



“The Public Interest”

Health/Safety and Environmental Issues

the PASMA way to shared knowledge

Public Agency Safety Management Association

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Articulating a new Legal Definition...or Why you can't win! Dick Monod de Froideville, Ed.

Safety and Health compliance codes are “activity and hazard” specific; meaning they are intended to regulate specific hazards during a specific activity. The words and phrases used in codes will determine their nature and may be “proscriptive, performance or a composite”. A proscriptive code is characterized by such words as “shall, will and must”; a performance code will suggest options and contains words such as “may, should, and could”. A composite code, however, may start “proscriptive” in appearance, but when read further allows for “options” that demand the regulated engage in “if this...then what” thinking. Furthermore, these composite codes typically require a separate written program and are definitively self-imposing. Cases in point would be codes dealing with the IIPP, Confined Spaces, Guarding of elevated locations and Energy Controls. Understanding performance codes for compliance purposes is cumbersome and difficult since these codes also tend to be vague, ambiguous, and unclear.

Decoding the “Code” then requires the regulated to “define” words such as “timely”, “effective” and “reasonable” before the Compliance Officer defines such words based on their prescribed understanding; and, absent a counter definition, the Compliance Officer will tend to prevail.

Should the lack of clear, concise and directive language reflect your frustrations regarding code interpretation and compliance in general, I offer as example, the Divisions latest rendition of the Heat Illness Prevention Program. I would also argue that since Cal/OSHA has interpreted the “code language” it is within the realm of possibilities that these interpretations will be the new compliance marching orders. If my premise is correct and these interpretations will be a part of the charging language of subsequent citations, I submit the Division has engaged in interpreting rather than enforcing the law; a function that is not within their scope and should not be permitted.

Prior reading this new Order for its clarity and particularity, a review of the common man definitions of vague, ambiguous and unclear could be useful and are provided as:

Vague means that the information is *lacking in detail* - if you give a vague description of something, the listener/reader *won't be able to imagine the subject with much precision.*

Ambiguous is when something can have *more than one meaning* or refer to more than one subject and the *listener/reader might have difficulty knowing exactly what it is you are describing.*

Unclear could mean the same but also *might suggest that the information is confusing*, either as a result of *poor use of language or perhaps through contradicting information.*

I strongly encourage our members to postulate how some of the words and phrases within the text of this new Heat Order are EXPECTED to be QUANTIFIED, more importantly what EVIDENCE WOULD BE REQUIRED other than the subjective and arguable definitions of the Compliance Safety and Health Officer.

The full text of this rendition may be found by following the link
<http://www.dir.ca.gov/dosh/documents/Heat-Illness-Prevention-Regulation-Amendments.pdf>

New Heat Illness Guidance

INTRODUCTION

Changes to the Cal/OSHA heat illness prevention regulation are expected to go into effect on May 1, 2015. The tables in this document provide guidance to employers and employees on how to implement the new requirements. Please note that this document does not cover all possible situations. For additional information and materials, go to <http://www.dir.ca.gov/DOSH/HeatIllnessInfo.html>.

(b) DEFINITIONS

EXISTING LANGUAGE	AMENDED LANGUAGE	GUIDANCE ON THE NEW REQUIREMENTS
<p>"Shade" means blockage of direct sunlight. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. For example, a car sitting in the sun does not provide acceptable shade to a person inside it, unless the car is running with air conditioning. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions.</p>	<p>"Shade" means blockage of direct sunlight. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. For example, a car sitting in the sun does not provide acceptable shade to a person inside it, unless the car is running with air conditioning. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use.</p>	<p>Shade must be easy for employees to reach. The requirement that shade "not deter or discourage access or use" means that workers should not encounter any obstacles or hazardous or unreasonably unpleasant conditions while moving towards the shade or resting in the shade.</p> <p>Examples:</p> <ul style="list-style-type: none"> • Employees should not have to cross traffic or waterways to reach the shade. • The shade should not be located next to portable toilet facilities or where employees would sit on wet or muddy ground or come in contact with branches, brush, and thorns.

(c) PROVISION OF WATER

EXISTING LANGUAGE	AMENDED LANGUAGE	GUIDANCE ON THE NEW REQUIREMENTS
<p>Provision of water. Employees shall have access to potable drinking water meeting the requirements of Sections 1524, 3363, and 3457, as applicable. Where drinking water is not plumbed or otherwise continuously supplied, it shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift.</p>	<p>Provision of water. Employees shall have access to potable drinking water meeting the requirements of Sections 1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge. The water shall be located as close as practicable to the areas where employees are working. Where</p>	<p>The purpose of requiring that water be "fresh, pure, suitably cool, and provided to employees free of charge" and "located as close as practicable to the areas where employees are working" is to encourage workers to drink water often and avoid making the workers interrupt their work in order to do so. To ensure that water is fresh, pure, and suitably cool, Cal/OSHA advises employers or supervisors visually examine the water and pour some on their skin.</p> <p>Fresh and Pure Water must be fit to drink (i.e., potable) and free from</p>

<p>Employers may begin the shift with smaller quantities of water if they have effective procedures for replenishment during the shift as needed to allow employees to drink one quart or more per hour. The frequent drinking of water, as described in subsection (f)(1)(C), shall be encouraged.</p>	<p>drinking water is not plumbed or otherwise continuously supplied, it shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift. Employers may begin the shift with smaller quantities of water if they have effective procedures for replenishment during the shift as needed to allow employees to drink one quart or more per hour. The frequent drinking of water, as described in subsection (f)(h)(1)(C), shall be encouraged.</p>	<p>odors that would discourage workers from drinking the water. If an employer supplies individual water containers, the containers must be clean, and a source of potable water (e.g., a municipal water source) must be readily available. Water from non-approved or non-tested water sources (e.g., untested wells) is not acceptable. If hoses or connections are used, they must be governmentally approved for potable drinking water systems, as shown on the manufacturer’s label.</p> <p>Suitably Cool During hot weather, the water must be cooler than the ambient temperature but not so cool as to cause discomfort.</p> <p>As Close As Practicable to Where Employees Are Working During a Cal/OSHA inspection, the inspector may ask the supervisor to describe the factors the employer considered in deciding where to place water. For example, although it may be impossible or prohibited by law to place water stations within rows of crops where employees are working, it may be possible to place the water stations at the end of rows. Because water containers are smaller than shade structures, they can be placed closer to employees than shade structures can be. Placing water only in designated shade areas or where toilet facilities are located is not sufficient. When employees are working across large areas, water should be placed in multiple locations. For example, on a multi-story construction site, water should be placed in a safely accessible location on every floor where employees are working.</p>
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Understanding The Rules Of The Game – They’re Posted!

Questions are repeatedly raised regarding the scope and application of the Cal/OSHA program yet not enough of us have either the time or the support to read the rules of engagement. Fortunately, these rules are available on line and searchable within the Divisions home page as the Divisions Policy and Procedures. As a service to our members I’ve selected what my observations have suggested should be mandatory reading. For example, Cal/OSHA has five ways to enforce conformity to the minimum requirements not all of them involve “citations”. Where the evidence suggests that a softer approach to enforcement is warranted, the Division could also issue a Notice or an Information Memorandum. Equally, when evaluating the IIPP, the Division has, within its Policy and Procedure Manual, offered examples of what constitutes “substantial compliance” as meant within the text of T8CCR3203. This information when articulated could prevent the issuance of a citation and conserve resources for more pressing Health and Safety needs.

There are more than a few Urban Myths when it comes to Cal/OSHA and granted there appears to be a significant difference in enforcement from Region to Region. It is precisely for that reason that Safety and Health professionals get to know and understand the rules of this game. To do anything less would be counter productive. Ergo, in order to assist in sorting through the maze of procedures, I’ve taken the liberty to itemize those policies that are of significance to our organizations, and bolded those that I feel are of operational impact. It is my hope that you will avail yourself of the information particularly since the Public Sector, in my experience, is notoriously vulnerable because of its own complexities.

P&P Address: <http://www.dir.ca.gov/samples/search/querypnp.htm>

Cal/OSHA Policy and Procedure Reminders – The Devil is in the Details

P&P	Title	Revised
C1A	Inspection Procedures Forms Completion for the Cal/OSHA 1A, 1AX, 1AY & 1AZ	8/9/11 8/1/08
C1B	Documentation Worksheet and Violation Classification (Cal/OSHA 1B) Forms Completion and IMIS Data Entry for the Cal/OSHA 1B and Cal/OSHA 1BX	9/1/08 6/29/02
C1C	Multi-Employer Worksite Inspections	12/8/00
C1D	Dual-Employer Inspections	5/1/96
C2	Citation, Notification of Penalty and Verification of Abatement (Cal/OSHA 2, 2X, 160, 161 and 161A)	6/2/08
C3	Special Order (Cal/OSHA 3 and 3X)	2/29/12
C4	Notice (Cal/OSHA 4 and 4X)	2/1/95
C5	Information Memorandum (Cal/OSHA 5 and 5X)	2/1/95
C6	Order to Take Special Action (Cal/OSHA 6 and 6X)	6/21/12
C8	Order Prohibiting Use (Cal/OSHA 8 and S-172)	11/14/00
C10	Completion of Proposed Penalty Worksheet (Cal/OSHA 10)	7/6/04
C10A	Handling of Cases to be Proposed for Violation-By-Violation Penalty	8/1/94
C12	Professional Development and Training	12/22/14
C14	Enforcement of 8 CCR Section 5193	1/1/03
C17	Process Safety Management	5/19/07
C18	Variances, Memoranda of Understanding, Long-Term Abatements and Joint and Voluntary Agreements	8/1/94
C19	High Hazard Employer Program (HHEP)	9/1/00
C20	Informal Conference (Cal/OSHA 20)	8/5/11
C21	Surface Building Maintenance Equipment	8/25/00
C23	Appeals and Hearings	10/10/00
C24	Subpoenas and Letters Requesting Documents	3/1/07
C25	Refusal of Entry (Cal/OSHA 25 and 25X)	2/1/95
C25A	Order to Preserve (Cal/OSHA 25A and 25AX) and the Notice (Cal/OSHA 250)	8/1/94
C27	Licensing of Crane Certifiers	8/1/94
C27A	Monitoring of Crane Certifiers and Surveyors	8/1/94
C27B	Crane Safety Deficiencies	8/1/94
C36	Accident Report (Cal/OSHA 36(S))	2/29/12
C41	Construction Activity Permits and Inspection of Permitted Activities	10/30/06
C43	Hazard Communication	7/1/95
C45A	Enforcement of 8 CCR Section 3203: Injury and Illness Prevention Program	4/1/03
C45B	Enforcement of 8 CCR Section 1509: Injury and Illness Prevention Program	4/1/03
C46	Field Sanitation and Agricultural Safety & Health	3/1/02
C47	Interim Tuberculosis Control Enforcement Guidelines	4/11/97
C50	Hexavalent Chromium Inspection Guidelines	5/22/09
C51	Crystalline Silica Inspection Guidelines with emphasis on exposure to concrete and masonry dust in construction per 8 CCR section 1530.1	4/23/09
C170	Accident Investigation (OSHA 170 and Cal/OSHA 170A)	1/10/14

