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CalOSHA FINES EMPLOYERS MORE THAN \$1,000,000 FOR COVID-19 PROTECTION VIOLATIONS

BY: SCOTT A. O'MARA

On February 4, 2021, the California division of the Occupational Safety & Health Administration (CalOSHA) reported that penalties totaling more than \$1,000,000 have been placed against many employers who have not complied with the Department of Industrial Relations' established COVID-19 Prevention Program (CPP). This program was discussed in *Newsletter 2020 Issue #18*, which stated that under the CPP, a person of authority and responsibility must be designated for the posting and implementation of such program in the workplace. The creation of the CPP is to be reviewed by the unions and associations representing workers, and these groups may participate if they feel that additional steps which are needed have not been identified.

The program has some easy steps, such as taking the temperature of workers when they enter the worksite, whether inside or outside. The CPP also discusses the importance of physical distancing, face covering and other engineering controls. There is also discussion regarding the necessity for the cleaning and disinfection of areas frequently touched by either the public or co-workers. This cleaning and disinfection is not limited to just the building; it also includes any vehicles used by workers. The CPP further discusses what a company's program should include.

Prior to the implementation of the CPP, a meeting was held on November 19, 2020, to discuss the above-mentioned items. About that same time, former Attorney General Becerra indicated that employees should be involved in the creation of the program, and free-of-charge pre-testing must be available for all workers potentially exposed to COVID-19 in the workplace. This is set forth in *Newsletter 2020 Issue #15*.

The first newsletter regarding the coronavirus and other aerosol-transmitted diseases (*Newsletter 2020 Issue #2*), discusses the California Code of Regulations, Title 8-5199, which states that an aerosol-transmitted disease control plan must include an adequate supply of personal protective equipment and other equipment needed to minimize employee exposure to aerosol-transmitted diseases.

The fines totaling more than \$1,000,000 were lodged against both public and private entities. San Quentin State Prison received a fine of \$421,880 because *the staff was not provided with adequate*

training and equipment for working with people who had COVID-19. In addition, staff members exposed to inmates with COVID-19 were not provided proper medical services.

Also, Avenal State Prison was fined \$39,600 for failing to implement or enforce controls to minimize COVID-19 exposure, not maintaining an effective aerosol-transmitted disease control exposure plan, and not maintaining an adequate written respiratory protective plan.

Private employers cited include Kaiser Permanente, fined \$188,950 for violations at its medical centers in San Leandro, Antioch and Walnut Creek; Mills-Peninsula Medical Center, fined \$25,250 for violations at its facility in Burlingame; and North Bay Medical Center in Fairfield, who also was fined \$25,250. CalOSHA further noted that all three of these medical facilities had deficient respiratory protection programs, and their employers had failed to immediately report serious COVID-19 cases.

Ventura-based fitness center BSF Fitness was fined \$57,740 for allegedly failing to establish, implement and maintain procedures to correct unhealthy conditions related to COVID-19, including such protective measures as face-coverings and physical distancing. Also, Sunray Healthcare Center in the Los Angeles area was fined \$53,805.

The fact that these fines were levied is significant. But even more significant is the fact that so many of the businesses fined are major entities, including state agencies and major corporations like Kaiser Permanente.

COVID-19 exposures are indeed present, especially in particular environments like incarceration facilities, hospitals and doctors' offices, and certainly in law enforcement with its prisoner contact and transportation, and for firefighters when providing emergency aid or transporting people.

All state, county, city and district employers and employees should be made aware of CPP and the seriousness of protection plan violations so they will be motivated to protect the health of their employees and the public and avoid being cited for violations. This is a need which is critical and must be met.



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