

March 21, 2016

TO: Christine Baker, Director, Department of Industrial Relations
Juliann Sum, Chief, Division of Occupational Safety & Health
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FR: California Hotel & Lodging Association
California Association of Boutique & Breakfast Inns
American Hotel & Lodging Association
Asian American Hotel Owners Association

RE: Housekeeping in the Hotel and Hospitality Industry Advisory Committee
Revised Discussion Draft Dated February 23, 2016

The California Hotel & Lodging Association (CH&LA) and the California Association of Boutique & Breakfast Inns (CABBI), on behalf of the hotel & lodging industry and its respective members, submits these comments in response to the Housekeeping in the Hotel and Hospitality Industry Advisory Committee's Revised Discussion Draft dated February 23, 2016. CH&LA also endorses and agrees with the comments filed by CH&LA and CABBI with a broad coalition of affected organizations and files these separate comments to reinforce member concerns with the unacceptable recent discussion draft.

Background

- Senator (now Pro Tem) Kevin León introduced [Senate Bill 432](#) to require fitted sheets and the usage of long-handled tools. After this legislation failed to advance, [Senator De León stated](#) that: *"A negotiation has been facilitated that will help the hotels find a fiscally responsible solution to protecting their workers."*

Estimated cost of proposed regulations: Over \$200mil in next decade.

- Unite Here Petition 526 to Cal/OSHA:
 - DOSH states the petition: *"[did] not provide sufficient information to establish the necessity of each proposed control measure [or] analyze alternative measures that may be as effective."*

Cal/OSHA Standards Board rejected petition.

- Cal/OSHA Standards Board then establishes an Advisory Committee.
 - CH&LA's Education Foundation commissioned a research study – *the petitioner has only cited research conducted over ten years ago for other purposes - both outside of California - and that had no applicability to the petition.*

Conclusion: All the facets of the housekeeper job do not present a material or above nominal risk of musculoskeletal disorder hazards, revealing that housekeeping activities are within NIOSH levels.

- **CH&LA's Education Foundation is awarded a national grant to develop a model IIPP Guide and educate the industry.**

CH&LA has conducted conferences on housekeeper issues, published materials, provided and distributed a model IIPP to every hotel in California.

- Since the advisory committee was convened:
 - Injury and incidence rates for housekeepers have declined significantly from 2010 to 2014 (Bureau of Labor Statistics).
 - **Specifically, the number of injuries has declined 11.64%, the incidence rate has declined by 19.76% and days away from work has declined 14.29%.**
 - **Specific to musculoskeletal disorders, injuries have been reduced by 1.93%, the incidence rate declined by 5.84%, and days away from work decreased 16.67%.**
 - **Recent industry trends include:**
 - The California lodging industry pioneered the now industry standard of only changing guest bedding every third day, greatly reducing the workload of the hotel housekeeper (98% of guests don't have their sheets changed daily).
 - California drought regulations require hotels to provide an in-room card that asks guests to not launder linens and towels every day to conserve water, further reducing the workload of the hotel housekeeper.
 - Virtually all of the major hotel companies have programs incentivizing guests to decline housekeeping via rewards programs, vouchers, and discounts.

In summary, hotel housekeepers are better trained and safer in California than they ever have been previously. In the face of a steadily declining injury rate for housekeepers in the hospitality industry, Cal OSHA would promulgate a draconian, prescriptive vertical IIPP that would cost the industry millions and would endanger its economic vitality in California. It would impose this regulatory framework on the most responsible and compliant members of the industry with little impact on the outliers and the "underground economy" that has been one of the proper and primary focuses of this Administration. The proposed regulation would fill no regulatory vacuum since Secs. 5110 and 3203, which have been repeatedly enforced by DOSH for perceived musculoskeletal disorders related to housekeeper tasks, occupy the field. This unfortunate precedent will encourage unions in other industries to leverage musculoskeletal issues in their organizing campaigns and collective bargaining, resulting in the balkanization of the regulatory process and the atomization of DOSH enforcement. The first Standards Board that looked at UNITE HERE's petition for an advisory committee and standard properly rejected it. This is a classic example of the proverbial solution in search of a problem. We respectfully request a full reexamination of this initiative, or, at the very least, some recognition of and response to the points raised in these comments.

The following comments reflect specific issues of the discussion draft, most of which are unchanged from those communicated by the California Hotel & Lodging Association at the December 3, 2015 meeting of the Housekeeping in the Hotel and Hospitality Industry Advisory Committee.

Hotel Housekeeping Musculoskeletal Injury Prevention

(a) Scope and Application. This section is intended to control the risk of musculoskeletal injuries and disorders to housekeepers in hotels and other lodging establishments. It does not preclude the application of other sections of Title 8.

(b) Definitions.

“Housekeeper” means an employee who performs housekeeping tasks and may include employees referred to as housekeepers, guest room attendants, room cleaners, maids, ~~guest services runners,~~ and housepersons.

“Housekeeping tasks” means tasks related to cleaning and maintaining sleeping room accommodations including bedrooms, bathrooms, kitchens, living rooms, and balconies. Housekeeping tasks include, but are not limited to, the following: (1) sweeping, dusting, cleaning, scrubbing, mopping and polishing of floors, tubs, showers, sinks, mirrors, walls, fixtures, and other surfaces; (2) making beds; (3) vacuuming; (4) loading, unloading, pushing, and pulling linen carts; (5) removing and supplying linen and other supplies in the rooms, (6) collecting and disposing of trash; and (7) moving furniture.

~~“Job hazard analysis” means an assessment that focuses on job tasks as a way to identify potential hazards. It examines the relationship between the worker, the task, the tools, and the work environment. For purposes of this section, a job hazard analysis is an assessment to evaluate housekeeping tasks with respect to potential causes of musculoskeletal injury to housekeepers.~~

“Lodging establishment” means an establishment that contains sleeping room accommodations that are rented or otherwise provided to the public, such as hotels, motels, resorts, and bed and breakfast inns. For the purposes of this section, “lodging establishment” does not include hospitals, nursing homes, residential retirement communities, prisons, jails, homeless shelters, boarding schools, or worker housing.

Short term rentals and vacation rentals should be added to more fully encompass the hospitality industry, reflecting the naming of the advisory committee as the Hotel and Hospitality Housekeeping Advisory Committee. With over 100,000 units actively listed in California, this component represents more than 20% of the paid lodging accommodations in California.

“Musculoskeletal injury” means acute injury or cumulative trauma of the muscles, tendons, ligaments, bursae, peripheral nerves, joints, bones or blood vessels.

“**Union** Representative” means a recognized or certified collective bargaining agent representing housekeepers.

This regulatory initiative is explicitly driven by union interests in organizing and collective bargaining activities. Even UNITE HERE in the December 3, 2015 meeting agreed to exclude the express references to “union” preceding the representative entitled to participate in the evaluation process. Despite the additional express agreement by DOSH personnel with those concerns, the union’s role has been included in the latest submission. That inclusion is revelatory of the driving force behind this regulatory initiative from its inception. The responsiveness of the standard-setting process to union agendas is further illustrated by the workplace violence IIPP. When SEIU Local 121 of the Registered Nurses petitioned for a health care industry IIPP (Pet. 538), it was promulgated. When a teacher, speaking on behalf of 300,000 California teachers, but without a union label, petitioned for a parallel IIPP in the educational setting (Pet. 542), it was rejected. And the reasoning behind rejecting this IIPP, articulated by DOSH and Standards Board Staff, was identical to the arguments we have raised for the last four years—

the overlap with existing regulations and the opening of a Pandora's Box to myriad of vertical, industry specific "me-too" regulations.

In addition to union representatives being privy to discussions of propriety methods in the process of developing a housekeeping IIPP and subsequent meetings, only a small portion of hotel properties in California are unionized. This proposed rule would include union representatives where there is no union representation.

"Worksite evaluation" means the identification and evaluation of workplace hazards in each housekeeping task, process, or operation of work with respect to potential causes of musculoskeletal injuries to housekeepers, that is specific to each workplace.

As agreed to by Christine Baker during a telephone conference with Juliann Sum, Lynn Mohrfeld and Baruch Fellner on February 16, 2016, the proposed housekeeper regulation is to be promulgated under the IIPP umbrella found at Sec. 3203, without any presumption that a workplace hazard is associated with housekeeper activities. It is a "find and fix" regulation which establishes a process and program to discover workplace hazards and, if they exist, to fix them. The Proposed Regulatory Package presumes the existence of hazards associated with a laundry list of life's everyday motions, and orders every hotel, every bed and breakfast, to implement elaborate programs to fix them. Without an express statement in this regulation that allows the hospitality industry to rely on data-driven medicine and ergonomic research indicating the absence of such hazards under definitive NIOSH criteria, the housekeeper regulation would be inconsistent with the IIPP standard. Further, it would impose requirements only on this industry while every other industry engaged in work involving exerting tasks—in many instances, much more exerting and repetitive-- would be governed solely by Sec. 5110, California's ergonomics standard, and by the non-prescriptive IIPP standard at Sec. 3203.

(c) **Housekeeping musculoskeletal injury prevention program.** As part of the Injury and Illness Prevention Program (IIPP) required by Section 3203, each employer covered by this section shall establish, implement, and maintain an effective, written, musculoskeletal injury prevention program (MIPP) that addresses hazards specific to housekeeping. The written MIPP may be incorporated into the written IIPP, or may be maintained as a separate program, **and must be readily accessible during each work shift to employees when they are in the lodging establishment where they work. (Electronic access and other alternatives to maintaining paper copies of the MIPP are permitted as long as no barriers to employee access are created by such options.)** The MIPP shall include:

- (1) Names or job titles of the persons with authority and responsibility for implementing the MIPP at each worksite;
- (2) A system for ensuring that supervisors and housekeepers comply with the MIPP, follow the employer's safe workplace housecleaning practices, and use the housekeeping tools or equipment deemed appropriate for each ~~cleaning~~ **housekeeping** task;

By requiring a system that "ensures" that supervisors and housekeepers follow specified "housecleaning practices" and "use the housecleaning tools or equipment deemed appropriate for each cleaning housekeeping task," this regulation would impose a straightjacket on housekeeping activities. Of course, the industry trains its housekeepers in best practices, but it also benefits from the creativity and flexibility in sequence and emphasis when it comes to housekeeper choices in how to clean, arrange and organize. More importantly, this provision transforms housekeeping tools and equipment into personal protective equipment; if housekeepers choose not to use them, they would be subject to progressive discipline. Many of the industry's most trusted and capable housekeepers prefer to do the job "their way," and it would be intolerable if they were fired because of the enforcement implications of this regulation.

- (3) A system for communicating with housekeepers in a form readily understandable by all housekeepers on matters relating to occupational safety and health, as required in Section 3203, including provisions

designed to encourage housekeepers to inform the employer of hazards at the worksite, and injuries or symptoms that may be related to such hazards, without fear of reprisal;

(4) Procedures for identifying and evaluating housekeeping hazards through a ~~job hazard analysis~~ **worksite evaluation**:

(A) The initial ~~job hazard analysis~~ **worksite evaluation** shall be completed within three months after the effective date of this Section or within three months after the opening of a new lodging establishment.

(B) The procedures shall include an effective means of involving housekeepers and their **union** representative in designing and conducting the **worksite evaluation**.

(C) Housekeepers shall be notified of the results of the ~~job hazard analysis~~ **worksite evaluation** in writing or by posting it in a location readily accessible to them. The results of the ~~job hazard analysis~~ **worksite evaluation** shall be in a language easily understood by housekeepers.

(D) The ~~job hazard analysis~~ **worksite evaluation** shall be reviewed and updated:

1. Whenever new processes, practices, procedures, or renovation of guest rooms or equipment are introduced that may change or increase housekeeping hazards;
2. Whenever the employer becomes aware of a new or previously unrecognized housekeeping hazard;
3. **Based on the findings and recommendations of injury investigations conducted in accordance with subsection (c)(5)**;
4. At least annually for each worksite.

Consistent with Title 8, Section 5120, 5 (C), the language should be changed to reflect existing regulatory language:

1. When the Plan is first established;
2. Whenever the equipment or conditions change in a manner that may affect housekeeper safety;
3. Whenever the employer is made aware of a new or previously unrecognized hazard; and
4. At least annually for each unit covered by the Plan.

(E) The ~~job hazard analysis~~ **worksite evaluation** shall address, at a minimum, the potential injury risks to housekeepers including but not necessarily limited to: (1) slips, trips and falls; (2) prolonged or awkward static postures; (3) extreme reaches and repetitive reaches above shoulder height, (4) **lifting or forceful whole body or hand exertions**; (5) torso bending, twisting, ~~lifting~~, kneeling, and squatting; (56) pushing and pulling; (67) falling and striking objects; (78) pressure points where a part of the body presses against an object or surface; (89) excessive work-rate; and (910) inadequate recovery time between housekeeping tasks.; and

Both (9) and (10) above go to the issue of a safe work rate, which has already been deleted in the section immediately following. Both provisions should be deleted.

~~2. A safe work rate for housekeepers expressed in the number of rooms cleaned per shift. The safe work rate may vary depending on the number of checkout rooms cleaned and other factors.~~

NOTE: Additional information regarding ~~job hazard analyses~~ **worksite evaluations** can be found in publications listed in Appendix A.

(5) Procedures to investigate musculoskeletal injuries to housekeepers, including the following:

(A) The procedures or **housekeeping** tasks being performed at the time of the injury and whether any identified control measures were available and in use;

(B) If required tools or other control measures were not used, **or not used** appropriately, a determination of why those measures were not used or were not used appropriately; and

(C) ~~Opinions~~ **Input** of the injured housekeeper, the housekeeper's **union** representative, and the housekeeper's supervisor as to whether any other control measure, procedure, or tool would have prevented the injury.

(6) Methods or procedures for correcting, in a timely manner, hazards identified in the ~~job hazard analysis~~ **worksite evaluation** or in the investigation of musculoskeletal injuries to housekeepers, including procedures for determining whether identified corrective measures are ~~used~~ **implemented** appropriately. These procedures shall include:

(A) An effective means of involving housekeepers and their **union** representative in identifying and evaluating possible corrective measures;

(B) A means by which appropriate equipment or other corrective measures will be identified, assessed, implemented, and then reevaluated after introduction and while used in the workplace; and

(C) A means of providing **and making readily available** appropriate housecleaning equipment, protective equipment, and tools to each housekeeper, including procedures for procuring, inspecting, maintaining, repairing, and replacing appropriate housecleaning tools and equipment.

Mandating prescribed housekeeping methods, tools and equipment undermines the regulation that governs each and every other industry in California, namely Sec. 5110. It completely ignores the medical component in objectively determining whether causation between often subjective symptoms of pain and injury and the specific housekeeping task is "substantially certain." It turns a blind eye to whether the mandated measures impose "additional unreasonable costs," particularly in light of the undisputed evidence and analysis provided by CH&LA that the five-year cost of compliance with this regulation would be \$108 million.

(7) Procedures for reviewing, at least annually, the MIPP at each worksite, to determine its effectiveness and make any corrections when necessary, including an effective procedure for obtaining the active involvement of housekeepers and their **union** representative in reviewing and updating the MIPP. The procedures shall include a review of the Cal/OSHA Form 300 log and other relevant records such as Cal/OSHA Form 301 incident reports.

(d) **Training.** The employer shall provide training to housekeepers and their supervisors in a language easily understood by ~~housekeepers~~ **these employees.**

(1) Frequency of training. Housekeepers and their supervisors shall be trained as follows:

(A) When the MIPP is first established;

(B) To all new housekeepers and supervisors;

(C) To all housekeepers given new job assignments for which training was not previously provided;

(D) At least annually thereafter; and

(E) Employers shall provide additional training when new equipment or work practices are introduced **or whenever the employer becomes aware of a new or previously unrecognized hazard.** The additional training may be limited to addressing the new equipment or work practices.

(2) Training shall include at least the following elements as applicable to the housekeeper's assignment:

(A) **The signs, symptoms, and risk factors commonly associated with musculoskeletal injuries,**

We strenuously object to the revised training language dealing with signs, symptoms and risk factors related to musculoskeletal disorders. Instead of accepting CH&LA language that required such training “as governed by data-driven medicine,” the latest draft would require such training for “commonly associated” signs, symptoms and risk factors. Given the range, complexity and subjectivity of ergonomically-related issues, the concept of “commonly associated” is so vague and undefinable as to be meaningless. Further, the rejection by an agency committed to safety and health of the concept of data-driven medicine as a training touchstone is incomprehensible and indefensible.

(AB) The elements of the employer’s MIPP and how the written MIPP will be made available to housekeepers;

(BC) The process for reporting safety and health concerns without fear of reprisal;

(CD) Body mechanics and safe practices including: identified hazards at the work place, how those hazards are controlled during each **housekeeping** task, the appropriate use of cleaning tools and equipment, and the importance of following safe work practices and using appropriate tools and equipment to prevent injuries; ~~and~~

(E) The importance of, **and process for, early** reporting of symptoms and injuries to the employer;

~~(F)~~ Practice using the types and models of equipment that the housekeeper will be expected to use;

~~(G)~~ An opportunity for interactive questions and answers with a person knowledgeable about hotel housekeeping equipment and procedures; and

~~(H)~~ Training of managers and supervisors on how to identify hazards, the employer’s hazard correction procedures, how defective equipment can be identified and replaced, how to obtain additional equipment, how to evaluate the safety of housekeepers’ work practices, and how to effectively communicate with housekeepers regarding any problems needing correction.

(e) Records

(1) Records of the steps taken to implement and maintain the MIPP, including any measurements taken or evaluations conducted in the **worksite evaluation** ~~job hazard analysis~~ process, shall be created, maintained, and made available in accordance with Section 3203(b).

(2) A copy of the MIPP and all records required by Subsection (1) shall be available at the worksite for review or copying by housekeepers and their **designated** representative in accordance with Section 3204(e)(1).

(3) All records shall be made available to the Chief or designee within 72 hours of request.

(4) Records of occupational injuries and illnesses shall be created and maintained in accordance with Division 1, Chapter 7, Subchapter 1 of these orders.

Appendix A (Non-Mandatory)

Reference Materials for ~~Job Hazard Analysis~~ **Worksite Evaluations**

The following are examples of materials that can be used in performing a ~~job hazard analysis~~ **worksite evaluation** for housekeeping:

Ohio State University. Ergonomic Resources for Housekeeping.
<https://ergonomics.osu.edu/Housekeeper%20Training%20Materials>

State Fund. Tips for Hotel Room Attendants.

<http://www.statefundca.com/safety/ErgoMatters/RoomAttendants.asp>

Department of Industrial Relations. Working Safer and Easier for Janitors, Custodians and Housekeepers, 2005. www.dir.ca.gov/dosh/dosh_publications/janitors.pdf

British Columbia, Injury Prevention Resources For Tourism and Hospitality- Accommodation.

<https://www2.worksafebc.com/Portals/Tourism/Prevention-Accommodation.asp>

Ergonomics Study of Custodial, Housekeeping and Environmental Services Positions at University of California. May 2011. The UC System-wide Ergonomics Team.

<http://ucanr.org/sites/ucehs/files/97141.pdf>

Government of Western Australia, Checklist and information- Accommodation industry.

https://www.commerce.wa.gov.au/sites/default/files/atoms/files/accommodation_industry_2013.pdf

Non-California governmental sources should be deleted. Conversely, include "Evaluation of Musculoskeletal Disorder Risk in Hotel Housekeeping Jobs" by Steven F. Wiker, Ph.D, CPE.

~~Appendix B (Non-Mandatory)~~

~~Reserved for Model IIPP Developed by HESIS Stakeholders~~

~~[Possible new addition if all stakeholders collaborate with HESIS to create a Model IIPP]~~

Include the California Hotel & Lodging Association's IIPP Development Guide, the sole industry-specific resource.