

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:)
January 19, 2023 OSH)
Standards Board Meeting)
_____)

IN-PERSON & TELECONFERENCE

Attend the meeting in person:

Harris State Building
Auditorium
1515 Clay Street
Oakland, CA 94612

Attend the meeting via Video-conference

THURSDAY, JANUARY 19, 2023

10:00 A.M.

Reported by:
M. Nelson

CALIFORNIA REPORTING, LLC
229 Napa Street, Rodeo, California 94572 (510) 224-4476

APPEARANCES

BOARD MEMBERS PRESENT AT HARRIS STATE BUILDING:

Dave Thomas, Chairman
Dave Harrison, Labor Representative
Nola Kennedy, Public Member

BOARD MEMBERS PRESENT VIA TELECONFERENCE:

Barbara Burgel, Occupational Health Representative
Kathleen Crawford, Management Representative
Chris Laszcz-Davis, Management Representative
Laura Stock, Occupational Safety Representative

BOARD STAFF PRESENT AT HARRIS STATE BUILDING:

Christina Shupe, Executive Officer
Steve Smith, Principal Safety Engineer
Autumn Gonzalez, Chief Counsel
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant
Amalia Neidhardt, Senior Safety Engineer

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Lara Paskins, Staff Services Manager
Jennifer White, Regulatory Analyst

ALSO PRESENT IN OAKLAND:

Eric Berg, Deputy Chief of Health, Cal/OSHA

TKO STAFF:

Maya Morsi
John Roensch

SPANISH INTERPRETERS:

Patricia Hyatt
Estella Moll

APPEARANCES (Cont.)

PUBLIC MEETING COMMENTERS: (*Online testimony)

Helen Cleary, Phylmar Regulatory Roundtable
Dave Smith, Safety Consultant
Bruce Wick, Housing Contractors of California
*AnaStacia Nicol Wright, Worksafe
*Michael Donlon, MD Safety Service
*Louis Blumberg, Climate Resolve
Robert Moutrie, California Chamber of Commerce
Dan Leacox, Leacox & Associates, Inc.
*Mitch Steiger, California Labor Federation
*Kevin Bland, California Framing Contractors Association
and the Residential Contractors Association
*Carmen Comsti, California Nurses Association

I N D E X

	Page
I. CALL TO ORDER AND INTRODUCTIONS	6
II. PUBLIC MEETING (Open for Public Comment)	12
A. PUBLIC COMMENT	
B. ADJOURNMENT OF THE PUBLIC MEETING	
III. BUSINESS MEETING - All matters on this Business Meeting agenda are subject to such discussion and action as the Board determines to be appropriate.	29
<p>The purpose of the Business Meeting is for the Board to conduct its monthly business.</p>	
A. PROPOSED VARIANCE DECISIONS FOR ADOPTION	--
1. Consent Calendar	
B. REPORTS	29
1. Division Update -	29
2. Legislative Update -	35
3. Executive Officer's Report -	36
C. BOARD DISCUSSION - EXCLUSION PAY	38
<p>The Board will discuss the inclusion of exclusion pay in proposed regulations, including pending proposals for Air Transmissible Disease Prevention for General Industry.</p>	
D. NEW BUSINESS	83
1. Future Agenda Items	
<p>Although any Board Member may identify a topic of interest, the Board may not substantially discuss or take action on any matter raised during the meeting that is not included on this agenda, except to decide to place the</p>	

I N D E X (Cont.)

	Page
III. BUSINESS MEETING (Cont.)	
matter on the agenda of a future meeting. (Government Code sections 11125 & 11125.7(a).)	
E. CLOSED SESSION	84
<u>Matters Pending Litigation</u>	
1. Western States Petroleum Association (WSPA) v. California Occupational Safety and Health Standards Board (OSHSB), et al. United States District Court (Eastern District of California) Case No. 2:19-CV-01270	
2. WSPA v. OSHSB, et al., County of Sacramento, CA Superior Court Case No. 34-2019-00260210	
<u>Personnel</u>	
F. RETURN TO OPEN SESSION	84
1. Report from Closed Session	
G. ADJOURNMENT OF THE BUSINESS MEETING	85
Next Meeting: February 16, 2023 Fresno Council of Governments Board Room 2035 Tulare Street Fresno, CA 93721 10:00 a.m.	
Reporter's Certificate	86
Transcriber's Certificate	87

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

JANUARY 19, 2023 10:01 A.M.

CHAIR THOMAS: Good morning. This meeting of the Occupational Safety and Health Standards Board is now called to order. Let's stand for the flag salute, please.

(Whereupon the Pledge of Allegiance was recited.)

CHAIR THOMAS: Thank you. I'm Dave Thomas. I'm the Chairperson and the other Board Members present here in Oakland are Mr. David Harrison, Labor Representative; Ms. Nola Kennedy, Public Member.

The Board Members attending via teleconference are Ms. Barbara Burgel, Occupational Health Representative; Ms. Kathleen Crawford, Management Representative; Ms. Chris Laszcz-Davis, Management Representative; and Ms. Laura Stock, Occupational Safety Representative.

Present from our staff for today's meeting are Ms. Christina Shupe, our Executive Officer; Mr. Steve Smith, Principal Safety Engineer; Ms. Autumn Gonzalez, Chief Counsel; Mr. David Kernazitskas, Senior Safety Engineer; Ms. Sarah Money, Executive Assistant; and Ms. Amalia Neidhardt, Senior Safety Engineer, who is providing translation services for our commenters who are native Spanish speakers.

Also present is Mr. Eric Berg, Deputy Chief of Health for Cal/OSHA.

1 Supporting the meeting remotely are Ms. Lara
2 Paskins, Staff Services Manager; and Ms. Jen White,
3 Regulatory Analyst.

4 Copies of the agenda and other materials related to
5 today's proceedings are available on the table near the
6 entrance to the room, and are posted on the OSHSB website.

7 This meeting is also being live broadcast via
8 video and audio stream in both English and Spanish. Links
9 to these non-interactive live broadcasts can be accessed
10 via the "Meetings, Notices and Petitions" section on the
11 main page of the OSHSB website.

12 If you are participating in today's meeting via
13 teleconference or videoconference, we are asking everyone
14 to place their phones or computers on mute and wait to
15 unmute until they are called on to speak. Those who are
16 unable to do so will be removed from the meeting to avoid
17 disruption.

18 As reflected on the agenda, today's meeting
19 consists of two parts. First, we will hold a public
20 meeting to receive public comments or proposals on
21 occupational safety and health matters. Anyone who would
22 like to address any occupational safety and health issues,
23 including any of the items on our business meeting agenda,
24 may do so when I invite public comment.

25 If you are participating via teleconference or

1 videoconference, the instructions for joining the public
2 comment queue can be found on the agenda. You may join by
3 clicking the public comment queue link in the "Meetings,
4 Notices and Petitions" section on the OSHSB website, or by
5 calling 510-868-2730 to access the automated public comment
6 queue voicemail.

7 When the public comment begins, we are going to
8 alternate between three in-person and three remote
9 commenters.

10 When I ask for public testimony, in-person
11 commenters should provide a completed speaker slip to the
12 staff person near the podium and announce themselves to the
13 Board prior to delivering any comments.

14 For commenters attending via teleconference or
15 videoconference, please listen for your name and an
16 invitation to speak. When it's your turn to address the
17 Board, unmute yourself if you're using WebEx, or dial *6 on
18 your phone to unmute yourself if you are using the
19 teleconference line.

20 We ask all commenters to speak slowly and clearly
21 when addressing the Board, and if you are commenting via
22 teleconference or videoconference, remember to mute your
23 phone or computer after commenting. Today's public
24 comments will be limited to two minutes per speaker, and
25 the public comment portion of the meeting will be extended

1 for up to two hours, so that the Board may hear from as
2 many members of the public as is feasible. Individual
3 speaker and total public comment time limits may be
4 extended by the Chair.

5 After the public meeting is concluded, we will
6 hold a business meeting to act on those items listed on the
7 business meeting agenda.

8 We will now proceed with the public meeting.
9 Anyone who wishes to address the Board regarding matters
10 pertaining to occupational safety and health is invited to
11 comment, except however, the Board does not entertain
12 comments regarding variance matters. The Board's variance
13 hearings are administrative hearings where procedural due
14 process rights are carefully preserved. Therefore, we will
15 not grant requests to address the Board on variance
16 matters.

17 For our commenters who are native Spanish
18 speakers, we are working with Ms. Amalia Neidhardt to
19 provide a translation of their statements into English for
20 the Board.

21 At this time, Ms. Neidhardt will provide
22 instructions to the Spanish speaking commenters, so that
23 they are aware of the public comment process for today's
24 meeting.

25 Amalia?

1 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH]

2 "Good morning, and thank you for participating in
3 today's Occupational Safety and Health Standards Board
4 public meeting. The Board Members present in Oakland are
5 Mr. Dave Thomas, Labor Representative and Chairman; Mr.
6 Dave Harrison, Labor Representative; and Ms. Nola Kennedy,
7 Public Member.

8 "The Board Members attending via teleconference
9 are Ms. Barbara Burgel, Occupational Health Representative;
10 Ms. Kathleen Crawford, Management Representative; Ms. Chris
11 Laszcz-Davis, Management Representative; and Ms. Laura
12 Stock, Occupational Safety Representative.

13 "This meeting is also being live broadcast via
14 video and audio stream in both English and Spanish. Links
15 to these non-interactive live broadcasts can be accessed
16 via the "Meetings, Notices and Petitions" section on the
17 OSHSB website.

18 "If you are participating in today's meeting via
19 teleconference or videoconference, please note that we have
20 limited capabilities for managing participation during
21 public comment periods. We are asking everyone who is not
22 speaking to place their phones or computers on mute and
23 wait to unmute until they are called to speak. Those who
24 are unable to do so will be removed from the meeting to
25 avoid disruption.

1 "As reflected on the agenda, today's meeting
2 consists of two parts. First, we will hold a public
3 meeting to receive public comments or proposals on
4 occupational safety and health matters.

5 "If you are participating via teleconference or
6 videoconference, the instructions for joining the public
7 comment queue can be found on the agenda. You may join by
8 clicking the public comment queue link in the "Meetings,
9 Notices and Petitions" section at the top of the main page
10 of the OSHSB website, or by calling 510-868-2730 to access
11 the automated public comment queue voicemail.

12 "When public comment begins, we are going to be
13 alternating between three in-person and three remote
14 commenters. When I ask for public testimony, in-person
15 commenters should provide a completed request to speak slip
16 to the attendee near the podium and announce themselves to
17 the Board prior to delivering a comment.

18 "For our commenters attending via teleconference
19 or videoconference, listen for your name and an invitation
20 to speak. When it is your turn to address the Board,
21 please be sure to unmute yourself if you're using WebEx or
22 dial *6 on your phone to unmute yourself if you're using
23 the teleconference line.

24 "Please be sure to speak slowly and clearly when
25 addressing the Board, and if you are commenting via

1 teleconference or videoconference, remember to mute your
2 phone or computer after commenting. Please allow natural
3 breaks after every two sentences so that an English
4 translation of your statement may be provided to the Board.

5 "Today's public comment will be limited to four
6 minutes for speakers utilizing translation, and the public
7 comment portion of the meeting will extend for up to two
8 hours, so that the Board may hear from as many members of
9 the public as is feasible. The individual speaker and
10 total public comment time limits may be extended by the
11 Board Chair.

12 "After the public meeting is concluded, we will
13 hold a business meeting to act on those items listed on the
14 business meeting agenda.

15 "Thank you."

16 CHAIR THOMAS: Thank you, Ms. Neidhardt.

17 CHAIR THOMAS: (Indiscernible.)

18 BOARD MEMBER HARRISON: Dave, you need to turn on
19 your mic, your mic button please.

20 CHAIR THOMAS: Sorry about that. Let me start
21 over.

22 If there are in-person participants who would
23 like to comment on any matters concerning occupational
24 safety and health, you may begin lining up at the podium.
25 And we will start with the first three in-person and then

12

1 we will go to the next three online. So go right ahead,
2 introduce yourself.

3 MS. CLEARY: Good morning. Good morning Chair
4 Thomas, Board Members. My name is Helen Cleary. I'm the
5 Director of PRR. PRR is an occupational safety and health
6 forum. We have 37 organizations including utilities and
7 companies. And individual members are environmental health
8 and safety professionals responsible for the safety and
9 health of thousands of workers in California.

10 PRR was surprised to hear last month the Division
11 already has a draft for an infectious disease standard for
12 general industry and that it has included exclusion pay.
13 We have significant concerns and are not confident that an
14 infectious disease standard for general industry can be
15 drafted in a way that is reasonable and appropriate. Today
16 we offer a few points for consideration as you discuss this
17 later on in your meeting.

18 For an OSH standard to be effective and
19 reasonable it should be limited in scope and designed for
20 specific hazards that are incidental to the job. We see
21 this in the ATD standard in lead, even in heat. Workers
22 are covered by these standards because the hazard is
23 inherent to their work or their industry and there is an
24 elevated risk of actual or potential occupational exposure.

25 Similarly, medical removal and required pay

1 protections are in place for known occupational hazards in
2 certain industries, because of specific job duties and work
3 environments. But it's not a very common practice.
4 Moreover, the triggering of removal and pay protection is
5 the result of an objective and measurable result. The
6 employee has an elevated risk, has clearly been exposed at
7 work, and received a medical diagnosis through a medical
8 test.

9 Exclusion pay requirements in the COVID-19 ETS do
10 not follow this type of framework and controls are not in
11 place. And because of their experience in managing that
12 aspect of the COVID standard, PRR members have considerable
13 concerns regarding the expansive scope of diseases and the
14 industries an infectious disease standard for general
15 industry will attempt to cover. Adding a significant
16 financial burden with exclusion pay requirements has the
17 potential to make it wildly unreasonable.

18 Unfortunately, workers experience various
19 injuries and illnesses at work despite employers and
20 employee prevention efforts. We all know that serious
21 illnesses and injuries are reportable. And except for the
22 limited list of occupational exposures that require paid
23 protections the vast majority of occupational illnesses, if
24 they result in days away from work, are covered by
25 established sick leave policy and Workers' Compensation.

1 We don't support or agree that a broad group of infectious
2 diseases for every industry in California should be managed
3 differently.

4 When advocating for exclusion pay, some Board
5 Members expressed frustration that California sick policies
6 do not provide enough coverage for the duration of the
7 illness, or worker compensation doesn't provide full pay
8 when an employee is ill or injured. Despite how many of us
9 feel or have personally been impacted by these policies
10 they shouldn't implement or justify exclusion pay in the
11 rule. We don't believe that it's the Board's
12 responsibility or Cal/OSHA's appropriate use of authority
13 to create regulatory requirements in order to eliminate
14 gaps in coverage or solve faults in California's sick leave
15 policies.

16 During today's discussion we encourage the Board
17 to ask the Division questions that will help stakeholders
18 learn about the strategy and the inclusion of exclusion
19 pay. It's important to understand how the current draft
20 creates a verifiable and objective process for the employer
21 and the employees to follow to determine actual
22 occupational exposure.

23 Also, it would be helpful to know the scope and
24 definition of infectious diseases. Is it limited to novel
25 diseases and a specific list, or will it include current

1 widespread viruses such as the flu or the common cold?

2 We also encourage the Division to release the
3 draft as soon as possible and schedule an advisory
4 committee meeting. We understand that this is already a
5 work in progress. But transparency and early, continued
6 dialogue will be central in the development of such a
7 significant and broad standard across the state.

8 We all experienced frustration and shortcomings
9 that resulted when dialogue around the COVID-19 ETS stopped
10 and we ran out of time to make improvements. Developing
11 one standard for all industries for multiple diseases is
12 not going to be an easy task and I'm sympathetic to the
13 team that's working on that now. But we'd like to get
14 ahead of this. And in the interest of transparency and
15 being proactive, get ahead of it from the start.

16 So thank you for your time today, we look forward
17 to learning more.

18 CHAIR THOMAS: Thank you.

19 Who do we have next?

20 MR. SMITH: Good morning.

21 CHAIR THOMAS: Good morning.

22 MR. SMITH: Good morning, is that my -- am I
23 good? Everything's on? All right.

24 Good morning to the Board and attendees in-person
25 and online. I'm Dave Smith, a Safety Consultant in

1 California and the author of Petition 483 on first aid
2 kits. I'm sure everybody's tired of hearing about it,
3 because it's now 2023.

4 In 2006 which is now 17 years ago a client of
5 ours, a consulting firm, asked a simple question, "Dave,
6 what first aid kits should I buy?" The answer is still, to
7 this day in 49 other states and US territories, "Buy an
8 ANSI-compliant kit, inspect it weekly, restock as
9 necessary. Done."

10 The answer to my California employer today,
11 "Follow Title 8," which has not changed. So it's not
12 simple to find a doctor to tell you if they know, or if in
13 construction followed the chart in 8, CCR 1512 that was
14 devised decades ago.

15 In 2006 when I wrote that first petition Arnold
16 Schwarzenegger was Governor of California, the iPhone was a
17 year away, and Barry Bonds broke Babe Ruth's homerun record
18 for the San Francisco Giants.

19 So 17 years later we've got to get this resolved
20 to provide clarity and ease of compliance with what should
21 be a really basic and needed safety and health regulation.
22 Complexity and delay hurts workers and it hurts their
23 employers. Thank you very much.

24 CHAIR THOMAS: Thank you.

25 Go ahead.

1 MR. WICK: Good morning.

2 CHAIR THOMAS: Good morning.

3 MR. WICK: Chair Thomas, Board Members, staff.
4 Bruce Wick, Housing Contractors of California. I do always
5 appreciate what you all do. You make very serious
6 decisions here that affect the health and safety of 18-plus
7 million California workers, 1.4 million employers, and can
8 impact hundreds of millions of dollars of money spent. And
9 we want to do that wisely and well for our workers, so
10 having good information is really important for you all to
11 make well-informed decisions. So I do want to just touch
12 on two items about that.

13 One is last -- I think it was last month, you
14 were told that Workers' Comp is not a good remedy for
15 workers who are off work, because employees only receive
16 two-thirds of their wage. The full reality of the Workers'
17 Comp system is an employee receives two-thirds of their
18 gross wages. There are no deductions for taxes, social
19 security, or union dues. And typically an employee does
20 not have any commute expenses while they're working from
21 home, so the net effect to an employee is very close when
22 they receive that two-thirds of their gross wage check. So
23 Workers' Comp is a very effective remedy to help employees
24 when they are off on Workers' Compensation.

25 And the second part is it appears we're going to

18

1 have a draft infectious disease proposal impacting for
2 general industry, everyone outside of those currently under
3 the ATD. And I presume there'll be an advisory committee.
4 And an advisory committee really needs to have the
5 information to make good recommendations to this Board, so
6 you can make a well-informed decision.

7 We need to know why of the other 17-and-a-half
8 million employees, for the most part the Workers' Comp data
9 says COVID was well-covered by IIPP regulations in
10 following those rules in all the information that was given
11 to us -- the Appeals Board information. I attend at least
12 their meetings once a month and they put out a report. And
13 I asked the same question, "Has any employer gotten
14 negotiated out of a IIPP violation for COVID?" The answer
15 is, "No."

16 We've had two ALJ rulings that weren't ruling on
17 whether the IIPP applied, but the way the judges wrote
18 their ruling they were clearly saying the IIPP covers COVID
19 issues. So I think it's really important as we go forward
20 that we have that kind of information.

21 We're also told we needed the COVID regulation,
22 because the IIPP was not effective enough. But we've never
23 heard a single instance where the Enforcement Division has
24 told us this is where a Cal/OSHA inspector would not have
25 been able to issue a citation under the IIPP, but could

1 under the COVID reg.

2 That's information we all should have.

3 Employers, as we've said they're paying \$1.5 billion on a
4 Workers' Comp surcharge to fund all of DIR. And Christina
5 Shupe and her staff do a tremendous job putting out a whole
6 lot of production for the staff that they have, but someone
7 at DIR ought to be able to put this information together so
8 that when we talk about wherever we go in the future, what
9 that regulation has, we have the information, that an
10 advisory committee can have a fruitful discussion based on
11 facts and information. And you all can make an informed,
12 very serious decision whenever that happens down the road.
13 Thank you.

14 CHAIR THOMAS: Thank you.

15 We'll now go to whoever we have online. Maya, do
16 we have a caller?

17 MS. MORSI: Yes, we have Jessica Early with
18 National Union of Healthcare Workers.

19 CHAIR THOMAS: Jessica, can you hear us? Hello,
20 Jessica? I guess we don't have Jessica. Let's move to the
21 next one.

22 MS. MORSI: Up next is AnaStacia Nicol Wright
23 with Worksafe.

24 MS. NICOL WRIGHT: Hi, everyone. I hope my
25 camera works today.

1 CHAIR THOMAS: Go ahead.

2 MS. NICOL WRIGHT: So Good morning, Board.

3 CHAIR THOMAS: Good morning.

4 MS. NICOL WRIGHT: Good Morning Board Members,
5 our colleagues, and a Happy New Year to everybody. I'm
6 AnaStacia Nicol Wright with Worksafe and I'm here to
7 comment on the Board's discussion of inclusion of exclusion
8 pay and the pending ATD general industry proposal.

9 Although a draft of the permanent general
10 industry ATD has yet to be circulated Worksafe would like
11 to underscore the vital importance of including and keeping
12 exclusion pay. The effectiveness of the ATD standard
13 against future unknown disease outbreaks will be greatly
14 reduced if job and pay protections are left out.

15 It's well-documented that without sick pay most
16 economically vulnerable workers will choose to go to work
17 to avoid losing their pay. Workers who are kept out of
18 their workplace pursuant to Cal/OSHA policy due to any ATD
19 or novel pathogen during a future outbreak must have their
20 pay and jobs protected. Exclusion pay provides these
21 workers with the means to stay home to protect their
22 coworkers and the public. By ensuring that workers who are
23 required to quarantine from work will still receive their
24 pay and job benefits, we remove the built-in incentive for
25 those who live paycheck to paycheck who cannot afford to

1 miss a single day.

2 Additionally, exclusion pay provisions are found
3 in many other Cal/OSHA standards including the lead,
4 cadmium, methylene chloride -- I believe that's how you say
5 it -- formaldehyde, benzene and cotton dust standards.

6 Based on the common-sense approach and tested
7 practices of California's healthcare ATD, and the COVID
8 ETS, removal of infectious workers from the workplace must
9 be included as a key outbreak control measure in the
10 permanent ATD standard for general industry.

11 Lastly, we also would like to express concern for
12 the indoor heat standard and state that it's urgent.
13 California workers, as we've seen throughout the past
14 years, need protection from these rising temperatures and
15 so we also urge the Board to work swiftly to enact that
16 important rule. Thank you all.

17 CHAIR THOMAS: Thank you.

18 Maya, who do we have next?

19 MS. MORSI: Up next is Louis Blumberg with
20 Climate Resolve.

21 CHAIR THOMAS: Louis, can you hear us? Louis?
22 Can you hear us, Louis? Apparently not, so we will move on
23 to the next.

24 MS. MORSI: Next is Mike Donlon with speaking --
25 oh sorry, with Safety Professional.

1 CHAIR THOMAS: Mike. Michael, can you hear us?

2 MR. DONLON: Yes. Good morning. Can you hear
3 me?

4 CHAIR THOMAS: Yeah, go right ahead.

5 MR. DONLON: Okay. Yeah, I'm Mike Donlon. I'm
6 speaking just as a safety professional today and I want to
7 speak about fall protection in residential construction.

8 Now I used to be a compliance officer for
9 Cal/OSHA. And I was in charge of Cal/OSHA's Construction
10 Safety and Health Inspection Program, which targeted
11 inspections in residential construction, leading to the
12 current regulation. That was the genesis of that, brought
13 the contractors and the carpenters to the table to develop
14 the current regulation. I was pretty much the most-hated
15 man in construction at that time. You can ask Bruce Wick
16 about that, because it was his employers that I kept
17 citing.

18 I also taught upper Division classes at Sac State
19 for 10 years in occupational safety and health. And in
20 those classes I always taught that developing a safe work
21 procedure was better than tacking on safety rules. This is
22 what we do with job hazard analysis. It is just the best
23 way to create a safe work environment. And that's exactly
24 what we did with the residential framing regulation. It's
25 created safe work procedures. Pivoting to the federal rule

23

1 would take that away in favor of just creating a safety
2 rule that's tacked on, hard-to-follow. And what we'll end
3 up with is window dressing: people in harnesses with ropes
4 attached to them, with the rope attached to nothing on the
5 other end. That's kind of what happens under that.

6 So I would contend that we are not as effective
7 as fed OSHA. We are more effective than Fed OSHA
8 currently. And that's the message we should be speaking to
9 them.

10 Back when we had those meetings -- we heard Kevin
11 and others talk about the meetings we had with fed OSHA.
12 The Division and the Board came in with statistics that
13 showed California falls in residential construction had
14 gone down with that new regulation, and that we were lower
15 than states that were following the federal rule. And so I
16 think we need to dig up those statistics again and take
17 them to Fed OSHA again.

18 Again I mean they said, "We don't care." But we
19 should care, because this is about preventing employees
20 from falling, it's not about a number. Thank you.

21 CHAIR THOMAS: Thank you.

22 Let's see. Was that three?

23 MR. BLUMBERG: This is Louis Blumberg. I'm on
24 the phone now. Can you hear me?

25 CHAIR THOMAS: Yeah, Louis, go right ahead.

1 MR. BLUMBERG: Okay, thank you very much. I was
2 having trouble with the technology. My name is Louis
3 Blumberg. And I'm representing Climate Resolve, a nonprofit
4 organization in Los Angeles. I'm here to follow up on what
5 AnaStacia said about the indoor standard, the high heat
6 standard for indoor workers. We think this is really
7 urgent and note that the legislation that required you to
8 adopt this said January 1st, 2019. And the staff, they --

9 CHAIR THOMAS: Louis?

10 MR. BLUMBERG: Yes?

11 CHAIR THOMAS: Can you name your association,
12 your affiliation, please? We didn't get that.

13 MR. BLUMBERG: Yes. It's called Climate Resolve
14 in Los Angeles, a nonprofit organization. We're working on
15 the issue of extreme heat amongst other climate adaptation
16 issues. And note that the administration, the legislature,
17 have taken a lot of action in the last two years on extreme
18 heat. We urge the Cal/OSHA Standards Board to adopt the
19 draft high heat standard for indoor workers. It's over
20 four years late.

21 In that time we've seen a great expansion of the
22 number of workers in the fulfillment industry, working in
23 warehouses and delivery in hot vans. Action is needed to
24 protect these workers. Extreme heat causes more deaths
25 than any other climate peril and is a great threat to

25

1 workers. So we urge you to put this on your calendar and
2 adopt this high heat standard right away. Thank you.

3 CHAIR THOMAS: Thank you.

4 We'll continue now with in-person speakers, so go
5 ahead.

6 MR. MOUTRIE: Thank you Chair Thomas. Good
7 morning to you and the other members. This mic is good,
8 right?

9 CHAIR THOMAS: Yeah.

10 MR. MOUTRIE: Okay, perfect. So Robert Moutrie,
11 California Chamber of Commerce. Hopefully the rain and
12 flooding hasn't hit anyone's basement or first stories.
13 It's good to see you all for two consecutive months in-
14 person.

15 I'm here to comment on the exclusion pay
16 discussion briefly. And I want to associate my comments,
17 as will be clear with some of Helen Cleary's comments from
18 PRR, on that point. I want to touch that substantively,
19 but first of I focus on a procedural concern that hasn't
20 been discussed much. Which is that we have significant
21 concern about the Board, not just here but any matter,
22 stepping in to vote on a concept when the parameters of
23 that concept aren't really drawn, right? It is one thing
24 to say, "With the specific language in these provisions we
25 agree." It's another to say, "We like this concept however

1 it applied." And there's a lot of questions we don't know
2 yet because the text isn't public. So I want to put on the
3 record concern with going in favor of something before the
4 real details are there.

5 Turning to -- obviously this is a little
6 academic, because as Mr. Berg testified last month, right,
7 the exclusion pay provision is already in the draft that
8 will be shared to the advisory committee, but I want to
9 flag these concerns. Substantively, we look forward taking
10 part in that advisory committee process. And we have a
11 number of concerns related to the feasibility really of
12 that. And that comes with a number of questions, right?
13 You know, what diseases will be covered? Will it be novel
14 pandemics, novel fatal diseases, all diseases? How that
15 will function?

16 Also, of course, the cost and that hinges on the
17 scope of the coverage. Will it be feasible for large and
18 small employers? Or will they be treated differently based
19 on the industry that has the resources to deal?

20 And of course, how to separate workplace and non-
21 workplace, which is an issue that's been raised many times
22 and was raised with the COVID standard. How we draw that
23 line as we broaden it to even more common diseases?

24 And lastly, I think the concern that hasn't been
25 raised about potential scale is how do we craft this so as

1 to not supersede and really make irrelevant all the
2 existing sick leave law, which if this is depending on the
3 drafting, this could do.

4 I will look forward to participating in the
5 advisory committee and working through those concerns, but
6 wanted to put them in front of the Board as real huge
7 issues I think need to be discussed promptly and we look
8 forward to seeing that draft language.

9 That's all I want to touch, so thank you for your
10 time.

11 CHAIR THOMAS: Thank you.

12 Do we have any other in-person speakers? I don't
13 see any. So, Maya, we'll go to online.

14 MS. MORSI: I'm going to circle back to Jessica
15 Early with National Union of Healthcare Workers.

16 CHAIR THOMAS: Jessica, can you hear us? Jessica?
17 Why does this always happen?

18 MS. MORSI: Maybe press *6, unmute yourself.

19 CHAIR THOMAS: Yeah, *6. Jessica, if you could
20 unmute yourself.

21 Okay I'm not hearing anything, so we'll just move
22 on. Is she there?

23 MS. MORSI: No.

24 CHAIR THOMAS: Oh, that's it? That's all we
25 have?

1 MS. MORSI: That's all we have, yeah.

2 CHAIR THOMAS: Oh, okay. Any other in-person
3 speakers? Last chance.

4 UNKNOWN SPEAKER: (Indiscernible - off mic
5 colloquy.)

6 CHAIR THOMAS: She just did, yeah?

7 UNKNOWN SPEAKER: Oh, she did. I'm so sorry.

8 CHAIR THOMAS: Yeah, no that's all right. It's
9 all right.

10 All right. So we have no more commenters in-
11 house? Okay. So at this time the Board appreciate your
12 testimony. The public meeting is adjourned and the record
13 is closed.

14 We'll now move on to our business meeting. The
15 purpose of the business meeting is to allow the Board to
16 vote on the matters before it and to receive briefings from
17 staff regarding issues listed on the business meeting
18 agenda. Public comment is not accepted during the
19 business meeting unless a member of the Board specifically
20 requests public input.

21 Proposed variances, we don't have any variances
22 for consideration, I see.

23 All right, then we will move on to Division
24 Update. Mr. Berg, will you please brief the Board?

25 UNKNOWN SPEAKER: (Indiscernible).

1 CHAIR THOMAS: Yeah. Yeah, let's make it
2 official. Let's make it official. It's the --
3 professional.

4 MR. BERG: Okay. Thank you Board Members. There
5 was a comment on the first aid proposal, which started
6 rulemaking I think it was March of last year, not sure.
7 Anyways, we've completed all the stage 2 rulemaking
8 documents, so hopefully all that's ready to go for your
9 consideration at a recent and upcoming meeting. So all
10 that work has been completed on first aid. And it will be
11 employers can just pick up an ANSI kit is what it requires
12 -- just the latest, I think it's the 2021 ANSI standard.
13 So it'll make it much easier than it is now, which has this
14 table that doesn't exactly match the ANSI standard. So the
15 whole purpose of that is just to make it easier to get the
16 first aid kit. So all the work on that has been done.

17 We also finished all the work on lead and indoor
18 heat, so those are in the queue. So hopefully those will
19 be getting rulemaking soon.

20 We also have a small update for the ATD standard,
21 the existing ADT standard for healthcare and several other
22 industries. It's not just healthcare, but that should be
23 coming soon as well.

24 So that's all I have on the rulemaking we're
25 working on right now. We have a couple of other small ones

1 we're working on, some PELs, and those should be coming
2 soon as well.

3 CHAIR THOMAS: Thank you.

4 MR. BERG: Oh, and workplace violence we should
5 be holding an advisory committee later this year.

6 CHAIR THOMAS: Okay. Do we have any --

7 BOARD MEMBER STOCK: I had -- yeah, this is
8 Laura. I had a question, if I could?

9 MR. BERG: Sure.

10 CHAIR THOMAS: Go right ahead.

11 BOARD MEMBER STOCK: Can you hear me?

12 CHAIR THOMAS: Oh yeah. Go ahead.

13 BOARD MEMBER STOCK: Yeah? Okay, thank you.

14 Eric, can you give us any more specifics about
15 the process, you said that the work is done on indoor heat,
16 and it's in the queue? And I just wondered if you could
17 explain that a little bit more. Where does it literally
18 sit? And who needs to -- what needs to happen before it
19 will be released publicly?

20 MR. BERG: That's under a review by others in the
21 Department and Agency, so once all their reviews are
22 complete. Then I think it'd go to the Office of
23 Administrative Law, I think.

24 I don't know if, Christina, do you want to talk
25 more about this? Because she'll send it to the Office of

1 Administrative Law rather than us, so I don't know if you
2 want to add anything to it.

3 MS. SHUPE: Oh, and I'm going to apologize, but
4 add what about the Office of Administrative Law?

5 MR. BERG: Oh, it's the indoor heat. Once it
6 finishes all its reviews and you guys send it to the OAL,
7 just how it works.

8 MS. SHUPE: Yeah. So once indoor heat, once the
9 proposal is ready for submission we'll go ahead and send --
10 put the notice to the Office of Administrative Law.
11 There'll be a 45-day public comment period and near the end
12 of that 45-day public comment period we'll schedule a
13 public hearing before the Board.

14 BOARD MEMBER STOCK: And can you give us any more
15 specifics about when you expect that to happen, when this
16 review might be complete? Because as it was mentioned it's
17 four years late, so do you expect it within the next month
18 or two?

19 MS. SHUPE: We're right now, we're expecting to
20 hear lead in April and indoor heat in May. But I want to
21 caution the Board on we are very much at the end of the
22 finish line, but once we do issue that public notice, that
23 one-year clock with OAL takes place. And so everything
24 needs to occur within that one-year clock. So it's best
25 practice for us to make sure that that package is

1 completely done and thoroughly reviewed before we start
2 that one-year clock.

3 It is absolutely (indiscernible) priority though.

4 BOARD MEMBER STOCK: (Overlapping colloquy.)

5 Thank you for the (indiscernible). You're aiming for
6 April, is that what I'm hearing? Though I understand, that
7 pending what you said in making sure it's that's your --

8 MS. SHUPE: We're aiming for lead in April and
9 indoor heat in May. Oh Laura, you're muted. We just lost
10 your audio.

11 BOARD MEMBER STOCK: Oh, okay. Can you hear me
12 now?

13 MS. SHUPE: You're back.

14 CHAIR THOMAS: Yeah, go ahead.

15 BOARD MEMBER STOCK: Yes. Well, I was just
16 thanking you for that comment. Thank you.

17 CHAIR THOMAS: Any other questions for Eric from
18 the Board? No others?

19 BOARD MEMBER BURGEL: Yes, Dave, I have a quick
20 question. This is Barbara.

21 CHAIR THOMAS: Go ahead.

22 BOARD MEMBER BURGEL: Eric, do we have an update
23 on the elevator safety rules and where they are?

24 MR. BERG: No, I don't -- I'm not involved with
25 that, so I can't comment.

1 BOARD MEMBER BURGEL: Okay.

2 Maybe Christina, can you update us on the
3 elevator safety rules?

4 MS. SHUPE: I can just share with you the brief
5 information that I know, which is that it's still at the
6 elevator unit. That they have been working with
7 manufacturers and laborers and are having several meetings.
8 Once they have hammered out their concerns they will go
9 ahead and submit that package to us, but we haven't
10 received it.

11 BOARD MEMBER BURGEL: Okay, great. Thank you.

12 CHAIR THOMAS: All right, any other questions
13 from the Board? Go ahead, Nola.

14 BOARD MEMBER KENNEDY: So Eric, do you know when
15 there might be the first advisory committee meeting for the
16 infectious disease standard?

17 MR. BERG: Well, as you know we have many
18 regulations on the agenda right now. We have indoor heat,
19 we have workplace violence, aerosol transmissible disease,
20 and some of the PELs. So the Division is still in the very
21 early stages of considering what a general industry
22 infectious disease standard could look like, so it's still
23 to be determined.

24 BOARD MEMBER KENNEDY: Thank you.

25 CHAIR THOMAS: Any other questions?

1 BOARD MEMBER LASZCZ-DAVIS: Hey, Dave, this is
2 Chris. Will we have an opportunity to discuss the concept
3 of exclusion pay? I mean, is that part of the agenda or do
4 I bring it up at this point?

5 MS. SHUPE: We actually have it on the agenda as
6 a discussion, and we'll address that after we finish
7 Reports.

8 BOARD MEMBER LASZCZ-DAVIS: All right. Thanks,
9 Chris.

10 CHAIR THOMAS: All right any other questions for
11 Eric? (No audible response.) All right. Eric, you're
12 excused. Thank you so much.

13 And we will go on with the Legislative Update.
14 Ms. Gonzalez, will you please brief the Board?

15 MS. GONZALEZ: Good morning Chair and Board
16 Members. The legislative session is early yet, so we only
17 have one bill on the report. That's AB 1, which is related
18 to maintenance of oil refineries. And then I just wanted to
19 let you know that AB 257, which was the Fast-Food Workers
20 Act that we followed all last year. It looks like that is
21 going to be halted for now while that goes on to the ballot
22 as a referendum, so that's it.

23 CHAIR THOMAS: Any questions for Ms. Gonzalez
24 from the Board? All right, I'm not seeing any.

25 So Executive Officer's Report. Christina, will

1 you please brief the Board?

2 MS. SHUPE: Thank you, Chair Thomas. John, if
3 you would go ahead and put the logo up on the screen now?
4 So I'd like to draw everybody's attention to the screen.
5 And those of you attending remotely, you should see it
6 presented shortly. I'm pleased to announce that we now
7 have our own logo. And we actually hadn't one for quite
8 some time. Although -- those folks in-person, go ahead and
9 raise your hand if you know what it looks like. (Laugh)
10 Yeah, I'm seeing no hands.

11 Great. Our staff have been working with the DIR
12 Office of External Affairs. And they came up with a
13 concept that really emphasizes our commitment to
14 California, our connection to the larger OSHA program, but
15 also the Standards Board's unique, independent identity.
16 I'd like to thank both OSHSB staff members Amalia Neidhardt
17 and Lara Paskins and the staff of the Office of External
18 Affairs. They worked tremendously on this for a number of
19 months.

20 We went through various revisions, and I'm really
21 pleased with the final result. It'll be -- you'll see it
22 rolled out over the next several weeks. We're going to
23 provide unified branding for our website, our external
24 communications, meetings, and the events where we provide
25 presentations and outreach. Thank you, John.

1 CHAIR THOMAS: It looks like we worked closely
2 with Cal Berkeley on that one. The same colors, I like it.

3 MS. SHUPE: Those are those are California
4 colors.

5 Looking forward to next month select members of
6 the Board, DIR Director Hagen, members of OSHSB and
7 Division staff, and invited members from labor will be
8 attending the World Ag Expo in Tulare. We'll be learning
9 about emerging technology in the ag space, and that will be
10 on the 14th and 15th.

11 And then on the 16th the Board will be meeting in
12 Fresno, California. And this location will facilitate our
13 in-person participation by the Board and local ag
14 stakeholders.

15 We're, as we noted earlier in the meeting,
16 expecting a vote on the first aid package, at the February
17 meeting.

18 On the administrative side hiring is and
19 continues to be our top priority. We have a number of
20 vacancies, which we actually have made some really good
21 progress on I'm pleased to report. We are working on our
22 Principal Safety Engineer recruitment. We have active
23 postings for three Senior Safety Engineer positions. And
24 we are setting up interviews right now for a legal AGPA to
25 assist with research and Public Records Act requests. And

37

1 we anticipate doing recruitments for legal secretaries in
2 the near future.

3 So lots of movement in that space, it's taking up
4 a lot of bandwidth, but we're seeing really good results.

5 CHAIR THOMAS: All right. Do we have any
6 questions from the Board? (No audible response.) All
7 right, I'm not seeing any. Thank you, Christina.

8 So Board Discussion, Exclusion Pay. Do you want
9 to introduce that?

10 MS. SHUPE: I will, thank you.

11 At the last meeting, Board Member Laura Stock
12 requested a discussion on exclusion pay. This agenda item
13 is provided, so that the Board may have an open and frank
14 discussion about their issues and concerns. And members of
15 the interested stakeholder community will be invited to
16 make comment at the end of the presentation, but also may
17 be called upon by the Board Members throughout the
18 discussion if they have specific queries.

19 And with that, Laura, would you like to go ahead
20 and start the discussion?

21 BOARD MEMBER STOCK: Yeah. Thank you, Christina.
22 And I just to modify symbolically what you said I'm pleased
23 that this item is on the agenda, but I actually went a
24 little further than simply calling for a discussion. I
25 actually had suggested a motion that we could vote on that

1 would strongly be able to provide to the Division our
2 desire that exclusion pay be included in the draft of the
3 of the ATD standard for general industry.

4 And the reason for that is that based on the
5 experience that we had last fall, where the majority of
6 Board Members had strongly stated their belief that that
7 was an essential element to the effective rule, at that
8 point we were told it was too late. In spite of the
9 majority of us calling for that we were told it was too
10 late to be included, because the SRIA had been conducted
11 without it and including it would delay it too much to do a
12 new economic analysis.

13 So that was part of the reason that I felt like I
14 wanted to actually do whatever we could as a Board to give
15 a strong statement to the Division that we believe that
16 this is essential. So that's what I'm hoping to do today.

17 I have provided to Christina the language of the
18 motion that I'm hoping we can vote on, which I'll just --
19 and then I have a few kind of comments about it. But I'll
20 just tell you what it is that I was hoping that we could
21 actually vote on today, which was that we request that the
22 proposed general industry infectious disease standard
23 include exclusion pay, so that infected workers are able to
24 stay home and prevent workplace spread without losing pay
25 and other job protections.

1 And as somebody said, it's just a general
2 statement. I know that there's going to be a lot of
3 details within the actual reg that are going to address how
4 this would actually work. But the intent is to express
5 strongly our commitment to including that.

6 And, of course, we've had months and months of
7 discussion. We've heard from many, many stakeholders about
8 why this is so essential. I mean, we know from the
9 occupational health perspective that the hierarchy of
10 controls that we're all familiar with says that the best
11 way to prevent a hazard is to remove the hazard. And in
12 the case of an infectious disease, that means making it
13 possible for infected workers to stay home.

14 We also know that infected workers, particularly
15 those low wage, many of whom were impacted by this, are not
16 going to be able to afford to stay home without pay.

17 And I want to just specifically again, there was
18 a quote that was in the Statement of Reasons for the vote
19 that we took in December that says, "Research suggests that
20 policies like exclusion pay most benefit low-income and
21 marginalized workers as those workers are less likely to
22 have access to paid time off than better-off workers." We
23 know that without exclusion pay the regulations simply
24 won't work, because people will be unable to stay home.

25 We've gotten information from Autumn, and we've

1 discussed here about the other benefits that are available
2 to people, including sick leave. And we know that many
3 workers have access to very, very limited sick leave, part-
4 time workers even less.

5 Workers' Comp, we've already discussed the fact
6 that is it's very difficult a system to navigate. It
7 doesn't cover everybody's wages. It kicks in only after
8 waiting period. And it is not something that most people
9 can easily access.

10 There has been a question I know about whether
11 unemployment insurance would be of benefit that could --
12 that workers who were excluded could actually access. But
13 there, since that is supposed to be available to workers
14 who are able otherwise to work, it's unclear whether that
15 would be available.

16 Relative to whether the Board has the authority
17 to do something about exclusion pay, I also want to just
18 quote from a document that Autumn had provided to the
19 Board, which is a part of the decision of the California
20 Court of Appeals from the *Western Growers Association vs*
21 *the Occupational Standards Board*. And I'm just going to
22 quote. "Excluding workers exposed to known COVID cases
23 thus operates to protect other workers from potential
24 exposure to COVID-19. Similarly mandating pay, benefits,
25 and seniority during periods of exclusion furthers the goal

41

1 of encouraging workers to report positive COVID-19 cases
2 and COVID-19 exposures thus allowing employers to minimize
3 possible additional exposures to other workers. These
4 goals all fall within the Board's authority to assure safe
5 and healthful working conditions.'" So that that gives us
6 a very strong basis to be standing on.

7 And so with that sort of introduction, and with
8 just reference to the many months of testimony we've heard
9 from workers and others about why exclusion pay is so
10 essential to allowing them to stay home I went when the
11 time is right I would like to be able to see if we could
12 vote as a Board on that motion to include that language in
13 the infectious disease regulation that we'll be
14 considering. So thank you.

15 CHAIR THOMAS: Thank you, Laura.

16 So any discussion from other Board Members?

17 BOARD MEMBER LASZCZ-DAVIS: Chris.

18 CHAIR THOMAS: Go ahead, Chris.

19 BOARD MEMBER LASZCZ-DAVIS: Okay, I've got the
20 floor here. Can you hear me?

21 CHAIR THOMAS: Yep.

22 BOARD MEMBER LASZCZ-DAVIS: Okay, good. The
23 whole issue of exclusion pay is one I struggle with,
24 because I'm not sure it's within our scope of authority and
25 discussion, quite frankly. I see another arm of the

1 government dealing with that. I think our role is
2 standards and regulations. I struggle with the fact that
3 any motion on exclusion pay just addresses a concept
4 without any detail. And I'm not sure how the Board
5 rightfully can vote on a concept without any detail or any
6 understanding as to its implementation.

7 I have to ask, and I ask myself, is our --
8 philosophically is what we do an opportunity to make an
9 employee whole when it comes to financial remedies? And I
10 don't disagree that as you look at all the financial
11 remedies, they're not seamless. But is it our role within
12 the Board to ensure that there are seamless financial
13 remedies? I mean, it's just a question. I think it's one
14 we've got to address.

15 And is it just infectious disease? Or will it be
16 a whole host of other adverse insults that employees
17 undertake in the course of their occupation, and that may
18 also reside in the community.

19 When I think about the ATD standard the beauty of
20 that is, and that's for the healthcare industry, is that
21 there are guideposts. There are medical evaluations. And
22 there are other guideposts that really hold the healthcare
23 sector accountable. I'm not sure from an execution
24 standpoint how that really gets deployed in most of the
25 business sectors, whether it's agricultural, in whether

1 it's retail, and a lot of small businesses that exist in
2 California. Again, we're just talking concept, but without
3 the detail I think we need to be careful to be moving in a
4 direction that we may regret, looking backwards.

5 Another -- yet again I made the comment about the
6 difficulty of implementation. I would encourage, and I
7 know Eric's platter is full, everybody's platter is full,
8 but I think we need to get an advisory committee process
9 triggered as soon as possible. So there are robust
10 discussions and transparency upfront, to deal not only with
11 exclusion pay, but all the details surrounding an
12 infectious disease standard.

13 And I know there's a call for a motion today. I
14 would not agree with that. I think we're too premature at
15 this point to vote on something we know little about other
16 than a concept. That's just my thoughts.

17 CHAIR THOMAS: Thank you, Chris.

18 Any other comments?

19 BOARD MEMBER BURGEL: Dave, this (Overlapping
20 colloquy.) Go on Kate, go on.

21 CHAIR THOMAS: Kate, go ahead.

22 BOARD MEMBER CRAWFORD: Sure. So I just want to
23 watch -- sorry, there's an echo -- I just want to echo this
24 idea that it's too early. It's precipitous for us to even
25 be talking about this. I do not agree that we should be

1 entertaining a motion along these lines. We don't know
2 anything about what is going to be proposed. We don't know
3 what the scope is. We don't know any of the details. I
4 think we should have an advisory committee and join that
5 immediately. But I do not think we should move forward
6 with any sort of commitment to any piece of this. We don't
7 have any details. Thank you.

8 CHAIR THOMAS: Thank you.

9 Barbara?

10 BOARD MEMBER BURGEL: I would support on the
11 motion as proposed by Laura. I think that we were
12 surprised that the version of the COVID standard that we
13 passed in December did not include exclusion pay despite
14 our support, registering our support for exclusion pay as a
15 critical methodology to reduce transmission in the
16 workplace.

17 Again, it's the employer's responsibility to
18 provide a safe and healthy workplace. Yes, COVID is
19 transmitted by the community and at work. We're trying to
20 keep sick employees home. And especially for our low-wage
21 workers, that's very critically difficult if you're making
22 a decision of going to work with a sore throat and a cough,
23 not testing because you don't want to have to stay home,
24 because you have to pay rent and put food on the table.
25 It's very critically important.

1 I understand the concern around not having a
2 specific definition in front of us to vote. But I think
3 it's important for us as a Board to weigh in around the
4 concept of exclusion pay at this time. It's an opportunity
5 to save lives, frankly, so I support this. Thank you.

6 CHAIR THOMAS: Thank you, Barbara.

7 Go ahead, Dave.

8 BOARD MEMBER HARRISON: Yeah, I just want to
9 weigh in a little bit here. I don't disagree with anything
10 that's been said today. There are several governmental
11 bodies that could deal with this. We've heard about
12 Workers' Comp, we've heard about EDD. There is this body.

13 Just to comment a little bit. Obviously everyone
14 knows what we're charged with, rulemaking that helps
15 provide a safe and healthy workplace. And EDD and Workers'
16 Comp, they don't have that same charge. If an employee
17 fears financial hardship, because they don't qualify for
18 EDD or Workers' Comp, or because EDD is only providing
19 maybe half of their regular wages they are going to be more
20 inclined to go to work sick, providing an unsafe and
21 unhealthy work environment.

22 So and then to speak a little bit about the
23 Workers' Comp piece, I come from the construction industry.
24 And construction employers know that Experience Ratings, X-
25 Mod Ratings for your Workers' Comp rates are very

1 important, not only for establishing your Workers' Comp
2 rates but also for even being allowed to bid on certain
3 projects. So we could get to a point where we've got
4 enough construction workers applying for Workers' Comp
5 benefits, that's going to increase X Moderates and it's
6 going to disallow their employer from even bidding
7 projects. So I think that's a pitfall we should be aware
8 of as well.

9 We can't regulate what EDD does, nor Workers'
10 Comp. We can only work diligently for what this Board
11 does. And so with that I would support a motion as well.
12 I know there's not enough detail to get a specific motion
13 approved, but a philosophical motion, if you will. And I
14 haven't heard the language yet, I'm looking forward to it.
15 But moving in that direction I would support that as well.
16 Thank you.

17 CHAIR THOMAS: Thanks, Dave.

18 Any comments from you?

19 BOARD MEMBER STOCK: Can I just -- one other
20 comment, and then I see Chris you have your hand up for
21 some, so I'll go say something really quick and then turn
22 it over to Chris.

23 I just want to highlight and this is just --

24 CHAIR THOMAS: Can we wait just a minute?

25 BOARD MEMBER STOCK: Yeah, sure.

1 CHAIR THOMAS: Because Nola was going to say
2 something. So Nola, go ahead.

3 BOARD MEMBER KENNEDY: Sorry about that.

4 BOARD MEMBER STOCK: My apologies.

5 BOARD MEMBER KENNEDY: I was too slow to start.

6 Like Dave I agree with much of what's been said
7 by the Board Members. I share I think probably Chris's
8 concern that we don't have enough details. To me
9 "infectious disease" is a very broad term. I think these
10 days when most of us are just thinking "COVID" and what
11 happened during the COVID pandemic when we hear "infectious
12 disease." But I'm thinking ringworm. I'm thinking the
13 common cold. There are all kinds of things that are
14 infectious diseases. So until we have an idea of what's
15 going to be covered by any kind of general industry
16 infectious disease standard, I think we have to be very
17 careful about putting requirements into that standard that
18 as a society we may not agree with either. And not that I
19 think this Board has to be concerned necessarily with
20 social concerns, but I do think we have to be realistic.
21 That's it.

22 CHAIR THOMAS: Laura, go ahead.

23 BOARD MEMBER STOCK: Sorry, Nola. I couldn't see
24 that you had -- you were fiddling with your microphone.

25 So just a couple of things. First of all, my

1 goal with this motion is intentionally to keep it out of
2 the weeds of the specifics. Because I think what's
3 important is to express our strong belief that a regulation
4 that is designed to protect from infectious disease in the
5 workplace, be able to do what is most essential. And I
6 want to just quote what Barbara said -- I think she used
7 the term -- it's a critical method to reduce transmission
8 in the workplace. Which is related to, Chris, what you
9 were saying is that our role -- it's not necessarily about
10 making workplace, the workers whole, which I believe we
11 should be concerned about of course. But it's from an
12 occupational health point of view that our role is to
13 promote safety in the workplace, and to set regulations
14 that set requirements for how employers maintain safety in
15 the workplace.

16 And in a situation with infectious disease, like
17 we saw with COVID a critical method is to be sure that that
18 infection, that hazard is minimized. And so I believe it
19 is very firmly in our scope. And particularly, I think,
20 the Appeals Board or whatever that decision that, Autumn,
21 you provided that I was reading before. When the lawsuit
22 about the original COVID reg, they also agreed that it is
23 within our scope. So I think that makes me feel confident
24 that this is something that we can do.

25 So again, I feel like the purpose is to provide a

1 strong call that this be included knowing that there's a
2 lot of details and what kinds of infectious disease it
3 covers, all of the things that you're raising, I agree
4 with. But I think once we have a regulation that sets
5 those where we're defining a hazard in the workplace, we
6 must make it possible for workers who have that, who are
7 bringing that hazard into the workplace, to be able to stay
8 home so it isn't spread. And the only way that that's
9 going to occur is if people can do that without risking
10 their livelihood. Thank you.

11 CHAIR THOMAS: Thank you, Laura.

12 Was somebody else going to comment? Barbara, go
13 ahead.

14 BOARD MEMBER BURGEL: This is Barbara. I wanted
15 to add support for an early advisory committee in response
16 to certainly our public commenters today.

17 I also agree, again that the motion does not
18 preclude a robust discussion in the near future that sets
19 forth, I think Helen Cleary mentioned, the need for
20 objective and verifiable factors that will put some -- what
21 do you call that -- sort of bumpers to keep this standard
22 feasible and effective at reducing transmission in the
23 workplace for employers. So I'm strongly in support of
24 scheduling that advisory committee sooner than later. And
25 strongly in support of a motion on the philosophical

1 concept of including exclusion pay as a method to reduce
2 transmission in the workplace. Thank you.

3 CHAIR THOMAS: (Overlapping colloquy.) Thank you
4 Barbara.

5 BOARD MEMBER CRAWFORD: Okay, I just had a quick
6 question. Did Eric tell us -- I'm sorry, Chris -- did Eric
7 tell us that this draft would be out in the first half of
8 2023? Can he confirm that?

9 BOARD MEMBER LASZCZ-DAVIS: I recall him telling
10 us that it was included.

11 CHAIR THOMAS: Eric?

12 BOARD MEMBER LASZCZ-DAVIS: Yeah.

13 CHAIR THOMAS: Is it included in the draft, the
14 new draft?

15 MR. BERG: (Indiscernible.)

16 MS. SHUPE: I'm sorry, Eric, I need you to step
17 up to the microphone.

18 CHAIR THOMAS: You might as well stay there for a
19 minute.

20 MR. BERG: We don't have a specific timeline for
21 the advisory committee at this time. As I explained
22 earlier that we have several other projects we're working
23 on so there's no -- we don't have any specific time when
24 we're going to have an advisory meeting.

25 CHAIR THOMAS: But see, I didn't know if this was

1 a question, but there is an exclusion pay part of that new
2 regulation that is being developed, correct?

3 MR. BERG: Yeah, we're working -- I mean, we're
4 committed to working with stakeholders through the advisory
5 committee process, as you know, going through ideas. Right
6 now it's a really early process, so maybe working with an
7 advisory committee and all the stakeholders and deciding
8 what's appropriate and what's not.

9 CHAIR THOMAS: Thank you.

10 Any other -- oh, go ahead, Chris.

11 BOARD MEMBER LASZCZ-DAVIS: Yeah, just a real
12 quick question. This is a process question. It would make
13 eminently more sense to me to have a discussion about a
14 motion for exclusion pay, or the requirement for exclusion
15 pay, after we have the first advisory committee meeting.

16 That first advisory committee meeting with
17 stakeholders and a real robust conversation should
18 eliminate the for-or-against on exclusion pay and the
19 provisions surrounding that if the decision is to keep it
20 in and in what format. So I think in terms of process, why
21 not have a motion to Laura's point that not now, but after
22 the very first advisory committee meeting.

23 BOARD MEMBER STOCK: If I could just respond to
24 that suggestion, Chris? I'm hoping that we can have a vote
25 on this. I recognize not everybody might agree with it, so

1 just to kind of acknowledge that. I'd like to see if we
2 can have the vote today. And partly it's because right now
3 the draft is being developed. There'll be a draft
4 developed for people to review. And perhaps it already is.
5 We've heard that it possibly includes exclusion pay. We
6 haven't seen it. There will be a draft that is developed
7 for a discussion at that advisory committee. So my intent
8 now is to provide for, however many of us support this
9 idea, as strong as a call to the Division in the draft that
10 they're developing that it be included.

11 So I know that we're going to have opportunities
12 in the future to actually do binding votes on passing or
13 not passing this regulation. And we'll be seeing, at that
14 point we'll be looking at versions that are incorporating
15 all the comments we're going to be getting from
16 stakeholders. So having this motion today in my mind, does
17 not preclude all of that discussion going forward. But it
18 is really designed to really give a strong call to the
19 Board, I mean to the Division that this is important. That
20 we believe that it is an essential piece of transmission of
21 preventing this hazard in the workplace. And that we want
22 it to be included in the draft that is being developed.

23 And I do recognize that there's different points
24 of view. That not everybody might agree, but I would like
25 to see if we could have that vote today as planned. And

1 then we can of course continue to consider that as we move
2 forward.

3 BOARD MEMBER BURGEL: Dave, I have a question --

4 CHAIR THOMAS: Go ahead.

5 BOARD MEMBER BURGEL: -- a comment. Okay, I also
6 support bringing forth a motion today for our vote.

7 I also want to clarify and ask Eric Berg -- my
8 understanding was at the September 2021 advisory committee
9 was on the general industry infectious disease. Am I
10 incorrect in that?

11 MR. BERG: (Indiscernible.)

12 BOARD MEMBER BURGEL: Because the draft was
13 generated after that, it hasn't been posted. But my
14 understanding is that there was an advisory committee in
15 September of 2021.

16 MR. BERG: I believe that was the COVID, but
17 maybe I'm misremembering. I thought that advisory was
18 COVID.

19 BOARD MEMBER BURGEL: (Overlapping colloquy.)
20 Oh, it was COVID? Okay, was it COVID, the temporary -- the
21 permanent standard? It wasn't on the general industry
22 infectious disease standard. Oh, I thought it was. All
23 right, thank you.

24 CHAIR THOMAS: So I think in looking at this
25 issue, and most of you know how I feel about it. But I

1 believe we should make a motion. I don't know exactly how
2 it would be tailored, but we should have a motion.

3 That all things being equal, none of us have ever
4 lived through a pandemic before until now. I mean, this is
5 a hundred-year event. Now it may not end up being a
6 hundred-year event from now on, I don't know. But we're
7 all learning from what happened in in the last three years.
8 And I don't think any of us thought that we would really
9 still be dealing with it now, this this many years later,
10 but we are.

11 And I think one of the main reasons why it wasn't
12 remarkably worse than it was -- and it was bad here in the
13 United States -- is because that we did provide. And we
14 were on -- I don't know about you guys -- I think we were
15 all on this, the construction crafts from almost day one on
16 putting something together, because we had no choice. Our
17 guys were going to continue to work. And there was
18 literally nothing else we could do but find the best,
19 safest way for them to work. And if they happened to get
20 it, stay your path, stay home, because you know what's
21 going to happen.

22 I mean, you're going to have an outbreak, and
23 nobody wants to lose money. And we included the health
24 benefit in there because we didn't want people to lose
25 their health insurance. And it was -- we were met more

1 than halfway by our employers who realized that this was
2 the only way that they were going to be able to continue
3 working. It's not just for the worker. I mean, this is
4 for business. I mean, this is how you protect your
5 companies and your people and your liability, is to have
6 these things in place.

7 And anybody who's working for an hourly wage
8 rate, even salary to a certain extent, you're living
9 paycheck to paycheck. There's just no other way to look at
10 it. You don't have \$10,000 or \$20,000 saved up that you
11 can just dig into for these kinds of events.

12 And if we're looking at the same kind of
13 infectious disease that we're all living through now and
14 have lived through for the last three years, and I'm not
15 talking about the flu or a cold or something like that, I'm
16 talking about where people are at risk of dying. I don't
17 think there's any choice but to have something that will
18 set that off at some certain point.

19 I mean, it would have to be certain criteria, a
20 certain amount of people, a certain amount of countries. I
21 mean, I'm sure that's what it would end up being in the
22 end. It wouldn't be just we have an outbreak of the flu in
23 Tulare, to name a county or anywhere else in California.
24 And now we're going to implement exclusion pay and all
25 these other nuts. That's not the way it works.

1 And there are things like Workmen's Comp [sic] if
2 you get hurt, unemployment when you're not working --
3 what's the other one I'm thinking about, there's one more -
4 not Workmen's Comp, but --

5 MS. SHUPE: Disability?

6 CHAIR THOMAS: Disability. Yeah, disability.
7 There's many things out there that can cover most issues.
8 But when you get to an infectious disease such as what
9 we're going through right now, I don't see any other way to
10 get through it even halfway successfully. And I don't know
11 if you want to say that 1.1 million people has died is
12 successful. But we all know it could have been a lot worse
13 without certain things.

14 And you know, I'm in favor of the motion. I
15 think we should get it on record that that's what this
16 Board is for. Now, how that all turns out in the end none
17 of us know. But I think we should advocate for that,
18 because I think it's a really important aspect of keeping
19 people safe is hey, you're still going to be able to have a
20 wage. And you're still going to be able to have money.
21 And let's just hope you get through however long it takes
22 to get through the infection, whether it's five days or two
23 weeks, whatever it turns out to be in the next situation
24 that happens.

25 So that's my feeling. And I don't know, Laura,

57

1 did you have --

2 BOARD MEMBER STOCK: So do you want -- I don't
3 know if, Christina or Autumn, you were helping to craft
4 language that could be voted on? Do you want to provide --
5 I think that the language, with some advice about what is
6 appropriate, I can suggest some language that the Board
7 requests that the proposed general industry infectious
8 disease standard as drafted by the Division of Occupational
9 Safety and Health include exclusion pay provisions to
10 further the occupational health and safety of workers. I
11 think I've heard that that's the kind of language that's
12 appropriate.

13 I know I originally was interested in trying to
14 include language that sort of highlights the reason, that's
15 the way that in order to ensure that workers are protected
16 and able to stay home. But Christina or Autumn, do you
17 want to share about what you think the best way to approach
18 this would be?

19 MS. SHUPE: So I will just note for the Board
20 that this discussion is all being recorded and will be part
21 of the transcript. And so that's where we provide the
22 reasons and the logic behind the motion that you're making.
23 The motion itself should be limited to the specific ask.

24 And so I'll go ahead and just reiterate what
25 Laura just said, give me just one moment. And so, and

1 Laura please correct me if I'm wrong, but the motion that
2 Laura is making is, "The Board requests the proposed
3 general industry infectious disease standard, as drafted by
4 the Division of Occupational Safety and Health, include
5 exclusion pay provisions to further occupational safety and
6 health of California workers."

7 BOARD MEMBER STOCK: Yes, that looks fine. Yeah.
8 But Barbara it looks like you have a comment
9 (indiscernible) suggestion?

10 BOARD MEMBER BURGEL: May I make a friendly
11 amendment. Because I think we heard from AnaStacia Nicol
12 Wright from Worksafe, and we discussed it at the last
13 couple of meetings, around job and pay protections. So
14 it's not just exclusion pay, it's also job protection.
15 Because as we know, the California -- you know, the FMLA,
16 the federal medical (indiscernible) Family Medical Leave
17 Act --

18 CHAIR THOMAS: (Overlapping colloquy) Barbara,
19 before we start -- Barbara -- Barbara (indiscernible) --

20 BOARD MEMBER BURGEL: -- doesn't include
21 infections -- go on.

22 CHAIR THOMAS: Barbara, before we start amending
23 what we haven't even put into a motion yet we should -- I
24 think there -- the motion should be made. I guess Laura is
25 the one that's making the motion and Christina

1 (indiscernible) motion is.

2 BOARD MEMBER STOCK: (Overlapping colloquy) So
3 Dave, can I amend it? I like Barbara's point. Is it
4 possible since I was the maker of the amendment to change
5 the proposal?

6 CHAIR THOMAS: Well, we don't really have a
7 motion. We don't really have a motion yet, so make your
8 motion the way you want to make it.

9 BOARD MEMBER STOCK: Okay.

10 CHAIR THOMAS: And then we'll see where it goes
11 from there.

12 BOARD MEMBER STOCK: So I'm going to make it --

13 (Overlapping colloquy from multiple people.)

14 BOARD MEMBER STOCK: (Overlapping colloquy.) --
15 make it again if I can? So let me -- I'm just looking at
16 what - "The Board requests that the proposed general
17 industry infectious disease standard, as drafted by the
18 Division of Occupational Safety and Health, include job and
19 pay protection provisions to further occupational safety
20 and health of California workers." So that to try to
21 capture the point that Barbara was making.

22 (Overlapping colloquy from multiple people.)

23 BOARD MEMBER CRAWFORD: I have a question.

24 CHAIR THOMAS: So we have a motion. Do I have a
25 second?

1 BOARD MEMBER BURGEL: Second.

2 CHAIR THOMAS: We have a motion and second. Is
3 there anything on the question, Kate?

4 BOARD MEMBER CRAWFORD: Yes. So I am very
5 concerned that we are going to end up somehow affecting
6 state and federal law. This to me is not a philosophical
7 motion that we're talking about where -- and so I just want
8 to be really clear is that when we are voting on this is
9 this a binding vote? Or is this a philosophical statement
10 of this is how we feel about it, vote?

11 CHAIR THOMAS: I would say what we're saying is
12 that this upcoming infectious disease regulation, that this
13 Board prefers that there be exclusion pay included in it.
14 Now, how -- yeah, and that's it. I think that's it.

15 Now, I don't know how this -- none of us know how
16 or what's going to happen in the end. But I think that's a
17 good place for us to be, because that's what we have done
18 before and it worked for people.

19 Go ahead.

20 BOARD MEMBER HARRISON: Ultimately the final rule
21 is going to come back to us for a vote, so there. True.

22 (Laughter.)

23 BOARD MEMBER CRAWFORD: Well, there you go.
24 There's Dave with the elegant comment.

25 CHAIR THOMAS: Chris?

1 BOARD MEMBER LASZCZ-DAVIS: Yeah, just real
2 quickly. Would Laura, as we're talking friendly amendments,
3 would Laura consider a slight adjustment to make this
4 motion after the first advisory committee meeting of
5 stakeholders? I think that input is absolutely critical.

6 BOARD MEMBER STOCK: Yeah. Thank you, Chris. I
7 hear what you're saying. And I think, as I mentioned
8 before, I am hoping that we can have that vote today.
9 Precisely for the reasons that I stated earlier is that the
10 draft that will be considered by -- I want to be sending a
11 message that the draft that is considered by that advisory
12 committee that would be presented for people to comment on
13 include exclusion pay, or job and pay protections as we've
14 described.

15 And I think, again the concerns we have about how
16 it's going to influence things going forward, just to how I
17 see it, like Dave is saying too, it's sending our strong
18 feeling about the critical nature of this provision. It
19 doesn't preclude or influence the vote that we're
20 eventually going to be taking. The regulation that we see
21 is going to reflect stakeholders, there's going to be
22 Statement of Reasons, all the other things that we
23 consider. This has nothing to do, it doesn't preclude any
24 of that. It just expresses our desire, which is what we
25 did last -- before the last vote, but in a much more

1 informal way.

2 I think we all we all mentioned it in our -- or
3 not all of us, but most of us mentioned it in our comments
4 in October whenever we discussed it. Dave Thomas strongly
5 said we need to have it in there. We request to have it in
6 there. I'm trying to turn that conversation into something
7 a little bit more organized, so that we can say as a Board,
8 for those of us who are willing to vote for this, this is
9 our strong request that it be included. And I do think now
10 is the time to do it.

11 CHAIR THOMAS: Any other comments? (No audible
12 response.) All right.

13 BOARD MEMBER KENNEDY: I'll make one.

14 CHAIR THOMAS: Oh, go ahead Nola.

15 BOARD MEMBER KENNEDY: Sorry, I just sort of want
16 to follow up. And I want to say I agree that in the COVID
17 standard I think exclusion pay was important for keeping a
18 source of the hazard out of the workplace. I want to
19 reiterate I have concerns about translating this into an
20 infectious disease standard. And so I'll just -- I mean, I
21 don't think it really matters. I think the Division is
22 aware of how the Board feels now, definitely all the
23 stakeholders are. But with the way the current motion is
24 worded I can't support it.

25 CHAIR THOMAS: Okay, any other? Any other

1 comments? (No audible response.) All right, hearing none
2 then I'll have Ms. Money call the roll.

3 MS. MONEY: Okay. I was trying to get the motion
4 written down, but I couldn't quite get it. Do we want to
5 restate it one more time just to be safe?

6 MS. SHUPE: I'll go ahead and restate it for the
7 record and I've confirmed this with Laura.

8 The motion before the Board is, "The Board
9 requests that the proposed general industry infectious
10 disease standard as drafted by the Division of Occupational
11 Safety and Health include job and pay protection provisions
12 to further occupational safety and health of California
13 workers."

14 CHAIR THOMAS: All right. And we have a second
15 on that by --

16 MS. MONEY: I have Barbara Burgel as second.

17 CHAIR THOMAS: Okay, so we have a motion and
18 second. Call the roll.

19 MS. MONEY: Ms. Burgel?

20 BOARD MEMBER BURGEL: Aye.

21 MS. MONEY: Ms. Crawford?

22 BOARD MEMBER CRAWFORD: No.

23 MS. MONEY: Mr. Harrison?

24 BOARD MEMBER HARRISON: Aye.

25 MS. MONEY: Ms. Kennedy?

1 BOARD MEMBER KENNEDY: Nay.

2 MS. MONEY: Ms. Laszcz-Davis?

3 BOARD MEMBER LASZCZ-DAVIS: No.

4 MS. MONEY: Ms. Stock?

5 BOARD MEMBER STOCK: Aye.

6 MS. MONEY: Chairman Thomas?

7 CHAIR THOMAS: Aye. And the motion passes.

8 So do -- I guess there's no further discussion on
9 that item.

10 MS. SHUPE: So because this is a little out of
11 order with the normal Board meeting, we normally hold all
12 of our public comment at the top of a meeting, but this is
13 an added discussion. So at this time it's appropriate to
14 invite public comment on the Board agenda item.

15 CHAIR THOMAS: Okay.

16 MS. SHUPE: So at this time anyone who's
17 attending remotely, who would like to participate in or
18 provide comment to the Board, please go ahead and submit
19 the request. And then anyone in-person who would like to
20 comment on the Board's discussion, specifically the Board's
21 discussion, please come up to the podium.

22 MR. LEACOX: Yes, this is Dan Leacox with Leacox
23 and Associates. So I greatly appreciated that you include
24 an opportunity for public comment in this context in this
25 unusual context. I thought that was very appropriate.

1 Though it seems to me would have been more appropriate to
2 be able to comment before the voting. And really, I just
3 want to make that comment on the procedure. It was -- it
4 seemed like a very good move, but after the fact a little
5 less meaningful. Okay.

6 CHAIR THOMAS: Thank you.

7 MR. WICK: Thank you for the opportunity and
8 appreciate the respectful and healthy discussion of a very
9 difficult and serious and important topic. Bruce Wick,
10 Housing Contractors of California.

11 I do appreciate -- and I think we need to take a
12 look at this from what Chair Thomas has talked about -- we
13 were unprepared for COVID. My grandparents lived through
14 it, but they died a long time ago and they never told me
15 about the 1918 flu and what you had to do. So we were
16 unprepared on every level across the world. And we don't
17 want to be unprepared again.

18 I think we did some really great things, the
19 Division, this Board. Like you said, both Daves,
20 construction, labor and management got together and from
21 the get-go we had a great plan. And nothing really changed
22 in how we operated based on the permanent standard. We
23 took care of things. And our numbers, every fatality is a
24 person, every illness is a person, but we did a great job
25 of preventing as you said, Chair Thomas. It could have

1 been much worse had we not taken the steps that we did.

2 I do think and I'm respectfully in disagreement
3 with Dave Harrison about it -- and I understand we get
4 frustrated. And we want to control what we can control and
5 we want to do something here. But is there a more
6 appropriate entity? And is there a more appropriate place
7 to do this?

8 And if you're going to send a message to the
9 Division, I would strongly suggest you send a message to
10 all the other people you are -- this Board has enormous
11 responsibility and enormous impact. And let's send a
12 message to Speaker Rendon and Pro Tem Atkins and Secretary
13 Knox and Director Hagen, and Governor Newsom while we're at
14 it, how important you believe this issue is. We all
15 believe this issue is important. It's my perspective that
16 businesses, especially small business should not be the
17 backstop for all these things. The government should be.
18 This should be the government combined working together
19 between all its various parties, what's the most
20 appropriate entity?

21 We get upset when the legislature wants to pass
22 safety regulations. Say, "This is the appropriate entity
23 for that."

24 We have respectful discussions with federal OSHA
25 and appreciate, you know, Matt. We sit down and we roll up

67

1 our sleeves and we're working through the issues, we are.
2 But it's a respectful dialogue of who's the appropriate
3 entity who can make the best decision about this. And
4 let's get informed and let's work our way through that.

5 So if we're going to send messages, let's send a
6 real message where it should go to the more appropriate
7 entities and say our biggest discussion on this thing is
8 who funds it? We've got 1.3 million employers with less
9 than 25 employees in California. And if we get another
10 pandemic like COVID how many of them went out of business,
11 never to return? How many of them would be beleaguered?
12 And we're saying, "You pay for this." No, I think the
13 government should pay for it.

14 We spent trillions on COVID nationally. Why
15 can't the government step in if it raises to the level like
16 Chair Thomas said, there's a level that we should do this
17 to help people. Because of those 1.3 million employers
18 with less than 25 employees. Those are most of your hourly
19 workers who need help if this thing ever hits us again. We
20 hope it doesn't. But it could and we need to be prepared.

21 But it's all levels of government working
22 together to achieve the outcome we need, so that we don't
23 cause unintended consequences of putting more small
24 employers especially at risk for not surviving, because
25 then someone doesn't have their job anymore, at all. Thank

1 you.

2 CHAIR THOMAS: Thank you.

3 Any other in-person commenters? (No audible
4 response.) All right. I think, Maya, we have some people
5 on the line -- oh, go ahead. No, go ahead. Okay, you
6 sure? Okay.

7 Go ahead, Maya, what do we got?

8 MS. MORSI: First up we have Brian K. Miller with
9 Rudolph and Stetten. Sletten. Sletten, sorry, Sletten.

10 CHAIR THOMAS: Did you say Brian?

11 MS. MORSI: Brian K. Miller, with Rudolph and
12 Sletten (indiscernible).

13 CHAIR THOMAS: Brian. Are you with us, Brian?
14 Hello?

15 UNKNOWN SPEAKER: Brian actually had to stop at
16 11:30, so I think he got off. (Indiscernible.)

17 CHAIR THOMAS: I didn't hear that?

18 MS. MORSI: He had an 11:30 meeting.

19 CHAIR THOMAS: Oh. Okay, well let's go on to the
20 next.

21 MS. MORSI: Up next is Mitch Steiger with
22 California Labor Federation.

23 CHAIR THOMAS: Mitch, can you hear us?

24 MR. STEIGER: Yes, I can. Thank you, and very
25 much appreciate the opportunity to testify today.

1 I just wanted to commend the Board for the vote
2 to approve, or well to recommend that exclusion may be put
3 in the first draft of the standard. As we've said many
4 times before at these meetings, the defining feature here
5 of what we're doing is dealing with an infectious disease.
6 And over and over again we've -- as we've learned more
7 about COVID and we've learned more about how it works, the
8 one constant that we have learned is that taking workers
9 who have the infectious disease and separating them from
10 those that don't is the best control measure that we have.
11 Masks are helpful, but they're not 100 percent. Cleaning
12 and disinfecting we thought was a lot more important than
13 it turned out to be. Partitions changed. This is the one
14 thing that we know really matters. We have a version of it
15 in other standards and we think it makes nothing but sense.

16 And frankly, we with all due respect to our
17 friends in the employer community, it's a little -- there's
18 this constant opposition to sick leave of any kind is a
19 little confusing. But especially when it comes to
20 infectious diseases where we are talking about taking
21 workers who could bring something into the workplace that
22 not only causes a major outbreak among other workers, but
23 could also cause a major outbreak among customers or other
24 members of the public are involved.

25 It is hard to think of a more wise use of

1 resources than to prevent that from happening. Just
2 setting aside the human toll and the fact that workers need
3 time away from work to recover from an infectious disease
4 and then not having that time can make the disease not only
5 worse, but can make the effects of it permanent. It really
6 kind of seems like a win-win-win to deal with whatever the
7 short-term, upfront investment may be that's associated
8 with exclusion pay. And then see the benefits down the
9 line in terms of outbreaks that don't happen among workers,
10 Workers' Comp claims that don't happen.

11 A lot of people have talked about the issues with
12 the Workers' Comp system. The biggest one that we would
13 always mention is that most COVID claims are denied. And
14 maybe that would be the case with future infectious
15 diseases, maybe not. But clearly this is not a system that
16 was designed for this sort of thing where symptoms come up
17 out of nowhere, you need to leave right now. And if you
18 don't know whether or not you're going to get paid you're a
19 whole lot more likely to make the decision to just chance
20 it and stay at work, keep your mouth shut and stay at work.
21 And then now we have the outbreak.

22 And so we just think it was an incredibly wise
23 decision by the Board to really make a statement on this
24 issue, send a message to the agency, to the administration,
25 to everybody that this is a smart decision. It made sense

1 with COVID. It'll make sense with whatever's coming in the
2 future with other infectious diseases. And we appreciate
3 the Board's effort today. Thank you.

4 CHAIR THOMAS: Thank you.

5 Who do we have next, Maya?

6 MS. MORSI: Up next is Mike Donlon.

7 CHAIR THOMAS: Mike, are you with us?

8 MR. DONLON: I'm here.

9 CHAIR THOMAS: Go ahead.

10 MR. DONLON: While I don't argue that keeping
11 infected employees away from the workplace is a -- you
12 know, it's good thing, but I wonder if the burden needs to
13 be put on the employers. As Chairman Thomas said, these
14 employees sometimes don't have \$10 or \$20,000, they're off
15 work. Well, the same can be said for small employers.
16 They don't have a big chunk of money, especially startup
17 businesses. You look at minority-owned businesses.
18 They're running month-to-month saying, "How am I going to
19 make payroll this month?"

20 So they're in the same position as their
21 employees in a lot of cases. And putting this burden on
22 them, you could potentially put people out of business,
23 which none of us want to put a small business, our local
24 favorite restaurant, the little grocery store where we can
25 get products we can't find anywhere else, those are the

1 places we love. We don't want to see them go out of
2 business.

3 The other thing that keeps being brought up are
4 other regulations that have various types of exclusion pay
5 or some type of payroll thing in them. Lead is brought up.
6 Well those are ones that are pretty much unique to the
7 workplace. Those are hazards that if you get lead
8 poisoning and you're working with lead, you're pretty
9 certain you got it at the workplace. You didn't
10 necessarily get that at the local grocery store or
11 somewhere at a restaurant, at a family event. You got that
12 in the workplace. And all these things, benzene, all the
13 ones that were mentioned, the hazards are very unique to
14 the workplace. So that's kind of a different category.
15 We're talking apples and oranges.

16 I just think we need to find some other means
17 rather than burdening employers with these costs. We get
18 one employee out they're going to be making less money,
19 because of that or they're going to have to bring someone
20 else in to do that work. And so again a lot of employers
21 just can't afford this. And we're not in the business here
22 of putting people out of business. We're here for employee
23 safety, so we have to kind of balance those two things.
24 Thank you.

25 CHAIR THOMAS: Thank you.

1 Why don't we go ahead to the in-person.

2 MS. CLEARY: Hello, again. Helen Cleary with
3 PRR. You know, we covered our concerns earlier in our
4 comments. I just wanted to follow up on a couple of things
5 and points that were made during the discussion. We agree
6 that based on the wording of the motion, this does seem
7 very premature. And now we're concerned that it will push
8 a up-and-down yes/no vote later. So what it sounds like
9 what it was asked for was that exclusion pay is included.

10 We would have liked seeing -- we would like to
11 see maybe options of how this would work. Because right
12 now it's the fear of the unknown. And Board Member Kennedy
13 said, "ringworm and the common cold" and that's where our
14 concern is as well is infectious disease is this huge
15 bucket. It's not just the pandemic that we just went
16 through.

17 And the pandemic obviously was unprecedented. We
18 hope we're never there again, but standard infectious
19 diseases include so many concerns. And now looking at it
20 from a general industry perspective in all of these
21 different industries, it sounds like what the Board has
22 asked for is we want this period.

23 And so when the vote does come, yes, you can vote
24 yes or no. But is that yes or no vote going to be based on
25 the fact there is exclusion pay? Well, maybe there will --

1 could be a lot of really great things an infectious disease
2 rule that isn't contingent on whether or not it has
3 exclusion pay. So the details here are so important. Now
4 it seems like we really need to move up this timeline and
5 start talking about it and look at what are we looking at?
6 And what is going to be in front of us?

7 I also want to point out I think we're conflating
8 two things. Removing an employee with a disease removes
9 the hazard. Keeping them whole and providing, making sure
10 they can support they're -- is you have a livelihood to
11 support their families is a different issue. And it's
12 unfortunate, but that's the reality.

13 And like Donlon said, "Who is responsible for
14 this?" And I think that's the bigger question. So other
15 agencies need to get involved and to look at this maybe
16 holistically from a state perspective. But that's what I
17 have to say for now on the last minute here.

18 So thank you. I appreciate the discussion. You
19 know, it was a robust discussion with Board Members.
20 Everyone's obviously very passionate about this, us
21 included. And so hopefully we'll continue to keep this
22 rational and come up with a solution that really does work
23 for everybody because that is what we want as well. So
24 thank you for your time today.

25 CHAIR THOMAS: Thank you.

1 Go ahead.

2 MR. MOUTRIE: Thank you, Chair Thomas. Robert
3 Moutrie of California Chamber of Commerce. Again, I will
4 not rehash my earlier comments. I was trying to not add,
5 but I need to address I think one point that's been raised
6 a couple of times.

7 A number of labor advocates have made the point,
8 "Well, we just don't see why business isn't in support of
9 this for their costs." And I think that's somewhat of an
10 unfair comment. I would just briefly address it, which as
11 Bruce and others commented it is a significant cost to
12 workplaces across California to say that, "You will have a
13 workforce who is not here, who is not working, while I pay
14 this one." Obviously, the larger employers will do better,
15 right? But there are a lot of small businesses that have a
16 significant cost there.

17 I think Chair Thomas, you commented on this
18 wisely some months ago. It's all blurry but I think you
19 said while expressing your support for the idea said, "I'm
20 not sure how we do it, if there needs to be state help, but
21 I believe it should be there." And I think that that is a
22 core concern that I need to flag there. I hear that and as
23 an intellectually, totally fair argument, or a fair
24 statement, I should say. But if there were state help for
25 this, so it's not just a matter of employers take this,

1 there would not be a question. But there is significant
2 costs for businesses across California in doing this.

3 I also want to, as Helen noted, say, "The issue
4 being discussed is most concerning to us now, because it is
5 an unwritten check or we don't know what the provision is.
6 If you were to say, as you did, if it's a multicounty
7 disease at a certain level of pandemics we could have a
8 different calculation and say, "Okay, this is workable." I
9 think that's where much of our concern comes from now. And
10 hopefully that's resolved once you move to the advisory
11 committee stage.

12 I want to also just note one point of that to
13 correct, I think it came up earlier, I think Board Member
14 Burgel mentioned concern about job protections. And I
15 think I said this two meetings ago, but I'm going to
16 reiterate, labor law already provides many protections that
17 prevent from termination and things like that while out on
18 sick leave and others. So, again, there is a legal
19 framework there. It's fine that we vote on it here, but I
20 want to remind the Board that that exists in other places
21 in law. Thank you.

22 CHAIR THOMAS: Thank you.

23 Do we have any other commenters online, Maya?

24 MS. MORSI: Up next is Kevin Bland.

25 CHAIR THOMAS: Kevin, can you hear us?

1 MR. BLAND: Yes, Chair Thomas.

2 CHAIR THOMAS: Thank you.

3 MR. BLAND: Kevin Bland, from representing the
4 California Framing Contractors Association, Residential
5 Contractors Association. I think that I was really excited
6 whenever -- and when I say really excited, I guess I don't
7 know if that's the right term -- but happy to hear that we
8 were going to have comment during the business meeting,
9 which almost never happens. It's probably happened half a
10 dozen times in my career, so it's over 20 years so it's
11 pretty rare. And I thought, "Okay, this is great," because
12 this is an issue that's got a lot of passion on both sides.

13 And I was expecting that 1) we would have known
14 about it in advance, which I don't think we did. I looked
15 on the agenda again to see if it showed that and it didn't.
16 And 2) that it would have been before the motion and vote,
17 because the purpose to me of public comment is to provide
18 all the information, at least from the stakeholders to the
19 extent possible, prior to a vote occurring on a particular
20 issue. So I just want to state a little disappointment
21 there in that.

22 And the other thing that I found as theme as
23 sitting here listening is we just voted on something that
24 we don't really have a known what-it-is, and what context
25 it's in yet, because I think everyone has a different idea

78

1 of what it means. The only thing we do know is what the
2 term "exclusion pay" meant in the pandemic regulation.

3 And so we're all trying to guess at what context
4 this is in. We're trying to -- we hear everything from
5 disease in multiple countries to a cold, and so I'm trying
6 to figure out what how we know what we're commenting on
7 without having the context in which it is. We know we have
8 a current ATD standard which had something similar to it.

9 There's a big know in ATD in general industry.
10 ATD applies to health care. Health care, the exposure is
11 occupational. That doesn't mean it just happens at work.
12 It means it's inherent in the work being performed. Like
13 guarding is inherent in work being performed with a punch
14 press versus something at home. When you can't distinguish
15 between something happening at work and something happening
16 at home like an illness or a sickness it's hard to say that
17 that is an occupational hazard. It may be something that
18 is at work and at home and indistinguishable.

19 And we went through this with the pandemic. But
20 I think the pandemic is in a little bit of unique, rather
21 than a general ATD everyday standard when the ATD -- and we
22 heard also the lead, same thing, it's inherent in the work
23 being performed.

24 So I guess I'm just expressing that I wish we
25 would have had an opportunity to bring up some of these

1 points in discussion prior to the vote for consideration.
2 Whether it changed anyone's mind and the vote or not is
3 irrelevant. At least we would have had an opportunity to
4 have done that and maybe brought up some points that hadn't
5 been discussed.

6 And, for instance, a motion that would have said
7 something to the effect of "consider it in the context"
8 versus "it's in there, regardless of what it is." Because
9 when we don't even know the context yet, I think "consider"
10 would have been a word that could have been added. Maybe
11 that would have been a suggestion, I don't know, because we
12 didn't get that opportunity to do that.

13 But anyway, I appreciate your time. I didn't
14 mean to rant. Workplace safety and health is
15 (indiscernible) and devoted my entire career to it. And I
16 think faith in the process, in this Board, future boards,
17 past boards is very important for all stakeholders, labor
18 and management. And I hope that we continue to have that.
19 So thank you very much.

20 CHAIR THOMAS: Thank you.

21 Christine?

22 MS. SHUPE: Do we have any more public comments?

23 CHAIR THOMAS: One more, who do we have?

24 MS. MORSI: We have Carmen Comsti with California
25 Nurses Association.

1 CHAIR THOMAS: What was the first name?

2 MS. MORSI: Carmen Comsti.

3 CHAIR THOMAS: Oh, Carmen. Can you hear us?

4 MS. COMSTI: Yes, I can hear you. Thanks, Chair
5 Thomas and the Standards Board. I wanted to speak on
6 behalf of California Nurses Association, again in support
7 of exclusion pay in a permanent standard. And in strong
8 support of Board Member Stock's motion.

9 I think we need to reassess how this discussion
10 is happening. And just remember that when we're talking
11 about occupational exposures related to infectious disease,
12 that it's not simply about whether or not you're a
13 healthcare worker who is in a hospital that could be
14 exposed to many infectious diseases, your coworkers can
15 become vectors for infectious diseases. It's not something
16 that's necessarily inherent about the occupations. And I
17 think we need to reassess how this discussion is happening
18 and that exclusion pay is part of the Aerosol Transmissible
19 Disease standards. Not only because patients can get
20 health care workers sick with infectious airborne diseases,
21 but also because their coworkers can spread the diseases
22 also.

23 And I think it's important to remember that the
24 goals of exclusion pay, while it is great that it will make
25 workers whole, that the occupational safety and health goal

1 is to ensure that people who are working in workplaces
2 don't expose themselves or their coworkers to infectious
3 diseases that we know can be spread in workplaces. We know
4 that exclusion pay and job protections are important in
5 ensuring that people stay at home if they become sick with
6 an illness or disease.

7 And I think we, while I appreciate the discussion
8 and the call for more detail, this is an essential
9 component to fairness and equity, particularly for low-
10 income workers, who may fear that if they stay at home that
11 they will lose money. And it's an impossible choice that we
12 cannot place workers in. And that is part of the reason
13 why exclusion pay should be included in a permanent
14 standard.

15 And again, I think we've had long discussions
16 about exclusion pay over the past several years and most
17 recently the past couple of months. And I think it's
18 important to remember that these are key components. And
19 of course, there's going to be other elements that are
20 going to be added to a standard, but this is a key
21 component that is essential in an infectious disease
22 standard. Thanks.

23 CHAIR THOMAS: Thank you.

24 Do we have any other callers, Maya? Okay.

25 Christina, go ahead.

1 MS. SHUPE: Thank you, Chair.

2 I'd just like to make a comment on point of order
3 because we received a couple of public comments. The
4 Board's discussion was noted on the agenda and was provided
5 to the public a minimum of 10 days in advance and that is a
6 requirement of California's open meeting laws. There is,
7 however, nothing that precludes the Board from having a
8 discussion about a matter within their purview and making a
9 decision, as long as it's noticed to the public.

10 The opportunity for public comment at the end is
11 the opportunity to provide the public with their feedback
12 to the Board. We also provide public comment at the top of
13 the meeting. And so I would encourage stakeholders who
14 feel like they were not adequately included today to take
15 advantage of the agenda that is provided in advance of the
16 meeting, to join our mailing list. And to also be active
17 participants in the public comment period that is provided
18 at the beginning of every meeting. Thank you.

19 CHAIR THOMAS: Thank you, Christina.

20 So I guess we'll move on to future agenda items.
21 Do any Board Members have any questions for staff on items
22 they would like to propose for future Board agenda items?
23 Anybody?

24 Do we have a closed session today?

25 MS. SHUPE: A very brief closed session.

1 CHAIR THOMAS: All right, so we're going to
2 recess for a closed session. And we will be back, let me
3 think.

4 MS. SHUPE: Fifteen minutes.

5 BOARD MEMBER STOCK: Could you send the call-in
6 information again if you don't mind, Sarah? I'm not sure I
7 saw that for the closed session. If we could just get that
8 email again?

9 MS. SHUPE: She's doing that now. Thank you.

10 CHAIR THOMAS: Okay. So we'll be back in session
11 around 12:15, so as of now we're in recess. Thank you.

12 (Off the Record at 11:53 a.m.)

13 (On the Record at 12:22 p.m.)

14 CHAIR THOMAS: All right. We're back in session
15 and have nothing to report from our closed session other --

16 (Off mic colloquy.)

17 CHAIR THOMAS: Have we got everybody?

18 MS. MORSI: Yeah.

19 CHAIR THOMAS: All right, so we have nothing to
20 report from closed session.

21 The next Standards Board regular meeting is
22 scheduled for February 16^h, 2023, in Fresno via
23 teleconference and video conference. Please visit our
24 website and join our mailing list to receive latest
25 updates. We thank you for your attendance today.

1 There being no further business to attend to this
2 business meeting is adjourned, and go Niners.

3 (The Business Meeting adjourned at 1:24 p.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of April, 2023.



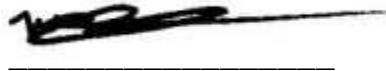
MARTHA L. NELSON, CERT**367

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of April, 2023.



Myra Severtson
Certified Transcriber
AAERT No. CET**D-852