Chapter 9

ORDER PROHIBITING USE

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Chapter 9

ORDER PROHIBITING USE

Policy Statement: It is the policy of the Division of Occupational Safety and Health (DOSH), also known as the Division or Cal/OSHA, to determine the presence of a dangerous workplace condition or practice which constitutes an imminent hazard to employees, to warn the employer and the employees about the presence of an imminent hazard, and to prohibit entry into the place of employment, or any part thereof, containing the imminent hazard, or prohibit use of a machine, device, apparatus or equipment which constitutes an imminent hazard.

Purpose: This policy is intended to set forth procedures for DOSH team members to conduct workplace inspections in accordance with applicable laws and regulations, ensuring that employers maintain safe and healthy work environments for employees.

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

- California Labor Code, Sections 6325, 6326 and 6327

Procedures:

I. Cal/OSHA Form 8: *Order Prohibiting Use* and Cal/OSHA Form S-172: *Yellow Tag*

A. **Imminent Hazard**

1. Hazard Evaluation

   Compliance Safety and Health Officers (CSHOs) shall evaluate all hazards which are observed during the course of any inspection or investigation in any place of employment to determine whether any of the hazard(s) constitutes an imminent hazard.

2. Definition

   An imminent hazard is any condition or practice which poses a hazard to employees which could reasonably be expected to cause death or serious

physical harm immediately, or before the imminence of such hazard can be eliminated through normal enforcement procedures.

B. **Issuance Procedures**

1. Hazard Warning

   When CSHOs determine that an imminent hazard exists at a place of employment, CSHOs shall warn the employer and the employees at risk about the presence of the imminent hazard.

2. Hazard Elimination

   CSHOs shall encourage the employer to eliminate the imminent hazard immediately.

3. Issuance

   a. Order Prohibiting Use (OPU) and Yellow Tag

      If the employer does not, or cannot, immediately eliminate the imminent hazard, CSHOs shall complete and issue, a Cal/OSHA Form 8, and attach a Cal/OSHA Form S-172 to the place of employment, the specific area of the place of employment, or a specific machine, device, apparatus or equipment at the place of employment which constitutes an imminent hazard.

      NOTE: When a representative of the Consultation Service notifies the District Manager (DM) or Senior Industrial Hygienist – Supervisor (SIHS) that an imminent hazard exists at a particular workplace, and that the employer has failed to abate the imminent hazard, the DM/SIHS shall immediately send a CSHO to the workplace and instruct the consultant to remain at the workplace until CSHO arrives. If appropriate, an OPU shall be issued, but no citations shall be issued, unless the employer fails to correct the imminent hazard or fails to comply with any conditions of the OPU.

   b. Citation or Information Memorandum

      i. If compliance personnel determine that none of the employer's employees have been exposed within the previous six months to the imminent hazard, an Information Memorandum shall be issued to the employer according the procedures found in Chapter 23.

      ii. If compliance personnel determine that the employer's employees are currently exposed, or have been exposed during the previous

six months, to the imminent hazard, a Citation shall be issued to the employer according to the procedures found in Chapter 18.

4. Scope of Order Prohibiting Use

   CSHOs shall limit the OPU to the immediate area in which the imminent hazard exists within the place of employment, or to the specific machine, device, apparatus or equipment which constitutes the imminent hazard.

5. Attaching the Cal/OSHA Form S-172: *Yellow Tag*

   CSHOs shall securely attach the Cal/OSHA Form S-172: *Yellow Tag* by wire and seal the wire attachment with a security clip, or by other means, to the place of employment, or to the immediate area in which the imminent hazard exists within the place of employment, or to the specific machine, device, apparatus or equipment which constitutes the imminent hazard.

6. Employer Information

   a. Removal

      CSHOs shall advise the employer and employees that the OPU can only be removed by an authorized representative of the Division, and only when the imminent hazard has been eliminated.

      NOTE: Anyone who enters a place of employment, or uses a machine, device, apparatus or equipment subject to an OPU before it is made safe, or who defaces, destroys or removes an OPU without Division authorization, is guilty of a misdemeanor.

   b. Hearing

      CSHOs shall inform the employer whose place of employment or equipment is subject to an OPU that the employer has the right to request a hearing by the Division to review the validity of the OPU and that the hearing must be held within twenty-four (24) hours following the employer's request.

C. **Duration**

   When an OPU has been issued, the Order remains in effect until the Division determines that the imminent hazard has been eliminated.

D. **Removal of the Yellow Tag**

1. With Division Authorization

   When the imminent hazard has been eliminated, compliance personnel shall remove the Yellow Tag.

   NOTE: Under unique circumstances, the DM/SIHS may deputize or authorize a person to act as a Division representative for purposes of removing the Yellow Tag.

   For instance, when DM/SIHS is certain that the imminent hazard has been eliminated, DM/SIHS may authorize the employer or another person to remove the Yellow Tag and return the Yellow Tag to the District Office if the place of employment is at a location remote from the District Office and it would be a hardship on the employer to wait for compliance personnel to go to the place of employment to remove the Yellow Tag(s).

2. Without Division Authorization

   When compliance personnel learn that the Yellow Tag has been removed without Division authorization, or that employees have been directed by the employer to work in the place of employment or to use a machine, device, apparatus or equipment which is subject to the OPU, i.e., working in violation of an OPU, the following procedures shall be followed:

   a. Notification

      Compliance personnel shall notify DM/SIHS of the violation of the OPU and DM/SIHS will in turn notify the Regional Manager (RM) and the Bureau of Investigations (BOI);

   b. Inspection

      DM/SIHS shall direct compliance personnel to inspect the place of employment containing the imminent hazard to determine if an imminent hazard still exists. If the imminent hazard still exists, CSHOs shall:

      i. Photograph and interview employees working in violation of an OPU;

      ii. Attach a new Yellow Tag; and

      iii. Notify DM/SIHS that a new Yellow Tag has been attached.

II. Employer Contestation

A. **Hearing Requests**

Any employer whose place of employment is subject to an OPU has the right to request a hearing by the Division to review the validity of the OPU.

B. **Hearing Procedures**

1. If an employer whose place of employment is subject to an OPU requests a hearing to review the validity of the OPU, the issuing District Manager shall ensure that a hearing is held at the District Office within twenty-four (24) hours of the employer's request.

2. A hearing shall be held to determine the validity of issuing the OPU. Notice shall be provided by DM/SIHS to the employer who requested the hearing of the date, time, and place of the hearing.

3. Employees, or employee representatives, are entitled to attend the hearing. The employer shall be responsible for notifying his or her employees of the hearing and shall present proof of notification that the employees have been notified of the hearing date, time and place.

4. DM/SIHS, or his or her designee, shall serve as the hearing officer and shall electronically record the entire hearing.

5. The Division shall enter the following jurisdictional documents into the record as exhibits:

    a. A copy of the OPU (Cal/OSHA Form 8) issued to the employer; and

    b. A copy of the Declaration of Service on the employer, whether performed by personal service or by Certified Mail--Return Receipt Requested;

    NOTE: If documents entered into evidence by the Division are not originals, then the Custodian of Records at the District Office where the originals are kept must sign a statement, attached to the documents, declaring that the attached copies are true and correct copies of originals kept in the District Office files.

6. The issuing District shall present eyewitness testimony from compliance personnel or any other relevant eyewitnesses, and any photographic evidence, to establish the imminent hazard justifying the issuance of the OPU.

7. The employer, or the employer's representative, shall have the opportunity to question any witnesses called by the District and to present witnesses on the employer's behalf. Similarly, the Division may question any witness produced by the employer.

8. The hearing record shall be closed after all parties have had an opportunity to present relevant evidence.

   NOTE: Copies of the hearing record shall be provided, upon request, to any interested party.

9. The hearing officer shall make a determination about the validity of the imminent hazard based on the evidence presented at the hearing.

10. If the hearing officer decides to uphold the validity of the OPU or concludes that the Order is not valid based on the evidence in the hearing record, the hearing officer shall inform the employer of the decision immediately following the hearing.

III. Field Procedures

A. When an imminent hazard is identified and cannot be eliminated immediately, compliance personnel shall complete the Cal/OSHA Form 8 and the Declaration of Service in duplicate and issue the original Cal/OSHA Form 8 and Declaration to the employer in the field and return copies to the District Office.

B. After issuing the Cal/OSHA Form 8 and the Declaration of Service, compliance personnel shall securely attach the Cal/OSHA Form S-172 by wire and seal the wire attachment with a security clip, or by other means, to the place of employment, or to the immediate area in which the imminent hazard exists within the place of employment, or to the specific machine, device, apparatus or equipment which constitutes the imminent hazard.

C. After attaching Cal/OSHA Form S-172, compliance personnel shall advise:

   1. The employer and employees that the Cal/OSHA Form S-172 can only be removed by an authorized representative of the Division, and only when the imminent hazard has been eliminated; and

   2. The employer of their right to request a hearing in front of the Division to review the validity of the OPU and that the hearing must be held within twenty-four (24) hours following the employer's request for a hearing.

D. After removal of the Yellow Tag(s), CSHOs shall collect all attached Tag(s), note on each Tag or Tags the date of removal, and place each Tag or Tags in the employer's case file.

IV. Office Procedures

A. CSHOs shall inform DM/SIHS of the issuance of a Cal/OSHA Form 8 and attachment of a Cal/OSHA Form S-172.

B. DM/SIHS shall review and approve the Cal/OSHA Form 8 by initialing the Cal/OSHA Form 8 under Item 4 (Date and Time Issued).

NOTE: After a Cal/OSHA Form S-172 has been attached and the Cal/OSHA Form 8 has been approved, the District Office shall notify the Regional Manager of the issuance of an OPU and shall fax to the Regional Manager a copy of the Cal/OSHA Form 8.

C. After DM/SIHS approval, Office Support Staff shall:

1. Mail a copy of the Cal/OSHA Form 8 to the employer along with any pertinent enforcement documents by Certified Mail--Return Receipt;

2. Fax a copy of the Cal/OSHA Form 8 to the Legal Unit in San Francisco;

3. When the Cal/OSHA Form 1 is data-entered, Office Support Staff shall ensure that Item 42 (Optional Information), reflects the issuance of an OPU and the number of Yellow Tags attached; and

4. Place a copy of the Cal/OSHA Form 8 in the employer's case file.