

Cal/OSHA's Course for 2023

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Farm Employers Labor Service

California Farm Labor Contractors Association

Ag Labor Forum

November 11, 2023



What Do Cal/OSHA and the Standards Board Have on their Plates for 2023?

- **The Big Stuff You Probably Already Know About:**
 - COVID-19 Emergency Temporary Standard (ETS) v.3
 - COVID-19 non-Emergency Standard
- **Other Stuff You Probably Forgot About (Maybe hoped Cal/OSHA and the Standards Board did too):**
 - Indoor Heat Standard
 - First Aid kits
- **Legislation on “over-the-horizon” stuff:**
 - AB 2243 – re-visit wildfire smoke and heat illness standards
 - AB 257 – FAST Food Council – OSH implications?



Cal/OSHA COVID-19 Emergency Temporary Standard v.3

Readopted in April 2022, effective May 6, **effective until December 31, 2022**

Cleaning Surfaces: Eliminates requirements for surface disinfection and cleaning

“Vaccinated” Status:

- Deletes references to “fully vaccinated” to distinguish among employees
- For most purposes all employees are to be treated alike, regardless of vaccination status
- Employers will be required to furnish N95 respirators to employees on demand and to make COVID-19 testing available at no cost, during paid time, to all employees (other than “returned cases”; see next point) who had a “close contact” in the workplace, regardless of vaccination status.



Cal/OSHA COVID-19 Emergency Temporary Standard v.3

“Returned Case:”

- New Term
- Refers to an employee who has recovered from COVID-19 in the past 90 days and remains symptom-free
- Employers will not have to offer “returned cases” testing in the event of a close workplace contact or if the “returned case” is part of the “exposed group” in the event of an outbreak

Masking:

- Incorporates Newsom Executive Order lifting workplace face-covering requirements for employees not fully vaccinated
- Face coverings still be required when ordered by the California Department of Public Health (CDPH)



Cal/OSHA COVID-19 Emergency Temporary Standard v.3

Mask Quality: Removes the silly and impractical requirement that masks provided by employers for employee use cannot allow the passage of light.

Shifting CDPH Guidance: Ties quarantine, workplace exclusion, close contact requirements to frequently changing CDPH guidance.

- “Close Contact” definition – (10/13/22) – changed from “6 feet/15 minutes/in a 24-hour period” definition of close contact to “sharing an indoor airspace of 400,000 cubic feet or fewer for a total of 15 minutes or more in a 24-hour period
- Subdivided indoor areas considered as individual spaces
- “6/15/24” still applies in spaces larger than 400,000 cf

Exposure Notifications – AB 685/AB 2693

- Previously had to notify each exposed employee individually
- Employers to post a notice and keep records of when the notice was posted (as of 1/1/23)



Cal/OSHA COVID-19 Emergency Temporary Standard v.3

Employer-Provided Housing:

- “Cohort” members of households/crews if possible
- MERV-19/HEPA filtration
- Face coverings when required by CDPH guidance
- Screening: encourage residents to report symptoms
- Testing: test close contacts; test all residents if 3 or more cases in 14 days
- Quarantine cases/close contacts

Employer-Provided Transportation:

- “Cohort” households/crews by vehicle
- Face coverings when required by CDPH guidance
- Provide respirators on req. per voluntary use rules
- Ventilation: windows open unless too hot/cold, unless AQI is 100+
- Ensure everyone sanitizes hands



COVID-19 “non-emergency” Standard

Expected to be adopted at Standards Board’s December 2022 meeting

Effective 1/1/23-12/31/24 (recordkeeping/recording until 12/31/25)

Close Contact: Adopts CDPH 15 minutes in 24 hours in a less-than 400K cf space

- Individual rooms considered separate, >400K cf spaces

Return to Work/Quarantine: Adopts shifting CDPH guidance

Exposed Group: excludes persons momentarily passing through even if everyone is not masked

“Infectious:” all persons to be considered potentially infectious regardless of symptoms, vax status, or negative test result

Continues Contact Tracing Req.: despite CDC/CDPH discontinuing contact tracing requirements for local PHDs

Case Notification Requirement: defers to AB 2693

(LC § 6409.6)

Deletes req. to report to local health dept.

Deletes req. to maintain close contact records

No Exclusion Pay (yet)...



Indoor Heat

- **2016:** CA Legislature passes SB 1167 (Mendoza) mandating Cal/OSHA to propose to the Standards Board an indoor heat illness standard by 1/1/19
- **2017, February & May:** agency releases draft reg., holds advisory meetings with industry/employer representatives;
 - Serious concerns:
 - Scope of workplaces where applicable
 - Temperatures where various requirements would be applicable
 - Complexity of definitions like “acclimatization”
 - Use of “wet bulb globe temperature”
 - Management of employees moving into and out of indoor spaces
- **2018:** three advisory meetings, four drafts (one revising existing outdoor standard)
 - More problems:
 - Definition of “indoor”
 - Applicability to vehicles/drivers
 - Measurement/control of “all” environmental risk factors
 - 30-year record retention and access for measurement of “all” environmental factors



Indoor Heat

- **2019:** Two advisory committee meetings and two drafts
 - Still problems:
 - Inconsistency between outdoor heat illness standard and indoor heat proposal for employers of indoor and outdoor employees
 - Vehicles – how to monitor and regulate dozens/hundreds of “single-occupancy” workplaces/vehicle interiors
 - Applicable “*where* temperature exceeds 87° F”; does it ever “turn off” after reaching that temperature?
 - Definition of “indoor” and whether to apply indoor or outdoor standard
 - Req. to maintain “cool-down area” @ < 82° degrees; outdoor “shaded” areas too?
 - Huge number of “environmental risk factors” an employer would be required to evaluate and record
 - Revised draft released in April; still problematic
 - Then...COVID, everything comes to a stop
- **2022:** Standards Board public statement: Indoor Heat
- Rule will be submitted soon for Labor Secretary approval
 - But...which of the nine drafts? Is it the April 2019 draft?
- **2023:** Standards Board expected to consider... something...



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First Aid Kits

- Standards Board granted a petition from a safety consultant to revise Cal/OSHA standards for construction and general industry First Aid Kits in 2011
- (Finally) heard by the Board (after a series of drafts and advisory committee hearings) in April 2022
- Allows an employer to use First Aid kits either containing materials approved by a consulting physician or a First Aid kit compliant with ANSI Z308.1-2021 or all materials specified in Table 1



Legislation Putting New Stuff on Cal/OSHA/Standards Board's Agenda

- **AB 2243 (Garcia):** requires Cal/OSHA to submit a regulatory proposal to the Standards Board to “consider revising” the Heat Illness and Wildfire Smoke standards
 - **Heat Illness standard (GISO 3395):**
 - Require employers to distribute a copy of the employer’s written Heat Illness Prevention plan “upon hire, and upon training required by Section 3395..., but no more than twice a year.”
 - Require employers to distribute a copy of the Heat Illness Prevention Plan to all employees “at least once on an annual basis.”
 - **Wildfire Smoke Standard (GISO 5141.1):**
 - Reduce the mandatory respiratory requirement threshold to an Air Quality Index (AQI) of 301 or more
 - Division may propose a threshold lower than 301
 - At AQI greater than 301, “...the employer need not implement fit testing and medical evaluations or otherwise implement requirements of the general Respiratory Protection standard (GISO 5144)



Legislation Putting New Stuff on Cal/OSHA/Standards Board's Agenda

- **AB 257 (Holden):** Fast Food Accountability and Standards (FAST) Recovery Act:
 - Supported by the California Service Employees International Union and Fight for \$15
 - AB 257 was originally authored by former Assembly Member Lorena Gonzalez (D-San Diego), who later championed it after resigning her Assembly seat and assuming leadership of the California Labor Federation
 - Establishes in the Department of Industrial Relations (DIR) a Fast Food Sector Council to set industry-wide minimum standards on minimum wages, working hours, working conditions, and promoting the “health, safety and welfare” of California fast food workers
 - Applies to “fast food chains” made up of 100 or more establishments nationally sharing a common brand or having common standards for restaurant appearance, marketing, packaging, products, and services. It applies to any single location in California if the chain has 100 or more locations anywhere in the U.S.



Legislation Putting New Stuff on Cal/OSHA/Standards Board's Agenda

- **AB 257 (Holden):** Fast Food Accountability and Standards (FAST) Recovery Act:
 - Restaurants need not be franchised to be covered. This will likely cover any counter service, quick service, fast casual, and many other types of restaurants.
 - The Council will be composed of up to 10 members with representatives of the DIR, fast food franchisors, fast food franchisees, fast food restaurant employees, advocates for fast food employees, and one representative from the Governor's Office of Business and Economic Development (GoBiz).
 - The Council's powers will be similar to those of the now-defunct Industrial Welfare Commission
 - The Council is empowered to raise the minimum wage for fast food workers to \$22 per hour in 2023, with cost-of-living increases thereafter.



Legislation Putting New Stuff on Cal/OSHA/Standards Board's Agenda

- **The Impact of AB 257 on Cal/OSHA and the Standards Board is unclear**
 - Discussions at a recent Standards Board public meeting indicate the Board and its staff expect to see an increased workload as a result of the Council's actions
 - Occupational safety and health changes proposed by the Council might need to be considered and approved by the Board
 - The passage of the FAST Recovery Act could either pave the way for similar "councils" covering retail, home health care, manufacturing, and other industries, or the Council's ambit could be expanded to cover other industries
 - The Legislature already has singled out for special attention specific activities and industries including textile manufacturing, car washing, farm labor contracting
 - Might California agriculture be next?



And on that Cheerful Note...

Thank you for your Attention

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Topics

- New Cal/OSHA requirements and safety best practices for:
 - Wildfire smoke
 - Work-related employee injury & illness reporting
 - Employee access to Written Injury & Illness Prevention Program
- Update on Cal/OSHA enforcement activity
- Programs
- On the Horizon
- Resources

Protection from Wildfire Smoke

Passage of Permanent Standard

- Title 8 Section 5141.1
- Elements Hazard Assessment
 - Communication
 - Training and instruction
 - Control of harmful exposures to wildfire smoke

Protection from Wildfire Smoke (continued)

Appendix B

- Information to be provided to employees (mandatory)
- Use to train employees
- Other versions acceptable as long as they address critical elements

Air Quality Index (AQI) Values	Levels of Health Concern	Colors
<i>When the AQI is in this range:</i>	<i>..air quality conditions are:</i>	<i>...as symbolized by this color:</i>
0 to 50	Good	Green
51 to 100	Moderate	Yellow
101 to 150	Unhealthy for Sensitive Groups	Orange
151 to 200	Unhealthy	Red
201 to 300	Very Unhealthy	Purple
301 to 500	Hazardous	Maroon

Note: Values above 500 are considered Beyond the AQI. Follow recommendations for the Hazardous category. Additional information on reducing exposure to extremely high levels of particle pollution is available [here](#).

Source: airnow.gov

Protection from Wildfire Smoke (continued)

Safety Best Practices for wildfire smoke:

- Assessing critical operations
- Monitoring
- Communicating
- Personal protective equipment and other safety practices
- Employee Training
- Response

Work-related Employee Injury & Illness Reporting

AB 1805 - 8/30/2019

- Changed definitions of serious injury and exposure
- Dropped 24-hour time limit for hospitalization and reporting
- Aligned concept of “realistic possibility” to severity

Work-related Employee Injury & Illness Reporting (continued)

Effective early 2020

– Title 8 Section 330:

- “Serious injury or illness” means
 - Any injury or illness occurring in a place of employment or in connection with any employment that requires inpatient hospitalization for other than medical observation or diagnostic testing
 - Or in which an employee suffers
 - » Amputation
 - » Loss of an eye
 - » Any serious degree of permanent disfigurement

Written Injury & Illness Prevention Program

Allow employees access to program:

- Written or electronic copy
- Employer notice to employees of right of access
- Must be in written program

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Safety Program Evaluation

Facility: _____

Administrator: _____

Once you have evaluated all of the elements that should be a part of your safety program, use this section to summarize the present status of the program elements, and to establish goals for improvement. After filling in the present status of each element evaluated, determine measurable goals for improvement where necessary. Then you are ready to prioritize each goal and establish target dates for completion. You should periodically review your progress towards each goal and provide support to those responsible for implementation.

Basic Program Element	Present Status (Poor, Fair, Good, Excellent)	Goal	Target Date
1. Written Safety Policy Statement			
2. Safety Responsibilities			
3. Safety Program Recognition and Enforcement			
4. Safety Communications			
5. Hazard Recognition and Control			
6. Incident Reporting and Investigation			
7. Employee Training			
8. Recordkeeping			
Additional Considerations			
9. Standard Operating Procedures (SOP's) and/or safety rules			
10. Return to Work for Injured Employees			
11. Employee Selection and Placement			
12. Emergency Procedures			

Date Completed: _____

Evaluator: _____

Safety Program Evaluation

Zenith's Safety Program Evaluation is based on the premise that the same basic principles of good management should be applied for any management endeavor. Production, quality, cost, and safety and health. Long-term, bottom line results are dictated by the degree to which effective management controls (activities) are applied.

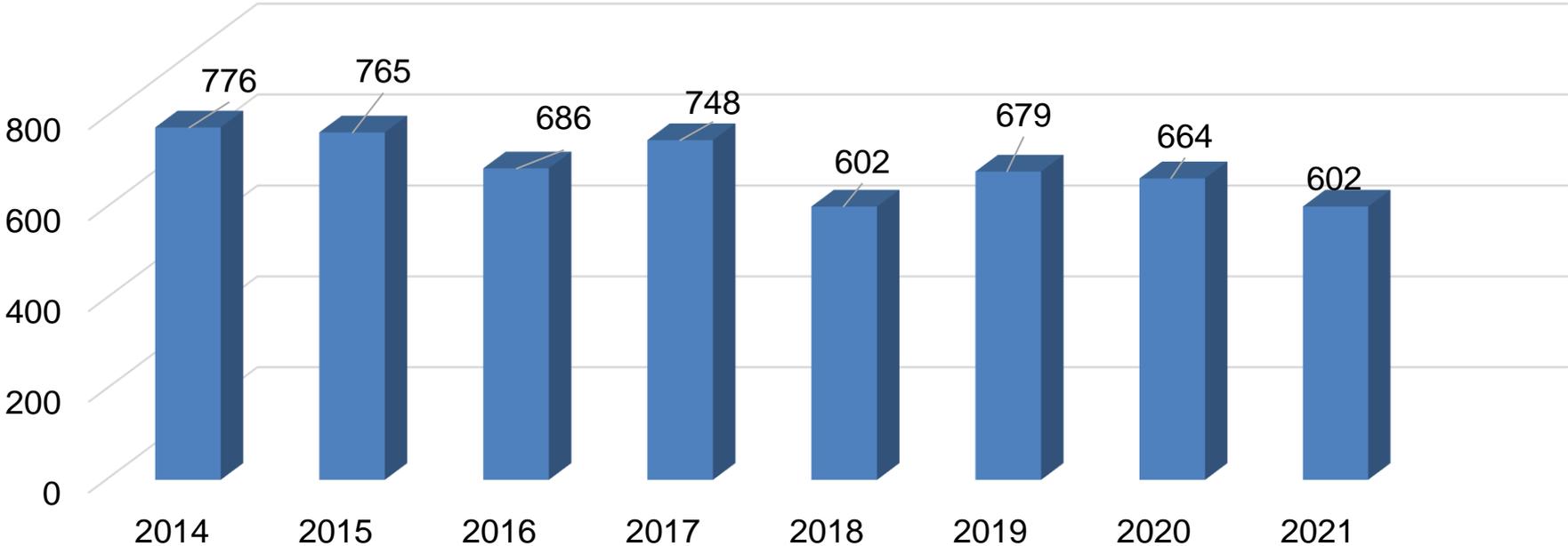
This system will help evaluate your safety management controls (activities), and offer recommendations for improvement. The following twelve activities should be in place to varying degrees regardless of size or type of business. For each activity, circle the rating which most accurately reflects the present status of your safety program.

BASIC PROGRAM ELEMENTS

1. Written Safety Policy Statement	<p>Poor No written safety policy statement.</p>	<p>Fair Policy distributed and communicated to all employees, but is outdated and incomplete.</p>	<p>Good Policy statement includes company safety and health philosophy, and designation of responsibility and authority. Also established accountability</p>	<p>Excellent In addition to "good" – the policy is reviewed at least annually and updated as needed. The policy is signed and communicated "down the line" by operating management.</p>
2. Safety Responsibilities	<p>Poor Responsibilities are not written, communicated or applied</p>	<p>Fair Some responsibilities are written and communicated, but not applied consistently</p>	<p>Good Responsibilities are written, communicated and enforced consistently. Safety rules are also posted. Employees and managers/supervisors are held accountable for complying with all safety rules. Managers/supervisors are held accountable for their safety performance.</p>	<p>Excellent In addition to "good" – all employees show positive interest in preventing losses by bring unsafe acts and conditions to the attention of management. Employees are involved in job analyses. Managers/supervisors perform above established safety standards/goals and are rewarded accordingly.</p>
3. Safety Program Recognition and Enforcement	<p>Poor No written procedure or system in place</p>	<p>Fair Informal recognition provided but not on a consistent basis. Discipline process exists but not enforced.</p>	<p>Good Management is responsible for ensuring that all safety and health policies and procedures are clearly communicated and understood by all employees. Managers and supervisors are expected to enforce the rules fairly and uniformly. Formal recognition for safety activities. Discipline process enforced consistently.</p>	<p>Excellent In addition to good, it is evident that safety activities are being completed consistently without the need for constant discipline. Safety culture has improved.</p>
4. Safety Communications	<p>Poor No written procedures. Management does not conduct meetings. No safety committee</p>	<p>Fair Some managers/supervisors conduct meetings, some do not. Meetings are not planned or documented. Some communication methods used such as bulletin boards, posters, brochures in new hire orientation and safety committee's. Safety committee exists, but no formal guidelines and/or procedures.</p>	<p>Good All manager/supervisors conduct planned safety meetings. Meetings and attendance are documented. Meetings provide two way communications and are in a form readily understandable by employees. There is a form of anonymous communication available for employees. In addition, various other communication methods included as described in fair category. Safety committee is comprised of membership from each department or location. Representation by management and employees. Meets regularly and documents activities.</p>	<p>Excellent In addition to "good" – subjects are based on needs pointed out by accident cause analysis, inspections and observations. Problems are identified, effects on group/individual are discussed and specific action implemented to eliminate problem. Management uses the safety committee as the basic means of implementing the loss control efforts. Key operating executive acts as the chairperson. The committee has guidelines and objectives.</p>

Cal/OSHA Enforcement Activity

Cal/OSHA Enforcement Inspections in NAICS Major Group 11 Agricultural Production Crops by Calendar Year



Data from Fed-OSHA

Cal/OSHA Enforcement Activity

NAICS 11 (continued)

Frequent Citations 10-1-2020 to 9-30-2021
Title 8 Section 3395, Heat Illness Prevention
Title 8 Section 3203, Injury and Illness Prevention Program
Title 8 Section 3457, Field Sanitation
Title 8 Section 342, Reporting Serious Injury/Fatality
Title 8 Section 3441, Operation of Ag Equipment
Title 8 Section 3314, Control of Hazardous Energy (LOTO)

Current Enforcement Activity

- Here's the link so that you can look at the frequently cited Title 8 sections for your NAICS industry group
 - <https://www.osha.gov/pls/imis/citedstandard.html>
- Share caveat!

Cal/OSHA Enforcement Activity

NAICS 11
(continued)

- 43 accident inspections, Calendar Year 2021
 - 28 Fatalities
 - 8 COVID-19
 - Others
 - Struck by
 - Lock out/tag out
 - Carbon monoxide
 - Falling tree

Current Enforcement Activity

- Data from last 2022 Cal/OSHA Advisory Committee meeting shows onsite inspection numbers returning to normal range (~5400* vs ~8000 pre-pandemic)

*From osha.gov run 10/5/22

Ca/OSHA Enforcement Activity

(continued)

Continued use of “Letter in Lieu of Inspection”

- Need timely response
- ~8500 letter inspections*
- Significant increase in “on-site” inspections
- Enforcement
 - Standard, classic, enforcement action with possibility of citations with monetary penalties

*osha.gov run 10/5/22

Mandatory Safety Programs

- Injury and Illness Prevention Program
- COVID-19 Prevention Program
- Wildfire Smoke Protection Program
- Heat Illness Prevention Program

On the Cal/OSHA Horizon

- Indoor Heat
- Workplace Violence Prevention
- Permanent Infectious Disease/COVID Program
- Changes to First Aid Standard

Wildfire Smoke

- Cal/OSHA: <https://www.dir.ca.gov/dosh/Worker-Health-and-Safety-in-Wildfire-Regions.html>
- Appendix B (English):
https://www.dir.ca.gov/Title8/5141_1b.html
- (Spanish):
<https://www.dir.ca.gov/dosh/doshreg/Protection-from-Wildfire-Smoke/Spanish/Protection-from-Wildfire-Smoke-Emergency-proptxt-spanish.pdf>
- USEPA/CARB/CDPH:
 - https://www.airnow.gov/sites/default/files/2021-09/wildfire-smoke-guide_0.pdf
- -Requirements to Protect Workers Exposed to Wildfire Smoke Training Video
[English](#) | [español](#)

Wildfire Smoke

- <https://aghealth.ucdavis.edu/wildfires>

Resources (continued)

- Work related employee injury and illness reporting
 - http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1805
- Field Sanitation
 - <https://www.dir.ca.gov/OSHSB/Single-User-Toilet-Facilities.html>

Resources (continued)

- Night work
 - <https://www.dir.ca.gov/oshsb/documents/Outdoor-Agricultural-Operations-During-Hours-of-Darkness-apprvdtxt.pdf>
 - https://www.dir.ca.gov/dosh/dosh_publications/Night-Agriculture-fs.pdf
- Injury and Illness Prevention Program IIPP
 - <https://www.dir.ca.gov/OSHSB/Employee-Access-to-Injury-and-Illness-Prevention-Program.html>
 - <https://www.dir.ca.gov/dosh/puborder.asp#IIPP>

Resources (continued)

- COVID-19
 - Reporting of confirmed cases to Cal/OSHA
 - <https://www.dir.ca.gov/dosh/coronavirus/Reporting-Requirements-COVID-19.html>
 - Frequently asked questions (Updated October 2022)
 - <https://www.dir.ca.gov/dosh/coronavirus/ETS.html>
 - January 2022 changes to ETS
 - https://www.dir.ca.gov/dosh/dosh_publications/COVIDOnePageFS-12-16-2021.pdf

Resources (continued)

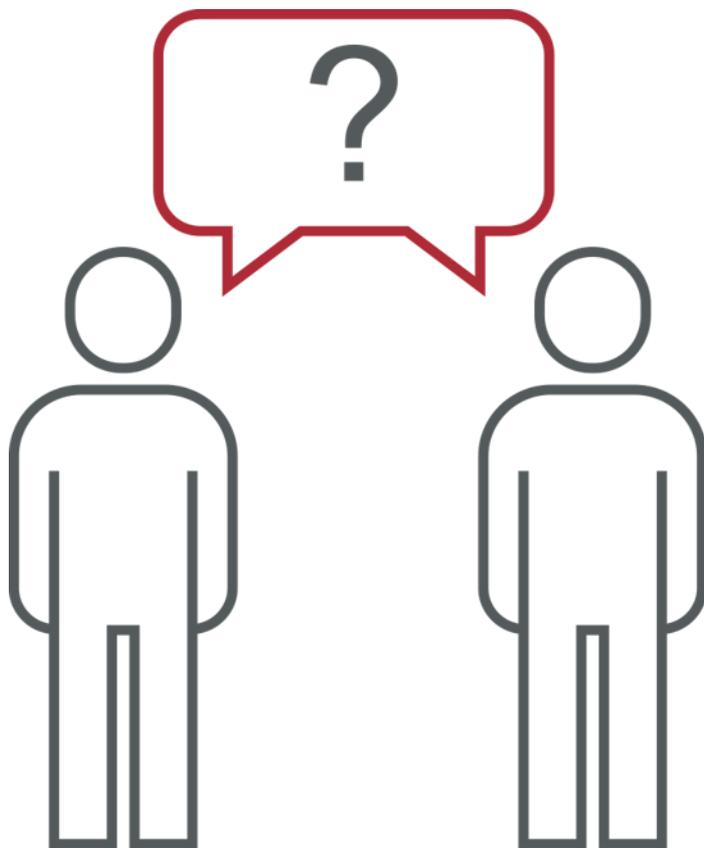
– Cal/OSHA

<https://www.dir.ca.gov/dosh/coronavirus/>

– NIOSH Western Center for Ag Health and Safety

<https://aghealth.ucdavis.edu/covid19>

- Note: also a good resource for wildfire smoke protection information



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