

Why a wine grape grower advocacy group signed on to sue Cal/OSHA



Cal/OSHA's emergency temporary standard around Covid-19 could have a detrimental impact on the state's wine grape growers, an industry advocate says. WOODKERN

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A legal challenge against new state regulations aimed at protecting workers from Covid-19 is moving ahead, even after the state released new clarifications on the law late last week.

Just before the end of the year, a coalition of agriculture industry advocates filed a lawsuit seeking to challenge the emergency temporary standard approved late last year by the California Occupational Safety and Health Standards Board. The board is part of California's Division of Occupational Safety and Health, also known as Cal/OSHA.

"Our hope is that they could resolve the problem of unintended consequences, because the legislation is written so badly," said [Michael Miiller](#), director of government relations for the California Association of Winegrape Growers, one of the organizations that is bringing the lawsuit.

On Friday, Cal/OSHA released on its website an FAQ clarifying some of the regulations in the emergency standard.

Miiller said the clarification does little to address his organization's complaints with the standard, and, in some cases, makes it more confusing.

He said the association didn't have long to read the draft of the standard before public comment opened in November.

"We scrambled to figure this out and came back to them with some pretty serious problems," Miiller said.

However, Miiller said Cal/OSHA didn't address any of them.

"We were given no choice, then we had to seek litigation to get the thing thrown out," he said.

The groups bringing the legal challenge, in addition to the grape growers' association, are the Western Growers Association, the California Farm Bureau Federation, the California Business Roundtable, the Grower-Shipper Association of Central California and the Ventura County Agricultural Association.

Most of those are agriculture groups. Miiller said that's because the standard has an outsized impact on agriculture due to its rules around worker housing.

One of the key issues is that the existing Cal/OSHA guidelines for agriculture mandate that employers comply with local county health guidelines on Covid-19, in addition to the standard. However, Miiller said that, especially in rural areas, the county guidelines can directly conflict with the Cal/OSHA rules.

One example Miiller gave is that if an employee does test positive, and that employee is living in shared housing, employer-provided or otherwise, the county will likely instruct the grower to isolate the employee in a hotel room.

The state also supports this, and last year Gov. [Gavin Newsom](#) instituted the Housing for the Harvest program to help with the costs.

However, the standard mandates that the employee would have to be isolated in housing with a separate eating and drinking facility, which would eliminate most hotel rooms as an option. In the FAQ released Friday, Cal/OSHA clarified that this only applies to shared housing. However, that distinction is not present in the text of the standard.

“I feel obligated to advise my members to comply with the law,” Miiller said.

He said that most counties have directed employers to notify health officials if an employee has tested positive, and also the hotel they are staying in, so staff can take appropriate precautions.

However, the standard now says that an employer must keep employee information, including if they’ve had a positive Covid-19 test, confidential.

“They’re requiring compliance with the county order, but they’re also saying the (standard) has to be complied with, which is in direct conflict,” Miiller said.

Cal/OSHA did not immediately respond to a question from the Business Journal on this apparent conflict, and a Cal/OSHA spokesperson declined to comment on the lawsuit, saying the department does not comment on pending litigation.

Miiller said the law could also be catastrophic for agriculture because it imposes new requirements around employer-provided housing, which growers provide often for migrant workers, including guest workers entering the country through the federal government’s H2-A visa program.

Miiller said the requirements in the standard for employee-provided housing will dramatically cut the capacity of housing units.

“If you talk about rural areas, you’re not going to find additional housing,” Miiller said. “This is in the middle of a housing crisis.”

Wine grape growers are entering a period of critical demand for labor, as vineyards need to be pruned in the cold months while the vines are dormant.

“What is a grower supposed to do when they have this work that needs to be done and their workforce is cut in half?”

Miiller said Oregon and Washington, which also largely rely on agricultural guest workers, have allowed for employers to use plexiglass barriers in worker housing where social distancing isn’t possible, but Cal/OSHA does not.

Miiller said the wine grape growers’ association is in favor of and happy to comply with regulations protecting workers.

“We are not opposed to regulation on Covid-19 that works,” he said. Miiller said the association supported Assembly Bill 2043, which is aimed specifically at protecting agricultural employees from Covid-19, and was signed by the governor in September.

“We have no problem with anything that protects our employees, but it has to be something that’s clear,” Miiller said.

Miiller said that Cal/OSHA has communicated that it won’t be considering any changes to the standard for six months, and employers must comply with it until then, regardless of whether everyone in a workplace is vaccinated. Agricultural workers are considered by the state to be a high priority to receive the vaccine — Miiller said farm workers could start being vaccinated in February. This means agricultural employers may end up having to abide by the standard regulations even after everyone in the workplace is vaccinated.