Chapter 1

JURISDICTION

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Chapter 1

JURISDICTION

Policy Statement: It is the policy of the Division of Occupational Safety and Health (DOSH), also known as Cal/OSHA or the Division, to assert jurisdiction over every place of employment in the State of California to enforce and administer all laws and lawful standards and orders or special orders requiring the protection of the life, safety and health of every employee in such a place of employment, unless DOSH does not have subject matter or territorial jurisdiction over the employment or place of employment.

Purpose: This policy is intended to set forth procedures for DOSH team members to understand the scope of DOSH's authority and to ensure workers' health and safety within those defined boundaries. This policy helps team members to determine whether DOSH has jurisdiction over a particular workplace, and how to make appropriate referrals when it is not within its jurisdiction.

Authority: DOSH will administer this policy in compliance with all applicable laws, rules, and guidance:

- California Labor Code, Sections 6303(a) and (b), 6303.5, 6307, 6310 and 6800

Procedures:

I. DOSH's Jurisdiction

DOSH has jurisdiction over almost every workplace in California. DOSH is authorized to conduct workplace inspections to enforce occupational safety and health standards. Every workplace covered by DOSH may be subject to inspection.

II. Other Agencies' Jurisdiction

A. **Federal Jurisdiction**

1. For all referrals, complaints and accidents involving the Federal Occupational Safety and Health Administration (OSHA), compliance personnel must complete and submit a Cal/OSHA Form 90: *Referral Report* to the District Manager (DM), Senior Industrial Hygienist Supervisor (SIHS) and/or an authorized designee, which is herein referred to as DM/SIHS/Designee, for review and approval (see Policy and Procedures Chapter 4: *Referral*).This includes, but not limited to, the following:

    a. Employee(s) of the United States government.

    b. California private employers working at worksite controlled by an agency or department of the United States government (e.g., military installations and national parks), where the federal agency:

        i. Claims exclusive federal jurisdiction over the area in which contractor's employees are working, or

        ii. Refuses entry to DOSH's compliance personnel.

        NOTES:
        - Until the jurisdictional issue can be resolved between the federal agency or department and Federal OSHA, DOSH's compliance personnel shall not attempt to conduct an inspection or investigation.

        - Compliance personnel must reach out to management and/or Legal Unit for guidance when they are unsure of any jurisdictional issues.

    c. Discrimination under Section 11(c) of the Federal Occupational Safety and Health Act by employees under the jurisdiction of Federal OSHA.

        NOTE: Any complaint of discrimination by employees under DOSH's jurisdiction must be referred to the Labor Commissioner's Office (LCO), formerly known as Division of Labor Standards Enforcement (DLSE). See Section II.B. of this policy for more information on how to make referrals to LCO.

    d. Transporting hazardous substances under regulations implementing Section 405 of the Surface Transportation Act (STA), Section 7 of the International Safe Container Act (ISCA), and Section 211 of the Asbestos Hazard Emergency Response Act (AHERA).

    e. Enforcement of any occupational safety and health standard promulgated by Federal OSHA when California has no equivalent state

standard in effect, and a policy directive from the Chief directs compliance personnel to refer violations of the federal standard to Federal OSHA.

f. California employers who manufacture explosives under contract to the United States Department of Defense (DOD).

   NOTE: California employers are exempt from the provisions of Group 18 (General Industry Safety Orders 5326 through 5374), if they are under contract with federal government agencies which require compliance with: (1) DOD Contractor's Safety Manual(s); (2) Explosive Safety Requirements and Surveillance; and (3) where the Department of the Army or DOD conducts site inspections to ensure compliance.

g. Maritime activities on navigable waters (i.e., waters deep and wide enough to afford ship passage to the Pacific Ocean), such as:

   i. Longshoring operations on all vessels from the shore side of the means of access to the said ships,

   ii. Marine vessel construction operations from the means of access on the shore,

   iii. All afloat marine shipbuilding and repair from the foot of the gangway,

   iv. All shipbuilding and repair in graving docks or dry docks,

   v. All ship repairing done on marine railways or similar conveyances used to haul vessels out of the water,

   vi. All floating fuel operations,

   vii. All diving from vessels afloat on the navigable waters,

      EXCEPTION: If the diving operation falls under the scope clause of Section (§) 6050(a)(1) of Title 8 of the California Code of Regulations (8 CCR), DOSH has jurisdiction over the operation.

   viii. All afloat dredging, pile driving and similar operations outside the three-mile continental limit, or

ix. All offshore drilling, drilling rigs operating outside the three-mile continental limit.

2. For all referrals, complaints and accidents involving the following federal agency or department, compliance personnel must complete and submit a Cal/OSHA Form 90: *General Referral* to DM/SIHS/Designee for review and approval (see Chapter 4). This includes, but not limited to, the following:

   a. U.S. or California Army National Guard or U.S. or California Air National Guard.

      NOTE: Referrals, complaints and accidents at state-owned California Army National Guard and California Air National Guard facilities may fall under DOSH's jurisdiction providing the unit has not been federalized or does not require federal recognition. Compliance personnel and/or DM/SIHS/Designee must contact the DOSH's Legal Unit prior to initiating or referring the referral, complaint or accident.

   b. Railroad operations.

      EXCEPTION: DOSH has jurisdiction over the safety and health of railroad employees in offices and shops devoted to the construction, maintenance or repair of railroad equipment. DOSH also has occupational health jurisdiction over all other railroad employees and has traditionally asserted safety jurisdiction over all other railroad employees under Section 6303(a) of the Labor Code (Lab.) as long as no other federal or state agency is actively exercising safety jurisdiction.

      Compliance personnel must contact the Legal Unit before asserting jurisdiction over railroad employees who do not work in offices or shops.

   c. Aircraft crewmembers while an aircraft is "in operation" (Federal Aviation Administration [FAA]).

      "In operation" means when the first cabin or flight crewmember boards the aircraft to do flight preparation work to when the last crewmember leaves after a flight is completed. It is not just when an aircraft is in flight.

      EXCEPTION: Per agreement with the Federal Aviation Administration, federal OSHA exercises jurisdiction over "cabin" crewmembers (i.e., flight attendants, and not the flight crew such as pilots and co-pilots) while an aircraft is "in operation" for three limited areas: (1) hazard

communication; (2) bloodborne pathogen exposure; and (3) occupational noise exposure. The FAA still maintains jurisdiction over flight crew for these three areas.

d. The following U.S. National Parks and U.S. National Monuments (U.S. Department of the Interior):

   i. Cabrillo National Monument,

   ii. Sequoia/Kings Canyon National Park, and

   iii. Yosemite National Park.

e. Native American Tribes.

   i. *Federal*: All private sector employers on reservations or on trust lands except for tribally-owned, tribally-operated intramural operations on American Indian reservations or on trust lands.

   ii. *DOSH*: Public sector employers. Consultation allowed for visits on the reservations with OSHA region approval and the tribe.

B. **Labor Commissioner's Office**

For all referrals, complaints and accidents involving the Labor Commissioner's Office, compliance personnel must complete and submit a Cal/OSHA Form 90D: *LCO-DOSH Inter-Agency Referral* to the DM/SIHS/Designee for review and approval (see Chapter 4). This includes, but not limited to, the following:

1. Any complaint concerning discrimination under Labor Code § 6310 of the California Occupational Safety and Health Act by employees under DOSH's jurisdiction.

   NOTE: Complaints must be filed with LCO within one year of the discriminatory action.

2. Any complaint concerning an employee's refusal to perform work under Labor Code § 6311 by employees under DOSH's jurisdiction.

3. Any retaliatory threats, both direct and indirect.

   a. Retaliation generally means subjecting employees to adverse action or otherwise discriminating against them for engaging in a protected activity, such as reporting a workplace safety violation.

b. Immigration-related threats are a form of retaliation by employers, and some examples of these threats may include:

- Contacting ICE, also known as “immigration,” “la migra,” “immigration authorities,” or “border patrol.”

- Making threats, such as “ICE will find you,” “Immigration has your address,” “I’ll call immigration on you,” or “You’ll never be allowed back in this country.”

- Instructing other employees to anonymously report an employee to ICE, sending text messages threatening arrest if the worker tries to collect wages or participate in DOSH proceedings or investigation.

C. **Pesticides**

1. Manufacturing, Formulating, Storage and Distribution

   DOSH has jurisdiction over establishments engaging in pesticide manufacturing, formulating, storage and distribution.

2. Application

   a. *Enforcement*: See Master Agreement between the Department of Industrial Relations and the Department of Pesticide Regulation.

   b. *Pesticide Reporting Incidents*: For information regarding reporting of pesticide incidents, see Chapter 3: *Accident Report* for more information on accident report.

D. **Labor Camp Permits**

1. Employer Duties

   The 8 CCR § 3350 requires that every employer operating a labor camp for five (5) or more employees under the provisions of the California Employee Housing Act (CEHA):

   a. Obtain a valid permit from the Department of Housing and Community Development (DHCD), or from a local government agency authorized to issue such permits, or

   b. Post, or have available, a valid and current permit.

      NOTE: A labor camp is any living quarters, dwelling, boardinghouse, tent, bunkhouse, maintenance-of-way car, mobile home, or other

housing accommodations, including employee housing or labor supply camp, maintained in connection with any work or place where work is being performed, whether or not rent is involved, and the premises upon which they are situated or the area set aside and provided for parking of mobile homes or camping.

2. Enforcement

   a. Labor Camp Permit Complaints

      i. If DOSH receives a complaint about an unpermitted labor camp, compliance personnel must do the following:

         a) Document the complaint according to the procedures set forth in Chapter 2: *Complaint Intake and Processing*, and

         b) Conduct an inspection to determine if the employer providing the labor camp has a valid permit which is posted or available and if the labor camp contains any obvious housing hazards.

      ii. If the camp is unpermitted or contains obvious housing hazards, compliance personnel shall complete Cal/OSHA Form 90L: *Labor Camp Housing Referral* and send a copy of the Cal/OSHA Form 90L to the appropriate Department of Housing and Community Development Office or local governmental agency. For a copy of the Cal/OSHA Form 90L, see Chapter 4.

   b. Compliance Inspections

      i. During an inspection of a worksite where employee housing is provided for five (5) or more employees, compliance personnel must determine if the employer has a valid permit to operate a labor camp and if the labor camp contains any obvious housing hazards.

      ii. If compliance personnel determine that the employer lacks a valid labor camp permit, or that the labor camp contains obvious housing hazards, compliance personnel must complete a Cal/OSHA Form 90L and send a copy of the completed form to the appropriate Department of Housing and Community Development Office or local governmental agency (see Chapter 4).