

Alert | OSHA



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Cal/OSHA to California Employers: Get It Right or Pay the Price

On Sept. 28, 2021, California Gov. Gavin Newsom signed into law Senate Bill 606 ([SB 606](#)), which, among other things, creates two new categories of California Division of Occupational Safety and Health (Cal/OSHA) violations: “egregious” and “enterprise-wide.”

The new categories of violations carry significant monetary penalties against employers. Employers face up to \$134,334 per egregious and enterprise-wide violation. But employers who commit egregious violations could face significantly higher monetary penalties, because each exposed employee will be considered a separate violation, i.e., \$134,334 multiplied by the number of impacted employees.

The new law takes effect Jan. 1, 2022.

Egregious Violations

Cal/OSHA can issue a citation for an egregious violation if it finds at least one of the following factors to be true:

- The employer, intentionally, through conscious, voluntary action or inaction, made no reasonable effort to eliminate the known violation.
- The violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses. For purposes of this paragraph, “catastrophe” means the inpatient hospitalization, regardless

of duration, of three or more employees resulting from an injury, illness, or exposure caused by a workplace hazard or condition.

- The violations resulted in persistently high rates of worker injuries or illnesses.
- The employer has an extensive history of prior violations of this part.
- The employer has intentionally disregarded their health and safety responsibilities.
- The employer's conduct, taken as a whole, amounts to clear bad faith in the performance of their duties under this part.
- The employer has committed a large number of violations so as to significantly undermine the effectiveness of any safety and health program that may be in place.

Enterprise-Wide Violations

SB 606 creates a “rebuttable presumption” that an employer with multiple worksites has committed an enterprise-wide violation if Cal/OSHA determines that either of the following is true:

- The employer's written policy or procedure regarding a certain topic or issue is not in compliance (e.g., an employer's Heat Injury and Illness Prevention Plan or COVID-19 Prevention Plan); or
- There is evidence of a pattern or practice of the same violation or violations committed by the employer involving more than one of its worksites.

Cal/OSHA is also authorized to obtain enterprise-wide abatement for enterprise-wide violations.

Notably, SB 606 brings Cal/OSHA's enforcement scheme in line with the federal Occupational Safety and Health Agency's (OSHA) egregious violation policy. OSHA is permitted to issue citations for egregious violations to employers when certain factual predicates are met. Egregious violations carry separate monetary penalties for each exposed or impacted employee.

Unlike California's new amendments to Cal/OSHA, however, the OSH Act does not authorize enterprise-wide violations. Rather, if federal OSHA seeks corporate-wide abatement, it can obtain it only through negotiated settlements with employers.

Before SB 606 takes effect, employers should carefully review their written safety policies and procedures as well as work practices to ensure compliance with Cal/OSHA's rules and regulations. This is especially true for employers with multiple worksites in California or that have a prior history of Cal/OSHA violations.

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