

FACT SHEET – SB 410 (Leyva) Streamline Health and Safety Rulemaking

Purpose

To improve workplace safety by eliminating duplicative and burdensome steps from the health and safety rulemaking process.

Background

In 2011, the Legislature approved, and the Governor signed SB 617 (Calderon), which required state agencies to prepare an economic assessment of all regulations with an estimated fiscal impact of over \$50 million.

This assessment, referred to as the Standardized Regulatory Impact Assessment (SRIA), has resulted in nearly all major regulations now taking up to two years longer and consuming far more staff time than was the case prior to this change. While the SRIA process was intended to improve regulations, the result has instead been a very duplicative step that costs more, takes longer, and protects fewer workers.

For example, SB 1167 (Leyva, 2016) directed Cal/OSHA to develop an indoor heat safety standard by January 1, 2019. During the 2016 legislative session, this proposed standard—and its potential costs and benefits—were debated at length during numerous policy committees, floor presentations, and other discussions. This bill was introduced following a high-profile case

of warehouse workers falling ill and being required to drive themselves to the hospital despite visibly suffering life-threatening heat illness. Years of litigation were required to win even a small citation, dramatically highlighting the need for a heat illness-specific standard.

Once the bill became law, advisory committee meetings were conducted and have long since concluded. These meetings, which occur for virtually every proposed safety standard, exist specifically to allow a detailed, thorough consideration of the standard's costs and benefits to both workers and employers.

Three indoor heat advisory committee meetings took place in various locations throughout the state in 2017-18. Any stakeholder—including any employer—who wanted to attend was welcomed and given unlimited opportunities to speak. Many did, and many offered detailed analysis regarding predicted compliance costs.

Following these meetings, no fewer than eight different versions of the standard were released, at eight different times, and stakeholders were allowed weeks to comment on each one. Commenters were allowed and encouraged to detail their thoughts on these proposed regulations, including their opinions regarding fiscal impact.



A final version of the standard was released on April 22, 2019. Then, the Administrative Procedures Act (APA) process began, during which further consideration of the fiscal impact took place. Many regulatory hurdles remain; the proposed standard will, at some point, go to California's Occupational Safety & Health Standards Board (OSHSB) for both a public hearing and a public meeting. Extensive discussion over costs and benefits will therefore already occur, independent of SRIA, at a minimum of two OSHSB meetings.

The SRIA review, however, inserts at least a fifth fiscal analysis, prior to OSHSB consideration, before regulations can become law. And SRIA's are very demanding: typically, outside economists must be hired and about one to two years are necessary to prepare language meeting Department of Finance (DOF) standards. Worse yet, if the SRIA fails to pass muster with the DOF, or if the regulation needs to be changed, the whole process must start over and that entire investment of time and money is lost—not to mention that SRIA's create the potential for litigation if an interested outside party disapproves of the submitted analysis. Given the degree to which these outside parties often oppose new worker safety standards, it is safe to assume they will explore every potential avenue to further slow down an already arduous process.

Perhaps the most harmful unintended consequence has been the pressure on worker safety advocates to limit or weaken proposed standards. California's landmark health care workplace violence standard, for example, exempted certain health care facilities to avoid meeting the \$50 million threshold. Hitting this cutoff would have triggered SRIA and thus delayed the standard by at least a year—an even worse outcome for those involved, given the importance of reducing these risks as soon as possible. Unknown numbers of health care workers now face increased risk of serious injury

or death as a result.

In just the last two years, however, Cal/OSHA has proven itself more than capable of approving emergency regulations without SRIA and without years of unnecessary delay. Both the recent wildfire smoke and COVID-19 regulations were drafted, proposed, and approved within six to seven months. Both are currently in effect and improving health and saving lives, whereas had the typical timeline of six to seven years been allowed, countless workers would have fallen ill and/or died as a result of these two catastrophic hazards. Workers exposed to other dangers deserve the same prompt attention, even if the emergency regulation timeline is not always achievable. At a minimum, the additional and unnecessary years spent in SRIA should be eliminated.

With the original intent of SB 617 having been largely negated by its implementation, we believe the issue should be revisited as soon as possible, especially given recent attacks on health and safety standards at the federal level. In 2017, the U.S. Senate voted to repeal critically important workplace injury reporting requirements, and former President Trump sought to cut the U.S. Department of Labor budget by 21%. These two actions, among many under the former Administration and Congress, demonstrated the devastating effects on worker health and safety that can be expected under anti-worker federal leadership. Similar attacks will reoccur at some point in the future, and Cal/OSHA must be able to respond quickly when they do.

What This Bill Will Do

SB 410 simply exempts Cal/OSHA from the mandate to perform a SRIA on proposed major regulations. All other existing layers of review, including internal fiscal analysis, the advisory committee process, OSHSB public hearings and meetings, and the standard rulemaking process remain unaffected. The bill reflects the exceptionally and uniquely detailed fiscal analysis that already takes place at Cal/OSHA and allows the agency to focus scarce resources on more effective uses.

Support

California Labor Federation, AFL-CIO (Sponsor)

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