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Cal/OSHA Penalties

Proposed Rules Take Aim at 'Egregious' Violators

CAL/OSHA is working on new rules that would crack down on and step up enforcement and penalties against California employers that commit "egregious" and "enterprise-wide" workplace safety violations.

To enforce the impending rules, the agency is ramping up hiring of investigators to identify egregious violators and to refer more employers for criminal prosecution. The forthcoming rules would impose substantial penalties on companies that have shown a disregard towards California workplace safety regulations and the wellbeing of their employees.

Employers that are cited for egregious violations could be fined up to $158,000 "per instance," meaning it can be applied for each employee exposed to the violation.

Here's what's on tap:

Enterprise-wide violation

Under the proposed rules, a violation is enterprise-wide if an employer has multiple worksites and either of the following is true:

- The employer has a written policy or procedure that violates Cal/OSHA rules; or
- The Division of Occupational Safety and Health has evidence of a pattern or practice of the same violation or violations involving more than one of the employer's worksites.

TWO NEW PENALTY STRUCTURES

Enterprise-wide Violation

The proposed penalty is multiplied by the number of worksites covered at inspection, up to a maximum of $158,727 per exposed worker, and will be adjusted each year for inflation.

Egregious Violation

The proposed maximum penalty for egregious violations will be $158,727. Importantly, each employee that is exposed to a violation would be considered a separate violation. The penalty can be assessed on a per-instance basis.

Egregious violation

The proposed rules define an egregious violation as a willful violation where the employer has had a previous egregious violation in the past five years. One or more of the following must apply:

- The employer intentionally made no reasonable effort to eliminate a known violation.
- The employer has a history of one or more serious, repeat or willful violations or more than 20 general or regulatory violations per 100 employees.
- The employer intentionally disregarded its health and safety responsibilities, such as by failing to maintain an Injury and Illness Program, ignoring safety hazards, or refusing to comply with regulations.
- The employer's conduct amounts to clear bad faith in the performance of their duties to comply with occupational safety and health standards.
- Within the five years preceding a citation for an egregious violation, the employer has committed more than five violations of any Title 8 standard that has become finalized.

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Digital Tools
Use Technology to Prevent Losses and Manage Your Risk

BUSINESSES ARE increasingly using smartphones and tablets to manage their risks and improve their workplace safety.

A growing number of applications for these devices — matched with other technologies — can help companies prevent losses, reduce the chances of workplace accidents and manage risk.

There are also a number of innovative apps that allow businesses to identify, report and address safety issues, security risks and other problems remotely.

This technology can make life easier for a company's risk manager or human resource officers, adding another layer of protection.

On-site systems

Mobile devices can connect to security and utilities systems via apps from their security equipment vendors, giving business owners instant information when they're away from the premises.

For example, the system may send a text alert to a smartphone if a security camera picks up sudden movements.

Other products may stream videos from multiple security cameras to a smartphone app, enabling the owner or personnel to keep an eye on the premises during off-hours.

For example, a system might send a text alert when it detects a leak in the building's plumbing system. Once alerted, the building owner can shut off the water remotely or in person, thus limiting the damage.

Video from cameras that monitor the premises can also be saved and used in helping police recover stolen property. A coffee manufacturer in Portland, Oregon, implemented a system like this.

Weeks after installation, the company recorded video of a burglar stealing thousands of dollars in equipment. The owners downloaded the video, sent it to the local police and posted it on social media channels. The video produced a full criminal investigation, arrest and conviction.

Risk management apps

There are several noteworthy applications on the market that businesses can use to manage their risks and workplace safety, including the following:

RiskReporter – This app is designed to help risk managers keep track of their organization's potential risks. Users can record risk-related events as they occur and e-mail them to supervisors, all the while noting suggested risk-control measures and action plans.

Origami Mobile – The app enables risk professionals, employees and contractors to conduct job site audits and inspections and report incidents remotely, even in instances where Wi-Fi is unavailable.

Users are able to detect and report workplace operational hazards and behavior trends, monitor effectiveness of safety programs, gather and leverage real-time incident data and provide coaching and training services to workers.

Kizeo Forms – This app allows users to customize components of the app specifically to their workplace. Its main function is the ability to report incidents from remote locations, using geolocation.

The app also includes features like:
- Remote near-miss reporting
- Remote security log
- Remote risk assessment
- Remote check of personal protective equipment
- Ergonomics inspection.

Risk Assessor – This app lets you create detailed safety reports from your phone or tablet. You can brand the reports with your company details and create a bespoke hazard and control list to suit your business. ❖

Employers Should Double Down on Workplace Safety

- The violations resulted in worker fatalities, a worksite catastrophe, or five or more injuries or illnesses. Catastrophe is defined as inpatient hospitalization of three or more workers from a workplace hazard.
- Within the 12 months immediately preceding the underlying violation, 10% of all employees at the cited worksite sustained workplace injuries or illnesses.

The takeaway

The proposed regulations pose the largest risk for companies with multiple locations.

Fines will be adjusted each year to account for infation.

Employers should double down on their workplace safety efforts and ensure that there is buy-in to the program from top management down to supervisors and line workers at all locations. ❖

New Rulemaking

Proposed Workplace Violence Rules Sow Confusion

CAL/OSHA has proposed new regulations that would incorporate California's new workplace violence prevention law — which took effect July 1 — into Title 8, the set of regulations that covers workplace safety in the Golden State.

However, the proposed rules add a number of new requirements that some safety observers say would be unworkable in many workplaces and may create burdensome new standards for employers to follow. Here's how the new rules add to those requirements.

Workplace controls

The proposed regulations list acceptable procedures and rules that can be used to effectively reduce workplace violence hazards:

- Appropriate staffing levels,
- Hiring dedicated security personnel,
- Effective means to alert employees of the presence, location and nature of a security threat, and
- Control of visitor entry.

Engineering controls

Suggestions for engineering controls that can help prevent violence:

- Electronic or mechanical access controls to employee areas,
- Weapon detectors (installed or handheld),
- Enclosed workstations with shatter-resistant glass,
- Deep service counters,
- Spaces configured to optimize employee access to exits, escape routes and alarms,
- Separate rooms or areas for high-risk persons,
- Locks on doors,
- Affixing furniture to the floor,
- Opaque glass windows (which can protect privacy, but allow employees to see where potential risks are),
- Improving lighting in dark areas, sight-aids, enhancing visibility and removing sight barriers,
- Video monitoring and recording, and
- Personal and workplace alarms.

Workers most at risk

The proposed rules list situations or locations that have a higher risk of workplace violence. These include:

- Employees working alone or in locations isolated from other staff,
- Areas with poor illumination or blocked visibility.,
- Work locations that lack effective escape routes,
- The presence of money or valuable itemss,
- Frequent or regular contact with the public,
- Working late at night or early morning, and
- Selling alcohol, marijuana or pharmaceutical drugs.

Response procedures

The draft rules outline steps employers can take when responding to and then investigating a case of workplace violence, post-incident:

- Provide immediate medical care or first aid to workers who have been injured in the incident,
- Identify employees involved in the incident,
- For employers with more than 25 employees, make available individual trauma counseling to those staff affected by the incident,
- Conduct a post-incident debriefing as soon as possible after the incident with employees and supervisors involved in the incident,
- Identify hazards that may have contributed to the incident,
- Identify and evaluate whether appropriate corrective measures developed under the firm's workplace violence prevention plan were effectively implemented, and
- Solicit opions from employees involved in the incident about the cause of the incident, and what could have prevented it.

The takeaway

The proposed rules are just the first step. They still have to go through a public comment period and the Division of Occupational Safety and Health, which writes new regulations.

However, the rules have already received plenty of pushback from employers. ❖

HI-TECH SOLUTION: *Electronic entry systems can reduce the chances of workplace violence.*

Construction Industry
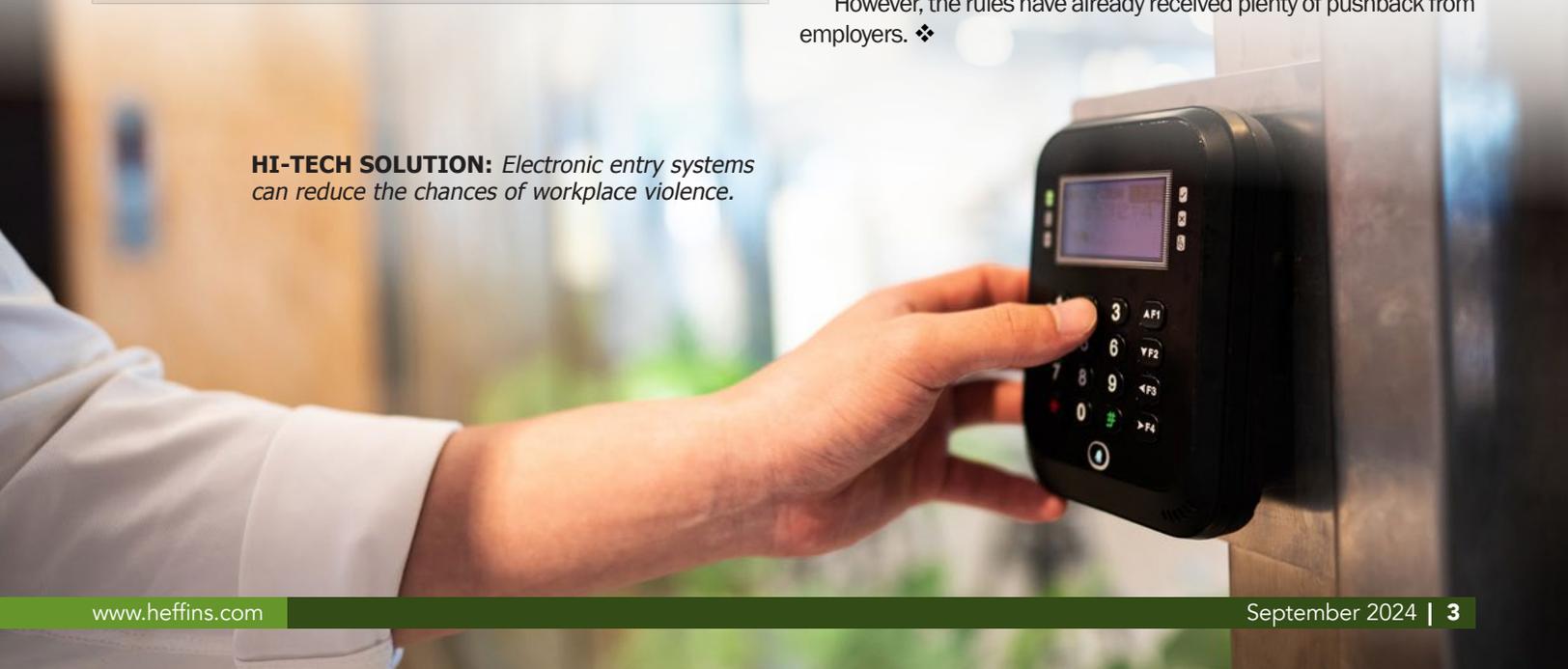
EEOC Issues Harassment Prevention Guidance

THE EQUAL Employment Opportunity Commission has issued new guidance for preventing harassment on construction industry worksites.

The guidance, while not binding, can be used as a template for construction firms to implement anti-harassment policies. According to the EEOC, the industry has an especially high incidence of harassment complaints.

The guidance, "Promising Practices for Preventing Harassment in the Construction Industry," outlines the main principles for implementing an effective strategy to prevent workplace harassment:

Buy-in from leadership

Worksite leaders, from the project owner to crew leads to union stewards, should clearly, frequently and unequivocally message and demonstrate that harassment is prohibited.

The EEOC recommends that project owners and general contractors prioritize and emphasize worksite-wide collaboration to prevent and correct harassment. The general contractor is typically well positioned to coordinate harassment prevention across a worksite and serve as a backstop for resolving difficult issues.

General contractors should assist subcontractors and staffing agencies with their legal obligations under federal anti-discrimination laws by referring them to the EEOC's Small Business Resource Center.

It also recommends that project owners or sponsors consider requiring that contract bids include a plan to prevent and address workplace harassment.

Strong and comprehensive harassment policies

Policies should include:
- A clear description of prohibited conduct, with examples tailored to the work environment.
- An unequivocal statement that harassment is prohibited.
- A description of complaint and reporting processes and where to find more information about them.

- A commitment that the employer will provide a prompt, impartial and thorough investigation, and that the employer will keep confidential the identity of individuals who make reports.
- A statement that workers are encouraged to report harassment, bullying or other inappropriate conduct even if they are not sure if the conduct violates the policy.
- A discipline policy that is prompt, consistent and proportionate to the severity of the harassment or related misconduct, such as retaliation.
- An unequivocal statement that retaliation for reporting harassment is prohibited.
- Account for language barriers in the workforce, such as non-native English speakers or workers with poor literacy.

Regular and effective training

All workers should be regularly trained on the harassment policy and complaint system.

Training should be:
- Clear, easy to understand and offered in languages commonly used by on-site workers.
- Tailored to the specific workforce and work environment.
- Interactive if feasible. Alternative options include providing training through an interactive module accessible via mobile phone or watching a series of short video clips, followed by a guided discussion about the clips.

The takeaway

While the guidance isn't legally binding, employers should consider following its recommendations as doing so can reduce their risk of liability.

Just a note of caution: There are inherent risks when one employer relies on another employer to adhere to policies, as it can create friction between partnering organizations. ❖