



May 28, 2013

Ellen Widess, Chief  
Department of Industrial Relations  
Division of Occupational Safety and Health  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

Ms. Widess:

In light of the issuance of the Occupational Safety and Health Administration's (OSHA) Compliance Guidance for Residential Construction (STD 03-11-002), the Directorate of Cooperative and State Programs and the Directorate of Construction have begun the process of reviewing all of the corresponding State Plan standards, policies and procedures covering fall protection in residential construction.

As you may recall, the Compliance Guidance for Residential Construction (STD 03-11-002) canceled OSHA's interim enforcement policy (STD 03-00-001) on fall protection for certain residential construction activities, and requires employers engaged in residential construction to comply with 29 CFR 1926.501(b)(13). This new guidance informed State Plans that, in accordance with the Occupational Safety and Health Act (OSH Act), they must each have a compliance directive on fall protection in residential construction that, in combination with applicable State Plan standards, results in an enforcement program that is at least as effective as federal OSHA's program.

In relation to the Standards Board final statement of reasons discussing Roof Hazards-New Production-Type Residential Construction, OSHA sent an advisory opinion stating that the federal standard requires fall protection at a height exceeding 6'. The advisory opinion stated that the proposed changes did not provide protection equivalent to the federal standard in that fall protection is not required until a height exceeds 15'. In justifying the 15' height requirement, the Standards Board made reference to OSHA Directive STD 03-00-001 (STD 3-0.1A) "Plain Language Revision of OSHA Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction." However, as noted above, OSHA's Compliance Guidance for Residential Construction (STD 03-11-002) has canceled STD 03-00-001, effective June 16, 2011.

We are particularly concerned about the following areas where the California State Plan's standards and enforcement policies for fall protection differ significantly from OSHA's policies and standards, specifically in the context of residential construction:

- o California's trigger height for fall protection ranges from 4' for wall openings, 6' for excavations, 7.5' from the perimeter of a structure, to 15' for residential-type framing activities. It is unclear which trigger heights apply to residential construction. OSHA has

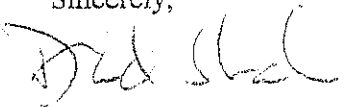
a general 6' trigger height for fall protection in construction, including in residential construction. See 29 CFR 1926.501(b).

- California lacks a cohesive residential fall protection standard or compliance policy; instead, fall protection provisions for residential construction are housed across multiple articles, making it difficult for employers to ensure compliance with the correct regulations.
- California's definition of residential construction is different from federal OSHA's definition. See OSHA STD 03-11-002, *Compliance Guidance for Residential Construction*.
- The California standards also differ in several other ways that may create concerns. For example, the state program allows for a fall protection plan when conventional fall protection is "clearly impractical" (as opposed to the federal requirement for a showing of infeasibility or greater hazard), and makes allowances for short term work.

Please submit a detailed analysis comparing California's fall protection standards and enforcement policies that apply to residential construction, to OSHA's Compliance Guidance for Residential Construction (STD 03-11-002) and Subpart M of 29 CFR 1926. Pursuant to the requirements of 29 CFR 1953, please submit a copy of California's complete legislation, regulations, policies or procedures governing fall protection in residential construction; identify each of the differences between the state requirements and federal OSHA's requirements (include discussion of the bulleted points listed above); and provide an explanation of how each state provision is "at least as effective" as the comparable federal provision.

We appreciate your cooperation and request a response by July 29, 2013.

Sincerely,



DAVID SHIRAISHI  
Area Director