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Whither Cal/OSHA? Ground-breaking Standards, but No One to Enforce Them



By **Guest Guest**

FEB 1, 2024

California



by Guest Contributor **Garrett Brown**

Cal/OSHA is yet again looking for a new Chief – the third time in five years.

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Former Chief Jeff Killip departed on January 19th after a two-year stint, returning to Washington state government and leaving Cal/OSHA with almost 40% vacancies in field enforcement staff.

Cal/OSHA's current predicament reflects the longstanding schizophrenic existence of an agency is often viewed as the "premier state plan" for its first-in-the-nation regulations but lacks the critical staff needed to enforce the law.

What lies ahead for Cal/OSHA and for the workers it is mandated to protect?

Cal/OSHA is one of 21 states that are authorized by OSHA to run their own public and private sector [OSHA programs](#). The Occupational Safety and Health Act requires those states to run programs that are "at least as effective" as the federal program.

California's OSHA program has historically stood out for its pathbreaking health and safety standards, many issued long before federal OSHA is able to issue similar standards to protect the rest of the country's workers. For example, Cal/OSHA has issued standards to protect workers from airborne infectious diseases, musculoskeletal disorders, heat and workplace violence — all regulations that federal OSHA does not yet have.

Innovative worker protection standards are great. But agencies need staff to enforce their standards. A years-long understaffing crisis is undermining the ability of California's worker protection agency to do its job and to implement and enforce newly issued standards to prevent acute silicosis, to prevent indoor heat illness, and to update the decades-old lead poisoning regulation. Cal/OSHA's continuous vacancies in field inspectors, essential administrative staff, and managers at local and regional levels have consistently undermined its ability to effectively enforce either old or new regulations, and to be a meaningful deterrent to irresponsible employers.

“Cal/OSHA's continuous vacancies in field inspectors, essential administrative staff, and managers at local and regional levels have consistently undermined its ability to effectively enforce either old or new regulations, and to be a meaningful deterrent to irresponsible employers.”

A wave of generational retirements at Cal/OSHA began before the Covid pandemic struck, but a tsunami of Covid-related worker complaints and illness reports during 2020-2022 overwhelmed Cal/OSHA. District Managers went into desperate triage management mode, while the reduced corps of Compliance Safety and Health Officers (CSHOs) — Cal/OSHA's inspectors — struggled to keep up, knowing that their ability to do more than the bare minimum was very limited. The agency remained [riddled with critical vacancies](#) and a crippling workload throughout 2023.

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As of January 1, 2024, Cal/OSHA had [111 vacancies in the compliance safety and health officer positions](#) which conduct field inspections of worker complaints, worker injuries and illness, and planned inspections of hazardous workplaces. The vacancy rate of 38.5% means there are only 170 full-time equivalent CSHOs for more than 19 million workers in California, for a ratio of 1 inspector to every 113,000 workers.

By comparison, the state of Washington has a ratio of 1 inspector to every 27,000 workers, and Oregon has a ratio of 1 inspector to every 26,000 workers. The also-understaffed federal OSHA currently has a ratio of 1 inspector to every 90,000 workers. In 1980, federal OSHA had a ratio of 14.8 CSHOs per million workers – forty-four years later, Cal/OSHA has a ratio of 8.7 CSHOs per million workers.

According to the latest available [Cal/OSHA organization chart](#), eight enforcement District Offices have CSHO vacancy rates at or above 40% — San Francisco (67%), San Bernardino (57%), Bakersfield (50%), Santa Ana (50%), Fremont (45%), Los Angeles (44%), and both the PSM Refinery and Non-Refinery units (40%). Seven more District Offices have CSHO vacancy rates between 33% and 40% — American Canyon, Foster City, Mining & Tunneling unit, Oakland, Sacramento, San Diego, and Van Nuys.

Three District Offices – Cal/OSHA’s basic enforcement unit – are without a District Manager (Fresno, Monrovia, and Santa Ana LETF), while the Los Angeles District Office has zero clerical staff. These leadership and administrative vacancies – which have been present at various District Offices throughout the state for years now – severely impede Cal/OSHA’s ability to meet its mandate and mission.

Adverse Impacts of Chronic Understaffing

The years of chronic understaffing have impacted Cal/OSHA’s effectiveness in several ways:

- District Managers with barely half the funded and authorized CSHO positions filled, have an incentive to “invalidate” worker complaints and thereby reduce the number of inspections that are required by law to be opened in order to address the steady stream of worker complaints and injuries;
- CSHOs, who have an ever-growing pile of complaints and accidents on their desk, have an incentive to “open and close” inspections as fast as possible, conducting “once over lightly” inspections so they can move on to the next inspection;
- CSHOs simply do not have the time for health-related inspections to reduce chemical exposures, or noise, or ergonomic hazards. These inspections require time-consuming industrial hygiene monitoring, or multiple inspection visits in order to issue and sustain health-related citations;

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- The Cal/OSHA Legal Unit, which prepares for and conducts the administrative law hearings when citations are challenged by employers, has an attorney vacancy rate of 32% (12 attorney positions). This vacancy rate provides an incentive to settle employer appeal cases – rather than to take them through the legal process. Cases that are dropped due to an overwhelming case-load or to placate litigious employers can reduce the agency’s deterrent impact and undermine CSHO morale.

Recently released data indicates that the chronic understaffing is having an impact on Cal/OSHA’s impact and deterrence effect. In the first three quarters of 2023, CSHOs opened 5% *more* inspections than in the same period in 2022, but the number of citations issued *dropped* 21% from the year before, and the total penalties *declined* by 45%. Understaffed CSHOs were able to “open/close” more inspections, to comply with internal benchmarks, but fewer citations were issued (likely related to less time available to document hazards and violations). And fewer citations lead to lower civil penalties.

In calendar year 2023, Chief Killip reported that 12 CSHOs were hired to work in District Offices throughout the state. During the same period, the Chief reported that there were 18 resignations and 13 transfers to other state agencies, as well as 26 retirements. The job classifications of the resignations and transfers were not reported, but Killip noted in his weekly hiring updates that “retention of CSHOs” was a significant problem. Given the expanded workload and intense time pressures caused by understaffing, it is likely that some of the resignations and transfers were enforcement field inspectors seeking less stressful jobs elsewhere, or who simply retired.

Key Obstacles to Hiring Enforcement Staff

It is true that all employers – including state government – have had difficulty hiring staff recently, especially post-Covid. But the performance of Cal/OSHA and its parent agency, the Department of Industrial Relations (DIR), has been dismal because of both structural problems and self-inflicted weaknesses.

The job classifications for the CSHO positions – “safety engineer” and industrial hygienist – all require “minimum qualifications” (MQs) of a college degree in engineering, even though the job tasks of inspectors do not require actual engineering training and skills. This MQ excludes applicants with other college degrees, and also candidates with high school diplomas and experience as union safety and health coordinators or as members of company health and safety committees. Also, potential applicants with actual engineering degrees can find higher paying jobs elsewhere.

Because of California government bargaining policy, industrial hygiene CSHOs earn 20% less than their safety engineer co-workers, even though they all do the same work for Cal/OSHA. This means that hiring IHS as field inspectors is very difficult because of the internal disparity in pay, and because industrial hygienists can easily find better paying jobs outside of Cal/OSHA.

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“ *Because of California government bargaining policy, industrial hygiene CSHOs earn 20% less than their safety engineer co-workers, even though they all do the same work for Cal/OSHA.* ”

The human resources offices of Cal/OSHA and DIR – themselves understaffed – have been excruciatingly slow in processing job applications so it takes weeks and months before job offers are tendered to qualified applicants. In many cases, these applicants have accepted positions elsewhere in the meantime. Applicants who want to work for Cal/OSHA have to be willing to turn down every other job offer until Cal/OSHA gets its act together to offer them a CSHO position.

With the recent adoption of emergency regulations to reduce silica exposures to artificial stone workers, and the pending approval of the indoor heat regulation and update of the lead exposure regulation, the need for inspectors who are industrial hygienists has never been greater. Without industrial hygiene CSHOs, Cal/OSHA cannot collect the exposure data needed to effectively enforce these regulations. On January 1st, Cal/OSHA only had 7 industrial hygienists among its 170 CSHOs, and had 22 vacant IH positions among the 111 CSHO vacancies. Given the small number of industrial hygienists at Cal/OSHA, full enforcement of these new health regulations, and older ones as well, appears to be an unlikely prospect.

The delays in hiring have also extended up the chain to the Chief position. There was an eight-month gap between Chief Killip’s appointment and the departure of the previous Chief, Doug Parker, who is now the federal OSHA director. The eight-month long “limbo period” for Cal/OSHA in 2021 adversely affected Cal/OSHA’s ability to set policy, support enforcement and consultation units, and improve the pace of hiring.

Another long delay will make these problems worse.

Other Longstanding Problems at Cal/OSHA

The understaffing and slow pace of hiring has meant Cal/OSHA has not been able to address longstanding problems like the lack of diverse language capacity in field inspectors. In a state where at least 5 million of its 19 million member workforce have limited English fluency or are mono-lingual in other languages, [only 16 CSHOs have been certified](#) by the state as bilingual – 14 in Spanish and one each in Cantonese and Vietnamese.

California has 15 operating oil refineries throughout the state and Cal/OSHA’s Process Safety Management (PSM) refinery standard is much stronger than federal OSHA’s. Cal/OSHA’s dedicated PSM unit – another first-in-the-nation innovation – currently only has 10 CSHO positions for enforcement at these 15

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facilities, and four of the positions are vacant. The 40% vacancy rate of the refinery part of PSM is matched by similar vacancies in the non-refinery PSM staff dedicated to enforcement in more than 1,000 facilities using toxic chemicals appearing on a specific list of high hazard substances.

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Cal/OSHA may also be unable to access all the financial resources at its disposal, worsening the current staffing crisis. Cal/OSHA is not funded by the state budget – so it is not affected by either budget surplus or deficit. The agency is funded by annual grants from federal OSHA, a series of small surcharges paid by employers on their worker compensation insurance premiums, and fees for specific services. But Cal/OSHA can't use that funding unless DIR – which controls Cal/OSHA's funds and budget – receives authorization from the Governor and Legislature to spend these non-state budget resources.

Even though Cal/OSHA's funding is independent from the state budget, the agency has been forced by the Governor and the state Department of Finance to keep half of its resources in “[reserve for economic uncertainties](#).” No explanation has been given as to why Cal/OSHA cannot use all of these funds for worker protection.

The refinery part of the PSM unit has been funded since 2014 by a separate surcharge (1 cent) on each barrel of crude oil processed by oil corporations in California. The fund typically generates between \$4 and \$5 million annually – but less than [half of those funds have been used](#) by the PSM unit in recent years. Recently Northern California communities adjacent to oil refineries have been subjected to repeated flaring and unplanned releases of toxic substances from the refineries. Yet there are only three filled CSHO positions in the PSM Northern California refinery unit – and the annual surplus of the refinery fee is refunded to the oil corporations.

Political Roots of the Cal/OSHA Crisis

Cal/OSHA's many problems are particularly irksome when considering that the political leadership of the state has been solidly Democratic for many years. In addition to Democratic Party governors since 2011, the state Legislature has had a “super majority” of Democratic Party lawmakers for several cycles. If the Democratic politicians were genuinely interested in having a robust, effective Cal/OSHA able to actually protect workers, the political power exists to fix the job classification and hiring process problems, to fill all the fully-funded CSHO

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positions, to increase the number of bilingual field inspectors, to address hazardous health-related exposures on the job, and to use all the funds collected for Cal/OSHA for genuine worker protection.

“If the Democratic politicians were genuinely interested in having a robust, effective Cal/OSHA able to actually protect workers, the political power exists to fix the job classification and hiring process problems, to fill all the fully-funded CSHO positions, to increase the number of bilingual field inspectors, to address hazardous health-related exposures on the job, and to use all the funds collected for Cal/OSHA for genuine worker protection.”

But given the reality of Cal/OSHA today, it difficult to avoid the conclusion that the Governor and legislators (who all have future political ambitions) are not willing to upset current and future corporate campaign contributors with a CalOSHA that can effectively do its job. Better to have a worker protection agency in name only, apparently, than to cause employers heartburn and unhappiness with a Cal/OSHA that is fully staffed, responsive, multi-lingual, and capable of enforcing the state’s laws.

The current need to hire another Chief provides the opportunity to “do what needs to be done” for an effective Cal/OSHA:

- Rapidly appoint a permanent Chief to reduce the time the agency spends in limbo;
- Revise the job classifications and “minimum qualifications” for Cal/OSHA’s CSHO positions;
- Greatly expand – if only on a temporary basis – the human resources staff at Cal/OSHA and the Department of Industrial Relations, to significantly shorten the hiring process; and
- Make use of all the funds collected every year for Cal/OSHA so that PSM and all programs have the resources they need to effectively enforce the law.

The people who pay the cost for the crisis at Cal/OSHA are the 19 million working people in California and their families. A worker protection agency that is not responsive to worker complaints, that conducts rapid “open/close, open/close” inspections to keep its head above water, that cannot conduct the appropriate health-related investigations for lack of industrial hygienists, that cannot access and use all the funding it receives, is simply unable to do its job. But workers in California have a right under the law to at least the same level of protection that workers in Oregon and Washington state enjoy.

Cal/OSHA, and occupational health in general, has few friends in the world. The friends it does have – the labor movement and other worker organizations, and OHS professionals – need to find a way to inform and mobilize workers and their communities who pay the price for a weak Cal/OSHA. The pressing need to

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quickly hire a new Chief offers just such an opportunity to build the case – and public pressure – for a robust, effective, and responsive Cal/OSHA with the politicians that control its access to funding and influence its activities. The moment for a broad-based worker health and safety campaign and a strong Cal/OSHA is now.

Garrett Brown worked as a field compliance officer for Cal/OSHA for 18 years and another three years in Headquarters as the Special Assistant to then Chief Ellen Widess. Brown has posted many documents and analysis of the California state worker health and safety agency at the “Inside Cal/OSHA” website. Brown also is volunteer coordinator of the Maquiladora Health & Safety Support Network, partnering with worker and community groups in the developing world.

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