

State of California
Department of Industrial Relations
M e m o r a n d u m

To : ALL STANDARDS BOARD MEMBERS

Date : August 30, 2010

From : **Occupational Safety and Health Standards Board**
Michael J. Manieri Jr., Principal Engineer-Standards

Subject : **Personal Protective Devices- Hazard Assessment and Equipment Selection-HORCHER**

The following information is provided in regard to the proposed revisions to the California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 7, Article 10, Section 3380 and New Non-mandatory Appendix A of the General Industry Safety Orders.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues.

In preparing responses to an audit conducted by the United States Department of Labor, Occupational Safety and Health Administration (Federal OSHA), the Division of Occupational Safety and Health (Division) ascertained that California lacks provisions equivalent to 29 CFR 1910.132(d)-(f) and the related non-mandatory Appendix B. Those regulations and Appendix are in Federal Register, Volume 59, No. 66, pages 16344-16360. The Board proposes to adopt regulations which are the same as the federal regulation except for editorial and format differences.

These Federal standards specifically require employers to select and use personal protective equipment (PPE); communicate selection information to employees; verify that a workplace assessment has been performed through documentation; ensure that defective or damaged PPE is not used; to provide employee training on the use, care, and limitations of PPE including refresher training and documentation; and to verify that each affected employee has received and understood the training.

The proposed non-mandatory Appendix A to Article 10 is intended to provide compliance assistance for employers and employees in implementing requirements for a hazard assessment and the selection of personal protective equipment. The proposed Appendix A is slightly different from the Federal non-mandatory Appendix B. The deviation from federal language in non mandatory Appendix A exists with regard to Item No. 10, selection guidelines for foot protection. California references more recent editions of national consensus standards for foot protection than does Federal OSHA, which references an outdated ANSI Z41-1991 standard.

This deviation is to ensure consistency between Appendix A, Item No. 10 and Title 8 foot protection standards.

An informative Note has been proposed which refers to the Non-Mandatory Appendix A as an example of procedures that would comply with the assessment standards.

The proposed regulations are substantially the same as the final rule promulgated by Federal OSHA. Therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting a standard substantially the same as a federal standard. However, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written and oral comments at the public hearing is to: 1) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and, 2) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(3). The regulation may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

DOCUMENTS RELIED UPON

Federal Register, Volume 59, No. 66, pages 16334-16364 (Wednesday, April 6, 1994)

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

STRIKEOUT/UNDERLINE DRAFT PROPOSAL

See Attachment No. 1.

SIDE-BY-SIDE CODE COMPARISON WITH FEDERAL STANDARD

See Attachment No. 2.

COST ESTIMATES OF PROPOSED ACTION

While this proposal is administrative in nature and would affect a wide variety of general industry employers, it is similar in many respects to California's Injury and Illness Prevention Program (IIPP) standards to the extent that it requires employers to determine whether occupational safety and health hazards exist in their workplaces and to take action to mitigate the hazards; these actions include training, recordkeeping and communicating to employees how they are to protect themselves from the hazards. Therefore, Board staff believes any fiscal impact arising from this proposal should be minimal in comparison to the existing cost of doing

business and maintaining an IIPP program as required by General Industry Safety Orders Section 3203.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to the regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

Attachments