



"The Public Interest"

Health/Safety and Environmental Issues

the PASMA way to shared knowledge

Public Agency Safety Management Association

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PASMA South Conference – September 17th. 2015

The December 2014 Bureau of Labor Statistics (BLS) Data indicates that collectively, PASMA and our non-member counterparts have the responsibility for the Health and Safety, of approximately 1,442,828 fulltime and 650,310 part time employees with a total salary budget of approximately \$8,931,540,035 and \$1,092,957,954 respectively. This data reminds us of the awesome responsibility we carry as stewards of the Health and Safety of our employees and the public fund. Protecting these resources means that we stay current with means, methods, procedures and technology that will help us be more consistently effective as well as efficient. Where and when can be obtain this type of information...the upcoming PASMA Annual Conference would be an IDEAL venue. I hope you will SAVE the date and actively participate both by registering early, helping with the Committee and most importantly forward any speakers that might have information that our members need. Remember that the "more, the merrier" so **BRING A FRIEND!** (Ed)



2015 PASMA SOUTH CONFERENCE

THURSDAY, SEPTEMBER 17, 2015
EMBASSY SUITES, LOS ANGELES - DOWNEY
DOWNEY, CALIFORNIA

Register Now For The 2015 PASMA South Conference - Thursday, September 17, 2015.

The 2015 PASMA South Conference will be held on Thursday, September 17, 2015 at the Embassy Suites, Los Angeles-Downey located at 8425 Firestone Blvd, Downey, California.

Attendees will receive **Continuing Education Unit (CEU)** credits for the PDC, traditionally 0.6 CEU's are awarded, pending approval.

Discounts available for Groups of 4+ attendees, save \$100, e-mail pasma@pasmasth.com for more details.

[The 2015 Conference is currently looking for Presenters. We are currently accepting applications - download a PDF application - click here](#)

[To view a PDF of all Sponsorship Opportunities - click here](#)

[To register by mail or fax, download a PDF Registration Form - click here](#)

If you have any questions on the 2015 PASMA South Conference, you can e-mail us at pasma@pasmasth.com, fill out the [contact form](#) on our website, or call Erika May directly at 661.472.6591.

Cal/OSHA should adopt a professional code of ethics and conduct to resurrect Credibility

Theoretically, Cal/OSHA personnel are obligated to discharge their duties in accordance with the Cal/OSHA Policy and Procedures Manual. The P&P was created and designed to ensure consistent and fair enforcement of the Safety Orders. Furthermore, the concept of developing, implementing and maintaining an effective Policy and Procedure is to maintain economic efficiency in that citations will conform to tests of evidence, will not be arbitrary or capricious and would therefore not lend itself to expensive, protracted legal defense efforts. Additionally, since the industry trade term "CSHO" applies only to the enforcement branch of the OSHA programs and defines that CSHO as either a Safety Engineer or Industrial Hygienist, it would make sense that these separate Professions conform to their respective professional Codes at the very least. Granted the mere existence and signing to a Professional Code is no guarantee of due diligence, but over my years of service in this profession, I've noticed that both perspective and application relative to the practice of this CSHO designation is anything but consistent, fair or in compliance with the P&P. This premise suggests that Cal/OSHA should adopt a "code of ethics and conduct" for all of their CSHO's and more importantly, that consideration be given to the creation of an independent oversight committee to monitor the Cal/OSHA District inspection metrics to ensure compliance. This ethics issue is offered for your consideration solely because during my travels I've fielded many questions from stakeholders that have noticed a significant difference in selected code violations, characterizations, the use of vague and ambiguous charging language, and most importantly the apparent "doubling up" of citations regarding the same hazards, even if one abatement action could serve to satisfy all cited codes.

To be fair, I fully understand the concept of "feeding the meter", but, the primary mission for the OSH Act is to source out imminent and serious hazards for purposes of managing the risk to employees, and in so doing, controlling the single most important business expenditure, Workers Compensation and related costs. The OSH Act directive was not to just "feed the meter" to justify the programs existence but rather to be a resource, where needed, to identify, evaluate and control workplace hazards. Alas, this is not how I was raised in this Division and it saddens me to see the Divisions credibility so compromised.

Fixing this credibility problem would require an organizational systems analysis for systemic and more importantly institutional problems. In the meantime, holding all members of the Divisions staff to a declared and documented Code of Ethics/Conduct would, in my opinion, go a long way for each CSHO and their immediate supervision to "own" their field decisions rather than simply defer or obfuscate the decision logic to the concept of "because we can" and "we need to satisfy the **State Activity Mandated Measures Report (SAMM)** report. Secondly, and more importantly, swearing adherence to such a code would, hopefully, act as a constant reminder that CSHOs are de-facto scientific investigators that must apply scientific methods and measure. The term CSHO should be considered more than just an administrative title, it should once again be known as a highly specialized profession with some very specialized skill sets. That Code of professional conduct would create Professional Standards that are currently missing or forgotten in favor of expediency and convenience. I encourage our professional membership both private and public to initiate a campaign to have the Division "develop, implement and maintain an effective" (sound familiar) professional code enforcers code of conduct. Models for such a code are listed below.

<http://www.caceo.us/>

<http://www.aace1.org/>

<https://www.aiha.org/about-aiha/governance/Pages/Code-of-Ethics.aspx>

<http://www.asse.org/about/code-of-professional-conduct/>

Ninth Circuit Addresses Whether California Employers Need to Reimburse Employees for Non-Slip Safety Shoes

<http://www.natlawreview.com/article/ninth-circuit-addresses-whether-california-employers-need-to-reimburse-employees-non>

On June 18, 2015, the *Ninth Circuit* issued an unpublished opinion in *Lemus v. Denny's, Inc.* The opinion provides guidance to California employers that require their employees to wear non-slip shoes as a condition of employment.

California law generally requires that an employer must reimburse employees for "necessary expenditures." However, not all expenses are reimbursable.

In addressing Denny's requirement that employees wear non-slip black shoes for which they are not reimbursed, the Court noted that, under California law, a "restaurant employer must only pay for its employees' work clothing if the clothing is a 'uniform' or if the clothing qualifies as certain protective apparel regulated by CAL/OSHA or OSHA." The plaintiff who sued Denny's did not argue that the non-slip black shoes were part of a "uniform," nor did he argue that such shoes were not "generally usable in the [restaurant] occupation." As such, the Court held that California law does not require Denny's to reimburse the cost of its employees' slip-resistant footwear. Notably, the Court did not address whether such shoes qualified as reimbursable protective apparel because the plaintiff conceded that issue.

The Court also found in favor of Denny's on the plaintiff's challenge to the use of computerized authorizations for certain wage deductions. California requires that when wages are deducted from an employee's paycheck (other than taxes, Social Security, etc.), the employee must expressly authorize such a deduction in writing. The plaintiff claimed that the cost of non-slip shoes was not properly deducted because employees did not sign a paper authorizing such deductions; but did so electronically. The Court rejected that argument.

Finally, the Court rejected the plaintiff's argument that employees were coerced into buying non-slip shoes from a particular vendor. However, the plaintiffs did not present any evidence that employees were required to purchase from that vendor.

The Ninth Circuit's opinion provides guidance on the issue of whether employees must be reimbursed for non-slip shoes. In particular, unless the shoes were considered part of a uniform and were not usual and generally usable in the employer's industry, it would appear that reimbursement of such is not required under California law. Additionally, where an employee authorizes a deduction electronically using some form of personal identification, the opinion provides a California employer with some comfort that it has met its obligation so long as such a record is retained. Also, where there is no actual coercion for an employee to purchase something from the employer or a specified third party for employment, the opinion again provides employers with comfort that they have complied with the law.



**No
Fear
with
Gear**



Easy Citation Potential with Simple, Elegant Safety Orders – An Exercise?

During the next few newsletter articles, I'd like to discuss the General Safety Orders below. I would like to challenge the reader to consider the **text** of these orders relative to the type of evidence needed, if any, to support the issuance of a legitimate citation. **Hint:** think about any objective and/or subjective (employee symptom or complaint related) information or any other data that would trigger compliance with these orders. Keep note of the highlighted text and attempt to discern the appropriate intent and meaning particularly since in the industrial environment these are among the most common hazard categories; equipment/process noise and chemistries.

§3328. Machinery and Equipment.

- (a) Machinery and equipment shall be of **adequate design** and shall not be **used or operated under conditions of speeds, stresses, or loads which endanger** employees.
- (b) Machinery and equipment in service **shall be inspected** and **maintained** as **recommended** by the **manufacturer** where such recommendations are available.
- (c) Machinery and equipment with **defective parts which create a hazard** shall not be used.
- (d) Machinery and equipment designed for a fixed location shall be restrained so as to prevent walking or moving from its location.
- (e) Machinery and equipment components shall be designed and secured or covered (or both) to minimize hazards caused by breakage, release of mechanical energy (e.g., broken springs), or loosening and/or falling unless the employer can demonstrate that to do so would be inconsistent with the manufacturer's recommendations or would otherwise impair employee safety.
- (f) Any modifications shall be in accordance with (a) and with good engineering practice.
- (g) Machinery and equipment in service shall be **maintained in a safe operating** condition.
- (h) Only **qualified persons** shall be permitted to maintain or repair machinery and equipment.

§5097. Hearing Conservation Program.

(b) Monitoring.

- (1) When **information indicates** that any employee's exposure **may equal or exceed an 8-hour time-weighted average** of 85 decibels, the employer **shall obtain measurements** for employees who may be exposed at or above that level. Such determinations **shall be made by December 1, 1982**.
- (2) The monitoring requirement shall be met by either area monitoring or personal monitoring that is **representative of the employee's exposure...**

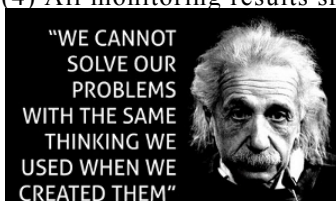
§5141. Control of Harmful Exposure to Employees.

- (a) **Engineering Controls.** Harmful exposures shall be prevented by engineering controls **whenever feasible**.
- (b) **Administrative Controls.** Whenever **engineering controls** are **not feasible** or do not achieve full compliance, **administrative controls shall be implemented** if practicable.
- (c) Control by **Respiratory Protective Equipment.** Respiratory protective equipment, in accordance with Section 5144, shall be used to prevent harmful exposures as follows:
 - (1) During the time period necessary to install or implement feasible engineering controls;
 - (2) Where feasible engineering controls and administrative controls fail to achieve full compliance; and
 - (3) In emergencies.

§5155. Airborne Contaminants.

(e) Workplace Monitoring.

- (1) Whenever it is **reasonable to suspect** that employees may be exposed to concentrations of airborne contaminants in excess of levels permitted in section 5155(c), the **employer shall monitor** (or cause to have monitored) the work environment so that exposures to employees **can be measured or calculated**.
- (2) When exposures to airborne contaminants are **found or are expected to exceed** allowable levels, measures to control such harmful exposures **shall be instituted in accordance with section 5141**.
- (3) For the adequate protection of employees, the person supervising, directing or evaluating the monitoring and control methods shall be versed in this standard and shall be competent in industrial hygiene practice.
- (4) All monitoring results shall be recorded and such records shall be retained in accordance with section 3204.



To Think Critically, Think RED

