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# COVID-19: Legislative, HR, and Safety Updates for October 2021

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# Objectives Today

- Brief Legislative updates on Cal and Federal OSHA
- Brief Update on EEOC and CDC regarding Vaccines
- Open Conversation on these topics

# Update COVID-19 ETS

## Cal OSHA and Fed OSHA

- Reminder – Cal/OSHA COVID-19 Prevention Emergency Temporary Standards are still in effect – updated on June 17, 2021
- Fed OSHA will issue an emergency temporary standard (ETS) **obligating employers with 100 or more employees to require COVID-19 vaccines or weekly testing** – pending
- Cal OSHA confirmed it will adopt a “comparable standard”

# Cal/OSHA

## SB 606 Enforcement Powers

- SB606 – Effective January 1, 2022
- Major Provisions of SB 606
  - Created *Enterprise-Wide* violation for employers with multiple worksite.
  - Can now cite for "egregious" violations (for each willful violation) and each instance of employee exposure will be considered a separate violation for purposes of assessing penalties.
  - Increases penalties for willful and repeat violations.
  - If an employer does not provide requested information in a reasonable time, DOSH can issue a subpoena.

# Cal/OSHA

## SB 606-Definitions

**Enterprise-Wide Labor Code 6317 (a)** Employers with multiple worksites with a pattern or practice of the same violation have a “rebuttable presumption” of an enterprise-wide violation.

**Egregious-Labor Code 6317.8. (b)** violation is an “egregious violation” if one or more of the following is true about that employer or the willful violations committed by it

- 1) The employer, intentionally, through conscious, voluntary action or inaction, made no reasonable effort to eliminate the known violation.
- (2) The violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses. For purposes of this paragraph, “catastrophe” means the inpatient hospitalization, regardless of duration, of three or more employees resulting from an injury, illness, or exposure caused by a workplace hazard or condition.
- (3) The violations resulted in persistently high rates of worker injuries or illnesses.
- (4) The employer has an extensive history of prior violations of this part.
- (5) The employer has intentionally disregarded their health and safety responsibilities.
- (6) The employer’s conduct, taken as a whole, amounts to clear bad faith in the performance of their duties under this part.
- (7) The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that may be in place.

# How to prepare for SB 606

- IIPP and COVID-19 Prevention Plans written and current.
- Ensure employee training is being conducted on a routine basis and documented.
- Notify Cal/OSHA within 8 hours of a serious injury or fatality (this includes COVID-19 hospitalizations).
- Review safety programs and ensure they are written and current.

# Example: Most frequent Cal OSHA citations in 2019

1. Injury and Illness Prevention Program
2. Heat Illness Prevention Program
3. Construction Injury and Illness Prevention Program
4. Control of Hazardous Energy, Including Lockout/Tagout
5. Hazard Communication
6. Emergency Eyewash and Shower Equipment
7. Reporting Work- Connected Fatalities and Serious Injuries
8. Respiratory Protection
9. Portable Fire Extinguishers
10. Permits to Operate Air Tanks

<https://safetyervices.ucdavis.edu/news/calosha-top-violations-2019>

# Current Examples of Cal OSHA Citations

## Citation and Notification of Penalty

**Company Name:** Gotworx Staffing INC  
**Establishment DBA:** and its successors  
**Inspection Site:** 20401 E Mariposa Ave  
El Segundo, CA 90245

## Citation 2 Item 1 Type of Violation: **Serious**

California Code of Regulations Title 8, 3203 Injury and Illness Prevention Program.

- (a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:
- (7) Provide training and instruction:
- (A) When the program is first established;
  - (B) To all new employees;
  - (C) To all employees given new job assignments for which training has not previously been received;
  - (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;
  - (E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,
  - (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

**Prior to and during the course of the inspection the employer failed to effectively train employees on COVID-19 information, including but not limited to prevention, symptoms, reporting and the employer's procedures to control and prevent transmission for employees. [3203(a)(7)]**

<b>Date By Which Violation Must be Abated:</b>	July 02, 2021
<b>Proposed Penalty:</b>	\$18000.00

## Citation and Notification of Penalty

**Company Name:** Acalanes Union High School District  
**Establishment DBA:** and its successors  
**Inspection Site:** 310 Moraga Road  
Moraga, CA 94556

## Citation 1 Item 1 Type of Violation: **Serious**

T8 CCR Section 3205(c)(6)(A).COVID-19 Prevention.  
(c) Written COVID-19 Prevention Program. Employers shall establish, implement, and maintain an effective, written COVID-19 Prevention Program, which may be integrated into the employer's Injury and Illness Program required by section 3203, or be maintained in a separate document. The written elements of a COVID-19 Prevention Program shall include:

- (6) Physical distancing.
- (A) All employees shall be separated from other persons by at least six feet, except where an employer can demonstrate that six feet of separation is not possible, and except for momentary exposure while persons are in movement. Methods of physical distancing include: telework or other remote work arrangements; reducing the number of persons in an area at one time, including visitors; visual cues such as signs and floor markings to indicate where employees and others should be located or their direction and path of travel; staggered arrival, departure, work, and break times; and adjusted work processes or procedures, such as reducing production speed, to allow greater distance between employees.

Prior to, and during the course of the inspection, including, but not limited to January 29, 2021 the employer failed effectively implement its COVID-19 Prevention Program by ensuring that employees were separated by at least six feet from other employees while taking breaks and eating/drinking in building B.

<b>Date By Which Violation Must be Abated:</b>	Corrected During Inspection
<b>Proposed Penalty:</b>	\$5400.00

<https://www.dir.ca.gov/dosh/COVID19citations.html>



# Preparing for OSHA ETS-things to start thinking about now

- Framework will **most likely** include:
  - All employers with 100 or more employees must:
    - ensure their workers are vaccinated
    - OR require unvaccinated employees to produce a weekly negative test result before coming to work
    - Counted on a company-wide basis
    - Remote workers not covered provided they don't come to the workspace

# Preparing for OSHA ETS

- Are you covered?
- Survey employee's vaccination status
- Research testing options
- Consider paid time off requirements
- Consider remote worker options
- Develop written plan
- Develop communication plan

# Resources

- [COVID-19 Vaccine Resource Hub \(naco.org\)](https://naco.org/covid-19-vaccine-resource-hub)
- [Employer COVID-19 Vaccine Mandate: Frequently Asked Questions \(naco.org\)](https://naco.org/employer-covid-19-vaccine-mandate-frequently-asked-questions)
- [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB606](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB606)
- <https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html#updates>

# Questions

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