

# CALIFORNIA INDUSTRIAL HYGIENE COUNCIL

*Advancing public policy to improve the health and safety  
of workers and the community.*

November 23, 2020

Via email: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)

Office of Administrative Law  
Reference Attorney  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

Subject: OAL File #2020-1120-01E, COVID-19 Prevention

Dear Sir/Madam:

The California Industrial Hygiene Council (CIHC) appreciates the opportunity to comment on OAL File #2020-1120-01E, COVID-19 Prevention. CIHC has been tracking the Occupational Safety and Health Standards Board's (OSHSB) proposed emergency action on COVID-19 Prevention, participated in the OSHSB's verbal comment opportunity during their monthly meeting on November 19, 2020, and submitted written comments to OSHSB on November 19, 2020. CIHC is copying the agency contact (OSHSB Executive Officer Christina Shupe) on these comments as well as required.

The CIHC, founded in 1990, represents the industrial hygiene and the occupational and environmental health (OEHS) professions in California. CIHC is affiliated with the national American Industrial Hygiene Association (AIHA), an 8,000-member organization dedicated to worker health and safety. The CIHC is formally comprised of industrial hygienists and OEHS professionals who are members of the five California AIHA local sections represented by the CIHC Board of Directors. The CIHC's mission is to provide sound scientific and technological input to the regulatory and legislative processes, and establish a legislative presence in the state Capitol through professional representation.

The CIHC opposes these emergency regulations (Title 8 California Code of Regulations (8 CCR) Sections 3205, 3205.1, 3205.2, 3205.3 and 3205.4). The CIHC understands the seriousness of the COVID-19 pandemic, but these regulations are not necessary. CIHC realizes that other states, such as Virginia, Michigan and Oregon, have already adopted emergency COVID-19 prevention regulations. However, it is important to note that these states do not have the breadth and depth of existing regulations to cover this "novel" hazard as we have in California. OSHSB's adoption of these emergency regulations has been rushed, and has the appearance of political motivation.

Our State already has adequate regulations in place to address the COVID-19 hazards that potentially affect California workplaces. This is demonstrated by the fact that the Division of Occupational Safety and Health (DOSH) enforcement actions regarding COVID-19 have resulted in citations being issued to numerous and varied work environments, and presumably, these enforcement actions will continue. Based on information available from [www.dir.ca.gov](http://www.dir.ca.gov), regulations currently being cited to require employers to address COVID-related hazards include, but are not limited to:

- 8 CCR 5199 Aerosol Transmissible Diseases (Health care industry)
- 8 CCR 3203 Injury and Illness Prevention Program (IIPP), especially hazard identification and correction, and training requirements
- 8 CCR 5144 Respiratory Protection
- 8 CCR 5162 Emergency Eyewash and Shower Equipment
- 8 CCR 3457 Field Sanitation (Ag industry)

Based on the provisions of the IIPP regulation, and given the current plethora of information and news on this pandemic, COVID-19 is a hazard an employer should easily recognize that is potentially part of the workplace. As such, a separate standard is not necessary, especially this overly involved set of requirements that will be difficult for employers with the most sophisticated health and safety programs to meet let alone the small businesses that may not have access to the resources that will be needed to comply.

Employers already have access to, and are using, a myriad of workplace safety guidance documents on COVID-19 prevention such as those available from the Cal/OSHA program, the California Department of Public Health, the National Institute for Occupational Health and Safety, and the American Industrial Hygiene Association, as well as guidance from local Health Departments. In the OSHSB emergency regulation documentation, they convey this fact as well. In lieu of regulatory action, CIHC recommends that DOSH issue a guidance document for compliance that is pertinent to the Title 8 sections they are already using to cite employers. Also acknowledged in the OSHSB emergency regulation documentation is their understanding that many employers have already developed programs and procedures for COVID prevention. This seems to argue that emergency regulations are actually not necessary.

The employers who are already implementing effective procedures to assure that their employees have a safe work environment have been using national, state and local guidance in large part to supplement their IIPPs. These employers do not need a new set of regulations. Employers who are currently not making changes to their safety procedures and work environments in light of the COVID-19 hazard are probably not going to address this hazard just because a new, and onerous, set of regulations is adopted.

The CIHC Board members have reviewed the new emergency Title 8 Sections, and we have many concerns with the prescriptive requirements and potential cost for implementation (for example, changes that may be needed to ventilation systems, housing, and transportation). To highlight just one of CIHC's specific concerns, please consider the following. OSHSB specifically addresses ventilation systems in the cost analysis essentially saying that changes to ventilation systems are not required. However, the emergency regulations include a specific requirement in 8 CCR 3205(c)(8)(B) that "employers shall maximize the quantity of outside air provided to the extent feasible". The way indoor air quality is improved and/or the quantity of outside air is maximized may very well necessitate ventilation system changes! The OSHSB emergency regulation documentation includes cost review for State and local agencies, but does not consider the cost for ventilation system changes or the cost to the private sector employers in California. The work places in California are not amenable to one-size fits all regulations!

As serious as the effects of this novel corona virus have been, and just as with previous pandemics, this emergency is in fact self-limiting with vaccinations most likely available in the very near future. The basic question, therefore, remains "is this emergency regulation necessary"?

CIHC appreciates the ability to be involved in the regulatory process. On behalf of CIHC, I may be contacted at (916) 712-4547 or kwa-sacramento@att.net.

Very truly yours,  
California Industrial Hygiene Council



Pamela Murcell, MS, CIH  
President, CIHC

CC: Ms. Christina Shupe, Occupational Safety and Health Standards Board  
Via email: cshupe@dir.ca.gov