

Section 7.4

Employer's Failure to "Assure" Compliance - 3CCR §6738

Question posed at the Roundtable

This document provides guidance on the following question posed at the Hearing Officer Roundtable:

- What evidence is necessary to prove that an employer failed to "Assure" employee compliance with the requirements of Title 3, California Code of Regulations (3CCR) section 6738 concerning personal protective equipment (PPE)?
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Definition

Assure - 3CCR section 6000 defines Assure¹ as taking "all reasonable measures so that the behavior, activity, or event in question occurs."

Measures for "assuring" employee compliance

In addition to defining assure, 3CCR section 6000 also describes some reasonable measures that an employer could take to "assure" employee compliance with the worker safety regulatory requirements. These measures include:

- Making sure that the employee has the knowledge to comply;
- Providing the means to comply;
- Supervising the work activity; and
- Having and enforcing a written workplace disciplinary action policy covering the employer's requirements.

In addition to this list, employers must comply with all other measures specified in a specific pesticide law or regulation.

Employers responsible for worker safety violations

3CCR section 6702 requires employers to train, supervise, and intervene to the level required, to assure employee compliance and safety while handling pesticides. In general, 3CCR section 6738 requires employers to assure:

1. Employees have everything available in the proper condition to provide the intended protection, and
 2. The employees use the proper equipment required in each specified situation.
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¹ Merriam-Webster's Collegiate® Dictionary, Tenth Edition, provides a more succinct definition: "To make sure or certain."

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Proving employer "failure to assure" compliance

Employee violations of worker safety regulations imply an employer's "failure to assure" compliance because the employer assumed the responsibility and the authority to prevent unsafe work practices from occurring or continuing.

In spite of this regulatory advantage, the investigator must evaluate and document all of the circumstances associated with the violation and the relationships between these facts. If the accumulated evidence allows an average person to infer that the employer did not take all reasonable measures to assure employee compliance, then the employer is in violation of 3CCR section 6738. While there are no strict guidelines for building adequate proof, the following table may help an investigator establish whether the employer took all reasonable measures available to them to assure employee compliance with the worker safety requirements.

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Did the employer Assure...	By taking reasonable measures ² , such as....
Knowledgeable employees?	<ul style="list-style-type: none"> • Implement a written training program that complies with 3CCR section 6724; • Conduct training in the language understood by the employee • Provide qualified trainers; • Conduct surprise inspections to test employee knowledge; • Stage formal and “tailgate” training sessions that match employee needs and knowledge.
The means to comply?	<ul style="list-style-type: none"> • Train employees on proper PPE use, fit, and maintenance; • Provide all required PPE; • Make all required PPE available at the work site; • Require the use of PPE (as documented through the training and disciplinary programs); • Require the employee to inspect PPE before use and reject inadequate equipment; • Require the proper cleaning after use; • Repair or replace worn, damaged, or heavily contaminated PPE; • Assure the proper storage of PPE at all times; • Conduct surprise inspections to assure employees use: provided supplies, equipment in good condition, and heat stress prevention.
Adequate supervision?	<ul style="list-style-type: none"> • Match the supervision method to the activity’s hazard and complexity and the employee’s competency and history; • Provide a means to contact the supervisor in case the employee has questions; • Conduct surprise and routine “in person” inspections to check PPE use and condition; • Correct unsafe work practices when they are observed and document the correction; • Provide a safe workplace by enforcing employer and regulatory requirements.
An effective workplace disciplinary action program?	<ul style="list-style-type: none"> • Implement a written workplace disciplinary action policy; • Train employees about the policy; • Enforce the policy by citing employees, in writing, who violate employer and regulatory requirements

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² Assumes that the employer can provide documentation where appropriate.

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References

- 3CCR section 6000, Definitions
 - 3CCR section 6702, Employer-Employee Responsibilities
 - 3CCR section 6738, Personal Protective Equipment
 - Merriam-Webster's Collegiate® Dictionary, Tenth Edition
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