

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

**FIRE DEPARTMENTS' COMPLIANCE
WITH CAL/OSHA REGULATIONS FOR
PROTECTIVE CLOTHING AND EQUIPMENT**

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

P-416

FIRE DEPARTMENTS' COMPLIANCE WITH CAL/OSHA
REGULATIONS FOR PROTECTIVE CLOTHING AND EQUIPMENT

SEPTEMBER 1984



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September 24, 1984

P-416

Honorable Art Agnos, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report entitled "Fire Departments' Compliance with Cal/OSHA Regulations for Protective Clothing and Equipment." This report indicates that California fire departments generally provide their paid fire fighters with protective clothing and equipment required by the California Occupational Safety and Health Act (Cal/OSHA). However, fire departments do not always have sufficient quantities of the protective clothing and equipment to equip volunteer fire fighters, who are not covered by Cal/OSHA regulations.

Respectfully submitted,

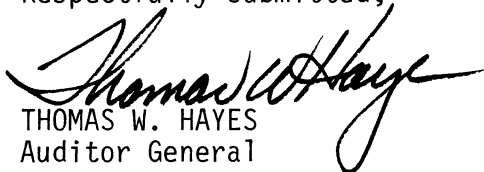

THOMAS W. HAYES
Auditor General

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SUMMARY

California fire departments generally provide their paid fire fighters with protective clothing and equipment required by the California Occupational Safety and Health Act (Cal/OSHA). However, fire departments do not always have sufficient quantities of the protective clothing and equipment to equip volunteer fire fighters, who are not covered by Cal/OSHA regulations.

We asked 101 California fire departments to provide information about their provision and use of protective clothing and equipment required by Cal/OSHA regulations. Forty-six fire departments responded to our questionnaire. We conducted follow-up telephone conversations with 24 of the 46 fire departments and visited ten. The 46 respondents are comprised of fire departments that use only paid fire fighters, fire departments that use only volunteer fire fighters, and fire departments that use both paid and volunteer fire fighters.

Thirty-nine of the 46 fire departments that responded to our questionnaire use paid fire fighters and are thus subject to Cal/OSHA regulations. Thirty-five of the 39 reported that they have all of the protective clothing and equipment required for their paid fire fighters. Twelve of the 39 fire departments also use volunteer fire fighters; 10 of the 12 said they provide for their volunteer fire fighters the protective clothing and equipment required for paid fire fighters. Seven fire departments that responded to our questionnaire use only volunteer fire fighters; 3 of these 7 fire departments have all of the protective clothing and equipment that is required for paid fire fighters.

Officials of fire departments that do not meet the Cal/OSHA requirements told us that they do not have some of the protective clothing and equipment required by Cal/OSHA regulations because they lack sufficient funds. They also reported that some items are not available from manufacturers and some items are unreliable.

Despite the lack of sufficient protective clothing and equipment for some of the fire fighters, we did not identify any injuries or deaths to fire fighters caused by insufficient protective clothing and equipment. Fire department officials pointed out that they attempt to minimize the risk of injury or death to fire fighters who are insufficiently protected. However, fire chiefs still expressed concern for their personal liability in the event of injury or death to their fire fighters because of insufficient protective clothing or equipment.

Pending Litigation

Nine fire departments have sued the State to recover costs of purchasing protective clothing and equipment required by Cal/OSHA regulations. These fire departments argued that the purchases constituted state-mandated expenses and were thus subject to statutes that require the State to reimburse local agencies for costs mandated by the State. The Department of Industrial Relations, which administers Cal/OSHA regulations, contended that the regulations implement a federal program and either clarify or implement statutes not subject to the requirement that the State reimburse local entities for costs.

On May 23, 1984, the Los Angeles County Superior Court agreed with the fire departments and awarded them \$159,663 plus interest. The State of California has appealed the decision. The County of Los Angeles indicated that it would also sue the State to recover costs of required protective clothing and equipment. The Department of Industrial Relations expects other fire departments to file similar suits.

INTRODUCTION

The federal Williams-Steiger Occupational Safety and Health Act (OSHA) of 1970 encouraged each state to adopt plans and implement programs that meet federal criteria for ensuring safe and healthy working conditions for all employees. The federal government provides up to 50 percent of the funding for states, such as California, that elect to develop their own programs.

California chose to administer an occupational safety and health program and enacted the California Occupational Safety and Health Act (Cal/OSHA) in 1973. This legislation established a program to provide safe and healthy working conditions for California employees. The program is administered by the following units within the Department of Industrial Relations:

- The Occupational Safety and Health Standards Board, which adopts, amends, and repeals safety and health standards and reviews all requests for variances from standards;
- The Division of Occupational Safety and Health, which, through its Cal/OSHA program, enforces occupational safety and health standards and regulations as dictated in the California Administrative Code; and

- The Occupational Safety and Health Appeals Board, which hears appeals concerning citations and penalties and resolves issues that are in dispute.

In 1978, the Occupational Safety and Health Standards Board adopted regulations that establish minimum requirements for personal protective clothing and equipment for fire fighters. These regulations differentiate between structural fires and wildland fires and establish different minimum requirements for the specific safety gear required for each type of fire. For example, the regulations establish minimum requirements for helmets, face shields, coats, pants, boots, gloves, respiratory devices, and personal alarm devices to be used by fire fighters when suppressing structural fires. Additional regulations define the protective clothing and equipment required for fire fighters who suppress wildland fires.

Through its Cal/OSHA program, the Department of Industrial Relations has regulatory authority over approximately 600 fire departments that use paid fire fighters. The Department of Industrial Relations does not regulate federal fire departments or approximately 460 volunteer fire departments. Additionally, according to a 1979 opinion by the Attorney General, the Cal/OSHA requirements apply only to paid fire fighters. Fire departments that use both paid and volunteer fire fighters are subject to Cal/OSHA requirements only insofar as their paid fire fighters are concerned. One of the responsibilities of the Department of Industrial Relations is ensuring

that fire departments that are subject to Cal/OSHA requirements comply with all pertinent safety regulations and provide their fire fighters with the appropriate clothing and equipment.

Inspectors of the Division of Occupational Safety and Health (DOSH) are responsible for investigating serious work-related injuries, work-related fatalities, and complaints alleging hazardous conditions encountered by California wage earners, including fire fighters. Although the inspectors can give citations for violations of Cal/OSHA regulations, they are not required to make periodic inspections of fire departments to ensure compliance with the regulations. According to the deputy chief in charge of the DOSH's inspection and compliance activities, Cal/OSHA inspections of fire departments generally result from a complaint or a report of a serious injury or fatality.

SCOPE AND METHODOLOGY

We conducted this review to determine if California fire departments provide their fire fighters with and ensure the use of protective clothing and equipment required by Cal/OSHA regulations. We included in our review fire departments that use only paid fire fighters, fire departments that use only volunteer fire fighters, and fire departments that use both paid fire fighters and volunteer fire fighters. Based on the 1979 opinion of the Attorney General, we define a paid fire fighter as one who receives compensation for fire fighting activities and a volunteer fire fighter as one who receives no compensation.

To obtain the information for this review, we examined pertinent statutes and regulations and accident investigation reports, and we interviewed officials of the Cal/OSHA program and other officials of the Department of Industrial Relations. We also interviewed officials at the Department of Finance, the Office of the State Fire Marshal, the Workers' Compensation Insurance Fund, and the California Department of Forestry.

To determine if fire departments have the appropriate protective clothing and equipment, we sent a questionnaire to a sample of 101 California fire departments. Forty-six fire departments responded to the questionnaire. Using information that these fire departments provided regarding their inventories, we determined if they had the required protective clothing and equipment. We conducted follow-up telephone interviews with 24 of the 46 fire departments that responded to our questionnaire. In addition, we visited the following 10 of the 46 fire departments: Folsom Fire Department, Hayfork Fire Protective District, Millville Volunteer Fire Company, Mountain Gate Community Services District, Mt. Laguna Volunteer Fire Department, Rio Linda Fire Protective District, Riverside County Fire Department, Stanislaus County Fire Safety Department, Yuba City Fire Department, and the California Department of Forestry facility at San Andreas.

Finally, we reviewed files at 3 of the 19 Cal/OSHA district offices (Sacramento, Modesto, and Redding) to determine if any complaints or reports of accidents involving fire fighters cited lack

of appropriate protective clothing and equipment. We did not observe any actual fire fighting activities.

This report also includes information regarding suits against the State by fire departments attempting to recover the costs of purchasing protective clothing and equipment required by Cal/OSHA regulations. These suits contend that statutes require the State to reimburse local entities for the cost of purchasing items required by Cal/OSHA regulations.

ANALYSIS

ALTHOUGH FIRE DEPARTMENTS GENERALLY PROVIDE PROTECTIVE CLOTHING AND EQUIPMENT FOR PAID FIRE FIGHTERS, THESE ITEMS ARE NOT ALWAYS PROVIDED FOR VOLUNTEER FIRE FIGHTERS

The California fire departments in our survey generally meet California Occupational Safety and Health Act (Cal/OSHA) regulations that require specific protective clothing and equipment for paid fire fighters. Volunteer fire fighters, however, who are not covered by those regulations, do not always have sufficient protective clothing and equipment. Officials of the fire departments that do not meet the Cal/OSHA requirements told us that they do not have the funds necessary to purchase all the protective clothing and equipment. In addition, fire chiefs reported that some items are not available from manufacturers and some items are unreliable. Although our review did not disclose any injuries or deaths to fire fighters as a result of insufficient safety gear, the absence of injuries and deaths may result, in part, from actions taken by fire chiefs to minimize risks to their insufficiently-protected fire fighters. However, several of the fire chiefs expressed concern for their personal liability if any of their fire fighters were to be injured or killed because of insufficient protective clothing and equipment.

quantities include protective coats, helmets, gloves, and self-contained breathing apparatus/respirators required for fighting structural fires, and coats and pants required for fighting wildland fires.

Officials of the fire departments that do not have sufficient quantities of the protective clothing and equipment primarily told us that they do not have the funds necessary to purchase the items. Fire chiefs also told us that the individual fire shelters and the personal alarm devices are often not available from the manufacturers. Furthermore, the fire chiefs charged that the personal alarm devices are not reliable. The purpose of this device is to emit an audible signal when a fire fighter is stationary for a specific time. The signal indicates that the fire fighter may need assistance. However, the fire chiefs told us that the devices frequently sound an alarm prematurely or do not work at all.

Risks From Having Insufficient Protective Clothing and Equipment

Although we noted that protective clothing and equipment is not provided for all of the fire fighters in all of the fire departments we surveyed, we did not find any instances of injury or death to fire fighters that resulted from insufficient protective clothing or equipment. We reviewed reports of accident investigations conducted by Cal/OSHA personnel since January 1978. None of the

reports indicated that any injuries or deaths to fire fighters were caused by insufficient protective clothing and equipment or a failure to use the protective items.

Fire department officials told us that they minimize the risk to their fire fighters who might not have sufficient protective clothing and equipment. Fire chiefs told us that fire fighters who do not have the proper protective clothing and equipment are not permitted "on the fire line." Furthermore, fire departments may not need to use insufficiently-protected fire fighters because all of the fire departments responding to our questionnaire participate in mutual aid agreements with other fire departments. These agreements enable a fire department to request additional fire fighters and equipment from other fire departments to assist in fighting a fire.

Nevertheless, even with the efforts of the fire departments to minimize risk to their fire fighters who lack sufficient protective clothing and equipment, several fire chiefs still expressed concern for their personal liability in the event of injury or death to any of these fire fighters. While workers' compensation legislation generally precludes employees from filing civil suits against their employers, the California Labor Code does not prohibit criminal suits against employers. However, we did not identify any such criminal suits filed by or on behalf of fire fighters claiming injury or death caused by insufficient protective clothing and equipment.

Both paid and volunteer fire fighters who are injured during fire fighting activities are eligible to receive Workers' Compensation for time lost from work and for medical and legal expenses. The amount of Workers' Compensation for volunteer fire fighters is the same as the compensation for paid fire fighters.

CONCLUSION

Fire departments generally provide their paid fire fighters with protective clothing and equipment required by Cal/OSHA regulations, but volunteer fire fighters, who are not covered by these regulations, do not always have enough protective clothing and equipment. Several fire chiefs told us that they lack funds to purchase all of the necessary items or that the items are not available or are unreliable. We did not identify any injuries or deaths to fire fighters caused by insufficient protective clothing or equipment, but this lack of injuries and deaths may result from the fire chiefs' attempts to minimize risks to their insufficiently-protected fire fighters. However, fire chiefs still expressed concern for their personal liability in the event of injury or death to their fire fighters as a result of insufficient protective clothing and equipment.

OTHER PERTINENT INFORMATION

Nine fire departments have sued the State to recover their costs of purchasing protective clothing and equipment required by Cal/OSHA regulations for suppressing structural fires. In these suits, the fire departments contended that Cal/OSHA requirements for protective clothing and equipment constitute a state-mandated local program and that the State should reimburse fire departments for the costs of the required items. The Department of Industrial Relations countered that Cal/OSHA regulations merely implement a federal program and, therefore, the costs are not reimbursable.

The fire departments based their suits on state statutes that require the State to reimburse local agencies for all "costs mandated by the State." A mandated cost, according to the Revenue and Taxation Code, is any increased cost that a local agency must incur as a result of specific legislative or executive actions. The mandated costs may arise from any statute enacted or executive action issued after January 1, 1973, that requires a new program or an increased level of service in an existing program. The legislation to implement the Cal/OSHA was enacted by the Legislature in July 1973.

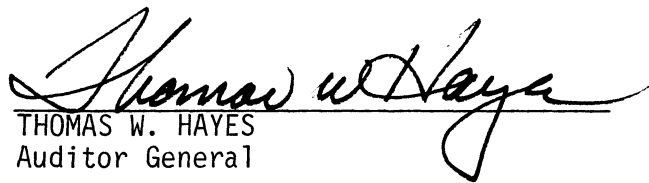
The State, however, contended that it is not liable for the costs incurred by fire departments to purchase protective clothing and equipment. According to the chief counsel of the Division of Occupational Safety and Health, the State is not liable for the costs

because Cal/OSHA requirements are not state-imposed requirements. The Department of Industrial Relations maintains that Cal/OSHA regulations merely implement federal law. Moreover, according to the department, the regulations basically serve two purposes: they clarify statutory or regulatory requirements, and they anticipate or respond to new technology or to new safety and health hazards. The department contends, therefore, that Cal/OSHA regulations do not constitute a new program or a higher level of service to local agencies; instead, the regulations represent either clarification or initial implementation of statutes requiring employers to provide safe and healthy working environments.

On May 23, 1984, the Los Angeles County Superior Court agreed with the fire departments and awarded them total costs of \$159,663 plus interest. According to the chief counsel of the Division of Occupational Safety and Health, the State of California appealed this decision in June 1984. In July 1984, the County of Los Angeles indicated that it intends to file suit in Los Angeles County Superior Court to recover from the State more than \$872,000 in costs for protective clothing and equipment for fire fighters who fight structural fires. However, as of August 13, 1984, the county had not filed this suit. The chief counsel told us that the Department of Industrial Relations expects other fire departments also to sue the State.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: September 14, 1984

Staff: Eugene T. Potter, Audit Manager
Allison G. Sprader
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DEPARTMENT OF INDUSTRIAL RELATIONS

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September 14, 1984

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Sacramento, CA 95814

Re: Fire Departments' Compliance with Cal/OSHA
Regulations for Protective Clothing and
Equipment

Dear Mr. Hayes:

Thank you for the opportunity to review and comment upon the subject draft report. I believe that the draft accurately portrays the present situation. The issue concerning application of Cal/OSHA regulations to volunteer firefighters surfaced several years ago before the California Occupational Safety and Health Standards Board. As Executive Officer of the Standards Board at that time, I requested an Attorney General Opinion concerning this issue. In the published Opinion, the Attorney General concluded that volunteer firefighters (meaning firefighters who are not paid) are not employees under the California Occupational Safety and Health Act. [69 Ops. Att. Gen. 115 (1979).] Since that Opinion, the Cal/OSHA program has evaluated coverage of firefighters on a case-by-case basis to determine whether they should be considered as employees or true volunteers. For instance, if so-called volunteer firefighters receive remuneration in excess of personal costs, even though not substantial, the Division could consider such persons as employees for purposes of the Cal/OSHA Act.

If I can be of further assistance concerning your report on this subject, please contact me at your earliest convenience.

Sincerely,


Ron Rinaldi
Director

RTR:jd

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps