

Cal/OSHA materials

Know them, get them and use them to establish negligence in your PI case

By Mauro Fiore, Jr. and Yesenia Sanchez-Riewthong

As a personal-injury lawyer, why should you care about Cal/OSHA (California Occupational Safety and Health Administration)? The answer is simple: After significant workplace injuries, Cal/OSHA investigators are required to conduct a thorough investigation of the workplace to attempt to ascertain if the injury could have been prevented. Cal/OSHA makes public its reports, materials, and opinions on whether the injury was caused by violations of any safety standards.

Cal/OSHA investigations are helpful because Cal/OSHA is empowered to compel employers to produce reports, photographs, video, contracts, and other information that a personal injury lawyer could only obtain in formal discovery. Cal/OSHA investigations can also help you because they often identify possible third-party defendants, and they contain other crucial evidence that helps build a case for your injured client.

Usually, within a few weeks of a significant workplace injury a Cal/OSHA investigator will want to meet with the injured party to interview them. Hopefully, by this time the injured party will have retained counsel so counsel can be present for the interview. It is our policy to always allow the Cal/OSHA investigator to interview our clients as Cal/OSHA is on the injured person's side and they will not harm your client's case. We can recall several times during such interviews where the Cal/OSHA investigator told us about previously unknown third parties that caused or contributed to the injury. The Cal/OSHA investigators are usually happy to share this information with plaintiffs' lawyers. They want to see the injured worker get compensation due to workplace negligence no matter who is at fault.

Cal/OSHA gets to work almost immediately when it receives a report of an injury. Cal/OSHA must be informed of any significant injury within eight hours of the incident. Under Cal/OSHA regulations a serious injury or illness that they need to be informed of is defined in section 330(h), Title 8, California *Administrative Code*:

> 'Serious injury or illness' means any injury or illness occurring in a place of employment or in connection with any employment that requires inpatient hospitalization for other than medical observation or diagnostic testing, or in which an employee suffers an amputation, the loss of an eye, or any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by an accident on a public street or highway, unless the accident occurred in a construction zone.

Cal/OSHA investigative reports will usually contain interviews with witnesses and the injured party; interviews with supervisors; information on who was working on the project (this includes potential third parties who were also on the worksite); photos, videos, drawings; OSHA opinions on what standards were violated and who (including third parties) caused or contributed to the injury; information on any fines that were levied by Cal/OSHA for violations.

Cal/OSHA jurisdiction

Cal/OSHA has jurisdiction over almost every workplace in California. This means Cal/OSHA is the main government agency authorized to inspect California workplaces for occupational safety and health violations. Cal/OSHA lacks jurisdiction in only a few limited areas like federal workplaces and maritime workplaces.

While many regulations are similar between Cal/OSHA and federal OSHA there are also several differences, some of which are listed below:

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1. Cal/OSHA has the Injury and Illness Prevention Standard, while federal OSHA does not. The Injury and Illness Prevention Standard is based on the belief that employers, through a systematic approach to recognizing and correcting workplace hazards, can reduce workplace injuries and fatalities significantly. These standards mandate a written Injury and Illness Prevention Program (IIPP). In fact, the most frequently cited Cal/OSHA violation is the absence of an IIPP.
2. California is the only state that has an ergonomic standard and the requirement that compliance with ergonomic standard is mandatory. California's ergonomics regulation requires an employer to implement a Repetitive Motion Injury (RMI) prevention program when at least two employees, performing the same job or work activity, develop repetitive motion injuries. The program should include a worksite evaluation, control of exposures that caused the injuries, and training employees.
3. As far as Bloodborne Pathogen Standard is concerned, Cal/OSHA regulations differ slightly from federal OSHA regulations. For example, California requires more information in the selection and evaluation procedures for sharps (such as needles) and also in the sharps injury report.
4. California has Aerosol Transmissible Disease (ATD) regulations while federal OSHA does not. The vast majority of health-care employers, and certain other employers whose employees are likely to come into contact with persons infected with aerosol transmissible diseases, are required by the regulation to take affirmative steps to ensure that the diseases are contained as much as possible. ATDs include SARS, tuberculosis, measles, and influenza among others. Medical and dental employers must complete an ATD exposure control plan.

Cal/OSHA was created in 1973 as a response to the federal Occupational Safety and Health Act (OSHA) of 1970, which established the Occupational Safety and Health Administration (OSHA) to oversee workplace safety and health at the federal level. The OSHA Act required states to create their own occupational safety and health programs that were at least as effective as the federal program. California, being a state with a large workforce and significant industrial activity, chose to establish its own program.

Under the OSHA Act, most private sector employers are responsible for providing a workplace that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees. The Act also provides protection to workers who file complaints about unsafe or unhealthy working conditions and prohibits employers from retaliating against employees who exercise their rights under the law. Overall, the OSHA Act and the agency have had a significant impact on workplace safety in the United States and have helped to prevent countless workplace injuries, illnesses, and deaths over the past several decades.

Written materials and documentation play a crucial role in the administration of Cal/OSHA and OSHA regulations. Regulations often require employers to maintain written documentation of their compliance with specific standards and regulations. Employers are also required to keep written reports and documentation related to specific incidents or hazards in the workplace as well as written documentation of workplace inspections, accident investigations, and corrective actions taken in response to identified safety issues.

For lawyers, understanding Cal/OSHA and obtaining Cal/OSHA materials is important because it will allow you to navigate a wide array of legal issues. For example, Cal/OSHA regulations can play a significant role in workplace injury and illness cases. Lawyers who represent employees who have been injured on the job must understand Cal/OSHA standards to determine whether their client's employer or a third party was in violation of those standards and, if so, whether that violation contributed to the client's injuries. Employers who fail to comply with Cal/OSHA documentation requirements can face significant fines and penalties and be subject to costly and complex legal battles. Overall, and regardless of who your client is and the type of case before you, Cal/OSHA materials are evidence that can play a crucial role in the outcome of your case.

Cal/OSHA regulations useful to personal injury litigation

Cal/OSHA materials are resources provided by the Occupational Safety and Health Division (OSHA) that help ensure safety compliance in the workplace. These materials include a range of resources, such as regulations, standards, guidelines, training programs, publications, and other educational resources.

Cal/OSHA – Title 8 regulations

These are legally binding requirements that employers must follow to ensure safe and healthy working conditions for employees. OSHA regulations cover a variety of topics. In our practice, we have often used Title 8 codes to ascertain the standards that were violated in personal injury cases involving injuries on construction sites or other jobsites.

The Safety Orders are organized by industry, process and equipment-specific subchapters. With a few exceptions, the General Industry Safety Orders (GISO) establish minimum occupational safety and health standards that apply to all places of employment in California. Additional industry, occupation or equipment-specific safety orders are located in other subchapters. Safety orders in these subchapters that address conditions and hazards will take precedence over the safety orders in the GISO wherever they are inconsistent with the General Industry Safety Orders.

The Title 8 index makes reference to the occupational safety and health standards in Chapter 4 (Safety Orders) of the California Code of Regulations (CCR)

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that are enforced by the Division of Occupational Safety and Health (OSHA). In addition to the Title 8 worker safety and health standards, the index includes references to a limited number of Cal/OSHA program administrative requirements such as posting, certification and registration requirements.

These are specific requirements that employers must follow to protect workers from hazards in the workplace. As you can see, Cal/OSHA materials are complex. Cal/OSHA standards cover a wide range of industries and hazards, and they require employers to meet specific requirements to protect workers from workplace injuries and illnesses. These requirements often involve technical terminology and detailed procedures, which can be difficult to understand for those who are not familiar with them. So, here's a tip: You can gain a better understanding of the regulations by consulting Cal/OSHA's official Interpretation and Guidance documents. These Interpretation and Guidance documents are available on the Cal/OSHA website, https://www.dir.ca.gov/dosh/. Search the database by keyword or by Cal/OSHA standard number. The database includes interpretations issued by Cal/OSHA's Directorate of Standards and Guidance, as well as interpretations issued by Cal/OSHA's field offices. You can also contact OSHA directly to request an interpretation of a specific standard or regulation.

These are some of the most noteworthy standards:

- General Duty Clause: Section 6400 of Title 8 of the California Code of Regulations states that "Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein." This is a broad standard that can be used to cite employers for any recognized hazards that are not covered by specific Cal/OSHA standards.
- Machine Guarding Standard: Section 4558 of Title 8 requires employers to install guards on machines and equipment to protect employees from hazards such as nip points, rotating parts, flying chips, and sparks. The standard provides detailed requirements for the design, construction, installation, and maintenance of machine guards, as well as requirements for training employees on the use of guards and the dangers associated with operating machinery without proper guarding.
- Hazard Communication Standard: Section 5194 of Title 8 requires employers to develop, implement, and maintain a written Hazard Communication Program (HCP) to inform and protect employees from hazardous chemicals in the workplace. The Cal/OSHA HazCom standard requires employers to create an inventory of hazardous chemicals used in the workplace, obtain Safety Data Sheets (SDSs) for each chemical, and label containers with hazard warnings. Employers must also train employees on the hazards associated with the chemicals they may be exposed to, and provide them with information on how to protect themselves from these hazards.

OSHA materials: How to get electronic materials

Cal/OSHA recognizes the importance of online resources for obtaining information and offers a variety of online resources to help employers and workers understand and comply with Cal/OSHA regulations.

Cal/OSHA's website, https://www.dir.ca.gov/dosh/, is a gold mine of information on workplace safety and health. The website contains a vast library of publications, including regulations, standards, and guidance documents, that can be downloaded for free. Employers can access resources on a wide range of topics, including workplace safety, health and environmental regulations, and training materials. The website also provides tools such as hazard identification and assessment tools, interactive training programs, and compliance assistance resources.

By utilizing these online resources, employers and workers can ensure that they are complying with Cal/OSHA regulations and providing a safe working environment for all. The internet has made it easier than ever to access information and resources on workplace safety and health.

Cal/OSHA public-records requests

Public records maintained by the Department of Industrial Relations (DIR) Cal/OSHA are available for inspection by members of the public pursuant to the Public Records Act (PRA) which is contained in the California Government Code beginning at section 6250.

Requests for public records may be made online, in person at any Cal/OSHA District Office, by email, mail, telephone or fax. DIR encourages requesters to submit their requests in writing to avoid miscommunication regarding the records being sought, and to help ensure that the requesters get the records as soon as possible. In order for DIR to locate the requested records, the request must clearly describe an identifiable record. DIR is available to assist in formulating the request. Whenever possible, a request should provide the following information:

- Names of the people, places and/or things the records involve;
- The period of time for which the records are being sought; and
- The office, division, branch or section of DIR that created or maintains the records.

If a request is made for records in electronic format, and DIR maintains them in electronic format, DIR will produce them in the electronic format in which it maintains them.

Some simple requests can be satisfied immediately. For most requests, DIR requires up to 10 days to notify the requester whether DIR has responsive records, when they will be available for inspection, the cost of providing copies, and whether any of the records contain information that is exempt from inspection. Under some circumstances, DIR requires an additional 14 days to make those initial determinations.

In most cases, there is no charge for requesters to inspect records or to make

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copies using their own equipment on DIR's premises. If DIR makes copies, the first ten pages are provided at no cost. Each additional page costs 19 cents. In connection with requests for electronic data, if producing the records involves data compilation, extraction or programming, the requester is required to pay for the cost of the services involved in producing the record.

Subpoenas

You may need to obtain Cal/OSHA materials through a subpoena. This can be a complex and time-consuming process that requires careful planning and execution. The first step is to identify the specific Cal/OSHA materials that are relevant to your legal case. This may include Cal/OSHA inspection reports, citations, penalties, or other enforcement documents. Once the specific Cal/OSHA materials have been identified, the lawyer can draft a subpoena that requests the production of those materials.

Any subpoena should include the name and address of the person or entity being subpoenaed, which in this case would be Cal/OSHA. It should also provide a specific description of the materials being requested, the deadline for OSHA to produce the materials, and a statement of the consequences for failing to comply with the subpoena. Once the subpoena has been drafted, you must serve it on Cal/OSHA. This can be done by mailing a copy of the subpoena to the appropriate Cal/OSHA office or delivering it in person. After the subpoena has been served, you should follow up with Cal/OSHA to ensure that the materials are produced by the deadline specified in the subpoena. It's important to note that if Cal/OSHA fails to comply with the subpoena, you may need to take legal action to enforce the subpoena.

Lawyers should consult with experienced legal counsel and familiarize themselves with the applicable laws and regulations before attempting to issue a subpoena to Cal/OSHA.

Tips for utilizing OSHA materials effectively

As a plaintiff's lawyer, using Cal/OSHA materials effectively can be critical in determining liability for your client's injuries. To do this, you need to have a deep understanding of Cal/OSHA regulations and standards. Take the time to familiarize yourself with the regulations and standards that apply to your client's case, as well as any updates or changes that may have been made since the incident occurred.

Cal/OSHA materials like the full Cal/OSHA investigative report can be a valuable tool for identifying potential hazards in the workplace that may have been caused by potential third-party defendants. Use the regulations and standards to identify any violations or areas where potential defendants may have fallen short in providing a safe work environment. Cal/OSHA keeps detailed records of workplace inspections, violations, and other incidents, and these records can be a valuable source of information.

Cal/OSHA regulations and standards can also be used to establish standards of care for workplace safety. Use the regulations and standards to demonstrate what should have been done to prevent the incident that led to your client's injuries. Consider bringing in an expert witness to help interpret OSHA regulations and standards, as well as any Cal/OSHA records related to your client's case. By following these tips, you can effectively use Cal/OSHA materials to support your client's case and help them achieve a successful outcome.

Conclusion

Cal/OSHA materials can be valuable tools. Understanding the regulations, standards, and investigative records related to an injury can help establish negligence by potential third-party defendants and other parties who may have caused or contributed to a workplace injury. As plaintiffs' lawyers, it is essential to understand how to access and use these materials correctly to protect our clients' interests and ensure that they can be compensated fully for a workplace injury. Workers' compensation benefits, while valuable, often will not fully compensate an injured worker. This is where you can use your understanding of Cal/OSHA materials to investigate and hold responsible those third-party actors who are not shielded from liability by workers' compensation laws.



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Mauro Fiore, Jr. graduated from law school in 1998. He has since dedicated himself to representing regular people seeking justice against insurance companies, large corporations and public entities. His firm, Fiore Legal, Inc., *is headquartered in Monrovia, with locations in West Covina, Los Angeles, Pasadena, Stockton, Fresno, and Seattle, WA.*



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