

California

State OSHA Annual Report (SOAR)

FFY 2022



EXECUTIVE SUMMARY

This annual report covers a period in which California experienced a surge of COVID-19 cases, the winter of 2021-2022, but also a time in which the worst effects of the crisis began to recede. This report thus demonstrates Cal/OSHA's progress toward achieving its strategic goals during a new stage in the pandemic. At this point, Cal/OSHA must continue to respond to occupational exposure to COVID-19, but also gradually return to pre-pandemic activities in the coming fiscal years.

Cal/OSHA's role is to promote workplace safety and health by enforcing safety and health regulations; providing compliance assistance through free consultation support to employers; offering targeted outreach, education and training for workers, especially vulnerable workers; and increasing awareness and engagement of both employers and employees regarding the importance of a safety and health culture.

Cal/OSHA strives to provide as many employers as possible with assistance in achieving voluntary compliance with Cal/OSHA standards before enforcement measures become necessary—and, more importantly, before an employee is injured or killed. Traditional enforcement methods are supplemented by incentive and education programs and outreach encouraging voluntary compliance. Partnership and cooperative programs leverage Cal/OSHA's resources.

In accordance with the Government Performance and Results Act (GPRA) requirements, California developed a five-year Strategic Plan covering federal fiscal years 2019 through 2023. The five-year Strategic Plan incorporated the three national OSHA goals as its direction. The three overall strategic goals are:

- Goal 1. Secure safe and healthy workplaces, particularly in high-risk industries, and improve workplace safety and health through enforcement and consultative assistance.
- Goal 2. Promote workplace cultures that increase employer and employee awareness of, commitment to, and involvement in safety and health.
- Goal 3. Maximize Cal/OSHA's effectiveness and enhance public confidence.

The Federal Fiscal Year (FFY) 2022 Annual Performance Plan developed by Cal/OSHA was intended to support the overall goals of the five-year Strategic Plan. The 2022 Performance Plan included specific performance goals designed to produce measurable progress toward realizing Cal/OSHA's strategic goals. Performance goals included:

- ✚ Reducing fatalities and occupational injuries and illnesses in construction, agriculture and tree trimming;
- ✚ Reducing injuries, illnesses and fatalities in selected high-hazard industries to make removals from the High Hazard Industries list due to decreased injury and illness rates;

- ✚ Reducing fatalities and occupational injuries and illnesses in petroleum refining and other industries which fall under the requirements of the Process Safety Management standard;
- ✚ Raising awareness of heat illness prevention among employees and employer groups in outdoor places of employment;
- ✚ Promoting, involving and communicating with high-risk vulnerable worker organizations and workers to increase their knowledge about workplace safety and health;
- ✚ Promoting voluntary compliance by offering employers a variety of partnerships, including recognition and exemption programs;
- ✚ Joining with groups committed to worker safety and health to leverage Cal/OSHA resources and expertise in reducing fatalities, illnesses and injuries in the workplace;
- ✚ Creating a short video presentation and social media content on employer responsibilities to provide a safe and healthy environment free from the fear of retaliation for reporting an unsafe work condition or reporting a workplace injury;
- ✚ Responding effectively to mandates so that workers are provided full protection under Cal/OSHA by timely response to imminent hazards, to formal complaints and to reports of work-related fatalities, as well as by timely issuance of citations, so that hazards could be timely corrected;
- ✚ Providing a training program that offers a wide range of training opportunities and learning experiences to assist CSHOs with their professional development; and
- ✚ Enhancing communication with industry, labor, and professional safety and health organizations.

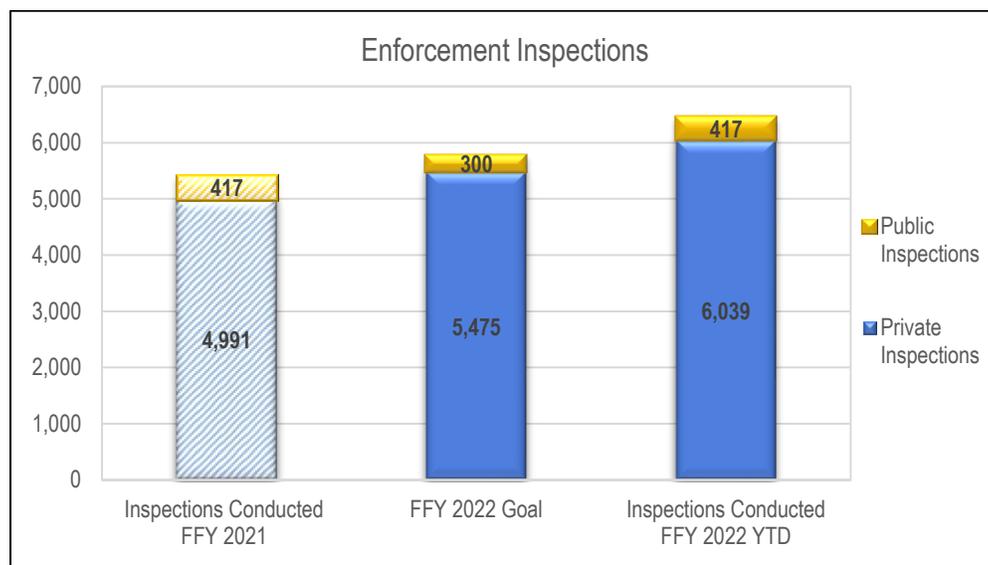
This annual report reflects California's integrated approach to achieving the goals of the five-year Strategic Plan. Cal/OSHA Enforcement programmed and self-referral activities, complemented by strategically targeted onsite compliance assistance, have continued to be coordinated to ensure the greatest impact on selected industries with the highest preventable injury, illness and workers' compensation rates.

FFY 2022 ACCOMPLISHMENTS

Enforcement and Outreach/Educational Activities

Cal/OSHA Enforcement opened 6,456 inspections this federal fiscal year, an increase of 1,048 inspections over the amount reported on Cal/OSHA's prior SOAR for FFY 2021.¹ Cal/OSHA surpassed its goal of 5,775 private and public sector inspections combined.

Of the total inspections conducted, 6,039 were private industry inspections and 417 were public sector inspections. During this time, Cal/OSHA identified approximately 13,061 hazards, potentially affecting the estimated 1.8 million workers employed at these establishments. Of the hazards identified, 2,559 resulted in serious, 25 resulted in willful, and 147 in repeat citations. Four resulted in failure-to-abate penalties.²



Cal/OSHA conducted an internal review of case files to support enforcement activities in February of 2022. This was a broad-based, district-by-district examination of both inspection files and letter investigations. Additionally, enforcement management collected the forms used by each office to check whether each district was using the correct, most up-to-date forms. The goal was to ensure consistency across the state. As a result of this audit, Cal/OSHA identified missing elements in some case files and the circulation of incorrect forms within a few offices.

In FFY 2023, Cal/OSHA intends to utilize the specialized skills of the DIR Audit Unit to develop an internal case review process.

While enforcement activities are critical to the Cal/OSHA program, outreach and education are also vital to the success of fulfilling our mission. The Outreach Coordination Program provides outreach to high-risk, vulnerable employee populations throughout the state, raising their awareness of their workplace rights and providing education and training to protect against workplace hazards. This Program expanded its impact by establishing new relationships this fiscal year, networking with 20 unions, 17 community-based organizations, eight state and municipal agencies, and two institutions of higher education.

¹ FFY 2021 data as reflected by the OIS Inspection Summary report dated December 22, 2022.

² FFY 2022 data as reflected by the OIS Inspection Summary and Scan Summary reports dated December 6, 2022.

Cal/OSHA outreach staff also leveraged existing relationships. They coordinated with the Mexican Consulate to participate in 137 Consulate events throughout the state, which were held both in person and virtually. On the local level, Cal/OSHA attended events held by various individual counties, providing information regarding workers' rights and employers' responsibilities, as well as events held by California State University Northridge and University of California campuses Berkeley, Davis, Los Angeles, Merced, and San Diego.

Outreach Coordination Program staff and other Cal/OSHA personnel participated in 266 separate events; workers with limited or no English-speaking skills attended at least 236 of these. In some cases, these workers were monolingual speakers of indigenous languages, mainly employed in low-wage jobs. Cal/OSHA has identified such workers as particularly vulnerable to workplace safety and health violations and at high risk of being either unaware of their workplace rights or unable to assert such rights.



From top left to right: BOT Associate Safety Engineer (ASE) Michael Alvarez; Bilingual Community Engagement Liaisons (BCELS) Lourdes Cruz and Edith Stafford; BOT ASE Zin Chuong; BCEL Lourdes Cruz; Senior Safety Engineer (SSE) Charlene Gioriani, BCELS Lourdes Cruz and Edith Stafford BOT ASE Gilbert Martinez; Program Manager for Communications and Strategic Planning Brandon Hart; Outreach Coordination Program District Manager Juan Calderon; BCEL Edith Stafford.

Outreach staff distributed 81,307 written materials covering a variety of important safety and health-related topics. To spread information about occupational safety and health, Cal/OSHA also appeared on local radio stations and participated in television interviews and live Facebook events. The following were among the outreach materials created or revised in FFY 2022:

Webpages:

- ✦ [Monkeypox Virus webpage](#)
- ✦ [Protecting Workers from Monkeypox \(MPX\) for Employers and Workers Covered by the Aerosol Transmissible Diseases Standard \(Title 8 Section 5199\)](#)

Documents:

- ✦ Cal/OSHA Partnership Opportunities in [English](#) and [Spanish](#)
- ✦ [Confined Space Guide for General Industry](#)
- ✦ Guide to Cal/OSHA in [English](#), [Chinese](#), [Korean](#), [Punjabi](#), [Spanish](#), and [Vietnamese](#)
- ✦ Health & Safety Rights: Facts for California Workers in [English](#) and [Spanish](#)
- ✦ [Housekeeping Musculoskeletal Injury and Illness Prevention Program](#)
- ✦ [Lockout/Tagout for Employees](#) fact sheet
- ✦ Pocket Guide for the Construction Industry [online version](#) and [print version](#) with [covers](#)
- ✦ [Protecting Workers Exposed to Hydrogen Fluoride \(HF\)](#)
- ✦ Safety and Health Protection On The Job (Cal/OSHA poster) in [English](#) and [Spanish](#)
- ✦ Tree Work Safety for Workers and Employers in [English](#) and [Spanish](#)
- ✦ Understand Your Workplace Safety & Health Rights in [English](#) and [Spanish](#)
- ✦ When to Report Work-Related Injuries and Illnesses fact sheet in [English](#) and [Spanish](#)
- ✦ Working Safer and Easier for Janitors, Posters 1 through 9.

For COVID-19 outreach materials, please see below.

COVID-19 Prevention

Occupational exposure to COVID-19 continued to affect Californians during FFY 2022. Cal/OSHA had previously adopted three primary strategies for responding to the pandemic, as follows:

(1) Leveraging our knowledge and technical expertise to develop regulation and guidance.

California's emergency regulations regarding COVID-19 in general industry, first adopted in November 2020, provided comprehensive requirements in the workplace as well as special provisions regarding outbreaks, employer-provided housing, and transportation. The emergency standards were readopted multiple times, with textual changes appropriate to changing pandemic conditions. In FFY 2022, Cal/OSHA twice readopted the emergency regulations with revised requirements (section 3205 et seq.), effective January 14, 2022 and May 5, 2022.

To assist stakeholders in complying with the readopted emergency regulations, and also with other standards applicable to COVID-19 prevention, Cal/OSHA continued to update its frequently asked questions (FAQs), factsheets, model COVID-19 prevention plan, and other written materials.

On December 21, 2021, a California Court of Appeal issued a published decision upholding the trial court's refusal to issue a preliminary injunction against the emergency COVID-19 regulations, as they were originally promulgated, at the request of a coalition of employers. This decision, *Western Growers Assoc. vs. Occupational Safety and Health Appeals Board* (2021) 73 Cal.App.5th 916, included the following findings:

- ✦ The Standards Board was entitled to deference when it determined that regulations existing before the COVID-19 emergency standards did not sufficiently protect workers;
- ✦ The employers failed to establish likelihood of success on the merits of their claim that the Standards Board had not met the requirement for factual findings of emergency;
- ✦ The Superior Court did not abuse its discretion in concluding that employers failed to establish likelihood of success on their claim that taking six months to promulgate the emergency regulations was a delay demonstrating this was not subject to emergency rulemaking;
- ✦ The Board did not exceed its statutory authority when it adopted prescriptive standards;
- ✦ The Board did not exceed its statutory authority when it required exclusion of workers exposed to COVID-19 from the workplace; and
- ✦ The Board did not exceed its statutory authority when it mandated that employers continue paying excluded workers under the conditions specified in the regulations.

This decision not only ensured the continued application of the COVID-19 emergency regulations, it also reinforced the authority of the Standards Board to respond to occupational safety and health crises in the future using emergency rulemaking.

At the same time that Cal/OSHA was keeping the emergency COVID-19 regulations up-to-date, staff were also developing a non-emergency regulatory package. Developing these regulatory packages simultaneously was a significant undertaking, and timing was critical. The emergency regulations were going to expire on January 1, 2023, but it was clear that the virus would still pose a hazard to workers after that time. Cal/OSHA therefore needed to proceed through non-emergency rulemaking, including extensive fiscal and economic analysis, in time to present the proposal to the Standards Board for a vote shortly after the close of FFY 2022.

Notice of the proposed rulemaking was published on July 29, 2022, and a public hearing on the proposal was held on September 15, 2022. OSHSB voted to adopt the non-emergency rulemaking soon after the close of the FFY, after a public hearing on December 15, 2022. The proposed non-emergency regulations will remain in effect for two years after their effective date, with recordkeeping provisions remaining in effect for an additional year beyond that.

(2) Continuing to educate as many employers and workers as possible through virtual and in-person events.

A vital part of our strategy is keeping employers and workers educated and informed on the continual changes related to COVID-19. The following Cal/OSHA guidance materials were updated or created in FFY 2022:

Webpages:

- ✚ The [Cal/OSHA COVID-19 Guidance and Resources webpage](#)
- ✚ The [Cal/OSHA COVID-19 Prevention Emergency Temporary Standards resources webpage](#)
- ✚ [Cal/OSHA Training Academy](#)
- ✚ COVID-19 Emergency Standards FAQs: [English](#) and [Spanish](#)
- ✚ Revisions to the COVID-19 Prevention ETS FAQs in [English](#) and [Spanish](#)
- ✚ [Citations for COVID-19 Related Violations](#)

Videos:

- ✚ [Cal/OSHA COVID-19 Standards Update training video](#)

Documents:

- ✚ COVID-19 Isolation and Quarantine – What Employers and Workers Need to Know fact sheet: [English](#) and [Spanish](#)
- ✚ COVID-19 Emergency Temporary Standards – What Employers Need to Know in [English](#) and [Spanish](#)
- ✚ COVID-19 Model Prevention Program in [English](#) and [Spanish](#)
- ✚ Revisions to the COVID-19 Prevention ETS FAQs in [English](#) and [Spanish](#)

(3) Strategic enforcement efforts to have the greatest impact with finite resources.

Cal/OSHA received over 7,600 COVID-19 related complaints in FFY 2021. This dropped to just under 3,000 in FFY 2022. However, given that Cal/OSHA received just under 14,900 overall complaints, COVID-19 related complaints still accounted for about 20% of all complaints, a significant proportion.

During FFY 2022, Cal/OSHA opened over 900 COVID-19-related inspections and issued citations for about 850 violations related to COVID-19 hazards. This was fewer than FFY 2021, in part due to the large drop in COVID-19 related complaints. In addition to onsite inspections, Cal/OSHA conducted over 2,900 letter investigations related to COVID-19. Using the letter inspection procedure—supplemented by offering employers assistance and expertise about how to correct hazards—allowed Cal/OSHA to obtain timely and satisfactory results from more workplaces than the agency could have inspected in person.

Enforcement efforts have been supported by Cal/OSHA's attorneys and legal staff. Cal/OSHA's counsel prioritized achieving abatement in contested cases, even if the underlying litigation remained unresolved, in order to correct ongoing hazards as quickly as possible. Counsel also negotiated with large employers such as the California Dept. of Corrections and Rehabilitation and Kaiser Permanente to reach multi-investigation settlements, improving efficiency and ensuring abatement of COVID-19 hazards at locations across the state. As described in the section of this report that addresses the Appeals Board, this strategy has successfully reduced the proportion of appeals with serious unabated hazards to only 5% of all COVID-19 appeals.

Public Sector Consultation Service Branch Activities

The Consultation Services Branch provides onsite consultation services to the public sector under the 23(g) program. During FFY 2022, the Consultation Services Branch conducted 11 initial visits for the public sector. During these visits a total of 81 hazards were identified with 28 being classified as Serious, 50 being classified as Other-Than-Serious, and three being classified as Regulatory. The Consultation Services Branch also provided 19 formal training events and 30 other compliance assistance activities for the public sector.

PUBLIC FFY 2022 Visits & Compliance Assistance		Total
Total Onsites 10-1-21 to 9-30-22		
Total Number of Onsites		11
Number Initial Visits		11
Number Training and Assistance Visits		0
Number Follow Up Visits		0
Total Hazards		
Total Number of Hazards		81
Number of Serious Hazards		28
Number of O-T-S Hazards		50
Number of Regulatory Deficiencies		3
Partnership Programs		
Golden Gates		0
SHARPS		0
New		0
Renewals		0
Compliance Assistance		
Compliance Assistance to Employers (Speeches)		19
Compliance Assistance to Employers - (Other)		30

Cal/OSHA held quarterly State Agency Workplace Safety and Health Network meetings with public employers. This network includes more than 160 participants from over 56 separate agencies.

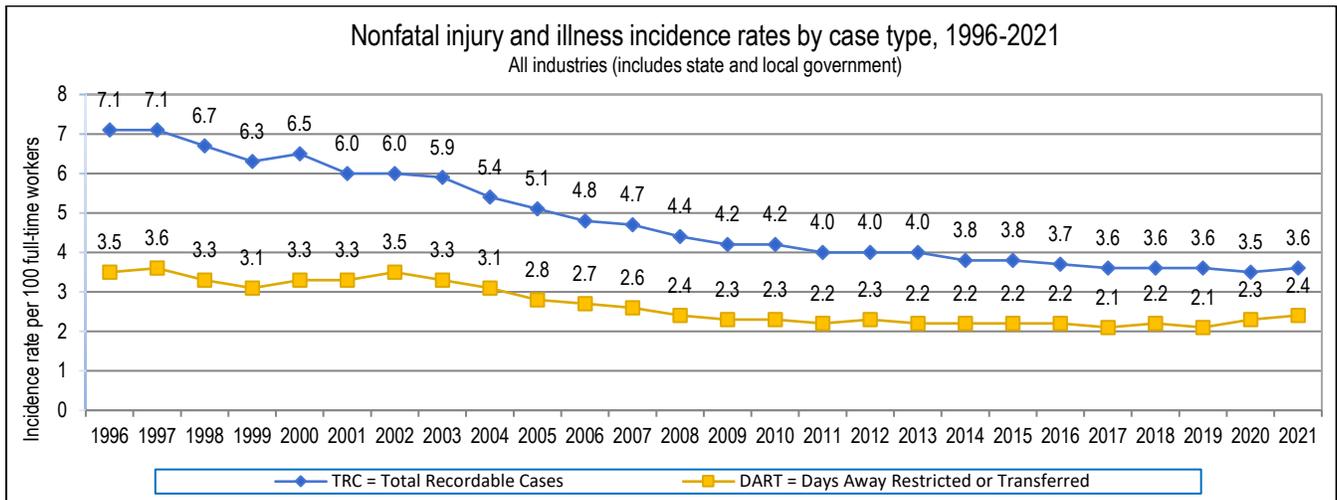
The Consultation Services Branch also administers the Voluntary Protection Program (VPP) under the 23(g) program. In FFY 2022, Consultation had no new Cal/VPP establishments. The exigencies of the pandemic impacted employer uptake, and Cal/OSHA staff who usually work on VPP matters assisted with COVID-19 issues. Nonetheless, Cal/OSHA renewed 18 sites; six sites were withdrawn or terminated. The VPP Unit also provided one in-person event for current and potential VPP candidates. The VPP Unit ended FFY 2022 with eight pending applications, 67 VPP-Star sites, and three VPP-Reach sites. Three new consultants were hired at the end of the fiscal year, which will help Cal/OSHA reach its performance goals in the coming fiscal year.

Lastly, under the 23(g) program, the Consultation Services Branch operates the Voluntary Protection Program-Construction (VPP-C). For FFY 2022, the VPP-C Unit evaluated and added three new sites; two sites were terminated due to project completion, and there were no renewals. The VPP-C Unit ended Federal Fiscal Year 2022 with 11 pending applications and 14 total active VPP-C sites.

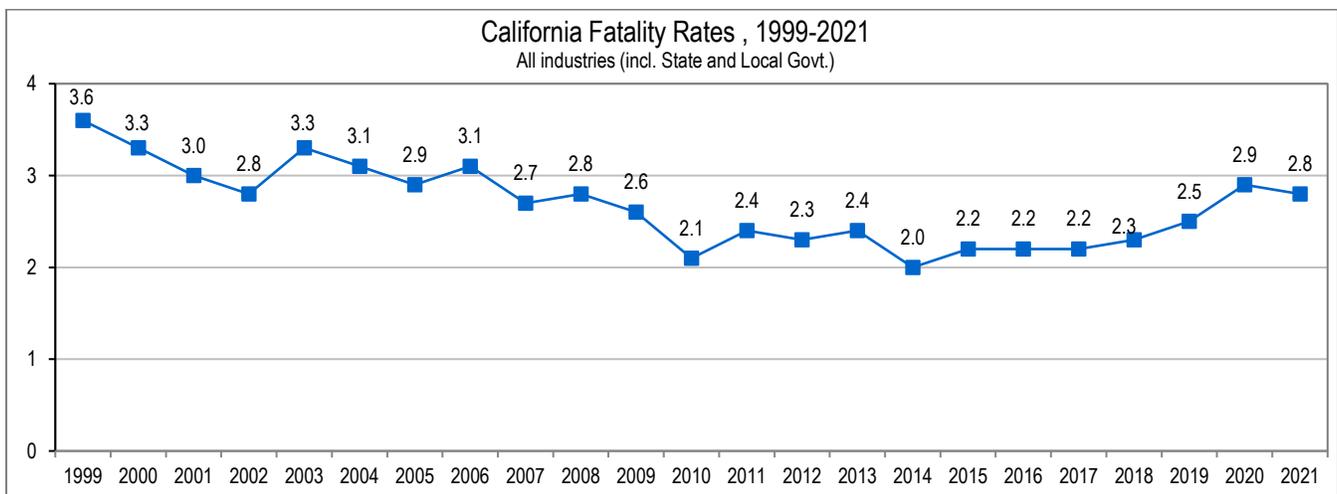


Injuries, Illnesses, and Fatalities

Cal/OSHA believes its combined enforcement and educational efforts have contributed to a gradual long-term decrease in California's nonfatal on-the-job total recordable case (TRC) injury and illness incidence rate. Please see the following graph. In recent years, this has appeared to plateau, with a rate of 3.5 or 3.6 per 100 full-time employees in CYs 2017 through 2021.³ However, the post-pandemic TRC rate is still to be determined and will be watched closely by Cal/OSHA in coming years.



As reported by the Census of Fatal Occupational injuries (CFOI), the rate of fatalities for CY 2021 decreased slightly to 2.8 per 100,000 full-time equivalent (FTE) workers.⁴ California's CY 2021 fatality rate of 2.8 is significantly lower than the national rate of fatal work injuries for civilian workers, which saw an increase in CY 2021 to 3.6, from 3.4 in CY 2020.⁵ Please note that neither COVID-19 nor other illnesses, other than heat illness, are included in CFOI fatality statistics.



³ Incidence rates of nonfatal occupational injuries and illnesses by selected industries and case types, 2021 at <https://www.dir.ca.gov/OPRL/Injuries/2021/Menu.htm>

⁴ Fatal injury rates by state of incident and industry, all ownerships, 2021, available at <https://www.bls.gov/iif/state-data/fatal-injury-rates-by-state-and-industry-2021.htm>.

⁵ Fatal occupational injuries, total hours worked, and rates of fatal occupational injuries by selected worker characteristics, occupations, and industries, civilian workers 2021 and total hours worked and rates of fatal occupational injuries by selected worker characteristics, occupations, and industries, civilian workers, 2020 available at www.bls.gov/iif/fatal-injuries-tables.htm

The tables below provide a quick comparison of fatality rates between the national and California data by industry type. California was lower than the national average in most industries for which comparable rates exist, with a pronounced difference for the category of agriculture, forestry, fishing and hunting, as shown in the chart below. California had higher rates in only three industry groups: transportation and utilities; financial activities; and education and health services.

Fatality Rates

	California				National		
	CY 2019	CY 2020	CY 2021		CY 2019	CY 2020	CY 2021
Overall Rate	2.5	2.9	2.8	Total	3.5	3.4	3.6
Agriculture, Forestry, Fishing, and Hunting	13.9	10.2	11.4	Agriculture, Forestry, Fishing, and Hunting	23.1	21.5	19.5
Construction	6.5	8.0	6.3	Construction	9.7	10.2	9.4
Manufacturing	1.5	1.2	2.1	Manufacturing	n/a	2.3	2.6
Transportation and Utilities	7.5	6.5	7.1	Trade, Transportation and Utilities	5.5	5.2	5.7
Wholesale. and Retail Trade	1.9	2.7	2.4	Wholesale Trade	4.9	4.6	5.1
				Retail Trade	2.0	2.0	1.9
Professional and Business Services	2.2	3.1	2.3	Professional and Business Services	n/a	n/a	n/a
Financial Activities	n/a	1.5	1.9	Financial Activities	1.0	0.9	0.9
Educational and Health Services	0.7	0.8	n/a	Educational and Health Services	0.6	0.7	0.7
Leisure and Hospitality	1.7	1.8	2.0	Leisure and Hospitality	2.2	2.5	2.4
Other Services, Except Public Administration	2.7	2.7	2.7	Other Services, Except Public Administration	3.0	3.3	3.8
				Private Industry	3.8	3.7	3.8
Public Administration	1.3	n/a	n/a	Government	1.8	1.8	n/a

Occupational Safety and Health Appeals Board (OSHAB)

The California Occupational Safety and Health Appeals Board (Appeals Board) has continued to respond to the significant challenges to the hearing process presented by COVID-19. As the workload remained steady, staff concentrated on perfecting videoconferencing during the hearing process. Videoconferencing has become an essential, reliable, and effective tool, and outreach provided by the Appeals Board to all stakeholders has contributed to the success of video hearings.

Video Hearings

During FFY 2022, the Appeals Board conducted 115 hearings over 208 days on the Zoom video platform. No in-person hearings were conducted. The Administrative Law Judges (ALJ) conducted approximately 600 settlement conferences utilizing the Zoom platform during this same period. The response from stakeholders remains generally positive. During two years of conducting video hearings, the Appeals Board has ensured that the due process rights of the parties are protected.

On March 22, 2022, the Appeals Board presented stakeholder training, live on Zoom, entitled "Representing Clients in Proceedings Before the California Occupational Safety and Health Appeals Board." This training was primarily geared toward those representatives who are new to the appeals process and focused on the regulations of the Appeals Board.

Efficiency Improvements

On May 2, 2022, the Appeals Board began conducting its Status Conferences using a conference line accessed by the parties at the appointed conference time, rather than requiring the ALJ to call each party individually. Parties may join by telephone number or the online Zoom platform, so internet access is not necessary.

Since September 2022, the Appeals Board has been engaged in a limited pilot program to explore the effects of scheduling two appeal hearings before one ALJ on one day. Hearings often come off calendar shortly before the commencement of the hearings. The pilot is being conducted to determine ways in which the Appeals Board can more thoroughly utilize the hearing calendar. This pilot program is scheduled to go through mid-December, at which time the Appeals Board will review the results of the program and determine a future course of action.

Covid-19 Appeals

As of September 30, 2022, and since the beginning of the pandemic, the Appeals Board had received 939 appeals of inspections which included COVID-related citations. Of the 939 cases, 470 of those appeals had been resolved. Twenty-four, or approximately five percent, of the remaining 469 open appeals involved unabated Serious violations. The five percent value included 12 appeals which were in abeyance due to their Bureau of Investigations status (i.e. because of investigation for possible criminal violations).

Appeals Board Decisions of Interest

Arriaga USA, Inc., dba Stoneland USA, formerly cited as Arriaga USA, LLC, dba Stoneland, Cal/OSHA App. 1279492, Decision After Reconsideration (Dec. 7, 2021)

The Board upheld a Serious, accident-related citation alleging that Employer failed to guard moving parts of machinery by frame or location. This was related to an incident where an employee's head was crushed between a moving machinery part and the interior structure of a stone-cutting machine.

The Board found that Employer was not denied a full and fair hearing due to technical issues that occurred during the hearing, which was conducted by video conference, nor due to the self-represented Employer's lack of legal knowledge and experience. The Board found that Employer failed to meet its burden to show any likelihood that the hearing outcome would have been different had the hearing been conducted in person. The Board found that Employer had not been prejudiced by its choice to represent itself at the hearing.

The Board further found that Employer was properly charged with the violation.

Ranch of the Golden Hawk, Cal/OSHA App. 1224802, Decision After Reconsideration (May 23, 2022).

The Board upheld seven citations, five classified as Serious and two characterized as accident-related, alleging violations of workplace health and safety regulations related to the fatal injury of a tree worker who was struck by a falling section of tree trunk.

The Board rejected the employer's assertion that the Division lacked jurisdiction to issue the citations, contending the work in question was a "household domestic service" rather than employment. The Board concluded that the property on which the fatal accident occurred was owned and maintained by a business entity rather than a private homeowner, and the tree work was done for the benefit of the property and ultimately of that business entity. The Board therefore found the employer was properly charged with all violations.

Walmart Associates, Inc. dba Walmart Fulfillment Center #8103, Cal/OSHA App. 146176, Decision After Reconsideration (July 21, 2022).

The Board upheld two citations alleging, respectively, failure to report a serious injury, and failure to provide appropriate foot protection to employees operating electric pallet jacks. This followed an incident in which an employee sustained a compound fracture of the lower leg while operating an electric pallet jack.

Employer argued that, because the injured employee was provided by a labor contractor, it was not an employer of the injured employee and was thus not liable for the violation. The Board disagreed.

First, the Board concluded that Employer's policy and training documents indicated extensive control over many facets of the employee's employment. The Board thus affirmed the ALJ's conclusion that Employer was a "dual employer" for purposes of Cal/OSHA enforcement.

Second, the Board also concluded that Employer was a "client employer" as provided by the Labor Code, and thus required to comply with the Cal/OSH Act with regard to workers supplied by a labor contractor. The Board therefore found that Employer was properly charged with the violation.

Civil Review of Appeals Board Cases

The Appeals Board prevailed in a number of notable court cases.

In **Atkinson Construction, LP v. California Occupational Safety and Health Appeals Board**, the Court of Appeal affirmed a superior court decision in favor of the Board. Atkinson had failed to properly brace a 140-foot I-beam during construction of a freeway overpass. The I-beam fell to the roadway below, seriously injuring an employee. Atkinson was cited for failure to properly brace the beam. Atkinson argued to the Board and courts that it was not in violation of the cited regulation, but rather that safety orders pertaining to “falsework” applied exclusively. The Board and both courts disagreed, holding that a construction safety order mandating that beams be braced to prevent overturning applied. The Court of Appeal did not publish the decision.

The San Joaquin County superior court ruled in **Amazon.com Services LLC et al. v. Occupational Safety and Health Appeals Board** that Amazon violated foot protection requirements. Amazon argued that its training and administrative processes and procedures were adequate to protect employees from the danger of foot injuries at its warehouse and shipping facility in Tracy, California. The court held that the evidence demonstrated actual exposure to the hazard of foot injury and that Amazon had not required its employees wear protective foot gear. The court also rejected Amazon’s argument that the Board’s interpretation of the applicable safety order (§ 3385) was not unconstitutionally improper and that the Board was not required to apply the federal standard instead of California’s.

In **Granite Construction Company, Granite Industrial, Inc. v. California Occupational Safety and Health Appeals Board**, the Sacramento County superior court affirmed the Board’s decision holding that Granite Construction Company had failed to require appropriate respiratory protection equipment for employees exposed to “Valley Fever” at a solar power facility under construction in Monterey County, California. Valley Fever is a respiratory illness caused by fungi (commonly called “cocci” spores) endemic to soils in the area where the project was being built. The court held that although there is no safety order specifically regulating exposure to cocci spores, Cal/OSHA has authority to regulate such exposure under California’s injury and illness prevention program and respiratory protection regulations. Since the employer did not require employees exposed to cocci spores to wear appropriate respirators, the court affirmed the Board’s holding that Granite was in violation.

In **L&S Framing, Inc. v. California Occupational Safety and Health Appeals Board**, the Placer County superior court affirmed the Board’s decision to allow Cal-OSHA to amend a citation because the employer failed to demonstrate it was or would be prejudiced by the amendment. The court noted that amendments are liberally allowed in administrative proceedings in the absence of a showing of prejudice or disadvantage.

The Alameda County superior court, in **California Department of Industrial Relations, Division of Occupational Safety and Health v. California Occupational Safety and Health Appeals Board**, affirmed the Board’s decision to require Cal OSHA to reveal to the cited employer limited information from a complaint filed against the employer. Not only the complainant’s name, but also information which may tend to reveal his identity, is protected from disclosure. The Court found that CalOSHA must provide the cited employer with the contents of the complaint which will not reveal the informant’s identity. Cal/OSHA has appealed this matter.

In **Key Energy Services, LLC v. California Occupational Safety and Health Appeals Board**, the Sacramento County superior court remanded the matter to the Board to issue a decision explicitly addressing the employer’s “independent employee action defense.” The case involves an injury accident on an oil well maintenance rig. The employer was cited for allegedly failing properly to inspect a tool used to clamp on to sections of pipe used in the oil well.

MWL Solutions, et al. v. California Occupational Safety and Health Appeals Board, in Sacramento County superior court, involved a challenge to the Board's video hearing procedures by three employers in a consolidated case. The court held that the Board has statutory authority to hold hearings by video conference and had not engaged in improper ("underground") rulemaking in establishing a process for all parties to use for that purpose. Employers have appealed the superior court's decision.

Grimmway Enterprises v. California Occupational Safety and Health Appeals Board, Kern County superior court, involved a virtually identical challenge to the Board's video hearing process in two administrative appeals by Grimmway. The court consolidated the challenges into one decision and held that the Board has statutory and regulatory authority to hold hearings by video conference.

Special Initiatives

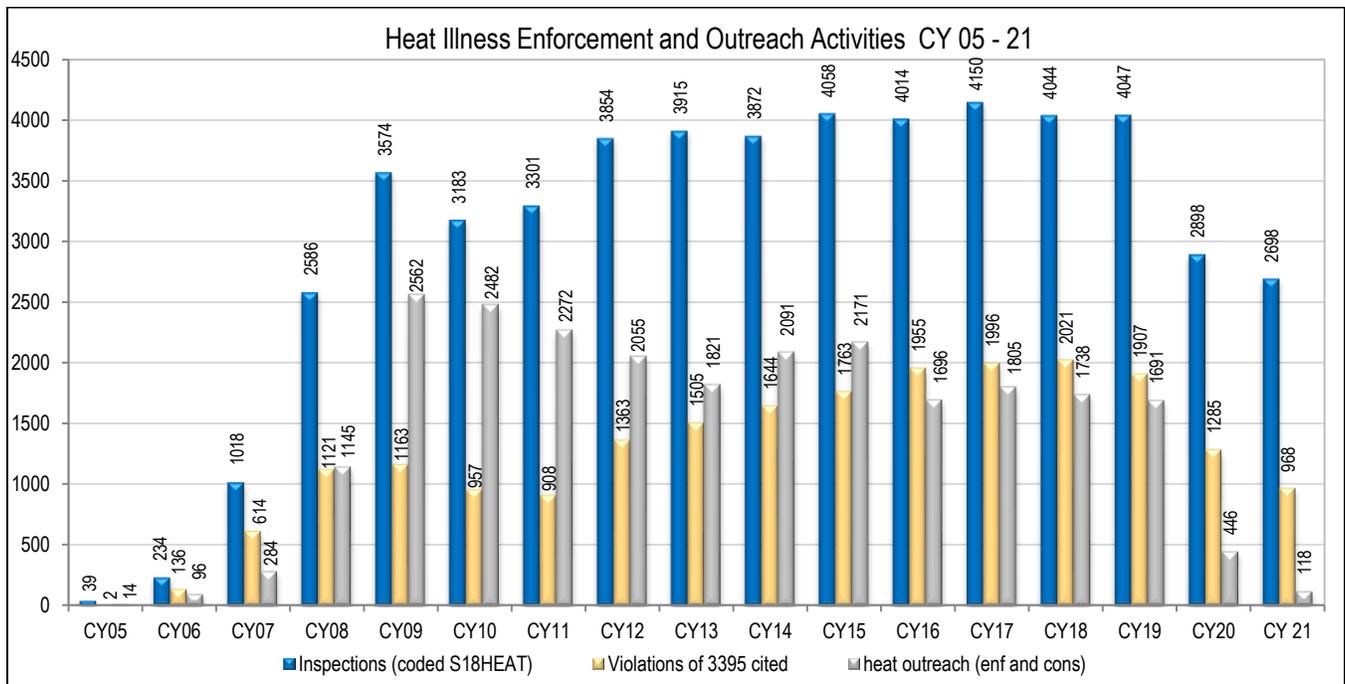
Heat Illness Prevention

This year, California experienced one of the hottest summers on record. Heat waves started in the spring, with the first in early April. Five months later, in September, a number of locations in California broke heat records during an extended heat wave. In Sacramento, September temperatures peaked at 116 degrees Fahrenheit. Cal/OSHA supported California’s Office of Emergency Services (CalOES) during this heat emergency.

Throughout the heat season, Cal/OSHA performed over 250 high heat inspections. These are programmed inspections which augment Cal/OSHA’s usual enforcement activities in response to complaints and reports of heat illness. The Heat and Agricultural Coordination Program also held eight heat calls to review past and upcoming activities, review and discuss heat illness and fatality cases, provide ongoing support and instruction, and obtain feedback from senior professional staff on our Heat Special Emphasis Program (Heat SEP) operations.

Heat enforcement efforts peaked just prior to and during high-heat events, particularly during the summer months. The overall compliance rate for CY 2022 will be determined once all of the CY 2022 cases are closed; CY is used rather than FFY because California’s heat season extends into October, after the end of each federal fiscal year. The overall compliance rate⁶ in both CY 2021 and 2020 was 73%. This is an increase compared to CY 2019, which had a compliance rate of 65%.

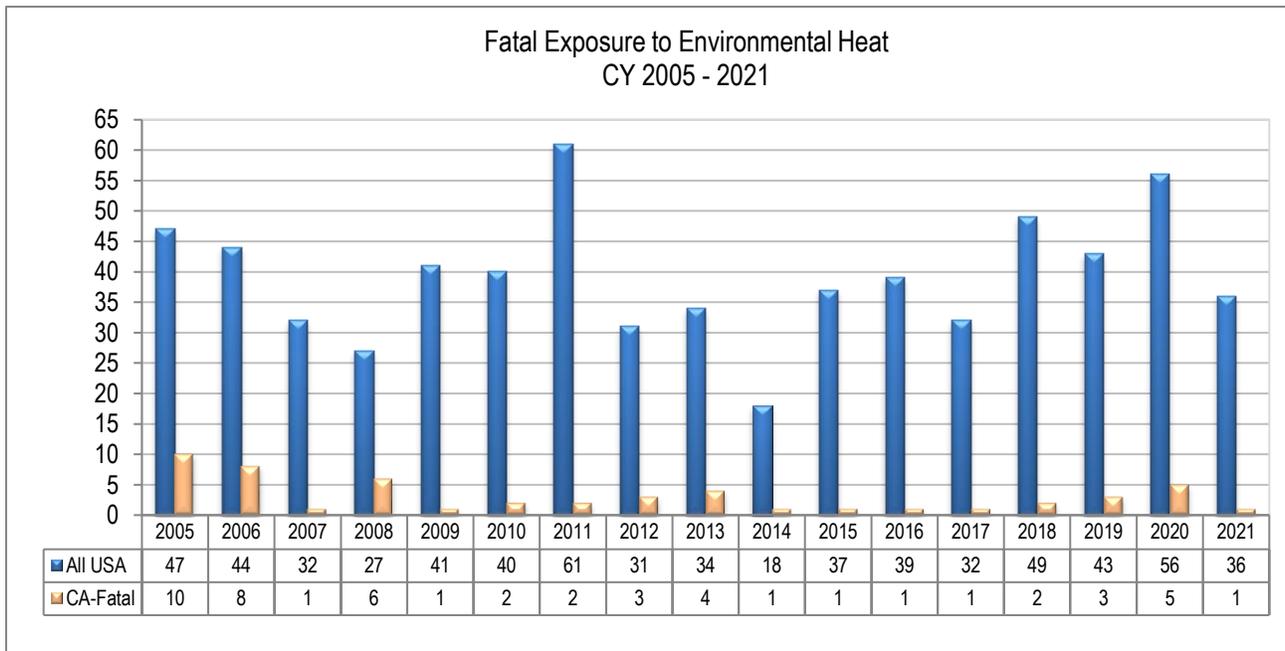
The following graph represents the year-round enforcement and outreach activities from calendar year (CY) 2005 through CY 2021.⁷



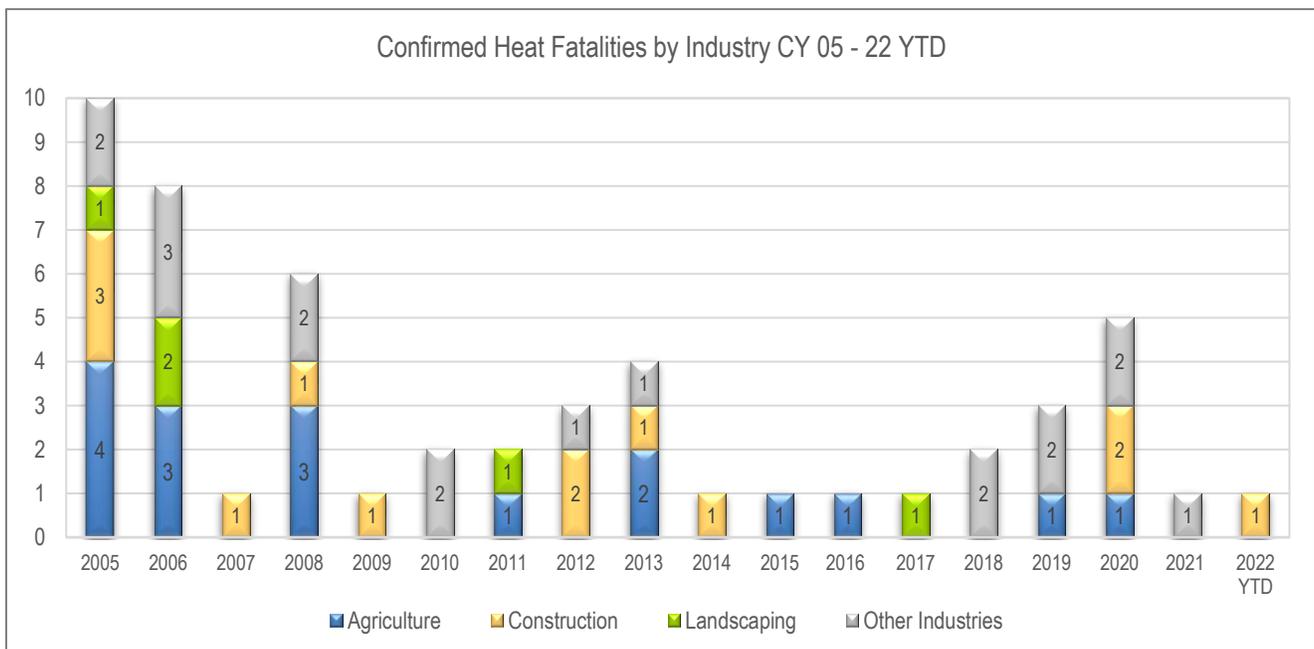
⁶ The percentage of inspections opened in 2021 and completed in 2021 or later where no violations of section 3395 were cited, compared to all inspections opened in 2019 and completed in 2019 or later where compliance with section 3395 was evaluated.

⁷ Inspections are coded S18 HEAT if heat hazards were evaluated; other safety and health hazards may have also been addressed.

In CY 2021, there was one confirmed heat related fatality. California’s total heat-related fatalities can be seen compared to the total number of U.S. heat-related fatalities in the following graph.⁸



To date for CY 2022, Cal/OSHA is aware of one medically confirmed fatality case related to outdoor heat exposure, but as of this writing, other suspect heat-related fatalities are pending medical evaluation.



Cal/OSHA continued its longstanding heat illness prevention media campaign, which included bilingual outreach via billboards, television, and radio.

⁸ Please note that national data comes from CFI, which only includes occupational deaths found to be within the scope of that project. California heat-related deaths are included, as tracked by Cal/OSHA, regardless of whether they are in within the scope of CFI. The national statistics may not be entirely comparable and may include indoor heat-related deaths that would not necessarily have been tracked by Cal/OSHA during this period.

Heat, always a significant hazard in California, will only affect more workers and employers as summer temperatures become more extreme. Cal/OSHA has therefore recognized that its outreach efforts must expand to new audiences throughout the state. In FFY 2022, the media campaign was broadened to address restaurant, warehouse and manufacturing workers. Advertisements related to indoor heat hazards were targeted online on through social media and on the Google Display Network for restaurant, warehouse and manufacturing workers.



DIR published eight news releases this heat season, to inform employers and workers of their obligations and rights, and held its annual [Heat Illness Prevention \(HIP\) Network](#) call, which connects over 200 employer associations, employers, and worker advocacy groups. The HIP Network is a voluntary public and private partnership established to increase both employers' and employees' awareness of the hazards of heat illness and the importance of heat illness prevention measures to prevent heat-related fatalities and serious illnesses in California outdoor workplaces.

During this FFY, the campaign included multilingual advertisements on 54 billboards, 130 wall posters, 95 lunch trucks and 170 work vans in Sacramento, San Joaquin, Merced, Madera, Fresno, Kings, Tulare, Kern, Santa Barbara, Ventura, Riverside, San Diego and Imperial counties. There were also advertisements near gas pumps at 56 gas stations in the Los Angeles area.

More than 23,000 multilingual educational advertisements in Spanish, Punjabi, Hmong, and Mixtec aired on 35 radio stations in the target areas during this reporting period. Targeted on-line ads have reached more than 1,700,000 unique individuals and resulted in 25,393 clicks to Cal/OSHA's 99calor.org website.

Wildfire Response

Although the 2022 fire season was not as destructive as those of recent years, California still endured 7,490 wildfires that burned 362,455 acres in total. The most destructive of these was the Mosquito fire that occurred in September 2022 in Northern California, burning 76,788 acres across two counties, destroying 78 structures and damaging 95 structures. While there were no deaths, there were two non-fatal injuries to firefighters.

Given Cal/OSHA's years of experience with heat illness prevention outreach, in FFY 2022 the agency took advantage of existing campaigns and networks previously used to disseminate heat hazard information by also include wildfire smoke information. Advertisements addressing wildfire smoke protection were targeted at agriculture, construction and warehouse workers online, outdoors, and on the radio.



Cal/OSHA has also partnered with Los Angeles County Fire and the University of California Los Angeles to assist with field trials of prototype powered air purifying respirators (PAPRs) suitable for firefighting in wildlands and the wildland-urban interface. To learn more about wildland firefighting operations, Deputy Chief Eric Berg and other Cal/OSHA staff were invited to observe firefighting operations at the large Fairview fire northeast of Los Angeles.



Labor Enforcement Task Force Public Works Initiative

The Department of Industrial Relations' Labor Enforcement Task Force (LETF) is a coalition of California State government enforcement agencies, including Cal/OSHA and the Division of Labor Standards Enforcement, that work together and in partnership with local agencies to combat the underground economy.

In January, LETF announced a new initiative to inspect publicly funded construction sites to ensure employers provide workers' compensation insurance and follow workplace health and safety requirements, applicable prevailing wage laws, skilled and trained workforce requirements, and apprenticeship standards.

Expanding Accessibility for Non-English Speakers

In FFY 2022, Cal/OSHA expanded its outreach efforts by hiring Bilingual Community Engagement Liaisons (BCEs). The two new BCEs, who began work in February of 2022, improved the ability of the Outreach Coordination Program to reach vulnerable employee populations and engage with non-English speaking communities. The BCEs' goal is to engage and develop partnerships between Cal/OSHA and worker organizations to provide critical information and resources to workers. They actively participate in joint committees and partner with community-based organizations and other state agencies.

As of August 2022, Cal/OSHA has 49 employees who are sufficiently fluent in a language other than English to pass the state's language certification exam; others speak non-English languages but are not certified. For staff who wish to improve their skills, since 2016 the Cal/OSHA Spanish language support program has the cost of tuition fees, books, and in-person classes for employees after work hours. Cal/OSHA staff's language skills are supplemented by an external translation service, providing a network of native-speaking language interpreters telephonically available for over 100 languages and dialects.

Addressing Staffing Challenges

For each of the past several years, Cal/OSHA has received authority for new positions within Enforcement and other units which support enforcement activities. On July 1, 2022, almost 100 new positions were authorized, including 41 in Enforcement.

Cal/OSHA's Recruiting Committee members meet regularly to monitor and track vacancies and develop recruiting strategies. Although staffing challenges remain, especially for industrial hygienists, Cal/OSHA has remained transparent about hiring, publishing online information about filled and vacant positions among safety engineers, industrial hygienists, and supervisors.⁹ Cal/OSHA has made hiring a top priority and has developed a multi-pronged approach to filling vacancies, including outreach and advertising in professional journals and publications; at professional societies, associations, colleges and universities; on social media platforms and job boards; and through a virtual career fair.

Training efforts not only provide Cal/OSHA staff with up-to-date information but can also help with retention efforts. Professional Development coordinated and facilitated 23 total training classes that comprised of both division-mandated, technical training and webinar events. These events were attended by Cal/OSHA managers, professional staff, and attorneys.



⁹ Cal/OSHA's Recruitment and Hiring can be found at <https://www.dir.ca.gov/dosh/DOSH-Recruitment-Hiring.html>.

PARTNERSHIPS / COMPLIANCE ASSISTANCE

Employment Education and Outreach (EMPLEO)

The Employment Education and Outreach (EMPLEO) was established as a partnership to provide Spanish-speaking employees and employers with information on federal and state workplace laws. This partnership consists of government agencies, consulates, and non-profit organizations in five counties in Southern California that assists workers in understanding their rights and provides employers with information pertaining to the resources available to them. Partners in the EMPLEO program include the U.S. Department of Labor's Wage and Hour Division; OSHA; the U.S. Equal Opportunity Commission; California Division of Labor Standards Enforcement; Cal/OSHA; the consulates of Mexico, El Salvador, Guatemala, Honduras, Nicaragua and Costa Rica; the regional Hispanic Chamber of Commerce; and the Coalition of Human Immigration Rights in Los Angeles, among others.

Cal/OSHA is proud to have been part of this program since its inception in 2004, providing information and assistance to Spanish-speaking workers and employers regarding their rights and responsibilities, and responding to workplace complaints.

Cross Referrals with the Division of Labor Standards Enforcement (DLSE)

Under California law, the Division of Labor Standards Enforcement (DLSE) has responsibility for investigating worker complaints related to unpaid wages, lack of rest breaks, and other labor law violations. Unlike the federal system, DLSE – not Cal/OSHA – is responsible for investigating worker complaints of retaliation, reprisal and discrimination by employers against employees who express concern about and/or contact Cal/OSHA regarding unsafe and unhealthy working conditions.

Cal/OSHA refers complaints of labor law violations and employer discrimination to DLSE, while DLSE refers worker complaints, and the observations of its own employees conducting DLSE inspections of work sites, regarding unsafe and unhealthy working conditions to Cal/OSHA. During FFY 2022, Cal/OSHA forwarded at least 47 referrals for investigation to DLSE (45 concerning labor law violations, and two concerning employer retaliation and discrimination), and 140 referrals were received by Cal/OSHA from DLSE during FFY 2022.

ALLIANCES

Alliance Program

During the COVID-19 pandemic, organizations were grappling with COVID-19 response and thus less able to develop new work plans as part of an alliance with Cal/OSHA. Despite this, the program met with a number of prospective participants in FFY 2022 and signed a new Alliance Agreement with the State Compensation Insurance Fund (SCIF) on August 1, 2022 to coordinate education and training and to establish regular communications and outreach. These elements will provide key field staff in both organizations with increased working knowledge of the safety and health hazards related to the construction and general industries, as well as procedures, methods, and loss prevention techniques to mitigate these hazards. Four other Alliance Agreements are nearing completion, demonstrating that the Program is returning to its pre-pandemic vibrancy.



Alliance Agreement signing ceremony, left to right:
Eddie Russell (Sr. VP of Loss Control Services, SCIF) & Jeff Killip, Cal/OSHA Chief

SIGNIFICANT CASES

FATAL EXPLOSION OF WATER TANK DURING WELDING **JR Filanc Construction Company, Inc. (1537872)**

On December 21, 2021, the Division issued citations against a contractor for an incident in Lemoore, California. An employee was welding a flange to the side of a municipal water tank where methane gas was present, and the tank exploded. The employee was working in a bucket about 30 feet up, and sudden release of the tank's approximately 1.5 million gallons of water pushed the bucket truck onto its side, killing the employee.

Cal/OSHA issued five serious citations. Three of those citations were under the Injury and Illness Prevention regulation: failing to effectively identify the hazard posed by the presence of flammable gases or vapors when introducing an ignition source (welding); failing to effectively establish or implement effective methods or procedures to correct that unsafe condition; and failing to providing effective training and instruction regarding safe welding procedures, associated hazards, and the importance of testing for flammable gases and vapors before a source of ignition is introduced to the location. The other two serious citations were for failing to secure the employee to the boom, basket or tub through specified means while in an elevated aerial device; and permitting a source of ignition where the concentration of flammable gases or vapors exceeded, or was reasonably expected to exceed, 25 percent of the lower explosive limit, with testing to ascertain whether that limit was reached.

Penalties totaled \$121,500. Employer appealed.

INSUFFICIENT PROTECTION FROM CAVE-INS AT UNPERMITTED EXCAVATION **Gagan Jeet Singh (1544125)**

On December 22, 2021, Cal/OSHA issued citations against a construction employer working at a site in Studio City, California.

Cal/OSHA issued a willful-serious citation for failing to protect employees working in an excavation from cave-in hazards, using protections meeting specified design criteria. Cal/OSHA also issued a repeat-regulatory for creating a permit-required excavation without first obtaining a permit. Additionally, two serious citations were issued for failing to have a stairway, ladder, ramp or other safe means of egress from the excavation, and failure to have a competent person on site to conduct daily inspections of the excavation. A citation for a general violation was also issued.

Penalties totaled \$124,470. Employer appealed.

SILICA EXPOSURE IN MANUFACTURED STONE INDUSTRY **Davis Stone, Inc. (1540059)**

On January 6, 2022, Cal/OSHA issued five serious violations against a countertop manufacturer in Escondido, California. Cal/OSHA determined that employees had been exposed to an airborne concentration of respirable crystalline silica in excess of 50 $\mu\text{g}/\text{m}^3$.

The serious violations were issued for that exposure and for failure to assess the exposure of each employee who is, or may reasonably be expected to be, exposed at or above the action level; failing to establish and implement a written exposure control plan for respirable crystalline silica that contains the

required elements; and failure to meet respiratory protection requirements. Cal/OSHA also found five general violations and two regulatory violations.

Penalties totaled \$92,255. Employer appealed.

FATAL CONTACT BETWEEN REBAR AND ENERGIZED OVERHEAD LINE
Millennium Reinforcing Inc. (1542169)

On January 14, 2022, Cal/OSHA issued a willful-serious accident-related citation against a concrete reinforcing company after investigating a fatality at a site in Los Angeles, California. An employee was electrocuted, and two others were hospitalized, after a piece of rebar contacted an energized overhead line operating at 16000v phase to phase.

The citation was issued against the employer for allowing rebar to come within six feet of an energized overhead line. Cal/OSHA also found one general violation.

Penalties totaled \$112,900. Employer appealed.

WILLFUL FAILURE TO MAINTAIN LAMINATOR MACHINE
Circle Graphics, Inc. (1568199)

On April 19, 2022, Cal/OSHA issued citations against a printer in San Fernando, California after an employee operating a laminator was seriously injured when his hand was caught in a nip point area between rollers.

Cal/OSHA issued a willful-serious accident-related citation for failing to maintain laminator machines in a safe working condition, in particular the emergency stop kick cables and the photoelectric eye system intended to stop the machines when objects moved into the hazardous area. Cal/OSHA also issued one serious citation under the Injury and Illness Prevention Plan regulation for failure to provide effective training and instruction to employees on the safe operation of laminators. Cal/OSHA also found three general and one regulatory violation.

Total penalties were \$110,750. Employer appealed.

ELECTROCUTION DURING SWITCHGEAR REPAIR
USS-UPI, LLC (1566326)

On May 2, 2022, Cal/OSHA issued citations against the employer, a steel company, for an electrocution and arc flash at an electrical switchgear room in Pittsburg, California. The employee was repairing a mechanical issue in a 13.8kV PIF-style load break interrupter switch.

Cal/OSHA issued five serious accident-related citations under the electrical safety orders for failure to conduct a job briefing; failure to ensure that circuit breakers were open, inoperable, and tagged to de-energize the power to the switchgear; failure to ensure that the line side of the switchgear was deenergized by testing with a device designed to detect voltage; treating high voltage equipment as deenergized without first establishing that specified conditions were met; and failure to clearly identify, effectively isolate, and ground the electrical equipment to be worked from all sources of voltage. Cal/OSHA also issued a citation for a general violation.

Penalties totaled \$91,200. Employer appealed.

MULTI-EMPLOYER CONFINED SPACE FATALITY AT REFINERY

Valero Refining Company (1563573), T.R.S.C., Inc. (1567111), J.T. Thorpe & Son, Inc. (1563596), Total Safety, U.S. Inc. (1563632)

On May 5, 2022, Cal/OSHA issued citations against Valero and three contractors following a confined space death of a worker who suffocated in a regenerator overflow well at the Valero refinery in Benicia, California. The worker lost consciousness after descending into a regenerator overflow well at the refinery to evaluate the condition of the well interior and to perform cleaning operations in advance of a welding crew. He was found inside the regenerator, suspended by fall protection equipment.

Cal/OSHA issued four willful-serious citations against Valero under California's confined space regulation for failing to evaluate the workplace to determine if any spaces were permit-required confined spaces; to test conditions in the overflow well to determine if acceptable entry conditions existed before entry was authorized; to test or monitor the permit space as necessary to determine if acceptable entry conditions were maintained; and to ensure that employees used proper respiratory protection and fall protection during emergency response and rescue. Five additional serious citations were issued for various violations of the respiratory protection regulation, including failure, during multiple rounds of testing, to provide rescuers either a full facepiece pressure demand SCBA meeting certification requirements or a combination full facepiece pressure demand supplied-air respirator (SAR) with auxiliary self-contained air supply, even after one person reported feeling dizzy.

Penalties totaled \$534,375. Valero Refining appealed.

The deceased worked for refractory contractor **J.T. Thorpe & Son**. Cal/OSHA issued a willful-serious, accident-related citation against that employer, under the confined space regulation, for failing to test conditions in the permit-required space to determine if acceptable entry conditions existed before entry was authorized, and a serious citation for failing to verify that conditions were acceptable throughout the duration of authorized entry. Cal/OSHA issued an additional serious citation under the confined space regulation and found four regulatory violations, including one for failing to immediately report the fatality.

Penalties totaled \$141,125. J.T. Thorpe & Son appealed.

Industrial safety company **Total Safety U.S.** was issued six willful serious concerning the duties of attendants at permit-required confined spaces for failure to maintain an accurate count of authorized entrants and use an means of accurately identifying entrants; to communicate with entrants as necessary to monitor their status and to alert them if evacuation is needed; to order the authorized entrants to evacuate the permit space immediately if the attendant cannot effectively and safely perform their required duties; to warn unauthorized persons to stay away; to advise the unauthorized persons that they must exit immediately; and to inform the authorized entrants and the entry supervisor if unauthorized persons have entered the permit. Cal/OSHA also issued several serious citations related to the employer's permit-required confined space program and found four general violations.

Penalties totaled \$988,000. Total Safety U.S. appealed.

Construction contractor **T.R.S.C** was issued eight serious citations. A serious, accident-related citation was issued for failing to repair, or set aside at a safe distance, a broken welding torch that was leaking argon. The remaining seven serious citations were issued for various violations of the confined space regulation: failure to prevent unauthorized entry into the overflow well; to identify the hazards of the permit-required confined space; to verify that conditions were acceptable for entry; to provide, maintain, and ensure the use of testing and monitoring equipment; to test conditions before entry; to test or monitor to ensure acceptable entry conditions were maintained; and to ensure that entrants communicate with the attendant as necessary to enable the attendant to monitor status and alert entrants if evacuation is needed.

Penalties totaled \$101,125. T.R.S.C. appealed.

INSUFFICIENT PROTECTION FROM CAVE-INS AT EXCAVATION

Progressive Fueling Construction, Inc. (1588275), ELKA Construction, Inc. (1588637), RSVC Co. (1588643)

On May 20, 2022, Cal/OSHA issued citations against contractor Progressive Fueling Construction and two other companies at a site in Beaumont, California where a gas tank was being installed. A willful-serious was issued for failure to provide and install adequate protective systems to protect employees from cave-ins when they entered an excavation. Cal/OSHA also issued a serious citation for use of portable ladder for excavation egress which did not meet regulatory requirements.

Penalties totaled \$142,125. Progressive Fueling Construction appealed.

Both general contractor RSVC and subcontractor Elka were also issued one serious citation each for inadequate protective systems to protect from cave-in. Elka also received a citation for a regulatory violation for failing to obtain a T1 Trench/Excavation Permit.

The penalty for RSVC was \$9,000. The penalties for Elka totaled \$10,250.00. Both employers appealed.

FATAL EXPLOSION OF FUEL TANK DURING WELDING OPERATIONS

Adept Process Services, In. (1570353)

On June 28, 2022, Cal/OSHA issued citations against an employer which provides commercial marine services in National City, California. A welder employed by a different company, not cited, was directed to repair a pin-hole leak in a 250-gallon fuel tank. The tank exploded shortly after TIG welding began, resulting in the welder's death. Multiple employees were nearby at the time of explosion.

Cal/OSHA issued a willful-serious accident-related citation against the employer. Cal/OSHA determined that the employer had violated a shipbuilding, ship repair, and shipbreaking regulation by allowing hot work to be performed on a fuel tank that had contained gasoline without the work area being tested and certified by a Marine Chemist or a U.S Coast Guard authorized person as "Safe for Hot Work." In the alternative, Cal/OSHA alleged that the employer had violated a regulation governing tanks, vats and containers containing flammable liquids, with the employer cited for permitting the worker to perform hot work on a fuel tank of a boat that had contained gasoline without flammable vapors being adequately purged, and without testing for the flammability of vapors. Three serious citations were also issued for the following: multiple instances of violation of California' Injury and Illness Prevention Program regulation; failing to visually inspect the area where hot work was to be performed to ensure the area was free of fire hazards, unless a Marine Chemist's certificate or Shipyard Competent Person's log was used for authorization; and conducting hot work without ensuring that an adequate fire watch was posted when required. Cal/OSHA also found three general violations.

Penalties totaled \$193,050. Employer appealed.

APPLICATION OF OCCUPATIONAL SAFETY AND HEALTH REGULATIONS TO RIDESHARE DRIVERS

Uber Technologies, Inc. (594663) and Lyft, Inc. (1594664), not related inspections

On August 1, 2022, Cal/OSHA found one general and two regulatory violations by Uber, two under the Injury and Illness Prevention Program regulation, and one for various violations of the COVID-19 regulation for general industry, including requirements to provide notification of exposure to suspected or

confirmed cases; failing to conduct exposure investigations, failure to ensure riders' compliance with state and local masking requirements; and failure to provide face coverings to employees free of charge. All three violations specifically concerned drivers, whom employer contends are independent contractors and therefore outside the jurisdiction of Cal/OSHA. The employer-employee relationship at rideshare companies has been the subject of extensive litigation outside the occupational safety and health context, including litigation over a related ballot proposition.

Penalties totaled \$2,255. Uber appealed.

Lyft, Inc. likewise contends that its drivers are not employees. Cal/OSHA issued citations for two general and one regulatory violation to Lyft on August 1, 2022. Similar to Uber, two of the violations were under the Injury and Illness Prevention Program regulation, and one was for various violations of the COVID-19 standards, all specifically related to drivers.

Penalties totaled \$2,255. Lyft appealed.

Both inspections took place in San Francisco.

SILICA EXPOSURE AND UNREPORTED SILICOSIS FATALITY IN MANUFACTURED STONE INDUSTRY

Primus Marble, Inc. (1598680)

On August 12, 2022, Cal/OSHA issued citations against a countertop manufacturer in Pacoima, California.

Cal/OSHA determined that employees were exposed to an airborne concentration of respirable crystalline silica above $50 \mu\text{g}/\text{m}^3$, calculated as an 8-hour time-weighted average, and found that an employee had died of silicosis in 2020, a death which the employer improperly failed to report to Cal/OSHA.

Employer received two serious accident-related citations, one for the exposure, and another for failing to have an effective respiratory protection plan and to meet several respiratory protection requirements related to silica. A repeat-serious citation was issued for failing to provide medical surveillance when required, based on a prior citation that had become final on October 28, 2020. Cal/OSHA found an additional two serious violations for failing to repeat exposure monitoring within three months of results indicating exposures above the permissible exposure limit and failing to provide information and training regarding the health hazards of exposure to respirable crystalline silica. Cal/OSHA determined that the employer had committed a willful-general violation for failing to use engineering and work practice controls to reduce exposure to respirable crystalline silica as well as seven general violations and three regulatory violations, including one for failing to report the workplace fatality.

Penalties totaled \$90,875. Employer did not appeal.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD (OSHSB)

Hybrid Meetings and Remote Participation

Since March 2020, the Standards Board has provided remote access options for public participation at its monthly board meetings. This has vastly expanded opportunities for engagement with all stakeholders, especially low-wage and hourly workers who face additional barriers to providing in-person testimony. The Standards Board, which provides livestreaming of its board meetings in English and Spanish, has seen a sustained increase in public engagement of over 1,200 percent, with spikes considerably higher. This has led to more diverse feedback and allowed the Standards Board to better consider regulatory impact across California's workforce.

Permanent Variance Program

The Standards Board grants permanent variances from occupational safety and health regulations and acts as a review body for any employer or other person adversely affected by the granting or denial of a temporary variance by Cal/OSHA. As part of a larger review of operations, the Standards Board identified opportunities to improve workflow and maximize existing resources by streamlining administrative regulatory requirements. Revised section 411, described below, improved efficiency for the Board and employers. This allowed the Standards Board to continue services while facing increasing workload demands. Over 700 permanent variances were granted in 2022.

REGULATIONS

New or revised Title 8 California Code of Regulations in FFY 2022:

Administrative Regulations

Section 340.70, Definition of Normal Consumption. Title 8 California Code of Regulation, section 340.70, Definition of Normal Consumption, was adopted as an emergency regulation in June of 2021. During FFY 2022, the emergency regulation was re-adopted twice, without any revisions, to allow time for a regular rulemaking. This emergency regulation defines the term “normal consumption” as used in Labor Code section 6403.3(c), which requires that general acute care hospitals maintain a stockpile of specified equipment in an amount equal to three months of “normal consumption.” Section 340.70 became a final, non-emergency rule after the close of FFY 2022.

Section 336, Assessment of Civil Penalties. (Effective January 1, 2022). This rulemaking is conducted every year to increase maximum and minimum civil penalties for certain violation classifications to conform to the percentage increase in the CPI-U, not seasonally adjusted, for October of the current year, as compared to the prior year’s October CPI-U.

Section 411, Applications for Permanent variances. (Effective July 1, 2022). This procedural regulation updates the permanent variance application process. It allows employers to file one variance application and one copy of any photographs, blueprints, or other illustrative materials (instead of one original and six copies) and allows for electronic copy distribution. It also provides that the Standards Board may scan a single copy and give access to the document via online storage or email. The elimination of the requisite six copies saves printing and shipping costs for the applicant, eliminates paper waste, and reduces negative environmental impact.

Safety Regulations

GISO Sections 6052, 6056, 6056.1 (New), 6057, 6060, and 6062 (Horcher) (Effective October 1, 2021) This rulemaking clarified existing regulations that were affected by a rulemaking entitled Commercial Diving Operations. Section 6052, 6056, 6056.1, 6057, 6060 and 6062 were amended or added to be comparable to federal standard 29 CFR 1910.410, 1910.420, 1910.421, 1910.422, 1910.423, 1910.424, 1910.425, and 1910.430. The Horcher process is available to adopt regulations that are the same as the federal regulations, except for editorial and format differences.

GISO Group 13 Cranes and Other Hoisting Equipment (Effective July 26, 2022) This rulemaking consolidates existing standards for cranes and derricks, currently within the Construction Safety Orders, into the General Safety Orders. The standards will therefore apply to all industries.

Health Regulations

Sections 3205, 3205.1, 3205.2, 3205.3 and 3205.4 (Effective November 30, 2020, readopted May 2021, readopted January 2022, readopted May 2022). These emergency regulations require employers to protect employees from exposure to COVID-19. The regulations apply except when employees work from home, work in locations where there is no contact with others, telework in locations not in the employer’s control, or when the Aerosol Transmissible Diseases Standard, section 5199 covers employees. The emergency regulations, after their final readoption, states, among other things, that employers must establish, implement and maintain a written COVID-19 prevention program meeting

certain specific requirements; must offer COVID-19 testing to employees who are symptomatic or who had a close contact; must follow any CDPH requirements about face coverings; must provide face coverings upon request; and must meet notice and recordkeeping requirements. The regulations contain additional control requirements when there are outbreaks, when employees use employer-provided housing, and when employees use employer-provided motor vehicle transportation. Non-emergency COVID-19 regulations were adopted after the close of the FFY.

LEGISLATION

A number of bills affecting Cal/OSHA were chaptered in this year's session. The brief summaries of legislation below provide an overview of the bills' intent and do not purport to provide an official description of the legislation or elaborate on the details of the measures. Copies of the legislation referenced in this report, along with information, such as legislative committee analyses, are available on the Legislative Counsel of California website at www.leginfo.ca.gov.¹⁰

AB 257¹¹ (Holden) Food facilities and employment. Establishes a Fast Food Council to establish sector-wide minimum standards on wages, working hours, and other working conditions for fast food workers, and to ensure interagency coordination and prompt agency responses. If the Council decides that changes to occupational safety and health regulations are needed, the Council can petition the Standards Board, which must consider the petition within six months. No Council recommendation can be adopted by the Board which reduces occupational safety and health regulations. The Council cannot petition, or issue/amend any standards regarding the minimum wage or other matters, until after the Director of Industrial Relations receives a petition approving the creation of the council signed by at least 10,000 California fast food restaurant employees.

AB 1643¹² (Rivas) Labor and Workforce Development Agency: heat: advisory committee study. This bill creates an advisory committee, with members including representatives from the Labor and Workforce Development Agency, the Department of Industrial Relations and Cal/OSHA, among others, to propose topics for study concerning the effects of heat on California workers. Among the possible topics are 1) improved data collection regarding worker injuries, illnesses, or deaths as well as losses to businesses and the economy; 2) time away from work and lost wages due to heat; 3) the frequency at which different types of occupational injuries and illnesses occur at given temperatures and humidity levels; and 4) underreporting of heat illnesses and injuries covered by workers' compensation, especially among low-income employees. The Committee will submit a report to the Legislature by January 1, 2026.

AB 1775¹³ (Ward) Occupational safety: live events. This bill applies to entities that contracts with an entertainment events vendor for a live event on a county fairground, state park, California State University, University of California, or auxiliary organization-run facility. The entity must have the vendor and its subcontractors certify that 1) employees involved in the setting up, operation, or tearing down of the live event have completed certain training requirements; and 2) that heads of departments and leads have completed certain training and certification requirements, *or* that the vendor and its subcontractors have a "skilled and trained workforce," as defined in the Public Contract Code.

AB 2057¹⁴ (Carillo) Department of Transportation: goods movement data. Among other things, requires the Department of Industrial Relations to provide the Department of Transportation with links to existing public registries of with links to existing public registries and databases related to drayage trucks, employers who have committed workers' compensation fraud, and health and safety enforcement activities.

AB 2068¹⁵ (Haney) Occupational safety and health: postings: spoken languages. This bill requires Cal/OSHA to create a document, which employers must post along with citations and special orders. The document will state, among other things, that Cal/OSHA investigated the workplace and found one or more violations, and that the employer is required to communicate any hazards to employees in a

¹⁰ In general, chaptered bills take effect January 1 unless they contain an urgency clause, in which case they take effect immediately when chaptered. It is also possible for a bill to specify its effective date.

¹¹ Bill text: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB257

¹² Bill text: https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1643

¹³ Bill text: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1775

¹⁴ Bill text: https://leginfo.ca.gov/faces/billStatusClient.xhtml?bill_id=202120220AB2057

¹⁵ Bill text: https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2068

language and manner they understand. The document will also contain contact information for Cal/OSHA. The document will include the required contents in at least seven languages, as specified by the bill.

AB 2243¹⁶ (Garcia) Occupational safety and health standards: heat illness: wildfire smoke. This bill concerns rulemaking regarding workplace exposure to outdoor heat and wildfire smoke. California's existing regulation concerning outdoor heat, Title 8 section 3395, obligates employers in specific industries, including agriculture and construction, to have a heat illness prevention plan for outdoor workplaces. This bill instructs Cal/OSHA to consider adding a requirement that employers give this plan to workers upon hire and at least annually. Cal/OSHA must also consider additional regulatory requirements related to acclimatization, especially following an absence of a week or more from working in ultrahigh heat settings.

For wildfire smoke, the existing Title 8, section 5141.1 has requirements about the air quality index (AQI) thresholds at which employees must be provided with respirators for voluntary use during wildfire smoke events (above 150), and when employees are *required* to wear respirators (above 500). This bill directs Cal/OSHA to consider reducing the AQI threshold at which farmworkers are required to wear respirators from over 500 AQI to 301; a lower threshold would also be permissible. As a part of lowering the threshold, Cal/OSHA must also consider exempting farmworkers from existing regulatory requirements, such as fit-testing and medical evaluations, that usually accompany mandatory respirator use.

The deadline for Cal/OSHA to present these revisions to the Standards Board is December 31, 2025, except for the acclimatization provisions, which do not have a deadline.

AB 2298¹⁷ (Mayes) Recreational water use: wave basins. This bill requires the California Department of Public Health develop regulations for wave basins, as defined, in consultation with Cal/OSHA. The bill also clarifies that a wave basin is subject to permanent amusement ride standards. Cal/OSHA enforces amusement ride safety not only for employees, but also for the public.

AB 2693¹⁸ (Reyes) COVID-19: exposure. This bill extends the provisions of the existing Labor Code sections 3525(b), which provided explicit authority for Cal/OSHA to issue an Order Prohibiting Use to address imminent COVID-19 hazards, by one year from January 1, 2023 to January 1, 2024. The bill also amends Labor Code 6409.6 to replace previous COVID-19 notification requirements for employers. Instead, employers must post notifications of confirmed COVID-19 cases and related information, in English and the language spoken by a majority of the people on the worksite, and must give written notice to the exclusive representatives of employees with COVID-19 or a close contact. Employers must keep a log of these notifications and make them available to the Labor Commissioner. Finally, the bill eliminates existing provisions requiring employers to report COVID-19 to local public health agencies and requiring those agencies to report in turn to the California Department of Public Health.

SB 1044¹⁹ (Durazo) Employers: emergency condition: retaliation. This bill prohibits an employer, in the event of an emergency condition, defined to exclude a pandemic, from taking or threatening adverse action against an employee for leaving or refusing to report to a workplace within the affected area, when the employee has a reasonable belief that the workplace or worksite is unsafe, with exceptions for first responders and other specified categories. When feasible, employees must notify the employer of the emergency condition, before leaving or refusing to go to the workplace. The bill also prohibits an employer from preventing an employee from accessing the workers' mobile phone or other communications device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to confirm their safety.

¹⁶ Bill text: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2243

¹⁷ Bill text: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2298

¹⁸ Bill text: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2293

¹⁹ Bill text: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1044

SB 1294²⁰ (Cortese) Workforce wellness center: Santa Clara Valley Transportation Authority. This bill requires the Workforce Development Board and the Health and Human Services Agency, to develop a model plan for a worker wellness center. The Board must consult with Cal/OSHA to ensure its plans do not conflict with occupational safety and health laws and regulations.

²⁰ Bill text: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1294

SUMMARY OF ANNUAL PERFORMANCE PLAN RESULTS

The Federal FFY 2022 performance goals for Cal/OSHA Enforcement consist of:

- ✚ Performance Goal 1.1 Targeting the Mobile Workforce
- ✚ Performance Goal 1.2 High Hazard Targeting Program
- ✚ Performance Goal 1.3 Process Safety Management (PSM) and Covered Industries
- ✚ Performance Goal 2.1 Heat Illness Prevention Enforcement and Outreach to Employees and Employer Groups
- ✚ Performance Goal 2.2 Educational Outreach to High-Risk, Vulnerable Employee Populations
- ✚ Performance Goal 2.3 Partnership Programs
- ✚ Performance Goal 2.4 Alliances
- ✚ Performance Goal 2.5 Increase Employers' Awareness of Activities Protected from Retaliation or Discrimination
- ✚ Performance Goal 3.1 Timeliness of Inspections Opening and Citations Issuance
- ✚ Performance Goal 3.2 Training and Professional Development
- ✚ Performance Goal 3.3 Communication with Stakeholders

Each of these performance goals and their corresponding activities and outcome measures are detailed in the tables that follow.

GOAL 1.1
Targeting the Mobile Workforce

Strategic Goal: Secure safe and healthy workplaces, particularly in high-risk industries, and improve workplace safety and health through enforcement and consultative assistance.

Performance Goal: Target the mobile workforce to reduce fatalities and occupational injuries and illnesses in construction, agriculture and tree trimming by reducing and eliminating hazards in these industries.

Performance Indicator Type	Indicator	Results	Comments												
Activity Measures	<ul style="list-style-type: none"> Conduct approximately 2,800 inspections combined for construction, agriculture and tree trimming. Approximately 10% of the construction inspections will be programmed. Attempt to sustain a 1% higher percentage of the serious classification of citations issued as result of these inspections. 	<ul style="list-style-type: none"> 2,583 combined inspections were conducted in construction, agriculture and tree trimming during FFY 2022, as reflected by OIS as of December 6, 2022. 15% (303 out of 1,972) construction inspections opened in FFY 2022 were programmed. The percent of serious citations issued in FFY 2022 as a result of these inspections, that were sustained (with final order dates) were: <table border="0" style="margin-left: 40px;"> <thead> <tr> <th></th> <th style="text-align: center;"><u>FFY 2021</u></th> <th style="text-align: center;"><u>FFY 2022</u></th> </tr> </thead> <tbody> <tr> <td>Agriculture</td> <td style="text-align: center;">78%</td> <td style="text-align: center;">87%</td> </tr> <tr> <td>Construction</td> <td style="text-align: center;">79%</td> <td style="text-align: center;">86%</td> </tr> <tr> <td>Tree Trimming</td> <td style="text-align: center;">87%</td> <td style="text-align: center;">72%</td> </tr> </tbody> </table> <p style="font-size: small; margin-left: 40px;">FFY 21 and 22 OIS data as of December 6, 2022</p> 		<u>FFY 2021</u>	<u>FFY 2022</u>	Agriculture	78%	87%	Construction	79%	86%	Tree Trimming	87%	72%	<ul style="list-style-type: none"> This goal was not achieved; however, FFY 2022 reflects a 24% increase compared to FFY 2021. This measurement includes inspections in construction, agriculture and landscaping NAICS as well as inspections in other NAICS coded as S 12 Tree Trim. This goal was achieved. This goal was achieved. Number are subject to change as cases are adjudicated.
	<u>FFY 2021</u>	<u>FFY 2022</u>													
Agriculture	78%	87%													
Construction	79%	86%													
Tree Trimming	87%	72%													

Goal 1.1 Targeting the Mobile Workforce (cont.)

Performance Indicator Type	Indicator	Results	Comments																								
<p>Outcome Measures</p>	<ul style="list-style-type: none"> Abatement of non-contested serious hazards found in these industries will be achieved in 95% of cases. Number of serious hazards eliminated as a result of these inspections will increase by 1% compared to FFY 2020. Trenching and excavation hazards abated will increase by 5% compared to FFY 2017. Number of employees removed from serious hazards as a result of these inspections will increase by 1% compared to FFY 2020. 	<ul style="list-style-type: none"> Abatement of serious, willful, repeat (S/W/R) violations cited during FFY 2022 and not currently under contest is as follows: <ul style="list-style-type: none"> 98% - agriculture 95% - construction 86% - tree trimming The number of serious, willful, repeat (S/W/R) hazards eliminated as a result of these inspections were: <table border="1" data-bbox="961 630 1381 763"> <thead> <tr> <th></th> <th>FFY 2020</th> <th>FFY 2022</th> </tr> </thead> <tbody> <tr> <td>Agriculture</td> <td>333</td> <td>272</td> </tr> <tr> <td>Construction</td> <td>978</td> <td>706</td> </tr> <tr> <td>Tree Trimming</td> <td>104</td> <td>79</td> </tr> </tbody> </table> <p>FFY 20 and 22 OIS data as of December 6, 2022</p> The OSHA National Office tracks the achievement of this agency priority goal (APG). The number of employees removed from serious, willful, repeat (S/W/R) hazards as a result of these inspections were: <table border="1" data-bbox="961 1084 1381 1218"> <thead> <tr> <th></th> <th>FFY 2020</th> <th>FFY 2022</th> </tr> </thead> <tbody> <tr> <td>Agriculture</td> <td>3,977</td> <td>2,644</td> </tr> <tr> <td>Construction</td> <td>4,583</td> <td>5,779</td> </tr> <tr> <td>Tree Trimming</td> <td>364</td> <td>894</td> </tr> </tbody> </table> <p>FFY 20 and 22 OIS data as of December 6, 2022</p> 		FFY 2020	FFY 2022	Agriculture	333	272	Construction	978	706	Tree Trimming	104	79		FFY 2020	FFY 2022	Agriculture	3,977	2,644	Construction	4,583	5,779	Tree Trimming	364	894	<ul style="list-style-type: none"> This goal was achieved in two of the three industries. Whenever possible, Cal/OSHA field staff attempt to secure abatement of these hazards while on-site. This goal was not met. The OSHA National Office tracks the achievement of this agency priority goal (APG). This goal was met in two of the three industries.
	FFY 2020	FFY 2022																									
Agriculture	333	272																									
Construction	978	706																									
Tree Trimming	104	79																									
	FFY 2020	FFY 2022																									
Agriculture	3,977	2,644																									
Construction	4,583	5,779																									
Tree Trimming	364	894																									

GOAL 1.2
High Hazard Targeting Program

Strategic Goal: Secure safe and healthy workplaces, particularly in high-risk industries, and improve workplace safety and health through enforcement and consultative assistance.

Performance Goal: Reduce injuries, illnesses and fatalities in selected high hazard industries, with a goal of removing the industry from the High Hazard Industries list due to decreased injury and illness rates.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> The High Hazard Unit and other district offices staff will conduct 350 targeted inspections of establishments in high hazard industries from the High Hazard Industries list. 	<ul style="list-style-type: none"> 366 targeted inspections were conducted during FFY 2022 by the High Hazard Enforcement Unit (HHU) and other district offices, as reflected by OIS as of December 6, 2022. 	<ul style="list-style-type: none"> This goal was achieved.
Outcome Measures	<ul style="list-style-type: none"> Abatement of non-contested serious hazards found in these inspections will be achieved in 98% of cases. Percentage of Programmed inspections conducted in High Hazard establishments, with Serious/Willful/Repeat (S/W/R) violations will be 62% or greater. The High Hazard Targeting program will identify violations in at least 90% of all programmed inspections during the FFY. Average number of violations per inspection with violations will reach or exceed 5.2. 	<ul style="list-style-type: none"> 97% of serious, willful, and/or repeat violations (S/W/R), not currently under contest, cited in FFY 2022 as the result of HHU targeted inspections and district office programmed inspections (coded REGIONP1), were abated. 57% of programmed inspections conducted in High Hazard establishments had S/W/R violations in FFY 2022 as reflected by OIS as of December 7, 2022. 92% of Programmed inspections conducted in High Hazard establishments had violations cited in FFY 2022. Average number of violations per inspection with violations was 5.5 for programmed inspections with violations cited in FFY 2022. 	<ul style="list-style-type: none"> Abatement was just slightly under the goal of 98%. This goal was not met. This goal was achieved. This goal was achieved.

GOAL 1.3
Process Safety Management (PSM) and Covered Industries

Strategic Goal: Secure safe and healthy workplaces, particularly in high-risk industries, and improve workplace safety and health through enforcement and consultative assistance.

Performance Goal: Reduce fatalities and occupational injuries and illnesses in petroleum refining and other industries which fall under the requirements of the PSM standard.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • The Cal/OSHA Process Safety Management (PSM) Unit will conduct a total of 30 programmed inspections at facilities, other than petroleum refineries, that meet the trigger threshold quantities for the PSM standard. • Participate in six outreach/compliance assistance activities provided to industry/professional groups. • PSM Unit will conduct four comprehensive inspections of petroleum refineries during normal operating conditions. • The PSM Unit will conduct four comprehensive turnaround inspections of petroleum refineries (two in the North and two in the South), in accordance with Labor Code 7872. • The PSM Unit will conduct follow-up inspections at establishments other than petroleum refineries for 2% of all inspection types, whether programmed or unprogrammed. 	<ul style="list-style-type: none"> • 41 programmed inspections were conducted in FFY 2022 at facilities other than petroleum refineries that meet the trigger threshold quantities for the PSM standard, as reflected by OIS on December 6, 2022. • The PSM Unit staff participated in nine outreach/compliance assistance activities provided to industry/professional groups, during FFY 2022. • Two comprehensive programmed inspections of petroleum refineries (NAICS 324110) were conducted by the PSM Unit during normal operating conditions in FFY 2022. • Two turnaround inspections of petroleum refineries (NAICS 324110) were conducted by the PSM Unit, both in the South, in accordance with Labor Code 7872. • Three follow-up inspections were conducted by the PSM Unit during FFY 2022, as reflected in OIS as of December 6, 2022. 	<ul style="list-style-type: none"> • This goal was achieved. • This goal was achieved. • This goal was not achieved. During the pandemic, PSM staff have occasionally been diverted from their usual activities in order to make resources available for COVID-19 response. • This goal was partially achieved. Planned refinery turnarounds were moved by employers to November 2022, resulting in postponement of two planned turnaround inspections until shortly after the FFY. • This goal was achieved. There were 24 non-follow-up inspection not currently under contest, programmed or unprogrammed, at establishments other than petroleum refineries.

GOAL 1.3 Process Safety Management (PSM) and Covered Industries (cont.)

Performance Indicator Type	Indicator	Results	Comments
<p>Outcome Measures</p>	<ul style="list-style-type: none"> Abatement of non-contested serious hazards found in these industries will be achieved in 98% of cases. The number of fatalities and serious injuries/illnesses attributable to violations of the PSM standard at these facilities will be reduced compared to the average level for the past three years. 	<ul style="list-style-type: none"> 98% of serious, willful, and/or repeat violations (S/W/R) cited during FFY 2022, not currently under contest, were abated, as reflected in OIS as of December 6, 2022. There was one serious injury/illness attributable to violations of the PSM standard (T8 CCR 5189 and 5189.1) at a covered facility during CY 2021, as reflected by OIS reports and internal tracking by PSM management staff. 	<ul style="list-style-type: none"> This goal was achieved. This goal was achieved. The average number of fatalities and serious injuries/illnesses attributable to violations of the PSM standard at covered facilities for the past three years (2019 - 2021) is 2.6.²¹ However, it should be noted that current data shows two serious injuries/illnesses attributable to violations of the PSM standard (T8 CCR 5189 and 5189.1) at covered facilities during CY 2022, to date.

²¹ The number of fatalities and serious injuries/illnesses attributable to violation of the PSM standard for calendar years 2019, 2020 and 2021 were respectively 4, 3 and 1.

**Goal 2.1
Heat Illness Prevention Enforcement and Outreach to Employees and Employer Groups**

Strategic Goal: Promote workplace cultures that increase employee and employer awareness of, commitment to, and involvement in safety and health.

Performance Goal: Raise awareness of heat illness prevention among employees and employer groups in outdoor places of employment.

Performance Indicator Type	Indicator	Results	Comments												
Activity Measures	<ul style="list-style-type: none"> Conduct 2,300 inspections of outdoor places of employment where heat hazards are evaluated. Conduct a minimum of 100 outreach events where heat illness prevention will be discussed and emphasized. Distribute a minimum of 15,000 units of heat illness prevention outreach materials during inspections and outreach events. 	<ul style="list-style-type: none"> 3,376 inspections were conducted where outdoor heat hazards were evaluated (coded S 18 HEAT) during FFY 2022. 249 outreach events were conducted where heat illness was emphasized during FFY 2022. 48,700 units of heat illness prevention materials were distributed during outreach events alone. 	<ul style="list-style-type: none"> This goal was exceeded. This goal was exceeded. This goal was exceeded. 												
Outcome Measures	<ul style="list-style-type: none"> Abatement of non-contested heat hazards found in outdoor places of employment will be achieved in 95% of cases. Reduce the number of heat-related serious illnesses and fatalities occurring in outdoor places of employment, based on Cal/OSHA internal tracking, from the baseline average level for calendar years 2011-2013. 	<ul style="list-style-type: none"> 87% of 3395 violations, not currently under contest, cited during FFY 2022 (all industries) were abated, as reflected by OIS as of December 6, 2022. There number of confirmed heat-related illnesses and confirmed outdoor heat related fatalities were: <table border="1" style="margin-left: 40px;"> <thead> <tr> <th></th> <th>CY 2021</th> <th>CY 2022 YTD</th> <th>CY 2011-2013 Baseline Average²²</th> </tr> </thead> <tbody> <tr> <td>Confirmed Outdoor Heat Illnesses</td> <td>35</td> <td>55</td> <td>52</td> </tr> <tr> <td>Fatalities</td> <td>1</td> <td>1</td> <td>3</td> </tr> </tbody> </table> <p align="center">CY 2022YTD data as of December 8, 2022</p>		CY 2021	CY 2022 YTD	CY 2011-2013 Baseline Average ²²	Confirmed Outdoor Heat Illnesses	35	55	52	Fatalities	1	1	3	<ul style="list-style-type: none"> This goal was not met. Cal/OSHA prioritizes working with employers to obtain abatement. This goal was achieved when comparing baseline to CY 2021. Illnesses and fatalities in CY 2022 are still pending confirmation.
	CY 2021	CY 2022 YTD	CY 2011-2013 Baseline Average ²²												
Confirmed Outdoor Heat Illnesses	35	55	52												
Fatalities	1	1	3												

²² The number of heat-related illness for calendar years 2011, 2012 and 2013 based on Cal/OSHA internal tracking were respectively 54, 48 and 54. The number of worker fatalities due to outdoor heat exposure for calendar years 2011, 2012 and 2013 based on Cal/OSHA internal tracking were respectively 2, 3, and 4.

Goal 2.2
Educational Outreach to High-Risk, Vulnerable Employee Populations

Strategic Goal: Promote workplace cultures that increase employer and employee awareness of, commitment to, and involvement in safety and health.

Performance Goal: Promote, involve and communicate with high-risk vulnerable worker organizations and workers to increase their knowledge about workplace safety and health.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> Cal/OSHA Enforcement Branch staff and BOT staff will continue to distribute publications in English and other languages that detail the requirements of Cal/OSHA regulations including worker rights. These publications will be distributed electronically and through printed format depending on the requestor's needs or the type of event. Publication distribution will exceed 20,000 in total. Cal/OSHA staff will participate in 120 training and outreach events in FFY 2022 for high-risk, vulnerable workers organized by worker and community organizations University programs, state and local government, labor unions, and consulates. 	<ul style="list-style-type: none"> Over 128,500 physical publications and links to publications were distributed during FFY 2022 outreach events with vulnerable workers.²³ Cal/OSHA staff participated in 236 outreach events with vulnerable workers. 	<ul style="list-style-type: none"> This goal was exceeded. This goal was exceeded.

²³ Emailed links are not included in this sum, which only includes physical documents and links provided directly to participants during events.

Goal 2.2 Educational Outreach to High-Risk, Vulnerable Employee Populations (cont.)

Performance Indicator Type	Indicator	Results	Comments
<p>Outcome Measures</p>	<ul style="list-style-type: none"> • After attending the training and outreach events, at least 1,200 participants will have gained increased knowledge of workplace safety and health hazards, workers' rights and how to exercise those rights. An additional 20,000 workers will gain this knowledge through trainings conducted by event participants. • Develop an online training platform for employers and workers in English and Spanish. 	<ul style="list-style-type: none"> • 43,146 event participants were provided information about workplace health and safety hazards, workers' rights under the law and how to exercise these rights. About 114,440²⁴ workers gained health and safety knowledge through trainings conducted by event participants. • Cal/OSHA developed and continues to maintain its Cal/OSHA Training Academy training platform for employers and workers and contains materials in both English and Spanish. 	<ul style="list-style-type: none"> • This goal was exceeded. • This goal was achieved.

²⁴ This is based on surveying participants.

**Goal 2.3
Partnership Programs**

Strategic Goal: Promote workplace cultures that increase employer and employee awareness of, commitment to, and involvement in safety and health.

Performance Goal: Promote voluntary compliance by offering employers a variety of partnerships including recognition and exemption programs.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> Cal/VPP unit will hold three, and Cal/VPP Construction unit will hold two, workshops (via webinar) to promote these programs. 	<ul style="list-style-type: none"> The Cal/VPP unit held a one-day workshop via webinar in FFY 2022. This is the first since the beginning of the pandemic. No Cal/VPP Construction unit held. 	<ul style="list-style-type: none"> This goal was not met.
Outcome Measures	<ul style="list-style-type: none"> Six new establishments will be added into the Division's leadership level for fixed site establishments (Cal/VPP) and 14 will be renewed. Six new establishments will be added into the Division's leadership level partnership program for construction VPP worksites and two will be renewed. 	<ul style="list-style-type: none"> No new VPP establishments were added into the Divisions leadership level for fixed establishments but 15 were renewed in FFY 2022. Three new establishments were added into the Division's leadership level partnership program for construction VPP worksites, but no sites were renewed during FFY 2022. 	<ul style="list-style-type: none"> This goal was not met for new establishments. The goal to renew 14 establishments was surpassed slightly. Employers were less likely to seek participation in the VPP program as a result of the pandemic. Only 50% of the goal was met for the leadership level partnership. While there were no Cal/VPP construction renewals, existing projects were either completed or did not come up for renewal.

Goal 2.4 Alliances

Strategic Goal: Promote workplace cultures that increase employer and employee awareness of, commitment to, and involvement in safety and health.

Performance Goal: Join with groups committed to worker safety and health to leverage Cal/OSHA resources and expertise in reducing fatalities, illnesses and injuries in the workplace.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> Identify 10 potential participants that meet the requirements for alliances. Enter into a dialogue with six of the potential participants to explain the purposes, requirements and expectations of alliances, provide relevant information and explore a proposal that defines the projected participants and goals and objectives of the proposed alliance. Select three organizations with which to enter into alliance agreements. 	<ul style="list-style-type: none"> 36 potential participants were identified that meet the requirements for alliances. Cal/OSHA entered into a dialogue with 10 potential participants to explain the purposes, requirements, and expectations of alliances. Five organizations were selected for entering into alliance agreements. 	<ul style="list-style-type: none"> This goal was exceeded. This goal was exceeded. This goal was exceeded.
Outcome Measures	<ul style="list-style-type: none"> Cal/OSHA will sign two alliance agreements. Cal/OSHA and the alliance participants will develop written Work Plans describing the specific activities and products that the alliance will complete during the two-year alliance agreement. Cal/OSHA and the alliance participants will implement the actions agreed upon in the Work Plan. 	<ul style="list-style-type: none"> One Alliance Agreements was entered into in FFY 2022. These are two-year, renewable agreements. Work plans developed describing specific activities that will be completed during the two-year contract. Cal/OSHA and alliance participants agreed upon a date to begin implementing the actions agreed upon. 	<ul style="list-style-type: none"> This goal was not met. This goal was achieved. This goal was achieved.

Goal 2.5
Increase employers' awareness of activities protected from retaliation or discrimination

Strategic Goal: Promote workplace cultures that increase employer and employee awareness of, commitment to, and involvement in safety and health.

Performance Goal: Create a short video presentation and social media content on employer responsibilities to provide a safe and healthy environment free from the fear of retaliation for reporting an unsafe work condition or reporting a workplace injury.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • Create a short video describing employees' anti-retaliation rights under CA Labor Code sections 6310 and 6311. • Create an approved flyer with information on an employee's right to report unsafe work conditions or to report a workplace injury without fear of retaliation. • Create an infographic on workers' rights to report unsafe working conditions to post on DLSE's and DIR's Facebook, Instagram and Twitter platforms. 	<ul style="list-style-type: none"> • Videos in six languages have been created: English, Spanish, Punjabi, Mandarin, Cantonese and Chatino. • Flyer has been created and posted to DLSE's website at www.dir.ca.gov/dlse/employees-are-protected-osha-retaliation.pdf • Infographic was created and shared on DLSE's Facebook, Instagram and Twitter accounts on July 31, 2022, for National Whistleblower's Appreciation Day. 	<ul style="list-style-type: none"> • This goal was achieved. • This goal was achieved. • This goal was achieved.

Goal 2.5 Increase employers' awareness of activities protected from retaliation or discrimination (cont.)

Performance Indicator Type	Indicator	Results	Comments
<p>Outcome Measures</p>	<ul style="list-style-type: none"> • Post one informational video onto the DIR website describing employees' anti-retaliation rights under CA Labor Code sections 6310 and 6311. • Link approved flyer or infographic with information on an employee's right to report unsafe work conditions or to report a workplace injury without fear of retaliation on five social media platforms, association newsletters/emails, or other community websites. • Distribution of 100 flyers about protections for reporting workplace health and safety or injury concerns through on-site inspections or through correspondence with Licensing and Registration Unit. • Five settlement agreements confirming an employee's right to report unsafe work conditions or to report a workplace injury without fear of retaliation. • Five agreements to post a Notice in the workplace confirming an employee's right to report unsafe work conditions or to report a workplace injury without fear of retaliation. • Five agreements for employer provided training to staff regarding workplace health and safety rights and anti-retaliation laws protecting employees for reporting unsafe work conditions or workplace injuries. 	<ul style="list-style-type: none"> • Currently in the process of adding links to DLSE website. • Infographic was created and shared, but on fewer than five social medial platforms, association newsletters/emails, or other community websites. • DLSE Bureau of Field Enforcement (BOFE) have distributed an excess of 100 anti-retaliation flyers during on-site inspections. • At least five settlement agreements have been executed confirming an employee's right to report unsafe work conditions or to report a workplace injury without fear of retaliation. • At least 19 RCI/OSHA cases have settlement agreements that include a posting notice provision. • Two RCI/OSHA cases were identified where employers have agreed to additional training. 	<ul style="list-style-type: none"> • This goal was not met. • This goal was not met. • This goal was achieved. • This goal was achieved. Random sampling of RCI/OSHA settlements executed this year were reviewed. • This goal was achieved. • This goal was not met. DLSE determined that more training resources must be made available in order to include training requirements in settlement agreements and is working towards that goal.

**Goal 3.1
Timeliness of Inspections Opening and Citations Issuance**

Strategic Goal: Maximize Cal/OSHA's effectiveness and enhance public confidence.

Performance Goal: Respond effectively to mandates so that workers are provided full protection under Cal/OSHA by timely response to imminent hazards, to formal complaints and to work related fatality reports, as well as by timely issuance of citations, so that hazards could be timely corrected.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • Cal/OSHA district offices will run on a weekly basis the “UPA Tracking” report to monitor the unsatisfied complaints, and will run monthly the “UPA One Liner Detail” report to track complaint response time. • Cal/OSHA will use the SAMMs report to monitor, on a monthly basis, response times to imminent hazard complaints/referrals, as well as fatality reports, and correct data entry errors that occur. • Cal/OSHA district offices will run monthly the “Open Inspection” report and work with CSHOs to expedite citation issuance. • Cal/OSHA offices will monitor SAMMs and other management reports to track progress of citation lapse time. 	<ul style="list-style-type: none"> • Cal/OSHA district offices did not consistently run these reports on a weekly and monthly basis, respectively. • Cal/OSHA staff ran the SAMMs report to monitor response times to imminent hazard complaints/referrals, as well as fatality reports and corrected any data entry errors that occurred. • Cal/OSHA staff ran the OIS Open Inspections report on a monthly basis and worked with CSHOs to identify less complicated cases without serious citations with the goal of issuing citations as soon as possible. • Cal/OSHA staff ran the OIS SAMMs, and Open Inspection reports to track citation lapse time and other measures. 	<ul style="list-style-type: none"> • This goal was not met. Cal/OSHA’s hiring efforts, described above, include district office managers and clerical staff. This should improve report consistency in the future. • This goal was achieved. • This goal was achieved. • This goal was achieved.

Goal 3.1 Timeliness of Inspections Opening and Citations Issuance (cont.)

Performance Indicator Type	Indicator	Results	Comments									
<p>Outcome Measures</p>	<ul style="list-style-type: none"> Respond to formal serious complaints on average within 3 working days and to formal non-serious complaints on average within 14 calendar days of receipt of the complaint. Respond to 100% of imminent hazard complaints/referrals within one work day of receipt. Respond to 100% work related fatality reports within one work day of receipt. Decrease the average number of days for citations issuance for both safety and health inspections. Percentage of serious violations abated during inspection will be at least 68%. 	<ul style="list-style-type: none"> Cal/OSHA responded within an average of 8.60 work days to ALL serious complaints (formal and non-formal), and within 17.57 calendar days to ALL non-serious complaints (formal and non-formal), as reflected by CA SAMMs #CA-1A and CA-1B dated December 9, 2022. Cal/OSHA responded to 100% of imminent hazard complaints/referrals within one work day of receipt, as reflected by SAMMs #03 dated December 9, 2022. Cal/OSHA responded to 88.14% work related fatality reports within one work day of receipt, as reflected by SAMMs #10 dated December 9, 2022. Average citation lapse time as reported by OIS SAMMs #11 was as follows: <table border="1" data-bbox="997 954 1339 1060"> <thead> <tr> <th></th> <th>FFY 2021</th> <th>FFY 2022</th> </tr> </thead> <tbody> <tr> <td>Safety</td> <td>89.78</td> <td>76.65</td> </tr> <tr> <td>Health</td> <td>119.03</td> <td>78.08</td> </tr> </tbody> </table> <p>FFY 2021 OIS SAMMs #11 dated Nov. 30, 2021 FFY 2022 OIS SAMMs #11 dated Dec. 9, 2022</p> 74% of serious, willful, repeat (S/W/R) violations cited during FFY 2022 were abated on site, as reflected by OIS as of December 6, 2022. 		FFY 2021	FFY 2022	Safety	89.78	76.65	Health	119.03	78.08	<ul style="list-style-type: none"> This goal was not met. This goal was achieved. This goal was not met. There were 28 fatalities with response time greater than one work day of receipt. Many of these were COVID-19 related and/or required further information and/or guidance. This goal was achieved. Citation lapse time decreased for both safety and health inspections as compared to the previous FFY. This goal was achieved.
	FFY 2021	FFY 2022										
Safety	89.78	76.65										
Health	119.03	78.08										

Goal 3.2 Training and Professional Development

Strategic Goal: Maximize Cal/OSHA's effectiveness and enhance public confidence.

Performance Goal: Improve the skills, capabilities and technical knowledge of Cal/OSHA workforce.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • A professional development program for newly hired CSHOs will be developed and implemented during: <ul style="list-style-type: none"> ○ The first year ○ The first three years • Individual development plans (IDPs) for CSHOs after the first three years will continue to be developed by managers and submitted to the Professional Development and Training Unit (PDTU). • The development of all IDPs will be monitored and tracked by PDTU and management. • At least two technical courses will be offered. 	<ul style="list-style-type: none"> • A professional development program was implemented for newly hired CSHOs working for DOSH during: <ul style="list-style-type: none"> ○ The first year ○ The first three years • Individual development plans (IDPs) for CSHOs after the first three years developed by managers were not developed and submitted to PDTU for training analysis needs. • PDTU and management monitored and tracked the implementation of IDPs completed. • PDTU offered more than two technical courses to CSHOs this year. 	<ul style="list-style-type: none"> • This goal was achieved. • This goal was not met. • This goal was achieved. • This goal was achieved.
Outcome Measures	<ul style="list-style-type: none"> • 80% of the newly hired CSHOs will receive all the required training, during their first year. • 80% of the newly hired CSHOs will receive all the required training, during their first three years. • 80% of the CSHOs with more than three years of experience will attend at least four technical courses during, their first five years. 	<ul style="list-style-type: none"> • 100% of newly hired CSHOs received all the required training during their first year. • 90% of the newly hired CSHOs received all the required training during their first three years. • 100% of the CSHOs with more than three years of experience attended at least four technical courses. 	<ul style="list-style-type: none"> • This goal was exceeded. • This goal was exceeded. • This goal was exceeded.

GOAL 3.3
Communication with Stakeholders

Strategic Goal: Maximize Cal/OSHA's effectiveness and enhance public confidence.

Performance Goal: Enhance communication with industry, labor, and professional safety and health organizations.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • Hold the Cal/OSHA Advisory Committee meetings. • Hold exploratory and pre-rulemaking open public advisory meetings on a variety of topics. • Reach out to stakeholder groups for their feedback when developing fact sheets and other publications on various subjects. • Respond to requests from stakeholders for Cal/OSHA senior staff and management to participate and present at various events. 	<ul style="list-style-type: none"> • Cal/OSHA Advisory Committee meetings were held during FFY 2022. • Cal/OSHA held exploratory and pre-rulemaking open public advisory meetings on a variety of topics. • Stakeholders were identified and selected to participate in reviewing fact sheets and other publications on various subjects during development. • Cal/OSHA responded to requests from stakeholders for senior staff and managers to participate and present at various events throughout the state. 	<ul style="list-style-type: none"> • This goal was achieved.
Outcome Measures	<ul style="list-style-type: none"> • Hold at least two Cal/OSHA Advisory Committee meetings. • Hold at least six exploratory and pre-rulemaking open public advisory meetings on emerging topics. • All of the factsheets and publications developed by Cal/OSHA or under its direction will be subject to input from the interested stakeholders. • Cal/OSHA senior staff and management will participate and present at 12 events organized by stakeholder groups and organizations. 	<ul style="list-style-type: none"> • Three Cal/OSHA Advisory Committee meetings were held during FFY 2022. • Two exploratory and pre-rulemaking open public advisory meetings on emerging topics were held during FFY 2022. • Selected stakeholders reviewed and provided input on all of the new fact sheets and publications that were developed by Cal/OSHA or under its direction. • Senior staff and management participated and presented at 118 events organized by stakeholder groups and organizations. 	<ul style="list-style-type: none"> • This goal was exceeded. • This goal was not met. • This goal was achieved. • This goal was exceeded.