



## 2016 Brings Many Cal-OSHA Changes and Big Changes in Workplace Violence Laws

Insights

1.08.16

Employers quite rightly complain about the sheer number, intrusiveness and plain weirdness of California employment laws. However, Cal-OSHA and its regulatory scheme have not been that different from Federal-OSHA regulation. Yes, California requires the Injury and Illness Prevention Plan (IIPP), but it's not that burdensome a task. Cal-OSHA does present more exposure to criminal investigation filing a workplace fatality, but other states are following California's lead. Traditionally, California has been more rational in its analysis of multi-employer worksites than the Feds or most other states. All this is to say, that we are not "Cal-OSHA bashers."

But, a lot of changes are afoot, and many of them will make it more difficult on employers.

### **Cal-OSHA is making it easier to cite employers for repeat violations.**

The Division of Occupational Safety and Health has [closed comment](#) on December 15, 2015 on its [draft changes to Title 8, Section 334 of the California Code of Regulations](#) which [currently defines a repeat violation as:](#)

- a violation where an employer has previously corrected an earlier violation for which a citation was issued and upon a subsequent inspection within three years occurred at the same worksite.
- For employers with no fixed establishment, such as employers in the construction industry, a repeat citation is based upon a prior violation within the same Cal-OSHA Region.

Unfortunately, this Administration has scrutinized and even bullied State OSHA Plans to more conform to the current Federal approach. Fed-OSHA now looks back five years in calculating the repeat and wants Cal-OSHA to do so.

- The proposed California change would modify the three year look-back to begin the date the initial citation becomes final or when the citation violation has been abated (whichever occurred last).
- The proposed regulation would also eliminate the fixed site and geographical/district limitations.
- Under the proposed regulation, a Cal-OSHA repeat citation could be issued for the same violation at any operation or job site or the employer throughout the state.

- The proposed regulation also suggested that the look-back period will not begin until the citation is finalized or has been abated. Under the current regulation, the starting time for calculating the look-back period begins at the date that the citation was issued and continues to run even if an employer appeals the citation. Currently, the appeal immediately stays the citation from becoming final, a necessary element for the issuance of a repeat violation and an employer can reduce the chances of a future repeat citation by appealing every citation and commencing the three year look-back period running.

### **Proposed Healthcare Workplace Violence Prevention Regulations**

Cal-OSHA has proposed new Workplace Violence Provisions in Healthcare. The proposed standard would require covered entities to develop and maintain: an extensive written workplace violence prevention plan containing 11 elements with multiple subparts, which must be reviewed annually; a violent incident log, comprehensive training programs and various records. An ancillary health care operation could rely on a host entity for some of these requirements. General acute care hospitals, acute psychiatric hospitals and special hospitals would also have additional extensive reporting requirements. This is a much broader approach than any Fed-OSHA or other State-OSHA Plans' rules.

### **New California law makes it easier to take guns away from potentially mentally ill individuals.**

California Law AB 1014, effective January 1, 2016, allows a judge to issue a temporary restraining order to prevent individuals with mental health issues or who are potentially violent from purchasing or possessing guns. Backers of the law pointed out that in many of the recent mass shootings, the shooters were mentally ill and should never have possessed guns. However, in almost state, it is very difficult for individuals or the government to act against individuals whose mental health may present a serious threat of violence.

Under the law, family members and friends may contact law enforcement if they believe that an individual may be a threat to themselves or to others, and law enforcement could then ask a judge for a temporary restraining order for 21 days, but could be extended after a hearing. Previously, as in the case of most states, individuals could be banned from buying firearms only if they are involuntarily committed to a mental health facility and guns could be seized from individuals only if certain narrow events occurred.

Opponents of the law are concerned that angry spouses and family members or others may wrongly use the law to cause problems out of malice or inaccurate assumptions. Such concerns are serious, but the passage of this law also allows us to evaluate whether such an approach might in fact prevent some of the incidents of mass shooting

### **New Cal-OSHA Leaders**

On December, 29, 2015, Governor Brown also announced two new Cal-OSHA Deputy Chiefs, Debra Lee and Eric Berg.

## ***Related People***

---



**Howard A. Mavity**  
Partner  
404.240.4204  
Email