minimize the instances of injury from repetitive motion; OSB failed to meet this statutory mandate and—at this writing—is not close to finalizing its minimum standards (see MAJOR PROJECTS). [15:1 CRLR 119-20]

Further, the bill would declare that it is to take effect immediately as an urgency statute. In order to qualify as an urgency statute, the author must show that the measure is necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution; according to Assemblymember Johnson, the fact constituting the urgent necessity for this bill is that "[i]n order to implement the change proposed by this act without delay, it is necessary that this act take effect immediately." [A. Appr]

AB 310 (Battin). Existing law establishes the Cal-OSHA Targeted Inspection and Consultation Fund, the funds in which are to be expended for Cal-OSHA's Targeted Inspection Program, Targeted Consultation Program, and the certification of loss control consultation services of workers' compensation insurers. [13:4 CRLR 133] Existing law provides for an assessment on employers with a workers' compensation insurance rating modification of 1.25 or more, to be deposited into the Fund. As introduced February 8, this bill would limit the assessment on employers to \$1,000. [A. L&E]

AB 452 (Escutia). Under existing law, the DIR Director levies certain assessments on insured employers and private self-insured employers, and collects fees from workers' compensation insurers, as specified, for deposit in Cal-OSHA's Targeted Inspection and Consultation Fund. The moneys in the Fund may be expended by DIR, upon appropriation by the Legislature, for designated Cal-OSHA programs relating to worker safety and for the costs of certifying loss control consultation services of workers' compensation



insurers. As introduced February 10, this bill would require DIR, no later than February 1, 1996, to appoint an advisory task force with specified membership, and direct the advisory task force, no later than May 1, 1996, to submit to the legislature its recommendations regarding the allocation, by priority of funding purpose, of the moneys in the Cal-OSHA Targeted Inspection and Consultation Fund. The bill would provide for the repeal of the above provisions on January 1, 1997. [A. L&E]

AB 572 (Goldsmith), as amended March 28, would require OSB, in adopting a standard that is different from a federal occupational safety and health standard covering the same issue, to make a finding that the cost of the differing state standard is justified by a specific benefit to safety in the workplace. The bill would require these findings to be included with the adopted standard in the CCR and the State Building Standards Code. The bill would apply to adoption of new standards and amendment of existing standards on and after January 1, 1996; it would not apply to standards already in effect on that date or to standards adopted pursuant to statutory provisions requiring nonconformity with the federal standards. [A. L&E]

AB 983 (Firestone). Existing law requires every employer to establish, implement, and maintain an IIPP, and requires OSB to adopt employer compliance standards. As amended April 25, this bill would declare the intent of the legislature to revise these provisions so as to eliminate unnecessary and duplicative reporting requirements, while preserving existing safety and health standards. [A. Appr]

AB 1398 (Woods), as introduced February 24, would exempt from the IIPP requirement small businesses, which the bill would define as employers with 25 or fewer employees. [A. L&E]

AB 1116 (Knox). Existing law authorizes the DIR Director, or his/her designee, where he/she finds a pattern or practice of violations or a willful violation of those requirements by any employer or physician, to assess a civil penalty of not less than \$50 nor more than \$200. As introduced February 23, this bill would increase the minimum and maximum civil penalties assessable in these cases to not less than \$350 nor more than \$1,400.

Existing provisions of the California Occupational Safety and Health Act of 1973 specify that, except where a penalty is otherwise prescribed for violations of occupational safety and health statutes, standards, orders, and special orders, the penalty for certain serious violations, repeated violations, violations creating a real or apparent hazard for employees

after notice and expiration of any abatement period, or for inducing such a violation is imprisonment in the county jail and a fine not to exceed \$5,000, or both. This bill would increase the maximum fine for these violations from \$5,000 to \$70,000. [A. L&E]

AB 1251 (House). Existing law specifies that, except as between an employee and his/her employer, the provisions of the California Occupational Safety and Health Act of 1973 do not apply to any civil action for personal injury or wrongful death that arose after April 1, 1972. As introduced February 23, this bill would instead specify that the provisions of the Act do not apply to any civil action for personal injury or wrongful death that is not between the employee and employer, regardless of when the cause of action arose or accrued. [A. L&E]

AB 1279 (McDonald), as amended March 27, would make findings concerning glasswool insulation and require OSB, on or before January 1, 1998, to adopt a standard limiting exposure to airborne fiberglass in accordance with specified recommendations of the U.S. National Institute for Occupational Safety and Health. [A. L&E]

AB 1399 (W. Brown). The Corporate Criminal Liability Act of 1990 provides that a corporation, limited liability company, 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, limited liability company, 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, within 15 days of acquiring the actual knowledge or immediately if there is imminent risk of great bodily harm or death, to inform DOSH and warn its affected employees. [10:4 CRLR 132] As introduced February 24, this bill would provide enhancements, as specified, for the repeated violation of this provision. [A. PubS]

SB 666 (Marks). Under existing workers' compensation provisions, an employee who is injured or killed in connection with his/her employment receives compensation only through workers' compensation and may not file a civil action; a civil remedy is available only if an exception to this rule exists. As introduced February 22, this bill would provide that a civil remedy is available if an employee's injury or death is proximately caused by a violent crime in the workplace. The em-

ployee must prove by clear and convincing evidence that prior violent crimes occurred in the workplace, that reasonable precautions could have been taken by the employer, and that the employer unreasonably failed to take those precautions. [S. Appr]

LITIGATION

In *California Labor Federation, AFL-CIO, v. OSB*, No. 95CS00362 (Sacramento County Superior Court, filed Feb. 2, 1995), petitioners seek a court order mandating OSB to comply with Labor Code section 6357 and adopt an ergonomics standard as soon as possible (*see* MAJOR PROJECTS). On February 16, Sacramento County Superior Court Judge James Ford ordered OSB to adopt the regulation or show cause on April 21 why he should not order it to do so. At the April 21 hearing, Judge Ford ordered the parties to provide the court with reasonable estimates on how long it would take to enact an ergonomics standard, and required both sides to submit declarations on or by May 22 setting forth the time estimate and the foundation for that estimate; at this writing, Judge Ford is scheduled to hear further argument on the matter on May 26.

RECENT MEETINGS

At its January 19 meeting in Los Angeles, OSB continued discussion on its December meeting on Petition No. 356, submitted by Daniel Kulka, Chair of the Safety, Health, and Environmental Committee of Associated General Contractors of California, who requested that the Board amend section 1712(d)(5), Title 8 of the CCR, with regard to protective covers, troughs, and caps. [15:1 CRLR 123] Specifically, section 1712(d)(5) currently requires that manufactured covers and caps be approved as provided for in section 1505 and be legibly marked with the manufacturer's name or logo. The petitioner asked that the words "and caps" be deleted from the section in order to eliminate confusion which presently exists for enforcement personnel regarding the old-style "mushroom" caps and the new and improved "approved covers" now available. At the December meeting, staff recommended that the Board deny the petition; however, OSB took no action on the petition. At OSB's January meeting, staff reported its determination that the regulation is not very clear regarding the Board's approval of the old-style mushroom caps, and recommended that the Board convene an advisory committee to propose revisions to clarify the section with regard to the use and approval of caps; OSB adopted staff's recommendation.



REGULATORY AGENCY ACTION

Also at its January 19 meeting, OSB considered Petition No. 358, filed by Landis Martila of the International Brotherhood of Electrical Workers, who requested that OSB amend sections 2940.8, 2951(g), and 2951(h), Title 8 of the CCR, regarding tree trimming operations in proximity to high voltage lines. Staff explained that the petitioner is requesting that OSB adopt specific language regarding unloading poles from a utility truck trailer or dolly; notifying the line clearance tree trimming crew foreman of any change in the status of deenergized lines; and requiring that a qualified line clearance tree trimmer act as a dedicated observer during tree trimming operations in proximity to high voltage lines during storms. DOSH reported that the first and third proposals are unnecessary, but found merit in the proposal to notify the foreman of any change regarding deenergized lines. OSB staff opined that the unloading proposal has merit, but that the other two proposals are already addressed in existing regulations. Following discussion, OSB decided to grant the petition to the extent that Board staff will convene an advisory committee to consider the revisions concerning unloading poles and notification of the status of deenergized lines; OSB denied the portion of the petition requesting that a qualified line clearance tree trimmer be required to act as a dedicated observer during tree trimming operations in proximity to high voltage lines during storms.

At its February 23 meeting in San Francisco, OSB revisited Petition No. 349, submitted by John Banzhaf, Executive Director of Action on Smoking and Health, which the Board originally discussed at its July 1994 meeting; the petitioner requested that OSB adopt regulations to protect workers from the proven carcinogenic hazards and other serious adverse health effects of environmental tobacco smoke and to ban smoking in the workplace. [14:4 CRLR 137] Despite the enactment of AB 13 (T. Friedman) (Chapter 310, Statutes of 1994), which prohibits smoking in enclosed spaces at specified places of employment, the petitioner asked that OSB defer action on his request for six months pending the outcome of Proposition 188, a measure on the statewide November 1994 ballot which would have invalidated AB 13 and put in place statewide smoking standards considered by most observers to be significantly less restrictive than AB 13. At the Board's February meeting, staff reported that because Proposition 188 was defeated by the California voters, OSB should deny the petition on the basis that it is unnecessary; the Board unanimously agreed.

Also at OSB's February 23 meeting, staff reported that pursuant to the Board's January 1994 direction regarding Petition No. 343, staff had convened an advisory committee to review and consider the need for a regulation that would require all miter, chop, tilt, cut-off, rip, and radial arm saws to have positive protection for the operator's "off hand." [14:2&3 CRLR 151] Staff reported that it convened the advisory committee on July 7, and that it was the committee's consensus that such an amendment is not necessary, and that the off hand is needed to secure the stock against the miter saw fence; the committee also agreed that awareness training of employees regarding the hazards of miter saws would be a more appropriate method of accident prevention. OSB accepted staff's recommendation that no further action be taken on this petition.

At OSB's March 23 meeting, Executive Officer Steven Jablonsky announced that he will retire from OSB on July 31; OSB Chair Jere Ingram expressed his appreciation for Jablonsky's dedication over the past several years. OSB agreed to designate an executive committee consisting of Ingram and OSB member Ken Young to identify potential replacements; according to Ingram, Jablonsky will also serve on that committee as an advisor.

At its April 20 meeting, OSB considered Petition No. 360, filed by members of the International Brotherhood of Elec-

trical Workers; the petitioners requested that OSB amend section 2943(d)(3), Title 8 of the CCR, which currently requires that suitable rubber gloves with protectors shall be worn when working on exposed conductors or equipment energized at 7,500 volts or less; the petitioners requested that OSB expand this provision to require that such gloves be worn when working on or near such conductors or equipment. DOSH staff reported its determination that the proposed revision is necessary and recommended that the petition be granted. Although OSB staff opined that the present language is sufficiently clear, it recommended that OSB grant the petition to the extent that the Board direct staff to convene an advisory committee to develop proposed revisions to clarify section 2943; OSB unanimously adopted staff's recommendation.

■ FUTURE MEETINGS

June 22 in San Francisco.
July 20 in San Diego.
August 17 in Sacramento.
September 21 in Los Angeles.
October 19 in San Francisco.
November 16 in San Diego.
December 14 in Sacramento.



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY (CAL-EPA)

AIR RESOURCES BOARD

Executive Officer: James D. Boyd
Chair: John D. Dunlap III
(916) 322-2990

Pursuant to Health and Safety Code section 39003 *et seq.*, the Air Resources Board (ARB) is charged with coordinating efforts to attain and maintain ambient air quality standards, to conduct research into the causes of and solutions to air pollution, and to systematically attack the serious problem caused by motor vehicle emissions, which are the major source of air pollution in many areas of the state. ARB is empowered to adopt regulations to implement its enabling legislation; these regulations are codified in Titles 13, 17, and 26 of the California Code of Regulations (CCR).

ARB regulates both vehicular and stationary pollution sources. The California

Clean Air Act requires attainment of state ambient air quality standards by the earliest practicable date. ARB is required to adopt the most effective emission controls possible for motor vehicles, fuels, consumer products, and a range of mobile sources.

Primary responsibility for controlling emissions from stationary sources rests with local air pollution control districts (APCDs) and air quality management districts (AQMDs). ARB develops rules and regulations to assist the districts and oversees their enforcement activities, while providing technical and financial assistance.

Board members have experience in chemistry, meteorology, physics, law, administration, engineering, and related scientific fields. ARB's staff numbers over 400 and is divided into seven divisions: Administrative Services, Compliance, Monitoring and Laboratory, Mobile Source, Research, Stationary Source, and Technical Support.