

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**PROPOSED DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
REGARDING PETITION FILE NO. 562**INTRODUCTION

On January 27, 2017, the Occupational Safety and Health Standards Board (Board) received a submission from Dan Leacox (Petitioner), of Leacox and Associates, described therein as a "Petition for clarification of employee access to the Injury and Illness Prevention Program". The submission was received by the Board pursuant to Labor Code Section 142.2, and designated OSHSB Petition 562 (Petition).

Labor Code Section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals and to render its decision no later than six months following their receipt.

SUMMARY

The Petitioner requested that the Board amend Title 8, California Code of Regulations, to expressly allow unspecified means of employee access to the written Injury and Illness Prevention Program (IIPP), established, and maintained by the employer pursuant to existing Section 3203. Toward that stated purpose, the Petition requests the following (deletion struck-out, addition underlined) amendments to Title 8, Section 3203:

Injury and Illness Prevention Program.

(a) Effective July 1, 1991, every employer shall establish, implement and maintain, and allow access to an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

(1) Identify the person or persons with authority and responsibility for implementing the Program.

(2) Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.

(3) Include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. Substantial compliance with this provision includes meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, means of access to the program, or any other means that ensures communication with employees

Exception: Employers having fewer than 10 employees shall be permitted to communicate to and instruct employees orally in general safe work practices with specific instructions with respect to hazards unique to the employees' job assignments as compliance with subsection (a)(3).

The Petition describes the above proposed amendment of Section 3203, as "small, but important changes" to Section 3203, which would clarify whether employees have a right to access the employer's IIPP if they so chose.

Legislation is pending in the State Assembly, addressing the same issue raised by the present Petition. Assembly Bill No. 978 (AB 978), introduced by Assembly Member Limón on February 16, 2017, would amend Labor Code Section 6319.3, an existing law requiring every employer to establish and maintain an effective injury [and illness] prevention program (IPP, or IIPP). AB 978 would require an employer having received a request from any current employee, or the employee's designated representative, for a copy of the Section 6319.3 required Injury Prevention Program, to provide the copy, in paper or electronic form, free of charge, within 5 business days. As of June 2, 2017, above described AB 978 remained pending in the State Assembly.

In conformity with Labor Code Section 6319.3, Title 8, Section 3203, mandates that each employer establish and implement a management system to minimize the risk to employees of occupational injury of illness. It is one of the most fundamental, and broadly applicable requirements with the Title 8, General Industry Safety Orders. Each required IIPP must include seven interrelated elements, functioning together to achieve injury and illness prevention:

- Responsible person (accountability for management)
- System to assure compliance (accountability for employees)
- Communication between management and employees
- Hazard identification (inspections)
- Accident investigation

- Correction of identified hazards
- Training of supervisors and employees

Although each required IIPP must incorporate each of the above conceptual elements, Section 3203 is a performance-based standard nonetheless. It is left to the employer to develop a safety management system, as reflected in its IIPP, which is tailored to the particular safety and health risk profile of the subject working environment and operations. As such, even employees generally well informed about occupational safety and health issues, could not presume to know the substance of their employer's particular IIPP, absent being informed of it by the employer.

DIVISION'S EVALUATION

By means of an advisor memorandum, dated April 28, 2017, the Division of Occupational Safety and Health (Division) has recommended to the Board that Petition 562 be approved, and that rulemaking be undertaken to amend Title 8, Section 3203, expressly allowing for employee access to the employer's IIPP. However, the Division does not limit the scope of its recommendation to the stated subject of the Petition, namely employee access to the IIPP. Instead, the Division couples its recommendation in favor of the Petition's narrowly focused objective, with more expansive development of amendments to Section 3203, specifying requirements for employee participation in IIPP development and implementation.

BOARD STAFF EVALUATION

As stated in its evaluation of the Petition, dated May 10, 2017, Board staff concurs with Petitioner that amending Section 3203, to more expressly specify an employee's right to receive a copy of his or her employer's IIPP, would contribute to occupational health and safety. However, Board staff is of the professional opinion that the minimal amendments to Section 3203, specified within the Petition, would not be adequate to achieve that purpose. Board staff believes careful consideration needs to be given, by means of a stakeholder advisory committee process, to what further provisions may be necessary elements of any minimally adequate amendments to Section 3203. Among possible inclusions identified by Board staff as deserving further consideration were: a specified timeframe within which requested access would be required; the scope of IIPP access within larger, operationally diverse organizations; access by designated representative request; and written access request procedure specification.

DECISION AND ORDER

As presently required, pursuant to Title 8, Section 3203, an employer establishes, and maintains an IIPP, with the purpose of providing employees safety and healthy working conditions. Full

knowledge, by subject employees, of the means set out in the IIPP to achieve workplace safety and health, is consistent with that purpose. Therefore the Board is interested in considering a rulemaking proposal, to amend Section 3203, in order that it more specifically require employer allowance of timely employee access to an employer's written IIPP, upon request.

Further, the Board finds validity in the concerns of Board staff, expressed within its above referenced written evaluation, that the minimal amendment of Section 3203 proposed by the Petition, would not be adequate to achieve its stated purpose.

The Board finds valid, in principle, a position put forth by the Division, within its above referenced advisory memorandum, that "active involvement of employees in developing and implementing the employer's IIPP will further reduce hazards by encouraging greater participation by all employees in identifying and addressing hazards." However, expanding the scope of rulemaking undertaken in response to Petition 562, to include amendments more expressly requiring employee involvement in IIPP development and implementation, would be to stray beyond the stated objective of the Petition, which in and of itself will foster such employee involvement. Therefore, with respect to the rulemaking proposal development resulting from this Decision and Order, the Board finds it to be within the reasonable discretion of Board staff, to limit the subject scope of proposal development to the issue of IIPP access by employees.

Having carefully read and considered Petition 562, as well as the above cited Petition evaluations of the Division and Board staff, Petition 562 is conditionally GRANTED to the limited extent that Board staff is directed to initiate rulemaking development, and convene an advisory committee, with the objective of bringing before the Board a proposal to amend Title 8, Section 3203, specifying reasonably required means of employee access, upon request, to his or her employers' written IIPP. In developing the rulemaking proposal, issues to be considered should include the following:

- The extent to which an access request procedure should be specified;
- The extent to which the access request of an employee representative must be honored;
- The required or permissible form or forms in which a copy of the IIPP is to be provided;
- The reasonable timeframe within which a requested IIPP copy is to be provided;
- Any extent to which a larger employer, with multiple distinctly separate and different operations, may limit the scope of the provided IIPP.