

California Future of Work Commission

San Francisco Hearing – March 12, 2020

Statement by Garrett Brown, MPH, CIH, former staff of Cal/OSHA (1993-2014) Compliance Safety and Health Officer and Special Assistant to the Chief of the Division

A critical element for the future of work, and the future of workers and their families in California, is a fully-staffed and fully-resourced workplace health and safety agency that can protect the health, safety and legal rights of the state's 19+ million workers.

This critical element is missing today, has been missing for years now under both Republican and Democratic Administrations, and Cal/OSHA must be rebuilt as soon as possible. The best regulations and standards in the world – and California has led the way in promulgating many of these – are not worth the paper they are written on unless there is a strong and credible enforcement agency able to establish a “level playing field” that will recognize the efforts of responsible employers and hold accountable employers who gamble with the lives and futures of their workforce.

Cal/OSHA's severe understaffing

There is a staffing crisis at Cal/OSHA – the Division of Occupational Safety and Health, or DOSH – today. According to the agency's Organization Charts for February 2020:

- Out of 244 funded positions for field enforcement inspectors (CSHOs), there are 52 vacant positions – a vacancy rate of 21.3%;
- Some regions of the state are especially hobbled: the San Francisco Bay Area (Region I) has a vacancy rate of 41% -- with a vacancy rate of 64% in the Fremont District Office, 43% in the San Francisco, and 33% in the Oakland office;
- There are only 192 CSHOs available statewide to conduct inspections for a workforce of more than 19 million workers and more than one million workplaces;
- There are huge gaps in DOSH's leadership capabilities with two of six Regional Manager positions vacant, and five District Offices without a Manager.

The standard international measure of enforcement capability is a ratio of the number of enforcement inspectors to workers. The state of Washington has a ratio of one inspector for every 28,000 workers, while the state of Oregon has a ratio of one inspector for every 22,000 workers. The ratio in California is one inspector for every 104,000 workers.

Surely the workforce of California deserves the same level of protection as the workers in Oregon and Washington.

Moreover, Cal/OSHA has only 186.5 workplace safety inspectors actually available for field inspections, fewer than the 250 Fish & Game Wardens employed by the state. Surely California's workers deserve the same level of protection as the state's wild life.

At the same time, because of internal administrative changes over the last 20 years, Cal/OSHA has almost lost the capacity to conduct "health" inspections related to worker exposure to chemicals, noise, biohazards, radiation, and ergonomic hazards. DOSH has only a handful of "industrial hygienists" that are trained to evaluate and control health hazards like the Coronavirus, or airborne silica or lead exposures, or other toxic chemicals. Cal/OSHA is not currently capable of protecting of the "health" portion of worker health and safety.

Cal/OSHA also has almost no bilingual capacity among its field enforcement inspectors. Only 28 CSHOs are certified by the state as bilingual inspectors – 26 in Spanish, one in Cantonese and one in Vietnamese. It is estimated that more than 5 million workers in California speak languages other than English, with many monolingual in their native tongues.

Lastly, California's record in protecting whistle-blowers reporting unsafe and illegal working conditions is simply shameful. It is not Cal/OSHA but rather a sister agency, the Division of Labor Standards Enforcement (DLSE), that is responsible for investigating reports of employer retaliation and reprisals against whistle-blowers. DLSE has only five investigators for the entire state and it takes more than a year for complaints to be resolved. The Federal government has repeatedly rebuked California for failing to protect whistle-blowers against firings and blacklisting by employers.

Why the staffing crisis?

The hollowing-out of Cal/OSHA to its current state of weakness is not due to lack of allocated resources. DOSH is funded by the Federal government, by a surcharge on worker compensation premiums paid by employers, and by special funds such a fee on refinery operations by the state's 15 oil refineries. In fact, multiple California Administrations have "left money on the table" by failing to spend the funds available for DOSH.

It has been primarily a failure of political will give provide Cal/OSHA with the staffing and resources it needs to protect the state's workers. One administration after another has been more concerned about keeping corporate campaign contributors and business interests happy than with preventing injuries, illnesses and deaths on the job.

The recent level of vacancies – generated by a wave of retirements – has occurred in large part because the Department of Industrial Relations (DIR, Cal/OSHA's parent agency) has been stripped of its ability to hire and promote internally without the supervision by the California Department of Human Resources (CalHR). CalHR's oversight means an already lengthy hiring process has slowed to an absolute crawl.

The CalHR oversight was imposed because of the misconduct of former DIR Director Christine Baker. Both the State Auditor and State Personnel Board found that Baker had engaged in nepotism at DIR and then retaliated against employees who reported the malfeasance. In response, DIR's lost its ability to directly hire and promote internally.

How to begin fixing the problem

The following immediate and longer term steps need to be taken now by the current Administration to reverse the crisis situation at Cal/OSHA and to ensure that the state has the capability to protect workers in the 21st century:

- Restore DIR's ability to hire and promote internally;
- Work with CalHR and DIR to streamline the hiring process and focus on the skills and experience needed to do Cal/OSHA's work;
- Work with CalHR to adjust the inspector classifications in Cal/OSHA so that industrial hygienists needed for the workplace "health" program can be hired and supported;
- Ensure that the state-generated funding for DOSH – including the worker comp fees and the refinery fee – are fully available to and used by the agency, and not returned to employers; and
- Develop a step-by-step plan to expand Cal/OSHA's staff – consultants, medical unit, standard-setting as well as enforcement – to meet at least the levels of neighboring states like Oregon and Washington.

California has the fifth largest economy in the world, it is the home of global technological innovation, its filmmakers create the dreams of people the world over – and yet California's workers do not have the protections today enjoyed by working people in other US states, let alone in other advanced industrial countries.

The future of work in California – as elsewhere – depends on a workforce whose right to speak and act in their own name without fear of reprisal, and whose right to go home at the end of the day without injury and disease is protected by state agencies that have the staffing and resources to do their job. This is not the case in California today.

The future is ours for the making, and I urge this Commission to make the recommendations that will reverse this situation and make California the national model in workplace health and safety it deserves to be.

Attachments:

- Summary chart of DOSH compliance safety and health officer staffing (3 pages)
- Copies of the DOSH monthly Organization Charts for February 2020 (6 pages)

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