

MEMORANDUM OF LAW

DATE: October 4, 1990

TO: D. Cruz Gonzalez, Risk Management Director

FROM: City Attorney

SUBJECT: Safety Issues

Recently you asked for an opinion concerning whether the City must comply with certain state and federal safety regulations.

Specifically, you want to know if the following regulations must be adhered to by the City, given its status as a charter city.

The regulations are:

General Industry Safety Orders (GISO)

5144 - Respiratory Protection Program

5096 and 5097 - Hearing Conservation Program

108 - Confined Spaces

3203 - Accident Prevention Program

Senate Bill 198 - Updates and reinforces GISO Section 3203 and requires more specific job-related training and record keeping.

Code of Federal Regulations

1910.120sic - Medical Surveillance

(for handlers of hazardous materials)

GISO regulations are applicable to charter cities.

California Code of Regulations title 8, section 3202(a) provides in pertinent part:

Section 3202. Application.

(a) These orders establish minimum standards and apply to all employments and places of employment in California as defined by Labor Code Section 6303; provided, however, that when the Occupational Safety and Health Standards Board has adopted or adopts safety orders applying to certain industries, occupations

or employments exclusively, in which like conditions and hazards exist, those orders shall take precedence wherever they are inconsistent with the General Industry Safety Orders hereinafter set forth (emphasis added).

Section 6303 of the Labor Code provides:

Section 6303. "Place of employment": "Employment"

(a) "Place of employment" means any place, and the premises appurtenant thereto, where employment is carried on, except a place the safety jurisdiction over which is vested by law in any state or federal agency other than the division.

(b) "Employment" includes the carrying on of any trade, enterprise, project, industry, business, occupation or work,

including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire except household domestic service.

In turn Labor Code section 6304 provides:

Section 6304. "Employer"

"Employer" shall have the same meaning as in section 3300 of the Labor Code.

Finally, section 3300 of the Labor Code defines employer as follows:

Section 3300. "Employer"

As used in this division, "employer" means:

- (a) The State and every State agency.
- (b) Each county, city, district, and all public and quasi public corporations and public agencies therein.
- (c) Every person including any public service corporation, which has any natural person in service.
- (d) The legal representative of any deceased employer.

Exclusions from this definition are found in section 3301 of the Labor Code and include the following:

As used in this division, "employer" excludes the following:

- (a) Any person while acting solely as the sponsor of a bowling team.
- (b) Any private, nonprofit organization while acting solely as the sponsor of a person who, as a condition of sentencing by a superior or municipal court, is performing services for the organization.

The exclusions of this section do not exclude any person or organization from the application of this division which is otherwise an employer for the purposes of this division. No exemptions are found in the Labor Code regarding charter cities in the areas of occupational safety section 6300 et seq., or workers compensation section 3300 et seq.

Concerning Senate Bill 198, the proposed bill does not modify or change the definition of employer for purposes of the GISO. The proposal merely amends and/or clarifies existing statutes and regulations. It, too, would therefore be applicable to charter cities if it is adopted.

On the other hand, 29 C.F.R. section 1910.120 et seq. is not applicable to San Diego. 29 U.S.C. section 652, the statute which governs the Code of Federal Regulations in this area, defines employer as: "a person engaged in a business affecting commerce who has employees, but does not include the United States or any state or political subdivision of a State."

In California, federal OSH Act requirements are implemented

along with the provisions of the California Occupational Safety and Health Act and related laws. All are implemented by the state Department of Industrial Relations, specifically by its Division of Occupational Safety and Health. Regulations which give specific requirements of medical surveillance for hazardous material workers are found in the California Code of Regulations, title 8, chapter 3.2 (1990).

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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