BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1598862**
SONY PICTURES STUDIOS, INC. **10202 W. WASHINGTON BLVD.** **CULVER CITY, CA 90232**	**DECISION**
Employer	

Statement of the Case

Sony Pictures Studios, Inc. (Employer) is a movie studio located in Culver City, California. From May 18, 2022, to August 31, 2022, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer, Dien Nguyen, conducted an inspection of Employer's worksite at 10202 W. Washington Blvd. in Culver City, California (the worksite).

On September 1, 2022, the Division issued one citation to Employer, alleging two violations of the California Code of Regulations, title 8.[1] Citation 1, Item 1, alleges that Employer had not established a written COVID-19 prevention program with all required elements. Citation 1, Item 2, alleges that Employer had not established, implemented and maintained an effective heat illness prevention plan that included all required elements.

Employer filed timely appeals of the citations, contesting the existence of the violations. Employer also asserted that the classifications were incorrect and the proposed penalties were unreasonable. Additionally, Employer asserted numerous affirmative defenses to both citations.[2]

This matter was heard by Administrative Law Judge Ka H. Leung for the California Occupational Safety and Health Appeals Board (Appeals Board) on November 7, 2024. Attorney David A. Wimmer of Swerdlow Florence Sanchez Swerdlow & Wimmer, represented Employer. William C. Cregar, Staff Counsel, represented the Division. The matter was submitted on April 1, 2025.

[1] Unless otherwise specified, all references are to California Code of Regulations, title 8.
[2] Except where discussed in this Decision, Employer did not present evidence in support of its affirmative defenses, and said defenses are therefore deemed waived. (*RNR Construction, Inc.*, Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

Issues

1. Is section 3205, subdivision (c)(3)(B)(3), enforceable after the repeal of those requirements by the Occupational Safety and Health Standards Board?

2. Did Employer establish, implement, and maintain an effective heat illness prevention plan with the minimum requirements under section 3395, subdivision (i)?

3. Is the classification for Citation 1, Item 2, correct?

4. Is the proposed penalty for Citation 1, Item 2, reasonable?

Findings of Fact

1. The Division inspected the worksite from May 18, 2022, through August 31, 2022.

2. During the inspection period, section 3205, subdivision (c)(3)(B)(3), required employers to provide written notice of potential COVID-19 exposure to employees within one business day.

3. Section 3205 was amended on February 3, 2023.

4. The amended section 3205 no longer requires written notice within one business day.

5. At the time of inspection, Employer maintained a Heat Illness Prevention Plan (HIPP).

6. Section 3395 requires the HIPP to include high heat procedures, emergency response procedures, and acclimatization methods and procedures.

7. High heat procedures must be implemented when temperature equals or exceeds 95 degrees Fahrenheit.

8. High heat procedures must be included in the HIPP regardless of actual worksite temperature.

9. Employer's HIPP contains high heat procedures, emergency response procedures, and acclimatization methods and procedures.

10. Employer's high heat procedures do not contain a directive for pre-shift meetings to review such procedures.

Analysis

1. Is section 3205, subdivision (c)(3)(B)(3), enforceable after the repeal of those requirements by the Occupational Safety and Health Standards Board?

The Division issued Citation 1, Item 1, under section 3205, subdivision (c)(3)(B)(3), which at the time of the inspection provided:

> (c) Written COVID-19 Prevention Program. Employers shall establish, implement, and maintain an effective, written COVID-19 Prevention Program, which may be integrated into the employer's Injury and Illness Prevention Program required by section 3203, or be maintained in a separate document. The written elements of a COVID-19 Prevention Program shall include: […]
>
> (3) Investigating and responding to COVID-19 cases in the workplace. […]
>
> (B) The employer shall take the following actions when there has been a COVID-19 case at the place of employment: […]
>
> (3) Within one business day of the time the employer knew or should have known of a COVID-19 case, the employer shall give written notice, in a form readily understandable by employees, that people at the worksite may have been exposed to COVID-19. The notice shall be written in a way that does not reveal any personal identifying information of the COVID-19 case, and in the manner the employer normally uses to communicate employment-related information. Written notice may include, but is not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending. The notice shall include the cleaning and disinfection plan required by Labor Code section 6409.6(a)(4). […]

At the hearing, the Division acknowledged that section 3205 was amended on February 3, 2023, approximately five months after the inspection was completed. The amended section 3205 no longer includes subdivision (c)(3)(B)(3).

In Citation 1, Item 1, the Division alleges:

> Prior to and during the course of the inspection, including but not limited to, on May 18, 2022, the employer had not established, implemented and maintained a written Covid 19 Prevention Program that contained all the required elements including but not limited to:
>
> 3. Within one business day of the time the employer knew or should have known of a COVID-19 case, the employer shall give written notice, in a form readily understandable by employees, that people at the worksite may have been exposed to COVID-19.

It is not uncommon for regulations referenced in a citation to be amended, replaced, or repealed. When this occurs, the Appeals Board evaluates whether the Occupational Safety and Health Standards Board (Standards Board) intended to preserve the requirements of the previous safety order. (*Dorfman Construction Company, Inc.*, Cal/OSHA App. 76-1100, Decision After Reconsideration (Feb. 26, 1981); *In the Matter of the Appeal of: KENKO, INC.*, Cal/OSHA App. 92-473 (Dec. 6, 1994).) If the Standards Board does not demonstrate such intent, the citation based on the repealed or altered regulation must be set aside. (*Dorfman Construction Company, Inc*., *supra*, Cal/OSHA App. 76-1100.)

In *Dorfman Construction Company, Inc.*, the Appeals Board held:

> The repealing of a safety order requires dismissal of matters that have not reached final disposition unless a new safety order is enacted or there is evidence of an intent to preserve the requirement of the repealed safety order. A safety order which substantially reenacts the substance of an older safety order keeps in existence the legal liabilities attached to violations of the older safety order.

(*Id.*)

When determining the intent of the Standards Board, the Appeals Board does not rely solely on the regulation's numbering or renumbering. Instead, it examines whether the legal requirements of the repealed regulation were intended to be retained. If a safety order's legal obligations remain intact, a citation issued under the previous regulation may still be upheld.

(*Id.*)

In this case, the Division cited Employer under section 3205, subdivision (c)(3)(B)(3), alleging that Employer failed to maintain a COVID-19 Prevention Program requiring written notice to employees within one business day of potential exposure to COVID-19. That provision, however, was repealed effective February 3, 2023. The notice obligation now appears in subdivision (e) of section 3205, which no longer requires written notice of exposure or imposes a one business day time frame.

The removal of this obligation from section 3205 demonstrates that the Standards Board did not intend to preserve the former legal requirement under subdivision (c)(3)(B)(3). As a result, Citation 1, Item 1, must be vacated.

2. Did Employer establish, implement, and maintain an effective heat illness prevention plan with the minimum requirements under section 3395, subdivision (i)?

Section 3395, subdivision (i), provides:

> Heat Illness Prevention Plan. The employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request. The Heat Illness Prevention Plan may be included as part of the employer's Illness and Injury Prevention Program required by section 3203, and shall, at a minimum, contain:
>
> (1) Procedures for the provision of water and access to shade.
>
> (2) The high heat procedures referred to in subsection (e).
>
> (3) Emergency Response Procedures in accordance with subsection (f).
>
> (4) Acclimatization methods and procedures in accordance with subsection (g).

In Citation 1, Item 2, the Division alleges:

> Prior to and during the course of this investigation including but not limited to, on May 18, 2022, the employer had not established, implemented and maintained an effective heat illness prevention plan that included all the required elements including but not limited to:
>
> (2) The high heat procedures referred to in subsection (e). (3,5).
>
> (3) Emergency Response Procedures in accordance with subsection (f). (1, 3, 4).
>
> (4) Acclimatization methods and procedures in accordance with subsection (g).

At the hearing, the Division conceded that Employer's Heat Illness Prevention Plan (HIPP) had acclimatization methods and procedures in accordance with section 3395, subdivision (g). (Hearing Transcript, p. 54, lines 12-17.) Additionally, Employer's post-hearing brief convincingly demonstrated that its HIPP contained all substantive requirements under section 3395, subdivision (f), for emergency response procedures.

In Employer's post-hearing brief, Employer acknowledged that its HIPP lacked certain elements required by section 3395, subdivision (e), for high heat procedures, specifically conceding it does not include a directive for pre-shift meetings to review those procedures. However, Employer argued that the Division failed to establish that the worksite temperatures ever exceeded 95 degrees Fahrenheit, and therefore, failed to prove that high heat procedures were required.

Section 3395, subdivision (i), clearly states that an employer shall establish, implement, and maintain an effective HIPP. It further mandates that the HIPP "shall, at a minimum, contain… the high heat procedures referred to in subsection (e)." Section 3395 does not require the Division to prove that the worksite exceeded 95 degrees Fahrenheit at any time during the inspection. The requirements of section 3395, subdivision (i), apply universally, regardless of the worksite's location, whether in the extreme heat of Barstow, California, or the cold peaks of Mount Shasta.

Section 3395, subdivision (e)(5), specifically requires that an employer's high heat procedures include:

> (5) Pre-shift meetings before the commencement of work to review the high heat procedures, encourage employees to drink plenty of water, and remind employees of their right to take a cool-down rest when necessary.

While the Employer's HIPP contained directives encouraging employees to drink water and take breaks throughout their shift, it failed to require these reminders at the beginning of the shift, as mandated by section 3395, subdivision (e)(5).

The Employer's argument that its HIPP is in *substantial* compliance with section 3395, subdivision (i), is unpersuasive. A plan that omits a required element is not in compliance. As Employer's HIPP entirely lacked a mandated provision, Citation 1, Item 2, is affirmed.

3. Is the classification for Citation 1, Item 2, correct?

Section 334, subdivision (b), provides:

General Violation - is a violation which is specifically determined not to be of a serious nature, but has a relationship to occupational safety and health of employees.

In order to establish a general violation, the Division need only show that the safety order was violated and that the violation has a relationship to occupational safety and health of employees. *(California Dairies, Inc.*, Cal/OSHA App. 07-2080, Denial of Decision After Reconsideration (June 25, 2009), citing *A. Teichert & Sons, Inc.*, Cal/OSHA App. 97-2733, Decision After Reconsideration (Dec. 11, 1998).)

The Division's inspector provided testimony that Citation 1, Item 2, was classified as general because it was determined to be not of a serious nature and pertained to the health and safety of employees. Employer produced no rebuttal evidence. Accordingly, the general classification of Citation 1, Item 2, is established.

4. Is the proposed penalty for Citation 1, Item 2, reasonable?

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.*, Cal/OSHA App. 1092600, Decision After Reconsideration (May 26, 2017), citing *Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).)

Exhibit 2 is the Division's "Proposed Penalty Worksheet." The Division's inspector testified that the penalties reflected on Exhibit 2 were calculated in accordance with the Division's policies and procedures. Employer did not produce evidence to rebut the presumptive reasonableness of the calculation. Accordingly, the penalty of $1,125 for Citation 1, Item 2, is found reasonable.

Conclusion

The evidence supports a finding that section 3205, subdivision (c)(3)(B)(3), was repealed and the Standards Board did not intend to preserve the former requirements of section 3205, subdivision (c)(3)(B)(3). Accordingly, Citation 1, Item 1, is vacated.

The evidence supports a finding that that Employer violated section 3395, subdivision (i), for failure to include high heat procedures referred to in section 3395, subdivision (e)(5). Accordingly, Citation 1, Item 2, is affirmed.

///
///

Order

It is hereby ordered that Citation 1, Item 1, is vacated.

It is hereby ordered that Citation 1, Item 2, is affirmed and the penalty is sustained at $1,125, as set forth in the attached Summary Table.

/s/ Ka H. Leung

Dated**:** 04/28/2025

Ka H. Leung
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.**

If no petition is filed, the penalty amount set forth in the Summary Table is due and payable 30 days after the Order or Decision is issued. If the Appeals Board approved a payment plan, all payments are due in accordance with the dates indicated in the Summary Table. If a Petition for Reconsideration is filed, no payment should be made until the final outcome of the appeal.