PASMA
PUBLIC AGENCY SAFETY MANAGEMENT ASSOCIATION

"The Public Interest"

Health/Safety and Environmental Issues

the PASMA way to shared knowledge

Public Agency Safety Management Association

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Editorial Message

Yet another good reason to train on T8CCR342; resistance is NOT futile; it's retaining your options.

In the last issue, I discussed the reporting requirements contained in T8CCR342 and its importance. Recently, I became aware of a disturbing reporting event at one of our member PASMA locations and involved a Fire Department (See T8CCR342(b)). The event involved several employees who experienced a splashing of liquids to the eyes. Both employees were first aid treated and released the same day. The employer provided the pro-forma notification to the local District Office and found the next day that a Cal/OSHA compliance officer had made telephone contact with both the employee and their supervisor WITHOUT notifying the employer of this contact nor the reasoning for. These events have become disturbingly more common and should be addressed not just by our membership, but all employers in the State.

As a reminder, Section 342 references T8CCR330(h) where serious injury is defined. Critically, T8CCR342(c) lists the information obligated to be provided, IF AVAILABLE, and includes:

(1) Time and date of accident.
(2) Employer's name, address and telephone number.
(3) Name and job title, or badge number of person reporting the accident.
(4) Address of site of accident or event.
(5) Name of person to contact at site of accident.
(6) Name and address of injured employee(s).
(7) Nature of injury.
(8) Location where injured employee(s) was (were) moved to.
(9) List and identity of other law enforcement agencies present at the site of accident.
(10) Description of accident and whether the accident scene or instrumentality has been altered. **Note** that subsection **(6),** although it intimates the personal address of the employee, it **DOES not** require a personal **telephone number**.

What is most troubling about this story is that a Compliance Officer initiated contact with both the employee **AND** their supervisor without notifying nor the consent of the Employer's authorized representative. Whether the Compliance Officer was guided/directed or did this on their own, should be of concern to all of us who believe in the due process and execution of law.

Ethics in Code Enforcement-Reality Check

Having heard this story, I began researching the Cal/OSHA Policy and Procedures Manual specific to "accident reporting" last updated 07/22/2019 to verify existing Cal/OSHA protocols and that assessment will be forwarded in a separate email attachment.

That review did not provide any procedural authorization for ANY CSHO to conduct themselves in the manner as described. Additionally, every referenced labor code identified in the reporting Policy and Procedure will be reviewed for the purpose of verifying this potential change in policy, and you will be informed shortly thereafter. In the meantime, employers should consider:

1. Retraining all their employees of their legal rights under the California Labor Code, specifically, Cal/Labor Code 6313(a) and Cal/Labor Code 6314(d). Cal/Labor Code 6313(a), in part addresses "investigations relating to fatalities, serious injuries, illnesses, or exposures". In normal times, this means Cal/OSHA initiates an inspection under current protocols, which at least requires an Opening Conference with the "highest level of management authorized" to engage. In the case mentioned, **this did not happen**. Cal/Labor Code 6314(d), in part reserves the right to engage in private conversation with the inspector…to either the employer or the employee or their representatives. It DOES NOT grant the CSHO the right to unilaterally dictate terms of any discussion UNLESS requested by either.
2. Document all information exchanged between the Cal/OSHA office "intake" officer as well as clarify any pertinent information received by the responding FD or Emergency Services.
3. Maintain communications alerts with those employees who may have experienced a close call/near-miss and sent home with OTC or self-monitoring and/or observation instructions from medical providers; particularly if the patient is classified as supervision.
4. Document any such events as soon as possible, contact District and Regional Management for clarification of the issues and vocalize any objections to a breach of professional actions and conduct, draft a diplomatic letter and forward to Cal/OSHA Headquarters.

Supervisors or third-party brokers/consultants during first CSHO's Contact; A word about "implied consent". (see DAR Arana)

Every year, I try to argue in favor of thoroughly training first line supervisors on the importance of knowing what to do and say when first approached by a Cal/OSHA Compliance Officer. My experience and years in the classroom have taught me that this is still not happening and usually to the detriment of the employer. The case summary indicates that Compliance need only to structure their first contact discussions with available line managers/supervisors to solicit an "implied consent" to have met the requirements prior to initiate an investigation. Please take note of the following Decision After Reconsideration by the Cal/OSHA Appeals Board and adjust your training accordingly.

In *Ariana,* it is argued that a **third-party broker/consultant** did not have the authority to consent to the inspection and never fully consented to the inspection. However, OSHAB found that the third party's communications and the employer's actions indicated consent to the inspection. Specifically, OSHAB said the third party's statements and conduct supported a finding that the broker/consultant did have authority to consent, and even assuming the third party did not, **the inspector's "belief"** that the person had the authority "was reasonable and based upon good faith."

OSHAB also rejected *Arana*'s arguments that consent had been withdrawn based on objections to the validity of the inspection, in particular assertions that the injury that led to the inspection was "not reportable" and, therefore, Cal/OSHA had no jurisdiction. Arana also argued that demands the inspection be closed with a finding of no citations and its failure to produce documents should have been interpreted as a refusal of consent. However, OSHAB stated that "[a] workplace injury or accident need not be 'reportable' under [Cal/OSH] for the Division to exercise its jurisdiction in investigating the injury or

accident." Nonetheless, OSHAB found that the record did not indicate that Arana had consistently refused consent and had instead indicated that documents might be forthcoming. "Employer's disagreement over whether any violation existed, and its desire for the inspection to be closed, are not tantamount to refusing consent, particularly in light of Employer's statements and conduct indicating its intention to cooperate with the investigation," OSHAB stated in the decision. The Arana decision underscores the importance of clearly and consistently communicating consent or a refusal of consent to a Cal/OSHA inspection. The board interpreted mere statements to a Cal/OSHA inspector that requested documents would be provided as sufficient to show the employer had consented to the investigation and thereby gave Cal/OSHA jurisdiction to issue citations for any alleged violations discovered. The use of the third-party broker/safety consultant was fraught with miscommunications and a lack of understanding of the consent to the inspection.

The Arana decision further serves as a crucial reminder for employers about California's requirements to maintain proper safety documentation, ensure the availability of trained first aid personnel, and promptly address unsafe work practices. Public sector employers may want to consider proactive steps to a gap analysis of all their safety programs at every worksite, ensure all records are current and accessible, and increase their training content to their staff on proper safety protocols.

Clarifying the Multi-Employer Work site Rule; Safety on Staging for Live Events – Public Sector

In 2022, Governor Newsom signed AB 1775 into law. This bill added Part 14 (sections 9250 through 9254) to the portion of the California Labor Code that governs Safety in Employment. These sections became effective on January 1, 2023. Entertainment events vendors contracted to set up, operate or tear down live events at public events venues must comply with the new requirements. As part of the contract for producing a live event, these employers must certify in writing that they have verified the training and certification requirements for all employees and subcontractors' employees who will work on the event.

This amended Labor Code clarifies what businesses are considered "entertainment events vendors"

Private employers that contract to set up, operate or tear down a live event at a public events venue. This includes any subcontracted employer involved in setting up, operating or tearing down a live event. Direct employees of the public events venues are not required to fulfill the training and certification requirements of Labor Code section 9251.

A public events venue for this standard is a public events venue on the following: a state-operated fairground, a county fairground, a state park, a California State University facility that hosts live events, a University of California facility that hosts live events, an auxiliary organization-run facility that hosts live events.

Specifies what constitutes a "auxiliary organization" as an entity associated with the California State University system or the University of California system. Auxiliary organizations are defined in CA Education Code section 89901.

In the Code, the covered activities listed in, "operating" a live event are lighting, sound, pyrotechnics, machinery, electrical apparatus, scenery, audiovisual equipment, or rigging.

The new Labor Code section 9251 requires entertainment events vendors to certify for their employees and any subcontractors' employees both of the following: An employee involved in setting up, operating, or tearing down a live event at the venue has completed the **Cal/OSHA-10**, the OSHA-10/General Entertainment Safety training, or the OSHA-10 as applicable to their occupation; **AND** Heads of departments and leads have completed the **Cal/OSHA-30**, the OSHA-30/General Entertainment safety training, or the OSHA-30, and are

certified through the Entertainment Technician Certification Program relevant to the tasks they are supervising or performing, or another certification program, as specified by the division.

What is the Fed/OSHA or Cal/OSHA 10; What is the Fed/OSHA or Cal/OSHA 30

The OSHA-10/30 or OSHA-10/30 General Entertainment Safety, or the Cal/OSHA 10/30 modules are contact (10/30 hrs) specific and the contents are hazard specific to the INDUSTRIES LISTED.

Cal/OSHA does not directly provide the 10-hour course but authorized centers are listed by visiting Federal OSHA's Current List of Authorized OTI Education Centers webpage.

"OSHA-10" means the United States Department of Labor's Occupational Safety and Health Administration's 10-hour course on workplace health and safety.

"OSHA-10/General Entertainment Safety" means the United States Department of Labor's Occupational Safety and Health Administration's 10-hour course on workplace health and safety specific to the entertainment and exhibition industries.

OSHA-**authorized trainers** issue course completion cards to students that successfully complete an OSHA Outreach Training Program class. The Outreach Training Program offers 10-hour or 30-hour classes for Construction and General industry, among others. To obtain an OSHA card, one must attend and successfully complete the entire class, including all required topics and the minimum number of hours. Please note that an OSHA card is not considered a certification or license.

Although, Cal/OSHA does not directly provide the 10-hour course. The International Alliance of Theatrical Stage Employees (IATSE) developed a 10-hour training program that focuses on the Entertainment Industry. To find authorized OTI educational centers, please visit federal OSHA's Current List of Authorized OTI Education Centers webpage.

Important categories of Employees targeted by this Labor Code Department Heads or a Lead

"Heads of departments" and "leads" mean any worker that leads, supervises, or **directs one or more** workers in that same occupation and is employed in an occupation that may be certified by the Entertainment Services and Technology Association (ESTA) Entertainment Technician Certification Program.

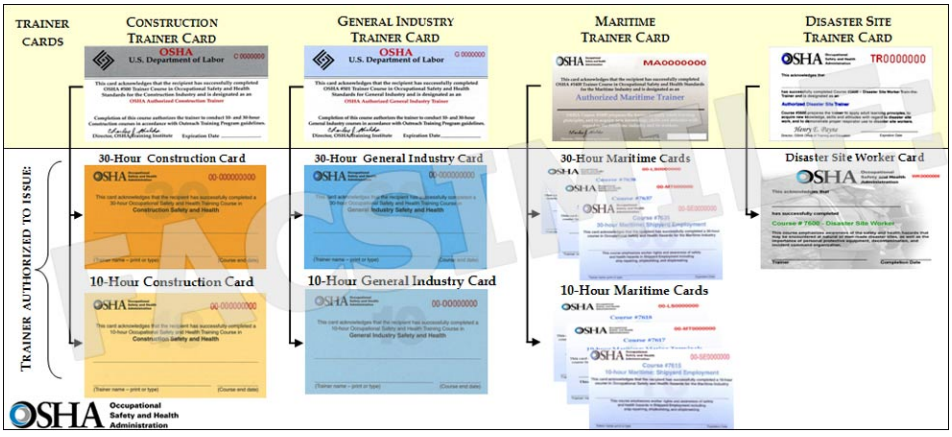
Training Organizations other than OSHA Training Institutes include the Entertainment Services and Technology Association (ESTA). ESTA is the non-profit trade association for the entertainment technology industry. ESTA develops standards for entertainment crafts through a technical standards program accredited by the American National Standards Institute (ANSI).

To learn more about ESTA, please visit https://www.esta.org/.

To learn more about the technical standards program, visit https://tsp.esta.org/tsp/about/about.html.

"OSHA-30" means the United States Department of Labor's Occupational Safety and Health Administration's (OSHA) 30-hour course on workplace health and safety.

"OSHA-30/General Entertainment Safety" means the United States Department of Labor's Occupational Safety and Health Administration's (OSHA) 30-hour course on workplace health and safety specific to the entertainment and exhibition industries.



1. *What is a "skilled and trained workforce"?*

"Skilled and Trained Workforce" is defined by CA Public Contract Code Section 2601(d), which states:

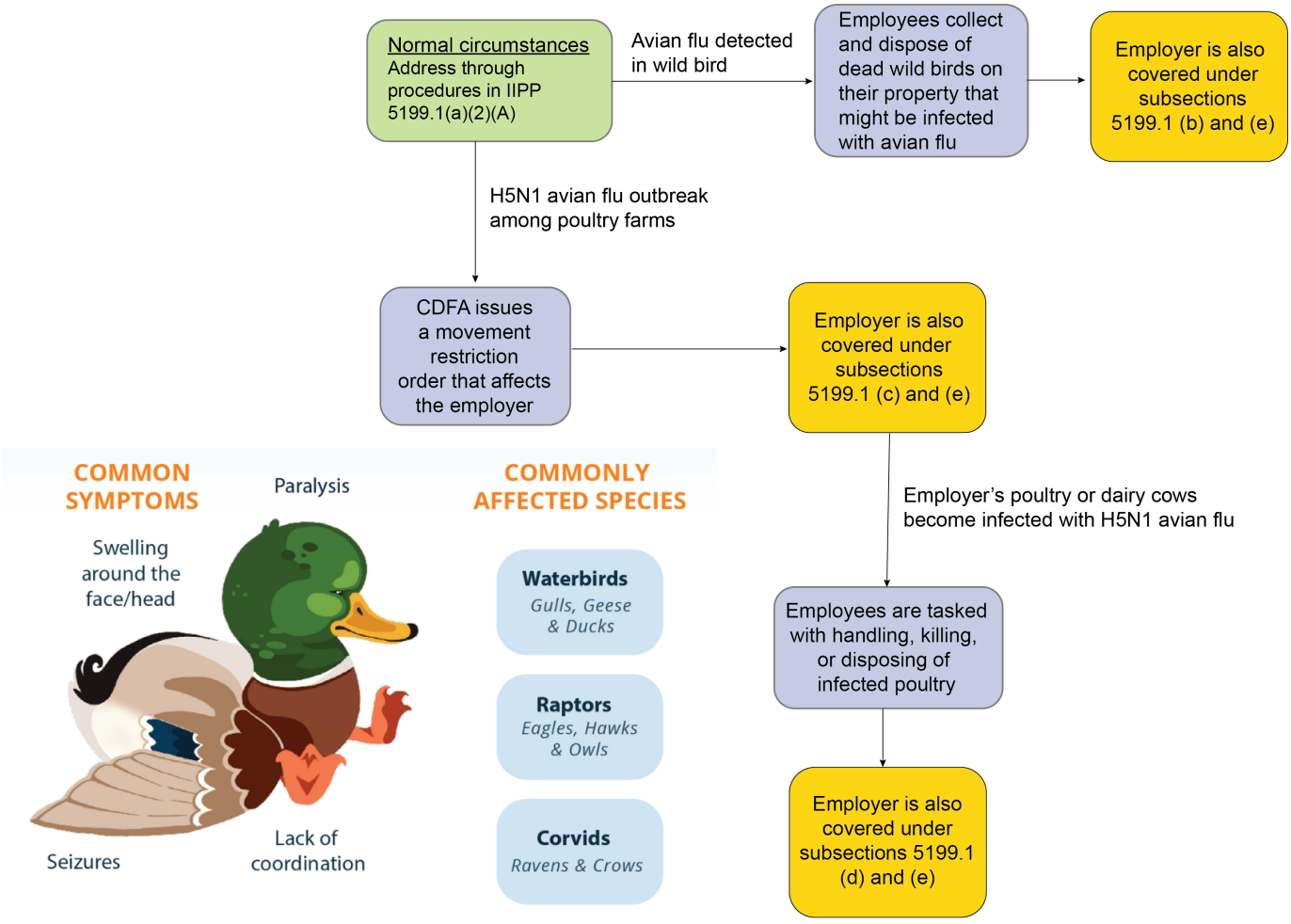
"Skilled and trained workforce" means a workforce that meets all the following conditions:

2. *How will the requirements be enforced?*

Cal/OSHA will enforce the certification requirement of Labor Code section 9251. When investigating an entertainment events vendor or contracting entity, Cal/OSHA will determine whether the written certification was included in the contract between the parties and may investigate how the entertainment events vendor verified that its employees met the requirements of Labor Code section 9251. At entertainment events, vendors who are unable to provide certification that their workforce has completed the required training could be cited by Cal/OSHA directly under Labor Code section 9252.

The latest Cal/OSHA Bird Flu

For Latest Resources on Bird Flu Visit: Cal/OSHA Bird Flu home page



...and Finally,

If all conditions exist at the same time, the employer is covered under 5199.1 (a), (b), (c), (d), and (e) at the same time.

Public Agency Request for refund

California Labor Code Section 6434.

(a) Any civil or administrative penalty assessed pursuant to this chapter against a school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers agency performing education functions shall be deposited with the Workplace Health and Safety Revolving Fund established pursuant to Section 78.

(b) Any school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers agency performing education functions **may apply for a refund of their civil penalty, with interest, if all conditions previously cited have been abated**, they have abated any other outstanding citation, **and if they have not been cited by the division for a serious violation at the same school within two years of the date of the original violation**. Funds not applied for within two years and six months of the time of the original violation shall be expended as provided for in Section 78 to assist schools in establishing effective occupational injury and illness prevention programs.

(Amended by Stats. 2000, Ch. 135, Sec. 129. Effective January 1, 2001.)

6434.5.

(a) Any civil or administrative penalty assessed pursuant to this chapter against a public police or city, county, or special district fire department or the California Department of Forestry and Fire Protection shall be deposited into the Workers' Compensation Administration Revolving Fund established pursuant to Section 62.5.

(b) **Any public police or city, county, or special district fire department or the California Department of Forestry and Fire Protection may apply for a refund of any civil or administrative penalty assessed pursuant to this chapter, with interest,** if all conditions previously cited have been abated, the department has abated any other outstanding citation, and the department has not been cited by the division for a serious violation within two years of the date of the original violation. Funds received because of a penalty, for which a refund is not applied for within two years and six months of the time of the original violation, shall be expended in accordance with Section 78 as follows:

(1) Funds received because of a civil or administrative penalty imposed on a city, county, or special district fire department or the California Department of Forestry and Fire Protection shall be allocated to the California Firefighter Joint Apprenticeship Program for the purpose of establishing and maintaining effective occupational injury and illness prevention programs.

(2) Funds received because of a civil or administrative penalty imposed on a police department shall be allocated to the Office of Criminal Justice Planning, or any succeeding agency, for the purpose of establishing and maintaining effective occupational injury and illness prevention programs.

(c) This section does not apply to that portion of any civil or administrative penalty that is distributed directly to an aggrieved employee or employees pursuant to the provisions of Section 2699.

(Added by Stats. 2005, Ch. 141, Sec. 1. Effective January 1, 2006.)

PASMA recruitment Day in May – Bring a Colleague!

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