**OCASSE**

**Governmental Affairs Update**

**May 2016**

**California Scene**

**Legislative Issues**

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| **CA A 2225** | **AUTHOR:** | **Low [D]** |
|  | **TITLE:** | Occupational Safety |
|  | **INTRODUCED:** | 02/18/2016 |
|  | **DISPOSITION:** | Pending |
|  | **SUMMARY:** |  |
|  | Makes technical, nonsubstantive changes to the California Occupational Safety and Health Act of 1973 that provides the Division of Occupational Safety and Health with all the power, jurisdiction, and supervision over all employment and places of employment to enforce and administer all occupational health and safety laws and to protect employees. | |
|  | **STATUS:** |  |
|  | 02/18/2016 | INTRODUCED. |
|  | 03/14/2016 | To ASSEMBLY Committee on PUBLIC EMPLOYEES, RETIREMENT AND SOCIAL SECURITY. |
| **CA A 2272** | **AUTHOR:** | **Thurmond [D]** |
|  | **TITLE:** | Occupational Safety and Health Standards: Plume |
|  | **INTRODUCED:** | 02/18/2016 |
|  | **SUMMARY:** |  |
|  | Requires the Occupational Safety and Health Standards Board to adopt standards to protect health personnel and patients from plume, defined as noxious airborne contaminants generated as byproducts of the use of specific devices during surgical, diagnostic, or therapeutic procedures. | |
|  | **STATUS:** |  |
|  | 02/18/2016 | INTRODUCED. |
|  | 03/03/2016 | To ASSEMBLY Committee on LABOR AND EMPLOYMENT. |
|  | 04/20/2016 | From ASSEMBLY Committee on LABOR AND EMPLOYMENT: Do pass to Committee on APPROPRIATIONS. (5‑1) |
|  | 05/04/2016 | From ASSEMBLY Committee on APPROPRIATIONS: Do pass. (15‑5) |
|  | 05/05/2016 | In ASSEMBLY. Read second time. To third reading. |
| **CA A 2437** | **AUTHOR:** | **Ting [D]** |
|  | **TITLE:** | Division of Occupational Safety and Health |
|  | **INTRODUCED:** | 02/19/2016 |
|  | **DISPOSITION:** | Pending |
|  | **SUMMARY:** |  |
|  | Requires the Division of Occupational Safety and Health to include in its report to the Legislature recommendations to improve the ability of the division to maximize health outcomes in places of employment. | |
|  | **STATUS:** |  |
|  | 02/19/2016 | INTRODUCED. |
|  | 03/08/2016 | To ASSEMBLY Committee on LABOR AND EMPLOYMENT. |

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| **CA A 2895** | **AUTHOR:** | **Hernandez R [D]** |
|  | **TITLE:** | Employee Safety: Injury Prevention Programs |
|  | **INTRODUCED:** | 03/01/2016 |
|  | **LAST AMEND:** | 04/13/2016 |
|  | **SUMMARY:** |  |
|  | Requires every employer to establish, implement, and maintain an effective injury prevention program. Requires the program to be written and to include certain elements. Requires the employer to identify a person responsible for implementing the program and to correct unsafe and unhealthy conditions and work practices. Requires a written injury prevention program. Provides a time frame for furnishing the program to a current employee at no cost. Makes a violation an infraction and imposes a civil penalty. | |
|  | **STATUS:** |  |
|  | 03/01/2016 | INTRODUCED. |
|  | 03/28/2016 | To ASSEMBLY Committee on LABOR AND EMPLOYMENT. |
|  | 04/06/2016 | From ASSEMBLY Committee on LABOR AND EMPLOYMENT with author's amendments. |
|  | 04/06/2016 | In ASSEMBLY. Read second time and amended. Re‑referred to Committee on LABOR AND EMPLOYMENT. |
|  | 04/13/2016 | From ASSEMBLY Committee on LABOR AND EMPLOYMENT with author's amendments. |
|  | 04/13/2016 | In ASSEMBLY. Read second time and amended. Re‑referred to Committee on LABOR AND EMPLOYMENT. |
|  | 04/20/2016 | From ASSEMBLY Committee on LABOR AND EMPLOYMENT: Do pass to Committee on APPROPRIATIONS. (5‑2) |
|  | 05/11/2016 | In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File. |
| **CA A 2895** | **AUTHOR:** | **Hernandez R [D]** |
|  | **TITLE:** | **Employee Safety: Injury Prevention Programs** |
|  | **INTRODUCED:** | **03/01/2016** |
|  | **LAST AMEND:** | **04/13/2016** |
|  | **DISPOSITION:** | **Pending** |
|  | **SUMMARY:** |  |
|  | Requires every employer to establish, implement, and maintain an effective injury prevention program. Requires the program to be written and to include certain elements. Requires the employer to identify a person responsible for implementing the program and to correct unsafe and unhealthy conditions and work practices. Requires a written injury prevention program. Provides a time frame for furnishing the program to a current employee at no cost. Makes a violation an infraction and imposes a civil penalty. | |
|  | **STATUS:** |  |
|  | 03/01/2016 | INTRODUCED. |
|  | 03/28/2016 | To ASSEMBLY Committee on LABOR AND EMPLOYMENT. |
|  | 04/06/2016 | From ASSEMBLY Committee on LABOR AND EMPLOYMENT with author's amendments. |
|  | 04/06/2016 | In ASSEMBLY. Read second time and amended. Re‑referred to Committee on LABOR AND EMPLOYMENT. |
|  | 04/13/2016 | From ASSEMBLY Committee on LABOR AND EMPLOYMENT with author's amendments. |
|  | 04/13/2016 | In ASSEMBLY. Read second time and amended. Re‑referred to Committee on LABOR AND EMPLOYMENT. |
|  | 04/20/2016 | From ASSEMBLY Committee on LABOR AND EMPLOYMENT: Do pass to Committee on APPROPRIATIONS. (5‑2) |
| **CA S 1073** | **AUTHOR:** | **Monning [D]** |
|  | **TITLE:** | Residential Housing: Lead‑Based Paint |
|  | **INTRODUCED:** | 02/16/2016 |
|  | **LAST AMEND:** | 04/26/2016 |
|  | **SUMMARY:** |  |
|  | Updates regulations governing lead‑related construction work to conform to federal rules, or be more stringent. Requires a request for authorization to enforce provisions of that rule and, to adopt regulations establishing procedures pursuant to which a local law enforcement agency may carry out enforcement activities. Requires related education and outreach. Prohibits such construction on a structure by a person which conducted the related inspection. Provides for license revocation for violations. | |
|  | **STATUS:** |  |
|  | 02/16/2016 | INTRODUCED. |
|  | 02/25/2016 | To SENATE Committee on RULES. |
|  | 03/28/2016 | From SENATE Committee on RULES with author's amendments. |
|  | 03/28/2016 | In SENATE. Read second time and amended. Re‑referred to Committee on RULES. |
|  | 03/31/2016 | Re‑referred to SENATE Committee on ENVIRONMENTAL QUALITY. |
|  | 04/20/2016 | From SENATE Committee on ENVIRONMENTAL QUALITY: Do pass as amended to Committee on APPROPRIATIONS. (7‑0) |
|  | 04/26/2016 | In SENATE. Read second time and amended. Re‑referred to Committee on APPROPRIATIONS. |

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| **CA S 1100** | **AUTHOR:** | **Monning [D]** |
|  | **TITLE:** | Worker Occupational Safety and Health Training |
|  | **INTRODUCED:** | 02/17/2016 |
|  | **LAST AMEND:** | 04/11/2016 |
|  | **SUMMARY:** |  |
|  | Provides that moneys in the Workers' Occupational Safety and Health Education Fund may be applied to specified collaborative work by the Commission on Health and Safety and Workers' Compensation in connection with its training and education program. Expands the list of purposes of the program to increase the number of, and assure continued capacity of, specified organizations to train workers and provide services. Requires the Commission to collaborate with specified entities. | |
|  | **STATUS:** |  |
|  | 02/17/2016 | INTRODUCED. |
|  | 02/25/2016 | To SENATE Committees on LABOR AND INDUSTRIAL RELATIONS and HEALTH. |
|  | 04/06/2016 | From SENATE Committee on LABOR AND INDUSTRIAL RELATIONS: Do pass to Committee on HEALTH. (5‑0) |
|  | 04/11/2016 | From SENATE Committee on HEALTH with author's amendments. |
|  | 04/11/2016 | In SENATE. Read second time and amended. Re‑referred to Committee on HEALTH. |
|  | 04/20/2016 | From SENATE Committee on HEALTH: Do pass to Committee on APPROPRIATIONS. (9‑0) |
|  | 05/02/2016 | In SENATE Committee on APPROPRIATIONS: To Suspense File. |

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| **CA S 1167** | **AUTHOR:** | **Leyva [D]** |
|  | **TITLE:** | Employment Safety: Indoor Workers: Heat Regulations |
|  | **INTRODUCED:** | 02/18/2016 |
|  | **DISPOSITION:** | Pending |
|  | **SUMMARY:** |  |
|  | Requires the Division of Occupational Safety and Health to propose to the standards board for its adoption, a heat illness and injury prevention standard applicable to indoor workers that provides equal or greater protection. | |
|  | **STATUS:** |  |
|  | 02/18/2016 | INTRODUCED. |
|  | 03/03/2016 | To SENATE Committee on LABOR AND INDUSTRIAL RELATIONS. |
|  | 04/06/2016 | From SENATE Committee on LABOR AND INDUSTRIAL RELATIONS: Do pass to Committee on APPROPRIATIONS. (4‑1) |

**Cal OSHA Standards Board**

**Adopted Regulations**

**TITLE 8: Sections 3207 and 3212**

**General Industry Safety Orders**

**Fall Protection for Work Around Skylights**

Public hearing: September 17, 2015

Filed with Secretary of State: April 12, 2016

Effective: July 1, 2016

The amendments add needed flexibility for fall protection around skylights, which are not directly addressed by federal regulations. For instance, whereas federal and state regulations currently regulate skylight screens above the skylight, the changes provide requirements for their use below the skylight. Nets used for fall protection are regulated by federal OSHA, but not in the manner they are proposed to be used in this rulemaking effort. Finally, skylights that meet the strength requirements of a cover are currently allowed under federal regulations, and are to be allowed by state regulations under certain circumstances.

**TITLE 8: Section 3328(a)**

**General industry Safety Orders**

**Definition of Adequate Design**

Public hearing: August 20, 2015

Filed with Secretary of State: February 25, 2016

Effective: April 1, 2016

This section addresses a number of safety issues related to the safe use and operation of machinery and equipment which include but are not limited to: operation under stress or load, inspection and maintenance, defective parts, and design, securing or covering critical components of machinery and equipment against breakage which could result in catastrophic failure and employee injury or fatality. Modifications were adopted to add regulatory text in subsection (a) that replaces the term “adequate design” with regulatory text to clarify that all machinery and equipment shall be designed or engineered to safely sustain all reasonably anticipated loads in accordance with recognized engineering principals. Further modifications were adopted to ensure that, machinery and equipment is not used or operated in environmental conditions that are not recommended by the manufacturer unless engineered by design to withstand those conditions. The adopted modifications will clarify to the employers that every piece of machinery and equipment is capable of sustaining its intended load and is engineered to safely support and withstand all anticipated loads, speeds, stresses or environmental conditions that are not against the manufacturer’s recommendations or its engineered design.

**TITLE 8: Section 4307**

**General Industry Safety Orders**

**Exception for Portable Power-Driven Circular Saw Blade Guarding (Horcher)**

Public hearing: November 19, 2015

Filed with Secretary of State: March 7, 1026

Effective date: March 7, 2016

Federal OSHA construction standard Section 1926.304(d) provides specific portable power-driven saw blade guarding requirements for circular saws. The federal standard requires a minimum arc of saw teeth exposure to allow a safe engagement of the saw blade with the piece to be cut. The adopted amendment adds the federal language to Section 4307(a) and (b) of the General Industry Orders (GISO) to provide the minimum arc of blade exposure for the upper and lower blade guard allowing the base plate to move freely and the saw blade to safely contact and retract from the work to be cut. This regulation adopts the federal language essentially verbatim to clarify existing instructions for the proper operation and use of circular saw blade guards.

**TITLE 8: Section 4412**

**General Industry Safety Orders**

**Pulp, Paper and Paperboard Mills – Conveyor Warning Sign (Horcher)**

Public hearing: November 19, 2016

Filed with Secretary of State: March 7, 2016

Effective date: March 7, 2016

The regulation requires signage for conveyors that crossover walkways and roadways to alert employees to the overhead hazard. The Board determined, as a result of a review of the referenced portion of the Federal Register, that Title 8 did not have an equivalent standard to the Federal 1910.261(c)(15)(iv). The regulation adopts the signage provisions into the Conveyor standard in the Pulp, Paper and Paperboard Mills Article within Group 8 of the General Industry Safety Orders. The proposed regulation is substantially the same as the final rule promulgated by Federal OSHA.

**Cal OSHA Standards Board**

**Proposed Regulations**

**TITLE 8: Section 5155**

**General Industry Safety Orders**

**Airborne Contaminants - Wood Dust and Western Red Cedar**

The Board held a public hearing at 10:00 a.m. on April 21, 2016 in the Council Chambers of the Walnut Creek City Hall, 1666 N. Main Street, Walnut Creek.

The substances wood dust and western red cedar with the amended Permissible Exposure Limits (PEL) in this proposal were considered by the Division of Occupational Safety and Health’s (Division) Health Expert Advisory Committee (HEAC) in three public meetings from September 2009 through June 2010. The HEAC considered the health basis of possible changes to the PEL based on a range of scientific information. Technical assistance was also provided to the Division by the Hazard Evaluation System and Information Service in the California Department of Public Health. In addition, informal public comment was invited on the range for possible PELs recommended by the HEAC for potential feasibility and cost issues at a meeting of the Division’s Feasibility Advisory Committee (FAC) on October 6, 2010. The meetings of both the HEAC and the FAC were open to the public.

The specific changes are as follows:

* Lowers the existing PEL in CCR, Title 8, Section 5155 Table AC-1 for wood dust from an 8-hour time-weighted average (TWA) of 5 milligrams per cubic meter of air (mg/M3 ) to 1 mg/M3 total particulate mass.
* Lowers the existing 15-minute short term exposure limit in CCR, Title 8, Section 5155 Table AC-1 for wood dust from 10 mg/M3 to 5 mg/M3 total particulate mass.
* Lowers the existing PEL in CCR, Title 8, Section 5155 Table AC-1 for Western Red Cedar from an 8-hour TWA of 2.5 mg/M3 to 0.5 mg/M3 total particulate mass.

**Federal Scene\***

**Congressional Issues**

**President Proposes Budget Increase for OSHA and MSHA – Decrease for NIOSH**

President Obama has proposed the Fiscal Year 2017 federal budget and it includes some good news for OSHA and MSHA while not so good news for NIOSH. But remember, the President’s proposed budget is only a “request” and there is no way this budget will make it into law.

As a matter of fact this is only the beginning of the entire process. The House Republicans have already put out a “blueprint” of their budget proposal that would drastically cut federal spending although no specific details have emerged. Then we will see the Senate proposal followed by numerous hearings on the Hill before they get down to the real business.

Will they adopt a budget? Odds are less than 50-50 as Congress seems to have fallen into this cycle of not approving a “real” budget, but simply adopting an omnibus bill as time runs out. I expect the same thing to occur this year. What makes this even more frustrating is that Congress adopted a two-year spending level last year so this scenario of omnibus bills could be avoided. So much for that idea! And don’t forget there is still the looming threat of sequestration cuts. The fun times continue!

Let’s take a look at the President’s budget proposal, even if it is only wishful thinking

**OSHA**

Existing Budget for FY16 $552.8 million

President’s FY17 Proposal $592.1 million

Some Specifics: FY16 FY17

Federal Enforcement $208 million $226 million

State Program Enforcement $100.9 million $104 million

Whistleblower Enforcement $17.5 million $22 million

Fed. Compliance Assistance $68.4 $73 million

State Consultations Grants $57.8 million $60 million

Training Grants $10.5 million $11 million

Safety & Health Standards $20 million $23 million

Safety & Health Stats $34.3 million $40 million

The OSHA budget proposal also highlighted the fact that the agency hopes to issue two final standards in FY17 (beryllium and respirator fit test), three notices of proposed rulemaking and 21 guidance documents.

Voluntary Protection Program – Good news on this front. For the first time ever the budget proposal contains a specific set-aside, $3.5 million, for this program. Nice to see the agency recognizes the worth of this program.

Flashback – In 2007 OSHA received $487 million. By 2012 the agency was receiving $565 million. Since 2012 the agency has seen a reduction of $12 million; and the number of employees at the agency (2173) is exactly the same as it was in 2007. Interesting for sure!

One other note – Why is this budget in trouble. Let me cite the words of the House Chairman of the Appropriations Subcommittee overseeing spending for OSHA, MSHA and NIOSH – “My advice would be don’t make plans to spent the money yet.” That says it all!

**MSHA**

Existing Budget for FY16 $375.9 million

President’s FY17 Proposal $394.9 million

**NIOSH**

Here’s where AIHA and many others get heartburn. For at least the fifth consecutive year the President has proposed a cut in the NIOSH budget. Nearly this entire cut is a result of zeroing out the appropriations for the Education Research Centers and the Agriculture, Forestry, Fishing Program. AIHA and others have already started efforts to retain this funding by sending letters to the Hill and will be requesting individuals to contact their elected officials to support retention of this funding.

Existing Budget for FY16 $339.1 million

President’s FY17 Proposal $283 million

**OSHA Announces Final Silica Rule**

It really did happen! On March 24, OSHA announced the final rule on occupational exposure to respirable crystalline silica. To take you back, OSHA first attempted to update the silica standard in 1974 after NIOSH recommended that OSHA cut the exposure limit in half. The current round of rulemaking began in 1997 and the George W. Bush administration declared it a priority in 2002. The Obama administration moved it to the top of the agenda in 2009. Then it was stalled at the White House Office of Management and Budget for two and a half years and now we have a final rule!!

So, what is all the fuss about? Well, the final rule cuts the current exposure limit in half for general industry and about 20 percent for construction and shipyards. The rule comprises two standards, one for construction and one for general industry and maritime. Both take effect on June 23, 2016. The construction portion will have one year to comply with most requirements. General industry and maritime will have two years. Employers in fracturing will also have two years to comply with all provisions except engineering controls which have a five year effective date.

Read it for yourself. Here is the link to the OSHA silica web page and the final rule

https://www.osha.gov/silica/index.html

Is this now the end of the debate on silica? Far from it! Industry has already stated it will challenge the final rule in court. Congress has two different approaches to get involved, albeit only one is really a viable approach.

* The first is the use of the Congressional Review Act to override the final rule. Problem with this is that even if Congress overrides the final rule the President is likely to veto the effort.
* The more likely approach is that Congress will attempt to incorporate a budget rider on the OSHA budget that will ban OSHA from spending any dollars on the silica final rule, including enforcement. In the last budget cycle the House placed such a rider on OSHA but the rider was removed when the final omnibus bill was introduced and enacted. I expect Congress to try this approach again.

**Other OSHA Activity**

**Beryllium**

OSHA held a public hearing on March 21 and 22 to discuss the agency’s proposed beryllium rule. The OSHA proposal has been years in the making and would address exposure limits that were set some 45 years ago. The new proposed exposure limit would lower the limit by roughly 90 percent and was reached by an agreement between those involved with beryllium from both industry and labor.

The hearings didn’t result in any final agreement as there were those who believe the limit should be even lower and those who believe the lower limit would create hardship for many businesses that work with beryllium.

What will happen? Hard to say at this point in time. While OSHA hopes to finalize this rule before the Obama administration ends in January, it should be noted that the

President’s 2017 budget proposal lists this rule as a priority in fiscal year 2017. This would allow for only a few months to finalize the rule since the fiscal year starts on October 1. However, OSHA has publicly stated it has no timetable for issuing a final rule. My guess is that there just may not be enough time to finalize the rule before the end of the year, especially in light of the administration and others concerned about issuing rules and regulations at the “midnight hour”.

One final note: The proposed beryllium rule is a clear example of the broken regulatory process. OSHA has been attempting to update this standard since it held public hearings on beryllium in 1975. OSHA began its current beryllium rulemaking in November 2002. The agreement (negotiated rulemaking) that led to the current proposal took two and a half years before an agreement was reached and proposed to OSHA.

**Safety and Health Program Management Guidelines**

June is the date set for completing the latest version of the voluntary Safety and Health Program Management Guidelines. This version updates the 1989 Guidelines and OSHA hopes that employers of all sizes will use the guidelines to create their own safety and health programs.

**Guidance on Data Evaluation for Weight of Evidence Determination**

The comment period on the chemical hazard Weight of Evidence Determination has been extended to May 2 from the original date of March 21. The guidance would help employers classify chemical hazards and determine what must be disclosed on the label and safety data sheet.

**Eye and Face Protection**

OSHA has published a final rule that updates requirements for personal protective equipment for workers in general industry, shipyards, longshoring, marine terminals and construction. The rule updates references to OSHA’s Eye and Face Protection Standards and becomes effective April 25. See final rule at

https://www.federalregister.gov/articles/2016/03/25/2016-06359/updating-oshastandards-

based-on-national-consensus-standards-eye-and-face-protection

**EPA-OSHA Prosecution Update**

Back in December it was announced that OSHA and EPA would join forces to crack down on safety and environmental crimes. The point was that the Department of Justice (DOJ) would have better luck in enforcing workplace violations under federal environmental laws that provide for a more severe penalty. After only a few months the DOJ has announced the program is working very well and that the Department is pursuing several civil cases that involve worker safety.

**Congressional Activity**

Time is running short if Congress expects to enact any meaningful legislation before the end of the year. When one takes into consideration the annual summer recess and the expected adjournment in early fall because of the election, legislative days are limited. Plus, expect much of the remaining time to be taken up in arguments over whether or not the Senate should take up the President’s nomination to the Supreme Court.

**Safe Patient Handling**

As a follow-up to introduction of legislation that would require OSHA to enact a safe patient handling standard, AIHA has submitted letters of support for the legislation. You can read AIHA letters within the AIHA member site at https://www.aiha.org/governmentaffairs/

FederalActivity/HR4266-Safe%20Patient-Support-03-23-16.pdf

**“Midnight” Rules Bill**

Republicans in Congress continue to debate legislation that would bar federal agencies from proposing or finalize any regulation with $100 million or more in annual estimated costs during the final months of a presidency. This issue has been around for quite some time and every administration faces the same threat. Most of the time the administrations avoid finalizing these “midnight” rules but every once in a while something comes up. One of the most talked about was the ergonomics standard that was finalized during the last few days of the Clinton administration. While the bill would impact both Republican and Democrat administrations, it is obviously targeted at the Obama administration; however the current administration had already warned agencies that they needed to finalize any regulation by mid-summer in order to avoid this problem.

**Interesting Bill.** HR 4768 has been introduced that would restore the principle that courts are to decide questions of law rather than agencies. The premise behind the bill is that only the courts should interpret the statutes and that the agencies have no right to do so. Proponents of the bill cite “regulatory overreach” while opponents claim the agencies have the expertise to interpret. Of course, part of the problem is that Congress makes the laws vague so as not to have to make hard choices. Don’t think this will pass in this session of Congress but the bill does have bi-partisan support.

**TSCA Reform**

Still no word on whether or not the Senate and the House can work out a compromise on the Toxic Substances Control Act legislation. Two separate bills have been passed but they need to decide on one measure if anything is to be accomplished. Both the House and the Senate are stating they still hope to enact legislation this year; however time is running out.

**NIOSH Activity**

A couple of quick items from NIOSH –

* NIOSH plans to issue a final new recommended exposure limit for diacetyl yet this year. NIOSH began looking into a new limit about 4 years ago and has led the effort to address this issue. Many had hoped OSHA would push some sort of regulatory action but it was left to NIOSH to move forward.
* NIOSH has also updated a NIOSH criteria document on heat stress. The document was last issued in 1986 and includes the latest research into the issue, including physiological changes that result from heat stress, the impact of drugs on heat stress and information on personal protective equipment that can be used to control heat stress.

\*Information thanks to AIHA “Happenings”