

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal of:

**AMAZON.COM SERVICES, LLC
dba AMAZON WAREHOUSE LGB3
410 TERRY AVE. N.
SEATTLE, WA 98109-5210**

Employer

Inspection No.

1473644

DECISION

Statement of the Case

Amazon.com Services, LLC, (Employer), operates a retail distribution warehouse. Beginning April 29, 2020, the Division of Occupational Safety and Health (the Division) through Compliance Officer Timothy Decker (Decker), conducted a complaint investigation at Employer's worksite located at 4950 Goodman Road, in Eastvale, California (the site). The site is an over one million square foot robotic fulfillment center known internally as the LGB3 Fulfillment Center (LGB3). Merchandise is received into, stowed, picked, packed, and shipped out of LGB3.

On October 6, 2020, the Division issued one citation to Employer for two alleged violations of the California Code of Regulations, title 8.¹ Citation 1, Item 1, classified as Regulatory, alleges that Employer failed to document employee safety and health training. Citation 1, Item 2, classified as General, alleges that Employer failed to provide effective safety and health training on the hazard of COVID-19.

Employer filed a timely appeal contesting the existence of both alleged violations, and appealed the penalty for Citation 1, Item 1. In addition, Employer raised numerous affirmative defenses, including, but not limited to, the Independent Employee Action Defense (IEAD).

This matter was heard by Howard Isaac Chernin, Administrative Law Judge (ALJ), for the California Occupational Safety and Health Appeals Board (Appeals Board) in Los Angeles, California, on October 5, December 15, 21, and 22, 2021, and August 31, 2022. ALJ Chernin conducted the video hearing with all participants appearing remotely via the Zoom video platform. Staff Counsel Mark Licker represented the Division, attorneys Kevin Bland and

¹ Unless otherwise specified, all references are to California Code of Regulations, title 8.

Martha Casillas of Ogletree Deakins represented Employer, and attorney Timothy Shadix of the Warehouse Worker Resource Center represented Third Party Matthew Flores.

The matter was submitted on December 21, 2022.

Issues

1. Did Employer fail to document employee safety and health training?
2. Did Employer fail to provide effective safety and health training on the hazard of COVID-19?
3. Did Employer establish any of its affirmative defenses?
4. Did the Division propose a reasonable penalty for Employer's violation of section 3203, subdivision (b)(2)?

Findings of Fact

1. LGB3 is a fulfillment center used to receive, stow, pick, pack and ship merchandise. At the time of the inspection, LGB3 employed between 3,000 and 5,000 employees split between two shifts.
2. In early 2020, COVID-19² emerged as a global health crisis, and constituted a new hazard to which Employer's employees were exposed by the time of the Division's inspection.
3. In response to the emergence of the COVID-19 hazard, Employer instituted a series of measures designed to address the hazard. These measures included training elements as well as operational changes intended to impede the spread of COVID-19 between employees at LGB3.
4. Employer did not keep complete documentation reflecting COVID-19 safety training provided to its employees. Records for some employees lacked the title or description of the training, as well as the identity of the training provider.

² As used in this Decision, "COVID-19" refers to SARS-CoV-2, the virus that causes a respiratory disease called coronavirus disease 19 (COVID-19).

5. Employer did not fully document COVID-19 training provided to all its employees at the site. Although Employer documented COVID-19 training provided to its new hires, Employer did not document COVID-19 training for existing employees who began work at LGB3 prior to the COVID-19 pandemic.
6. Besides new-hire COVID-19 training, Employer took additional steps to train and inform all employees at LGB3, regardless of their hire date, about the COVID-19 hazard. These steps included posting signs on topics including social distancing, hand washing, and staying home if symptomatic; televised “acid feeds” with various COVID-19 information throughout the site; information on stand-up boards; messages sent directly to employees’ work devices and messages on log-on screens at work stations; electronic messages sent to employees through its proprietary “A to Z” app, viewable on phones and computers; text messages sent to employees’ phones; brief verbal comments and coaching; and, TV screens showing live video of walkways with superimposed digital circles that change color from green to red if employees are not maintaining six feet of social distancing.
7. The multi-layered COVID-19 training that Employer provided to its employees communicated the COVID-19 hazard to employees, as well as how to avoid the hazard through such means as masking, social distancing, hand washing and sanitizing workstations.
8. Employees at LGB3 substantially complied with Employer’s COVID-19 training and instruction, and Employer ensured compliance through multiple methods, including audits and designating employees to monitor hallways and other areas where employees congregate.
9. The penalty that the Division proposed for Citation 1, Item 1, is reasonable.

Analysis

1. Did Employer fail to document employee safety and health training?

Section 3203, subdivision (b)(2), provides:

Documentation of safety and health training required by subsection (a)(7) for each employee, including employee name or other identifier, training dates, type(s) of training, and training providers. This documentation shall be maintained for at least one (1) year.

Citation 1, Item 1 alleges:

Prior to and during the course of the investigation, the employer failed to include on the Safety and Health Training documentation for each employee, the type(s) of training, and training provider(s) in accordance with subsection 3203(a)(7).

Applicability

Employer did not dispute during the hearing that the safety order applies to its operations at the site, and the uncontroverted evidence establishes that Employer was an entity covered by section 3203, subdivision (b)(2), and was therefore required to document safety and health training required by section 3203, subdivision (a)(7).

Violation

The Appeals Board has held, "The purpose of section 3203(b)(2) is to establish a means for employers to have readily accessible proof that they have complied with the [section 3203(a)(7)(E)] training requirements." *Los Angeles County Department of Public Works, Cal/OSHA App. 96-2470, Decision After Reconsideration (April 5, 2002).*

Here, the Division contends that COVID-19 presented a new hazard at the site, and therefore, Employer was obligated to provide its employees with training about it. Employer did not dispute that COVID-19 was a new hazard in March 2020 or that it was obligated to provide training on the worksite hazard presented by COVID-19.

The Division must demonstrate that Employer did not record and maintain sufficient documentation of safety and health training. As part of his document request, Decker requested training records for employees Hector Delgado (Delgado), Latashia Young (Young), Victoria Miguel (Miguel), Loraine Kenevan (Kenevan), and Doug Lansen (Lansen) (Exhibit C).³ Decker credibly testified he found several instances where the Employer's training records were deficient. Decker further testified that although he received evidence of COVID-19 training given to new hires (Exhibit 12), Employer did not provide documented evidence that Employer's existing employees received it. In particular, Decker credibly testified that he did not receive documentation reflecting that Delgado and Young received all of Employer's COVID-19 training, and Employer did not provide evidence to contradict Decker and did not provide documentation reflecting those two individuals' COVID-19 training. According to Decker, Delgado and Young had job-specific COVID-19 training that was documented, but additional training was not documented appropriately except as to Young. Also, Decker credibly testified

³ During the hearing, Employer pointed to several instances where the Division misspelled names of employees who were interviewed and/or whose training records were requested. The misspellings are deemed harmless error by the undersigned in light of the full evidentiary record, and do not affect the resolution of the appeal of this citation.

that training records that he received from Employer (Exhibit 14) did not identify the training topics or the instructor or provider of the training. This evidence is enough to support a finding that Employer did not document all of the training provided for Delgado and Young.

Gina Bardessono (Bardessono), Employer's senior site safety manager for the LGB3 Fulfillment Center, testified regarding Employer's documentation of COVID-19 training. Although she was "not 100 percent sure what their training procedures were," Bardessono testified that training began being provided electronically as opposed to in person as a result of the pandemic. Specifically, Bardessono testified that Exhibit GG was the COVID-19 training provided to employees. She also testified that Exhibit K was a portion of the records created around August 2020 reflecting COVID-19 refresher training provided to Employer's employees. Employer did not offer initial COVID-19 training records for Delgado or Young, despite the fact that they were employed at the site during the relevant period, and despite the fact that the Division requested their training records. Employer concedes in its closing brief (Employer's Closing Brief, page 6) and the evidence supports a finding that Employer did not document all of the training that it provided to employees as required.

For all of the foregoing reasons, therefore, the Division met its burden of establishing a violation of section 3203, subdivision (b)(2). Therefore, Citation 1, Item 1, is affirmed.

2. Did Employer fail to provide effective safety and health training on the hazard of COVID-19?

Section 3203, subdivision (a)(7), provides:

- (a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

[. . .]

- (7) Provide training and instruction:

- (A) When the program is first established;

Exception: Employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with the previously existing Accident Prevention Program in Section 3203.

- (B) To all new employees;

- (C) To all employees given new job assignments for which training has not previously been received;

- (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;

(E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,

(F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

Citation 1, Item 2, alleges:

Prior to and during the course of the inspection the employer failed to provide effective safety and health training on COVID-19 and procedures to mitigate potential exposure, in that the employer did not ensure that all employees had access to, viewed and understood all COVID-19 training materials, and employees were unaware of key elements in the training materials, including but not limited to, sanitation of work stations and frequently touched objects in the workplace.

The Division has the burden of proving a violation, including the applicability of the safety order, by a preponderance of the evidence. (*Coast Waste Management, Inc.*, Cal/OSHA App. 11-2385 and 2386, Decision After Reconsideration (Oct. 7, 2016.) “Preponderance of the evidence” is usually defined in terms of probability of truth, or of evidence that when weighed with that opposed to it, has more convincing force and greater probability of truth with consideration of both direct and circumstantial evidence and all reasonable inferences to be drawn from both kinds of evidence. (*United Parcel Service*, Cal/OSHA App. 1158285, Decision After Reconsideration (Nov. 15, 2018); *Leslie G. v. Perry & Associates* (1996) 43 Cal.App. 4th 472, 483.)

Applicability

Section 3203, subdivision (a), provides the minimum requirements for employer Injury and Illness Prevention Programs (IIPP). One requirement is that every employer is required to provide necessary training to its employees to ensure they can safely perform their jobs. There is no dispute that Employer employed thousands of employees at the site on the date of the inspection and was required to comply with section 3203, subdivision (a). Furthermore, it is undisputed that by March 2020 a COVID-19 hazard existed in workplaces throughout California, including the site.

Violation

Pursuant to section 3203, subdivision (a), employers are required to establish, implement, and maintain an effective Injury and Illness Prevention Program (IIPP). To establish an IIPP violation, the flaws in a program must amount to a failure to “establish,” “implement,” or “maintain” an “effective” program. Even when an employer has a comprehensive IIPP, the

Division may still demonstrate a violation by showing that the employer failed to implement one or more elements. (*HHS Construction*, Cal/OSHA App. 12-0492, Decision After Reconsideration (Feb. 26, 2015).)

An IIPP can be found not effectively established, maintained, or implemented on the ground of one deficiency, if that deficiency is shown to be essential to the overall program. (*Hansford Industries, Inc. DBA Viking Steel*, Cal/OSHA, App. 1133550, Decision after Reconsideration (Aug. 12, 2021).) Training is essential to an overall workplace safety program. (*Mountain Cascade*, Cal/OSHA App. 01-3561, Decision after Reconsideration (Oct. 17, 2003).)

The Appeals Board has repeatedly found that the purpose of section 3203, subdivision (a)(7), “is to provide employees with the knowledge and ability to recognize, understand and avoid the hazards they may be exposed to by a new work assignment through ‘training and instruction.’” (*Timberworks Construction, Inc.*, Cal/OSHA App. 1097751, Decision After Reconsideration (Mar. 12, 2019).) The Division may prove a violation of the regulation by showing that the employer did not implement adequate training. (*Bellingham Marine Industries, Inc.*, Cal/OSHA App. 12-3144, Decision After Reconsideration (October 16, 2014); *National Distribution Center, LP*, Cal/OSHA App. 12-0391, Decision After Reconsideration (October 5, 2015).) The training provided by the employer must be of sufficient quality to make employees “proficient or qualified” on the subject of the training. (*Ibid.*) Although the existence of training records may support a conclusion that training occurred, “lack of records, coupled with employee testimony indicating that no training was provided, may lead to a reasonable inference that no such training was provided.” (*Blue Diamond Materials, A Division of Sully Miller Construction*, Cal/OSHA App. 02-1268, Decision After Reconsideration (Dec. 9, 2008).)

The Division offered the testimony of Decker, as well as two employee witnesses, Matthew Flores (Flores) and Douglas Larsen (Larsen), to show that employees were not effectively trained on COVID-19. Their relevant testimony is summarized below.

Timothy Decker

Decker testified to the training methods that he learned about during and following his inspection of the site on April 29, 2020. He testified that during his inspection, he observed that Employer had delineated lanes for employees to use when entering the building. (Exhibit 4.) He also photographed an employee near the entrance handing out face masks. Decker observed several employees receive masks upon entering the site. Flores further testified that he observed “different policies and procedures” regarding COVID-19 on posters, signs, videos and “things of that nature” while walking around the building with management. This included a sign near the entrance instructing employees on wearing masks, as well as maintaining social distancing, not sharing masks, and keeping masks sanitary and undamaged. (Exhibit 5.) Although Decker

testified that there were contradictions in the information given to employees regarding reusing masks, Decker admitted that he did not inquire about this during his investigation.

Decker testified that the only evidence of comprehensive COVID-19 training that he received was Exhibit 10, which he described as comprehensive COVID-19 training documentation, in response to a Notice to Classify as Serious. Employer's management informed Decker that this training was for new hires and was computer-based. Decker testified that he believed the training was meant to take 10 minutes based on language contained within the materials. The training states that it covers "The measures we are putting in place to everyone during the COVID-19 pandemic and what you can expect when you arrive at your Amazon facility." (Exhibit 10, p. 6.) Decker testified that the training covered the following topics: "Social Distancing," "Access to Cleaning Products," "Deep Cleaning," "Additional Protective Measures," "Hand washing," "Temperature Checks," and "Stay at home." Decker testified that out of the approximately six to eight employees who he interviewed at the site, only one stated that he had received the training in Exhibit 10. However, nothing in the record suggests that any of the other five to seven employees with whom Decker spoke were newly hired by Employer after the start of the COVID-19 pandemic.

Besides the new hire training, Decker testified to a "plethora" of additional training instituted throughout the site. Decker referenced the sign posted near the main entrance advising employees to wear masks. He also testified that he learned about questions that needed to be answered by associates when logging in to use a scanner or a computer. Decker testified that these questions rotated, and included, "Do you see people social distancing?" and "Are you washing your hands?" In addition, Employer would designate employees to go around observing whether employees were socially distancing and asking COVID-19 related questions, although not every employee was questioned. Employer also utilized text alerts on Employer's internal "A to Z" app, as well as posters and videos throughout the site.

Finally, Decker testified that during his inspection he entered the main break room at the site at around 11:30 A.M. and observed employees "doing other things rather than eating" while unmasked. (Exhibit 8.) He also testified that he observed several employees standing in close proximity to one another and not wearing masks or wearing them improperly below their faces.

Matthew Flores

Flores, who was employed at the site between October 2018 and May 2021, credibly testified that in early 2020, he was employed at the site in the role of a picker. A picker works on a raised platform (workstation) equipped with a computer, an overhead scanner and a handheld scanner. A conveyor belt carrying products runs alongside each workstation. Employees might be assigned to different workstations in the course of a single shift, but typically only one

employee occupied a workstation at a time unless a supervisor or maintenance employee had reason to occupy the workstation as well.

Flores testified to alleged deficiencies in his COVID-19 training. As a threshold matter, Flores stated that he did not recall being shown pages 13 or 14 of Employer's slide deck for a training entitled "Working at Amazon During COVID-19" (Exhibit 10.) These two pages outline Employer's multi-layered approach, what it called "a 7 Point Safeguard," consisting of 1) Social distancing; 2) improved access to cleaning products; 3) deep cleaning of work areas, surfaces and equipment; 4) additional personal protective equipment; 5) more thorough and frequent handwashing; 6) temperature checks upon arrival; and, 7) supporting employees to stay home if symptomatic. Flores' testimony is summarized below:

Social Distancing

Flores denied that he received training on minimizing the spread of COVID-19 in breakrooms or why social distancing is important. He also testified that he observed people who were not socially distancing throughout the site. Furthermore, Flores testified that when he transferred to the packing area in July or August 2022, social distancing was "worse" in the packing area, which is in the center of the LGB3 warehouse. Flores further testified that he did not receive any additional training on social distancing following his transfer. Flores admitted that he saw signs throughout the facility instructing employees to maintain six feet of social distancing, including in the restrooms, but denied being trained as to why employees should maintain such distance from one another. Flores also admitted that Employer used floor markings and signage to instruct employees about maintaining social distancing. (Exhibits W and X.) He also admitted that there were video screens posted at the site that used colored circles to indicate whether appropriate social distancing was being maintained between employees. (Exhibit DD.) Nonetheless, Flores testified that during shift changes, people would get closer than six feet to one another while leaving LGB3.

Improved Access to Cleaning Products

According to Flores, unspecified "sanitizing equipment" was visible from workstations, but Flores denied being trained regarding where to get the supplies or how to indicate on the computer that he was engaging in sanitation activities.

Deep Cleaning of Work Areas, Surfaces and Equipment

Flores testified that he did not receive training on pages 44 through 48 of Exhibit 10, which identify the various surfaces that employees were expected to sanitize. He also denied receiving training consistent with the bottom of page 48 of Exhibit 10 regarding how to clean the

surfaces of his work area, either before or after his transfer from the picking area to the packing area. Flores further testified that during shift changes in the picking area, he observed that “other people weren't stopping and picking up cleaning products to clean their own workstations that they were going to start at,” which led him to believe that they were not cleaning their workstations during the minute that elapsed between logging in and when parcels started arriving via the conveyor belt. Flores testified that Employer closely monitored productivity and “time off task,”⁴ and never provided him with training on how to clean his workstation, and never explained how to perform these tasks without affecting his perceived productivity. Flores did admit, however, to receiving instruction on cleaning work areas over text messages via Employer’s “A to Z app,” as well as on posters and screens throughout LGB3.

Additional Personal Protective Equipment

Flores testified that there was at least one area at the site where he could obtain personal protective equipment and ask safety-related questions. (Exhibit V) He also testified that there were signs posted throughout the site advising employees on how to properly wear masks. (Exhibit CC.)

More Thorough and Frequent Hand Washing

Although he did not recall seeing Employer’s written training regarding hand washing, Flores did testify that he recalled seeing messaging around the site encouraging hand washing. Flores denied that hand sanitizing products were available at workstations and further testified that time taken to wash one’s hands would have been counted against an employee as “time off task”. Flores testified that although he was not trained on where to obtain hand washing supplies, he could see them from his work station, anywhere from 20 to 300 feet away. Flores additionally testified that there were television screens on each floor that would display messages about handwashing and workstation cleaning, but they were in the areas where employees would show up for “stand up” meetings that included stretching and morning announcements from supervisors. Employees were not focused on these screens during the “stand up” meetings. Most of the time, the screens simply displayed workstation assignments.

Flores admitted on cross-examination that he saw signs posted throughout the LGB3 warehouse regarding sanitation and handwashing (see, *c.f.*, Exhibit EE), and he recalled seeing signs reminding employees about handwashing and social distancing in the restrooms. He also admitted to receiving information on these topics through Employer’s “A to Z” phone app, but he claimed the information was vague and ineffective in particular in light of Flores having preexisting medical conditions.

⁴ During the hearing, “time off task” was described as a productivity tool used by Employer to gauge how much time per shift an employee is spending not working.

Temperature Checks Upon Arrival

Flores did not testify as to this aspect of Employer's COVID-19 training.

Supporting Employees to Stay Home if Symptomatic

Flores testified that he received multiple advisements via text message concerning what to do if symptomatic and/or awaiting COVID-19 test results. These advisements included instructions to stay home if the employee 1) had close contact with a confirmed or presumed COVID-19 patient and was advised by a medical provider to self-quarantine, or 2) if the employee is experiencing COVID-19 symptoms. Although Flores testified that he could not receive or check text messages at work, Flores nonetheless recalled receiving and reviewing these advisements.

Douglas Larsen

Larsen testified that he is a purchasing manager for the Los Angeles Dodgers, and that he was furloughed by the Dodgers around the end of March 2020. Larsen credibly testified that he began working for Employer in April 2020 at LGB3, and worked there until approximately April 2021. During that time, Larsen worked in the stow area, as well as in the equipment cage where equipment such as radios and laptops were checked in, checked out, and programmed. Larsen received three or four hours of online video-based training when he started working for Employer. According to Larsen, the initial training did not cover COVID-19 prevention. Larsen did credibly testify, however, that during his employment at LGB3, he received COVID-19 related training concerning social distancing, proper masking, and sanitation. Larsen also credibly testified that although there was no formal classroom training regarding COVID-19, there were posters on walls at the site, and Employer enforced social distancing throughout the site. He also testified that COVID-19 prevention instructional videos and corporate directives would be displayed when someone logged into a workstation terminal.

Larsen credibly testified that in the early periods that he worked at LGB3, time-on-task was relaxed, and Employer was flexible and accommodating of employees needing to use the bathroom and wash their hands, for instance. Larsen stated that it became less flexible over time, but he could not recall when.

Larsen was not sure whether he had seen Exhibit 10 while working for Employer, but he testified that he had seen content like that which is included in the exhibit "every day" at LGB3.

Social Distancing

Larsen credibly testified to seeing information about social distancing every day at the site. He stated that Employer monitored employees' social distancing "everywhere in the building" and it was "constantly engrained in all the employees' heads", although he did not recall if the information included why social distancing was important. There were employees who were assigned to enforce social distancing, who would be spaced out in various passageways or other congestion areas. Larsen was assigned to this task on at least one occasion. Larsen did note, however, that it was difficult to maintain social distancing in areas such as passageways and hallways, or other areas where people congregated during breaks.

Improved Access to Cleaning Products

Larsen credibly testified that there were cleaning supplies "within your work distance" for cleaning workstations.

Deep Cleaning of Work Areas, Surfaces and Equipment

Larsen also credibly testified that he recalled being trained to clean work surfaces for COVID-19 prevention and recalled seeing instruction in writing similar to that contained on page 24 of Exhibit 10. He credibly testified that he was instructed to and did in fact routinely clean his work station at various times including when arriving at or leaving a workstation and at shift changes.

Additional Personal Protective Equipment

Larsen credibly testified that he was given information about masking including why it was important, consistent with the information on page 62 of Exhibit 10.

More Thorough and Frequent Hand Washing

Larsen did not testify specifically as to this topic of Employer's COVID-19 training.

Temperature Checks Upon Arrival

Larsen credibly testified that on numerous occasions he was tasked with checking employees' temperatures with an infrared thermometer as they entered LGB3, and that he received on the job training to perform this task.

Supporting Employees to Stay Home if Symptomatic

Larsen recalled seeing information like that on page 14 of Exhibit 10, regarding staying off work while waiting for COVID-19 test results.

Gina Bardessono

Employer called Gina Bardessono (Bardessono) as its only witness. Bardessono is Employer's senior site safety manager at LGB3, and has held that role since January 2018. Prior to working for Employer, Bardessono spent 21 years as a store team leader for Target, where she oversaw operation of the store and was responsible for the safety of 250 to 300 employees. She testified that her job entails ensuring that the work environment at LGB3 is safe and that all safety rules are being followed.

Bardessono credibly testified that in March 2020, COVID-19 was a new hazard and that Employer was "constantly making changes" at LGB3 in response to direction from government agencies including the federal Centers for Disease Control and Prevention (CDC). Some of the changes made at LGB3 included putting down tape for social distancing, moving time clocks, installing remote break rooms to allow for more social distancing, obtaining sanitation supplies, and passing out masks, gloves and sanitizer at the front entrance to the building. (Exhibit 4.) Bardessono further testified that Employer implemented unlimited time off, temperature checks, set up sanitation stations, and implemented cleaning routines via an outside company.

Bardessono testified that COVID-19 information was provided to employees in "numerous ways." Employer halted in-person "stand-up" meetings with employees at the beginning of the COVID-19 pandemic. It used preexisting systems used for communicating important information to employees such as e-mails through Employer's "A to Z" platform and text messages through "Text-Them-All." Employer also utilized television screens throughout LGB3, referred to as "acid feeds." According to Bardessono, employees were used to watching information on these screens and Bardessono further testified that Employer utilized signage around the building, including A-frame signs that had previously been used to provide information about schedule changes and changes at LGB3. Bardessono further credibly testified that Employer had a system in place where it would send messages that would pop up on employees' workstation screens, and provided and logged video-based training through its "K-Net" platform. She also testified that Employer utilized "stand-up boards" to give daily assignments, and would post COVID-19 related information in that area as well. Bardessono also testified about Employer's training ambassadors, who are employees that provide training on site. Bardessono credibly testified that ambassadors would also share safety information with employees. Finally, Bardessono testified that Employer utilized posted signs in bathrooms called "installments" to communicate important information to employees.

Bardessono also discussed employee new-hire training. According to Bardessono, pre-COVID-19 training was all done on-site. Employer switched from on-site, in-person training to virtual training during the early part of the COVID-19 pandemic. Bardessono was not sure, however, as to what training was provided to newly hired employees prior to them showing up at LGB3 for work. On day one at the site, Employer would assign a fellow employee as a training ambassador. Employer assigned ambassadors amplifiers so that they could communicate with and train new hires effectively while socially distancing. Bardessono stated that ambassadors go over safety with new hires, but she was not able to definitively say whether training ambassadors communicated COVID-19 protocols to new hires.

Bardessono credibly testified that Employer used multiple methods to instruct employees on cleaning their work stations. Initially, management physically handed supplies to employees and gave them instructions to clean their workstations when they first arrived. Later, Employer began utilizing other means such as the bathroom “installments” and on the television screen “acid feeds.” Management continued going around reminding employees to clean their workstations. According to Bardessono, employees were not punished or docked pay for time spent cleaning their workstations.

Bardessono denied that Employer blocked cell phone signals during the pandemic. She explained that prior to the pandemic, cell phones were not allowed in the fulfillment area. During the COVID-19 pandemic, however, Employer changed its policies due to evolving circumstances.

Bardessono went into detail about the messages that appeared on the screen at a workstation when an employee would first log in. According to Bardessono, between April and October 2020, messages would display on screen telling employees to wash their hands, stay six feet apart, wear their masks, and stay home if they were sick. Employees did not have to do anything to acknowledge these messages. Bardessono further explained that similar messages were displayed on approximately 55 to 60 inch television screens throughout the building.

Bardessono testified that Exhibit GG, entitled “Working at Amazon during COVID 19,” is a refresher course that came out in October 2020. The purpose of the training was to document that everyone had received training on COVID-19. Bardessono testified that the training was designed to reinforce Employer’s COVID-19 training, including: social distancing, access to cleaning products, deep cleaning, and additional protective measures, which Bardessono said included masks and temperature checks. Bardessono described the training as self-led, and said that employees could go at their own pace. The training was given to new hires before their first day at work and constituted paid time for them; however, Employer also gave the training to all of its employees and managers on-site.

Bardessono testified to the various signage posted throughout LGB3. (Exhibits Q and R.) Bardessono elaborated that the signage included instructions to employees on different procedures, including social distancing, hand washing, and where to clock in and out. These signs included language such as “Stop. You need to have a face covering before you enter the building.”

Bardessono also testified to the COVID-19 safety audits that Employer conducted. (Exhibit Z.) Associate safety champions from Employer’s social distancing team would walk around with Kindle tablets and would observe conditions and ask questions on topics including social distancing, masking and cleaning workstations. Bardessono described other activities of Employer’s social distancing team, which evolved during the period of April to October 2020, to include such roles as: checking temperatures of employees entering LGB3, maintaining sanitation stations, enforcing social distancing and masking, and coaching and training employees on various COVID-19 related topics.

Bardessono testified about Employer’s “Project Speedbump” (Exhibit FF), which utilized television monitors with colored circles superimposed over employees to indicate whether they were adhering to Employer’s social distancing requirements. Green circles meant that employees were at least six feet apart; if the employees were closer to one another, however, the circle would turn red. Bardessono also testified about the use of tape on floors,⁵ which Employer had done prior to the COVID-19 pandemic, as a way that employees were trained on where they could go or where items needed to be kept such as chairs and boxes.

Bardessono credibly testified that she observed employees wearing masks and wiping down their workstations at LGB3.

As previously mentioned, section 3203, subdivision (a)(7), requires employers to effectively train employees whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard ((a)(7)(C)); as well as whenever the employer is made aware of a new or previously unrecognized hazard ((a)(7)(D)). For training to be effective, it must empower employees to know how to recognize and avoid the hazard.

Here, when viewing the evidence as a whole, it is found that Employer provided effective training to its employees (both new hires and existing employees) on the COVID-19 hazard. This finding is based on the credible testimony of Bardessono and Larsen, which is credited, and which supports a finding that Employer took reasonably quick action to institute comprehensive training and instruction on the COVID-19 hazard at LGB3. Although not every employee necessarily received precisely the same training in precisely the same way, Larsen testified to the overall effectiveness of the training in communicating the hazard to employees as well as how to

⁵ Bardessono referred to this as “5-S”.

avoid it through such measures as masking, social distancing, hand washing and workstation sanitizing. Bardessono testified to the various elements of Employer's training program as well as how Employer implemented and enforced its training through observation, coaching and auditing.

This finding is also based on the testimony of Flores. Flores's testimony was somewhat inconsistent. Although Flores maintained at various times during his testimony that he was not effectively trained on the COVID-19 hazard, Flores's testimony demonstrates that he was effectively trained by Employer on how to recognize and avoid it.

This finding is also based on the testimony of Decker. Although Decker claimed deficiencies in Employer's training program, he testified to the "plethora" of ways that Employer trained its employees on recognizing and avoiding COVID-19 at LGB3. Furthermore, although Decker claims that he saw multiple people in a break room who were not donning masks while "doing other things rather than eating," the undersigned views this testimony as speculative because Decker did not ask the employees what they were doing or take other measures to determine whether they were effectively trained. Because this specific evidence is speculative, it is afforded less credibility and weight.

Finally, this finding is also based on the documentary evidence admitted during the hearing, including Employer's "day zero" COVID-19 training for new hires (Exhibit 10), as well as the various photographs taken at LGB3 of signage and other means for communicating the COVID-19 hazard and avoidance strategies. Employer utilized signage and other methods of communication throughout LGB3 to communicate and reinforce COVID-19 training. The training was comprehensive and provided important information to Employer's employees about the hazard of COVID-19 as well as how to avoid it by various methods including practicing social distancing and masking.

Section 3203, subdivision (a)(7), does not prescribe the precise method by which an Employer must provide training to employees on known or newly discovered hazards. The only requirement is that the training be effective to permit employees to recognize and avoid the hazard. Therefore, an employer is given latitude to provide training in various ways and through various channels. Here, Employer utilized numerous methods to train its employees on the COVID-19 hazard and enforced the training through various means as well. Although certain aspects of Employer's training program could have likely been improved, the evidence as a whole supports a conclusion that Employer provided overall effective training, and any deficiencies were immaterial and incidental to the overall effective training provided.

For all of the foregoing reasons, therefore, the Division did not meet its burden of establishing a violation of section 3203, subdivision (a)(7). Citation 1, Item 2, is vacated, and its associated penalty is set aside.

3. Did Employer establish any of its affirmative defenses?

Employers bear the burden of proving their pleaded affirmative defenses by a preponderance of the evidence. (*RNR Construction, Inc.*, Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

Here, Citation 1, Item 1, alleges non-compliance with a non-delegable duty. Citation 1, Item 1, alleges that Employer failed to document COVID-19 training as to one or more employees. Employer did not present evidence to support any of its affirmative defenses as to this citation. Therefore, the defenses are deemed waived.

4. Did the Division propose a reasonable penalty for Employer's violation of section 3203, subdivision (b)(2)?

Penalties calculated in accordance with the penalty setting regulations set forth in sections 333 through 336 are presumptively reasonable and will not be reduced absent evidence that the amount of the proposed civil penalty was miscalculated, the regulations were improperly applied, or that the totality of the circumstances warrant a reduction. (*RNR Construction, Inc.*, *supra*, Cal/OSHA App. 1092600, citing *Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).)

Generally, the Division, by introducing its proposed penalty worksheet and testifying to the calculations being completed in accordance with the appropriate penalties and procedures, will be found to have met its burden of showing the penalties were calculated correctly. (*MI Construction, Inc.*, Cal/OSHA App. 12-0222, Decision After Reconsideration (Jul. 31, 2014).) The Appeals Board has held that maximum credits and the minimum penalty allowed under the regulations are to be assessed when the Division fails to indicate the basis of its adjustments and credits. (*Armour Steel Co.*, Cal/OSHA App. 08-2649, Decision After Reconsideration (Feb. 7, 2014).)

During the hearing, the Division submitted its C-10 proposed penalty worksheet (Exhibit 16). Decker credibly testified as to how he calculated the penalty for Citation 1, Item 1, and his testimony is deemed reasonable in light of the totality of the evidence at hearing.

Therefore, it is found that the Division proposed a reasonable penalty for Employer's violation of section 3203, subdivision (b)(2).

Conclusions

The evidence supports a finding that Employer violated section 3203, subdivision (b)(2), by failing to properly document training that it provided to its employees on COVID-19.

The evidence supports a finding that Employer did not violate section 3203, subdivision (a)(7), by failing to instruct employees on recognizing and avoiding the hazard of COVID-19 at LGB3.

The Division proposed a reasonable penalty for Citation 1, Item 1.

Orders

Citation 1, Item 1, is affirmed and the associated penalty is affirmed and assessed as set forth in the attached Summary Table.

Citation 1, Item 2, is vacated and the associated penalty is set aside as set forth in the attached Summary Table.

Dated: 12/30/2022



Howard I. Chernin
Administrative Law Judge

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**