

Understanding CalOSHA

California is one of 25 “OSHA States” which has a state agency to oversee worker health and safety. Federal law allows California to develop regulatory standards that must, at a minimum, meet federal standards. In the interim period between the adoption of a federal rule and the development of a state regulation, federal rules must be followed. Thus, references in this document will be to California codes, unless one does not exist.

CalOSHA has two sections: Consultation and Enforcement. CalOSHA has enforcement powers and the ability to investigate accidents, serious injuries, or employee complaints. CalOSHA can issue a citation (Labor Code 6317) to an employer (including local governments), and in 1999 was granted authority to fine government organizations. Since January 2000, CalOSHA can fine and/or jail individuals employed by government entities if the offense is serious enough. In enforcement proceedings CalOSHA has been granted wide latitude for “interpretation” of existing regulations, by legislation and court decisions.

The bottom line regarding CalOSHA regulations is that fire departments (1) must train all employees to perform safely in hazardous job activities, and (2) must train them to state-mandated or nationally-recognized “industry standards.”

Elements of Training Mandates

There is no specific definition of a “training mandate,” although codes and regulations that include training as an employer-required activity contain some or all of the following elements:

1. What the employer is required to do. However, the degree of specificity contained within code language varies widely. For example, Title 8 of the California Code of Regulations, Section 3401(b)(5) which covers protective clothing and equipment for firefighters states that “firefighters . . . shall be trained in the appropriate techniques and provided with the necessary protective equipment” (8 CCR, §3401(b)(5)). A section on fork lift operations states “The employer shall ensure that each operator is competent . . . as demonstrated by the successful completion of training and evaluation” (8 CCR, §3668(a)(1)). The Government Code section on sexual harassment requires California to develop an information sheet on sexual harassment, and states, “Each employer shall distribute this information sheet to its employees” or an equivalent document (GC §12950(b)).
2. Specific elements of the training. However, the degree of specificity identifying training elements also varies widely. For example, the code section on respiratory protection identifies specific elements in which employees must be trained. The code section that describes the required course content for EMT training is 16 pages long. At the other extreme, the code section that covers private fire brigades simply states “training must be commensurate with duties.”
3. Hours of instruction versus “competencies.” Most codes are competency-based, meaning that the instruction is to cover certain topics and the student must demonstrate a certain level of skill to complete the training. A few codes give specific numbers of hours of training (EMT is 114 hours, Haz Mat First Responder is 8 hours). However, codes that identify specific training hours also those list competencies that must be covered in the training.
4. Refresher training requirements. Some codes require that employees receive training “annually.” Others require re-training “whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard” (8 CCR, §3203(a)(7)(D)). Some codes have no requirement for re-training or re-certification.

5. Instructor requirements. Not every code addresses instructor requirements. A few codes have very specific and detailed descriptions of instructor competencies (particularly highly technical ones like hazardous materials and EMT). Some simply say the instructor must be “knowledgeable.”

When considering “mandatory” training, other issues besides CalOSHA regulations must be included. The referencing of “recognized national standards” by CalOSHA highlights the need to deliver training that meets those standards. The California State Fire Marshal’s office develops state certified training standards that meet or exceed national standards.

Impact of the General Duty Clause and the General Industry Safety Orders

“Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.” (California Labor Code §6400)

“Every employer shall establish, implement, and maintain an effective injury prevention program **(which) shall include . . . an occupational health and safety training program** designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee’s job assignment.” (California Labor Code §6401.7(a)(4))

This section, commonly referred to as the “General Duty Clause”, underlies all OSHA regulations. This section is interpreted by CalOSHA regulators to mean that an employee requires training for any required job or task that has a potential safety risk or hazard. The nature of fire department emergency operations is such that *all aspects of the job have risks and hazards*. This clearly indicates that a department has a responsibility to provide training in all aspects of emergency operations, whether or not the training is addressed by a specific regulation.

The California Code of Regulations, Title 8 (Industrial Relations), Division 1 (Department of Industrial Relations), Chapter 4 (Division of Industrial Safety) contains Subchapter 7, General Industry Safety Orders. SB 198 modified these, updating §3203 to require every employer to “establish, implement and maintain an effective Illness and Injury Prevention Program” (IIPP).

The IIPP has to include:

- Identification of the “person with authority and responsibility for implementing the program;”
- “A system for ensuring that employees comply with safe and healthy work practices;”
- “A system for communicating with employees . . . on matters relating to occupational safety and health;”
- “Procedures for identifying and evaluating work place hazards;”
- “A procedure to investigate occupational injury or illness;”
- “Procedures for correcting unsafe or unhealthy conditions;” and
- “Training and instruction.”

The subsection on training requires that the employer provide training and instruction:

- (A) When the program is first established;
- (B) To all new employees;
- (C) To all employees given new job assignments for which training has not previously been received;

- (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;
- (E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,
- (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

Considering the all-encompassing scope of these requirements for training, it is not difficult to reach the conclusion that a fire department has a great responsibility for training and re-training all personnel on just about everything relating to the fire service.

Impact of SB 1207. Occupational Safety and Health: Volunteer Firefighters

SB 1207 went into law in January 2001. It amended two sections of the California Labor Code. The primary outcome of this law is that Volunteer Firefighters are considered “employees” under the Labor Code, as it relates to OSHA requirements.

The National Volunteer Fire Council has information on its website relating to federal OSHA rules and their applicability (or lack thereof) to volunteer firefighters in non-OSHA states.