Chapter 23

# INFORMATION MEMORANDUM

**Policy Statement:** It is the policy of the Division of Occupational Safety and Health (DOSH), also known as Cal/OSHA or the Division, to issue an Information Memorandum to an employer to direct the employer's attention to a workplace condition which has the potential of becoming a hazard to the safety or health to the employer's employees in the future.

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

- California Labor Code, Sections 6300, 6307, 6308 and 6351.

**Procedures:**

A. USE AND APPLICATION

Potential Violative Condition

An Information Memorandum (Cal/OSHA Form 5) is a document which is used by the Division to direct the employer's attention to a workplace condition which has the potential of becoming a violation of a Title 8 Safety Order in the future if employee exposure to the violative condition occurs.

EXAMPLES: An unfinished installation which lacks required safety features; uncrated or recently assembled machinery that lacks required machine guarding; and exposures that may exceed concentration limits under different operating conditions.

Hazard Identification and Employee Exposure

During the course of every inspection or investigation in which a violative condition is noted, compliance personnel shall make every

effort to document employee exposure to the violative condition, whether the exposure is able to be observed by compliance personnel at the time of the walkaround or whether the exposure is unobserved.

Compliance personnel shall make every effort to document unobserved employee exposure to a violative condition by taking the following steps:

Interviewing employees, employee representatives, employers or employer representatives or others who may have knowledge of the occurrence of employee exposure to the violative condition at the worksite or away from the worksite; and

Reviewing all pertinent employer records which may demonstrate past employee exposure.

If compliance personnel obtain information by means of interviews or records review that employee exposure has occurred within the statute of limitations period, compliance personnel shall document the employee exposure and issue a citation to the employer for the violative condition. See Chapter 18.

If compliance personnel are unable to obtain information through interviews or records review that employee exposure has occurred within the statute of limitations, compliance personnel shall document on the Cal/OSHA Form 1B the lack of employee exposure and issue an Information Memorandum to alert the employer to a workplace condition which has the potential of becoming hazardous to the safety or health of the employer's employees in the future.

## B. ISSUANCE

### Office Issuance

Before final preparation, compliance personnel shall submit the documentation for issuance of an Information Memorandum to the District Manager for review and obtain the District Manager's approval to issue the Information Memorandum.

### Field Issuance

Compliance personnel shall field-issue an Information Memorandum only after telephonic approval by the District Manager and only when the

following conditions exist:

An imminent hazard exists and compliance personnel have issued an Order Prohibiting Use; or

A violative condition exists which compliance personnel determine necessitates the immediate issuance of an Information Memorandum.

Closing Conference

During the Closing Conference, compliance personnel shall inform the employer who has been issued an Information Memorandum of the following:

The Information Memorandum is not subject to appeal to the Occupational Safety and Health Standards Board; and

If the employer fails to correct the violative condition which gave rise to the Information Memorandum and, during reinspection, employee exposure to the violative condition can be documented, one or more citations may be issued and civil penalties proposed.

NOTE: One or more of the citations issued may be classified as willful based on the information contained in the Information Memorandum.

## C. OFFICE PROCEDURES

The Information Memorandum issued to the employer shall be typewritten or computer-printed by the preparer (Office Support Staff or compliance personnel).

NOTE: The Cal/OSHA Form 5X shall be used for the second and each succeeding page of the Information Memorandum.

All Information Memoranda which are office-issued to the employer shall be mailed via Certified Mail--Return Receipt Requested along with any other enforcement documents or given to the employer at the Closing Conference.

When an Information Memorandum is field-issued, compliance personnel shall prepare the Information Memorandum using carbon paper to produce a copy. The copy shall be issued to the employer or the employer's representative, together with the Declaration of Service.

Compliance personnel shall return the original to the District Office. Office Support Staff shall mail a copy of the field-issued Information Memorandum to the employer Certified Mail--Return Receipt Requested.

Office Support Staff or compliance personnel shall enter the number of Information Memoranda issued in Item 42 on the Cal/OSHA Form 1 which corresponds to the particular inspection which gave rise to the Information Memorandum.

## D. FORM DISTRIBUTION

Office Support Staff shall file a copy of the Information Memorandum in the employer's case file.

Office Support Staff shall file a copy of the Information Memorandum in a pend file for a possible follow-up inspection.

## E. FORM COMPLETION

District Office

Enter the issuing District Office.

Employer Address

Enter the name and mailing address of the employer.

Page Number

Enter the page number

Inspection Information

Enter the location of the inspection, the name of compliance personnel who conducted the inspection and the date of the inspection.

Item Number and Number of Instances

Item Number -- Assign an Item Number beginning with one.

Instances -- Enter the number of instances and include identifying information for each instance.

Description of Potential Hazard

Describe the violative condition in detail and reference the appropriate Title 8 Safety Order which applies to the condition. Place at the end of the description the one most appropriate Safety Order section number and subsection in the following manner: Ref. T8 CCR 3210(a). Do not assign an abatement date.

Signature and Date of Issuance

Compliance personnel and District Manager shall sign and indicate the date of issuance.

Region, District, Identification No., Optional Report No., and Cal/OSHA Form 1 Number.

Enter the Region, District, Identification No., Optional Report No., and preprinted nine-digit Cal/OSHA Form 1 Number.