



"The Public Interest"

Health/Safety and Environmental Issues

the PASMA way to shared knowledge

Public Agency Safety Management Association

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Front Page: Cal/OSHA P & P' C4 and C5

Individual Highlights:

Cal/OSHA P & P C4 and C5	2
CSUDH Free Cal/OSHA Update	3
CSUDH Cal/OSHA Appeals Training	4

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Editor's Message

"Cal/OSHA Policy & Procedure – C-4; C-5"

By: Dick Monod de Froideville

Section 6300 of the California Labor Code contains the mission statement of Cal/OSHA and reads in part that the CalOSH Act was enacted for the purpose of assuring safe and healthful working

conditions for all California working men and women by authorizing the enforcement of effective standards.... Historically we know that the Division's Enforcement choice is the issuance of Citations. However, both the Labor Code and Cal/OSHA's P&P authorizes the use of Notices and/or Information Memorandums as viable alternatives to enforce the regulations. Unfortunately for our stakeholders, not many know of their existence let alone the proper application during settlement negotiations. Please note that when issued, neither of these instruments carry any monetary penalties, cannot be appealed and may be used as the basis for a subsequent "repeat" or "failure to abate" citation. I strongly suggest you become familiar with this enforcement option. Enjoy the read. (Ed.)

The Use of a NOTICE Cal/OSHA P&P C-4 or INFORMATION MEMORANDUM P&P C-5 <http://www.dir.ca.gov/samples/search/queryppn.htm>

NOTICE P&P C4

AUTHORITY: California Labor Code Sec. 6317 and Title 8 California Code of Regulations Sec. 332.1 and 334(d).

POLICY: It is the policy of the Division of Occupational Safety and Health to consider issuance of a Notice in lieu of a citation when the violative condition does not have a direct relationship to employee safety or health, or when the violative condition does not have an immediate relationship to employee safety and health and the violative condition is of a general or regulatory nature.

PROCEDURES:

A. USE, APPLICATION AND EXAMPLES

1. Use

A Notice (Cal/OSHA Form 4) is an enforcement document which may be issued to an employer by the Division **in lieu of a citation** under the following circumstances:

- When a violative condition noted during the course of an inspection or investigation does not have a direct relationship to employee safety or health; or
- When the violative condition does not have an immediate relationship to employee safety and health and the violative condition is of a general or regulatory nature.

EXCEPTIONS: A notice shall not be issued when the violative condition is classified as a serious, willful, repeat or failure-to-abate, or when the number of general or regulatory violations equals or exceeds ten (10).

- Application. In general, a Notice may be issued when the employer complies with the clear intent of the standard but deviates from its particular requirements in a manner that has no direct or immediate relationship to employee safety or health. These deviations may involve distance specifications, construction material requirements, use of incorrect color or minor variations from testing or inspection regulations.



(Cal/OSHA P&P Cont'd)

EXCEPTION: A Notice in lieu of a citation shall not be issued for the following types of violations: (a) posting violations with reference to the Cal/OSHA Poster, citations, special orders, and orders to take special action; (b) recordkeeping violations, except for recordkeeping violation pertaining to crane certifiers; (c) reporting violations; and (d) other violations for which a minimum civil penalty must be assessed.

1. Examples

a. When exposure to the violative condition is not directly or immediately unsafe for employees;

EXAMPLE: A required sign indicating the presence of high explosives, i.e., EXPLOSIVES--KEEP OFF, has letters which are slightly less than the required eight (8) inches high in height. 8 CCR §1562(g).

b. When exposure to the violative condition is not directly or immediately unhealthy for employees;

EXAMPLE: Flashlight is not present in a First Aid Kit at a worksite with seventeen (17) employees when one is required to be included for 16 to 200 employees. 8 CCR §1512(c)(1).

c. When correction of the violative condition will not prevent an injury or illness;

EXAMPLE: A standard guardrail is one-half inch less than the required vertical height range of 42 to 45 inches. 8 CCR §3209(a).

d. When compliance with the applicable Safety Order will not improve employee safety and health but only enhance employee comfort; or

EXAMPLE: A water closet was provided within six (6) minutes travel from the worksite instead of within the required five (5) minutes. 8 CCR §6978(a) Note.

e. When compliance with the applicable Safety Order will not improve employee safety and health, but merely ensure the security of equipment or property.

EXAMPLE: Conductors and equipment shall be protected from overcurrent in accordance with their ability to safely conduct current. 8 CCR §2390.1.

INFORMATION MEMORANDUM P&P C5

AUTHORITY: California Labor Code Sec. 6300, 6307, 6308 and 6351.

POLICY: It is the policy of the Division of Occupational Safety and Health to issue an Information Memorandum to an employer to direct the employer's attention to a workplace condition which has the potential of becoming a hazard to the safety or health to the employer's employees in the future.

PROCEDURES:

A. USE AND APPLICATION - Potential Violative Condition

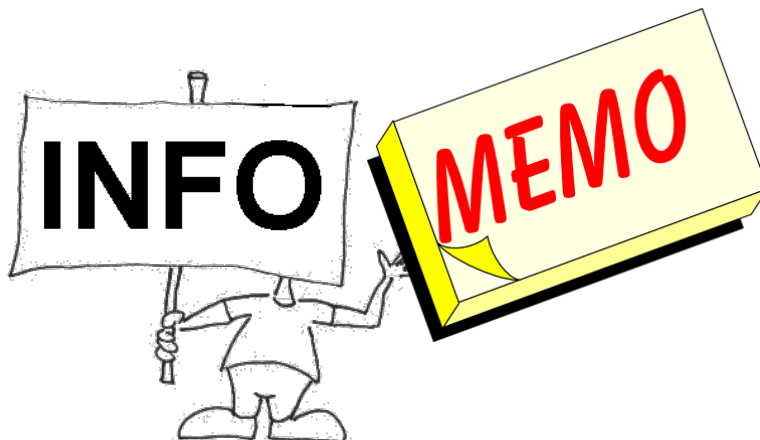
An Information Memorandum (Cal/OSHA Form 5) is a document which is used by the Division to direct the employer's attention to a workplace condition which has the potential of becoming a violation of a Title 8 Safety Order in the future if employee exposure to the violative condition occurs.

EXAMPLES: An unfinished installation which lacks required safety features; uncrated or recently assembled machinery that lacks required machine guarding; and exposures that may exceed concentration limits under different operating conditions.

Hazard Identification and Employee Exposure....

Compliance personnel shall make every effort to document unobserved employee exposure to a violative condition by taking the following steps:

Interviewing employees, employee representatives, employers or employer representatives or others who may have knowledge of the occurrence of employee exposure to the violative condition at the worksite or away from the worksite; and reviewing all pertinent employer records which may demonstrate past employee exposure.... **If compliance personnel are unable to obtain** information through interviews or records review that employee exposure has occurred within the statute of limitations, compliance personnel shall document on the Cal/OSHA Form 1B the lack of employee exposure **and issue an Information Memorandum** to alert the employer to a workplace condition which has the potential of becoming hazardous to the safety or health of the employer's employees in the future. See P&P C-1B.





Staying Current - Professional Opportunities to Learn More...

FYI – Capstone the last several Editorials regarding **JOB SAFETY ANALYSIS**, situational analysis and today's regarding legal options to the issuance of citations the links below offer opportunities for additional learning.

Free Cal/OSHA Update – Yours Truly will be HOSTING and doing the JSA Training

California State University DOMINGUEZ HILLS **OSHA® Training Institute Education Centers**

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Home > Quarterly Update

CAL OSHA QUARTERLY UPDATE

The Cal OSHA quarterly updates provide an overview of the latest developments and most frequently cited violations in California. Our team of experts and guest speakers will provide valuable information to help you stay in compliance.

Who Should Attend

Safety Professionals, Supervisors, Human Resources and personnel responsible for overseeing safety in the workplace.

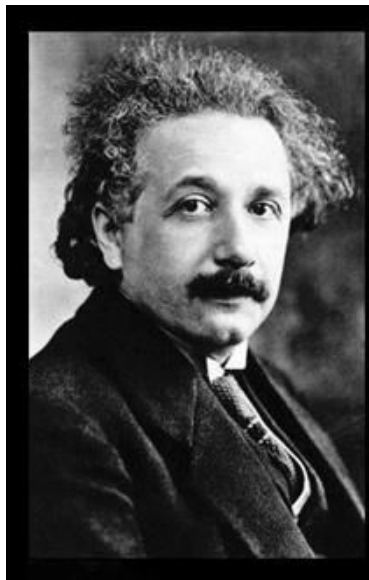
Great opportunity to network with Safety Professionals

Upcoming Dates

Date: Friday, August 1, 2014
Topic I: Job Hazard and Safety Analysis
Topic II: Revised Labor Code 226.7: "Cool-down Recovery Periods"
Location: CSUDH EE-1213
Time: 12:00pm – 3:00pm
Course Number: OSX 995-098
Registration Number: 30337

I love asking kids what they want to be when they grow up because I'm still looking for ideas.

WeKnowMemes



Education is not the learning of facts, but the training of the mind to think.

~ Albert Einstein

www.quotesthoughts.com

KNOW YOUR RIGHTS AFTER CITATION ISSUANCE.
Instructor: Ms. Katherine Wolff, Attorney - Cal/OSHA Retired
The time to prepare is DURING the Inspection Process



COURSES

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Home > Courses

OSX 995 - Cal OSHA Legal Process

This course will cover fundamental topics that are necessary to understand how an appeal before the Occupational Safety and Health Appeals Board takes place, such as filing an appeal, requesting discovery, participating in a prehearing, and presenting settlements to Administrative Law Judge (ALJ). Course enables Safety and Health Professionals to become familiar with **Cal/OSHA's legal process.**

CEUs: 1.6

Cost: \$395

Upcoming Course Schedule

Dates	Time	Meetings	Location	Fee	CSUDH CRS #
8/21-22	8am - 5pm	2	CSUDH	\$395	TBA

Register Today!

Learning Objectives:

When and how to file an appeal; What is an Expedited Hearing; How to request and answer Discovery; What happens at a prehearing; How to draft simple motions, prepare subpoenas, prepare evidence for hearing. Understand issues re: penalties, classification of citations, independent employee act, using an expert, failures to report, IIPP. Know the rules re: duplicative citations, rules of regulatory construction and the defense of the wrong safety order being alleged. How to do elemental analysis; deal with late appeals AND how to settle a case.

10% Discount - Safety and Risk Management Association Members
(PASMA, ASSE CHAPTERS, SCISS, Safety Forum of Inland Empire, PARMA, PRIMA)

Please Register Early: <http://www.csudh.edu/osha/cal-osha-legal.html>