



sixfifty

Updates to Cal/OSHA's Emergency Temporary Standards

January 28, 2021

Overview



- Stakeholder Meeting
- Penalties
- Exclusion Pay FAQ Updates
- Other FAQ Updates
- Tools for Compliance

Stakeholder Meeting



- On December 18, 2020, California's Occupational Safety and Health Standards Board (the "Board") had a stakeholder meeting
- The meeting addressed questions and concerns about the Emergency Temporary Standards ("ETS") issued by Cal/OSHA
- The Board established an agenda for an advisory committee meeting discussing amendments to the ETS
- Many of the clarifications were incorporated into the updated Frequently Asked Questions
- Many questions remain

Stakeholder Meeting



- Stakeholders raised concerns about finding vendors to accommodate their workforces and the cost of complying with the ETS's testing obligations
 - The cost of testing a single employee ranges from \$120 to \$180. An employer that is required to test 100 employees will spend at least \$12,000
- Stakeholders raised concerns about what to do if there are circumstances or industries in which physical distancing is not possible
 - Cal/OSHA acknowledged these occur but there are no categorical exceptions to the physical distancing requirements, and the burden falls on employers to prove on a case-by-case basis

Updated FAQs



- On January 8, 2021, Cal/OSHA updated the COVID-19 Emergency Temporary Standards Frequently Asked Questions (the “FAQs”)
- Cal/OSHA added 38 FAQs, which more than doubled the number of FAQs relating to the ETS
- On January 26, 2021, Cal/OSHA again updated the FAQs by reorganizing them and adding two new FAQs about testing

Compliance



- Cal/OSHA will “consider an employer’s good faith efforts in working towards compliance”
- Through February 1, 2021 Cal/OSHA **will cite but not assess monetary penalties** for violations of the ETS that would not have been considered a violation of a Cal/OSHA standard in place prior to November 30, 2020

Classification of Citations

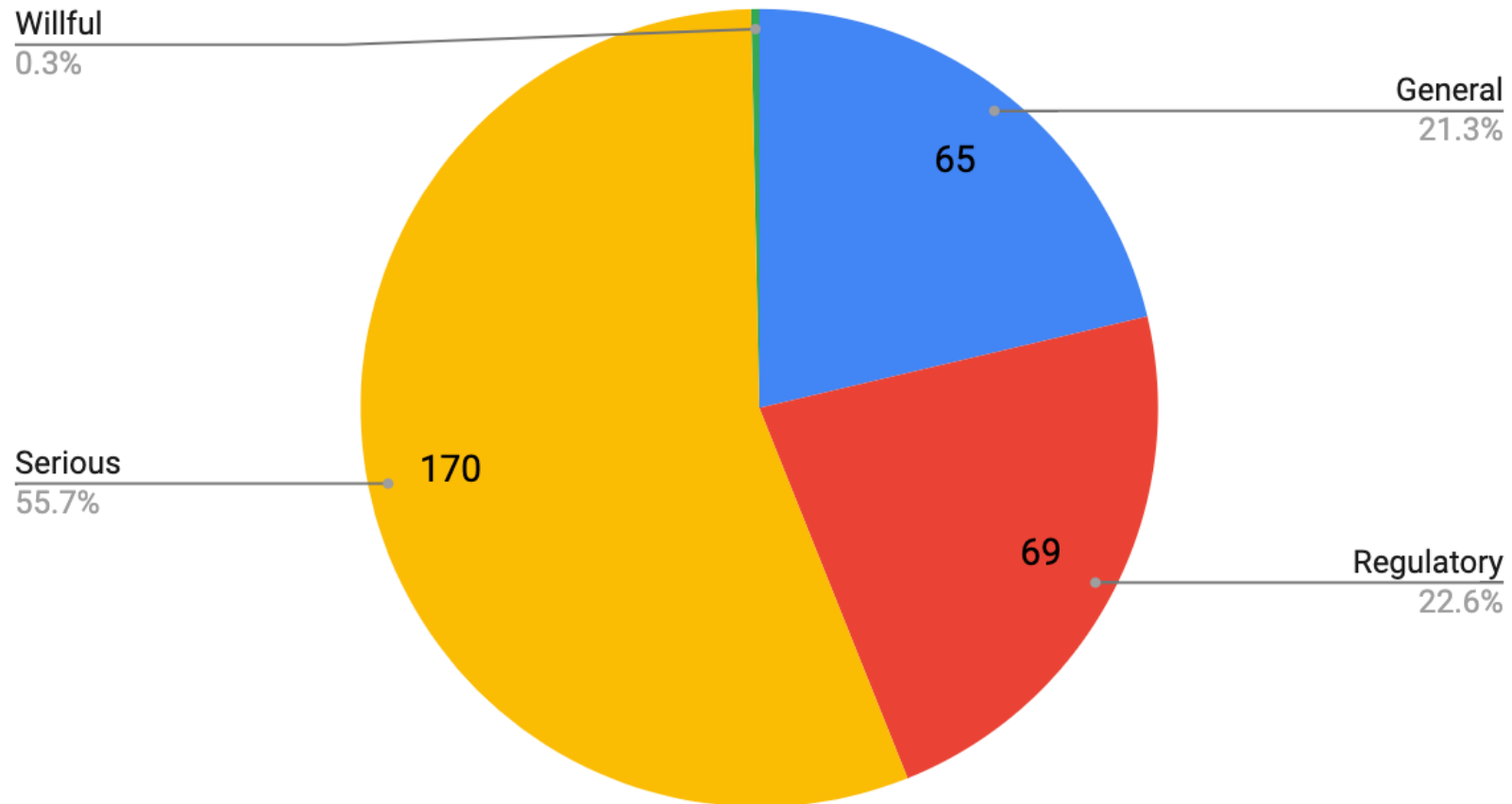
- Regulatory: Violations relating to posting and recordkeeping requirements
- General: Violations having some non-serious relationship safety and health
- Serious: Violations with a realistic possibility that death or serious physical harm that could result from the actual hazard created by the violation
- Willful: Violations where the employer either knew what it was doing was a violation, or was aware of an unsafe condition, and made no reasonable effort to eliminate it
- Repeat: Repeated violations

Maximum Penalties

- Regulatory: \$13,277
- General: \$13,277
- Serious: \$25,000
- Willful: \$132,765
- Repeat: \$132,765

Citations

Total Citations by Classification



Citations

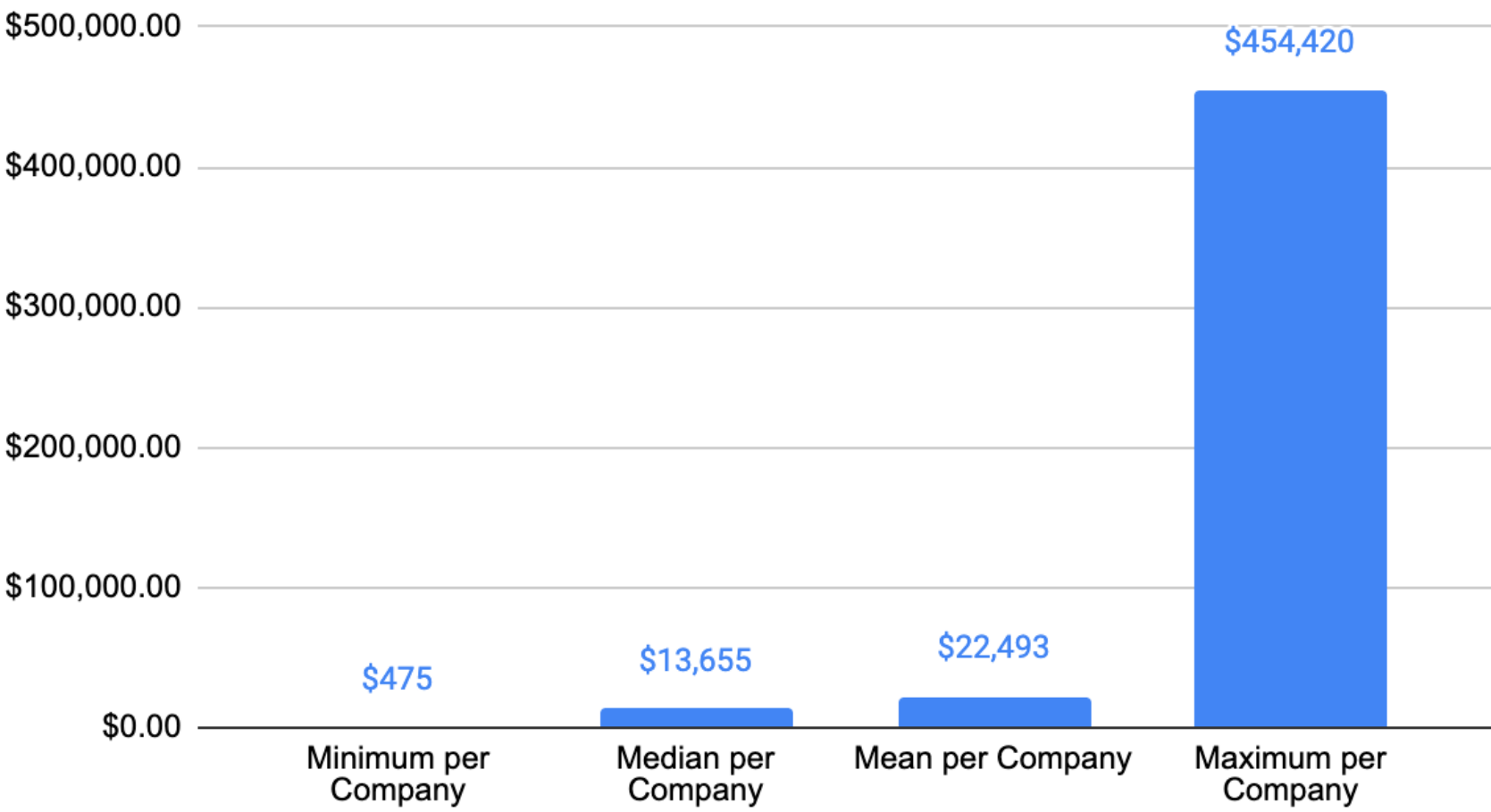


Month	Citations	Proposed Penalties
August	12	\$89,885
September	72	\$692,850
October	49	\$418,310
November	47	\$441,910
December	111	\$720,235
January*	13	\$153,550

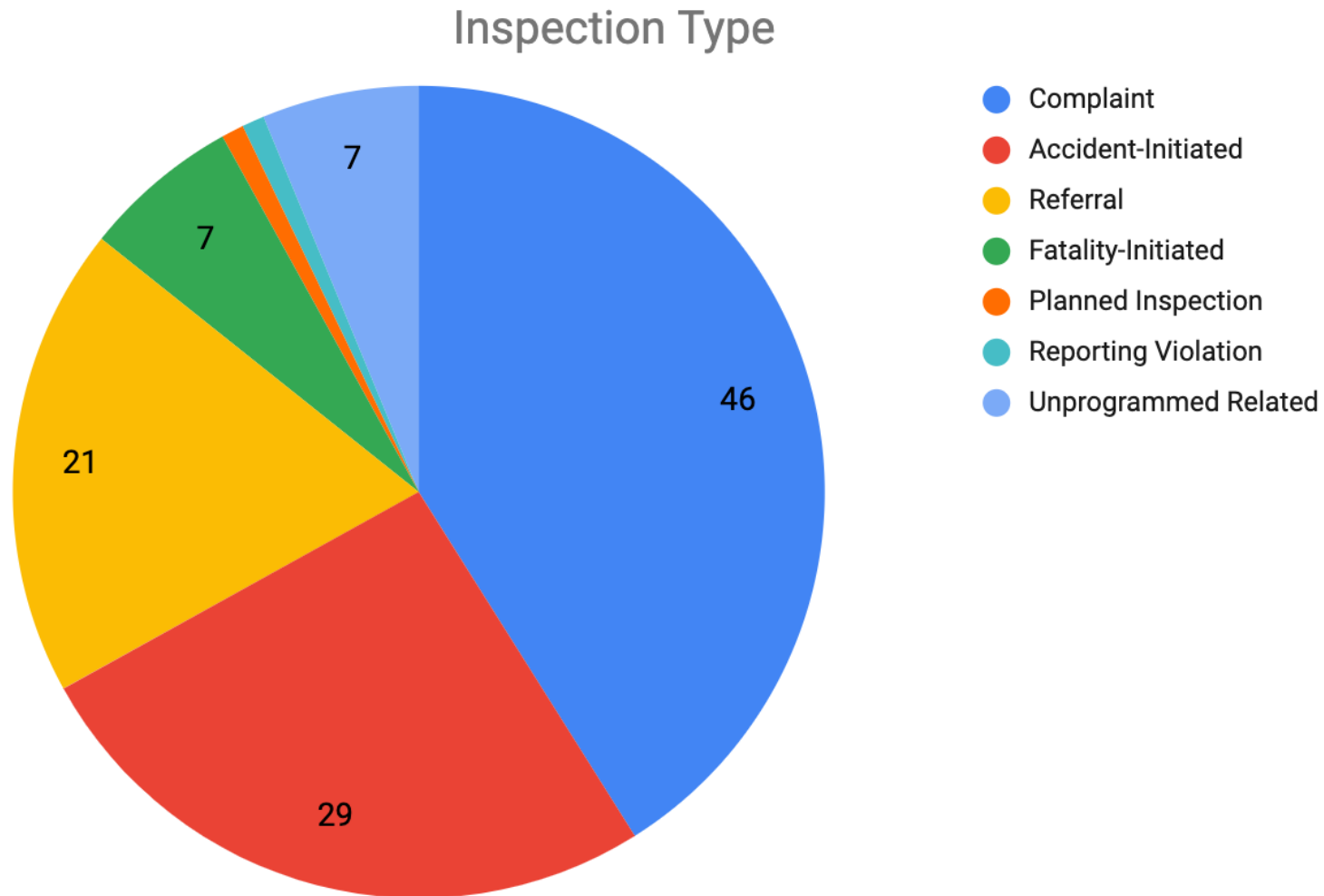
*January 1-6

Penalties

Amount of Penalties



Inspection Type



Exclusion Pay/ Benefit Information



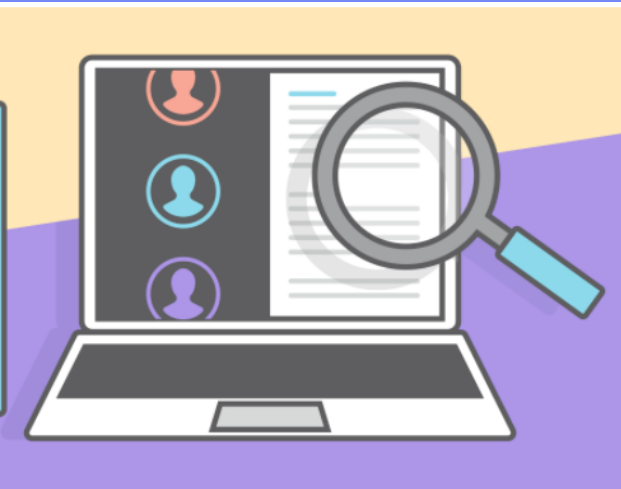
- An employer must continue to pay and provide benefits to excluded employees who **able and available to work but excluded from the workplace due to exposure to COVID-19**
- Employees will typically receive pay for the quarantine period (may be up to 14 days)
- Cal/OSHA has the authority to cite & order abatement if exclusion pay not observed
- Employees are NOT eligible for exclusion pay if:
 - Employer establishes exposure was not work-related
 - They are unable to work due to COVID-19 symptoms
 - They are unable to work for reasons other than protecting persons at the workplace from possible transmission (e.g., a business closure, caring for a family member, disability, or vacation)

Rebuttable Presumption



- Employers must take any reports seriously and investigate any evidence of an exposure
 - Employer's ultimate responsibility to determine if an exposure occurred elsewhere if an employee claims it was at the workplace
- **Rebuttable Presumption** is that exposure DID occur at work
 - Conduct "comparable investigations"
 - Produce "comparable evidence"
 - Presumption rebutted if "more likely than not" that exposure did not occur in the workplace
 - Expect further clarification

COVID-19 Investigation



What Does Investigation Look Like?

- Determine when the person was last in the workplace
- Determine (if possible) the date of testing and onset of symptoms
- Determine the locations at the worksite where employee could have been exposed
- Determine whether employee was in contact with other COVID cases
 - Were any other COVID cases reported by individuals at the same worksite during their exposure period
 - Was employee exposed to any outsiders while at the site? Only to screened individuals?

Workers' Comp vs. Exclusion Pay



- Impossible to be eligible for both at the same time
- **Workers Compensation Temporary Disability Benefits**
 - For wages lost during a period when worker is unable to work due to a disability
 - Ineligible for exclusion pay because they are *unable* to work
- **Exclusion Pay**
 - For wages during period when worker is asymptomatic and otherwise available and *able to* work
 - Ineligible for workers' comp because they are *able* to work

What About Vaccines?



- Individuals who have received the COVID-19 vaccine still need to wear masks, practice social distancing, and follow the other prevention measures in the ETS.
- The ETS will likely be revised in the future to address the impact of vaccines.

Clarification of Testing Requirements Part 1

Employer's Testing Obligations:

- Inform all employees on how they can obtain testing
- Offer testing to an employee at no cost and during working hours in the event of a potential COVID-19 work-related exposure
- Provide periodic (at least weekly or twice per week depending on the magnitude of the outbreak) COVID-19 testing to all employees in an “exposed workplace” during an outbreak
- Testing must be provided in a manner that ensures employee confidentiality

Clarification of Testing Requirements Part 2

What does it mean to offer or provide COVID-19 testing at no cost?

- Offer and Provide have the same meaning.
- Employers can send employees to a free testing site but must pay the employee for time spent being tested and traveling to and from the testing site. Employers should also reimburse employees for travel expenses.



Clarification of Testing Requirements Part 3

What if employees refuse to take the tests that are required under the ETS?

- An employer does not violate the Emergency Temporary Standards if it offers testing but an employee declines or refuses to take it.
- Employers are not required to obtain a signed declination from employees who refuse to take a COVID-19 test offered by the employer.

SixFifty Solution

Document Generation Engine



Untitled Document ...		SixFifty, LLC ▾
0 of 22 complete	< >	Generate Save & Exit
1 (CPP) The following questions will help you g... This program reflects the requirements in the ...		
2 (CPP) What is the name of your organization ... You don't need to include the full legal name o...		
3 (CPP) What is the name, phone number, and e... This person or department will also be listed a...	<p>(CPP) What is the name, phone number, and email address of the person or department that has authority and responsibility for implementing the CPP?</p> <p>This person or department will also be listed as the contact for questions about the CPP, questions about COVID-19 screening, where to report COVID-19 symptoms or positive test results, and possible COVID-19 exposures and COVID-19 hazards at the workplace. This person or department will also be the contact for high-risk employees that may need an accommodation.</p> <p>For many companies, this is Human Resources or the Head of Human Resources. If you do not have a Human Resources Department, you should designate someone else in the company who is familiar with the terms of the CPP and the company's operations and is able to capably answer questions and maintain private information confidentially.</p> <p><u>Example:</u> Human Resources</p> <p><u>Example:</u> 555-555-5555</p> <p><u>Example:</u> HumanResources@Sixfifty.com</p> <p>Person or Department</p> <input type="text"/>	
4 (CPP) How will your company screen employ... The ETS requires companies to develop and i...		
5 (CPP) Will your company provide testing or re... Companies are not required to provide COVID-...		
6 (CPP) Please provide information about wher... Companies must provide information about h...	<p>Phone Number</p> <input type="text"/>	

SixFifty Solution

Customizable CPP,
Identification of COVID-19
Hazards Worksheet, and Case
Investigation Form



SixFifty

Written COVID-19 Prevention Program

Date: December 08, 2020

SixFifty (the “Company”) is dedicated to prioritizing the health and safety of its employees during the COVID-19 pandemic and complying with all applicable laws and regulations. The Company has created this Written COVID-19 Prevention Program (the “CPP”), which sets forth the procedures, requirements, and rules the Company has put into place to protect its employees and prevent the spread of COVID-19 in accordance with the California Occupational Safety and Health Standards (“Cal/OSHA”) Board Emergency Regulation § 3205(c) (the “Regulation”).

Circumstances may warrant the modification of the CPP from time to time. Any such changes will be in writing and will be communicated to employees. No oral or written statements can, in any way, alter the provisions of the CPP. This CPP supersedes all prior conflicting statements and communications regarding COVID-19.

1. Authority and Responsibility

Sally Jones has overall authority and responsibility for implementing the provisions of the CPP at the Company. In addition, all managers and supervisors are responsible for implementing and maintaining the CPP in their assigned work areas and for ensuring employees receive answers to questions about the CPP in a language they understand.

All employees are responsible for using safe work practices, following all directives, policies and procedures, and assisting in maintaining a safe work environment. Employees should carefully read and familiarize themselves with the CPP.

SixFifty Solution

Update Notifications and Updated Documents as the ETS Evolves

Cal/OSHA Update 12-21-2020



Written by Adrienne
Updated over a week ago

Updates as of 12/21/2020

We continue to update the Cal/OSHA module to reflect the latest requirements and recommendations relating to the [emergency temporary standards](#) issued by Cal/OSHA requiring employers to prepare a written COVID-19 Prevention Program (CPP). Below is a summary of the latest updates that have been made to the Cal/OSHA module. Consider revisiting the relevant aspects of the CPP module in light of these developments.

- On December 14, 2020, the California Department of Public Health (CDPH) issued [COVID-19 Quarantine Guidance](#), which follows CDC guidance regarding the length of time asymptomatic close contacts (within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period) are required to quarantine. The guidance states that all asymptomatic close contacts may discontinue quarantine after Day 10 from the date of last exposure with or without testing. The guidance also permits essential critical infrastructure workers

Questions and Answers