**TO**: Environmental Health and Safety (EHS) Coordinator

**FROM**: Sam Celly, MS, JD, CSP

**DATE**: May 15, 2014

**SUBJECT: NEWS AND VIEWS**

**CA OSH APPEALS BOARD DECISION: EYE-WASH STATIONS IN PARTS DEPT.**

**Background:** Existing law requires an employer to provide eye wash stations that comply with ANSI standards. Eye wash stations must be within 10 seconds walking distance and not over 100 feet from the potential point of hazard. Most dealers have provided an eye wash in the service department within those stipulations.

**Appeals Board Decision:** The CA OSH Appeals Board upholds a lower Administrative Law Judge’s (ALJ) decision requiring that eye wash stations be provided where employees are unloading and opening boxes and containers of hazardous materials. The Board noted that leaks and spills occur when packages are damaged in transit and when employees unpack shipping cases (*Ref: 2013 CA OSHA App. Bd. Lexis 48*)*.*

**Take Away:** Parts department employees open boxes of hazardous materials, including corrosive batteries, and stock them on shelves in parts department. Many times, used battery cores are stored in parts as well. The battery cores sometimes crack and leak acid into the storage container. Therefore, eye wash stations must be installed within 100 feet of hazmat handling and storage. Dealers in other states may also adopt this requirement regarding eye wash stations.

**CA LAW ON EMPLOYER POLICY ON CARDIOPULMONARY RESUSCITATION**

**Background:** Under existing law, a person who, in good faith and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency is not liable for civil damages resulting from any act or omission, except as specified. Existing law further provides that a person who has completed a basic cardiopulmonary resuscitation course that complies with specified standards and who in good faith, renders emergency cardiopulmonary resuscitation at the scene of an emergency is not liable for any civil damages as a result of any act or omission, with some exceptions.

**CA Bill AB 633 Salas**: Assembly Bill 633, effective 1/1/14, prohibits an employer from having a policy of prohibiting an employee from providing voluntary emergency medical services, including, but not limited to, cardiopulmonary resuscitation in response to a medical emergency, except as specified. The bill states that these provisions do not impose any express or implied duty on an employer to train its employees regarding emergency medical services or cardiopulmonary resuscitation.

**Take Away:** Update your employee handbook on the employer policy on cardiopulmonary resuscitation in line with AB633 (*Ref: California AB 633 Salas*).

**LABOR LAW POSTING**

**Background:** Back in 2011, the National Labor Review Board (NLRB) issued a rule that required almost all employers (those with business revenue of more than $500,000) to post an NLRB poster. The poster spelled out to employees their rights under the National Labor Review Act (NLRA), such as the right to form unions,

bargain collectively, discuss terms of their employment with co-workers, and other prescriptions of the NLRA. It also provided a NLRB contact for employees seeking information on union matters, etc. Failure to post the poster was considered unfair labor practice that could bring in a spate of regulatory action. Needless to say, the rule met with stiff resistance from employer groups and litigation ensued between the NLRB and groups representing employers.

**Appeals Court Decision:** Earlier, a judge affirmed the NLRB directive of the poster requirement that was later challenged in the appeals court by the employer group. The Appeals Court reversed the lower courts decision and hence, the poster is no longer a requirement. The deadline for appeal to the Appeals Court decision to the US Supreme Court has passed and the NLRB has not appealed the final decision.
**Take Away:** You can remove this poster from your labor law poster wall as it is no longer required by law for the employer to post the poster. You may consult your labor lawyer for further details. *(You can see the poster at* [*http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4095/employeerightsposter-8-5x11.pdf*](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4095/employeerightsposter-8-5x11.pdf))

**MINIMUM PENALTY FOR FAILURE TO REPORT SERIOUS INJURY**

**Background:** The minimum penalty for failure to report a serious occupational injury, illness, or accident to OSHA has been increased to $5,000. Both Fed-OSHA and Cal/OSHA require that all serious injuries or fatalities to employees from accidents related to work be reported to the nearest OSHA office even if the accident occurs on a weekend. A serious injury or illness is defined as:

* **Cal/OSHA Regulation**: Fatality, amputation, disfigurement, or an incident that leads to hospitalization of an employee beyond 24 hours (other than for observation).
* **Fed-OSHA Regulation**: Fatality from a work related incident or in-patient hospitalization of three or more employees as a result of work-related incident.

The notification must be made to the nearest Cal/OSHA or Fed-OSHA office by phone within 8 hours even if the injury or fatality occurs on a weekend. The phone number of the nearest Cal/OSHA office is available on the labor law poster placed on the employee notice board. The Fed-OSHA number is 1-800-321-OSHA (1-800-321-6742). The law also specifies that an employer, officer, management official, or supervisor who knowingly fails to report a death to Cal/OSHA, or induces another to do so, is guilty of a misdemeanor punishable by up to 1 year in jail, a $1,500 fine, or both. If the violator is a corporation or LLC, the maximum fine is $150,000. The law has provisions that require Cal/OSHA to notify the appropriate prosecuting authority when an industrial accident results in a serious injury, illness, or death.

**Appeals Board Decision:** ALJ would sometimes reduce the $5000 penalty assessed by Cal/OSHA. Recent CA OSH Appeals Board decisions have eliminated the adjustments/reductions to this penalty by the ALJ.

**Take Away:** Eliminate the $5000 penalty by training your managers to report serious accidents to OSHA as required under the circumstances listed above even if the accident occurs after hours or on weekends. An OSHA investigation following the report of a serious injury is a certainty and detailed description of the accident to OSHA may incriminate the dealership leading to a criminal indictment. CSI, therefore, recommends that the employer is well-served by contacting their lawyer and being prepared for an OSHA investigation following a serious injury. (*Ref: T8CCR342 Ch. 3.2, AB 2837 & Labor Code 6423 and 29CFR1904.39(a)*)

*Note: The contents of this article are merely for information only and not to be considered as legal advice. Employers must consult their lawyer for legal matters and safety consultants for matters related to safety. The article was authored by Sam Celly of Celly Services, Inc. who has been helping automobile dealers comply with EPA & OSHA regulations since 1987. Sam received his BE (1984) and MS (1986) in Chemical Engineering followed by a J.D. from Southwestern University School of Law (1997). Your comments/questions are always welcome. Please send them to* *sam@cellyservices.com*.