

# CELLY SERVICES, INC.

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Environmental, Health and Safety Services

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## CSI NEWS

August 01, 2001

### Whatsaup 40%

You think it's your energy bills, wish it was your sales but actually it is your workers' compensation insurance! Last year workers' compensation premiums increased about 40% and this year it is expected to be up 30%. California amended its workers' compensation law in 1995 to provide a more competitive field for insurance companies, thereby reducing the premiums for employers. In 1995, the law that required employers to pay workers' compensation insurance was modified to an open rating system from a rate fixed by the state. The 1995 regulations sparked a price war amongst insurance companies much to the delight of employers. However, the premiums that went down about 50% in the year following the deregulation are up about 8% from the pre-deregulation days.

Insurance companies have reportedly increased the premiums to cover up their losses. Last year they lost about \$3 billion in California alone. To make matters worse, some of them went belly-up or left the business in the state to minimize their exposure. For example, the second largest writer of workers' compensation insurance in California, Fremont General Corp., is now under voluntary state supervision for its poor financial condition. Another reason was that when the stock market headed south, many insurance companies that had their fortunes tied up in the market got pummeled.

What does this all mean to employers? Brace yourself for higher premiums and declare an assault on issues that increase premiums. The injuries at the dealership that contribute to the premiums can best be controlled by having an aggressive safety program that involves frequent work place inspections, employee training, and counseling to employees involved in accidents. Consultants from CSI can help dealerships achieve these goals.

Finally, the workers compensation benefits level has not increased in California for the last five years. Governor Gray Davis citing them to be a heavy burden on businesses vetoed two bills that would have increased benefits to employees by \$5 billion. However, Governor Davis has declared that he is amicable to an "acceptable bill." When that happens, expect another spike in your premiums.

### Now They Got A Dentist

A private enforcer of Proposition 65 brought a case against a dental office for failure to provide warnings of exposure to mercury that is present in minimal quantities in silver dental fillings. Proposition 65 is a unique California law in that it prohibits any person in the course of doing business from knowingly and intentionally exposing any individual to a chemical, known to the state of California to cause cancer or birth defects, without first giving clear and reasonable warning.

In the case at hand, the Los Angeles Superior Court granted summary judgment on grounds that the plaintiff failed to provide any evidence of the level of mercury exposure. The appellate court reversed. The appellate court stated that once the plaintiff alleges exposure to a Proposition 65 chemical at any level, the burden of proving that the exposure is below Proposition 65 thresholds lies on the defendant.

Now proving levels below Proposition 65 levels can be an uphill battle. For example, in the case of cancer causing chemicals, the "No Significant Risk" level is one in one hundred thousand excess cancer risk. As the state has set the levels for a few chemicals, many chemicals require the risk determination to be made. This can require literature search and even some clinical research.

So where does the dealership go from here? They routinely use chemicals that are on the Proposition 65 list or are known to cause cancer or birth defects. A clear and reasonable warning at appropriate locations would help avoid Proposition 65 litigation. The signs should be posted as follows:

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Parts Front and Back Counter: The sign stating that "Chemicals sold at this facility are known to the state of California to cause cancer, birth defects or other reproductive harm" should be placed at conspicuous places.

Entrance to Service and Bodyshop Areas: The sign stating that "Chemicals used at this facility are known to the state of California to cause cancer, birth defects or other reproductive harm" should be placed at public and private entrances to these areas.

Documentation: Whenever autos are detailed or painted with Proposition 65 chemicals and residues may remain, the invoice should have a warning or a warning label placed inside the automobile. Warning should state "Chemicals used to refinish and/or polish this automobile have utilized chemicals known to the state of California to cause cancer and birth defects." If sample paint or other chemical is given to the customer, make sure Proposition 65 and other warning labels are affixed to the containers.

Lastly the dealership should contact a qualified counsel to assess his risk to Proposition 65 requirements and seek guidance on protective measures.

### Log This One

Draft Cal-OSHA regulations have exempted new and used car dealers from keeping Injury & Illness Recordkeeping requirements discussed below. However, CSI urges that you do keep the log as this will assist you in better tracking injuries at your dealership and hence taking meaningful remedial measures. These measures would reduce your future losses and reduce your worker compensation insurance bills. See article in this Newsletter "Whats-Up 40%."

After 30 years, OSHA's injury recordkeeping requirements are going to be amended. The present Log 200 will be replaced by Form 300, Form 300A, and Form 301 as of January 01, 2002.

OSHA's recordkeeping requirements were designed to help employers recognize workplace hazards and correct hazardous conditions by keeping track of work-related injuries and illnesses and the causes. The revised forms will produce better information about injuries and illnesses while simplifying the recordkeeping system for employers. According to the Secretary of Labor, the revisions to recordkeeping will not lessen an employer's recordkeeping responsibilities but will make it easier to successfully meet the requirements.

The revision improves employee involvement, creates simpler forms, and provides cleaner regulatory requirements. A brief summary of some of the key provisions of the recordkeeping rule is as follows:

- ◆ Updates three recordkeeping forms:
  - Log of Work-Related Injuries and Illnesses (OSHA Form 300)
  - Injury & Illness Incident Report (OSHA Form 301)
  - Summary of Work-Related Injuries & Illnesses (OSHA Form 300A)
- ◆ Eliminates different criteria for recording injuries and illnesses. One set is used for both.
- ◆ Requires records to include any work-related injury or illness resulting in one of the following: death; days away from work; restricted work or transfer to another job; medical treatment *beyond* first aid; loss of consciousness; or diagnosis of a significant injury/illness by a physician or other licensed health care professional.
- ◆ Includes new definitions of medical treatment, first aid, and restricted work to simplify recording decisions.
- ◆ Requires a *significant* degree of aggravation before a preexisting injury or illness becomes recordable.
- ◆ Clarifies the recording of "light duty" or restricted work cases. Requires employers to record cases when the injured or ill employees is restricted from their "normal duties" which are defined as work activities employee regularly performs at least once weekly.
- ◆ Provides a separate column to capture statistics on hearing loss! (Our guess is that as we have an aging work force, this could a significant issue later.)

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- ◆ Eliminate the term “lost workdays” and focus on days away or days restricted or transferred. New rules rely on calendar days instead of workdays!
- ◆ Requires employers to establish a procedure for employees to report injuries and illnesses and tell their employees how to report. Employers are prohibited from discriminating against employees who do report. For the first time, employee representatives will have access to those parts of the OSHA 301 form relevant to the employees they represent.
- ◆ Protects employee privacy by (1) prohibiting employers from entering an individual's name of Form 300 for certain types of injuries/illnesses (i.e., sexual assaults, HIV infections, mental illnesses, etc.); (2) providing employers the right not to describe the nature of sensitive injuries where the employees' identity would be know; (3) giving employee representatives access only to the portion of Form 301 which contains no personal identifiers; and (4) requiring employers to remove employees' names before providing the data to persons not provided access rights under the rule.
- ◆ Requires the annual summary to be posted for three months instead of one. Requires certification of the summary by a company executive.
- ◆ Changes the reporting of fatalities and catastrophes to exclude some motor carrier and motor vehicle accidents.

As one can imagine, a summary of this magnitude involving hundreds of pages in fine print in the Federal Register may have omitted some issues that may later need management attention. As we learn more, we will share details of the law that demand your attention.

California Division of Occupational Safety & Health is currently requesting written comments on the new rule. The official record of the rulemaking will close on October 29, 2001. California will follow the changes as required by the provision of 29CFR 1902.3(k), 29CFR1952.4, and 29CFR1956.10(l), to adopt regulations for recordkeeping of occupation injuries and illnesses that are identical to the requirements of revised 29CFR1904. CSI believes this formality will be completed for timely enactment of California law so as to require California employers to use new forms by January 1, 2002. In jurisdiction that follow the Federal Law, a number of industries classified as low-hazard-retail, service, finance, insurance and real estate sectors are exempt from the requirements of the new rule.

Form 300, Form 300A, & Form 301 are enclosed for CSI clients. Optional Form G is also enclosed.

## Top 10 Hits

Here are the top ten 10 OSHA standards cited by OSHA inspectors during inspections from October 1999 to September 2000. The citations are as follows:

1. Hazard Communication
2. Control of Hazardous Energy, Lockout/Tagout
3. Respiratory Protection
4. Machines, General Requirements
5. Electrical, Wiring Methods, Components & Equipment
6. Mechanical Power Presses
7. Mechanical Power Transmission Apparatus
8. Electrical Systems Design. General Requirements
9. Occupational Noise Exposure
10. Personal Protective Equipment, General Requirements.

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## Electronic Products Generator

If you have a computer screen or any Cathode Ray Tube (CRT) to get rid of, the state of California has a new label for you. It is called Electronic Products Generator. A new regulation eliminating the disposal of CRT into the dumpster went into effect August, 1, 2001.

The new rule has been adopted to reduce the disposal of CRT to landfills where they can break and potentially pollute the groundwater. Electronic Products Generator (EPG) is a label given to a generator of a total of five or less CRT devices per year. EPG's have certain exemptions. The EPG's can store the CRT's indefinitely and may not obtain any documentation for the disposal of the CRT.

Larger automobile dealerships that generate more than five CRT's are also required to manage them as "Universal Wastes." The accumulation time for entities that generate more than five CRT's a year is one year, i.e., the CRT's must be disposed within one year of the first CRT being generated. Also, entities generating five or more CRT's a year must obtain a bill of lading while shipping the old CRT's. For a detailed description of Universal Waste, see our newsletter dated November 2000. In any case, whether one is an EPG or not, the CRT has to be recycled. A list of 103 CRT recyclers is available on the states web site at [www.ciwmb.ca.gov/reuse/links/computer.htm](http://www.ciwmb.ca.gov/reuse/links/computer.htm). Households are also required to take their CRT's to the local collection site on a periodic basis in a fashion similar for other household paints, solvents, etc. It is noted that these CRT's must be shipped in a box or similar container that prevents breakage or spillage.

## Check Your Exhaust

California law requires that exhaust systems installed in shops be so designed, constructed, maintained and operated as to prevent harmful exposure by maintaining a volume and velocity of exhaust air sufficient to gather dusts, fumes, mists, vapors or gases from said equipment and to convey them to a point of safe disposal thereby preventing their dispersion in harmful quantities to employees. Also, the law requires that the mechanical vent system be tested after initial installation and annually thereafter.

Some of the dealerships have a closed configuration of the shop area with a mechanical exhaust system, where employees attach hoses to auto exhausts when idling motors in the shop area. This system must be checked for proper operation on an annual basis. Of note, shops with open faces may have sufficient natural ventilation where a mechanical system may be unnecessary.

The airflow required through hoses is not specified in OSHA regulations. However, American Council of Government Industrial Hygienists (ACGIH) manual, often used by safety professionals, do recommend the airflow for these exhaust devices. The recommended airflow according to ACGIH Industrial Ventilation Manual, 22<sup>nd</sup> edition, Figure VS-85-01, December 1990 indicates as follows:

Vehicle horsepower (hp)	Cfm/vehicle	Flexible duct diam.	Branch connection
Up to 200	100	3"	4"
Over 200	200	4"	4"
Diesel trucks	See VS-85-03		

On Dynamometer test rolls

Automobiles and light duty trucks = 350 cfm

Heavy duty truck = 1200 cfm minimum

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Since auto's greater than 200 HP are routinely serviced in the shop, the 200 CFM in the exhaust hose must be maintained and verified annually. For facilities using a dynamometer (smog II) inside the shop, the airflow has to be increased to maintain safe conditions inside the shop.

### **Service & Viagra Similarities**

Notices in a Viagra Brochure published by Pfizer Inc. on page 5.

- *“Compare his visit to the doctor to taking his car in for a tune up. If your transmission were slipping, you'd take your car to the mechanic, wouldn't you? Well, erectile dysfunction (ED) is like a mechanical problem in your body. Why not get it checked out by an expert?”*

Thought ED & autos needing servicing had a similarity? Well, at least Pfizer thinks so.

The article was authored by Sam Celly of Celly Services, Inc. Sam has been helping automobile dealers comply with EPA & OSHA regulations in California, Nevada, Arizona, Hawaii & Idaho since 1987. Sam received his BS & MS in Chemical Engineering followed by a JD from Southwestern University. Sam is a Certified Safety Professional & a Registered Environmental Assessor (CA). Your comments/questions are always welcome. Please send them to [sam@cellyservices.com](mailto:sam@cellyservices.com).