



Memorandum

Date: September 11, 2019

To: Christina Shupe, Executive Officer
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

From: Eric Berg, Deputy Chief *Eric Berg*
Research and Standards Unit
Division of Occupational Safety and Health

Re: Evaluation of Petition 576 to Amend Title 8 to Protect Employees in the Adult Film Industry

1.0 INTRODUCTION

On April 24, 2019, the Division of Occupational Safety and Health (Cal/OSHA) received a petition from an anonymous person. The petitioner requests protections for employee performers in the adult film industry (adult film workers) against violence, including sexual assault, and sexually transmitted infections.

Labor Code Section 142.2 permits interested persons to propose new or revised standards concerning occupational safety and health, and requires the Occupational Safety and Health Standards Board (Standards Board) to consider such proposals and render a decision no later than six months following receipt.

California Labor Code section 147 requires the Standards Board to refer to Cal/OSHA for evaluation any proposed occupational safety and health standard. Cal/OSHA is required to submit a report on the proposal within 60 days of receipt.

2.0 REGULATORY CHANGES REQUESTED BY THE PETITIONER TO PROTECT ADULT FILM WORKERS

The petitioner did not provide exact language for recommended changes to title 8. However, the petitioner did provide specifics on what protections they believe are needed for adult film workers, including the following:

2.1 A Cal/OSHA hotline specifically for adult film workers to file anonymous complaints.

- 2.2** A requirement that condoms, lubrication, and any other needed personal protective equipment (PPE) be provided to adult film workers. The petitioner identified the Mindgeek Corporation and XVideos (adult film streaming websites) as the entities that should be held responsible for provision of PPE.
- 2.3** A requirement that certain medical tests for sexually transmitted infections be made available to adult film workers and be paid for by the Mindgeek Corporation and XVideos.
- 2.4** A requirement that all medical tests be done by a laboratory certified by the Centers for Medicare and Medicaid Services in compliance with the Clinical Laboratory Improvement Amendment regulations and that the laboratories employ at least one licensed medical doctor at each testing facility.
- 2.5** A requirement that no third party, including producers, directors, or agents, may receive medical test results of any adult film worker.
- 2.6** A requirement that the Performer Availability Scheduling Services (PASS) medical testing currently administered by the Free Speech Coalition (an adult film employer association) be enhanced to improve communication with adult film workers.
- 2.7** A requirement that comprehensive health care insurance be provided to adult film workers. The petitioner identifies the Free Speech Coalition and the Adult Performer Advocacy Guild (labor union representing adult film performers) as the entities responsible for providing health care insurance to adult film workers.
- 2.8** A requirement that “*go-sees*” (in-person meetings or auditions before filming occurs between producers, directors, adult film performers, and others) take place in an office or registered business location with at least three persons present.
- 2.9** A requirement to prohibit racial discrimination in producing and marketing of adult film (prohibit the category of “*interracial*” as a sex act).
- 2.10** Addition of definitions, specific to adult film production, for the following terms: adult film director, adult film producer, employee, and “*go-see*.”
- 2.11** A requirement that a minimum 14 day abstinence period be observed when production holds or moratoriums are issued and that production holds or moratorium be reported to Cal/OSHA. The Free Speech Coalition issues production holds if there is a possible HIV exposure within the adult film community.¹
- 2.12** A requirement for a written “*consent contract*” before any sex acts are performed on camera to establish what sex acts are acceptable to the performers, what acts are not acceptable, methods of communication during filming, and preferences for personal protective equipment. Performers would have the right to use condoms. The contracts would be retained for at least ten years.

2.13 A requirement for a written “*Bill of Rights*” for adult film performers covering many topics. Some of the topics are the right of performers to:

- Know the content of a shoot before filming begins.
- Know the identity of other performers on the set before filming begins.
- Refuse a requested sexual act that the performer is not comfortable with.
- Specify the preferred method of protection against sexually transmitted infections.
- Request scene partners follow the same sexually transmitted safety protocols.
- Refuse to perform sexual acts off camera.
- Have access to employer provided lubricants, enemas, douches, baby wipes, and condoms.
- Express any health and safety concerns on set and have reasonable remedies carried out.
- Stop a scene if the performer feels uncomfortable or distressed.

2.14 A requirement for a “Performer Code of Conduct” covering the responsibilities of adult film performers such as:

- Complying with the sexual health protocols of the employer.
- Knowing what sexual acts are acceptable to scene partners prior to filming and respecting those limits.
- Not being under the influence of alcohol and illicit drugs.

3.0 BACKGROUND INFORMATION ON THE ADULT FILM INDUSTRY

As referred to in this evaluation, the adult film industry, also called the adult entertainment industry, consists of the production and consumption of sexually explicit video, film, interactive web-based media, still photography, drawing, paintings, animations, and other representations of a sexual subject matter. The content produced by the adult film industry is commonly referred to as pornography or porn.

3.1 General overview of the economics of the adult film industry

Prior to 2008, revenues in the adult film industry were largely generated from sales of DVDs, paid websites, pay-per-view, and other paid content. Since then, free streaming content over the internet from “*tube sites*”² has dominated the industry resulting in declining revenues from studio produced content.³

The content of the tube sites is uploaded by their users and the website owners earn revenues from ads shown between and during videos. However, adult film producers and content creators generally

do not receive revenue from the streaming websites. Owners of copyrighted materials have also found it difficult to get their material removed from the tube sites. This has resulted in lowered revenues from adult film studio productions for adult film producers, directors, and performers.

As a result of free streaming adult film media, the adult film industry has shifted to more personalized and less professional productions to generate revenue such as custom or made-to-order adult film videos, subscription based social media accounts, and live webcam shows.³

3.2 Mindgeek, XVideo, and other adult film streaming websites

The largest owner of adult video streaming websites that provide free content is Mindgeek. Mindgeek owns Pornhub, YouPorn, XTube, Redtube, ExtremeTube, SpankWire, Tube8, and many other adult film sites. Mindgeek operates close to one hundred websites that have over 115 million daily users. Mindgeek is one of the largest internet content provider worldwide; the tube sites operated by Mindgeek use more data than Twitter, Amazon, or Facebook.⁴ In addition to the tube sites, Mindgeek also owns adult film production companies and paid subscription websites such as Brazzers, Digital Playgroud, Mofos, MyDirtyHobbs, and Twistys.

Mindgeek does not have a monopoly of adult film tube sites as there are other large adult film tube sites not owned by Mindgeek. The largest adult film tube site is XVideo. XVideo has over 100 billion page views per month and is the tenth most popular website in the world. The third largest adult film tube site after XVideo and Pornhub (owned by Mindgeek) is xHamster with approximately 650 million viewers per month. XVideos and xHamster are not owned by Mindgeek.

4.0 HAZARDS IN IN THE ADULT FILM INDUSTRY ADDRESSED BY THE PETITION

The petition primarily addresses two workplace hazards in the adult film industry: workplace violence, including sexual assault, and sexually transmitted infections.

4.1 Workplace violence and sexual assault hazards in the adult film industry

Although workplace violence and sexual assault occurs in all industries, adult film performers are exceptionally vulnerable to sexual assault as the work involves performing a variety of sexual acts. Mike Stabile, Communications Director of the Free Speech Coalition, the adult film industry's trade and employer association explains the vulnerability:

Shoots can be fast-paced and stressful. You're naked and suddenly there's a director or a photographer attempting to position you and really private parts of your body. Most people on sets aren't ill intentioned, but that can be still be invasive or unwanted, and there's certainly an opportunity for someone to take liberties, or to grope. We need to make sure that performers have consent over what's done to them, especially in what might seem like gray areas.⁵

A standard industry practice in adult film is the list of “do’s and don’ts” and the “no list,” where performers establish what sexual acts are acceptable and what sexual acts are not acceptable to them, and a list of persons that the performer does not want to work with.

However, during filming, a performer may be subject to sexual acts, sometimes against their will, which are not acceptable to them (i.e. sexual assault).⁶ Performers may be pressured, coerced, or threatened to consent to perform unwanted sexual acts. Sexual assaults in the adult film industry have also been reported during auditions or “go-sees.”^{4,7} The petitioner provided several statements (via twitter) from multiple performers who endured sexual acts on and off set that were not acceptable to them.

In addition to sexual assault, performers may also be subject to violence and injury during filming, which they may or may not have consented to prior to filming. In the filming of scenes that portray physical abuse, actual physical violence can occur.^{4,5,6} The following excerpts from a twitter post from former adult film performer August Ames, who died tragically in 2017, exemplifies the problem:

The guy was way too rough with me. He was dragging me around and choked me with my panties, slamming my head down on the table and was just WAY too rough and the scene didn't even call for it....

...and nobody on set said s*** and I was literally in panic mode so I froze and didn't say no or stop. I just wanted it to be over...

...It felt like rape but I was in a “f*** it” mood and I was just pissed and wanted to get paid for the bulls*** I went through...

...I said that everything went fine and I had a good time. But I was holding back tears because you don't get paid if you say you were uncomfortable...⁸

4.2 Sexually transmitted infections in the adult film industry

Adult film industry workers face serious health risks due to potential infection with HIV and other pathogens transmitted through sexual contact. Infections that can be transmitted through sexual contact include the following:⁹

Sexually Transmitted Viruses

- Hepatitis A virus– Can cause liver failure.
- Hepatitis B virus– Can cause liver scarring (cirrhosis) and liver cancer.
- Hepatitis C virus – Can cause liver scarring (cirrhosis) and liver cancer.
- Herpes simplex virus – Can cause painful skin sores, bladder problems, meningitis, rectal inflammation, and serious infection of babies born to infected mothers.

- Human immunodeficiency virus (HIV) – Can harm the eyes, heart, kidneys, liver, bones, and brain, and can develop into acquired immunodeficiency syndrome (AIDS), which severely weakens the immune system and can lead to death.
- Human papillomavirus (HPV) – Can cause genital warts and cancer.

Other Types of Sexually Transmitted Infections

- Chlamydia – Can cause chronic pain, infertility, and potentially fatal ectopic pregnancy.
- Gonorrhea – Can cause chronic pain, infertility, and life-threatening infection.
- Syphilis – Can damage the heart, brain, and other organs.
- Trichomoniasis – Can cause genital inflammation in persons who develop symptoms and increase the risk of getting or spreading other infections, like HIV.

Several outbreaks of HIV have been recorded in the adult industry.¹⁰ During the 2004 HIV outbreak, the HIV transmission rate (also called attack rate) was 23 percent (3 of 13 women who performed sex acts with an HIV positive male tested positive for HIV, after having tested negative within the preceding 30 days). The investigators concluded the following:

The 23% attack rate in this cluster of infections was considerably higher than the most conservatively estimated risk of a single act of receptive anal or receptive vaginal sex with an HIV-infected partner of <0.5%... Risk of transmission was raised by at least three factors. First, the sexual contact involved in adult film production can be prolonged and traumatic, increasing the opportunity for infection to occur; notably in the case of these infections there was substantially increased risk of trauma to the anorectum (i.e. double-anal penetration). Second, most estimates of transmission risk are "per coital act" calculations. Risk for adult film workers is increased by their multiple coital and other exposures over a short period; the attack rate for this cluster represents a cumulative rather than per-act risk. Lastly, heterosexual transmissibility of HIV is greatest within the first months after infection.¹¹

Outbreaks of other sexually transmitted infections such as chlamydia, gonorrhea, herpes, syphilis, and human papillomavirus have also occurred in the adult film industry.^{12,13,14}

5.0 APPLICABLE TITLE 8 REQUIREMENTS

5.1 Workplace violence

Section 3342, Violence Prevention in Health Care, is the only title 8 regulation specific to workplace violence, but adult film work is not within the scope of the regulation.

Section 3203 requires employers to identify and evaluate workplace hazards, and then implement procedures to correct unsafe or unhealthy conditions, work practices, and work procedures. Section

3203 applies to all industries and Cal/OSHA has enforced this regulation to address workplace violence hazards. However, Cal/OSHA has not enforced section 3203 to address workplace violence issues in the adult film industry.

5.2 Bloodborne sexually transmitted infections

Section 5193, Bloodborne Pathogens, applies when employees may be occupationally exposed to blood or other potentially infectious materials (OPIM). Adult film productions are covered by section 5193 when adult film performers, as employees, are exposed to OPIM, such as semen and vaginal secretions, during sex acts. OPIM is defined in subsection 5193(b) as the following:

Section 5193. Bloodborne Pathogens.

(b) Definitions.

“Other Potentially Infectious Materials” means:

(1) The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any other body fluid that is visibly contaminated with blood such as saliva or vomitus, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids such as emergency response;

Section 5193 requires employers to:

- Establish, implement, and maintain an effective written exposure control plan to eliminate or minimize employee exposure to blood and OPIM (subsection 5193(c)(1));
 - Review the exposure control plan at least annually, and have an effective procedure for involving employees in the evaluation of the plan (subsections 5193(c)(1)(D) and (c)(1)(B)(8));
- Eliminate or minimize occupational exposure to blood or OPIM through the use of engineering and work practice controls (subsection 5193(d)(2));
- Provide, and enforce the use of personal protective equipment where exposure remains after the institution of engineering and work practice controls (subsection 5193(d)(4));
- Provide medical services, including post-exposure evaluation and follow-up, and provision of hepatitis B vaccinations (subsection 5193(f));
- Provide initial and annual training to employees (subsection 5193(g)(2));
- Keep and make available to employees certain exposure and medical records (subsection 5193(h)).

In the Treasure Island Decision After Reconsideration, the Occupational Safety and Health Appeals Board determined the section 5193 applies to the adult film industry and that barrier protection, such as condoms, is required during adult film production to eliminate or minimize contact with OPIM.¹⁵

6.0 APPLICABLE FEDERAL OSHA REGULATIONS

6.1 Workplace violence

Workplace violence is not specifically addressed by any current federal OSHA regulation. Under section 5(a)(1) of the Occupational Safety and Health Act, Federal OSHA issues general duty clause citations to address serious hazards where there is no applicable regulation such as workplace violence. However, Cal/OSHA is not aware of any federal OSHA citations to address violence in the adult film industry.

6.2 Bloodborne sexually transmitted infections

The federal bloodborne pathogens regulation, Code of Federal Regulations (CFR), title 29, section 1910.1030 is similar to title 8 section 5193. The federal standard requires employers to develop an exposure control plan, to utilize engineering and work practice controls to minimize or eliminate exposures to blood and OPIM, to provide and ensure that employees use personal protective equipment where hazards remain, and to provide training and medical services to employees who have occupational exposure.

7.0 PETITIONER'S BASIS FOR A REVISED REGULATION

The petition was submitted to address the following issues in the adult film industry:

- A slow but steady undercurrent of misconduct in the adult film industry.
- A culture of silence around this misconduct.

According to the petitioner, the petition, if made into a regulation, would help by:

- Establishing a framework for communication and professionalism within the adult film industry.
- Allowing workers to address serious workplace grievances.
- Assisting in the prevention of a culture of abuse in the adult film industry.

8.0 ANALYSIS OF THE PROPOSALS FROM THE PETITIONER

Due to the uniqueness of the adult film industry, specific regulations in title 8 would enhance protections of adult film workers. The regulations should include provisions that give adult film workers control over what acts they participate in and who they work with. This will help protect adult film workers from both workplace violence and infectious diseases.

However, certain portions of the petition are beyond the jurisdiction and authority of the Standards Board and Cal/OSHA. For these portions, legislative change would be needed before changes to title 8 could be considered.

8.1 Proposal to establish a Cal/OSHA hotline for adult film performers.

Cal/OSHA has established a webpage specific to health and safety in the adult film industry at <https://www.dir.ca.gov/dosh/adultfilmindustry.html> and provides specific Cal/OSHA phone number to call for complaints about adult film employee exposure to infectious disease. However, workplace violence issues are not addressed in the website or the provided phone number. Additional information would be beneficial to adult film workers.

8.2 Proposal to require the tube sites to provide condoms, lubrication, and other personal protective equipment to adult film performers

The petitioner requests that the tube sites such as Mindgeek, XVideo, XHamster, etc. pay for condoms and other personal protective equipment for performers for use during adult film productions. According to Appeals Board precedent, section 5193 currently requires employers to provide and ensure the use of condoms and personal protective equipment during adult film production to prevent exposure to bloodborne pathogens.

8.2.1 Only employers can be held responsible for complying with occupational safety and health regulations

The Labor Code limits Cal/OSHA enforcement of occupational safety and health regulations to employers:

LC §6304.5. It is the intent of the Legislature that the provisions of this division, and the occupational safety and health standards and orders promulgated under this code, **are applicable to proceedings against employers** [emphasis added] **for the exclusive purpose of maintaining and enforcing employee safety** [emphasis added].
* * * *

The California Appeals Court in Brock v. State of California (1978) also held that occupational safety and health regulations apply only to employers:

...Since third parties...are not in control of such...day-to-day operations ... the Legislature sensibly limited the applicability of the CAL/OSHA safety provisions to actions involving employers alone....

8.2.2 The tube sites are not employers of adult film performers

An employer is defined in Labor Code section 3300(c) as any person (which includes organizations, corporations and other entities), which has a natural person (i.e. an individual human being) in service.

3300. "Employer"
As used in this division, "employer" means:
* * * *

(c) Every person including any public service corporation, which has any natural

person in service.

* * * *

It is the intent of the Legislature that the amendments to this section enacted in the 1999 2000 Regular Session shall not abrogate the holding in Brock v. State of California (1978) 81 Cal.App.3d 752.

An employee is defined in Labor Code section 6304.1 as follows:

6304.1. "Employee"

(a) "Employee" means every person who is required or directed by any employer to engage in any employment or to go to work or be at any time in any place of employment.

* * * *

The tube sites function by having the finished product of an adult film production posted to their websites and making the content available to the public. If that is the extent of the tube sites involvement in adult film, then the tube sites would not be employers as this process does not involve direction over how adult film content is made nor direction of how employees work.

8.2.3 If performers are not employees of the tube sites, legislation would be needed to hold tube sites responsible for employee safety and health

Petitioner alleges that the tube sites do not pay for adult film content and are profiting from the labor of adult workers and directors and the property of adult film producers. The petitioner may wish to seek legislative changes to require the tube sites to pay for protective equipment needed during adult film production.

8.3 Proposal to require medical tests for sexually transmitted infection be made available to adult film performers and be paid for by the tube sites

8.3.1 Medical tests for sexually transmitted infections should be provided to adult film performers

Adult film workers face serious health risks due to potential infection with HIV and other pathogens transmitted through sexual contact. Testing for the pathogens listed below can detect a current infection.

- Hepatitis B virus
- Hepatitis C virus
- HIV
- Chlamydia
- Gonorrhea
- Syphilis

- Trichomoniasis

However, a negative test result is not a guarantee of the absence of infection, because tests often cannot detect infection in the earliest stages. Furthermore, even in later stages, a negative test result can sometimes be false, such as when the person is taking antiviral or antibiotic medications.

A title 8 regulation to protect adult film workers should require employers to offer and provide medical tests for sexually transmitted infections at no cost to workers. Such medical testing and proper follow-up medical treatment will help render adult film employment more safe and healthful consistent with the requirements of Labor Code section 6401:

6401. Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

In addition to providing the medical tests, training would be needed to help educate the workforce on possible false negative results.

8.3.2 The Standards Board cannot obligate non-employer tube sites to pay for medical testing

As discussed in part 8.2 of this evaluation above, if tube-sites are not employers of adult film workers, the Standards Board cannot require these entities to pay for medical tests under existing occupational health and safety laws. Legislative changes would be needed.

8.4 Proposal to require all medical tests be done by a laboratory certified by the Centers for Medicare and Medicaid Services in compliance with the Clinical Laboratory Improvement Amendment regulations and at least one licensed medical doctor be employed at each testing facility

8.4.1 Proposal that all laboratories performing medical tests be certified

All facilities in the United States that perform laboratory testing on human specimens for health assessment or the diagnosis, prevention, or treatment of disease are regulated under the Clinical Laboratory Improvement Amendments of 1988 (CLIA). The Centers for Medicare and Medicaid Services (CMMS) is the federal agency that enforces CLIA and regulates laboratories in the U.S. CMMS is part of the U.S. Department of Health and Human Services.

The petitioner's request to require all laboratories' that perform medical tests for adult film workers be certified by CMMS in compliance with CLIA is already required by federal law in CFR Title 42, Part 493.¹⁶ A reference to the federal requirements for laboratory certification in a title 8 regulation to protect adult film workers would meet the request of the petitioner.

8.4.2 Proposal that all laboratories that perform medical testing employ a licensed medical doctor

There are three categories of laboratory testing under CLIA; waived testing (simple tests with a low risk of error), moderate complexity testing, and high complexity testing.

There are no minimum requirements for personnel in laboratories that only perform waived testing. There are specific requirements and qualifications for personnel in laboratories that perform moderate and high complexity tests.

Laboratories that perform moderate complexity testing must have qualified personnel that fulfill the following functions: laboratory director, technical consultant, clinical consultant, and testing personnel. In addition to physicians, individuals with a certain science-based bachelor's degree and at least two years of laboratory training or experience may serve as a laboratory director, technical consultant, or clinical consultant. Testing personnel at laboratories that perform moderate complexity testing must have at least a high school diploma or equivalent, complete appropriate and documented training, and be certified by the laboratory director as having specific skills needed for the job.

Laboratories that perform high complexity testing have much more stringent personnel requirements, although they do not mandate that a physician be employed by such laboratories.

Given the serious health risks associated with certain sexually transmitted infections, Cal/OSHA believes that laboratories that perform medical testing for adult film workers should, at a minimum, meet the personnel requirements under CLIA for moderate complexity testing. A pilot study found that a substantial number of laboratories certified as doing only waived testing were found to be conducting non-waived tests or not following manufacturer's instructions.¹⁷

Although this does not meet the exact request of the petitioner that the laboratory staff include a physician, Cal/OSHA does not believe it is necessary to establish personnel qualifications for laboratories different from those already established under the CLIA regulations.

8.5 Proposal that no third party, including producers, directors, or agents, may receive medical test results of any adult film employee

The medical information of adult film workers is private under state statutes.¹⁸ A title 8 regulation to protect adult film workers should be consistent with state statutes and require that adult film workers' medical information be kept private and not shared with employers or others without the express written permission of the adult film worker.

8.6 Proposal that the Performer Availability Scheduling Services (PASS) medical testing currently used by the Free Speech Coalition (an adult film employer association) be enhanced to improve communication with adult film employees

A title 8 regulation to protect adult film workers should include specific provisions for communication between employers and employees regarding employee rights, medical testing, vaccinations, and medical privacy to ensure employees are able to make the best decisions to protect themselves from infectious diseases and workplace violence. See part 10.12 below for further details on recommendations for communication between adult film employers and workers.

Cal/OSHA does not require or endorse a specific medical testing service, such as PASS, which is administered by the Free Speech Coalition. The regulation should establish minimum requirements without specifying specific providers.

8.7 Proposal that comprehensive health care insurance be provided to adult film employees

The petitioner identifies the Free Speech Coalition and the Adult Performer Advocacy Guild as the entities that would be responsible for providing health care insurance to employees. Comprehensive health insurance provided by adult film employers for adult film employees would be beyond the jurisdiction and authority of the Standards Board and Cal/OSHA.

8.8 Proposal that “go-sees” take place in an office or registered business location with at least three persons present

A title 8 regulation to protect adult film workers should include provisions to protect workers from sexual assault during private meetings with employers and employer representative

8.9 Proposal to prohibit racial discrimination in producing and marketing of adult film

There are anecdotal accounts of racial discrimination in producing and marketing of adult film, including depiction of derogatory stereotypes and hate speech in scripts; and lower wages and refusal of work for African American performers.¹⁹

The Standards Board and Cal/OSHA do not have the authority to prevent racist content in adult film scripts.

Cal/OSHA also does not enforce rules to prevent on-the-job discrimination. Such enforcement is within the authority of the California Department of Fair Employment and Housing under the Fair Employment and Housing Act.

8.10 Proposal to add definitions, specific to adult film production, for the following terms: adult film director, adult film producer, employee, “go-see”

A title 8 regulation to protect adult film workers should define terms in the regulation that are specific to the industry.

8.11 Proposal that a minimum 14-day abstinence period be observed when production holds or moratoriums are issued by employers or employer associations and that that production holds and moratoriums be reported to Cal/OSHA.

A regulation to protect adult film workers should include provisions for how employers should protect employees after a possible HIV exposure or transmission occurs. However, Cal/OSHA may not have jurisdiction to halt production across the industry after such an event.

There are specific protections against the disclosure of persons who are tested for HIV (California Health and Safety Code section 120975). Cal/OSHA may be found in violation of that statute if it compels an adult film employer to report an HIV exposure to Cal/OSHA.

8.12 Proposal for a written “*consent contract*” before any sex acts are performed on camera. The contracts would be retained for at least ten years.

A regulation to protect adult film workers should contain requirements for establishing and implementing a system of informing adult film workers on the content of a scene and obtaining their consent before work begins. At a minimum, the following should be communicated to adult film workers, verbally and in writing, and their consent obtained, verbally and in writing, before photographing, filming, or the performing of sex acts:

- Sex acts that will be performed.
- Any objects, bondage, or devices that will be used in sex acts.
- Potential exposures to blood, OPIM, vomitus, urine, or feces.
- Methods used to prevent sexually transmitted infections, including a notation that section 5193 requires employers provide and ensure use of barrier protections, such as condoms, to eliminate or minimize exposure to blood or OPIM.
- Violence or violent acts that will be portrayed or used including biting, choking, hair pulling, kicking, punching, slapping, scratching, excessive physical force, animal attack, or use of an object as a weapon.
- The identity of producers, directors, and other performers directly involved in the scene.
- The rights of adult film workers as listed below in part 10.13.

8.13 A requirement for a written “*Bill of Rights*” for adult film performers

A regulation to protect adult film workers should include the right of employees to:

- Refuse sex acts the performer is not comfortable with.
- Refuse objects that the performer is not comfortable with to be used in sex acts.

- Be protected from sexually transmitted infections.
- Refuse to be subjected to violence, acts of violence, or portrayals of violence that the performer is not comfortable with.
- Refuse to perform with specific individuals (producers, directors, or other performers) who are on their “no list” (employers should be alerted to the fact that it is illegal to discriminate against a job applicant or employee because they are a member of a protected class.)
- Stop a scene if the performer feels uncomfortable or distressed.
- Refuse to perform sexual acts off camera.
- Express health and safety concerns on set and have reasonable remedies carried out.
- Be provided condoms and any other necessary items to protect employee safety and health such as lubricants, enemas, and douches.

8.14 Require a “Performer Code of Conduct” covering the responsibilities of adult film performers

A title 8 regulation to protect adult film workers should include a requirement for employers to implement a system for ensuring employees comply with safe and healthy work practices that includes training and communication on:

- 1.2** Complying with the employer’s sexual health protocols and title 8 requirements to protect adult film workers.
- 1.3** Knowing which sexual acts are acceptable to scene partners prior to filming and respecting those limits.
- 1.4** Not being under the influence of alcohol or illicit drugs.

9.0 CONCLUSION

Cal/OSHA recommends the petition be approved to the extent an advisory committee be convened by Cal/OSHA to create a regulation to protect adult film workers that contains the following elements:

- Adult film employers will provide all safeguards including barriers, personal protective equipment, training, and medical services at no cost to employees.
- All medical tests will be done by laboratories that, at a minimum, are certified to perform moderate complexity testing in accordance with CLIA.
- All personnel conducting and overseeing medical testing will be done by persons that are qualified, at a minimum, to perform moderately complex testing in accordance with CLIA.
- All medical services, including vaccines and tests, will be conducted and their results handled

in a manner that protects the privacy and confidentiality of adult film workers.

- Go-sees and pre-shoot meetings will be done in a manner that minimizes workplace violence risks to adult film workers.
- Verbal and written communication and consent provisions will be established to ensure that adult film workers know the contents of a scene before filming and that adult film workers consent to performing the scene prior to shooting or engaging in sex acts.
- Specific rights of adult film workers will be established including the right to refuse work they are not comfortable with.
- Adult film employers will establish systems for ensuring employees comply with safe and healthful work practices.

cc: Eric Berg
Chris Kirkham

¹ Lee, Eric Paul. “*Precautionary Production Hold Called.*” Aug 26, 2018. Free Speech Coalition. PASS Advisory, Press Release. <https://www.freespeechcoalition.com/blog/2018/08/26/precautionary-production-hold-called/>.

² Due to their how the free streaming websites function, which is similar to YouTube, these sites are known as “tube” sites.

³ Pinsker, Joe. “*The Hidden Economics of Porn. A gender-studies professor explains how the industry works.*” The Atlantic. April 4, 2016. <https://www.theatlantic.com/business/archive/2016/04/pornography-industry-economics-tarrant/476580/#ed%20note>.

Montgomery, Blake. “*Porn Stars Are Getting Personal to Combat Piracy.*” BuzzFeed News. July 24, 2018. <https://www.buzzfeednews.com/article/blakemontgomery/porn-pornhub-mindgeek-girlfriend-experience>.

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