

# California Adopts an Emergency Regulation to Tackle Occupational Silicosis Hazard

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The California Occupational Safety and Health Standards Board held its monthly meeting on December 14, 2023. At the meeting, the Standards Board unanimously adopted an emergency temporary standard (ETS) to address the rising instances of occupational silicosis among the engineered stone fabricating industry employees. The ETS amends the existing California Code of Regulations Title 8, section 5204. The ETS will be in effect for one year starting on December 29, 2023. The California Division of Occupational Safety and Health (Cal/OSHA) will likely make the changes permanent before the ETS expires.



## Quick Hits

- On December 14, 2023, the Standards Board adopted an emergency regulation to better protect workers from occupational exposures to respirable crystalline silica, especially in the engineered stone fabrication industry.
- The Standards Board invited and received public comments at the December 14 meeting from various stakeholders, ranging from stone fabrication employers, medical professionals, occupational safety and health professionals, and labor-side advocates and representatives.
- The emergency regulation requires employers to take additional employee exposure control precautions, such as using wet methods to cut or fabricate stones, frequently cleaning up debris to prevent dust buildup, and ensuring employees have and use appropriate personal protective equipment like air-purifying respirators.

## Background

In February 2023, a [petition](#) was filed urging the Standards Board to adopt emergency rules to better control the airborne silica dust hazard in engineered stone fabrication shops. In May 2023, Cal/OSHA [recommended](#) the Standards Board to grant the petition and undertake emergency rulemaking. In contrast, the Standards Board staff [recommended denying Petition 597](#) and requesting Cal/OSHA to consider making updates to the existing regulations. In July 2023, the Standards Board [granted Petition 597 and requested](#) that Cal/OSHA propose the necessary amendments to Title 8, section 5204.

In August 2023, Cal/OSHA [convened an advisory committee](#) to solicit input on its proposed emergency changes. The [proposed amendments](#) recommended expanding the scope and application of section 5204 to high-exposure trigger tasks without regard to employee exposure, exposure assessment, or objective data, compulsory continued monitoring of high-exposure trigger tasks at least every twelve months or more frequently, and a written exposure control plan, among others.

After Cal/OSHA submitted its [final proposed amendments](#), the Standards Board issued a [notice of proposed emergency action](#) to consider the proposed amendments at the December 14, 2023, meeting. At the meeting, multiple stakeholders spoke in favor and opposition of the proposed amendments. The proponents emphasized that statistics showing increased cases of silicosis and other respiratory-related illness among employees necessitate the new measure. The opponents countered by stressing that the new requirements will punish compliant employers through increased operational costs and that the better solution would be to improve enforcement mechanisms and efforts against noncompliant employers or a state-operated licensing and registration of stone fabricator shops.

## New Occupational Silica Exposure Regulation

The new emergency rules generally apply to California workers who are occupationally exposed to respirable crystalline silica (RCS), and to high-exposure trigger tasks—as defined in Title 8, section 5204(b)(9)—regardless of employee exposures, exposure assessments, or objective data. The regulation does not apply in limited instances, such as construction workers under section 1532.3, agricultural operations under section 3436, or when employers show objective data demonstrating that employee exposure to RCS remains below a certain level in a given period under any foreseeable conditions.

The new emergency regulation imposes various new obligations and responsibilities on employers. The prominent changes to employers' obligations would include the following:

- Employers are now required to conduct continued monitoring of all high-trigger tasks, irrespective of employee exposures or expected exposures, at least every twelve months or more.
- Prohibited use of work practices for high-exposure trigger tasks, including using compressed air on materials containing RCS, dry clean-up of materials containing RCS, rotating employees as a control measure to reduce RCS exposure, and walking or moving equipment on or through materials that contain RCS.
- Where the workplace high-exposure trigger tasks occur, a new obligation would be imposed to include in the employer's written exposure control plan (1) air monitoring records demonstrating effective engineering controls, (2) procedures to properly don and doff personal protective equipment to effectively prevent RCS exposure, (3) documentation of proper reporting to Cal/OSHA as required under section 5203, and (4) employer's procedures to ensure employees are properly trained to prevent RCS exposure.
- The new rules would impose a presumptive imminent hazard classification for failing to comply with engineering controls under section 5204(f)(2)(A) and others, which may be subject to Cal/OSHA's Order Prohibiting Use.
- The proposal includes a new obligation that employers provide and ensure the proper use of appropriate respiratory protection meeting certain specifications when employees perform high-exposure trigger tasks or work within a regulated area where such tasks occur.
- The new regulations would require employers to provide any required training, communications, signs, labels, and written information in a language that employees understand and tailored to employees' education level and literacy.
- Under the new rules, employers would need to post signs at all entrances to regulated areas bearing certain legends, such as "CAUSES PERMANENT LUNG DAMAGE THAT MAY LEAD TO DEATH."
- The new regulations would include a requirement to provide additional training to ensure employees' knowledge and understanding of symptoms related to exposure to RCS and high-exposure trigger tasks and how to prevent RCS exposures while performing said tasks, among others..

- The new regulations would require employers to report data related to confirmed silicosis or lung cancer cases related to RCS exposures within twenty-four hours of receiving the information to the California Department of Public Health and Cal/OSHA.

More information and resources related to the emergency occupational silica exposure regulation are available from [the Cal/OSHA pamphlet](#).

Ogletree Deakins will continue to monitor developments with respect to the pending changes to the occupational safety and health laws and regulations for the domestic service industry and will provide updates on the firm's [California](#) and [Workplace Safety and Health](#) blogs as additional information becomes available.

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