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# Cal/OSHA: 2022 in Review and Predictions for 2023

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For PARMA Annual Conference 2023

# Cal/OSHA in 2021: Lagging Indicators

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- Inspections stepped up in 2021
  - Nearly 25,000 complaints
- Vacuum of attorneys and district office staff
- FAME Report:
  - Close enough to call it good
  - But, Feds will continue to press Cal/OSHA to issue more Serious, Willful and Repeat citations

# Cal/OSHA in 2022

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- Tons of new attorneys
- Jeff Killip, new Chief of Cal/OSHA
  - Still getting his feet under him, no noticeable changes
  - Former Chief Doug Parker confirmed as head of Fed/OSHA
- Things much more “business as usual”

# Cal/OSH Standards Board

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- Next meeting: Jan. 19, 2023
  - Can attend in-person or virtually
- First aid regulation nearing update, but still pending
- Consolidation of crane regulations from CSO to GISO
  - Effective July 26, 2022
- No word on status of Indoor Heat regulation

# Cal/OSH Appeals Board

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- COVID cases still a “thing”
  - Still a line item at Board meetings
  - Some early pandemic cases still pending
    - 19 left from 2020 – all ATD/hospital cases
  - 441 open COVID appeals as of Dec. 9, 2022
- Video pre-hearings and hearings are likely here to stay
  - See T8 Section 376
  - Next meeting Jan. 19, 2023

# Cal/OSH Appeals Board cont.

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- Log jam of cases has been freed – appeals moving much quicker
  - Docketing and perfecting of appeals in days, rather than months
- Wide use of Video Settlement Conferences (VSC)
  - But, if no settlement, straight to hearing calendar
- *Granite Construction Co. v. Cal/OSH Appeals Board* pending before Appellate Court
  - Valley Fever issue: Employer at fault where employees were not *required* to wear N-95s

# AB 2068

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- Intention: require notifications to employees be in English as well as specified languages
  - Cal/OSHA to make notifications available in top seven non-English languages
- Penalty for failure to post: \$12,471 for each violation
- What postings?
  - Citations
  - Special orders

# Miscellaneous

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- Don't forget the update to Section 330(h)
  - Definition of serious injury
  - Still hearing 24-hour hospitalization references
- Amendment of citations during appeal
- Writ case regarding 1BY "delivery"



# IIPP Public Service Reminder

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- Keep it lean and mean
- Do not incorporate your other programs (i.e., CPP) – keep separate
- Don't expect the Division to excuse IIPP violations
- Don't forget to include "employee access" (see 3203(a)(8))
- IIPP remained the most cited regulation for 2021
  - 1,804 citations, 367 of them Serious

# Citation Penalty Amounts (as of Jan. 2023)

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- General / Regulatory: \$14,270 (up from \$ 13,434)
- Serious: still \$18,000, up to \$25,000 (remains highest in U.S.)
- Willful / Repeat: maximum of \$142, 692 (up from \$ 134,334)
- Egregious citation? Haven't seen one yet. (See SB 606)
- Note: increase in Jan. 2023 with CPI

# Emergency COVID Regulation

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- November 30, 2020: First ETS became effective
- June 17, 2021: Readopted with amendment
- December 16, 2021: Further readoption with further amendment
- April 14, 2022: Further readoption
- October 31, 2022: Public comment closed on non-emergency regulation
- December 2, 2022: Updated text for Board consideration
- December 15, 2022: ETS became permanent

# Permanent COVID Regulation

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- Will sunset two years from effective date (Jan. 2023)
- Defers to CDPH for definition of “close contact” and “infectious period”
  - Indoor spaces of 400,000 CUBIC feet per floor?
- Exposed group includes transportation and housing under Sections 3205.2 and 3205.3
- COVID is a workplace hazard to be addressed under the IIPP
  - But, can still maintain separate CPP

## Permanent COVID Regulation cont.

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- Maintain records for three years
- Defers to CDPH and local health for preventative measures, quarantine and masking requirements
- Division has ability to issue Order to Take Special Action (3205(k))
- Exclusion pay is eliminated
- Provision for aerosolizing procedures

## AB 2693 extends AB 685

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- AB 685 was set to expire in Jan. 1, 2023, but now effective until Jan. 1, 2024
- In lieu of individual notice of COVID exposure, employer can post a notice in the workplace for 15 days
  - Can still provide individual notices
- But, see permanent COVID standard: “Notice shall be given to all employees, employers, and independent contractors”

# Responding to Work Site Incidents

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- Reportable v. Recordable
- Have a plan for employee responses and needs
- Investigation and Report
  - Post-incident interviews
  - Photos
  - Be prepared to turn all of this over to Cal/OSHA (few exceptions)
- Get ready for Cal/OSHA

# Cal/OSHA Inspections

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- What initiates an inspection:
  - Report of injury, illness or death
  - Complaint
  - Drive-by
- What to do when Cal/OSHA shows up:
  - Supervisory personnel involved
  - Take notes and photos
  - Be cooperative, but not too cooperative
  - Limit exposure



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Thank you! Any questions?

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