

FY 2023 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report
California Department of Industrial Relations



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I. Executive Summary

The primary purpose of this report is to assess the California State Plan's program performance for Fiscal Year (FY) 2023, and to document progress in resolving outstanding findings from the FY 2022 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report. The criteria used to measure performance include those mandated by the Occupational Safety and Health Administration (OSHA).

The California State Plan is the largest in the nation, with multiple entities working in concert to provide occupational safety and health and whistleblower protection services. In recent years, California has not been able to fill staff vacancies in the state plan program in a timely manner, most notably in their enforcement and consultation programs. The vacancy rate has been compounded by the granting of several budget change proposals, including increasing the staffing ceiling of the state agencies, which provide services associated with the California State Plan.

The FY 2023 evaluation identified several areas of delayed response time, including responses to injuries, non-formal complaints, and investigations by letter. The State Plan made progress in the time to open inspections from formal complaints. Overall, violations per inspection were higher than the national average. However, the number of serious citations issued remains a longstanding concern, as the State Plan has a significantly lower rate than the Further Review Level (FRL). Lapse times for issuance of safety citations continued to be higher than the national average and the FRL. However, progress was noted on the lapse time for health inspections, which was in the FRL range. Significant progress was made in addressing commercial diving and fall protection in residential construction standards, but they remain not at least as effective (ALAE) as the federal requirements.

In FY 2023, the California State Plan program continued to lead the nation in addressing emerging hazards, adopting a standard to prevent the spread of COVID-19 in the workplace, and taking strides to address heat illness for indoor workers and silicosis in high-risk industries like the production of manufactured stone. Additionally, the enforcement branch continued to recover from the impacts of the COVID-19 pandemic, conducting 6,742 inspections, 11% over their goal and 4.5% over their FY 2022 inspections. One of the most ambitious plans in the nation, Cal/OSHA met 48 of the 70 goals listed in their grant application, partially achieving a further 6.

The California State Plan made some progress to address the previous seven findings and two observations from the FY 2022 Follow-up FAME Report, resulting in the completion of three findings and the closing of two observations. In FY 2023, four findings were continued. There were three new findings and five new observations. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of previous findings with associated completed corrective actions.

//. State Plan Background

A. Background

The Department of Industrial Relations (DIR) administers the California State Plan and is comprised of several divisions. Katie Hagen was the Director of DIR and State Plan Designee for the evaluation period.

The Division of Occupational Safety and Health (DOSH), more commonly known as Cal/OSHA, covers a myriad of responsibilities associated with occupational safety and health. These include enforcement of regulations, compliance assistance, outreach, health standards development, and enforcement and management of requirements of associated programs, such as pressure vessels, amusement rides, and elevators. For the period evaluated, Jeff Killip served as the Cal/OSHA Chief. Chief Killip was supported by Debra Lee, Deputy Chief for Field Enforcement; David Wesley, Assistant Deputy Chief for Enforcement; Dan Lucido, Chief Counsel; Carl Paganelli, Deputy Chief of Engineering, Consultation Services, and Process Safety Management; Brandon Hart, Training, Publications, and Outreach Unit Manager; Suzanne Reinfranck, Staff Services Manager; Eric Berg, Deputy Chief for Research and Standards; and Eugene Glendenning, Consultation Program Manager.

The California Occupational Safety and Health Standards Board (OSHSB) promulgates occupational safety and health standards for the State of California. The Board consists of seven members, who were appointed by the governor and led by David Thomas, Chairperson. Christina Shupe served as the Board's Executive Officer for most of the evaluation period, departing from the position on September 22, 2023.

The California Occupational Safety and Health Appeals Board (OSHAB) adjudicates contested cases. The Board was comprised of three members; Ed Lowry, Chairperson; Judith Freyman, Management Member; and Marvin Kropke, Labor Member. Patty Hapgood was the Acting Executive Officer.

The Department of Labor Standards Enforcement (DLSE) investigates allegations of retaliation. The Labor Commissioner was Lilia Garcia-Brower. Patti Huber left the role of Assistant Chief for Retaliation effective December 30, 2022. The Regional Manager for the evaluation period was Michael Harrison. He replaced Victor Lao, who left the role in early November 2022. Senior Deputies Jessica Santiesteban, Steve Pynes, and Alberto Argueta oversaw the work of Deputy Labor Commissioners dedicated to Occupational Safety Health (OSH) Act Section 11(c) retaliation investigations, with Mr. Pynes and Mr. Argueta being promoted into these roles in the third quarter of FY 2023.

There were 28 enforcement offices (known as district offices), with 17 of these offices separated into four geographical regions, each headed by a regional manager. Additionally, there were two High Hazard Unit offices (HHUs), one located in Oakland (HHU North) and another in Santa Ana (HHU South), which conducted programmed inspections of employers in high hazard industries.

The Process Safety Management (PSM) Unit had four offices, two located in Concord (PSM North) and two located in Santa Ana (PSM South). There were three Mining and Tunneling Unit offices with a mandate to inspect tunnels under construction. There were two Labor Enforcement Task Force (LETF) Unit offices, one located in Oakland (LETF North) and another in Santa Ana (LETF South), which targeted employers in the underground economy in partnership with other state agencies. The Crane Unit and a Pressure Vessel Unit had staff co-located in the district offices and assisted compliance safety and health officers (CSHOs) by providing technical expertise for cranes, hoisting equipment, and pressure vessels.

In FY 2023, the initial federal base award to fund the 23(g) program was \$28,984,700. California matched the federal funds and contributed an additional \$40,015,736 in 100% state funds, bringing the total budget to \$97,985,136. California matched an amendment increase of \$1,369,100 and reduced \$4,107,299 in 100% state funds, decreasing the total federal and state funds to \$96,616,037.

The FY 2023 financial closeout report was submitted timely, within 120 days after the end of the grant's performance period. The total expenses were \$103,509,103.49. California spent an additional \$6,893,066.49 in 100% state funds for personnel, fringe benefits, travel, contractual, indirect, and other costs. A financial monitoring review was conducted in August and September 2023. There were 12 findings, of which 8 were repeated from the FY 2021 financial monitoring review, and corrective actions are awaiting verification.

In addition to the 23(g) grant, California received \$7,500,000 in American Rescue Plan (ARP) federal funds for activities aimed at protecting workers during the COVID-19 pandemic and post pandemic recovery for the performance period of October 1, 2020, through September 30, 2023. California matched the federal funds, bringing the total federal and state funds to \$15,000,000. California had an approved closeout extension to January 28, 2024, and closed the grant timely on January 27, 2024. The total expenses were \$12,894,985. California lapsed \$1,052,508 in federal funds due to COVID-19 activities declining over the last nine months of FY 2023, resulting in reduced ARP expenditures. Some COVID-19 activities were backed out of ARP billing because there was insufficient documentation to support that the activities or inspections were conducted within the scope of the 23(g) work.

State and local government consultation services were provided under the 23(g) grant, while private sector consultation was provided under the 21(d) Cooperative Agreement. The private sector consultation program is evaluated separately in the FY 2023 Regional Annual Consultation Evaluation Report (RACER).

Cal/OSHA's enforcement program conducted 6,742 overall inspections, 11% higher than their FY 2023 goal of 6,050. Cal/OSHA also addressed more than 9,800 valid complaints; 15% of the entire number received nationwide.

B. New Issues

The California State Plan continued to struggle to fill its ranks of enforcement personnel in FY 2023. In self-published data from the Cal/OSHA Recruitment and Hiring [webpage](#), only two staff were added to enforcement from March 2023 through September 2023. Over the same period, the Division lost 10 staff. At the close of the fiscal year on September 30, the Cal/OSHA vacancy rate was 35% for enforcement positions, with 228 of 349 positions filled.

California has a low relative percentage of programmed inspections, with 22.3% of their inspections targeting employers in high hazard industries, versus 41.8% nationally. California made significant progress in the time it takes to open inspections on serious complaints from employees and employee representatives, reducing the average time from receipt to opening conference from 8.60 days in FY 2022 to 3.12 days in FY 2023. The average time to open an inspection in response to a report of a non-fatal injury was 16.5 business days, with a median time of 9 business days.

Cal/OSHA announced plans to pursue the development of an interface with the OSHA Information System (OIS) that will allow the State Plan to manage its enforcement case files more efficiently. The system is moving through the procurement and development process and will not be fully operational in the next fiscal year as planned.

The Occupational Safety and Health Standards Board adopted a non-emergency COVID-19 Prevention standard, effective February 3, 2023. The Board also adopted new standards for the requirements for personal protective equipment for firefighters in November 2022, effective January 1, 2023, bringing the standards closer into alignment with National Fire Protection Association recommendations. The Board proposed amended regulations on lead, new regulations on heat illness prevention in indoor places of employment in FY 2023, and it is in the rulemaking process continuing into FY 2024.

Additionally, the Board received and considered a petition to amend the General Industry Safety Orders (GISO), section 5204, Occupational Exposures to Respirable Crystalline Silica via an Emergency Temporary Standard (ETS) to address the growing number of reported cases of advanced silicosis among workers exposed to respirable crystalline silica (RCS) in engineered stone fabrication shops. The Board granted the petition for an ETS in a public meeting on July 20, 2023, and Cal/OSHA's Research and Standards Unit began work to develop language for consideration and adoption. The ETS was adopted and went into effect in December 2023, after the evaluation period for this report.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2023 is a comprehensive year and as such, an on-site program evaluation and case file review was conducted utilizing a 14-person OSHA team, which included whistleblower protection investigators. On-site reviews for

enforcement were conducted in the Foster City, Los Angeles, Modesto, San Diego, San Francisco, and Santa Ana District Offices, the Concord Refinery and Non-Refinery Process Safety Management Offices, and the Oakland High Hazard Unit.

A total of 167 safety and health inspection case files and 366 unprogrammed activity (complaints, reports of injury, and referrals) files were reviewed from November 15 – December 6, 2023. Safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period October 1, 2021 through September 30, 2023. Sample size for file categories was determined by applying the suggested procedures for performing random sampling contained within Appendix E of Directive CSP 01-00-005, State Plan Policies and Procedures Manual, to the total number of case files in those combined offices for each file type. The selected population included:

- Forty-one (41) No inspection files
- Thirteen (13) Programmed inspection case files
- Twenty-six (26) Fatality/catastrophe (FAT/CAT) inspection case files
- Eighty-seven (87) Unprogrammed inspection files
- One hundred (100) Non-valid unprogrammed activities (complaints, reports of injury, and referrals)
- Fifty-four (54) Valid formal unprogrammed activities
- One hundred ten (110) Valid non-formal unprogrammed activities
- One hundred two (102) Unclassified unprogrammed activities (generally reports of non-fatal or non-work-related injuries)

For the review period (FY 22-23), a total of 1,487 retaliation cases were completed, including cases docketed for investigation and those that were administratively closed. The retaliation electronic case file (ECF) review was conducted remotely from November 22, 2023 to January 30, 2024. To randomly select the cases from that population for case file review, OSHA used surveysystems.com with a 95% confidence level and a 10% confidence interval. The result was a sample size of 90 cases, with an additional 10% (nine cases) to account for any unanticipated issues given the systems transition from the Web Integrated Management Information System (WebIMIS) to OIS during this review period, but also to ensure a reasonable number of cases were reviewed beyond the minimum required. OSHA used the formula “=random()” in Excel to randomize the case list and took the top 99 cases, regardless of disposition type. The selected population included:

- Forty-nine (49) Administrative closures
- Twenty (20) Dismissed/non-merit cases
- One (1) Litigation/merit cases
- Eighteen (18) Settled other cases
- Eleven (11) Withdrawn cases

The analyses and conclusions described in this report are based on information obtained from a

variety of monitoring sources, including the:

- State Activity Mandated Measures Report (SAMM, Appendix D dated 11/14/2023)
- California SAMM (CA SAMM, dated 11/14/2023)
- State Information Report (SIR, dated 11/14/2023)
- Mandated Activities Report for Consultation (MARC, date 11/14/2023)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan
- FY 2023 State Plan 23(g) Grant Application
- OSHA Information System (OIS)
- Web Integrated Management Information System (WebIMIS)
- OSHAB Appeals Scheduling and Information System (OASIS)
- Quarterly monitoring meetings between OSHA and the State Plan
- Complaint About State Program Administration (CASPA) investigation
- State Plan Application (SPA) Portal

Each SAMM has an agreed-upon Further Review Level (FRL), which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D represents the State Plan's FY 2023 SAMM Report and includes the FRL for each measure.

B. Review of State Plan Performance

This section is an assessment of California's performance in meeting mandated activities and program elements. California's progress in achieving the five-year strategic and annual performance plan goals is addressed in their FY 2023 SOAR.

1. Program Administration

a) Training

The Professional Development and Training Unit (PDTU) is responsible for administering and tracking the development and training of staff. The PDTU delivered a total of 23 training classes comprised of 6 division-mandated classes, 14 technical training classes, and 3 training events for the Cal/OSHA Legal and Procurement Units. Training was conducted through a mix of in-person classroom setting, hands-on equipment setting, and virtual training events. Events were attended by Cal/OSHA managers, safety and health professionals, attorneys, and administrative staff. In July 2023, the PDTU deployed a new Learning Management System, enabling the unit to create training paths and track enforcement and consultation staff as they progress in their professional development.

b) OSHA Information System

All enforcement and whistleblower protection investigation data were captured in OIS and WebIMIS, and used to assess the effectiveness of the program. The data retrieved from the systems provided indicators that helped identify potential performance deficiencies, analyze

trends, and formulate corrective actions. The results were discussed in the quarterly meetings. The State Plan announced plans to pursue an interface system with OIS that will allow them to manage case files more efficiently. The system is currently in the development process. OSHAB uses the OASIS case management system to track inspections that have been appealed and the information is provided to the district offices for input into OIS. The role and operations of OSHAB are discussed further in the Review Procedures in Section III.B.3.

c) State Internal Evaluation Report

The Cal/OSHA State Internal Evaluation Program (SIEP) consists of an internal review of randomly selected case files to assess enforcement performance on various indicators including case lapse time, response time to address complaints, union/non-union involvement in inspections, worker interviews, and next-of-kin letters. In FY 2023, the Department of Industrial Relations Internal Audit team performed a review of 47 case files and the timeliness of 549 cases. The audit found that case files were not always completed in accordance with Cal/OSHA Policies and Procedures and that complaints and citations were not always responded to or issued timely.

d) Staffing

Per the FY 2023 23(g) grant application, there were approximately 700 employees throughout DIR dedicated in some part to the occupational safety and health program, the largest in the nation. As of August 1, 2023, the submittal of the grant application for FY 2024, there were 222 vacancies. Staffing continues to be a top priority for the agency. Considering the importance of staffing to achieving the goals of the State Plan program, an observation will be added.

Observation FY 2023-OB-01: Programs funded through the 23(g) grant experienced staffing shortages of up to a 35% vacancy rate.

Federal Monitoring Plan FY 2023-OB-01: OSHA will review program staffing on at least a quarterly basis and include discussion of the monitoring in quarterly meetings with the State Plan.

2. *Enforcement*

The Policy and Procedures Manual (P&P), Cal/OSHA's version of the Field Operations Manual (FOM), provides staff with guidance on how to conduct field enforcement.

a) Complaints

Cal/OSHA received more than 18,000 complaints, referrals, reports of injury, and other related activities in FY 2023. While not all these activities were found to be under the jurisdiction of the agency, more than 12,500 were responded to via an investigation by letter, on-site inspection, or a combination of both.

The California Labor Code requires that an inspection for a serious complaint is initiated within 3 working days, while an inspection for a non-serious complaint is initiated within 14 calendar days. These differences were not accounted for in the calculations for SAMM 1 and 2 of the OIS report, so a specific CA SAMM report was developed to capture this data. The CA SAMM data revealed

that serious complaints were inspected within 3.12 working days and non-serious complaints within 14.10 calendar days, slightly higher than the negotiated response times but a significant decrease from 8.60 and 17.57 respectively in FY 2022. Finding FY 2022-01 is completed.

The case file review and subsequent investigation of OIS data indicated that the average time to open an inspection for a non-fatal injury was 16.5 working days from the receipt of the report, and the median time to open such an inspection was 9 days. A memorandum dated March 4, 2016, titled "Revised Interim Enforcement Procedures for Reporting Requirements," addressed to OSHA Regional Administrators and State Designees, states, "OSHA inspections will begin, resources permitting, within five working days (except for fatalities and catastrophes) of receipt of the employer report." The Cal/OSHA Policy and Procedure C-36 Accident Report states, "The investigation of an accident that does not involve an employee fatality, shall be initiated and completed within a reasonable time after receipt of the accident report by the District Office." This data has not been historically tracked, SAMM captures response times for complaints and not accident reports. Accident reports are entered in OIS as FAT/CAT events by Cal/OSHA and referrals by OSHA. The delay in processing resulted in an observation.

Observation FY 2023-OB-02: The average time to open an inspection for a non-fatal injury was 16.5 working days.

Federal Monitoring Plan FY 2023-OB-02: OSHA will review the response time on at least a quarterly basis and include discussion of the monitoring in quarterly meetings with the State Plan.

Where an unprogrammed activity was investigated by letter as permitted by California Labor Code, letters were sent to the employer requesting a response to an alleged hazard, an average of 10.3 working days from receipt of the complaint or referral. Employers responded on average 25.9 working days from the date of the initial request by Cal/OSHA. An average of 12.9 working days elapsed between the due date for a response and when an on-site inspection commenced if one were conducted. Of the 5,311 investigations by letter, 2,611 (49.2%) had responses that were past due and did not receive an inspection. On average these responses were received 13.8 working days after the due date. The delay in processing and responding to overdue investigations by letter resulted in an observation.

Observation FY 2023-OB-03: Responses to investigations by letter were received an average of 25.9 working days from the original request by Cal/OSHA. Late responses were 13.8 working days late on average. Where inspections were initiated due to employer non-response, initiation occurred an average of 12.9 working days after the response due date.

Federal Monitoring Plan FY 2023-OB-03: OSHA will review response times and follow-ups on at least a quarterly basis and include discussion of the monitoring in quarterly meetings with the State Plan.

Imminent danger complaints and referrals were responded to within one day 99.25% (SAMM 3)

of the time, higher than the national average of 95.44% and slightly below the 100% FRL. There were no instances of denial of entry (SAMM 4).

b) Fatalities

For fatalities occurring in FY 2023, 93.26% (SAMM 10) were responded to within one day, below the national average of 97.46% and the FRL of 100%. The case file review revealed that inspections were not opened within one day in four of 24 (17%) fatalities, one of which was determined not to be work related and another which was found not to be within Cal/OSHA jurisdiction.

In the fatality and accident case files reviewed, one of 24 (4%) did not contain OSHA 170 Fatality and Catastrophe Investigation Summaries, and three of 24 (13%) did not contain OSHA 36 Initial Fatality/Catastrophe Report Forms. The consistent presence of this information in the case files completes Finding FY 2022-02.

In two of 24 (8%) fatality case files evaluated, there was no evidence that a condolence letter was sent to the Next-of-Kin and in four (16.7%) of the case files, including the two previously mentioned, a final letter detailing the outcome of the investigation was not present in the case file. The lack of Next-of-Kin letters resulted in an observation.

Observation FY 2023-OB-04: In four of 24 (16.7%) fatality case files reviewed, there was no evidence that required Next-of-Kin letters had been sent.

Federal Monitoring Plan FY 2023-OB-04: OSHA will review a selection of fatality case files during the FY 2024 Follow-up FAME to ensure that Next-of-Kin letters are being included as appropriate.

c) Targeting and Programmed Inspection

A total of 6,742 (SAMM 7) enforcement inspections were conducted, which was above the goal of 6,050 projected in the FY 2023 State Plan 23(g) Grant Application. Of these, 1,502 (22.3%) were programmed inspections. The State Plan conducts programmed inspections using four dedicated units within Cal/OSHA:

- i) The HHU inspects employers in industries with days away, restricted and transferred (DART) rates 200% or more of the latest state-wide average data.
- ii) The LETF inspects employers in the underground economy (for example, employers who circumvent labor laws) for different labor violations. LETF's inspections are generally in low hazard industries but may encompass high hazard areas. Federal funds were not provided to this unit, as it is 100% state- funded.
- iii) The PSM Units target employers who possess, store, or use

chemicals above a threshold quantity. These inspections are intended to prevent catastrophic events. The PSM Units conduct programmed inspections of non-refinery establishments based on randomly selected sites within a state database. Petroleum refinery establishments must submit a schedule of “turnarounds” for all affected units for the following calendar year. A turnaround inspection is a planned shutdown to perform major maintenance. After reviewing the schedule, the PSM Units can request further review and inspection. Federal funds were not provided to this unit as it is 100% state funded.

- iv) The MT Unit inspects each tunnel under construction six times per year as mandated by statute. These worksites are targeted by issued construction permits with the goal of hazard prevention through frequent monitoring inspections. Federal funds were not provided to this unit as it is 100% state-funded.

In addition, district offices conduct programmed inspections under two special emphasis programs; Occupational Exposure to Respirable Crystalline Silica Cut Stone and Stone Product Manufacturing, and Trenching and Excavations.

Percent of enforcement presence (SAMM 17) describes the number of safety and health inspections conducted compared to the number of employer establishments in the state. The State Plan had a percent enforcement presence of 0.85%, which was within the FRL range of 0.70% to 1.17%, indicating the State Plan is reaching employers with enforcement activity.

d) Citations and Penalties

The percent of safety inspections that were in-compliance was 24.22% (SAMM 9a), below the FRL of +/- 20% of the three-year national average (31.73%, range 25.38%- 38.08%). For health, the in-compliance rate of 35.80% (SAMM 9b) was within the FRL range of +/- 20% of the three-year national average (43.82%, range 35.06%- 52.58%).

Of the 126 inspection case files reviewed, 73 (57.9%) had citations issued. The issuance of citations was, in general, adequately supported and documented. In 24 of 126 (19%) inspection case files evaluated, three years of OSHA 300 logs were not present, there was no evidence they had been requested or provided, and citations were not issued for a lack of the required logs. In 17 of 126 (14%) inspection case files evaluated, there was no evidence of an employer history search.

Only three of 126 (2%) case files reviewed had health sampling conducted. Further review of inspections revealed that Cal/OSHA conducted sampling in 0.5% of inspections. Health sampling was conducted in 4.3% of inspections nationally over the review period. The low rate of health sampling may impact Cal/OSHA’s ability to identify and cite employers for health hazards such as

exceedance of permissible exposure limits. The low rate of health sampling resulted in an observation.

Observation FY 2023-OB-05: Cal/OSHA conducted health sampling in 0.5% of their enforcement inspections, versus a national rate of 4.3%.

Federal Monitoring Plan FY 2023-OB-05: OSHA will review inspections with sampling on at least a quarterly basis and include discussion of the monitoring in quarterly meetings with the State Plan.

The average number of serious, willful, repeat, or unclassified (SWRU) violations per inspection increased slightly to 0.67 (SAMM 5a) in FY 2023 but has shown a year over year decrease since FY 2018. The FY 2023 average continued to be below the lower end of FRL range (1.40-2.10, the three-year national average 1.75 +/-20%). This finding will carry over from the FY 2022 Follow-up FAME.

Finding FY 2023-01 (FY 2022-03): The average number of serious, willful, repeat, or unclassified (SWRU) violations issued was 0.67 (SAMM 5a) violations per inspection. This was below the lower end of the FRL range (1.40 violations per inspection).

Recommendation FY 2023-01 (FY 2022-03): Cal/OSHA should determine the underlying cause for the low number of serious, willful, repeat, and unclassified violations, and implement corrective actions.

The average current penalty per serious violation in the private sector was \$8,777.88 (SAMM 8), exceeding the three-year national average of \$3,625.21 and the FRL range of \$2,718.91 to \$4,531.51, and continued to be the highest nationally. Table 1 shows the average current penalty per serious violation, based on the number of workers controlled by an establishment, with smaller employers receiving a greater penalty reduction.

Table 1
Average Current Serious Penalty in Private Sector (SAMM 8)

Number of Workers	Average Current Serious Penalty	3-Year National Average	FRL
Total 1-250+	\$8,777.88	\$3,625.21	\$2,718.91 to \$4,531.51
1-25	\$6,052.00	\$2,348.03	\$1,761.02 to \$2,935.04
26-100	\$8,962.64	\$4,167.28	\$3,125.46 to \$5,209.10
101-250	\$11,410.41	\$6,052.04	\$4,539.03 to \$7,565.05
251+	\$11,493.24	\$7,331.41	\$5,498.56 to \$9,164.26

As a result of the low number of serious violations, the average penalty for an inspection with violations issued was \$5,906.03 per inspection, versus the national average of \$8,861.84 per inspection with violations.

District offices do not collect penalties from citations. The Accounting and Collections Unit, a separate unit within DIR, has the responsibility to track overdue payments and notify the appropriate district office once full payment is received on a weekly basis.

Lapse time can be an indicator of how long employees are exposed to a hazard, and a low lapse time infers exposure is minimized. The average lapse time for safety and health inspections was 78.95 and 75.94 days (SAMM 11) respectively. While the safety inspection lapse time exceeded the higher end of the FRL range (44.18-66.28), the health inspection lapse time was within the FRL range (55.78-83.66). It should be noted that lapse times exceeding the FRL range have been a FAME finding since 2013, and that the progress on the health inspection lapse time represents a positive step for the Cal/OSHA program. Finding FY 2023-02 was amended to reflect this change and is continued.

Finding FY 2023-02 (FY 2022-04): Cal/OSHA's citation lapse time was 78.95 days for safety inspections, above the high end of the FRL range of 66.28.

Recommendation FY 2023-02 (FY 2022-04): Cal/OSHA should establish a plan to work with district and regional managers to improve safety citation lapse time and maintain the current progress on health citation lapse time.

e) Abatement

Cal/OSHA tends to pursue correction during an inspection for violative conditions, meaning that the employer has abated the hazard after the opening of the inspection, but prior to issuance of a citation. During the evaluation period, 74.0% of violations issued by Cal/OSHA were corrected during the inspection, versus 38.8% nationally. Citations issued by Cal/OSHA were abated in an average of 76.0 days versus 84.6 days nationally.

In 20 of 73 (27.3%) case files where violations were issued, documentation of abatement was lacking in some manner. In 3 of 15 (20%) inspections with a serious violation not listed as corrected during inspection, a Cal/OSHA 161 form "Employer's Signed Statement of Abatement of Serious Violations" was not present in the case file. In 11 of 28 (39%) inspections with citations listed as corrected during an inspection, there was no documentation of CSHO observation or verification of abatement. The noted discrepancies in documentation of abatement of hazards resulted in a finding.

Finding FY 2023-03: In 20 of 73 (27.3%) case files evaluated where violations were issued, abatement documentation was lacking, including 11 of 28 (39%) cases with abatement noted as corrected during inspection lacked documentation of CSHO observation or verification of

abatement.

Recommendation FY 2023-03: Cal/OSHA should establish a plan to work with district and regional managers to ensure policies and procedures for the documentation of the abatement of hazards are adequate to demonstrate hazards have been abated and that policies and procedures are followed.

f) Worker and Union Involvement

The percentage of initial inspections with worker walk-around representation or worker interviews was 99.94% (SAMM 13), which is below the FRL of 100%, but above the national average of 96.76%. The case files reviewed confirmed union participation, when required.

3. Review Procedures

a) Informal Conferences

Employers are encouraged to request an informal conference with Cal/OSHA within 10 working days following the receipt of a citation. Informal settlement provisions provide employers the right of review. Workers or their representatives may participate in the proceedings. During the informal conference, the district manager or their designee has the authority to withdraw violations, change classification of violations, and reduce penalties, based on supporting evidence provided by the employer. Penalty reductions are awarded to employers for completing abatement prior to citation issuance or before the due date, thereby encouraging prompt abatement.

The penalty retention rate for non-contested serious citations was 92.43% (SAMM 12), which is above the further review level of the three-year national average +/- 15% (61.06%-82.62%). The cases settled by Cal/OSHA are recorded in OIS. If an appeal is filed with OSHAB, an informal conference can be held up to the day of the appeal hearing.

The case file evaluation revealed that of the 17 inspections reviewed where an informal or pre-hearing conference took place, there was only one instance where changes made to citations were not justified in the case file.

b) Formal Review of Citations

An employer has 15 working days to file an appeal with the OSHAB. The OSHAB may accept an appeal after the 15 working days if the employer can show good cause, such as circumstances beyond an employer's control. At least 30 days prior to the hearing, OSHAB will send out a Notice of Hearing to involved parties. The employer is responsible for notifying workers of the pending hearing by posting the notice near the site of the alleged violation, or where the workers report or carry out their duties. The Administrative Law Judge (ALJ) files a written decision 30 days after the submission date of the hearing. Any party to an appeal has the right to petition OSHAB to reconsider an order, or decision by an ALJ. If any party involved in the appeal process disagrees with the ALJ's decision, they may file an additional appeal to the California Superior Court. The cases settled by OSHAB are recorded in their OASIS database and then sent back to the

appropriate district office to update in OIS.

California had a contest rate of 49.04% during FY 2023, versus a national rate of 13.30%. For FY 2023, 11.33% (SIR 5b) of violations were vacated after an appeal was filed, below the national average of 15.30%, and 12.37% (SIR 6b) of violations were reclassified after the appeal, slightly below the national average of 12.40%. The penalty retention rate following an appeal was 60.10% (SIR 7b), below the national average of 66.1430%. It should be noted that, as stated previously, cases can be settled through informal conference up to the day of the appeal hearing.

OSHAB received 2,186 appeals over the course of FY 2023, closing 2,283 over the same period. Administrative Law Judges (ALJ) conducted 91 hearings and 215 settlement conferences. The Board has continued to be successful using videoconferencing to streamline the appeals process and all hearings were conducted using virtual tools. The success has led the Board to convert status, pre-hearing, and settlement conferences using videoconferences.

The Appeals Board also piloted a program to “double-book” ALJs on hearing days, scheduling judges for two hearings on the same day, as generally cases with scheduled hearings are settled prior to the hearing. Previously, this would result in the ALJ not having a hearing on that day. The Board found the increased flexibility offered was a better use of the judges’ time, and where both hearings went forward on the same day, there was enough staffing flexibility to address the outcome. OSHAB is treating the pilot as a proof of concept and has no need at this time to employ it, but should a need arise with the predicted increase in enforcement staffing and activity, they will be prepared to address it.

4. Standards and Federal Program Changes (FPCs) Adoption

a) Standards Adoption

The OSHSB promulgates occupational safety and health standards for California. When a new or revised standard is proposed, the State Plan generally submits a request to OSHA for an advisory opinion to ensure the State Plan’s new or revised standard is at least as effective (ALAE) as the federal regulation in advance of promulgation.

The rulemaking process includes an advisory committee as needed, a public hearing, stakeholder input, comment period, and economic analysis. Embedded within the rulemaking process is an opportunity for stakeholders, including OSHA, to provide oral and written comments to OSHSB via the 45-Day Notice period leading up to the Public Hearing. Additional comment opportunities are provided, whenever modifications to the original proposal are made via the 15-Day Notice process. Stakeholders can comment on the proposal, prior to the Public Hearing, when the proposed regulatory text is considered for adoption.

Current regulations for residential construction fall protection remain in the process of being amended. Significant progress was made towards the notice of proposed rulemaking in FY 2023 and the notice was published on December 1, 2023. The proposed standard will now go through the rulemaking process, including public hearings and standards adjustments, with adoption

required by state administrative law within one year of the notice. Although the rulemaking process is underway, this item remains a finding until adoption and an effective date is implemented. This has been a FAME finding since 2015.

Finding FY 2023-04 (FY 2022-05): OSHSB’s regulations for residential construction fall protection are not at least as effective (ALAE) as OSHA’s regulations, as required by 29 CFR 1953.5(a).

Recommendation FY 2023-04 (FY 2022-05): OSHSB should ensure their standards on residential construction fall protection are ALAE as OSHA’s standards.

On April 14, 2021, California adopted a change in their Commercial and Technical Diving Operations regulations effective October 1, 2021. Most of the regulation was adopted identical to the federal standard, except for the definition of technical diving and a few select exceptions. OSHA provided a letter dated October 14, 2020, describing concerns that some portions of the regulation were not ALAE as the federal standard. OSHA and OSHSB made progress on how to address safety and health for the types of diving in question, however a finding will continue until regulations that are ALAE as the federal requirements are adopted.

Finding FY 2023-05 (FY 2022-06): State Plan-initiated rulemaking promulgated standards on commercial diving are not ALAE as OSHA’s standard.

Recommendation FY 2023-05 (FY 2022-06): California’s commercial diving standard should be updated to ensure it is ALAE as OSHA’s standard.

During FY 2022 and 2023, OSHA issued seven federal standards that required a response. Additionally, one standard carried over from previous years that has not been adopted is included in Table 2 below.

Table 2
Status of FY 2022 and FY 2023 Federal Standards Where Adoption Was Required
(May include any delinquent standards from earlier fiscal years)

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) (11/18/2016)	1/18/2017	5/15/2017	Yes	No	5/18/2017	Not yet adopted
COVID-19 Vaccination and Testing; Emergency Temporary Standard 29 CFR 1910, 15, 17, 18, 26, 28 (11/5/2021)	11/20/2021	Not Applicable	Not Applicable	Not Applicable	12/5/2021	Not Applicable
Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard 29 CFR 1910	1/7/2022	1/5/2022	Yes	No	1/24/2022	5/5/2022
Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act - Annual Adjustment for 2022 29 CFR Part 1903 (1/15/2022)	3/15/2022	1/1/2022	Yes	No	7/15/2022	1/1/2022

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act - Annual Adjustment for 2023 29 CFR Part 1903 (1/15/2023)	3/15/2023	1/17/2023	Yes	No	7/15/2023	1/1/2023
Final Rule to Improve Tracking of Workplace Injuries and Illnesses 29 CFR Part 1904 (7/21/2023)	9/21/2023	10/15/2023	Yes	Yes	1/21/2024	Not Yet Adopted
Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions 29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)	4/14/2022	2/14/2022	Yes	No	8/14/2022	2/3/2023

On November 18, 2016, OSHA published its final rule regarding Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) which became effective January 17, 2017. State Plans were required to adopt the rule or standards at least as effective as the rule by May 18, 2017. The OSHSB has been engaged in rulemaking to address the changes. However, measures that are at least as effective as the federal standards have not been adopted.

Finding FY 2023-06: The State Plan program has not adopted changes at least as effective as OSHA’s walking-working surfaces standard which became effective January 17, 2017.

Recommendation FY 2023-06: OSHSB should ensure their standards on walking-working surfaces are at least as effective as OSHA’s requirements.

b) Federal Program Changes (FPCs) Adoption

During FY 2022 and 2023, OSHA issued 9 FPCs that required a response (Tables 3, 4, and 5).

The State Plan has historically adopted federal program changes as not identical to the federal program and submitted equivalent policies without supporting documentation identifying significant differences between the state and federal policies as well as why the differences are at least as effective as the federal language. The documentation of significant differences is required in OSHA’s State Plan Policies and Procedures Manual. OSHA has evaluated policies without the difference documentation; however, submissions were frequently missing elements like targeting methods for employers under emphasis programs. OSHA will continue to work with the State Plan to ensure that policies and procedures are at least as effective as OSHA’s.

Table 3

Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Required
(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/ Subject	Response Due Date	State Plan Response Date	Inten t to Adop t	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Revised Combustible Dust National Emphasis Program CPL 03-00-008 (1/30/2023)	3/31/2023	3/3/2023	Yes	No	7/30/2023	Not yet adopted
National Emphasis Program on Warehousing and Distribution Center Operations CPL 03-00-026 (7/13/2023)	9/11/2023	9/13/2023	Yes	No	1/9/2024	Not yet adopted

Cal/OSHA has not adopted the Combustible Dust National Emphasis Program, CPL 03-00-008, which was due to be adopted by states by July 30, 2023, resulting in a finding.

Finding FY 2023-07: Cal/OSHA has not adopted measures at least as effective as CPL 03-00-008, the Revised Combustible Dust National Emphasis Program.

Recommendation FY 2023-07: Cal/OSHA should adopt CPL 03-00-008 or measures at least as effective as OSHA’s directive.

Table 4

Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Equivalency Was Required
(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/ Subject	Response Due Date	State Plan Response Date	Inten t to Adop t	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Whistleblower Investigations Manual CPL 02-03-007	4/27/2016	4/27/2017	Yes	No	7/28/2016	3/10/2023
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	4/19/2021	Yes	No	9/19/2021	Superseded by CSP 02-00-005 (9/29/2023)
Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL DIR 2021-02 (CPL 02) (6/28/2021)	7/13/2021	8/4/2021	Yes	No	7/28/2021	5/6/2021
Compliance Directive for Cranes and Derricks in Construction Standard CPL 02-01-063 (2/11/2022)	7/3/2022	6/21/2022	Yes	No	11/3/2022	8/26/2022

FPC Directive/ Subject	Response Due Date	State Plan Response Date	Inten t to Adop t	Adopt Identical	Adoption Due Date	State Plan Adoption Date
OSHA Whistleblower Investigations Manual CPL 02-03-011 (4/29/2022)	10/11/2022	10/11/2022	Yes	No	2/11/2023	3/10/2023
Severe Violator Enforcement Program (SVEP) CPL 02-00-169 (9/15/2022)	11/15/2022	10/24/2022	Yes	No	3/15/2023	9/29/2023
Site-Specific Targeting (SST) CPL 02-01-064 (2/7/2023)	4/8/2023	3/3/2023	Yes	No	8/6/2023	7/1/2015
National Emphasis Program – Falls CPL 03-00-025	6/30/2023	6/12/2023	Yes	No	10/28/2023	11/1/2023
Consultation Policies and Procedures Manual CSP 02-00-005 (9/29/2023)	11/28/2023	12/12/2023	Yes	No	3/27/2024	Not yet adopted

Table 5
Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Encouraged
(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	State Plan Adoption Date
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OSHA's Use of Small Unmanned Aircraft Systems CPL 02-01-169 (12/22/2021)	2/22/2022	2/16/2022	No	No	Not applicable
National Emphasis Program – Outdoor and Indoor Heat-Related Hazards CPL 03-00-024 (4/8/2022)	6/8/2022	6/2/2022	Yes	No	10/17/2022

c) State-Initiated Changes

When a state initiates a change to their program plan, it is submitted to OSHA for review and approval. California initiated six changes during FY 2022 and FY 2023. Table 6 below lists all California-initiated changes during this evaluation period.

**Table 6
FY 2022 and FY 2023 State-Initiated Changes**

Standard	Adoption Date	Effective Date
Fire Fighters’ Personal Protective Clothing and Equipment – AB 2146 (2014)	4/21/2022	1/1/2023
COVID-19 Prevention permanent standard	12/15/2022	2/3/2023
COVID-19 Prevention (Emergency Regulation) Third Readoption	4/21/2022	5/5/2022
COVID-19 Prevention (Emergency Regulation) 2nd Readoption	12/16/2021	1/14/2022
Applications for Permanent Variance	3/17/2022	7/1/2022
Proposal to Consolidate Construction Safety Orders, Article 15 (Cranes and Derricks in Construction), into General Industry Safety	2/17/2022	7/26/2022

5. Variances

A variance is a regulatory action permitting employers to deviate from the requirements of an OSHA standard under certain conditions. OSHSB grants permanent variances. Most applications submitted concern the Elevator Safety Orders, which was outside of the scope of General Industry and Construction Safety Orders. No permanent variances were granted during this evaluation period, other than those for elevators, escalators, wheelchair lifts and other conveyances.

6. State and Local Government Worker Program

In FY 2023, 313 (4.64%) inspections in state and local government workplaces were completed, below the lower end of the FRL range of +/- 5 % of the negotiated value of 375 (5.79%, range 356 – 394, 5.50-6.08%) for SAMM 6. Penalties are assessed against state and local government employers in the same manner as private sector employers.

7. Whistleblower Program

Claims of workplace retaliation for reporting occupational safety and health issues are investigated by the DLSE, Retaliation Complaint Investigation (RCI) Unit. During this review period, DLSE and the RCI unit underwent significant changes in management and reporting structure. In the last year in particular, these changes have had a measurable impact on communication, coordination, and cooperation with the federal Whistleblower Protection

Program team. Although the tracking of whistleblower SAMM data was paused due to a systems transition during this review period, the electronic case file review and other anecdotal sources of information and observations, both during quarterly review meetings and collaboration on case-specific issues, indicates significant progress is being made on improving case file documentation, backlog reduction, and average case age.

DLSE timely submitted a complete version of the RCI Whistleblower Investigation Manual (WIM) on or about March 10, 2023. As has been noted in previous FAME reports, the state's WIM is likely to be a game changing factor in standardizing and elevating the quality of case file documentation moving forward after promulgation and training to the RCI WIM standards and requirements. Given this information, Finding FY 2022-07 is considered completed.

Although OSHA's ECF review discovered documentation issues of various types with individual cases, there were no trends, and especially not any trends regarding serious documentation issues that could impact the quality of the investigations, or that could signal a concern that the investigation was not at least as effective as OSHA's guidelines. Observation FY 2022-OB-01 is considered closed.

DLSE RCI management developed clear guidance for determining whether it has jurisdiction or must refer a case to the Division of Workers' Compensation pursuant to Labor Code section 132a, which grants exclusive jurisdiction to the California Worker's Compensation Appeals Board (WCAB) for retaliation due to an employee filing or expressing an intent to file a worker's compensation claim. The guidance was promulgated on April 2022 and approved by OSHA. In every case in which OSHA was able to identify this jurisdictional issue as being applicable during the FAME ECF review, the RCI Investigator(s) properly followed the guidance and correctly decided to administratively close the case due to a lack of jurisdiction. Accordingly, Observation FY 2022-OB-02 is closed.

There was only one request for a federal review of a dual-filed whistleblower case during this review period. The requestor received clear guidance in the state's final determination letter on the obligation to make the request within 15 calendar days of the state's appeal denial. The requestor failed to meet this deadline and ignored OSHA's written request to do so. OSHA therefore denied the request for a federal review without substantive review of the state's investigation and determination.

8. Complaint About State Program Administration (CASPA)

There were two Complaints About State Plan Administration (CASPA) in FY 2023. CASPA 2023 CA-01 alleged that complainants were not advised of their right to dual file whistleblower complaints with OSHA, and that a closing conference was not held including a brief verbal summary of the recommendation and basis for recommendations. A review of the pertinent case files revealed that there was no merit to the allegations and Division of Labor Standards Enforcement had followed policies and procedures at least as effective as OSHA's requirements.

The second CASPA, 2023 CA-04 alleged several instances of financial mismanagement within Cal/OSHA's consultation program. In reviewing the usage of State Plan funds, there was no evidence that any funding provided by OSHA was used outside of the requirements and constraints of the grant.

9. Voluntary Compliance Program

The California Voluntary Protection Program (Cal/VPP) for general industry employers and VPP-Construction (VPPC) for construction employers provides recognition and programmed inspection exemptions to qualified worksites. Participants are expected to have exceptional safety and health programs attributing to a lower risk of injuries and illnesses. In FY 2023, 10 new certifications and 12 re-certifications of general industry establishments were completed. For construction, five new sites were added. At the close of FY 2023, there were 66 Cal/Star sites and 15 construction-based Cal/Star sites.

10. State and Local Government 23(g) On-Site Consultation Program

This section covers consultation services provided solely to state and local government agencies that are funded under Section 23(g) of the OSH Act. Consultation services are provided to state and local government employers through the Consultation Services Branch. The private sector consultation program is funded under Section 21(d) of the Occupational Safety and Health (OSH) Act and evaluated separately in the FY 2023 Regional Annual Consultation Evaluation Report (RACER).

Consultants conducted 26 initial consultation visits to employers in state and local government agencies, exceeding the goal of 15 visits. All (100%) visits were to high hazard industries, exceeding the goal of 90% (MARC 1). All 26 (100%) visits were to establishments with 250 or fewer employees and businesses with 500 or less controlled (MARC 2A and 2B). The consultant conferred with employees 100% of the time (MARC 3).

During this evaluation period, 64 serious hazards were identified, and all (100%) were abated in a timely manner. One was corrected on-site, 51 within the original timeframe, 11 within the extension timeframe, and one within 14 days of the latest correction due date (MARC 4A and 4B). No employers were referred to enforcement (MARC 4C). Out of the 64 serious hazards, 52 (81.3%) were corrected in the original timeframe or on-site, exceeding the goal of 65% (MARC 4D). There were no uncorrected serious hazards with correction dates 90 days past due (MARC 5).

An on-site review was conducted of the state and local government consultation program on August 22 through December 1, 2022. The purpose of the visit was to assess the quality of the program's services and its internal quality assurance program in accordance with Consultation Policies and Procedures Manual (CSP 02-00-004) and 29 Code of Federal Regulations (CFR) Part 1908 - Consultation Agreements.

Of the six visit files reviewed, there were no findings or recommendations. Overall, the program

requirements were met. The next on-site review is scheduled for FY 2024.

Appendix A – New and Continued Findings and Recommendations

FY 2023 California Division of Occupational Safety and Health Comprehensive FAME Report

FY 2023-#	Finding	Recommendation	FY 2022-# or
FY 2023-01	The average number of serious, willful, repeat, or unclassified (SWRU) violations issued was 0.67 (SAMM 5a) violations per inspection. This was below the lower end of the FRL range (1.40 violations per inspection).	Cal/OSHA should determine the underlying cause for the low number of serious, willful, repeat, and unclassified violations, and implement corrective actions.	FY 2022-03 FY 2021-03 FY 2020-02 FY 2019-02 FY 2018-01 FY 2017-02 FY 2016-04 FY 2015-04 FY 2014-02 FY 2013-03 FY 2012-03 FY 2011-07 FY 2010-07
FY 2023-02	Cal/OSHA’s citation lapse time was 78.95 days for safety inspections, above the high end of the FRL range of 66.28.	Cal/OSHA should establish a plan to work with district and regional managers to improve safety citation lapse time and maintain the current progress on health citation lapse time.	FY 2022-04 FY 2021-04 FY 2020-03 FY 2019-03 FY 2018-02 FY 2017-03 FY 2016-03
FY 2023-03	In 20 of 73 (27.3%) case files evaluated where violations were issued, abatement documentation was lacking, including 11 of 28 (39%) cases with abatement noted as corrected during inspection	Cal/OSHA should establish a plan to work with district and regional managers to ensure policies and procedures for the documentation of the abatement of hazards are adequate to demonstrate hazards have been abated and that	New
FY 2023-04	OSHSB’s regulations for residential construction fall protection are not at least as effective (ALAE) as OSHA’s regulations, as required by 29 CFR 1953.5(a).	OSHSB should ensure their standards on residential construction fall protection are ALAE as OSHA’s standards.	FY 2022-05 FY 2021-05 FY 2020-04 FY 2019-04 FY 2018-03 FY 2017-04 FY 2016-01 FY 2015-01 FY 2014-01

FY 2023-#	Finding	Recommendation	FY 2022-# or
FY 2023-05	State Plan-initiated rulemaking promulgated standards on commercial diving are not ALAE as OSHA's standard.	California's commercial diving standard should be updated to ensure it is ALAE as OSHA's standard.	FY 2022-06 FY 2021-06 FY 2020-0B-03 FY 2019-
FY 2023-06	The State Plan program has not adopted changes at least as effective as the Federal Walking-Working Surfaces standards	OSHSB should ensure their standards on walking-working surfaces are at least as effective as the Federal requirements.	New
FY 2023-07	Cal/OSHA has not adopted measures at least as effective as CPL 03-00-008, the Revised	Cal/OSHA should adopt CPL 03-00-008 or measures at least as effective as those within the	New

Appendix B – Observations Subject to New and Continued Monitoring

FY 2023 California Division of Occupational Safety and Health Comprehensive FAME Report

Observation # FY 2023-OB-#	Observation# FY 2022-OB-# <i>or</i> FY 2022-#	Observation	Federal Monitoring Plan	Current Status
FY 2023-OB-01		Programs funded through the 23(g) grant experienced staffing shortages of up to a 35% vacancy rate.	OSHA will review program staffing on at least a quarterly basis and include discussion of the monitoring in	New
FY 2023-OB-02		The average time to open an inspection for a non-fatal injury was 16.5 working days.	OSHA will review the response time on at least a quarterly basis and include discussion of the monitoring in	New
FY 2023-OB-03		Responses to investigations by letter were received an average of 25.9 working days from the original request by Cal/ OSHA. Late responses were 13.8 working days late on average. Where inspections were initiated due to	OSHA will review response times and follow-ups on at least a quarterly basis and include discussion of the monitoring in quarterly meetings with the State Plan.	New

Observation # FY 2023-OB-#	Observation# FY 2022-OB-# or FY 2022-#	Observation	Federal Monitoring Plan	Current Status
FY 2023-OB-04		In four of 24 (16.7%) fatality case files reviewed, there was no evidence that required Next-of-Kin	OSHA will review a selection of fatality case files during the FY 2024 Follow-up FAME to ensure that Next-of-Kin	New
FY 2023-OB-05		Cal/OSHA conducted health sampling in 0.5% of their enforcement inspections, versus a national rate of 4.3%.	OSHA will review inspections with sampling on at least a quarterly basis and include discussion of the monitoring in quarterly	New
	FY 2022-OB-01 FY 2020-OB-05 FY 2019-OB-05	Retaliation case files lacked the required documentation such as final signatures on settlement agreements, correspondence between DLSE and the parties, evidence of review by a supervisor, letters of designation, complaint summaries, interview summaries,	OSHA will monitor the lack of required documentation during quarterly meetings with DLSE. OSHA also suggests for DLSE to use CLP 02-03-009 as a guide when maintaining ECF outside of California's database for tracking retaliation complaints, or provide OSHA	Closed 1/31/2024

Observation # FY 2023-OB-#	Observation# FY 2022-OB-# or FY 2022-#	Observation	Federal Monitoring Plan	Current Status
	FY 2022-OB-02 FY 2021-OB-02 FY 2020-OB-06 FY 2019-OB-06	There is no clear evidence that DLSE investigates retaliation for reporting workplace injuries and illnesses. Instead DLSE refers the complainants to the Division of Workers'	During quarterly meetings, OSHA will monitor to ensure that complaints of retaliation are being screened, according to the document provided by DLSE, and that the reporting of	Closed 1/31/2024

Appendix C - Status of FY 2022 Findings and Recommendations

FY 2023 California Division of Occupational Safety and Health Comprehensive FAME Report

FY 2022-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if
FY 2022-01	The average time to initiate an inspection for formal serious complaints was 12.54 working days and non-serious complaints was 20.53 calendar days, which exceeded the negotiated measure of 3 and 14 days, respectively.	Cal/OSHA should determine the cause of the extended response time to complaints and implement corrective action to ensure that complaints are responded to timely.	Progress is expected during the upcoming fiscal year after taking the following measures: <ul style="list-style-type: none"> Continue the Division’s robust hiring efforts for Enforcement Staff, including both existing CSHO vacancies and new positions allocated for the state’s 23-24 fiscal year. This includes efforts to advertise existing 	11/14/2023	Completed

FY 2022-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if
FY 2022-02	In the fatality and catastrophe case files reviewed in FY 2021, 12 of 59 (20%) did not contain an OSHA 170 Fatality and Catastrophe Investigation Summary.	Cal/OSHA should ensure that the OSHA 170 Fatality and Catastrophe Investigation Summaries are maintained in the fatality and catastrophe case files.	The Division expects to correct or significantly improve this during the upcoming fiscal year after finalizing a change to the Division's Policy and Procedures update as follows: <ul style="list-style-type: none"> • Revise written policy to ensure that Regional Managers sign all Fatality and Catastrophe Investigati 	12/6/2023	Completed

FY 2022-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if
FY 2022-03	<p>The average number of serious, willful, repeat, or unclassified (SWRU) violations issued was 0.64 (SAMM 5a) violations per inspection. This was below the lower end of the FRL range (1.42 violations per inspection).</p>	<p>Cal/OSHA should determine the underlying cause for the low number of serious, willful, repeat, and unclassified violations, and implement corrective actions.</p>	<p>Progress is expected during the upcoming fiscal year after taking the following measures:</p> <ul style="list-style-type: none"> • Analyze the effect of California-specific provisions on this measurement, including statutory and regulatory provisions regarding employer knowledge and penalty levels. • Update and re-issue list, created for CSHOs, of violations commonly found to be serious. • Determine 	Not Completed	Open 1/22/2024

FY 2022-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if
FY 2022-04	<p>Cal/OSHA's citation lapse time was 89.78 days for safety inspections and 119.03 days (SAMM 11) for health inspections. These are above the high end of the FRL ranges of 62.9 days for safety inspections and 79.32 days for health inspections.</p>	<p>Cal/OSHA should establish a plan to work with district and regional managers to improve citation lapse time.</p>	<p>Progress is expected during the upcoming fiscal year after taking the following measures:</p> <ul style="list-style-type: none"> • Continue the Division's extensive hiring efforts, described above. • Continue practice of having District Managers review "Open Inspection" report, including the "Citation Pending" section, when meeting with CSHOs monthly to review all open inspections and develop 	Not Completed	Open 1/22/2024

FY 2022-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if
FY 2022-05	OSHSB’s regulations for residential construction fall protection are not at least as effective (ALAE) as OSHA’s regulations as required by 29 CFR 1953.5(a).	OSHSB should ensure their standards on residential construction fall protection are ALAE as OSHA’s standards.	This regulation was assigned as a high-priority project to a Senior Safety Engineer in 2021. Engagement with the Department of Finance (DOF) in the fourth quarter of 2021 resulted in a second alternative approach being developed for the fiscal analysis. Engagement with OSHA staff in late 2021 and early 2022 resulted in an additional change to the regulatory text of the draft rulemaking proposal. The new draft language was shared with	Not Completed	Open 2/20/2024

FY 2022-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if
FY 2022-06	State Plan-initiated rulemaking promulgated standards on commercial diving are not ALAE as OSHA's standard.	California's commercial diving standard should be updated to ensure it is ALAE as OSHA's standard.	On August 12, 2022 OSHA sent OSHSB a letter stating it considers the commercial diving standards not ALAE and requested a response by October 1, 2022. OSHSB staff are actively engaging with OSHA to provide additional information for their ALAE determination , including conducting field visits revising proposed language, sharing videos gathered during the field visits and holding regular meetings with safety staff. The commercial diving	Not Completed	Open 2/20/2024

FY 2022-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if
FY 2022-07	DLSE does not have an approved whistleblower investigations manual to ensure that its policies and procedures are ALAE as OSHA's.	DLSE should complete the whistleblower investigation manual to ensure that its policies and procedures are ALAE as OSHA's.	On March 10, 2023, DLSE adopted the Retaliation Complaint Investigations Manual. The manual provides clear, updated policies and provides instruction regarding the operations of the Retaliation Complaint Investigation Unit. The manual has been submitted to	3/10/2023	Completed

Appendix D – FY 2023 State Activity Mandated Measures (SMM) Report

FY 2023 California Division of Occupational Safety and Health Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	12.06	3	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	7.34	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	23.71	1	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	4.07	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday	99.25%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5a	Average number of violations per inspection with violations by violation type (SWRU)	0.67	+/- 20% of 1.75	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
5b	Average number of violations per inspection with violations by violation type (other)	2.26	+/- 20% of 0.89	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS.
6	Percent of total inspections in state and local government workplaces	4.64%	+/- 5% of 5.79%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is
7a	Planned v. actual inspections (safety)	5,317	+/- 5% of 4,700	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 4,465.00 to 4,935.00 for safety.
7b	Planned v. actual inspections (health)	1,425	+/- 5% of 1,350	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,282.50 to 1,417.50 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$8,777.88	+/- 25% of \$3,625.21	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,718.91 to \$4,531.51.
8a	Average current serious penalty in private sector (1-25 workers)	\$6,052.00	+/- 25% of \$2,348.03	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,761.02 to \$2,935.04.
8b	Average current serious penalty in private sector (26-100 workers)	\$8,962.64	+/- 25% of \$4,167.28	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,125.46 to \$5,209.10.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
8c	Average current serious penalty in private sector (101-250 workers)	\$11,410.41	+/- 25% of \$6,052.04	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,539.03 to \$7,565.05.
8d	Average current serious penalty in private sector (greater than 250 workers)	\$11,493.24	+/- 25% of \$7,331.41	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$5,498.56 to \$9,164.26.
9a	Percent in compliance (safety)	24.22%	+/- 20% of 31.73%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for
9b	Percent in compliance (health)	35.80%	+/- 20% of 43.82%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health.
10	Percent of work-related fatalities responded to in one workday	93.26%	100%	The further review level is fixed for all State Plans.
11a	Average lapse time (safety)	78.95	+/- 20% of 55.23	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety.
11b	Average lapse time (health)	75.94	+/- 20% of 69.72	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for
12	Percent penalty retained	92.43%	+/- 15% of 71.84%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
13	Percent of initial inspections with worker walk-around representation or	99.94%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	N/A*	N/A*	This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS.
15	Percent of 11(c) complaints that are meritorious	N/A*	N/A*	This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS.
16	Average number of calendar days to complete an 11(c) investigation	N/A*	N/A*	This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS.
17	Percent of enforcement presence	0.85%	+/- 25% of 0.93%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%.

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS on November 14, 2023, as part of OSHA's official end-of-year data run.