Cal/OSHA Then & Now
“Why Is This Still Happening”
JTS Meeting 2026

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Contextualize AND Define in common TERMS

WORDS MATTER

COMPREHENSION IS CRITICAL PRIOR TO ACTION

Origins

1970 - National OSH Act Created

Codes developed and enforced Intended as: National "minimum" Occupational Safety and Health standard

Scope & Application to Employer & Employee in **"General Duty Clause" of Act**

1973 Cal/OSHA Created & Authorized as a:

1. "Contract Covered State"
2. Cannot be less effective than Federal Codes
3. Scope & Application found in Div. 5 Cal. Labor Codes

“Critical Controlling Labor Codes”

Section 6406 No person shall…:

(a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning, furnished for use in any employment or place of employment.

(b) Interfere in any way with the use thereof by any other person.

(c) Interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment, or place of employment.

(d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

When On boarding New Hires,
Reference these rather than “Company Policy”

“Controlling Labor Codes” (Employer/Employee Duties)

Section 6407

“Universal Citation”

Every employer **and** every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division **which are applicable to his/her own actions and conduct.**
(Amended by Stats. 1977, Ch. 62.)

On boarding New Hires,
Reference this Code rather than “Company Policy”

See Independent Employee Act of Misconduct

"Controlling Labor Codes"

(Cal/OSHA/Stakeholder Relations)

§6314(d) In…any investigation or inspection… "***Any employee or employer,*** *or their authorized representatives,* ***shall have the right*** *to* ***discuss safety and health*** *violations or safety and health problems* ***with the inspector privately*** *during the course of an investigation or inspection."*

Cal/OSHA Citation Focus is: "Direction & Control"

Government Code sec. 12926(t):

"Supervisor" means any individual having the authority, in the interest of the employer…, or the responsibility to direct them…."

CSHO will ask "who's in charge here" AKA "direction and control" over the activity

Why Supervisors? The Legal Premise

Supervisors represent Management…hence,

1. When they talk – information is known as imputed knowledge
2. What they say or NOT– information is known as ”statements against interest”
3. “Implied Consent”

Remember the 5th. Amendment???

8 Reasons for Employer Cal/OSHA Fails

Rooted "Tribal Thinking"

- ❑ **Employer misunderstanding of Cal/OSHA Process**
- ❑ **Code language not well understood.**
- ❑ **Safety Departments are isolated from related departments.**
- ❑ **ER unaware of "rules of engagement"**

(do not know where to find them nor how to interpret them.)

8 Reasons for Employer Cal/OSHA Fails

Rooted “Tribal Thinking”

- ❑ **Safety “programmed” to address topical hazards & does not triage related hazards**
- ❑ **Safety does not understand the inspection process nor ramifications.**
- ❑ **Cost/Benefit decisions only**
- ❑ **Regulated community rarely engages in the rule making process.**

Changing Cal/OSHA Realities

- **1989:** Senate Bill 198 required employers to establish, implement, and maintain an Injury and Illness Prevention Program (IIPP)

- **1999:** Assembly Bill 1127 required the Public Sector be accountable for Citation Penalties.

NEW Changing Cal/OSHA Realities

Assembly Bill 2774

Rebuttable Presumption – Employer Burden

"Realistic Possibility" for Serious Citations

CSHO = Expert Witness IF Mandated Training Completed

<u>Penalty Increases</u>

- ❑ **Leveraging Abatement Credits**

<u>Repeat Citations</u>

- ❑ **Corporate Wide**
- ❑ **Up to 162K +/-**

Changing Cal/OSHA Realities

Assembly Bill 606 (Effective 1/01/2022)

- **Rebuttable presumption that violation is "ENTERPRISE WIDE" when either/or is met:**
  - **Written Policy or Procedure violated Cal/OSHA Code**
  - **Pattern or Practice of same violation committed at more than one site**

- **IF Employer does NOT rebut the presumption:**
  - **Division may issue Enterprise Wide citation with Enterprise Wide Abatement**

Changing Cal/OSHA Realities

- **Egregious Violations**
  - **Issued if one or more of 7 elements are met e.g.**
    - **Intentionally made no reasonable effort to fix known violation**
    - **Bad faith relative to health and safety issues**
    - **History of large prior violations**
    - **Persistently high rates of injuries/illnesses**
  - **Has look back period of 5 years**
  - **Will remain effective for 5 years**

Changing Cal/OSHA Realities

- **Subpoenas**
- **Injunctions**
- **Temporary Restraining Orders**
- **See Cal/OSHA P&P C-200 Enforcement**

Defining "Code Speak"

Acceptable	**Train**	Adequate	Applicable	Appropriate
Careful	Immediately	Improper	**Effective**	Periodically
Practicable	**Foreseeable Emergency**	Reasonable	Recognized	Safe
Secure	Maintain	Substantial	Routine Operations	**Timely**

If you don't define, Compliance will

Other “Code Speak” phrases

”**…extent practicable.**" A decision in the eyes of the READER OR EVALUATOR?

”**…where applicable**." No criteria for judgment/OR IS THERE?.

”**…shall be considered.**" READER OR EVALUATOR? will think about…

And the latest **AB 2774** addition:

“**realistic possibility**” (the new basis for ISSUING **SERIOUS CITATONS**

Preventive Measures

Better Gambling on ODDS

All Levels of Management Should Know:
“Rules of Engagement”
&
Cal/OSHA “Pre-Inspection” Activities

Knowledge is Power

Cal/OSHA Policy & Procedure

Cal/OSHA Most Common Cits

Accdt Invest. Summaries

OSHA Establishment Search

OSHA Technical Manual

OSHA Safety Pays Calculator

Cal/OSHA Most Common

SOME HISTORICAL DATA TO CONSIDER

IT'S ALL ABOUT THE NUMBERS THEY CAN GET- THE ODDS ARE **NOT** IN YOUR FAVOR

SEE OSHA DATA

2023 Most Common Cal/OSHA Citations

1	3203	Injury and Illness Prevention Program, General Industry
2	3395	Heat Illness Prevention in Outdoor Places of Employment
3	1509	Injury and Illness Prevention Program, Construction
4	3205	COVID-19 Prevention
5	342	Reporting Work-Connected Fatalities and Serious Injuries
6	3314	The Control of Hazardous Energy for the Cleaning, Repairing, Servicing, Setting-Up, and Adjusting Operations of Prime Movers, Machinery and Equipment, Including Lockout/Tagout
7	6151	Portable Fire Extinguishers
8	5194	Hazard Communication
9	3276	Portable Ladders
10	5162	Emergency Eyewash and Shower Equipment

2022 Cal/OSHA Most Common Citations

#	Section	Title	Tot. Viol	Tot.Ser.Viol	%
1	*3203*	*Inj/Illness Prev. Program (IIPP)*	*1,962*	*131*	*6.7*
2	*3395*	*Heat Illness Prevention*	*1,232*	*155*	*12.6*
3	*1509*	*Constr. IIPP (Code of Safe Pract)*	*764*	*29*	*3.8*
4	*3205*	*COVID-19*	*670*	*81*	*12.1*
5	342	Failure to Report	570	8	1.4
6	*3314*	*Haz Energy Control (LOTO)*	*487*	*210*	***43.1***
7	6151	Portable Fire Ext.	312	0	0.0
8	*5194*	*Haz. Com*	*292*	*10*	*3.4*
9	3276	Portable Ladders	265	73	**27.5**
10	5162	Emergency Eye/Shower Equip	247	112	**45.3**
11	*5144*	*Resp. Protect.*	*246*	*30*	*12.2*
12	1512	Construction E.R. Med Svcs	220	5	2.3
13	2340.16	Workspace about electr. Equip	217	2	0.9
14	3650	Ind. Truck – Gen. Req.	216	78	**36.1**
15	461	Permit to operate Air Tanks	174	0	0.0
16	3328	Mach. & Equipment	163	71	**43.6**
17	3668	Ind. Truck Oper. Trng..	142	21	14.8
18	*5199*	*Aerosol Trans. Disease*	*138*	*38*	***27.5***
19	1670	PFA	136	67	**49.3**
20	1712	Impalement Protect.	122	78	**63.9**
21	2500.8	Flex. Cords. Uses not allowed	109	0	0.0
22	*3380*	*PPE to include Haz Assessment*	*102*	*18*	*17.6*
23	341	Constr. Permits	101	10	9.9
24	5185	Changing/Charging Batts.	92	78	**84.8**
25	14300.29	Employer Records - Forms	88	0	0.0

Notes

Expected Average CSHO Production Outcomes = 2.5 Cits./Insp w/ 30% Serious

Codes in Grey = Individual Written Programs or Special Assessments and/or Documents

Take note of "related" safety orders aka: Resp. Protection and General PPE; Battery charging and Emergency Eye/Shower Equipment.

Compliance Risks Per Jurisdiction
Cal/OSHA District Odds for Citations

Region3 Long Beach District - Jan 1, 2017 through Dec 31, 2017											
CSHO	Tot Ins	Tot Viol	Tot S/W/R	%S/W/R	Viol/Ins	CitLpsTime Safety	CitLpsTimeHlth	CitLpsTimeAve	Tot Ins w/o Viol	%Ins w/o Viol	
1	33	115	49	42.6	3.5	108	0	108	7	21.00%	
2	40	88	38	43.2	2.2	116	1250	117	9	23.00%	
3	46	175	61	34.9	3.8	84	0	84	6	13.00%	
4	44	96	39	40.6	2.2	100	104	101	14	32.00%	
5	21	82	23	28	3.9	106	73	90	2	10.00%	
6	6	4	3	75	0.7	122	0	122	2	33.00%	
7	33	141	42	29.8	4.3	91	71	85	6	18.00%	
8	35	90	30	33.3	2.6	68	0	68	18	51.00%	
9	15	80	30	37.5	5.3	116	0	116	2	13.00%	
Ave	30.3	96.8	35	36.2	3.2	101.2	166.4	99	7	22.00%	
Tot	279	855	321	37.5	3.1	98	95	98	67	24.00%	
									Ave Pen	352,028	LB District ODDS of Being Cited
									Tot Pen	3,147,032	78%

Regional Totals - 4 District Offices 46 Active Field CSHO's											Region 3 ODDS of Being Cited
	1479	4446	1394	31.4	3	82	82	82	282.5	19%	81%

Cal/OSHA Inspection Survival Guide





Cal/OSHA Inspection focal points





Injury Illness Prevention Program + Supervision = ?

The Inspection Process
Tact, Diplomacy, Kindness & Respect Will Re-negotiate Relationships

"**Opening Conference**" Compliance Officer will ask to see and must conduct with "highest level of management having authority to allow continuation of inspection"

Note: Compliance Officer *will respond to the address listed on the complaint/accident*, i.e., Maintenance Yard, Street Dept., Sanitation, etc.

Note: *Train All Department Heads/Supervision* in inspection procedures and include H&S or Risk Management in Process

Note: **Get to know the Compliance Officer**

Ask about educational/professional background

The Inspection Process

YOUR HOUSE RULES - ENFORCE THEM ON THE CSHO (I.E.)

Do Not Offer PPE – CSHO has own

- Wrap around Goggles, Nomex, Steel Toed Shoes, etc.

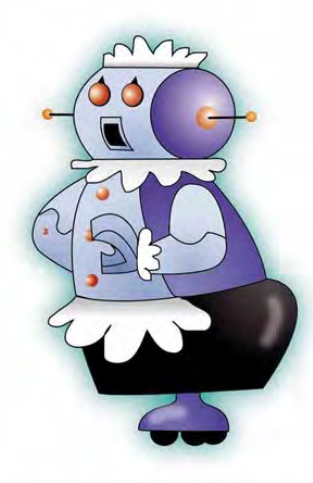
Inform of Special Hazards, Equipment, Process

- Chemistries, Bio-hazards, Trenching, etc.

Verify CSHO has Special Certification Requirements

- Asbestos Cert – applies to any CSHO
- HazWoper Cert - applies to any CSHO
- Lead Cert - applies to any CSHO
- Respiratory Protection – Hazard Specific

➢ **CAN RECORD CSHO**



The Inspection Process
All about Due Process & Evidence

(Answer questions only, do not volunteer information)

- **IIPP Document** and ***Records*** *to support* the program
  - Periodic Inspection Records
  - Routine and Special Training Records
  - Haz. Com Program w/ Master List of Chemicals
  - Permits, i.e., pressure vessels, compressors, etc.
- **<u>Other Written Programs where applicable</u>**
    - Resp. Protection/Hearing Conservation Program
    - Confined Space/Silica Programs
    - PPE Certification Statements for all PPE

The Inspection Process Walk Thru

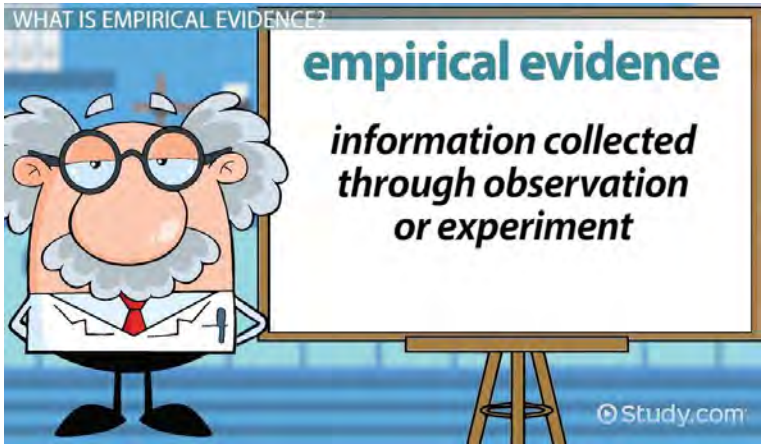


1. The shortest distance **DEFINITELY a straight line**
2. What the Officer sees, you must see.
3. What the Officer hears, you must hear.

Note: *Employee may ask compliance officer to talk in private.*

4. Photograph what the Officer photographs
5. Sample what the Officer samples
6. Measure what the Officer measures
7. **DOCUMENT observations and findings**

The Inspection Process Walk Thru



- ANY ANALYTICAL/ENGINEERING SAMPLING/MEASUREMENTS/PHOTOGRAPHS – INVOKE "CONCURRENT SAMPLING"

DO NOT "SPLIT" SAMPLES/READINGS ETC.

TAKE YOUR OWN.

DOCUMENT observations and findings

Enforcement of House Rules/Compliance

3203(a)(1) *Identify the person or persons with authority and responsibility for implementing the Program (Who & Contact)*

3203(a)(2) Include a **system for ensuring** that employees comply with safe work practices. Include: recognition… training and retraining programs, disciplinary actions, **or any other such means** that ensures employee compliance

Means: Enforce your house rules

Do you have Conditions of Employment

Do you have Duty Statements

Do you have Progressive Discipline

Is it **commensurate with the HAZARDS** violated

How are House Rules Communicated

3203(a)(3)…a system of communication w/employees ….**Substantial compliance includes**: meetings, training programs, postings…**or** **labor/management safety committee (see 3203(c) Safety Committee 7 subsections)** Means:

Committee is "Permissive" not obligated and,

Requires:

- **Equal Division for Chair Duty (Mgt/Labor)**
- **Formal Structure (Odd/Even members?)**
- **Rules of Order**
- **Technical Knowledge for Committee members**

House Maintenance

3203(a)(4) Include **procedures** for **identifying and evaluating** work place hazards including scheduled periodic inspections…Inspections shall be…

(a)(4)(A) When…first established.

(a)(4)(B) When new processes, substances, procedures, or equipment are introduced.

(a)(4)(C) Whenever…made aware of new hazard or previously unrecognized hazard. Note: if supervisor knows, the EMPLOYER knows.

Means

Normal checklists DO NOT meet code

WHY: DO NOT EVALUATE/TRIAGE HAZARDS

How Are Mishaps Investigated

3203(a)(5) Include a **procedure** for investigating occupational injuries or illnesses.

Means:

1. Who does it (Experience/Qualifications)
2. What means/method is used (Applicable Theories)

DOES NOT MEAN:

1. Only filling out a DWC-1

How Are House Issues Fixed?

3203(a)(6) Include methods and/or procedures for **correcting unsafe** work practices, conditions and work procedures in a **timely manner**:
(a)(6)(A) When discovered or observed…
(a)(6)(B) When an imminent hazard exists…

Means:

- Triage competing hazards based on Severity/Extent/Liklihood
- Define time for correction
- Serious – ASAP; NLT 3 days
- General – NLT 30 days

How And Who Trains/Educates House Members?

3203(a)(7) Provide training and instruction:

(a)(7)(C) …employees given **new jobs** for which training not given…

(a)(7)(D) …**new substances, processes, procedures or equipment**

(a)(7)(E) …**employer** made **aware** of a new hazards

(a)(7)(F) For **supervisors** to familiarize themselves with the safety and health hazards which their employees are being exposed.

Means - NOT H.R. unless

- Method & Delivery of training be technically competent
- Prove Supervisors trained both in Safety/Health as well as Supervision (enforcing house rules)
- Goal = Retention of Health and Safety subjects under Compliance interview

How And Who Trains/Educates House Members?

3203(a)(8) Allow employee access to the Written Program.

(A) Through (F) Subsections address:

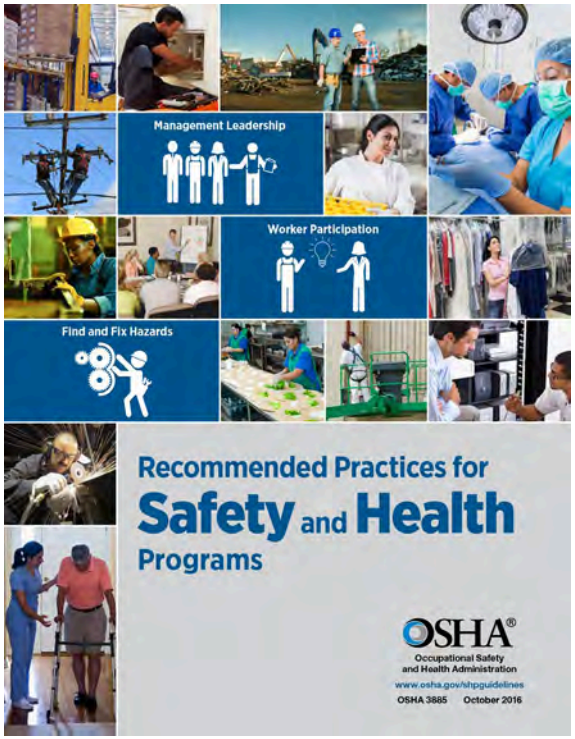
Definitions

Requests

Means

Methods

Delivery



Proof is in the PUDDING or "Where's The Beef"?

Compliance Means:

- Engage in *Situational Awareness/Analysis* in: Haz Recog/Eval/Control
- Prove *YOUR DECISION LOGIC* for:

  Engr./Admin./PPE Controls

- Triage hazard response by defining "Timely" by create a simple **MATRIX**