



"The Public Interest"

Health/Safety and Environmental Issues

the PASMA way to shared knowledge

Public Agency Safety Management Association

December 3, 2025

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BEST WISHES FOR THE BEST SAFETY ASSOCIATION



1993–2025
&
Beyond



Editorial

Why Participate In The Rule Making Process???

As representative for the Public Sector, where we often feel alone and left to our own devices there are 3 main reasons to start engaging in the Cal/OSHA rule making process. Those three reasons are bookended between two tag lines that are part and parcel of our cultural norms.

1. "Ignorance of the law is NO excuse"
2. "Rebuttable Presumption"
3. "Realistic Possibility"
4. "Elemental Analysis"
5. "To be forewarned is to be forearmed"

The first is self-explanatory and we are often reminded of this when facing any societal violation, civil, administrative, corporate or criminal. The second, third and fourth are listed sequentially because they are part of the current Cal/OSHA enforcement vernacular which some of our members may not fully understand and may therefore be less focused on the legitimacy of an inspection's outcome, aka the issued citations. Item number 4, "...forwarned...forarmed" is the feedback loop that should encourage all of us to participate so that subsequent safety orders are rooted in science, concise, readable, understandable, reasonable and economically feasible for all employers.

The following pages are my attempts to clarify those three critical "enforcement" terms which will hopefully set the stage for our **December ROUND TABLE DISCUSSION**, and should encourage all of you to attend so please register and let us know that you're coming.

The **PASMA**
Lunch
Bunch Reservation

Contact:

info@pasmaonline.org with your RSVP

Critical Pre-cursors to a Legitimate Citation – See Cal/OSHA P&P C-1B

1. Rebuttable Presumption – Legal framework: What is it and how is it used

Definition & meaning

A rebuttable presumption is a legal assumption that is accepted by the court as true until evidence is presented to dispute it. This means that the presumption holds weight in legal proceedings but can be challenged. In essence, it serves as a starting point for legal arguments, allowing one party to assert a fact that the other can contest.

Legal use & context

Rebuttable presumptions are commonly used in various areas of law, including:

- Family Law: Often used in paternity cases and adoption scenarios.
- **Civil Law: Can apply in tort cases where certain facts are presumed until disproven.**
- Criminal Law: May be relevant in cases involving intent or knowledge.

Key legal elements

- The presumption is accepted as true until evidence is provided to refute it.
- It applies to specific legal contexts, such as family law or civil cases such as Cal/OSHA Citations.
- The burden of proof lies with the party contesting the presumption.

Real-world examples - Here are a couple of examples of abatement:

Example 1: In a divorce proceeding, if a child is born during the marriage, the court will presume that the husband is the father unless evidence, such as a DNA test, proves otherwise.

Example 2: In an adoption case, a court may presume that the biological parents consented to the adoption unless they present evidence to challenge this assumption. (hypothetical example). In California - Presumption of paternity for children born during marriage is strong.

Common misunderstandings

- Some people believe that a **rebuttable presumption is the same as a fact**. Not so; it is an assumption that can be **challenged with stronger evidence**.
- Others think that once a presumption is established, it cannot be overturned. However, presenting sufficient evidence can refute it.

What to do if this term applies to you – Cal/OSHA Citations based on AB1127 and SB606

If you believe a rebuttable presumption applies to your situation, consider the following steps:

- Gather any evidence you have that may contest the presumption.
- Ensure you:
 - a) Define terms with outcome measures.
 - b) Consistently Document, Document and Document.

2. Realistic Possibility

A violation is presumed to be “serious” if **compliance personnel can show** there is “a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation” (Labor Code section 6432(a)). An **employer can rebut this presumption by showing that the employer “did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation”** Labor Code section 6432(c)).

The term **“realistic possibility”** means “a prediction clearly within the bounds of human reason, not pure speculation”. The **Division must provide a valid evidentiary foundation** for the “realistic possibility.” The Appeals Board has held that this foundation can be provided by **testimony from compliance personnel based on “expertise on the subject, reasonably specific scientific evidence, experience-based rationale, or generally accepted empirical evidence.”**

NOTE: Compliance is supposed to use three examples from the FAT/CAT [Investigation Summaries](#)

NOTE: Under Labor Code section 6432(g), compliance personnel are deemed “competent” (i.e., qualified) to testify about each element of a serious violation **if their Division-mandated training is current. (see Cal/OSHA P&P C12).**

The Appeals Board has held that the Division may assume a worst-case scenario in evaluating whether a violation is serious. **Lack of an actual accident is immaterial to this determination**, but the fact of an accident is relevant and would tend to prove the realistic nature of the hazard.

3. Elemental Analysis

Elemental Analysis Must be performed and how is it documented (see worksheet P&P C-1B).

Elemental Analysis Example: 8 CCR Section 3382(a) states in part that:

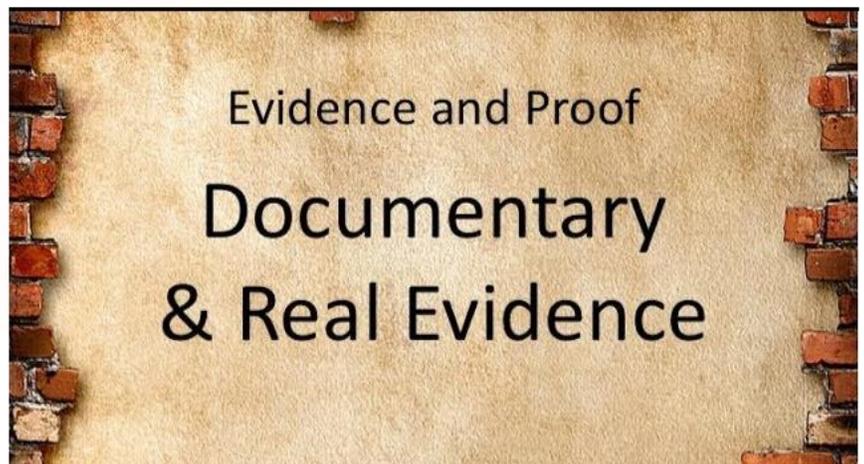
"Employees (Element 1) working (Element 2) in locations where there is the risk of receiving eye injuries such as punctures, abrasion, contusions, or burns (Element 3) as a result of contact with flying particles, hazardous substances, projections or injurious light rays (Element 4) which are inherent in the work or environment (Element 5), shall be safeguarded by means of face or eye protection (Element 6)."

#	Element	Evidence Summary	Types of Evidence
1	Employees	3 in a service garage	EOS
2	Working	Checking/adding oil and water	OB
3	Location w/Risk “Zone of Danger”	Working around in facility	
4	Of eye injuries	Batteries and Motor e.g. motor oil, puncture, Abrasions, contusions, batties burns,	CSHO experiences
5	Inherent in the work or environment	Used in the garage	OB, PH
6	Shall be guarded with face or eye protection.	No goggles or face shields provided.	EA, PH

Evidence legend: OB-Observation; EA-Employer Admission; EOS-Employer Oral Statement; OOS-Other Oral Statement; EWS-Employer written Statement; OWS-Other Written Statements; PH-Photograph; BO-Business Record; DO-Document; SM-Sample Measurement; MM-Monitoring Measurements; EPM-Equipment, Parts, Machinery identifiers; Other.

Walkaround Strategy for OHS Professionals

Focus Area	What the CHSO Looks For	Your Proactive Proof
Hierarchy of Controls	Evidence of substitution, engineering controls, PPE compliance	Field verification worksheets; recent ventilation test data
Exposure Assessment	Real-time or full-shift sampling; calibration logs	Pre- and post-sample calibration records per OTM II-1 (OSHA, 2023)
Employee Interviews	Consistency between worker statements and records	Training matrix cross-referenced to interview list
Photo/Video Evidence	Uncontrolled hazards, missing tags/labels	Pre-inspection photo archive (“before” shots) to show ongoing controls



Notice of Advisory Committee Meetings

For information on Division of Occupational Safety and Health advisory committee meetings, visit the [Attend an Advisory Meeting](#) webpage.

8 CCR Sections	Subject	Meeting dates & locations	Staff Contact
Sections 5349, 5349.1, 5350, 5355.1 and 5357	Snow Avalanche Blasting 2nd Meeting (September 16, 2025) 1st meeting (November 14, 2024)	September 16, 2025	Kevin J. Goddard (916) 621-1418
Section 3441	Autonomous-Agricultural-Tractors 3rd Meeting (August, 6-7 2025) 2nd Meeting (May, 8-9 2025) 1st Meeting (March 26, 2025)	August 7, 2025	Amalia Neidhardt (916) 274-5371
Articles 1-4	Variance Rules of Procedure	June 11, 2025	Tishara Ann Davis (916) 621-1420
Article 10.1 Sections 3401-3407 and 3410-3411	Fire Fighters’ Personal Protective Equipment – Labor Code Section 147.4(c) 6th Meeting (June 3-4, 2025) 5th Meeting (April 30, 2024) 4th Meeting (November 13-14, 2023) 3rd Meeting (April 4, 2023) 2nd Meeting (November 15, 2022) 1st Meeting (June 9, 2022)	June 3, 2025	Maryrose Chan (916) 274-5723
Sections 1669, 1670, 1671, 1716.2, 1724, 1730 and 1731.	Fall Protection in Construction Phase 2	May 21, 2025	Simone Sumeshwar (916) 621-1415
Section 3324	Horizontal Sliding and Swinging Gates 2nd Written Feedback (September 30, 2025) 1st Meeting (March 12, 2025)	September 30, 2025 Board staff is seeking input on an updated discussion draft.	Kevin J. Goddard (916) 621-1418
Article 2	Walking-Working Surfaces 6th Meeting (March 5-6, 2025) 5th Meeting (October 8-9, 2024) 4th Meeting (March 5-6, 2024) 3rd Meeting (October 11-12, 2023) 2nd Meeting (February 22-23, 2023) 1st Meeting (October 13-14, 2022)	March 5, 2025	Maryrose Chan (916) 274-5723
Sections 5006.1 (d), 5006.2(d)(3) and Section 4885	Crane Operator Recertification Requirements - Petition 598	July 24, 2024	Simone Sumeshwar (916) 621-1415
Sections 3420 and 3424	Brush Chippers 3rd Meeting (May 30, 2024) 2nd Meeting (October 29, 2019) 1st Meeting (January 29, 2019)	May 30, 2024	Michael Nelmidia (916) 274-5724
Section 1630	Elevators for Hoisting Workers 2nd Meeting (March 22, 2023) 1st Meeting (August 31, 2022)	March 22, 2023	David Kernazitskas (916) 274-5730

Section 3657 and New Section 3458.2	Date Palm Operations 2nd Meeting (April 14, 2021) 1st Meeting (March 12, 2020)	April 14, 2021	David Kernazitskas (916) 274-5730
Article 4	Walking-Working Surfaces 1st Meeting (February 12-13, 2020)	February 12, 2020	Maryrose Chan (916) 274-5723
Sections 1504, 1635 and 1710	Use of Cone and Bar Barricade and Temporary Flooring in Structural Steel Erection, Petition 570	October 10-11, 2019	Maryrose Chan (916) 274-5723
Sections 3649, 3650, 3663, and 3669	Hydrogen Powered Industrial Trucks The Board is seeking input on a revised discussion draft for Hydrogen Powered Industrial Trucks used in general industry. Interested parties are invited to submit written comments to Senior Safety Engineer Michael Nelmda (916) 274-5724 by May 26, 2025. May 5, 2025 Revised Discussion Draft 1st Meeting (April 11-12, 2019)	TBD	Michael Nelmda (916) 274-5724

Proposed Regulations

Proposed Regulation	Status
Section 5189.1 Process Safety Management for Petroleum Refineries Notice of Rulemaking Nov. 28, 2025	Public Hearing: Jan. 15, 2026
Sections 1512 and 3400 First Aid Notice of Rulemaking Nov. 28, 2025	Public Hearing: Jan. 15, 2025

**THANK YOU AND.....
DON'T FORGET TO RENEW
YOUR MEMBERSHIP!!
SEE YOU IN 2026
THE YEAR OF THE HORSE**

