



2024 Cal-Peculiarities: How California Employment Law is Different

Cal/OSHA Peculiarities

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AGENDA

- Cal/OSHA Overview
- Workplace Violence Prevention
- Indoor Heat Illness Prevention
- What to look out for

Cal/OSHA

- “State-plan” state
 - Federal OSHA sets the floor, but California can go above and beyond.
- Unique regulations
 - Injury Illness Prevention Program
 - COVID (set to expire February 2025)
 - Reporting serious injuries and illness
 - Outdoor heat
 - Workplace violence
 - Indoor heat
 - Etc.

Cal/OSHA

Different citation classifications and penalty structure

- **Serious** (realistic possibility of death or serious physical harm)
 - up to \$25K per violation
- **General** (not serious, but related to safety/health)
 - up to \$15,873 per violation
- **Regulatory** (paperwork, posting, etc.)
 - up to \$15,873 per violation
- **Repeat** (similar violation within 5 years) and/or **Willful** (knowing violation)
 - up to \$158,727
- **Egregious** (similar to, but more expansive than, willful) and **Enterprise-wide** (multiple worksites → presumption of same hazard)
 - Implementing regulations coming soon

Workplace Violence Prevention

Background

- Workplace Violence in general industry traditionally fell under the IIPP Standard.
- Cal/OSHA had been working on a general industry workplace violence standard since 2017.
- SB 553 became effective July 1, 2024.
- Cal/OSHA must propose regulations by December 31, 2025; the Cal/OSHA Standards Board must adopt workplace violence standards codifying SB 553 no later than December 31, 2026.
 - Draft is already making its way through the rulemaking process.
 - Would add additional, more specific, requirements.
 - Turns “performance” standard into “specification” standard?

Workplace Violence Prevention

Nearly Every Employer is Covered

- The requirement for a Workplace Violence Prevention Plan applies to all employers and employees in the State, with a few limited exceptions:
 - Employers already covered by [Cal/OSHA's Violence Prevention in Health Care standard](#);
 - Employees who telework from a location of their choosing that is outside the control of the employer;
 - And who never go into an office
 - Locations not open to the public where fewer than 10 employees work at a given time;
 - Department of Corrections and Rehabilitation and law enforcement agencies.

Workplace Violence Prevention

What Conduct is Covered?

- Broad definition:
 - “Workplace violence” means any act of violence or threat of violence that occurs in a place of employment.
 - “Threat of violence” means any verbal or written statement, including, but not limited to, texts, electronic messages, social media messages, or other online posts, or any behavioral or physical conduct, that conveys an intent, or that is reasonably perceived to convey an intent, to cause **physical harm** or to **place someone in fear of physical harm**, and that serves no legitimate purpose.

Workplace Violence Prevention

What Conduct is Covered?

- Includes but **is not limited to:**
- The threat or use of physical force against an employee that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury.
- An incident involving a threat or use of a firearm or other dangerous weapon, including the use of common objects as weapons, regardless of whether the employee sustains an injury.
- Animal attacks.

Types of Violence (includes but is not limited to)

Type 1

- Individual with no connection to the workplace commits a crime.

Type 2

- Violent act by an individual directed to an employee at the workplace by a customer or client.

Type 3

- Violent act by an employee directed at another employee.

Type 4

- Violent act at the workplace by another person who has a relationship with an employee.

Workplace Violence Prevention

What is Required by Employers?

- Written workplace violence prevention “plan”
 - policy AND procedure
 - Cal/OSHA has a model plan
- Key elements
 - Employee participation
 - Available to employees
 - Accepting and responding to WPV
 - emergencies and non emergencies
 - WPV hazard assessments
 - Coordination with other employers
 - Contractors, staffing agencies, multi-employer worksites

Workplace Violence Prevention

Training

- Annual
- Interactive / opportunity for Q&A
- Additional training is required when new or previously unrecognized workplace violence hazards are identified, or when there are changes to the Plan.
- Employers must retain training records for at least 1 year.
- Any employees who work in California must receive training.

Indoor Heat Illness Prevention

8 CCR 3396 – Indoor Heat Regulation

- New regulation is *in addition to* pre-existing outdoor heat regulation.
- Effective July 23, 2024
- Triggers:
 - Indoor work area with temp. $\geq 82^{\circ}$ F when employees present
 - Enhanced requirements $\geq 87^{\circ}$ F or when wearing special clothing or have high radiant heat @ $\geq 82^{\circ}$ F
- Exceptions:
 - Work from home
 - Incidental exposure

Indoor Heat Illness Prevention – Initial Requirements

- Triggered at $\geq 82^{\circ}$ and $< 87^{\circ}$
 - Written “Heat Illness Prevention Program”
 - Can incorporate into IIPP, outdoor heat program, or stand-alone
 - Close-observation
 - Access to potable drinking water
 - Fresh, pure, suitably cool, and free
- 1 qt / employee / hour
- Access to cool-down areas
 - Large enough to accommodate # of employees on recover/rest periods
 - Temp. $< 82^{\circ}$ F
 - Allow and encourage preventative cool-down rest
- Emergency response procedures

Indoor Heat Illness Prevention - Training

Long list of requirements:

- Environmental and personal risk factors for heat illness.
- The added burden of heat load on the body caused by exertion, clothing, and personal protective equipment.
- The employer's procedures for complying with the requirements of this section.
- The importance of frequent consumption of small quantities of water.
- The concept, importance, and methods of acclimatization.
- The different types of heat illness, the common signs and symptoms of heat illness, and appropriate first aid and/or emergency.
- The importance of employees immediately reporting signs and symptoms to the employer.
- The employer's procedures for responding to signs or symptoms of heat illness.
- The employer's procedures for contacting emergency medical services, and if necessary, for transporting employees.
- The employer's procedures for ensuring clear and precise directions to the.

Indoor Heat Illness Prevention – Supervisor Training

Additional training for supervisors:

- The procedures the supervisor is to follow to implement employer's HIIPP.
- The procedures the supervisor is to follow when an employee exhibits signs or reports symptoms consistent with possible heat illness, including emergency response procedures.
- Where the work area is affected by outdoor temperatures, how to monitor weather reports and how to respond to hot weather advisories.

Indoor Heat Illness Prevention – Enhanced Requirements

- $\geq 87^{\circ}$ F or $\geq 82^{\circ}$ F when wearing special clothing
- Measure temperature & heat index - **this is where many clients are struggling**
 - Maintain log
 - Date/time/location
 - Maintain for 12 months
 - Employee involvement
- Control measures – **this is where many clients are struggling**
 - Engineering controls
 - Maintain temp. $< 87^{\circ}$ F (or $< 82^{\circ}$)
 - Feasibility analysis
 - Administrative controls
 - Adjust work practices
 - Acclimatization
 - Work/rest
 - Personal protective equipment
 - Air/water cooled garments
 - Personal cooling systems

What's on the Horizon

- General industry infectious disease
- Egregious and enterprise-wide regulations
 - Enterprise-Wide
 - “rebuttable presumption” that a violation is enterprise-wide if the employer has multiple worksites and either of the following is true:
 - The employer has a non-compliant written policy or procedure; or
 - Cal/OSHA has evidence of “a pattern or practice” of the same violation or violations involving more than one of the employer’s worksites.
 - Maximum Penalty: \$158,727
 - Egregious
 - willful violation where:
 - the employer has a previous egregious violation that remains in effect (five-year lookback window), **or**
 - **list of triggers.**
 - Maximum *per-instance* penalty: \$158,727
- Workplace violence regulations



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