

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

1017 L Street, PMB #254
Sacramento, CA 95814-3805
(916) 274-5721
FAX (916) 274-5743
Website address www.dir.ca.gov/oshsb



**SUMMARY
PUBLIC MEETING AND BUSINESS MEETING
July 16, 2020
Teleconference in Sacramento, California**

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., July 16, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-992-4726 and via Webex at www.webex.com.

ATTENDANCE

Board Members Present at OSHSB Office

Dave Thomas

Board Members Absent

NONE

**Board Members Present via Teleconference
and/or Webex**

Barbara Burgel

Dave Harrison

Nola Kennedy

Chris Laszcz-Davis

Laura Stock

Board Staff Present at OSHSB Office

Christina Shupe, Executive Officer

Michael Nelmida, Senior Safety Engineer

Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Staff Present via Teleconference and/or Webex

Eric Berg, Deputy Chief of Health

**Board Staff Present via Teleconference
and/or Webex**

Mike Manieri, Principal Safety Engineer

Lara Paskins, Staff Services Manager

David Kernazitskas, Senior Safety Engineer

Jennifer White, Staff Services Analyst

Others Present via Teleconference and/or Webex

Michael Donlon, Construction Employers
Association

Eric Conn, Conn Maciel Carey

Mirella Deniz-Zaragoza, Warehouse
Worker Resource Center

Jennifer Wysick, Truebeck Construction

Edward Flores, University of CA, Merced

Stan Santos, Fresno Madera Tulare Kings
Central Labor Council

Eric Frumin, Change to Win

Ramón Castellblanch, CA Alliance for Retired
Americans

Stephen Knight, Worksafe

Cassie Hilaski, Nibbi Brothers General

Anne Katten, CA Rural Legal Assistance
Foundation
Robert Moutrie, CA Chamber of Commerce
Dan Leacox, Leacox and Associates
Raul Pickett, Central Valley Response Task
Force
Frances Schreiber, National Lawyers
Guild - Labor & Employment
Committee (NLG – L&EC)

Contractors
Julie Rey, San Joaquin Valley Air Pollution
Control District
Frank Belio, International Union of Elevator
Constructors Local 18
Elizabeth Treanor, Phylmar Regulatory
Roundtable
Kevin Riley, University of CA, Los Angeles,
Labor Occupational Safety and Health
Program

Mr. Thomas indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Steven Knight, Worksafe, commented in support of the petition that his organization and the National Lawyers Guild - Labor and Employment Committee (NLG L&EC) submitted in May to address COVID-19 exposure in the workplace (Petition 583). He asked when the petition will be put before the Board for consideration and vote.

Eric Conn, Conn Maciel Carey, representing the Coalition for Uniformity in COVID-19 Recordkeeping, stated that his organization is concerned about the fact that recordkeeping requirements in the Division's COVID-19 guidance differs substantially from federal OSHA's.

- The Division's guidance document says that while a positive test is considered determinative of recordability, a positive test result is not necessary. This directly contradicts federal OSHA's recordkeeping requirements for COVID-19 and guarantees that some cases will be recordable on the 300 logs in California that are not being recorded on 300 logs in other states.
- Federal OSHA requires employers to find work-relatedness for COVID-19 recordkeeping only where it is more likely than not that an illness was caused by an exposure in the workplace based on reasonably available evidence and in the absence of an equally or more likely alternative non-work explanation for the ailment. The Division's guidance document has created a presumption of work-relatedness and provided no guidance as to whether or not non-work exposures can be considered that may have been likely to have caused the illness.

He asked the Division to reexamine its guidance and either revise it to match federal OSHA's standards or withdraw it. **Elizabeth Treanor, Phylmar Regulatory Roundtable**, echoed Mr. Conn's comments.

Michael Donlon, Construction Employers Association, stated that the regulations petition 583 is seeking to promulgate are duplicative of the public health orders that have already been issued and will create confusion for employers. The public health orders are able to be modified much easier and quicker than the new standard that petition 583 seeks to implement. **Robert Moutrie, CA Chamber of Commerce**, echoed Mr. Donlon's comments.

Eric Fruman, Change to Win, commented in support of petition 583. He said that the existing regulations are inadequate, so a clearly applicable standard is needed. He also stated that COVID-19 is a workplace hazard that needs to be addressed, and the Division has the ability to deal with it better than public health authorities because the Division understands the problem from an employer/employee standpoint.

Raul Pickett, Central Valley Response Task Force, commented in support of petition 583. He also provided the following suggestions:

- Work plans need to be required at worksites and must contain specific language regarding infection control standards.
- There needs to be a central location where infection control data is collected and disseminated.
- It is important to identify and establish specific infection thresholds levels that clearly define when an outbreak has occurred.

Mr. Pickett also said that this petition is needed because many essential workers are immigrants and low-wage workers who do not have access to healthcare and have preexisting medical conditions, which puts them at greater risk of getting infections such as COVID-19. They also do not have union representation and no worksite protections. This petition will help to keep those workers healthy and will save lives.

Ramón Castellblanch, CA Alliance for Retired Americans, stated that the CDC guidelines to protect workers from exposure to COVID-19 are clearly not working. They need to be updated and turned into permanent standards. That is why petition 583 is needed right now.

Mirella Deniz-Zaragosa, Warehouse Worker Resource Center, stated that employers are not doing enough to protect workers from exposure to COVID-19. They are not doing adequate reporting and contact tracing around confirmed cases and they are not cleaning and sanitizing work areas. Proper physical distancing and regular handwashing by employees is not taking place because employees are hurrying to meet relentless quotas and production speeds that are set by their employer. **Stan Santos, Fresno Madera Tulare Kings Central Labor Council**, echoed this comment. Ms. Deniz-Zaragosa stated that the guidance protocols that the Division has issued are not the same as a mandatory standard that specifically addresses COVID-19 hazards, so an emergency standard is needed.

Elizabeth Treanor, Phylmar Regulatory Roundtable, asked the Board staff and Division to take into account the fluidity of the medical research and technological innovations and make requirements that are adaptable to changing situations, as they consider petition 583. She said that keeping the requirements simple will ensure that more employers comply. She also encouraged the Division to continue its work providing guidance documents to help employers comply.

Robert Moutrie, CA Chamber of Commerce, stated that petition 583 takes away the Division's ability to update guidance documents quickly and address new science as it comes along, and most of the issues that are being brought up are being addressed through the Governor's actions and the Division's guidance documents. Petition 583 also requires the

inclusion of a competent person, which means that employers will need to hire a person that is experienced in infectious disease control, which may not be feasible for some employers.

Cassie Hilaski, Nibbi Brothers, stated that the Division has managed to effectively develop and implement guidance documents, conduct enforcement of current regulations, and issue citations to employers who refuse to protect their workers from exposure to COVID-19 despite not having an emergency standard in place that is specific to COVID-19, so a standard for COVID-19 exposure is not needed. Additional regulation will not make bad actors comply and will not provide employees with any additional protections.

Frances Schreiber, National Lawyers Guild – Labor & Employment Committee (NLG – L&EC), stated that an emergency regulation is needed to address COVID-19 exposure because more needs to be done than just relying on the Division for enforcement action. The emergency regulation needs to have flexible aspects to it so that employers can make it fit with their workplace, but it also needs to give workers clear guidance and specifics on what their rights are. Having an emergency regulation in place will allow unions to enforce the regulation through collective bargaining agreements or by taking direct action, and it will provide direction for workers who do not have a union.

The following individuals also commented in support of petition 583:

- **Edward Flores, University of CA, Merced**
- **Kevin Riley, University of CA, Los Angeles, Labor Occupational Safety and Health**
- **Stan Santos, Fresno Madera Tulare Kings Central Labor Council**

Jennifer Wysick, Truebeck Construction, stated that additional regulation is not necessary to address COVID-19 exposure because the guidance documents that have been issued are specific to each county, and that is sufficient to address COVID-19 exposure in the workplace.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Meeting at 11:20 a.m.

Mr. Thomas called for a break at 11:20 a.m. and reconvened the meeting at 11:25 a.m.

II. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 11:25 a.m., July 16, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-992-4726, and via Webex at www.webex.com.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Ms. Shupe stated that there is a minor clerical error on the consent calendar regarding item L. Item L is incorrectly listed on the consent calendar as OSHSB File No 20-V-078. The correct file number is 20-V-178. With that clerical correction, she is aware of no unresolved procedural issues regarding the items on the consent calendar, and she believes that those

items are ready for the Board's decision on the question of adoption.

MOTION

A motion was made by Ms. Laszcz-Davis and seconded by Mr. Harrison to adopt the consent calendar as modified.

A roll call was taken, and all members present voted "aye." The motion passed.

B. OTHER

1. DOSH Update

Mr. Berg provided updates on the following Division projects:

- Indoor Heat: Going through the Standardized Regulatory Impact Analysis (SRIA) process.
- Workplace Violence in General Industry: Working on an updated draft to be posted for comments. This project is on hold due to COVID-19.
- Evaluation of Petition 583: Evaluation has been completed and is undergoing review.

Mr. Berg also responded to a previous question about recordkeeping as it pertains to COVID-19 cases in the workplaces. He said that the Division has posted its guidelines for recordkeeping on its website. They are consistent with the Division's recordkeeping regulations and are the same as those of federal OSHA.

Ms. Stock stated that it is clear that the existing regulations are not sufficiently addressing COVID-19 exposure in the workplace. It is also very confusing to navigate the multitude of guidance documents available. She asked the Division and Board staff about what needs to be done to get Petition 583 on the agenda for next month's meeting, and how the Board can help accelerate it once it comes up for a vote. She also asked how each of the guidance documents intersect with each other, and how they are being enforced. **Mr. Berg** stated that the evaluation for petition 583 is complete and has been submitted to the Department of Industrial Relations (DIR) for review. He will communicate the urgency of the petition to DIR. He asked Ms. Shupe what the deadline will be by which the Division will need to get its review to the Board staff in time to put petition 583 on the August agenda. **Ms. Shupe** stated that she did not have a deadline to share at the moment, but will find out and get the deadline to him by tomorrow. She also stated that the Board staff has not seen the Division's evaluation, and once the Board staff receives it, the Board staff needs time to review it and prepare a legally defensible proposed decision before the petition can be placed on the agenda for adoption.

MOTION

A motion was made by Ms. Burgel that petition 583 be heard, discussed, and voted on at the August 2020 Board Meeting. Motion not seconded. Motion failed.

Ms. Laszcz-Davis stated that she understands the urgency, but the Division should do a brief evaluation that takes into consideration the regulations that are already in place and what it

would take to upgrade or strengthen them to provide the protection that is needed. Communication and education regarding these regulations also needs to be much better.

Ms. Stock stated that the situation regarding workplace protections from COVID-19 exposure is the same as the situation was when the aerosol transmissible disease (ATD) standard was passed for healthcare. The injury and illness prevention plan (IIPP) provides basic requirements to protect workers, but additional industry-specific regulations are needed to address COVID-19 exposure, just like the additional requirements in the ATD standard were needed for healthcare. The ATD standard only applies to healthcare workers, but there are similar situations with COVID-19 that are occurring in non-healthcare workplaces, and those workers need to be protected. If the Board votes on the petition in August and moves it forward, the evaluation that Ms. Laszcz-Davis suggested can still take place as part of the process.

Mr. Thomas asked Mr. Berg how the Division is currently citing and enforcing regulations regarding COVID-19 exposure. **Mr. Berg** stated that the Division is doing many investigations and issuing citations under the ATD standard where it applies, and for situations where it does not apply, the Division is citing under Sections 3203 and 5141. **Ms. Stock** asked Mr. Berg how many citation have been issued under standards other than the ATD standard. **Mr. Berg** stated that he is unsure. **Ms. Stock** stated that she has heard of only one or two at the most, which is concerning.

Katie Hagen, Director for the Department of Industrial Relations, stated that the Division is doing workplace visits and inspections, issuing citations after the investigation is complete, and conducting follow-up visits as needed, in addition to providing guidance, consultation, and education. The Division of Labor Standards Enforcement (DLSE) is assisting with these things as well. The Division is providing outreach to employers via mass email to various industries, and has also set up a call center that reaches 1,200 callers per day to provide assistance.

Ms. Shupe stated that the Board staff and Division both understand the urgency and unprecedented need for worker protection against COVID-19, but it is important to review and evaluate petition 583 without rushing it so as to avoid making any mistakes.

Mr. Thomas stated that petition 583 will probably not be ready for the Board until at least the September meeting. He also stated that it is important for everyone to do their part to control the spread of COVID-19. He said that workers are forced to come to work when they're sick, and employers do not properly report cases of COVID-19 to the authorities.

Ms. Kennedy had the following questions for Mr. Berg:

- How are sites for inspections determined?
 - In response to complaints?
 - In response to outbreak clusters?
 - Is the Division targeting industries with increased case rates?
 - Is the Division focusing on vulnerable populations?
- Are there any situations where a COVID-19 outbreak is due to workplace exposure where the Division cannot cite under the IIPP or ATD standards?

Mr. Berg asked Ms. Kennedy to submit her questions in writing to him, and he will look into getting answers to those questions.

MOTION

A motion was made by Ms. Burgel and seconded by Ms. Stock that the proposed decision for petition 583 be brought before the Board at the August 2020 Board Meeting for consideration.

A roll call was taken, and all members present voted “aye.” The motion passed.

2. Legislative Update

Ms. Shupe provided updates on the following bills:

- AB 2043
- AB 2092
- AB 2028
- AB 2537
- AB 3056
- SB 275
- SB 1257

3. Executive Officer’s Report

Ms. Shupe stated that on June 30, the Governor issued Executive Order N-71-20, which modifies the 60-day extension for deadlines listed in Labor Code Sections 147 and 142.2 that were provided in Executive Order N-63-20. N-71-20 replaces the 60-day extension with a 120-day extension. This order applies to petitions already in progress with the Standards Board and to any future incoming petitions until the order is lifted. The order extends the petition deadline from within 6 months of submission of the petition to within 10 months of submission.

4. Board Member Comments and Future Agenda Items

No future agenda items were mentioned.

C. CLOSED SESSION

Pursuant to Government Code Sections 11126(e)(1) and 11126(a)(1), the Board conferred with counsel regarding the pending litigation matters listed on the agenda and consideration of personnel matters. Closed Session began at 12:13 p.m.

D. RETURN TO OPEN SESSION

1. Report on any Closed Session Action

Closed Session ended at 12:36 p.m. A roll call was taken to ensure all Board Members had returned to the teleconference and Webex meeting. All Board Members were present.

No action was taken during the Closed Session.

E. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 12:37 p.m.