

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD
PUBLIC MEETING, AND BUSINESS MEETING

In the Matter of:)
November 17, 2022 OSH)
Standards Board Meeting)
_____)

IN-PERSON & TELECONFERENCE

Attend the meeting in person:

Santa Clara City Hall
Council Chambers
1500 Warburton Avenue
Santa Clara, CA 95050

Attend the meeting via Video-conference

THURSDAY, November 17, 2022

10:00 A.M.

Reported by:
E. Hicks

CALIFORNIA REPORTING, LLC
229 Napa Street, Rodeo, California 94572 (510) 224-4476

APPEARANCES

BOARD MEMBERS PRESENT AT SANTA CLARA CITY HALL:

Dave Thomas, Chairman
Kathleen Crawford, Management Representative
Dave Harrison, Labor Representative
Nola Kennedy, Public Member

BOARD MEMBERS PRESENT VIA TELECONFERENCE:

Barbara Burgel, Occupational Health Representative
Chris Laszcz-Davis, Management Representative
Laura Stock, Occupational Safety Representative

BOARD STAFF PRESENT AT SANTA CLARA CITY HALL:

Christina Shupe, Executive Officer
Steve Smith, Principal Safety Engineer
Autumn Gonzalez, Chief Counsel
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant
Amalia Neidhardt, Senior Safety Engineer

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Lara Paskins, Staff Services Manager

ALSO PRESENT AT COUNTY ADMINISTRATION CENTER:

Eric Berg, Deputy Chief of Health, Cal/OSHA
Rachel Brill, Attorney, Cal/OSHA

TKO STAFF:

John E. Roensch
John M. Roensch

SPANISH INTERPRETERS:

Patricia Hyatt
Estela Moll

APPEARANCES (Cont.)

PUBLIC MEETING COMMENTERS: (*Online testimony)

Bryan Little, California Farm Bureau
Steve Johnson, Associated Roofing Contractors of the Bay Area Counties
Helen Cleary, Phylmar Regulatory Roundtable
*Robert Moutrie, California Chamber of Commerce
*Cameron Gill, Los Angeles Area Chamber of Commerce
*Jassy Grewal, UFCW Western States Council
Michael Miiller, California Association of Winegrape Growers
Kevin Bland, Western Steel Council, Residential Contractors Association, and California Framing Contractors Association
*Sandra Dickerson, Santa Maria Valley Chamber of Commerce & Your People Professionals, Inc.
*AnaStacia Nicol Wright, Worksafe
*Andrew Sommer, Conn Maciel Carey LLP on behalf of the California Employers COVID-19 Prevention Coalition
*Mitch Steiger, California Labor Federation
*Denise Kniter, L.A. County Business Federation (BizFed)
*Amy Russell, Paso Robles and Templeton Chamber of Commerce
*Victor Reyes-Morelos, The Valley Industry and Commerce Association
*Carmen Comsti, California Nurses Association
*Tresten Keys, Associated General Contractors of California
*Jack Blattner, Sacramento Metro Chamber

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Next Meeting: December 15, 2022
Rancho Cordova City Hall
Council Chambers
2729 Prospect Park Drive
Rancho Cordova, CA 95670
10:00 a.m.

Reporter's Certificate

Transcriber's Certificate

1 P R O C E E D I N G S

2 NOVEMBER 17, 2022

10:05 A.M.

3 CHAIR THOMAS: Good morning. This meeting of the
4 Occupational Safety and Health Standards Board is now
5 called the order. I'm Dave Thomas, Chairman. And the
6 other Board Members present here in Santa Clara are Mr.
7 Dave Harrison, Labor Representative, Ms. Kathleen Crawford,
8 Management Representative, Ms. Nola Kennedy, Public Member.
9 Board Members attending via teleconference are as Ms.
10 Barbara Burgel, Occupational Safety Representative, Ms.
11 Chris Laszcz-Davis, Management Representative, Ms. Laura
12 Stock, Occupational Safety Representative.

13 Present from our staff for today's meeting are
14 Ms. Christina Shupe, Executive Officer, Mr. Steve Smith,
15 Principal Safety Engineer, Ms. Autumn Gonzalez, Chief
16 Counsel, Mr. David Kernazitskas, Senior Safety Engineer,
17 Ms. Sarah Money, Executive Assistant, and Ms. Amelia
18 Neidhardt, Senior Safety Engineer who is providing
19 translation services for our commenters who are native
20 Spanish speakers. Also present are Mr. Eric Berg, via
21 WebEx, Deputy Chief of Health for Cal/OSHA, and Ms. Rachel
22 Brill, Cal/OSHA attorney. Also present, Mr. Jeff Killip,
23 California/OSHA chief. Supporting the meeting remotely is
24 Ms. Lara Paskins, Safety Services Manager.

25 Copies of the agenda and other materials related

6

1 for today's proceedings are available on the table near the
2 entrance to the room and are posted on the OSHSB website.
3 This meeting is also being live broadcast via video and
4 audio stream in both English and Spanish. Links to these
5 non-interactive live broadcasts can be accessed via the
6 meetings, notices, and petitions section on the main page
7 of the OSHSB website.

8 If you're participating today's meeting via
9 teleconference or videoconference, we are asking everyone
10 to place their phones or computers on mute and wait to
11 unmute until they are called on to speak. Those who are
12 unable to do so will be removed from the meeting to avoid
13 disruption. As reflected on the agenda, today's meeting
14 consists of two parts. First, we will hold a public
15 meeting to receive public comments or proposals on the
16 occupational safety and health matters. Anyone who would
17 like to address any occupational safety and health issues,
18 including any of the items on our Business Meeting agenda,
19 may do so when I invite public comment.

20 If you are participating via teleconference, or
21 video conference, the instructions for joining the public
22 comment queue can be found on the agenda. You may join by
23 clicking on the public comment queue link in the meetings
24 notices and petitions section on the OSHSB website, or by
25 calling 510-868-2730 to access the automated public comment

1 queue voicemail.

2 When public comment begins, we are going to
3 alternate between three in person and three remote
4 commenters. When I ask for public testimony, in-person
5 commenters should provide a completed speaker slip on the -
6 - to the staff person near to the podium and announce
7 themselves to the Board prior to delivering their comments.
8 For commenters attending via teleconference or web
9 conference, please listen for your name and an invitation
10 to speak. When it is your turn to address the Board,
11 unmute yourself if you're using WebEx, or dial star-six on
12 your phone to unmute yourself if you're using the
13 teleconference line.

14 We ask that all commenters do speak slowly and
15 clearly when addressing the Board. If you are commenting
16 via teleconference or videoconference, remember to mute
17 your phone or computer after commenting. Today's public
18 comment will be limited to two minutes per person, more or
19 less, and the public comment portion of the meeting will
20 extend -- be extended for up to two hours so that this
21 Board may hear from as many members from the public as is
22 feasible. Individual speakers and total public comment
23 time limits may be extended by the Board Chair. After the
24 public meeting is concluded, we will hold a business
25 meeting to act on those items listed on the business

1 meeting agenda.

2 We will now proceed to the public meeting.

3 Anyone who wishes to address the Board regarding matters
4 pertaining to occupational safety and health is invited to
5 comment. Except, however, the Board does not entertain
6 comments regarding variance matters. Board's variance
7 hearings are administrative hearings, where procedural due
8 process rights are carefully preserved, therefore we will
9 not grant request to address the Board on variance matters.

10 For commenters who are native Spanish speakers,
11 we are working with Ms. Amalia Neidhardt to provide
12 translation of their statements into English for the Board.
13 At this time Ms. Neidhardt will provide instructions to the
14 Spanish speaking commenters so they are aware of the public
15 comment process for today's meeting. Ms. Neidhart?

16 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH]

17 "Good morning, and thank you for participating in
18 today's Occupational Safety and Health Standards Board
19 public meeting. The Board Members present here in Santa
20 Clara are Mr. Dave Thomas, Labor Representative and
21 Chairman; Ms. Kathleen Crawford, Management Representative;
22 Mr. Dave Harrison, Labor Representative; and Ms. Nola
23 Kennedy, Public Member.

24 "Board Members attending via teleconference are
25 Ms. Barbara Burgel, Occupational Health Representative; Ms.

1 Chris Laszcz-Davis, Management Representative; and Ms.
2 Laura Stock, Occupational Safety Representative.

3 "This meeting is also being live broadcast via
4 video and audio stream in both English and Spanish. Links
5 to these non-interactive live broadcasts can be accessed
6 via the "Standards Board Updates" section at the top of the
7 main page of the OSHSB website.

8 "If you are participating in today's meeting via
9 teleconference or videoconference, please note that we have
10 limited capabilities for managing participation during
11 public comment periods. We are asking everyone who is not
12 speaking to place their phones or computers on mute and
13 wait to unmute until they are called to speak. Those who
14 are unable to do so will be removed from the meeting to
15 avoid disruption.

16 "As reflected on the agenda, today's meeting
17 consists of two parts. First, we will hold a public
18 meeting to receive public comments or proposals on
19 occupational safety and health matters.

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21 videoconference, the instructions for joining the public
22 comment queue can be found on the agenda. You may join by
23 clicking the public comment queue link in the "Standards
24 Board Updates" section at the top of the main page of the
25 OSHSB website, or by calling 510-868-2730 to access the

1 automated public comment queue voicemail.

2 "When public comment begins, we are going to be
3 alternating between three in-person and three remote
4 commenters. When I ask for public testimony, in-person
5 commenters should provide a completed request to speak slip
6 to the attendee near the podium and announce themselves to
7 the Board prior to delivering a comment.

8 "For our commenters attending via teleconference
9 or videoconference, listen for your name and an invitation
10 to speak. When it is your turn to address the Board,
11 please be sure to unmute yourself if you're using WebEx or
12 dial *6 on your phone to unmute yourself if you're using
13 the teleconference line.

14 "Please be sure to speak slowly and clearly when
15 addressing the Board, and if you are commenting via
16 teleconference or videoconference, remember to mute your
17 phone or computer after commenting. Please allow natural
18 breaks after every two sentences so that an English
19 translation of your statement may be provided to the Board.

20 "Today's public comment will be limited to four
21 minutes for speakers utilizing translation, and the public
22 comment portion of the meeting will extend for up to two
23 hours, so that the Board may hear from as many members of
24 the public as is feasible. The individual speaker and
25 total public comment time limits may be extended by the

1 Board Chair, if practicable.

2 "After the public meeting, we will hold a
3 Business Meeting to act on those items listed on the
4 Business Meeting agenda.

5 "Thank you."

6 CHAIR THOMAS: Thank you Ms. Neidhardt. If there
7 are any in-person participants who would like to comment on
8 any matters concerning Occupational Safety and Health, you
9 may begin lining up at this time -- you don't have to line
10 up, there's only a few. So, whoever's first would you
11 please -- we'll take the first three in person. So come up
12 to the mic right there and state your name and affiliation.

13 MR. LITTLE: All right.

14 CHAIR THOMAS: Thank you. Good morning.

15 MR. LITTLE: Good morning. Forgive me. I have
16 to do this because I wouldn't be able to see what I wanted
17 to say. And there's too much of it to just remember and
18 have memorized to be able to do that.

19 Well, good morning. Seems like I've done this
20 enough times now and been enough in your meetings that you
21 know who I am. But I'm Bryan Little with California Farm
22 Bureau. Farm Bureau is the largest general interest
23 agricultural organization in California. We represent
24 everybody who grows everything from avocados to zucchini,
25 stuff that grows on trees in the ground, walks around and

12

1 eats and poops and does all that stuff that farmers do in
2 the barnyard.

3 So just lots of -- a very broad, diverse
4 industry, about \$50 billion industry. If you put Texas and
5 Illinois together, you'd have stayed almost as big as
6 California but not quite. And so, I'm here -- wanted to
7 offer you some comments on the proposed permanent COVID-19
8 standard, and a couple of other little dogs and cats. So,
9 I'll try not to take too much of your time.

10 But, as I've done in the past, I would urge the
11 Board to refrain from imposing a permanent non-emergency
12 version of the COVID-19 standard. Governor Newsom
13 recognized the situation has changed radically in the last
14 year when he transitioned California to the only COVID-19
15 as an endemic disease, the safer plan, and announced his
16 intention to end the COVID-19 state of emergency in
17 February of next year.

18 When the agency and the Standards Board first
19 enacted emergency COVID-19 standards we did not have
20 vaccines or boosters or effective treatments available, all
21 of which we have today. Employers should not be expected
22 to continue to undertake extraordinary measures to protect
23 employees against a highly contagious disease that they are
24 as likely, or more likely, to be exposed to outside the
25 workplace as at the workplace. This is particularly true

1 now that most if not nearly all precautions against COVID
2 19 have been dropped in public non-workplace settings.

3 We all know that it's increasingly rare to see
4 the use of face coverings in public places, including in
5 meetings like this one. The last place I visited in months
6 where the use of face covering was compulsory, was a
7 medical office. I urge you to abandon the regulatory model
8 we've worked under for the last two and a half years. The
9 simple reason for this is that of course, times have
10 changed and we've all learned from the experience that even
11 emergency regulations with fairly short expiration periods
12 can't evolve fast enough to keep up with rapidly changing
13 science.

14 There's simply no way that a non-emergency
15 regulation with a two-year sunset can adapt and change.
16 The same reason that we all know you're unlikely to make
17 any further changes in the revisions that you've been
18 proposed today, because the regulatory process is simply
19 too rigid in its required timeframes to permit the agency
20 and the Board to act rapidly. This draft does reflect some
21 positive changes, like limiting the rule's duration to two
22 years, though a one-year duration would have been better.

23 In adopting a more performance-oriented injury
24 and illness prevention program like approach, the proposed
25 regulation also moves in a more positive direction. The

1 continuing demands by worker advocates to reinstate
2 exclusion pay in the non-emergency regulation is puzzling,
3 given the thorough explanation provided by representatives
4 of the agency at every Board meeting for the last several
5 months. We urge the agency to stand by its position that
6 exclusion pay is not necessary, given the legislature's
7 repeated actions to require employers to provide COVID-19
8 supplemental paid sick leave, as well as the panoply of
9 other benefits available to employees.

10 If, however, you feel compelled to move ahead
11 with the proposed non-emergency COVID-19 rule, the rule has
12 some problems you should attend to. Chief among them is
13 change to the definition of close contact, the 6-15-24.

14 CHAIR THOMAS: Just slow down a little bit.

15 MR. LITTLE: Sorry.

16 CHAIR THOMAS: That's all right all right.

17 MR. LITTLE: Sorry.

18 CHAIR THOMAS: Yeah.

19 CHAIR THOMAS: I -- yeah, I have been told I
20 might have a nice career as an auctioneer. I apologize for
21 going so fast --

22 CHAIR THOMAS: -- right or so. Oh, go ahead.

23 MR. LITTLE: Yes. So sorry. I will try to speak
24 more slowly. Just mentioning, and you know there was a lot
25 of discussion about it at the last Board meeting, about the

1 definition of close contact -- the 6-15-24 and the 100,000
2 cubic foot problem. I would be amazed if any business
3 person and any employer doesn't know precisely how many
4 square feet its business operations occupy. Cubic feet is
5 going to be a significantly different thing, because that
6 means you're gonna have various sizes of ceilings and other
7 types of facilities, open bay doors and other things like
8 that that are going to make the measurement of that a
9 little bit difficult.

10 And doing away with the six in the in the 6-15-
11 24, it's just kind of make it that much more difficult to
12 manage close contacts. And I think it's something that it
13 would be good if you could figure out a way to try to
14 address that. I mentioned very large buildings like
15 packing sheds, and that's gonna be in my last month's
16 remarks. And that's just another one of the ways that's
17 going to be -- continue to be problematic.

18 The proposed regulation also requires ongoing
19 contacts tracing. Like most COVID-19 precautions, contact
20 tracing has also largely been abandoned, except apparently
21 in workplaces if the draft regulation goes into effect.
22 CDPH no longer recommends contact tracing because of the
23 highly contagious but less virulent nature of the currently
24 circulating variants. CDPH recognized that contact tracing
25 is an inefficient use of the resources of local public

1 health departments. But the draft regulation seems not to
2 have recognized that.

3 Last, I would like to comment on a matter
4 appearing on the Board's agenda today, the Operating
5 Engineers appeal of the Monarch Tractor variance. This
6 variance appeal is not timely under the agency's rules for
7 managing variances, and the party appealing the variance is
8 not a party to the variance proceeding, as the Operating
9 Engineers don't represent any of the employees affected by
10 the variance. As such, the appeal is both untimely and
11 improper, and I urge the Board to dismiss this appeal.

12 Thank you very much for your time.

13 CHAIR THOMAS: Thank you, Bryan. Who do we have
14 next in person? Good morning.

15 MR. JOHNSON: Good morning, Mr. Chairman,
16 Cal/OSHA Standards Board Members. I'm Steve Johnson with
17 Associated Roofing Contractors of the Bay Area Counties.
18 And our association represents union roofers and water
19 proofers, primarily in the Bay Area. We have one
20 contractor in Fresno. That is a brave union holdout for
21 roofers and water proofers.

22 And so, I -- our association works closely with
23 Cal Chamber and we support Cal Chamber's stance on the on
24 the COVID requirements, and align with their thinking, and
25 we've had input and have signed on to their letters. So, I

17

1 won't spend a lot of time talking about that.

2 One of the things I wanted to get more
3 information about from Cal/OSHA is the upcoming lead
4 standard. And one of the things that really impacts
5 roofing operations is when we get regulations that change
6 and bring in the full force of 1532.1. And it's a
7 burdensome regulation.

8 And my concern is that one of the -- I blew the
9 dust off the advisory committee from 2015. And, Steve, I
10 feel your pain. I saw a lot of your comments in the
11 advisory committee.

12 Back to employers, you know, questions employers
13 had. Objective data is one of those things that I think
14 would be useful in establishing where, you know, what a
15 contractor is held to. And one of the -- in my reading of
16 the regulation, I'm having a hard time understanding if
17 objective data is -- can be used for initial
18 determinations. And my reading is that objective data
19 cannot be used as initial determinations.

20 So, if there are studies out there, if there are
21 -- if there's reliable data that shows that it's below a
22 certain threshold, PEL, whatever, you know, whatever that
23 action level, PEL, whatever that threshold is, I would urge
24 the positive use of objective data for things like lead
25 welding, for example, or lead flashings, and that's a big

18

1 concern that the roofing industry has.

2 So, I checked with NRCA, the National Roofing
3 Contractors Association, and they currently don't have
4 objective data for lashings. Because, you know, that
5 standard PEL is that if a roofer is applying lead
6 flashings, a -- or wearing a respirator generally as good
7 protection, they don't come in under that. They don't get
8 pulled into the -- all the requirements of the lead
9 standard for somebody like sandblasters, for example.

10 So, those are just some of the things that I've
11 been thinking about, but I'm trying to, I'm trying to -- I
12 know that I know that change is coming. I know that the
13 regulation is going to change. And I'm trying to get ahead
14 of what is going to be required for the roofing industry.

15 Because what I don't want is to have small to
16 medium sized contractors dragged into the full force of
17 1532.1, and go down roads they don't need to go down. Our
18 contractors, for the most part, provide protection already.
19 We're union roofing contractors, we strive to protect our
20 employees. And I think forcing contractors to hire NIH
21 full time, which is what it looks like this regulation is
22 going to do is -- really is going to impact operations.

23 The protections are there, the protections are
24 being used. Plenty of contractors who don't use those
25 protections, and those are the contractors that really need

1 to be targeted. But -- so those are some of my comments on
2 the lead standard. I'm looking for -- I'm looking for --
3 to you know, to partner. I'm looking to get out in front a
4 little bit. This standard has been in advisory committee
5 for a long, long time. And now it looks like it's coming
6 up again. So, those are my comments. Thank you.

7 CHAIR THOMAS: Thank you. Now who do we have
8 next from the audience? Last one. Go to the phone. Good
9 morning.

10 MS. CLEARY: Good morning. Good morning, Chair
11 Thomas, Board Members, my name is Helen Cleary and I'm the
12 director of PRR. We're an occupational safety and health
13 forum with various industries, individual members, REHS
14 professionals, and we have thousands of employees in
15 California across the state. Today, I'd like to comment on
16 the first aid 15-day proposal and the COVID-19 regulation.

17 Let's start with first aid. PRR was not
18 concerned with the 45-day proposal, and the public hearing
19 in April wasn't controversial. Discussion focused on some
20 clarification, changing physician to licensed healthcare
21 professional. However, when made-- when the 15-day notice
22 came out, there were major revisions that were proposed.
23 And this was completely unexpected, and it's raised major
24 concerns.

25 Members' primary concern is the new element to

1 have a specific type of container for first aid contents,
2 and the lack of time to prepare for the new inspection
3 requirement that was added. Both of these provisions have
4 significant operational and cost implications that were not
5 acknowledged or considered in the proposal, 15-day or the
6 45-day. We understand and we're glad to hear that there is
7 another 15-day notice that's in process. We're hopeful
8 those revisions will address PRR member concerns.

9 However, we think it's important to understand
10 what happened here. First aid revision started with a
11 petition for a logical change to make it easier to comply.
12 There was an advisory committee, they talked about
13 modernizing the first aid contents. Yet in a 15-day
14 notice, the proposal became burdensome and extremely
15 costly.

16 One of the most concerning aspects is that the
17 major changes proposed don't seem to be in response to a
18 significant problem. Unless the Division has injury and
19 illness data that says otherwise, as far as we understand,
20 first-aid kits in the field are not an issue. We're
21 hopeful that proposing new and significant changes was not
22 the intention, but we highlight the bigger picture today.

23 The petition for a simple change that would
24 maintain employee protections while simplifying the
25 compliance efforts shouldn't be an opportunity to overhaul

1 a rule. In our minds, this creates fear that this is
2 simulated collaboration and erodes the trust in the
3 process. And we want to point this out today in the hopes
4 of one, that it gets resolved, and two, that we're aware of
5 this for future rulemakings.

6 Regarding the COVID-19 non-emergency regulation,
7 we submitted comments last month in response to the 15-day
8 and the Board Member discussion at the last meeting. Our
9 position remains the same, and we urge that additional
10 changes are made before the Board votes. I'll touch
11 quickly on our primary concerns, some of them were
12 addressed by other stakeholders.

13 Using the 400,000 cubic feet as the only trigger
14 to determine a close contact, combined with the Division's
15 FAQ language that requires employers to test or exclude
16 workers, it's unreasonable, and for many reasons. One
17 example from our members is that some of them have clean
18 rooms with ventilation systems that are more effective than
19 HEPA filters. Yet, this has no bearing on how they're
20 required to manage close contacts in those spaces.

21 The Board should also consider the unintended
22 consequences of the time and resources that are being spent
23 by EHS professionals continuing to manage this rule,
24 including chasing down close contacts. This is time spent
25 away from proactively addressing other, what we believe are

1 more critical safety operations. Performing ergonomics
2 checks, you know, a proactive act, is one example of what
3 they would like to be doing.

4 In addition, the regulation doesn't support any
5 type of occupational risk assessment to determine actual
6 exposure or potential health risks, which is critical in an
7 effective occupational standard, especially in a non-
8 emergency rule. In response to the Board Member
9 discussions at the last meeting, for many reasons
10 highlighted in our comments, we don't believe that
11 exclusion pay should be included in the rule. There are
12 other financial resources available; pay protections in the
13 ATD standard not equivalent to exclusion pay in the ETS,
14 and there are no controls or limits on exclusion pay
15 requirements.

16 Finally, we appreciate and support Ms.
17 Crawford's request for an escape clause. California
18 employers cannot be responsible to enforce public health
19 guidance in their communities for the next two years. Data
20 and actual impact of COVID-19 in the community should be
21 driving our public policy decisions.

22 Thank you for your time today.

23 CHAIR THOMAS: Thank you. Maya, who do we have
24 as our first caller?

25 MS. MORSI: Up first is Robert Moutrie, with

1 California Chamber of Commerce.

2 CHAIR THOMAS: Robert, can you hear us?

3 (Off mic colloquy)

4 And don't speak too fast. Thank you.

5 MR. MOUTRIE: I will do my best. Good morning,
6 Chair Thomas, Board Members. Robert Moutrie for the
7 California Chamber of Commerce. Let me wish everyone an
8 early pleasant Thanksgiving. I hope you all have a good
9 time with your family next week. And I also understand
10 that today may be Board Member Crawford's birthday. I will
11 not mention or take any guess as to which specific birthday
12 that is. But if-

13 CHAIR THOMAS: That's a smart move on your part,
14 my friend.

15 MR. MOUTRIE: If that is the case, happy birthday
16 Kate. I would like to briefly touch on the approaching
17 vote for the COVID-19 regulation in December, and also
18 follow up on some of last meeting's discussion regarding
19 exclusion pay. I'd like to associate myself with the
20 comments of Bryan Little and his nascent career as an
21 auctioneer regarding opposition to extending the
22 regulation. I'd like to associate myself with the comments
23 of Steve Johnson related to the lead regulation, and also
24 Helen Cleary of PRR related to the first aid regulation
25 specifically.

1 Related to the COVID-19 regulation and that
2 extension, one piece that Mr. Little did not touch that I'd
3 like to flag specifically is related to comparative data
4 state to state. I mentioned this at last month's meeting
5 but like to highlight it again.

6 We do not see comparative data showing that
7 states without a COVID regulation in the workplace have
8 appreciably different rates. And this suggests to us what
9 I think many of us have been saying for some time. COVID-
10 19 is predominantly a social disease. And so given that
11 lack of data support, we do not think an extension,
12 particularly for two years, is appropriate.

13 Turning to the exclusion pay piece. In response
14 to some of the discussion last month, I want to emphasize a
15 couple of legal pieces. First, there was much discussion
16 last month related to whether workers were prohibit-- or
17 excuse me, were protected against discipline when taking
18 COVID-19 leave via sick leave, paid or unpaid, or on
19 disability. And there was a, I think there were repeated
20 comments that workers were not protected, and that was a
21 concern of the Board as I recall.

22 As an attorney, and I've spoken to other
23 attorneys to confirm this understanding, employees cannot
24 be disciplined while taking leave related to that cause.
25 So, an employee out on paid or unpaid sick leave related to

1 COVID-19 would not be subject to this, would not be subject
2 discipline there. In fact, if the employer were to take
3 such action, they would already be putting themselves at --
4 they would already be breaking the law and be subject to
5 suit and punishment that way. So, I want to make that
6 clear as a concern that was raised last month.

7 Then two, I will not go through all the buckets
8 of leave that are available. Those are detailed in our
9 October 31st letter, which was not intentionally sent on
10 Halloween but that was the timeline, which all of you
11 should have received a copy of.

12 I'd also like to flag again, as Mr. Little noted,
13 exclusion pay was an emergency measure. And you know,
14 opinions may differ about its appropriateness then, but we
15 are now three years into this, and we do not see it as the
16 same place we were in 2020-2021. There was a question last
17 meeting regarding precedent for exclusion pay and there was
18 some discussion, and the assertions that it has been --
19 there is clear precedent for Cal/OSHA to do this.

20 I'd like to briefly address that point. The two
21 areas where we see exclusion pay used are the ATD standard,
22 and lead and exposure-based regulations -- benzene, and
23 others like that. In both of those contexts, we see the
24 connection to the hazard really being part of your job. In
25 ATD for example, doctors and nurses are covered. Dentists

1 are not. Right? With the difference being that doctors
2 and nurses are expected as their job to confront this
3 disease. A dentist, though they may be exposed and maybe
4 in fact breathing directly in front of a member of the
5 public who may or may not bring something to their office,
6 is not the same risk as a doctor or a nurse. So, we really
7 see that as a distinction that is significant and shouldn't
8 kind of be ignored here.

9 Similarly with lead and benzene, right? The
10 employees who are actively disturbing lead as part of their
11 job are confronting this hazard. Right? And therefore, we
12 have much -- a thorough and testing protocol, and related
13 procedures. COVID-19 is not the same as a doctor who must
14 confront that disease everyday as part of their job. So,
15 though Cal/OSHA has used this tool in other regulations, we
16 do not see that as directly comparable here.

17 I would also like to -- turning to the 400,000
18 cubic foot measure for close contact. I'd like to echo
19 comments made a moment ago, and also like to thank Chair
20 Thomas, Member Laszcz-Davis, and Member Crawford, I
21 believe, at the last meeting, and apologies, Member Burgel
22 may also have raised this, in seeking clarification about
23 how that is to be applied. If the standard is extended in
24 December, we would certainly urge FAQs and ongoing
25 interface potentially with consultations to try to help

1 businesses understand how to work with that.

2 Because I can say that I've received many calls
3 from members saying, "How do I measure this?" You know,
4 "Doors open and doors close in my facility as people go in
5 and out. How am I supposed to draw that line?" And that
6 is something which, you know, the best employers are out
7 there trying to comply, but that is a confusing piece that
8 we are struggling with. So, we'd appreciate any ongoing
9 clarification there.

10 Last, I'd like to flag a procedural concern we
11 have. Which is, we are concerned that if -- with fif--
12 exclusion pay discussion last month, something that was not
13 raised that I think that -- at least I don't recall, which
14 should be included, is if we were to make that change in a
15 15-day notice. There was no discussion of implications, I
16 think for SRIA and for the timeline that would impose. It
17 is my understanding that if such a change were to be made,
18 that could require the revised SRIA, and that could push
19 out the adoption of any standard well past the December
20 meeting.

21 If it were to be pushed out, the concern -- I
22 should not say concern. The understanding of how that
23 would play out procedurally that I have, is now the Board
24 would not be able to adopt any permanent regulation in
25 December. The emergency regulation would expire, and there

1 would be a multi month gap. Once that gap occurs, it is
2 our understanding that the Board could not pick up and
3 transition the emergency regulations smoothly. The Board
4 would need to -- the Board and the Division would need to
5 begin a new rulemaking process. So that procedural issue
6 was not, I think, fully flushed out at the last meeting.
7 And I wanted to bring it to the Board's attention for
8 timing purposes, if the discussion goes that direction.

9 Thank you for your time, and again, I hope
10 everyone has a great Thanksgiving next week.

11 CHAIR THOMAS: Thank you. Maya, who do we have
12 up next?

13 MS. MORSI: Up next is Cameron Gill with the Los
14 Angeles Area Chamber of Commerce.

15 CHAIR THOMAS: Karen can hear us?

16 Hello?

17 Was it Karen Gill?

18 MS. MORSI: Cameron Gill with the Los Angeles
19 Area Chamber of Commerce.

20 CHAIR THOMAS: Cameron? Cameron, are you there?

21 MR. GILL: Can you hear me?

22 CHAIR THOMAS: Hello?

23 MR. GILL: Can you hear me?

24 CHAIR THOMAS: Yeah. Can you speak up just a
25 little bit? And do not talk too fast. And you may

1 continue.

2 MR. GILL: All right. I will. Hello. Good
3 morning. I am calling on behalf of the Los Angeles Area
4 Chamber of Commerce, an advocacy organization of over 1,400
5 members that includes business, nonprofits, and educational
6 institutions in the Los Angeles area. We align with the
7 comments from the California Chamber of Commerce. So, I'll
8 keep it short. And I also want to separately urge the
9 Board to not extend the COVID-19 regulation at the December
10 meeting. And if it is passed, to please consider leaving
11 exclusion pay out of the regulation. Thank you very much,
12 I hope you have a great day.

13 CHAIR THOMAS: Thank you. Who do we have next,
14 Maya?

15 MS. MORSI: Up next, we have Jassy Grewal, with
16 UFCW Western States Council. Jassy Grewal.

17 CHAIR THOMAS: Jassy, can you hear us?

18 MS. GREWAL: Yes, I can. Can you hear me?

19 CHAIR THOMAS: Yes, go right ahead.

20 MS. GREWAL: Wonderful. Good morning, Chair and
21 Standards Board Members. My name is Jassy Grewal, with the
22 UFCW Western States Council, here to testify on behalf of
23 our 180,000 frontline essential workers in California.
24 While UFCW remains disappointed that Cal/OSHA continues to
25 deny the inclusion of exclusion pay and job protections

30

1 back into the proposed non-emergency COVID-19 standard, we
2 strongly believe that the Standards Board should pass and
3 adopt the proposed standard before you today at the
4 appropriate time.

5 COVID-19 continues to pose a significant hazard
6 to workplaces across California, and we are extremely
7 concerned about the severity of this winter surge that is
8 already starting to show an uptick in cases at our
9 worksites. This winter surge is so concerning that
10 President Biden has decided to no longer end the federal
11 state of emergency to ensure there's access to testing and
12 vaccination.

13 We remain deeply concerned about what will happen
14 to workers health and employment come January 1st, 2023,
15 when the vast majority of workers will only have three paid
16 sick days as required by state law. I want to respond to a
17 comment around job protection and clarify our concerns.
18 Next year when workers do not have exclusion pay or
19 supplemental paid sick leave and will need to request
20 unpaid time off to recover from COVID-19 illness, they will
21 not have these job protections. They will need to use
22 unpaid time not protected by job protections.

23 We have employers who have already adopted
24 attendance policies for next year that will not allow
25 workers to use unpaid leave, or risk discipline or

1 termination from their employment. Workers have been
2 fortunate to have these job protections through the current
3 standard in place, and supplemental paid sick leave laws.
4 This is why UFCW implores the Standards Board to start the
5 development of a permanent general industry infectious
6 disease standard immediately, that will have the exclusion
7 pay and job protections for workers to tackle new airborne
8 infectious diseases, and when current infectious diseases
9 are spreading rampant through the community and our
10 workplaces.

11 It is imperative that a permanent infectious
12 disease standard have the basic protection for workers to
13 stay home while sick with pay, and without fear of losing
14 their jobs benefit and seniority. Workers cannot be left
15 without any protections or a COVID-19 standard, which is
16 why we strongly urge the Standards Board to adopt the
17 proposed standard before you today at the December Board
18 meeting. UFCW would like to express its extreme
19 appreciation and gratitude to the Chair and members of the
20 Standards Board for all their work throughout this
21 pandemic.

22 The pandemic is far from over for workers, and we
23 look forward to continuing this work with you all. Our
24 members did not sign up to work in industries -- or did not
25 sign up to work where airborne infectious diseases spread

1 rampant through their workplace, where they lose co-
2 workers, have lost family members to this disease. That is
3 not something that was ever in their job description.

4 Thank you for allowing me to make public comment
5 today.

6 CHAIR THOMAS: Thank you. We will go back to in-
7 person speakers. Who is next up at the mic?

8 Good morning.

9 MR. MIILLER: Good morning, Chair Members and
10 happy birthday. My name is Michael Miiller with the
11 California Association of Winegrape Growers, and I will
12 slow down. Thank you for that advice.

13 CHAIR THOMAS: Just act like there's a glass of
14 wine right there and you're gonna sip between. Go right
15 ahead.

16 MR. MIILLER: Even better advice. You've been
17 listening in to our Zoom meetings, haven't you? Thank you,
18 Board Members. I do want to align ourselves with the
19 comments from Rob Moutrie, from Helen Cleary, Bryan,
20 Little, relative to COVID. Specifically, we believe that
21 the continuation of a two-year-- what you are proposing to
22 be a two-year regulation on COVID is unnecessary. We
23 believe that the Board would be better positioned to follow
24 the advice from CDPH, from CDC, and from local health
25 experts.

1 I understand and appreciate that the Board
2 doesn't agree with those experts, but they are the experts.
3 They've done the research, and when you read what they have
4 concluded, including the Governor's statement that he wants
5 to end the pandemic emergency on February 28th, it becomes
6 clear that this regulation is no longer necessary.

7 Relative to the comment about a winter surge,
8 that only speaks to the social nature of the virus. It's
9 not a virus that is unique to the workplace. It is
10 something that we find ourselves in, exposed to in social
11 settings, in our schools, in our homes with family. It's
12 not something that is unique to the workplace. Treating it
13 as though it is a workplace risk ignores the social nature
14 of the virus. And so, we very much are opposed to it.

15 You have a letter that we submitted on October 31
16 And we (AUDIO CUT OUT 48:13)

17 BOARD MEMBER STOCK: The audio has gone off for
18 that testifier. If people could check on the audio for the
19 Zoom callers?

20 MS. PASKINS: Do we need to take a five-minute
21 break for technical issues.

22 BOARD MEMBER STOCK: Probably a good idea.

23 MS. PASKINS: TKO, can you weigh in, please?

24 It seems like we might have lost a feed to the
25 entire room. So, everyone hold tight, and I'll look into--

34

1 CHAIR THOMAS: Thought Halloween was over.

2 MS. PASKINS: There's Michael Miiller.

3 CHAIR THOMAS: Yeah, just let me make room --
4 people that are on remote, you may have to log back in.
5 They're good?

6 MS. PASKINS: I think we're good.

7 CHAIR THOMAS: Okay.

8 MS. SHUPE: They lost (INDISCERNIBLE).

9 CHAIR THOMAS: Okay. We're going to -- we'll
10 continue and hopefully everything will go along. Let's
11 continue.

12 MR. MIILLER: Okay. Thank you. The issue that I
13 would like to speak to today -- as you remember, I
14 repeatedly testified before the Board on the issue of
15 autonomous tractors and the self-propelled farm equipment
16 in general. I've repeatedly asked the Board to consider
17 updating section 3441 in Title 8 to allow for the full and
18 safe use of driver optional farm equipment.

19 Today I want to raise this issue relative to an
20 item on today's agenda, and also to ask the Board to take
21 action on this issue in a future Board Meeting. First, on
22 today's agenda, it includes a closed session item allowing
23 for the Board to discuss an appeal of a temporary variance.
24 I will absolutely respect the Chair's admonishment at the
25 beginning of the meeting. I will not speak to the merits

1 of the appeal or the matter of the appeal itself. I will
2 only speak to the to the issue of the process, and why are
3 -- we why we are concerned with this being on the agenda in
4 closed session.

5 By posting this as an agenda item in closed
6 session, it gives the appearance that the Board as a whole
7 may be conducting what amounts to a hearing on the appeal.
8 I realized that this was not the intent, but we are
9 concerned that if there's any discussion of the appeal in
10 closed session, it potentially creates a due process
11 problem for the parties to the appeal. Remember, in a
12 closed session of a meeting of this appeal, the Board
13 includes two panelists, three other Board Members who are
14 not panelists, and two Board Members who would need to
15 leave the room due to recusal issues.

16 If any Board Member who is not a panelist
17 discusses this appeal with either of the panelists, those
18 non-panelists Board Members may be inadvertently providing
19 testimony on the appeal. Under Title 8, section 423(a),
20 those Board Members would need to be sworn in and provide
21 testimony under penalty of perjury. Also under Title 8,
22 section 423(b), the parties to the case must be afforded an
23 opportunity to respond to that testimony.

24 Most importantly, by conducting the hearing-- the
25 meeting in closed session, the public has no way of

1 determining whether the Board has complied with the
2 requirements in Title 8, and in the Labor Code relative to
3 due process in consideration of the appeal. Therefore,
4 today I formally ask that matters on appeal, Item 1, 22-V-
5 054T, Operating Engineers Local 3, District 80, be removed
6 from today's closed session agenda.

7 A second request today is relative to potential
8 future Board meetings. Today, we formally ask that the
9 Board please be open to the need to gather information to
10 determine whether an amendment to section 3441 is needed.
11 Let me explain. Recently, NBC ran a tragic story about how
12 a young child was run over in the family's driveway by the
13 parent. It was an awful situation where the child died
14 because the mom was driving a high profile vehicle and did
15 not see the child directly in front of her. It was an
16 earth-shattering mistake, and my heart goes out to that
17 family. I cannot even imagine what they're going through.
18 It was terribly tragic.

19 To prevent this kind of horrific event from ever
20 happening again, there is an effort right now in Congress
21 to put sensors on the front, side, and back of all vehicles
22 sold in the United States -- new vehicles. The reason
23 they're doing this is because it will make that vehicle
24 safer. And by making it on all vehicles, it'll spread the
25 cost.

1 I bring this up today because this is the same
2 exact safety technology used in autonomous farm equipment
3 to make them safe. I also bring this up because contrary
4 to some prior testimony to the Board, autonomous farm
5 equipment is not automatically made safer by having someone
6 sitting on board with that equipment. That is simply not
7 true.

8 For vineyards around the world, their future is
9 in precision viticulture. Precision viticulture is the use
10 of science, robotics, and autonomous equipment to better
11 manage the vineyard. Precision viticulture is safer for
12 workers, it is safer for the environment, it provides for
13 increased conservation, and promotes a more thoughtful and
14 effective response to climate change, and helps growers
15 become better, even better stewards of the land.

16 State agencies like the Department of Pesticide
17 Regulation, CDFA, Air Resources Board, Department of Water
18 Resources, UC Davis, CSU Fresno, Cal Poly San Luis Obispo,
19 State Water Resources Control Board, Regional Water Boards
20 and Regional Air Boards, and others, all recognize the
21 potential value of precision viticulture. Interestingly,
22 in California, the single greatest obstacle to the full use
23 of precision viticulture, is section 3441. So, I would
24 like to formally ask the Board to bring in the experts and
25 begin gathering data and doing the research. And by all

1 means, bring in people from all sides of the issue. We
2 welcome organized labor unions and whatever data they may
3 have that they think makes this equipment unsafe. We
4 welcome those conversations.

5 There are several ways of gathering data and
6 information. Perhaps create an agenda item to put together
7 a panel of experts who can come to this Board, discuss the
8 science, discuss the technology with you in a formal open
9 setting, and answer any all questions you may have. We're
10 also happy to arrange demonstrations for you where you can
11 come out to vineyards and you can see how the equipment is
12 being tested and how it works.

13 This regulation was written 50 years ago, at a
14 time when power outlets in a car were considered a
15 cigarette lighter, and mobile communications typically
16 involve a CB radio. This regulation was written 20 years
17 from the development deployment of GPS technology. The
18 regulation is incredibly out of date. It's archaic. It's
19 a dinosaur. I'm convinced that if the Board takes the time
20 to gather the information, do the research, hear from the
21 experts, you will -- you'll find the need to change section
22 3441.

23 Thank you very much for your time, and I'm
24 available at any time to give you tours and show you all
25 the technology in use. Thank you.

1 CHAIR THOMAS: Thank you. Who do we have next
2 from the audience that would like to speak?

3 Good morning.

4 MR. BLAND: Good morning, Chair Thomas. Board
5 Members, Standards Board staff, Division. Kevin Bland,
6 representing the Residential Contractors Association, the
7 Western Steel Council and the California Framing
8 Contractors Association. Did I say that already?
9 Residential Contractors? CFCA? Anyway, you know the
10 alphabet that I always represent.

11 I'll be real quick. Want to just incorporate by
12 reference, and associate myself with the comments by Rob
13 Moutrie, Helen Cleary, Bryan Little, Steve Wilson, and
14 Michael Miller as it goes to the COVID issues. And in
15 particular, also with Ms. Cleary's comments regarding the
16 first aid. I just want to reiterate that first aid has
17 been around for a long time, been working on it for many
18 years. We thought we had it. The whole idea, to steal a
19 little bit of Helen's thunder, was it was to be simple,
20 right? Because the old reg was so archaic with the signed
21 doctor slip, and five bandages for six people, and four
22 gauze for 12 people, whatever it was on that big chart that
23 was in the regulation.

24 But this idea of the container that it's in now
25 having to be ANSI, the idea of the weekly inspections of

1 this being mandated, it got real complicated real quick
2 unexpectedly. So, I'm hoping we'll go back to the original
3 intent of the petition to make this simplified in the
4 context that it makes it easy for a contractor to comply
5 with it, easy to understand what they need to have in the
6 field, and provide guidance that it was intended to do with
7 some normalcy. So, I appreciate that, and hopefully we'll
8 reconsider that. I am happy to hear that there may be
9 another 15-day notice to maybe fix or undo the previous 15-
10 day notice. I'm not sure what it's going to have in it,
11 but we look forward to seeing that. So, thank you.

12 CHAIR THOMAS: Thank you. Do we have any other
13 members of the public that are here today that would like
14 to speak? No? Alright, Maya, who do we have next?

15 MS. MORSI: Up next, is Rebecca McCourt with
16 Ridgecrest Chamber of Commerce.

17 CHAIR THOMAS: Rebecca, can you hear us?
18 Rebecca? You might want to unmute yourself

19 MS. MORSI: Rebecca McCourt?

20 CHAIR THOMAS: Rebecca, can you hear us? Let's
21 move on to the next.

22 MS. MORSI: Up next is Sandra Dickerson with
23 Santa Maria Valley Chamber of Commerce, and Your People
24 Professionals.

25 CHAIR THOMAS: What was the first name again?

1 MS. MORSI: Sandra Dickerson.

2 CHAIR THOMAS: Sandra, can you hear us?

3 MS. DICKERSON: I can, thank you.

4 CHAIR THOMAS: Ah, there you are. Go ahead.

5 MS. DICKERSON: Good morning, Chair and Board
6 Members. I'm Sandra Dickerson, Chairman of the Board for
7 the Santa Maria Valley Chamber of Commerce, and owner of
8 Your People Professionals, an HR management company. With
9 over 100 small business clients from my own business, and
10 more than 800 who are our Chamber members, I have a good
11 understanding of the impact Cal/OSHA's COVID-19 regulation
12 has had.

13 Every business I've worked with has been very
14 conscientious about complying with this regulation since
15 they want to keep their employees safe. However, those
16 efforts have been very costly. Not just exclusion pay but
17 trying to maintain operations with employees required to be
18 off work, and we've had very few actual workplace
19 exposures. Now that California is substantially reopened,
20 it just does not make sense to continue imposing such a
21 time consuming and costly regulation on the business
22 community. Further, I urge you to not consider an
23 extension of exclusion pay. That's a cost the small
24 businesses just can't continue to absorb. Thank you.

25 CHAIR THOMAS: Thank you. Who do we have next,

42

1 Maya?

2 MS. MORSI: Anastacia Nicol Wright, with
3 Worksafe.

4 CHAIR THOMAS: Anastacia, can you hear us?

5 MS. WRIGHT: Yes, I can. One second, let me just
6 -

7 CHAIR THOMAS: Okay, good. Speak a little
8 louder, please.

9 MS. WRIGHT: Okay.

10 CHAIR THOMAS: And speak slowly. Thank you.

11 MS. WRIGHT: Yes. I don't believe my camera is
12 working, unfortunately. Can you still not hear me?

13 CHAIR THOMAS: Yeah, we can hear you.

14 MS. WRIGHT: Okay, so my camera's not working. I
15 apologize. I apologize. So, good morning to everybody
16 here, to the Board Members, and happy birthday to Member
17 Crawford. I'd like to start by acknowledging the last
18 public meeting, and the Board's strong support for
19 reincorporating exclusion pay into the two-year non-
20 emergency standard. The absence of exclusion pay from the
21 two-year standard will leave California's workers, most
22 vulnerable workers, with severely weakened COVID-19 safety
23 protections.

24 As we said before, studies have shown that 68
25 percent of COVID-19 deaths during the first year of the

1 pandemic were adults in low socioeconomic positions
2 employed in labor, service, and retail jobs that required
3 onsite attendance and prolonged close contact with others.
4 Exclusion pay allows workers to be able to afford to stay
5 home when they're sick with COVID. By removing exclusion
6 pay, we risk workers coming to work because they won't be
7 able to make ends meet if they take off from work. These
8 workers are our fast food employees, our grocery store
9 workers, our gas station attendants, our janitors. And not
10 only does staying home while sick with COVID, or not being
11 able to stay home while sick COVID, adversely affect them,
12 it also risks the health and safety of their colleagues and
13 the public that they're interfacing with.

14 Also, briefly, this is on the spots -- but in
15 response to some of the comments I've heard today, we've
16 all heard today, supplemental paid sick leave and exclusion
17 paid are not the same. Most importantly, supplemental sick
18 leave applies to employers with 26 or more employees. This
19 means that employers with 25 employees or less are exempt
20 from having to provide supplemental paid sick leave. And
21 per CalMatters and the February 2022 article, this
22 exemption, this being exempted for having to provide
23 supplemental paid sick leave, will apply to more than 90
24 percent of companies in California, and it leaves at least
25 one in four workers without access to this new supplemental

1 paid sick leave, per the data they found on California
2 Employments Development Department.

3 Furthermore, I believe it was said here today by
4 an employer representative that employers should not be
5 expected to protect workers from a highly contagious
6 disease that they can get outside of work or inside of
7 work. But I want to stress exclusion pay does not protect
8 people, workers from exposures outside of work.

9 CHAIR THOMAS: Anastacia, can you slow down just
10 a little bit?

11 MS. WRIGHT: Yes, I need to imagine I have a
12 glass of wine too.

13 (Laughter)

14 So, exclusion pay-

15 CHAIR THOMAS: Good advice, good advice.

16 MS. WRIGHT: -- exclusion pay does not protect
17 people from work -- exposures to COVID outside of work. It
18 only addresses work exposures that -- sorry, it only
19 addresses work exposures. And the fact that, as employers
20 have said today, this is a highly contagious virus,
21 employees may get the virus outside of work. Right? But
22 then they come to work and expose their colleagues to that
23 virus. Now that is an work exposure. The person who
24 obtained the virus outside of work likely wouldn't qualify
25 for exclusion pay. We're not talking about them. But

1 those that they exposed to COVID at work, that's the
2 exposure that we're talking about.

3 Moreover, sips wine, the big concern for many
4 worker advocates is that people who do not have leave,
5 maybe they have exhausted sick leave, vacation pay, they
6 don't qualify for supplemental paid sick leave, they'll be
7 ha-- they'll be forced to take a category legally known as
8 unpaid leave. And that will -- that opens the door to
9 leaving them -- leaving these employees not only unpaid,
10 but without job protections when they're required to
11 exclude themselves from work due to COVID.

12 Now I'm responding to this on the spot. I can get
13 you guys, the Board Members, whoever else wants, a memo at
14 a later date if it's necessary. But generally speaking,
15 from my understanding, an employee must be allowed to take
16 unpaid sick leave in a few circumstances. Right? And
17 that's going to be jury service, if they need to carry out
18 some magistrate duties, spending time with children under
19 18 for like parental bonding or adoption purposes, and
20 having to deal with an emergency involving a dependent.

21 Now, I know for a fact you are not your own
22 dependent because I've tried on my taxes and they told me
23 no. I couldn't carry myself. So, additionally, this virus
24 is highly contagious as I believe Mr. Little said, then
25 frontline workers are being forced to face the virus in

1 their jobs, as cashiers, clerks et cetera, who must
2 directly interface with the pu-(AUDIO CUT OUT)

3 CHAIR THOMAS: Ana, can you hear us? I think you
4 dropped out. We'll just go to the next because she must --
5 we lost her. I think we got the idea though.

6 MS. WRIGHT: --or the two-year agreement -

7 CHAIR THOMAS: Can you can you hear us Anastasia?

8 MS. WRIGHT: Yes.

9 CHAIR THOMAS: Anastasia, sorry,

10 MS. WRIGHT: Anastasia, but okay.

11 CHAIR THOMAS: Yeah, go ahead.

12 MS. WRIGHT: Would you like me to wrap up?

13 CHAIR THOMAS: Yeah, go ahead. You can continue.
14 We lost you for a minute. Go ahead.

15 MS. WRIGHT: Where did you guys last hear me?

16 CHAIR THOMAS: I can't remember.

17 (Laughter)

18 MS. WRIGHT: Oh, I'm hurt, I'm hurt. Okay, well,
19 let me just run it again. I was saying that I was
20 responding to some of the commentary that was made here
21 today, and saying that for worker advocates, one of the big
22 concerns is that the workers will have to take unpaid
23 leave. And this is what they take when they've exhausted
24 sick leave, vacation pay, they don't qualify for
25 supplemental paid sick leave.

1 They have to take the category known as unpaid
2 leave. And that can leave them without certain
3 protections, because unpaid leave, a lot of times, is
4 discretionary to be given by the employer. And it's
5 usually only required by law for things like jury service,
6 and to spend time with dependents, or if you need to take
7 time to care for a dependent, and I was saying that I know
8 you aren't your own dependent, because I've tried to do it
9 on my taxes and I couldn't carry myself.

10 So, if you need to take time off to care for a
11 dependent, that doesn't mean you get to take time off to
12 care for yourself when you're sick, and it might not
13 qualify under unpaid sick leave. Just highlighting the
14 point that while leave is protected, yes, but the issue
15 here is that the person, the worker, might not have actual
16 leave to take. They may have exhausted their leave and
17 have to rely on unpaid sick leave options, which by law, do
18 tend to carry less protection still.

19 And I was also saying that additionally, if the
20 virus is highly contagious as Mr. Little, I believe, was
21 saying, frontline workers would be more akin to doctors who
22 do have to face it as part of their day-to-day life at
23 work, because they have interface with the public who might
24 have the virus. and likely the public as was said today by
25 Mr. Moutrie, they don't have on masks. Now, sorry, I said

1 a lot. I heard a lot today, and I had a lot to respond.

2 But to be clear, Worksafe does support the
3 continuation of COVID protections and urges all Board
4 Members to vote for the two-year non-emergency standard.
5 Although a COVID 19 standard without exclusion pay will be
6 far less effective, we'd like to stress the two-year
7 standard still does require employers to engage in much
8 needed health and safety regulations that will aid in
9 keeping workers some amount of safer.

10 However, with the general industry standard, we
11 cannot make the same mistake. The general industry
12 standard must offer protections equal to, if not greater
13 than, the protection provided to health care workers in the
14 ATD. That standard provides paying job protections to
15 health care workers who must be excluded from work due to
16 exposure to an aerosol transmissible disease. And while
17 our nurses and doctors are a critical part of our society,
18 and they should be protected at all costs, the members of
19 our general workforce are just as important and deserving
20 of nothing less than provided in the ATD standard.

21 Before I conclude my comment, I'm almost done,
22 I'd like to leave those of us here today and watching with
23 a few questions that somebody should have to answer. What
24 are we saying to our community, to our essential workers to
25 our frontline workforce if we deny them the ability to

1 receive pay and job protections when they're forced to stay
2 home from work due to a workplace exposure to COVID-19?

3 How do we justify providing one segment of
4 society a workplace protection, but denying another segment
5 that there is a protection? That they're disposable? That
6 they're expendable members of our communities? What are we
7 saying here to California's most vulnerable workers?

8 Thank you all.

9 CHAIR THOMAS: Thank you. Who do we have next,
10 Maya?

11 MS. MORSI: Up next is Tresten Keys, with
12 Associated General Contractors of California. Tresten
13 Keys.

14 CHAIR THOMAS: Tresten, can you hear us?
15 Tresten, are you there?

16 Is that him on this -- is that him on the screen
17 or do we have him on the screen?

18 All right, we don't have him. So, let's move on
19 to the next person.

20 MS. MORSI: Up next is Andrew Sommer, California
21 Employers COVID-19 Protection Coalition.

22 CHAIR THOMAS: Andrew, can you hear us?

23 MR. SOMMER: Yes, I can, Chair. Andrew Summer,
24 from Conn Maciel Carey, on behalf of the California
25 Employers COVID-19 Prevention Coalition, which is a broad

1 array of California employers and trade organizations that
2 will be impacted by the COVID rulemaking.

3 I wanted to first address a comment raised by the
4 prior commenter regarding exclusion pay and alluding to the
5 ATD aerosol transmission to these standards. And they're -
6 - under that standard that the exclusion pay provisions is
7 under rather unique circumstances, not broad-based
8 impacting a broad array of employers as to any
9 circumstances for exclusion related to a transmittable
10 disease. In that case is specific to precautionary
11 removal. And it's focused on a healthcare setting where
12 there is a greater risk of transmission of a transmissible
13 disease in the workplace.

14 Here, the COVID standard is much farer reaching.
15 And you know, based on the studies and the science, you
16 know, there is considerable evidence of transmission
17 outside of the workplace. And oftentimes, blurred line as
18 to when transmission was in the workplace, or outside. In
19 any case, we join comments by Bryan Little and others that
20 the pandemic has evolved, both as to the conditions and the
21 science. And we urge the Board not to approve, adopt a
22 permanent COVID ruling at this point.

23 If a rule is to be adopted, we support Ms.
24 Crawford's request for an escape clause, that in the sunset
25 clause there should be a recognition of the state of

1 emergency and an opportunity to terminate the rule upon the
2 termination of that state of emergency. And if we don't
3 have an alternative triggering provision, we are locked
4 into this permanent rule for an extended period of time,
5 and would have to resume the rulemaking process to then
6 later terminate the rule.

7 We just don't believe that would be appropriate
8 here given the evolving nature of the pandemic, pandemic
9 conditions, and the lower rate of hospitalization,
10 fatalities, milder symptoms, vaccination, and all of these
11 circumstances that were considered by Governor Newsom in
12 announcing the end of the state of emergency, effective
13 February 28th.

14 Did want to briefly respond to inquiries made by
15 Members at the last meeting about benefits and legal
16 protections that are available outside of the COVID
17 rulemaking context. These are addressed in more detail in
18 our comments we submitted. To put briefly, you know, there
19 are benefits available in workers compensation: paid
20 statute, also state disability, paid family leave benefits,
21 and also of course, the paid sick leave statute, the
22 Healthy Workplace, Healthy Families Act, among other
23 entitlements.

24 But -- and also as for the job protection
25 question, that has been raised by commentators, as well Ms.

1 Stock at the last meeting. There are a variety of existing
2 statutes that provide job protection under California law,
3 that provide remedies for employees to go to the Labor
4 Commissioner, file a court proceeding to enforce them. And
5 they're quite robust.

6 And as for one of the last commenters there was a
7 note that taking time off would not be protected,
8 potentially. But that is not the case. If there's time
9 taken off for COVID purposes, there's a variety of laws
10 that would protect employees. Labor Code section 6310, as
11 an example, broadly prohibits employers from discriminating
12 against an employee for exercising rights under the
13 California OSH act. And that could be for taking a
14 mandated quarantine or isolation period off.

15 There's also protections under Labor Code section
16 6409.6, that prohibits employers from retaliating against
17 an employee for disclosing a positive COVID test, or being
18 diagnosed with COVID. There's also protections against
19 retaliation under the paid sick leave law, under California
20 law. And, protection under Labor Code 232.5 which
21 prohibits employers from discharging or otherwise
22 discriminating against employees for disclosing information
23 about the employee's working conditions. And it goes on
24 and on with California Family Rights Act, protections under
25 the California Fair Employment Housing Act as well.

1 And we, just in closing, we urge the Board not to
2 adopt a permanent rule here that's going to, based on
3 experience, cause us to be locked into a set of rules that
4 will become obsolete, or at least not effective given the
5 current nature of the pandemic and the circumstances that
6 we anticipate as this continues to wind down.

7 Thank you for your time.

8 CHAIR THOMAS: Thank you. Who do we have next,
9 Maya?

10 MS. MORSI: Just so everyone in WebEx can hear,
11 up next is Mitch Steiger, with California Labor Federation.

12 CHAIR THOMAS: Mitch, can you hear us?

13 MR. STEIGER: I can. Thank you, Chair Thomas,
14 and Members. Appreciate the opportunity to testify today.
15 Just wanted to speak mainly about the COVID-19 standard re-
16 adoption, but also a little bit about the autonomous
17 tractor issue.

18 On COVID-19. We would largely echo the comments
19 of UFCW and Worksafe, along the lines of all of the reasons
20 why exclusion pay was, is so important to keep in the
21 standard. We've, you know, at the risk of saying the same
22 thing that we've said in many of these meetings before, we
23 think the arguments behind keeping exclusion pay back in
24 the standard are at this point pretty clear and pretty hard
25 to deny. It's really important to keep in mind exactly

1 what we'd be doing by adopting this version that is before
2 you now. We would be requiring employers to exclude
3 workers who have tested positive, but not requiring
4 employers to pay those workers anything.

5 The reality of that being in place in law is that
6 workers will know that it's in place, they will hear about
7 it one way or another, and they will respond to it by
8 either not getting tested, or not telling their employer if
9 they are positive, because there are a lot of workers out
10 there who can't take that much time while not getting paid.
11 And they're just going to roll the dice, hope they don't
12 infect anyone, hope maybe it's not COVID, and just go to
13 work anyway.

14 This is going to cause outbreaks. This is going
15 to cause workers to get sick. It is going to cause
16 probably some workers to lose their lives. And it's going
17 -- the worst part is, it's going to cost employers more
18 than exclusion pay would. This is a lose-lose-lose, and we
19 will regret it if we go forward with this version.

20 That said, there are still a lot of very
21 important provisions in here that do a lot to help keep
22 workers safe from this virus. And so, whether exclusion
23 pay winds up in the final standard or not, it is critically
24 important that the Board adopt this on December 15th at the
25 next meeting, I think it's the 15th. That, if we lose

1 everything, if all of these standards go away at the same
2 time that supplemental paid sick leave goes away, and then
3 most of the public is no longer wearing masks. we are
4 setting the stage for a situation where we get right back
5 to where we were. Employers are correct that you are less
6 likely to die or be hospitalized than you were when this
7 first started.

8 But we -- I'm -- as far as I can remember I
9 haven't heard the phrase long-COVID even mentioned today.
10 This is something that has probably now affected over a
11 million Californians. A lot of those Californians got this
12 at work. This is an occupational illness that may never go
13 away. This could be a lifelong struggle that they have to
14 deal with. And this is something that we need to keep in
15 mind, it needs to be in the back of our minds with every
16 decision that we make about this standard, and is yet one
17 more reason why we need to keep this standard going.

18 Also wanted to mention this issue of the state of
19 emergency. That there is not, and there has never been any
20 connection between an emergency regulation and a state of
21 emergency. These are two very separate legal constructs
22 with very different definitions, different definitions of
23 emergency. One does not rely on the other. And the,
24 frankly, the attempts to confuse them are frustrating, that
25 one does not need the other.

1 And in fact, the press release announcing the
2 expiration of the state of emergency was very clear on this
3 point, and said that the threat remains very real, from the
4 top public health officials in the state of California.
5 Even those who are lifting the state of emergency disagree
6 with this point, and say that COVID is still very real, and
7 we still very much need to do what needs to be done to keep
8 everyone safe from this. And in our minds, that very much
9 includes keeping the COVID-19 standard in place for at
10 least the full two years, as planned to do currently. And
11 we strongly encourage the Board to do that in December.

12 And just really quickly on autonomous tractors.
13 We just wanted to clarify that we have always been very
14 strongly in support of whatever new safety features can be
15 put on any sort of vehicle that workers operate themselves,
16 that are operated around workers. All of these sensors
17 that reduce the likelihood of a worker getting hit, or a
18 worker getting run over, or anyone else getting hit or run
19 over, is something that we completely support.

20 And as far as the need for data to show that it
21 is safer to have a worker on there, I don't think we need
22 data to know that we have phones in our pockets that fail
23 all of the time. Our laptops fail all of the time. I even
24 have automatic braking on my car that is supposed to work.
25 And I think there's one time that it actually engaged when

1 it was supposed to. The rest of the time it hasn't. And
2 even those who manufacture these will very openly admit
3 that it doesn't work all the time. It's just kind of an
4 additional feature that they add to help keep people more
5 safe.

6 But we cannot move forward with a system that
7 just assumes all of this technology is going to work
8 perfectly all the time. Because as we're painfully aware,
9 it does not and it never will. And we think the basic
10 concept that it's always going to be the safest option to
11 have someone there that's focused on the work, that can be
12 there when the technology does fail, because it's going to,
13 in addition to whatever other technology we can come up
14 with to help minimize the likelihood of these sorts of
15 accidents, is the way that we think we should move forward
16 on that issue.

17 So -- but in conclusion, we would again just
18 strongly urge the Board to adopt the COVID-19 standard when
19 it comes before them in December, with or without exclusion
20 pay. Thank you

21 CHAIR THOMAS: Thank you. Who do we have next,
22 Maya?

23 MS. MORSI: Up next is Denise Kniter with L.A.
24 County Business Federation.

25 CHAIR THOMAS: Denise, can you hear us?

1 MS. KNITER: Yes, Good morning. Can you hear me?

2 CHAIR THOMAS: Yeah, we can. Go right ahead.

3 MS. KNITER: Good morning, Board. Thank you for
4 taking comment. I would like to agree with previous
5 statements made by Helen Cleary, Robert Moutrie, and the LA
6 Chamber of Commerce. We also signed on to the letter that
7 the California Chamber made in regards to the COVID
8 regulations. I don't want to repeat things that have
9 already been said. So, I just want to state that I am the
10 policy manager for the L.A. County Business Federation,
11 also known as BizFed, who --

12 CHAIR THOMAS: Can you slow down just a little
13 bit Denise?

14 MS. KNITER: Yes. Apologies.

15 CHAIR THOMAS: Take a sip, take a sip of wine.

16 MS. KNITER: Additional wine glass, yeah.

17 CHAIR THOMAS: Yeah.

18 MS. KNITER: So, I am the policy manager who
19 oversees the Small Business Committee for the L.A. County
20 Business Federation, sometimes we're called BizFed. And
21 so, I deal primarily in the L.A. region with small
22 businesses, and they make up over 80 percent of the
23 businesses locally.

24 I'd just like to state that, in addition to
25 previous concerns stated, if the goal of these regulations

1 is to increase worker safety, then the regulations also
2 need to be reasonably expected to be enforced. And a lot
3 of the temporary standards that are being discussed would
4 be really difficult, and often overlooked by the majority
5 of the employers in our region, who do not have the
6 resources, especially coming out of the initial phase of
7 the pandemic. The ones who have barely scraped by do not
8 have the resources to reasonably enforce the things that
9 would be expected of them in these new standards.

10 So, the question is, would these standards make
11 employees safer? And we can see from data that was
12 previously discussed in terms of other states who don't
13 have workplace regulations, that this isn't the primary
14 source of infection. And if the standards can't be
15 enforced by majority of employers in our area, but we know
16 that they will face repercussions for being unable to
17 enforce them and that the majority of our businesses would
18 face fees and other difficult situations. What is the
19 ultimate goal of these standards?

20 We absolutely agree with other data driven
21 practices such as vaccination, testing, masking. But we
22 know that even contact tracing, which was previously
23 discussed, is now seen as a waste of resources by people
24 who study and work in contact tracing. So, what is the
25 basis that we're using for these standards that should be

1 data driven?

2 And in addition, on the note of being data
3 driven, we'd like to echo previous sentiments that this
4 shouldn't be a two-year blanket sunset period on these
5 standards. We know COVID and the situations change much
6 more rapidly than that. When we have previously, at this
7 meeting, raised concerns as to where that two-year period
8 came from, the answer was a very short, "We have discussed
9 it with infectious disease experts."

10 I understand that not every process will be
11 extrapolated on. But we understand that this is -- when
12 we're going out and making policy that will affect real
13 people and real families, we need to consider the full
14 picture. And ultimately, the situation as it is now isn't
15 what it was two years ago, and should reflect that. And if
16 the situation changes or worsens, we should be able to
17 reflect that change. And the two-year sunset period
18 wouldn't allow for that.

19 So, I'll end my comment there. I appreciate you
20 allowing for comments, and we hope you'll take that into
21 consideration when it comes to a vote. Thank you.

22 CHAIR THOMAS: Thank you, Denise. Who do we have
23 next, Maya?

24 MS. MORSI: Up next is Amy Russell, with Paso
25 Robles and Templeton Chamber of Commerce.

1 CHAIR THOMAS: Amy, can you hear us?

2 Hello, Amy.

3 MS. RUSSELL: Can you hear me?

4 CHAIR THOMAS: Yeah. Amy, go ahead. Please
5 introduce yourself and your -- introduce yourself and your
6 affiliation, please. Thank you.

7 MS. RUSSELL: This is Amy Russell with the Paso
8 Robles and Templeton Chamber of Commerce. I am calling on,
9 obviously, on behalf of them. But regarding the COVID-19
10 regulation. So, we are located in San Luis Obispo County
11 on the Central Coast. And we align ourselves with the
12 comments from the California Chamber of Commerce. We do
13 urge the Board to not extend the COVID-19 regulation. If
14 it passed, please leave the exclusion pay out. I think
15 you've heard plenty of comments, so I'm not going to expand
16 on that unless you have any questions.

17 CHAIR THOMAS: No questions. Thank you.

18 MS. RUSSELL: Who do we have next, Maya?

19 MS. MORSI: Up next is Donna Duperron, with
20 Torrance Area Chamber of Commerce.

21 CHAIR THOMAS: Donna, can you hear us?

22 Hello, Donna?

23 Donna, are you there?

24 I guess not. Go on to the next.

25 MS. MORSI: Up next is an Anne Katten, with CRLA

1 Foundation.

2 CHAIR THOMAS: Anne, can --

3 MS. KATTEN: Yes, that works. Hi. Good morning.
4 Can you hear me?

5 CHAIR THOMAS: Good morning. We can hear you.
6 We don't see you, but we hear you.

7 MS. KATTEN: Yeah, the video didn't work. Sorry.
8 I'm Anne Katten, from California Rural Legal Assistance
9 Foundation, and we strongly support the comments of UFCW,
10 Worksafe, and the Labor Federation. And as we have
11 detailed in written comments, we feel that exclusion pay
12 should be added to the proposed regulation because many
13 workers do not have adequate sick leave or other leave
14 options. And we greatly appreciate that many of you share
15 this view and have spoken in support of it.

16 However, as proposed, the regulation is still
17 needed, and we urge your support even if exclusion pay
18 can't be added. In particular, the protections for
19 ventilation, or air filtering, and quarantine provision for
20 employee housing are really critical to maintain. We also
21 oppose the addition of any escape clause because of the
22 continuing threat of recurring surges, and because the plan
23 to end the emergency in February will put the state into a
24 different phase rather than ending all protections. And as
25 already mentioned, these are separate legal constructs.

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1 We join UFCW in urging that work begins soon on a
2 permanent general industry infectious disease standard that
3 includes job protection and exclusion pay provisions. It
4 is very important to have workplace protections designed by
5 Cal/OSHA, because Cal/OSHA is the expert in occupational
6 health.

7 And finally, regarding autonomous tractors, we
8 recognize that sensors and automatic braking can improve
9 safety if they operate as designed. But a driver is needed
10 because of the risk of computer glitches, and also of
11 malfunctions that can occur if sensors are knocked out of
12 place in rugged agricultural conditions, or are poorly
13 maintained.

14 Thank you very much for all your work and for the
15 opportunity to comment.

16 CHAIR THOMAS: Thank you, Anne. Who we have
17 next, Maya?

18 MS. MORSI: Up next is Donna Duperron, with
19 Torrance Area Chamber of Commerce.

20 CHAIR THOMAS: Donna, can you --

21 MS. DUPERRON: Yes --

22 CHAIR THOMAS: --we can hear you. Go ahead,
23 Donna. And make it slow. Take a sip of wine.

24 MS. DUPERON: Thank you. Welcome, Chair, and
25 Board. My name is Donna Duperon, CEO of the Torrance Area

1 Chamber of Commerce, an organization made up of 856
2 businesses. We too would like to align with comments made
3 by Rob, of the California Chamber of Commerce, and
4 separately urge the Board not to extend the COVID-19
5 regulation at your December meeting.

6 And if passed, please leave the exclusion pay out
7 of the regulation. Thank you so much.

8 CHAIR THOMAS: Thank you. How many callers do we
9 have left, Maya?

10 MS. MORSI: About five.

11 CHAIR THOMAS: Okay.

12 MS. MORSI: So far.

13 CHAIR THOMAS: Continue, go ahead.

14 MS. MORSI: Up next, Victor Reyes-Morelos, with
15 the Valley Industry and Commerce Association.

16 CHAIR THOMAS: Can you hear us?

17 MR. REYES-MORELOS: Hi, hello. Yes. Hi. Can
18 you hear me?

19 CHAIR THOMAS: There you go. Go ahead.

20 MR. REYES-MORELOS: Yes. Hi, good morning. My
21 name is Victor Reyes, and I'm calling on behalf of VICA,
22 the Valley Industry Commerce Association. I'm calling on
23 behalf of the business community to oppose extending the
24 California's COVID-19 regulation. It has been difficult to
25 keep up with and costly to implement over the course of the

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1 pandemic. But many of our businesses have done so and kept
2 up.

3 And now that the state is largely open, and the
4 state of emergency is ending in early 2023, we urge the
5 Board not to extend the COVID-19 regulation at your
6 December meeting, and emphasize the omission of exclusion
7 pay and the entirety of the regulation. Thank you.

8 CHAIR THOMAS: Thank you. Who do we have next?

9 MS. MORSI: Up next is Jack Blattner, with
10 Sacramento Metro Chamber.

11 CHAIR THOMAS: Jack. Can you hear?

12 Are you there, Jack?

13 Alright. Jack apparently is not there. We'll go
14 to the next caller.

15 MS. MORSI: Up -- Carmen Comsti, with California
16 Nurses Association.

17 CHAIR THOMAS: Carmen, can you hear us?

18 MS. COMSTI: Yes, I can hear you. Can you hear
19 me?

20 CHAIR THOMAS: Go ahead. Introduce yourself and
21 your affiliation please. Thank you.

22 MS. COMSTI: My name is Carmen Comsti, with the
23 California Nurses Association. Thank you, Chair Thomas and
24 Members. CNA supports the comments of the California Labor
25 Federation, Worksafe, UFCW, and CRLA Foundation on the two-

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1 year extension of the COVID standard. And we want to
2 reiterate our support of the prompt adoption of the
3 nonemergency COVID-19 standard.

4 The Standards Board must ensure that there is no
5 gap in coverage for workers, particularly as the triple
6 threat of COVID, RSV, and flu is beginning to rise in our
7 state. And in the past few weeks COVID positivity rates
8 have increased, demonstrating yet again that the risk of
9 COVID-19 for California's workers continues, regardless of
10 proclamations that the emergency is coming to an end. And
11 workers continue to have protracted struggles with long
12 COVID.

13 CNA reiterates our strong support of the return
14 of exclusion pay and other job protections for workers who
15 are required to be removed from the workplace under the
16 standard. And we thank that the Standards Board for your
17 clear support for exclusion pay at the last meeting.

18 And we also want to underscore what our
19 colleagues at UFCW and Worksafe clarified with the legal
20 protections for workers under our supplemental paid sick
21 leave laws, and the limitations of such sick-- paid sick
22 leave laws. Workers who are precautionarily removed under
23 the standard after an exposure must be protected under the
24 standard, particularly given that workers who are covered
25 by paid sick leave laws, and workers who would be required

1 to be removed under the standard, are different.

2 For CNA's members and healthcare settings,
3 exclusion pay and job protections for workers who are
4 removed under the aerosol transmissible disease standard
5 has been critical in ensuring that nurses and other health
6 care workers can protect themselves, their co-workers and
7 their patients from the continued spread of infectious
8 aerosol disease. Including deadly and serious diseases
9 like COVID-19. Ensuring that workers can stay at home
10 after an exposure helps ensure that the work -- that
11 workplace outbreaks are stopped in their tracks.

12 All workers in California deserve these same
13 protections that are in the current ATD standard. Nurses
14 know that they are not safe if their patients and community
15 lack these same protections. Nurses have felt the moral
16 distress that result when their employers forced them back
17 to work and they do not know whether they are exposing
18 their co-workers and patients to deadly disease. This was
19 particularly true when enforcement of the ATD standard was
20 lacking.

21 It is simply a matter of equity that all workers
22 have exclusion pay and job protections. COVID does not
23 distinguish between a hospital break room, a break room in
24 a retail setting, or a warehouse. And placing the burden
25 on workers to decide whether they must take a financial hit

1 to stay at home or expose their co-workers and customers is
2 devastating.

3 And, quickly, we just want to -- we are deeply
4 concerned with the recent proposed modifications with the
5 time to CDPH guidance. The Board must not allow the
6 standard -- must not abdicate its authority to determine
7 worker health and safety to an agency with different
8 priorities and expertise. CDPH develops its COVID-19
9 guidance based -- on the basis of what it determines is
10 best for public health, and may not prioritize other
11 considerations, or it may prioritize other considerations
12 over worker health and safety. They don't consider
13 hierarchy of controls. They don't consider reduction of
14 exposure to a hazard when it makes its guidance.

15 So again, we have our concerns with the 15-day
16 modification of the COVID 19 non-emergency standard, but we
17 want to urge the Standards Board to adopt the non-emergency
18 standard now at the December meeting, so that there is no
19 lapse in coverage. And we urge the Board to move forward
20 quickly on a general infectious disease standard as soon as
21 possible that includes exclusion pay and does not tie
22 itself to CDPH guidance.

23 Thank you for your time.

24 CHAIR THOMAS: Thank you. Who do we have next?

25 MS. MORSI: Up next is Tresten Keys, with

1 Associated General Contractors of California.

2 CHAIR THOMAS: Tresten, can you hear us?

3 MR. KEYS: Yes sir. Can you hear me?

4 CHAIR THOMAS: Yeah, go right ahead.

5 MR. KEYS: Perfect. Well, as you said, my name
6 is Tresten Keys, and I'm the regulatory and safety affairs
7 manager with Associated General Contractors of California.
8 A lot has been said and we would like to echo a lot of what
9 Robert Moutrie had said from Cal Chamber, especially when
10 it comes to exclusionary pay. He did mention those buckets
11 of benefits that we think are there and adequate for those
12 workers, and are in alignment with that, as well as his
13 comment on the SRIA, that needs to update that and have
14 that, and the timely manner behind that and what it would
15 take, and probably would lead to a inability to pass here
16 in December.

17 A lot has been said around close contacts, and I
18 think it's pretty adamant that that needs to be changed and
19 updated just a little bit. But speaking with our members,
20 here at AGC we represent mostly specializing in commercial
21 construction. And in that regulation and talks about an
22 indoor airspace. I would like, and what my questions have,
23 and what we've had through our committees is what we
24 consider an indoor airspace.

25 And I think, you know, the easiest example could

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1 be doing some type of curtain wall exterior skin building
2 and I have a leave out for a construction personnel hoist,
3 is that floor considered an indoor airspace? So, looking
4 at a definition for that would be great to help give out
5 some clarification. But with that, thank you for your time
6 and letting me make comments today.

7 CHAIR THOMAS: Thank you. Who do we have?

8 MS. MORSI: Up next is Rebecca McCourt with
9 Ridgecrest Chamber of Commerce.

10 CHAIR THOMAS: Rebecca, can you hear us?

11 Rebecca, are you there? If you are, unmute
12 yourself. If not, we'll go to the next caller.

13 MS. MORSI: The last one is Jack Blattner, with
14 Sacramento Metro Chamber.

15 CHAIR THOMAS: Are you with us?

16 MR. BLATTNER: Good morning. Yeah. Can you hear
17 me?

18 CHAIR THOMAS: Yeah, we can hear you.

19 MR. BLATTNER: Great. I'll be quick. This is
20 Jack Blattner with the Sacramento Metro Chamber. We
21 represent the business community in the six county
22 Sacramento region. In short, we agree with the comments
23 from Cal Chamber. We also urge the Board not to extend any
24 COVID regulations.

25 While these regulations were appropriate during

1 the height of the pandemic, they were also quite burdensome
2 on our small businesses here in the Sacramento region. Now
3 that California has opened back up and Governor Newsom has
4 announced that the COVID state of emergency will end in
5 February, and Californians, California and workers are back
6 to living normal post-pandemic lives, there is uncertainty
7 around where the exposure is coming from when they contract
8 COVID. And so, we think it makes particularly little sense
9 to adopt any form of exclusion pay in the coming year.
10 Thank you for your consideration.

11 CHAIR THOMAS: Thank you. Do we have any other
12 callers Maya, or are we done? All right. Is there anyone
13 in the audience that wishes to speak at this time?

14 If not, the Board appreciates your testimony.
15 Public Meeting is adjourned and the record is closed.
16 We're now going to take a 15-minute break. And then -- we
17 will recess for 15-minutes and we'll be back about five to
18 12. So, we are in recess. Thank you

19 (Off the record at 11:41 a.m.)

20 (On the record at 12:00 p.m.)

21 CHAIR THOMAS: Alright. We are back in session,
22 and we will now proceed with the business meeting. The
23 purpose of the business meeting is to allow the Board to
24 vote on the matters before it and to receive briefings from
25 staff regarding the issues listed on the business meeting

1 agenda. Public comment is not accepted during the Business
2 Meeting unless a member of the Board specifically requests
3 public input.

4 The proposed variance decisions for adoption are
5 listed on the consent calendar. Ms. Gonzalez, will you
6 please brief the Board?

7 MS. GONZALEZ: Yeah, thank you, Chair Thomas.
8 Today for your consideration and possible adoption, we have
9 variance decisions one through 62.

10 CHAIR THOMAS: Alright. So, at this time, I'll
11 entertain a motion to adopt variance decisions one through
12 62.

13 BOARD MEMBER HARRISON: Motion to approve.

14 BOARD MEMBER LASZCZ-DAVIS/BOARD MEMBER CRAWFORD:
15 Second.

16 CHAIR THOMAS: We have a motion and second. Do
17 we have any questions? Hearing none, Ms. Money, will you
18 please call the roll?

19 MS. MONEY: I have Mr. Harrison for the motion,
20 and Ms. Laszcz-Davis for --

21 CHAIR THOMAS: No. Kate.

22 MS. MONEY: Oh, Kate. Thank you.

23 BOARD MEMBER LASZCZ-DAVIS: That was Chris.

24 CHAIR THOMAS: Oh. You guys must have spoken at
25 exactly the same time in the same voice, because I didn't

1 hear anything.

2 BOARD MEMBER LASZCZ-DAVIS: It doesn't matter,
3 just pick one.

4 CHAIR THOMAS: Alright.

5 MS. MONEY: We'll go with Kate.

6 CHAIR THOMAS: Your choice, Sarah. Your choice.

7 BOARD MEMBER LASZCZ-DAVIS: It's her birthday,
8 give it to her.

9 CHAIR THOMAS: Yeah.

10 (Laughter)

11 MS. MONEY: So, I have a motion as Mr. Harrison,
12 and a second as Ms. Crawford.

13 Ms. Burgel?

14 BOARD MEMBER BURGEL: Aye.

15 MS. MONEY: Ms. Crawford.

16 BOARD MEMBER CRAWFORD: Aye.

17 MS. MONEY: Mr. Harrison.

18 BOARD MEMBER HARRISON: Aye.

19 MS. MONEY: Ms. Kennedy.

20 BOARD MEMBER KENNEDY: Aye.

21 MS. MONEY: Ms. Laszcz-Davis.

22 BOARD MEMBER LASZCZ-DAVIS: Aye.

23 MS. MONEY: Ms. Stock.

24 BOARD MEMBER STOCK: Aye.

25 MS. MONEY: Chairman Thomas?

1 CHAIR THOMAS: Aye.

2 And the motion passes. Thank you.

3 At this time, we're going to do the Executive
4 Officer's Report. Ms. Shupe, would you please brief the
5 Board?

6 MS. SHUPE: Thank you, Chair Thomas.

7 CHAIR THOMAS: It's not on. There it goes. It's
8 working.

9 MS. SHUPE: Is it working now?

10 CHAIR THOMAS: Yeah.

11 MS. SHUPE: Okay, great. Thank you, Chair
12 Thomas. I'd like to begin with recov-- covering an item
13 that the Board asked about last month. Last month, the
14 Board requested additional information on leave benefits
15 available for California workers. And to that end, I've
16 asked our chief counsel, Autumn Gonzalez, to prepare an
17 assembly of information for you. She has a slideshow,
18 which we'll go ahead and bring up now.

19 For those of you that -- in the audience who
20 might like a copy of this, you can send a request to
21 oshsb@dir.ca.gov. Thank you. Ms. Gonzalez?

22 MS. GONZALEZ: Thank you, Christina. And there's
23 also a handout. The Board Members have it in their
24 packets, and I think it's outside the door if you want to
25 grab one of these. And just a caveat, we could have a

1 week-long workshop training series on leave and benefits in
2 California and still not cover everything. I think
3 everyone here knows how complex it is and there's a lot to
4 talk about. So, this is a very short presentation just to
5 give an overview to kind of provide a little bit of
6 context.

7 (Pause)

8 Thank you. Our slideshow is cued up. Can we
9 move to the first slide? Thanks.

10 Paid sick leave. So, paid sick leave is
11 relatively new in California. I want to say this passed
12 within the last maybe five years. It's relatively recent.
13 And the way that this benefit works is employees accrue one
14 hour of leave per 30 hours worked. Employers have to
15 provide at least three days off, but that doesn't mean they
16 can't have more generous policies if they would like. And
17 this basically applies for most employers, most everybody
18 regardless of staff size, and it can also be used for
19 illness, medical or preventative care as well as care for
20 family members.

21 Let's go ahead and move to the next slide. Thank
22 you.

23 So, supplemental paid sick leave is the leave
24 that currently is going to be expiring on December 31st,
25 2022. Although that could always change, we could see

1 another extension. This provides up to 80 hours of leave
2 in addition to other paid sick leave available to an
3 employee. And 40 of those hours are for when someone
4 actually has COVID-19, they test positive, and then 40 of
5 those hours are for other things like taking care of a
6 family member, isolation and quarantine, things like that.
7 And employers with 26 or more employees are required to
8 provide this leave, so this is not for everyone. And like
9 I said it does expire at the end of this year currently.
10 Thank you.

11 STDI, our short-term disability insurance system.
12 This is available to California workers when they're unable
13 to work, or have to work less hours due to a disability.
14 So, the employee does have to have paid into the system
15 during the base period. And there are certain employees
16 who are excluded from this program as well. And it only
17 covers 60 to 70 percent of an employee's wages, so not
18 everything.

19 You can go ahead and go to the next one. Thank
20 you.

21 And then the accompaniment to that is the paid
22 family leave program, which is available to care for a
23 seriously ill family member. And again, you have to have
24 paid into the program during the base period. And it also,
25 same thing, 60 to 70 percent of weekly wages or a maximum

1 of eight weeks. And this can be taken intermittently, so
2 it doesn't have to be taken in one chunk.

3 Finally, we have -- we often call it FMLA leave,
4 or in California we call it CFRA leave. This is the 12
5 weeks of job protected leave, which people do often take
6 unpaid, but it can also be combined or work together with
7 paid forms of leave as well. All employers with five or
8 more employees have to provide this leave. And again, it
9 has to be ta-- it can be taken intermittently or it could
10 have been taken in one chunk and it can be car-- used to
11 care for a seriously ill family member. So, you have to
12 work about 24 hours a week, the total being 1,250 hours in
13 the previous year, to be covered by this kind of leave.
14 So, part time employees who don't work over 24 hours a
15 week, approximately, would not be covered by this program.

16 Next slide.

17 CHAIR THOMAS: Could you repeat that again?

18 MS. GONZALEZ: Yeah, so 1,250 hours of work in a
19 year doesn't -- I didn't have context for what that is.
20 But that's basically 24 hours a week of work. So, if
21 you're like totally part time, you work 20 hours a week,
22 you're not going to have enough hours to qualify for this.

23 CHAIR THOMAS: And that includes health care, but
24 does it include -- is it paid?

25 MS. GONZALEZ: It is not paid. Sometimes

1 employees can combine it with, for instance, if they have a
2 big pile of annual leave their employer might let them use
3 the two at the same time. But it is not a paid form of
4 leave.

5 CHAIR THOMAS: Thank you.

6 MS. GONZALEZ: You're welcome. And then next
7 slide.

8 And then this is just a little summation of
9 what's also on this page here. These are the different
10 kinds of leave benefits. Under the non-emergency
11 regulation that is on the website right now, under I think
12 it's 3205 c5e, correct me if I'm wrong, the employer has to
13 provide information on COVID related benefits including
14 sick leave and workers comp, if an employee is excluded
15 based on COVID or a close contact. So, there is the
16 requirement to provide information on this.

17 Next slide.

18 And then just generally, as all of the employers
19 here know, and we all know, we see these postings in our
20 workplace break rooms and other places employers are
21 required to post information about these programs. And
22 then there's also a very nice website that I put a link up
23 to that has this information on this chart, and a bunch of
24 other information in a multitude of languages that is
25 pretty helpful. So, I encourage taking a look at that.

1 And that's it.

2 CHAIR THOMAS: Thank you.

3 MS. GONZALEZ: You're welcome.

4 CHAIR THOMAS: Do we have any questions from the
5 Board Members?

6 BOARD MEMBER LASZCZ-DAVIS: This is Chris, I've
7 got a real quick question. Can you hear me?

8 CHAIR THOMAS: Yeah. We'll get to you in just a
9 second, Chris. Kate has --

10 BOARD MEMBER CRAWFORD: Sorry, Chris.

11 CHAIR THOMAS: Sorry, she was -- she jumped over
12 you again.

13 BOARD MEMBER CRAWFORD: It's that birthday thing.
14 Autumn, on the second to last slide, can you just
15 clarify. If you would bring that slide up for me?

16 Yep --

17 MS. GONZALEZ: Yeah, the employee leave benefits
18 slide. Yeah.

19 BOARD MEMBER CRAWFORD: So, time at position.
20 So, the third column over, the last piece, it says one year
21 plus 1,250 hours. So, is that telling me it's time and
22 hours? Or is that what -- do you know what that one-year
23 means? Is that one year at 1,250?

24 MS. GONZALEZ: It's one year at 1,250. And I
25 believe, but I would need to check this to be sure, but the

1 employer can choose whether it's a calendar year or if it's
2 the year that you got hired and you start.

3 BOARD MEMBER CRAWFORD: But it is time?

4 MS. GONZALEZ: Yeah.

5 BOARD MEMBER CRAWFORD: Okay, thank you.

6 CHAIR THOMAS: Chris, you had a question.

7 BOARD MEMBER LASZCZ-DAVIS: I did.

8 CHAIR THOMAS: Go ahead.

9 BOARD MEMBER LASZCZ-DAVIS: Just a couple of
10 questions with regard to it. As it turns out, what I was
11 not clear about was whether or not, given the cluster of
12 benefits and remedies that are available here, does it
13 really cover all workers? For example, contract employees
14 and contractors? That's one question. And if it doesn't,
15 then where do their remedies reside?

16 MS. GONZALEZ: Yeah, that's a great question. I
17 mean, in California, we have independent contractors, and
18 they are not always covered by many of these employees.
19 It's a moving target as far as what employees -- what
20 working people are considered independent contractors and
21 are not. So that would be the first group of people that
22 comes to my mind who would -- might not necessarily be able
23 to take advantage of a lot of these.

24 And then like we discussed with some of the other
25 programs. For some of them there's an hour cap, and if you

1 are a very part time person, for instance under CFRA if
2 you're working less than 24 hours a week, you're not going
3 to be eligible, either. And we know there are a lot of
4 workers out there who are working two or three jobs and
5 they might not be earning this -- the amount of hours
6 necessary to be able to take advantage of some of these
7 programs.

8 So, there's certainly gaps that exist right now.
9 Hopefully I answered your question?

10 BOARD MEMBER LASZCZ-DAVIS: Yeah, thank you,
11 Autumn.

12 BOARD MEMBER BURGEL: I have a question as well.

13 CHAIR THOMAS: Oh, go ahead.

14 BOARD MEMBER BURGEL: Dave. Is that all right?

15 CHAIR THOMAS: Yeah, go ahead.

16 BOARD MEMBER BURGEL: Thank you, Autumn. I
17 hadn't realized that the SDI did not require the seven-day
18 waiting period for COVID. So that's great news, that
19 there's no waiting period if it's a COVID diagnosis. But
20 what percent of employers in California do affiliate with
21 SDI, and those employees pay into SDI?

22 MS. GONZALEZ: That's a good question --

23 BOARD MEMBER BURGEL: I know at UCSF--

24 MS. GONZALEZ: -- that I don't have --

25 BOARD MEMBER BURGEL: -- for example, at UCSF we

1 did not have SDI. We didn't pay into SDI, so there's lots
2 of employers that don't have that ability to pay into SDI.
3 So, do you know the number of workers that are covered by
4 SDI?

5 MS. GONZALEZ: You know, I don't off the top of
6 my head. But I -- we were just having a sidebar right here
7 and state employees and federal employees, I believe, are
8 not covered by those programs. So, there are definitely
9 chunks of workers out there. And I can see if I can find a
10 number for you.

11 BOARD MEMBER BURGEL: Thank you. Also, from
12 workers compensation, we were talking about this at our
13 last meeting. And there is a three-day waiting period
14 before temporary disability comes in, and it's of course
15 limited. You don't get your full wages. It's up to 60
16 percent of your - of a state identified, determined
17 benefit. So, do you know if in workers compensation if
18 that three-day waiting period is voided if you have a COVID
19 exposure or illness that's work related?

20 MS. GONZALEZ: We have right now, it's Senate
21 Bill 1159, it does expire on January 1st, 2023. So, there
22 are some presumptions in place right now under workers comp
23 laws, and some other special benefits under the worker's
24 comp law that are going to expire pretty soon. I can send
25 you some information on that. I am not sure if it provides

1 a change in the waiting period.

2 BOARD MEMBER BURGEL: Right. And so, you know,
3 again, if workers qualify for their paid sick leave, they
4 could use -- usually employers allow them to use those
5 three days of paid sick time. Sometimes they don't. So,
6 there are some gaps. Again, just to clarify if somebody's
7 gotten exposed to COVID, that's not a workers compensation
8 claim at work. You have to have COVID infection to
9 qualify, or long COVID. And again, that three days would
10 be voided if they were hospitalized for COVID. So, a COVID
11 exposure and not being able to go to work wouldn't be
12 covered under workers compensation. So that's a gap in the
13 workers comp system.

14 So, I know that employers, you know, don't want
15 to use -- you know, have exclusion pay included in the
16 standard. But there are groups of employees that are not
17 covered by any of these benefits. I'm thinking of my taxi
18 driver population that I've done a lot of research with.
19 Taxi drivers are often -- again, they're considered
20 independent contractors. And I don't know about Lyft and
21 Uber drivers, you know, are they employees? I know there's
22 been some case law around that.

23 So, I do think there are groups of low wage
24 workers that are missed, and certainly as you brought up
25 those part time workers who don't have any coverage. And I

1 brought up my sister's example at the last meeting where
2 she lives in Michigan, but she was laid off and furloughed
3 at Macy's. And then she didn't have -- she had to have
4 heart surgery and didn't have FMLA coverage because they
5 were laid off for three months and she hadn't met the 1,250
6 hours in that prior account calendar year. So, she did not
7 have job protection when she had to go out to have major
8 heart surgery.

9 So, it's fascinating. The gaps in these programs
10 with large employers. And of course, the biggest gaps are
11 individuals who work for small employers or who are part
12 time workers. So, thank you for presenting this
13 information.

14 BOARD MEMBER STOCK: This is Laura. If I could
15 make a comment too thank you Autumn, this is really
16 helpful. And just to kind of build on both the question
17 Chris had about who does this leave out and what you're
18 saying, Barbara, about who it leaves out. You know,
19 there's many -- as you say, there's a lot of people who are
20 not eligible for any of those. But even the most
21 consistent right that people have is to the three days a
22 year for paid sick leave. You know, and again, not
23 everybody is entitled to that, but I just want to highlight
24 how insufficient that is.

25 I mean, really, in general, people need to have

1 more guaranteed paid sick leave, and it's completely
2 insufficient for COVID, which is -- lasts for more than
3 three days and could happen more than once in a given year.
4 So, I think that the presentation that we're seeing is
5 really highlighting that there is really, even though there
6 are existing and important benefits, there are very, very
7 important gaps. And we've heard a lot of people who have
8 been testifying today from part time or others who are
9 experiencing that gap. So, I think this is -- provides
10 some more information to confirm that. So, thank you,
11 Autumn.

12 MS. GONZALEZ: Thank you.

13 CHAIR THOMAS: Thanks, Laura. Any other
14 questions that the Board may have?

15 BOARD MEMBER BURGEL: Is this the time to bring
16 up comments about the COVID standard? Or are we still in
17 executive director report time?

18 CHAIR THOMAS: We're still on the executive
19 director's report. But we can do that at some point in the
20 meeting.

21 BOARD MEMBER BURGEL: Thank you.

22 MS. SHUPE: We wanted the Board to have this
23 information before you went into the Division's reports.

24 BOARD MEMBER BURGEL: Great, thank you.

25 CHAIR THOMAS: So, you want to continue with your

1 report, Christina?

2 MS. SHUPE: Thank you, Chair Thomas. I just have
3 a few more things to cover for the Board. I wanted to let
4 you know that your staff participated in the Cal/OSHA
5 advisory committee meeting on November 3rd, where we
6 updated the stakeholders on our activities. And then we
7 received approval from the Office of Administrative Law on
8 November 7th for the Board's firefighter personal
9 protective equipment regulation that you voted on in April
10 of this year. This is the one that addresses 2014 NFPA
11 standards. Staff have already begun rulemaking on bringing
12 those standards up to NFPA 2020. The 2014 standards were
13 approved November 7th, they'll become effective January 1st
14 of 2023, and enforcement will begin January 1st of 2024.

15 And then for indoor heat, our SAR documentation
16 is currently being prepared and we anticipate that that
17 will be submitted by the end of the month for our SAR
18 approval. And then in December of course we're looking at
19 COVID-19 prevention, a vote from the Board.

20 That's all I have. Are there any questions?

21 CHAIR THOMAS: Any questions from Board Members?

22 Doesn't look like it.

23 BOARD MEMBER BURGEL: I've got one.

24 BOARD MEMBER STOCK: I was gonna say, I do have
25 questions about other -- the status of other rulemaking.

1 But Christina, maybe it's more questions for the Division
2 about -- well, you've answered the question about indoor
3 heat. Since you raised that, maybe I'll start with indoor
4 heat. Could you say a little bit more about where it is,
5 and how long you think that process is going to take, and
6 when we might see that coming before the Board?

7 MS. SHUPE: Yeah, so we've finished our editorial
8 review, the Division's-- of the Division's proposal, and we
9 are drawing up the final documents now. Those documents
10 will be submitted to the labor secretary for review and
11 approval, and then there'll be noticed for public comment.
12 There will be a 45-day public comment period, a public
13 hearing before this Board, and then consideration of those
14 comments. I can't really give you a timeline for when that
15 SAR approval might come back, because it lies with the
16 Labor Secretary and their staff. But we're anticipating
17 that that public hearing should be able to happen sometime
18 in the first quarter of 2023.

19 BOARD MEMBER STOCK: Thank you, because of course
20 this is this is a regulation that actually had legislation
21 that set a specific deadline which has long passed. So,
22 hopefully that will motivate people to expedite this. But
23 I just want to note that. And the questions that I have
24 beyond that are about workplace violence, and also about
25 the general industry and infectious disease. But is that

1 better to pose those questions to the Division?

2 MS. SHUPE: Yes, those two topics would both go
3 to the Division.

4 CHAIR THOMAS: Which -- oh, you have a question?

5 BOARD MEMBER BURGEL: Yes. Thanks, Dave.
6 Christina, I'd like to bring up, just because it was
7 brought up in public testimony, could you share the
8 rationale of having a closed session item around the
9 autonomous tractor Monarch petition or issue? Like why is
10 that --

11 MS. SHUPE: So, I think at this -

12 BOARD MEMBER BURGEL: -- being handled in closed
13 session versus -- because, you know, this, this, I think,
14 would deserve a response based on our public commenters
15 today.

16 MS. SHUPE: So, there are exceptions in Bagley-
17 Keene that allow the Board to consider matters that may be
18 pending either adjudication or litigation. But I'm gonna
19 go ahead and redirect to our Chief Counsel at this time.

20 MS. GONZALEZ: Thank you. Yeah, I mean,
21 basically what Christina says. The Board does have the
22 right to deliberate and to confer with counsel about
23 matters before it. So, I've just picked up the practice
24 that we've used at other agencies that I've worked at,
25 where we adjudicate appeals to give the Board the

1 opportunity, if need be, which you may not want to take
2 advantage of, to discuss in closed session with counsel
3 potential outcomes before voting on a decision.

4 CHAIR THOMAS: Autumn, but we don't have any
5 closed session plan for today. Correct?

6 MS. GONZALEZ: We do not, that I know of.

7 CHAIR THOMAS: Thank you. Chris?

8 BOARD MEMBER LASZCZ-DAVIS: A real quick
9 question. And perhaps you guys are aware, but I guess I
10 need a refresher. There were a number of comments made
11 today about the COVID regulation and desire to see some
12 changes and all. And from a reality standpoint, is there
13 an opportunity to really modify what's on the table at this
14 point before we vote December?

15 CHAIR THOMAS: I think that would be a question
16 for the Division, which they're gonna give a report in just
17 a second here.

18 BOARD MEMBER LASZCZ-DAVIS: All right. Fair
19 enough.

20 CHAIR THOMAS: Thank you. Any other questions of
21 Autumn or -- okay. Then we're gonna move on to the
22 Division update. Mr. Berg, and Mr. Brill, will you please
23 brief the Board?

24 MR. BERG: Okay. Thank you, Board, Chair Thomas.
25 I guess I'll go first. First, I'll give a little update on

1 first aid. There will be a second 15-day change for the
2 first aid proposal. It will remove any new requirements
3 regarding the case for the first aid kits, and also remove
4 other prescriptive requirements. As this was requested by
5 employers and employer representatives, and comments
6 received.

7 The purpose of the first 15-day changes, which
8 were made in response to several comments received during
9 the initial 45-day comment period, was to make it easier
10 and simpler for employers. But these changes, instead of a
11 unique list of items for a first aid kit that does not
12 exist anywhere else, employers now have the option to use
13 an ANSI first aid kit, which are widely available and easy
14 to find. And employers will continue to have an option to
15 use the PLHCP accrued first aid kit, which is in the
16 existing regulation, and that option remains for employers
17 so they don't have to change if they don't want to. Or
18 they want to they can go and get an ANSI kit.

19 But we won't have that unique specific list that
20 doesn't exist anywhere. And it's all made to make it
21 easier and simpler for employers. And also, federal OSHA
22 requires weekly inspections in the construction first aid
23 kit regulation. And we are required by law at least - to
24 be at least as effective as federal OSHA. So that's the
25 rationale for the weekly inspections in the construction

1 regulation.

2 Next, moving on to the comments on the ATD
3 standard. Just to clarify some points that were raised
4 today. The ATD standard does not have a straight up
5 exemption for outpatient dental clinics. I think this was
6 stated erroneously earlier.

7 CHAIR THOMAS: Eric, we're having trouble hearing
8 you. Can you turn him up a little bit? It's a little --

9 MR. BERG: Is the microphone not working?

10 CHAIR THOMAS: It's working, but it's just a
11 little, yeah, fuzzy. So.

12 MR. BERG: Okay, can you hear me better now? I'm
13 closer to the microphone.

14 CHAIR THOMAS: Yeah, lean back a little bit.
15 Just talk loud, and lean back.

16 MR. BERG: Okay.

17 CHAIR THOMAS: There you go.

18 MR. BERG: All right just to clarify, I don't
19 know if you heard me before -- in the ATD standards there
20 are some incorrect points made that there was an exemption,
21 a straight up exemption, for outpatient dental clinics.
22 The ATD standard exempts outpatient dental clinics only if
23 they implement effective measures for screening out
24 patients with an aerosol transmissible disease, and provide
25 effective training to employees on screening patients. And

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1 thirdly, incorporate all these measures in writing into
2 their injury and illness prevention program. I just want
3 to clarify that information.

4 Now moving on to the COVID-19 non-emergency
5 proposal.

6 CHAIR THOMAS: Hold on just a second, Eric. Can
7 you turn that up just a little bit more?

8 MR. BERG: Turn what more?

9 CHAIR THOMAS: Go ahead, Eric.

10 MR. BERG: What's that?

11 CHAIR THOMAS: Go ahead.

12 MR. BERG: Can you hear me?

13 CHAIR THOMAS: Yeah.

14 MR. BERG: Okay. Going on to the COVID-19 non-
15 emergency proposal. Cal/OSHA heard the feedback from the
16 October meeting by the Board Members and stakeholders about
17 the draft non-emergency COVID standard. Since the draft
18 language was posted in late 2021, Cal/OSHA has worked to
19 move forward a standard that balances the concerns of
20 stakeholders and adapts to the changing nature of the
21 pandemic. For example, taking into account the additional
22 tools we have, such as vaccinations, to mitigate the spread
23 of COVID and protect from serious illness.

24 Cal/OSHA's top priority is to prevent any gap in
25 protection for California's workforce by ensuring a

1 regulation can be in place in January. All of the changes
2 requested at the October meeting were significant enough
3 that they would require an additional Notice and comment
4 period, as well as an updated economic analysis, which
5 would delay the effective date of the regulation by at
6 least several months and leave workers with less protection
7 during this time.

8 For all these reasons, and after reviewing all
9 the comments, we do not plan to make any further changes to
10 the proposed standard. Thank you, that's all I have.

11 CHAIR THOMAS: Thank you, Eric. I'm sorry. Ms.
12 Brill, do you have a comment?

13 MS. BRILL: It's quite alright.

14 CHAIR THOMAS: My bad.

15 MS. BRILL: Yes, thank you Chair Thomas and Board
16 Members. I am a staff attorney --

17 CHAIR THOMAS: I want to get it a little closer
18 to you.

19 MS. BRILL: Oh, sure. Sorry, is this better?

20 CHAIR THOMAS: Yeah. I'm a staff attorney at
21 Cal/OSHA and I've been working on the COVID regulations,
22 since roughly the second readoption. And I'm here to
23 discuss the definition of close contact.

24 I just want to point out for everyone that this
25 has been the definition under the ETS since October 13th of

1 this year, which is when CDPH updated their definitions.
2 Under these definitions, when an employee is determined to
3 be a close contact is a matter of looking at the size of
4 the workplace in which the exposure took place. We've
5 heard a lot today about the confusion around 400,000 cubic
6 feet. Just as a refresher, for indoor spaces of 400,000 or
7 fewer cubic feet, close contact is going to be someone who
8 shares the same indoor airspace with a COVID-19 case for a
9 cumulative total of a familiar 15 minutes or more over a
10 24-hour period during the COVID case's infectious period.

11 And this is the same definition that's been in
12 place under the ETS since June 8th of this year when CDPH
13 adopted it. For indoor spaces that are greater than 400
14 cubic feet in volume, a close contact is someone who is
15 within six feet of a COVID case for a cumulative total of
16 15 minutes or more over a 24-hour period during the COVID
17 19 case's infectious period.

18 CHAIR THOMAS: Can you repeat that one more time?
19 I'm having trouble because you're a little muffled. You
20 might want even get closer.

21 MS. BRILL: Alright.

22 CHAIR THOMAS: But can -- if you can repeat that
23 again, I'd appreciate it.

24 MS. BRILL: Sure. You want me to go back to
25 indoor spaces of 400,000 or fewer --

1 CHAIR THOMAS: Yeah.

2 MS. BRILL: -- cubic feet?

3 CHAIR THOMAS: Please.

4 MS. BRILL: Sure. Okay, for indoor spaces of
5 400,000 or fewer cubic feet, a close contact is someone who
6 shares the same indoor airspace with a COVID-19 case for a
7 cumulative total of 15 minutes over a 24-hour period during
8 the COVID case's infectious period. And this is the
9 definition that has been in place under the ETS since June
10 8th of this year, which is when CDPH adopted the shared
11 indoor airspace definition.

12 For indoor spaces with more -- of more than
13 400,000 cubic feet, a close contact is someone who is
14 within six feet of a COVID case for a cumulative total of
15 15 minutes or more over a 24-hour period during the COVID
16 case's infectious period. And that's the definition that
17 was in place under the ETS for all spaces before the June
18 8th, 2022 change that CDPH made.

19 So, in other words, neither of the two prongs of
20 this definition are new in terms of contact with the COVID
21 case, the difference is only the introduction of the
22 400,000 cubic feet. Just for like a reference check, a
23 standard large chain grocery store is usually over 400,000
24 cubic feet. So that's what we're visualizing when we
25 talked about that, while a standard specialty grocery store

1 is usually fewer than 400,000 cubic feet in volume.

2 The remainder of the definition is that when an
3 indoor space also has like closed off smaller indoor air
4 spaces defined by floors, ceiling, walls, or doors -- the
5 examples that we give are bathrooms, breakrooms, individual
6 offices -- the cubic feet of these spaces has to be
7 calculated separately from the cubic feet of the larger
8 indoor air space. And this is not -- this is also not new.
9 Workers in these separate spaces would not be considered a
10 close contact when the COVID case is in a larger indoor
11 airspace, as long as these workers are not in the larger
12 space for more than 15 minutes.

13 It might be helpful to have some of this written
14 down, and we're happy to provide this. I understand that
15 sort of talking about these numbers, it can get a little
16 confusing.

17 CHAIR THOMAS: That would be helpful. So, do
18 Board Members have any questions at this time? I don't
19 know if that's the end of what you were going to say?

20 MS. BRILL: I can answer questions if you would
21 like about the close contact definition.

22 CHAIR THOMAS: If there's any questions, might as
23 well ask them now. Laura? And then Barbara.

24 BOARD MEMBER STOCK: It wasn't -- it was actually
25 to Eric, I don't know if it had --

1 CHAIR THOMAS: Hold on. We don't have you. We
2 don't have you mic'd. You're muted, I think.

3 MS. BRILL: I don't think she's muted.

4 CHAIR THOMAS: Does it say mute up there?

5 UNIDENTIFIED SPEAKER: I hear her fine.

6 UNIDENTIFIED SPEAKER: You can hear her.

7 CHAIR THOMAS: Okay. Let's turn her up so we can
8 hear her.

9 BOARD MEMBER STOCK: You can hear me?

10 CHAIR THOMAS: We can't hear you.

11 BOARD MEMBER STOCK: You can hear me?

12 CHAIR THOMAS: That's better, yeah.

13 BOARD MEMBER STOCK: Okay.

14 CHAIR THOMAS: Here we go.

15 UNIDENTIFIED SPEAKER: I can hear her too.

16 BOARD MEMBER STOCK: Alright, great. It's
17 actually not necessarily a question on close contact, but
18 also to Eric. So, I just wanted to make a few comments. I
19 mean, it's been frustrating. I'm sure other Board Members
20 share the frustration about the fact that, you know, just
21 to see how little impact we have been able to have on the
22 nature and the content of this regulation. Particularly
23 when there was kind of a strong call from Board Members to
24 reinsert exclusion pay.

25 And I understand the issues that you're raising.

1 It seems like we were put in this position partly because
2 when the original discussion draft was developed, and a
3 financial analysis was done on that, it was a version that
4 did not include exclusion pay. And if it had included it
5 at that point, we would not be facing what Eric was
6 describing, which is that the time it would take now to do
7 those required steps are, you know, the time is running
8 out.

9 So, I just want to express my frustration with
10 that process. And just make another couple of comments
11 about it. You know, in listening to the comments this
12 morning, I have to say it was extremely distressing to hear
13 that there are those who are really still disputing whether
14 or not COVID is a workplace hazard. It's not a requirement
15 that we only regulate hazards that exclusively ever occur
16 at work. We regulate chemicals and we use them at home.
17 We regulate ergonomics and we lift at home.

18 That's not relevant to our role, which is to
19 protect workers from the hazards they face at work. And as
20 people have said, if somebody gets COVID in the workplace,
21 they are ill due to a workplace hazard. And it therefore
22 is the responsibility of this Board and of the employer to
23 implement measures to address that hazard.

24 And regarding the statements about the state of
25 emergency being over, I just want to reiterate a few

1 important things. As somebody said, on November 11th, the
2 US Department of Health and Human Services announced that
3 they are continuing the COVID state of emergency due to the
4 possibility of a wider surge. Today in my local paper
5 there was an article about new variants are rapidly
6 spreading and cases are ticking upwards, which we also
7 heard from some of our people who commented.

8 And I just also want to comment that the fact
9 that many -- somebody mentioned that a lot of people are no
10 longer implementing common sense measures like masking in
11 public places, for example, like in Board meetings. I'd
12 have to say that does not reflect a change in the pandemic
13 or the value of those measures. It reflects that people
14 are tired of taking those steps.

15 But we need to be driven not by the fact that
16 people want the pandemic to be over, but by the fact that
17 it remains a workplace hazard that we have a responsibility
18 to address. So, I have been a very vocal supporter of
19 exclusion pay. I don't need to reiterate why. I think the
20 presentation that we saw a few minutes ago from Autumn
21 reiterates how many people lack that protection.

22 But I also believe that even without that, and
23 even with the concerns about some of the other elements
24 from the confusion about close contact, and the other
25 things that people have talked about, it's essential that

1 we pass this regulation in December. It still contains
2 critical protections, including the requirement to assess
3 hazards and implement controls, specific language about
4 upgrading ventilation, about providing masks on requests.
5 And also, was as we heard from one commenter, quarantine
6 provisions for employee housing, to just name a few.

7 So, I do -- I want to express my strong belief
8 that we need to pass this in spite of its very important
9 limitations. And it's really essential that we move
10 forward expeditiously to work on the infectious disease
11 standard for general industry that includes the measures
12 that we are not going to be able to be included in this
13 regulation. So, with that, I wanted to ask Eric, if you
14 could provide us information about the process, where we
15 are in the process of the infectious disease regulation for
16 general industry? And I want some assurance that there is
17 going to be an opportunity to incorporate exclusion pay
18 into that regulation.

19 So, do you have any comments on that?

20 MR. BERG: Yeah, thank you, Laura. Yes, we are -
21 - we've developed, I guess internal language and what a
22 permanent infectious disease standard could entail, or at
23 least an outline. And then maybe we'll schedule advisory
24 committee meetings with stakeholders to consider all those
25 provisions, you know, including the exclusion pay or a host

1 of topics.

2 So, we'll be going over that with the
3 stakeholders and public in general, and receiving input in
4 making changes to that proposal, like we do with all our
5 advisory committee meetings where we have language and get
6 a lot of input and we reiterate on that language, change
7 it, update it, take into account those comments, and then
8 go through it again and make further changes. And just
9 repeat that process until we have language that looks good
10 for a rulemaking.

11 BOARD MEMBER STOCK: And can you give any
12 estimate on when that process will be able to begin? Like
13 when will language in advance of an advisory committee be
14 available? And when will the first advisory committee be
15 held?

16 MR. BERG: Yeah, I don't have any dates I can
17 share at this point. But as soon as I do, I will share
18 those.

19 BOARD MEMBER STOCK: Can we specifically put on
20 the agenda for next time to see if you're able to get a
21 little bit -- particularly since we're gonna have to vote
22 on this regulation. If it's possible to get a little bit
23 of a clearer timeline, that would be greatly appreciated.

24 MR. BERG: Okay.

25 BOARD MEMBER STOCK: Thank you.

1 CHAIR THOMAS: Thank you. Any other questions
2 Board Members may have at this time?

3 BOARD MEMBER BURGEL: I have a question, Dave,
4 this is Barbara.

5 CHAIR THOMAS: Go ahead.

6 BOARD MEMBER BURGEL: I also want to echo Laura's
7 comments. I was sort of surprised to hear COVID referred
8 to as a social disease, when in fact, people have to go to
9 work and don't have the luxury of being remote workers.
10 It's only a social disease if your 100 -- your workplace is
11 100 percent remote. So, here again, essential workers have
12 to go to work, grocery workers, hotel room cleaners, taxi
13 drivers. Of course, taxi drivers probably wouldn't be
14 covered by the COVID -- the emergency, non-emergency
15 standard anyway, because they're independent contractors.

16 But regardless, I do also plan to vote for the
17 current language, although it's not perfect, at our
18 December Board Meeting. I highly support the ventilation
19 requirements, which I think are the most important part,
20 plus the outbreak language in that current draft.

21 I have a question for Eric, specifically.
22 Because to my knowledge, the only order of -- the special
23 order by the Public Health Officer mandating vaccinations
24 for our California workforce is specific to the healthcare
25 workforce. Is that true? Is there any other CDPH public

1 health order that mandates vaccinations with boosters for
2 other essential workers?

3 I know there's one for health care workers and
4 the most current version is September 13th, 2022. That
5 requires all health care workers to have vaccines and
6 boosters. But is there any other order for any other
7 workforce in California for mandatory vaccination?

8 MR. BERG: No, I'm not aware of any other order
9 mandating vaccination.

10 BOARD MEMBER BURGEL: Has there been any
11 discussion with the California Department of Public Health
12 of extending a public health order requiring vaccination
13 for other essential workers?

14 MR. BERG: I haven't been involved in any such
15 discussion.

16 BOARD MEMBER BURGEL: Well, I think that, you
17 know, again, if we don't have any existing regulation, I
18 mean, I think that the California Department of Public
19 Health should explore mandatory vaccination for other
20 essential workforces, not just health care workers.

21 Thank you. That's all.

22 MR. BERG: Yeah, we meet with the CDPH at least
23 once a month so we can definitely bring that up.

24 BOARD MEMBER BURGEL: Because if they're not --
25 you know, again, we need coverage if indeed the standard

1 doesn't pass at our December Board Meeting. You know, I
2 think our workforce, our essential workforce, needs the
3 same kind of coverage, as I've spoken before, as what the
4 ATD current standard currently provides. Thank you.

5 CHAIR THOMAS: Any other questions for Eric?

6 BOARD MEMBER BURGEL: Oh, can I make another
7 comment? I'm so sorry, Dave. I just wanted to support --

8 CHAIR THOMAS: Just one more.

9 BOARD MEMBER BURGEL: All right. Thank you.

10 CHAIR THOMAS: Go ahead, go ahead.

11 BOARD MEMBER BURGEL: It was brought up again
12 today in public comment, I think by Rob Moutrie and others,
13 about the occupational health risk assessment. And it was
14 brought up in some of the comment letters. I fully support
15 an occupational health risk assessment, perhaps for the
16 general industry, infectious disease standard draft going
17 forward. I do think that we, you know, have always assumed
18 health care workers are the highest risk. Again, they do
19 close contact work for longer than 15 minutes, as do
20 dentists, with aerosolized disease. I mean, dental
21 procedures, drilling is considered an aerosolized producing
22 activity in the dental practice.

23 But it would be great to identify that healthcare
24 workers and dentists currently have a lot of PPE and a lot
25 of ventilation. Whereas in essential workers like grocery

1 stores and meat packing, you know, those processes are not
2 necessarily integrated within the practices. So, I would
3 maintain that we need a very good risk assessment matrix
4 that identifies individuals at highest risk, and who has
5 access who have access to again, engineering controls and
6 PPE, which mitigates some of that risk.

7 And I've only seen a document, one matrix of risk
8 assessment, which was published back in 2020. In fact,
9 I'll send it to you, Eric, I'm sure you've probably seen
10 it. It's fascinating, but it doesn't integrate the PPE and
11 ventilation issues. It doesn't integrate the control --
12 the hazard control mechanisms, which I think it should. It
13 should not just be exposure risk. It needs to be -- what
14 kind of hazard controls are feasible for that particular
15 group of workers? And I'll send you the only one I've been
16 able to find.

17 So, I do think it's important for us to engage.
18 You know, we have a couple of industrial hygienists on our
19 Board Nola and Chris. And I would concur, and I know,
20 Nola, you have just spoken for a risk assessment process.
21 And I think that's very important for our ongoing work with
22 the infectious disease standard for the general industry.

23 Thank you.

24 CHAIR THOMAS: Thank you, Barbara. Any other
25 questions? Any other comments the Board has? All right.

1 I'll just say this. I -- although I'm
2 disappointed that there's not exclusion pay, there are
3 other means but they all weigh short of covering all the
4 people that actually really need to be covered for -- under
5 exclusion pay, which is just going to, in my opinion,
6 prolong this process. We're going to go through this again
7 this winter. And, you know, it's going to spike up again.
8 And not as many people will die, you know I think we know
9 that.

10 But also, we really don't know what's going to
11 happen to people who end up with long COVID and what that
12 is going to entail in the future. If you don't get it
13 you're better off, but you know, it looks like we're -- you
14 know, it's always about money in the end, really. And if
15 it's not there, which I guess it must not be there, then
16 we're not going to continue with the exclusion pay. And
17 one way or another, we will pay for that in a certain
18 amount of people, a certain amount of sickness, certain
19 amount of lives.

20 But I still think that the emergency regulation
21 is valid. We're not past this yet. I mean, we've been
22 saying it for three years now, and it hasn't turned out to
23 be true yet, so I don't expect it to this coming year.
24 That's just my opinion. Any other comments or questions
25 before we move on?

1 Alright. So, we will go to new business, future
2 agenda items. Or did I miss something? Oh, sorry.
3 legislative update. Autumn? We didn't need to. Oh well.
4 Anyway, future agenda items. Any Board Members have any
5 other questions regarding that? Laura? Anybody else?
6 Alright.

7 BOARD MEMBER CRAWFORD: Can I talk about future
8 agenda items for -- on a different topic?

9 CHAIR THOMAS: Yeah.

10 BOARD MEMBER CRAWFORD: Because, because we've
11 heard today on autonomous equipment from a couple of our
12 groups. And I heard a lot of positive comments about it
13 today. I heard a great suggestion for an education
14 opportunity for the Board. Right so I heard an opportunity
15 to go tour. And I also heard an opportunity to suggest a
16 panel discussion, a balanced panel discussion, so that this
17 Board could educate themselves and understand how this
18 could actually help California going forward.

19 So, I would like to introduce that as a future
20 item of conversation here in the Board.

21 CHAIR THOMAS: Yeah, I think we could incorporate
22 that into one of our meetings. Probably not next month,
23 because it's --

24 BOARD MEMBER CRAWFORD: Next month will be dicey.
25 I mean full.

1 CHAIR THOMAS: So, I would say --

2 BOARD MEMBER CRAWFORD: Full.

3 CHAIR THOMAS: Yeah. So, I would say probably
4 sometime next year, we could incorporate that into January,
5 or February.

6 MS. SHUPE: We'll take a look at the schedule.
7 We have a couple of public hearings coming up at the first
8 of the year, but we can absolutely work with stakeholders
9 and pull together a panel discussion on topics.

10 BOARD MEMBER CRAWFORD: Perfect. And you know
11 what, I actually did have one other comment I wanted to
12 make. But I always liked Dave to provide the closing. So,
13 I didn't want to speak over you, but I wanted to thank
14 Autumn for bringing this information on the benefits. And
15 I think that there is a lesson for us as a Board.

16 This was a topic that came up over and over and
17 over. And for future when we have these conversations, I
18 think we should just bring that -- we should have kind of a
19 standing request to bring that information in early, to
20 educate us early, so that we all have the same information
21 available right in front of us for, you know, for reference
22 at any time. Because it was very beneficial. Thank you.

23 BOARD MEMBER STOCK: Dave I have a future -- I
24 wanted to add one more too.

25 CHAIR THOMAS: Good.

1 BOARD MEMBER STOCK: But were you discussing
2 something?

3 CHAIR THOMAS: Go ahead.

4 BOARD MEMBER STOCK: I was just going to say, and
5 it's -- I forgot to also ask Eric, and maybe this could be
6 on the next agenda. I wanted an update about the workplace
7 violence and general industry regulation. If you could,
8 Eric, do you have anything more to report on that? And
9 yeah, I'll start there.

10 MR. BERG: No, nothing new to report. We're
11 still working on updating the language. We've posted a
12 couple different versions of language and gotten comments
13 and reiterated on that. This is our process, so we still
14 have to post new language, and then schedule an advisory
15 meeting to discuss that language and get written comments
16 on that language before formal rulemaking starts,

17 BOARD MEMBER STOCK: I guess I'll just add that I
18 mean, I know it's really hard to predict. But things take
19 months and months. So, at a future agenda, if we could add
20 it to a future agenda item to get any more -- I don't know
21 if the Division is now putting together a calendar for your
22 work for the coming year that can actually place some of
23 these things on there. I just think that if we could get a
24 little bit more specific information about when these long
25 outstanding regulations might be coming before us, that

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1 would be appreciated. Thank you.

2 MR. BERG: Sure thing.

3 CHAIR THOMAS: Thank you, Eric. Barbara, you had
4 a question?

5 BOARD MEMBER BURGEL: Yeah. I have a question.
6 I concur with Kate's suggestion around learning more about
7 autonomous tractors. I also want, at the same time, the
8 update on the pilot project with Cal/OSHA. As you recall
9 at in our meeting in April, we heard that the pilot project
10 was still ongoing. And so that, I think was a two-year
11 project. It was only as Dave Harrison pointed out with
12 non-union small farms.

13 And so, the suggestion at that time in April, was
14 to expand the pilot project to perhaps a larger unionized
15 workforce. And so those kind of two issues are very
16 important in my mind, because I'm in support of autonomous
17 technologies rolling out in agriculture. I think the key
18 issues were, again, the pilot project results and the fact
19 that those -- that pilot project was limited to two small
20 non-unionized agricultural sites.

21 So, I don't know if -- I mean that still has to
22 be, again, that two-year process, pilot project has to --
23 so that's still ongoing. And so, I just wanted to make
24 sure that at the same time we have some more data, which
25 always is helpful and always appreciated. We need the

1 update from the pilot project that was set up with
2 Cal/OSHA. Thank you.

3 CHAIR THOMAS: Chri-- oh, David and then Chris.
4 Dave?

5 BOARD MEMBER HARRISON: So, I've got to be really
6 careful what I say. And I'm looking at counsel before I
7 speak. Because just for the record, I am going to be
8 recusing myself from the autonomous equipment issue.
9 Through -- and I'm, I'm really anxious for the hearing to
10 be conducted, which I will also -- I will be recusing
11 myself from, and any proceedings theref-- going forward.

12 But I think there's going to be a lot revealed
13 about the reality of the temporary experimental variance
14 and how that's being conducted, versus how it was
15 originally presented. And I'll leave it at that. I think
16 there's a stark difference from one to the other. And I
17 think we'll be able to make a good, educated decision on
18 how to move forward once the hearing is actually conducted.

19 MS. GONZALEZ: So, I'll just, I'll chime in that
20 we had a hearing date for the appeal of the temporary
21 experimental variance, and the parties asked that the
22 hearing be postponed because they had some more work to do.
23 So that hearing was going to be this month, but it did not
24 happen. So just in the interest of preserving everyone's
25 due process rights and not discussing that matter, we're

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1 gonna keep it at that, I think.

2 CHAIR THOMAS: Okay, and just to add, we don't
3 have a closed session today. And the only really issues --
4 the only issues we discuss in those meetings are some
5 personnel issues, and maybe if we're being sued by
6 somebody, and those are relevant. And as far as this
7 matter goes, I don't think we'll have anything to say about
8 it other than wherever it lands.

9 So, anyway.

10 BOARD MEMBER HARRISON: I think I said enough,
11 that's enough.

12 CHAIR THOMAS: Anyway, so, we're not going to
13 have a closed session. Yep. Oh, I'm sorry, Chris. Go
14 ahead.

15 BOARD MEMBER LASZCZ-DAVIS: Just real quickly.
16 You know, this was really a follow on to the discussion
17 about calibrating and benchmarking. And, you know, as you
18 recall, over the past year, I've more than once offered up
19 the suggestion for benchmarking. I think there are a
20 number of issues that we deal with where we could use the
21 benefit of a calibration with, with manufacturers, outside
22 agencies, and other states, just to round out the body of
23 knowledge that we have so that we as a Board can make
24 informed decisions.

25 So, it isn't unique just to autonomous vehicles.

1 I think it applies to a number of other issues. And we
2 really ought to take that opportunity to explore those as
3 well moving forward. That's all.

4 CHAIR THOMAS: Thank you, Chris. Any other
5 comments? All right. The next Standards Board regular
6 meeting is scheduled for December 15th in Rancho Cordova via
7 teleconference and video conference. Please visit our
8 website and join our mailing list to receive the latest
9 updates. We thank you for your attendance today.

10 There'll be no further business to attend to.
11 This business meeting and OSHA meeting is adjourned. Thank
12 you very much.

13 (The Business Meeting adjourned at 1:24 p.m.)

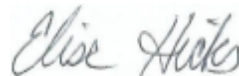
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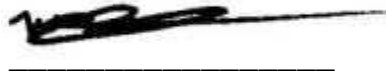
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