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REVISED PROPOSED PETITION DECISION OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD (PETITION FILE NO. 526)—VERSION 1

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on January 24, 2012, from Kurt Peterson and Pamela Vossenas representing Unite Here (Petitioner). The Petitioner requests the Board to amend Title 8, California Code of Regulations, to address the occupational hazards that may cause musculoskeletal injuries to housekeepers in the hotel and hospitality industry.

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 render a decision no later than six months following receipt. Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit a report on the proposal.

SUMMARY

The Petitioner states that, during the past decade, hotel operators have increasingly competed on the basis of the level of luxury of their room offerings. Room upgrades include luxury bedding consisting of oversized, heavier mattresses and bedding packages that have large, quilted comforters that can be bulky and include up to six pillows and other amenities such as heavier bath linens. The new linen requires housekeepers to load their carts heavily or to make more trips to linen rooms to replenish cart supplies. Also, some hotels are providing larger linen carts that are heavy and cumbersome to wheel over carpeted areas.

The Petitioner recommended a number of provisions in its proposal, and some of the primary concerns raised in the petition are as follows:

> The Petitioner states that, in some cases, employers have implemented cleaning protocols that have increased the number of rooms and beds that must be cleaned on a daily basis. The proposal would place limitations on the total square footage space that may be assigned to housekeepers to clean during an 8-hour shift based on factors that would include the type of amenities in rooms and the number of rooms scheduled for check-out.
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> According to the Petitioner, making beds, lifting mattresses and the tucking of loose sheets/linen presents lifting hazards and indicates the need for fitted sheets and for the

availability of special tools to assist with the lifting of mattresses. The use of a properly sized fitted bottom sheet eliminates the number of mattress lifts per bedding change, further reduces awkward postures associated with mattress lifting, and avoids unnecessary manipulation of bed linens.

In order to reduce awkward postures, forceful lifting and exertions, and extended reaches in hotel cleaning activities, safe housekeeping equipment should be either required or available. Such equipment includes adjustable long-handled cleaning tools such as mops, scrubbers and dusters; fitted sheets; laundry hampers on wheels; motorized carts with adjustable height shelves; ergonomically designed vacuum cleaners, and other equipment. The proposal also includes hazard assessments, safe cleaning and work practices, and monitoring and training requirements.

The Petitioner urges adoption of the proposed standards in order to prevent debilitating injuries suffered by housekeepers and in order to contain the financial costs that result from these injuries.

DIVISION'S EVALUATION

The Division's evaluation dated March 27, 2012, states that in 2011, the Division investigated musculoskeletal injuries to hotel housekeepers. The Division arranged for ergonomic evaluations. The ergonomists found injury risk factors associated with the housekeeping tasks, some of which were considered to be potential contributors to repetitive motion or acute injuries. Based on the Division's investigations in these and other cases, the Division believes that hotel housekeepers may be at increased risk of occupational musculoskeletal injuries and that appropriate control measures can reduce that risk.

The Division noted that Section 3203 establishes a general framework for the identification, evaluation, and correction of hazards, but it does not establish specific requirements to address the risks identified by the Petitioner. Nor does Section 3203 require the specific control measures advocated by the Petitioner.

The Division also stated that Section 5110, Repetitive Motion Injuries (RMIs), requires a program that includes worksite evaluation, control of exposures and employee training. However, employers are not subjected to these requirements unless or until more than one repetitive motion injury, meeting certain conditions, occurs at their workplace within a twelve month period. This section only addresses repetitive motion injuries and does not specify the control measures an employer must implement in this industry.

The Division believes that the petition does not provide sufficient information to establish the necessity of each proposed control measure, nor does it specifically analyze alternative measures that may be as effective. Therefore, the Division recommends that the Board grant the petition to the extent that it requests the Division to convene an advisory committee to address the musculoskeletal injury hazards to hotel housekeepers, to discuss whether a new standard should be developed to address those risks, and to discuss what should be included in such a standard.

STAFF'S EVALUATION

The petition documents include a list of injuries incurred by housekeeping employees at one hotel property during a three-year period, from 2006 to part of 2010. There are strain and sprain type injuries to various body areas of hotel staff that occur during the performance of housekeeping duties. The injury descriptions emphasize the need for hotel employers to take actions specific to their operations to mitigate the frequency and severity of potential injuries. It is evident in health and safety literature and by observation that hotel housekeeping duties include arduous cleaning work and bedding/linen changes that are subject to time constraints triggered by such factors as guest check-in times.

The Petitioner's proposed standard includes primary categories, such as the development of a safe housekeeping plan, administrative controls, monitoring and evaluation, communication and training, record keeping and employee rights. Board staff believes that a stakeholder's advisory committee should be convened to determine to what extent there may be duplication and overlap with existing Title 8 standards and the Petitioner's proposal. For example, when the ergonomics standard, Section 5110, is triggered by RMIs, it also requires worksite evaluation, control of exposures including engineering and administrative considerations, training and methods to minimize RMIs. However, as a performance standard, Section 5110 does not prescribe the specific control measures denoted in the petition that an employer must implement for specific industries, such as the hotel and lodging industry.

The petition does not provide cost estimates for the proposed types of "safe housekeeping equipment," such as ergonomically designed vacuum cleaners, fitted sheets as the bottom sheet on all California hotel mattress beds and the mandated use of motorized or self-propelled linen carts. It is unclear from the proposed language whether manually-pushed linen carts would continue to be permitted.

The Petitioner's proposal includes a provision that housekeepers not be required to clean more than 5,000 square feet of total room space during an 8-hour shift. This limit is subject to modifications in light of factors such as the number of check-out rooms or rooms with additional beds. However, these types of quotas or restrictions limiting the amount of work an employee can be assigned are typically not addressed in Title 8 standards, but rather are determined as a condition of employment and/or are addressed in collective bargaining agreements.

The petition indicates that hotel housekeeping employees are subject to occupational musculoskeletal injuries, and the Petitioner's proposal would require a number of control measures that include specific safe housekeeping tools and equipment, as well as administrative and procedural requirements to reduce risks. However, the petition does not sufficiently discuss the extent to which these controls may already be available or provided as an option, nor does the petition provide enough information to establish the necessity of the items outlined in the proposal's definition of "safe housekeeping equipment."

Several of the documents referenced in the petition conclude that hotel housekeepers have an increased risk of developing occupational musculoskeletal injuries. Board staff agrees that a significant number of musculoskeletal injuries occur in this industry and that appropriate control

measures can reduce those risks. However, clarification from industry stakeholders is necessary in order to evaluate sufficiently the necessity for undertaking a rulemaking action that includes both performance based standards and prescriptive control measures specific to hotel housekeeping operations.

For the reasons stated above, Board staff recommends that the petition be granted to the extent that an advisory committee be convened by the Division to determine if a rulemaking action should be initiated and what control measures may be necessary to address musculoskeletal injury hazards to hotel housekeeping employees. The Petitioner should be invited to participate in the committee deliberations.

PROCEEDINGS CONDUCTED ON MAY 17, 2012

At its May 17, 2012 business meeting, the Board considered the following Board staff recommendation:

> The Board has considered the petition and the recommendations of the Division and Board staff. For reasons stated in the preceding discussion, the petition is hereby GRANTED to the extent that the Division is requested to convene a representative advisory committee to determine whether a rulemaking action should be initiated and what control measures may be necessary to address musculoskeletal injury hazards to hotel housekeeping employees. The Petitioners should be invited to participate in the committee deliberations.

By a vote of four to two (one Board member being absent), the Board rejected that recommendation and took no further action to either grant or deny the petition. The concerns of the Board members who voted against the recommendation included, but were not necessarily limited to, to the following:

- The petition did not establish the necessity of the proposed rulemaking, and the Board staff recommendation did not ensure adequately that the advisory committee would consider the issue of necessity.

- The hazards of concern to the Petitioner are already addressed by such standards as California Code of Regulations, Title 8, Sections 3203 and 5110.

- A bad precedent would be set by carving out special repetitive motion standards for specific industries, and if standards are needed in such areas as bed making and bathroom cleaning, there is no rationale for limiting such standards to hotel housekeeping, and excluding such persons as janitors from the scope of the proposal.

- The Petitioner's proposal is too expansive in terms of the remedies it provides.

- The Division might not conduct the advisory committee as a neutral fact finder.

FURTHER DISCUSSION IN LIGHT OF THE BOARD'S MAY 17, 2012 PROCEEDING

The Division and the Board are separate entities. Neither has control over the other's personnel and resources. Neither can compel the other to take action regarding advisory committees and rulemaking. For this reason, when the Board wishes the Division to convene an advisory committee, the Board makes a request, which the Division is free to respond to as it deems appropriate.

Ergonomics-related matters are regarded as health, as opposed to safety, issues, and there is no federal occupational safety and health ergonomics standard. The Division has primary authority over health matters of this sort, in that Labor Code Section 147.1(c) states that the Division shall:

> On occupational health issues not covered by federal standards maintain surveillance, determine the necessity for standards, develop and present proposed standards to the board.

Based on such authority, the Division could well convene an advisory committee and develop a rulemaking proposal on the basis of this petition even if the Board never asks the Division to do so and even if the Board expressly denies the petition.

Since May 17, 2012, however, there has been a major change in the composition of the Board, and Board staff recognizes that the newly-constituted Board might favor the Board staff's original recommendation in this matter and should have the opportunity to resolve this matter in that manner.

CONCLUSION AND ORDER

The Board has considered the petition and the recommendations of the Division and Board staff. For reasons stated in the preceding discussion, the petition is hereby GRANTED to the extent that the Division is requested to convene a representative advisory committee to determine whether a rulemaking action should be initiated and what control measures may be necessary to address musculoskeletal injury hazards to hotel housekeeping employees. The Petitioners should be invited to participate in the committee deliberations.