



FAQ'S FOR LEADERS AND MEMBERS: FILING A CAL/OSHA COMPLAINT

November 2020

When may a Cal/OSHA complaint be filed?

Cal/OSHA complaints are appropriate when there is a dangerous condition at the workplace that presents a hazard for employees. Although unsafe workplaces are also unsafe learning environments for students and potentially also dangers to public health, Cal/OSHA is a workplace safety agency, and as such is focused on workers and dangerous working conditions.

Recently, the Governor signed [AB 685](#)—a law that becomes effective on January 1, 2021, and that, among other things, clarifies and expands the powers of Cal/OSHA to close workplaces that present an imminent hazard due to COVID-19 and to cite employers. If a condition at the workplace presents an imminent hazard, filing a Cal/OSHA complaint may be a useful and appropriate tool to address the problem. Chapters and members should attempt to resolve the safety issue with the employer before filing a Cal/OSHA complaint.

Cal/OSHA is understaffed, and the agency's operations are impacted by COVID-19. Getting the attention of Cal/OSHA is critical to getting a good result after filing a complaint. Members and local leaders are asked to please work with CTA Primary Contact Staff when considering whether to file a Cal/OSHA complaint.

What is considered hazardous?

Cal/OSHA may issue citations for violations of its standards. The most broad-sweeping (and currently applicable) regulation is the Injury and Illness Prevention Program ("IIPP") regulation. [8 CCR § 3203](#). The IIPP is—as the name suggests—a plan that an employer must have to address workplace hazards that could pose a threat to employee health and safety. The law requires the plans be more than just words on paper. Under the Labor Code, "[e]mployers must establish, implement, and maintain an effective [written] IIPP." [California Labor Code § 6401.7](#). Associations should request a copy of an employer's IIPP plan. Employers must provide the IIPP within five days of a request from an employee or representative. 8 CCR § 3203(a)(8)(B).

IIPP plans must include, among other things: a system for identifying hazards; methods and procedures for correcting unsafe conditions; and a system for ensuring employees

comply with those procedures. Potential exposure to COVID-19 is now a hazard in a school environment, and employers should update their IIPP plans to reflect it. The IIPP standard requires employers have an *effective* plan to address workplace hazards. If schools are not following public health guidance, including implementing mitigation measures that are appropriate in the school environment, such as requiring masking, cleaning regularly, allowing for physical distancing, ensuring proper ventilation and air filtration, providing hand sanitizer, and implementing testing/contact tracing protocols to manage exposure, then a Cal/OSHA complaint may be appropriate. We recommend chapters negotiate for any agreements reached regarding safety to be integrated into the employer's IIPP.

Additional information on the IIPP Standard can be found [here](#). Other useful Cal/OSHA regulations related to the COVID-19 hazard include the Personal Protective Devices Standard ([8 CCR § 3380](#)), the Washing Facilities Standard ([8 CCR § 3366](#)), the Hazard Communication Standard ([8 CCR § 5194](#)), and—for school nurses or school health facilities—the Aerosol Transmissible Disease Standard ([8 CCR § 5199](#)). If there is a work-related illness or death, the employer must report it to Cal/OSHA ([8 CCR § 342](#)).

Important Note: In September 2020, the California Occupational Safety & Health Standards Board voted to draft and consider adoption of a new COVID-19-specific safety standard. This Board recently issued a proposed emergency regulation regarding COVID-19 and the workplace. CTA is actively monitoring this effort and will update chapters regarding new requirements when they are adopted.

Is there a specific form I must use?

No, there is no specific Cal/OSHA form that must be used to file a complaint. On Cal/OSHA's [complaint webpage](#), there is a phone number that can be used to make a complaint by phone, but we recommend all complaints be submitted in writing. The information listed on the [website](#) should be included in the written complaint, such as a detailed factual description of the hazard, the number of employees that may be exposed, and how long the hazard has existed. Chapters should file formal complaints—not informal ones. More information regarding the complaint process is available [here](#).

Complaints typically should focus on no more than 3 or 4 issues. The complaint should point out the most serious and immediate hazards that threaten employee safety, but it does not need to include conclusions regarding regulations violated. Include in the complaint any other attempts that have been made to get the hazard addressed (e.g., emails sent to administrators or grievances filed). Complaints should also include the name and contact information for a representative from the Association who can provide additional information, witness contacts, and other evidence. Specific, concise complaints are more likely to get processed efficiently, and the Association may always file subsequent complaints.

Where and how should I submit a complaint?

Members and chapters that are interested in filing a Cal/OSHA complaint should work with Primary Contact Staff, who will coordinate getting review and feedback from the CTA Legal Department.

Ultimately, complaints should be sent to the appropriate Cal/OSHA district office that covers the place of employment where the hazard exists. We recommend both emailing the complaint and sending a paper copy of it. [This webpage](#) has a list of the district offices. A map of the territory covered by each office is available [here](#).

What happens after we file a complaint?

Cal/OSHA is required to investigate complaints that are “valid” (meaning not too vague, unsubstantiated, or harassing). Inspections are not announced in advance, but when the inspector arrives at the worksite, the inspector will ask if a representative from the Association is on site. If a union representative is available, that person may participate in the inspection. If no one is available, inspectors should contact the bargaining representative for more information.

After the inspection, the Association should follow up regarding the complaint. Cal/OSHA inspectors are sometimes stretched thin and may not reach out to the Association. Cal/OSHA generally has six months from the inspection or incident causing the hazard to issue any citation. Citations usually require the employer to abate the condition and/or pay a fine. Well in advance of the six-month deadline, chapters or complainants should check with the inspector to determine the status of the complaint and provide additional information if available. If the inspector is not responsive, the Association may follow up with the District Manager for the district where the complaint was filed. Also, due to the serious nature of the pandemic and ongoing developments such as AB 685, we hope that Cal/OSHA will investigate substantial complaints relatively promptly.

To get the attention of the agency more effectively, the Association should organize around the complaint. Using a member and parent organizing effort, media campaign, and/or similar public advocacy campaign to highlight the workplace safety issues can influence the agency.

What if the district or school retaliates?

Retaliation for filing a complaint, initiating the process or being a witness in a Cal/OSHA investigation is unlawful. [California Labor Code § 6310](#). Please contact your Primary Contact Staff if you believe an employer has retaliated against any employee.