

**DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
POLICY AND PROCEDURES MANUAL**

**ENFORCEMENT OF 8 CCR
SECTION 3203: INJURY AND
ILLNESS PREVENTION
PROGRAM**

P&P C-45A

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AUTHORITY: California Labor Code §6401.7 and Title 8, California Code of Regulations, §3203.

POLICY: It is the policy of the Division of Occupational Safety and Health to enforce 8 CCR §3203, pertaining to the Injury and Illness Prevention (IIP) Program, in accordance with applicable provisions of the Labor Code and Title 8.

PROCEDURES:

- A. The field evaluation of the effectiveness of an employer's IIP Program shall include, at a minimum, information contained from interviews with a sample of employees and the members of any labor/management safety and health committee. It may also include information obtained from record review, workplace inspection, and employer interviews.
- B. The Division shall evaluate the effectiveness of an employer's IIP Program in the course of every inspection and shall document the results of the evaluation. Evaluation of the employer's IIP Program shall be limited to a review of new circumstances and the continuing effectiveness of the IIP Program when:
 1. An inspection of the employer's workplace is conducted within 180 days of an earlier inspection when the employer was determined to be in compliance.
 2. The employer or worksite is participating in either a Voluntary Protection Program, Golden State, or Golden Eagle exemption program. See P&Ps C-1, C-1A, and C-16.
 3. An inspection includes work for which a permit is required for certain types of hazardous employment pursuant to Labor Code §6500 and for which a permit has been issued pursuant to Labor Code §6502, or a registration is required and has been granted pursuant to Labor Code

§6501.5. Permitted activities specifically involved can be found in P&Ps C-41, C-41A, C-41B and C-41C.

- C. An employer will not be considered by the Division to have an operative IIP Program, and to be in substantial compliance with 8 CCR §3203, if any one of the elements of the standard set forth in subsection (a)(1) through (7) are not established, implemented, and maintained, as well as set forth in writing, in the employer's IIP Program. Employers who are cited for a serious violation and do not have an operative IIP Program shall not receive a penalty adjustment for Good Faith or History, but will receive a penalty adjustment for Size only. In addition, employers who are cited for a serious violation and do not have an operative IIP Program shall receive an abatement credit, unless the serious violation results from a serious injury or illness.
- D. For general violations of 8 CCR §3203(a), the employer will be cited for a single violation of this subsection.

For instance, if the employer has no IIP Program, a single general violation alleging failure to establish, implement, and maintain an effective IIP Program will be issued. In contrast, if the IIP Program is not in writing, or it does not meet each of the required elements set forth in subsections (a)(1) through (7), a single general violation will identify which elements are not in compliance with the subsection by reference in separate paragraphs to the particular element of the standard and a description of the violative condition.

However, if the Division determines that the violative condition should be classified as serious, repeat, or willful, a separate citation will be issued for each element identified under subsection (a).

For regulatory violations of the recordkeeping requirements in subsection (b), an employer will be cited for a single regulatory violation in a manner similar to general violations of subsection (a). However, if the Division determines that the violative condition should be classified as repeat or willful, a separate citation will be issued for each element identified under subsection (b).

- E. In determining whether to cite a violation of 8 CCR §3203 as general or serious, compliance personnel shall use the guidelines found in P&P C-1B.
- F. Every employer's IIP Program must be in writing and a copy must be maintained at each of the employer's worksites. However, when employees are dispatched to work outside a fixed workplace, e.g., in agriculture, construction, installation, repair, delivery or service operations, a copy of the employer's written IIP Program may be maintained at the employee's established, central workplace. In those instances, a copy of the employer's written IIP Program will be requested by compliance personnel. If the IIP

Program is not received by the Division within three (3) working days, and from a discussion with employees, it is determined that the employer does not have an IIP Program, then the employer will be cited for failure to have an IIP Program.

- G. Every employer's IIP Program shall cover all of the employer's own employees, and all other employees who the employer controls or directs, and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards.

SPECIAL ENFORCEMENT PROCEDURES -- SB 198 REFORM OF 1993

- A. Special Enforcement Provisions for Specified Small Employers (Small Employer Relief)

For employers with fewer than 20 employees during the calendar year in which the inspection is conducted who are in industries that are not on a designated List of High-Hazard Industries (see Attachment A for the List of High-Hazard Industries) and who have a Workers' Compensation Experience Modification Rate of 1.1 or less, and for any employers with fewer than 20 employees during the calendar year in which the inspection is conducted who are in industries on a designated List of Low-Hazard Industries (see Attachment B for the List of Non-High-Hazard Industries, which includes a List of Low-Hazard Industries), written documentation of the IIP Program is limited to the following requirements:

1. Written documentation of the identity of the person or persons with authority and responsibility for implementing the program [8 CCR 3203(a)(1)].
2. Written documentation of scheduled periodic inspections to identify unsafe conditions and work practices [8 CCR 3203(a)(4)].
3. Written documentation of training and instruction [8 CCR 3203(a)(7)].

In order to be within the scope of the limited documentation requirements, employers with fewer than 20 employees during the calendar year in which the inspection is conducted who are in industries that are not on a designated List of High-Hazard Industries and who are in industries other than designated Low-Hazard Industries must provide documentation to the Division that the Workers' Compensation Experience Modification Rate is 1.1 or less.

Any employer who is not experience-rated by their workers' compensation insurance carrier, or who cannot provide the Division documentation that

their experience modification rate is 1.1 or less, will not be able to qualify for small employer relief because the Division does not consider the absence of an experience modification rate to be equivalent to an experience modification rate of zero (and therefore less than 1.1).

Failure to provide such documentation will result in such employers being required to comply with all written documentation requirements set forth in 8 CCR 3203. Moreover, even though documentation requirements for the foregoing specified employers are limited, the IIP Program must address orally all of the elements set forth in §3203(a), which compliance personnel shall evaluate through employee interviews.

B. Special Enforcement Provisions for Employers In Non-High- Hazard Industries

The Division has prepared a Model Injury and Illness Prevention Program for Non-High-Hazard Employers and has made copies of this Model Program available to employers upon request (see Attachment C for Model IIP Program). Any employer in a non-high-hazard industry who adopts, posts, and implements the Model IIP Program in Good Faith is not subject to a civil penalty for a first violation of 8 CCR 3203. See P&P C-10. However, any such employer who is not in compliance with §3203(a) shall be cited for a violation in accordance with the provisions of this policy.

C. Special Enforcement Provisions for Employers in Industries Which Have Historically Utilized Seasonal or Intermittent Employment

The Division has prepared a Model Injury and Illness Prevention Program for Employers in Industries with Intermittent Employment (see Attachment D for Model IIP Program and Attachment E for List of Employers in Industries Which Have Historically Utilized Seasonal or Intermittent Employment).

Any employer in such an industry shall be deemed in compliance with respect to requirements for a written IIP Program if the employer adopts the Model IIP Program prepared by the Division and complies with the requirements set forth therein. However, even though written program requirements for the foregoing employers are limited, the IIP Program must address orally all of the elements set forth in §3203(a), which compliance personnel shall evaluate through employee interviews.

D. Special Enforcement Provisions for Local Governmental Entities

Local governmental entities (any county, city, city and county, or district, and any public or quasi-public corporation or public agency therein) are required to maintain a written IIP Program. Such local governmental employers are not required to keep records pursuant to 8 CCR 3203(b) concerning the steps taken to implement and maintain the Program. Even though documentation requirements for the foregoing specified employers are limited, the IIP Program must address orally all of the elements set forth in §3203(a), which compliance personnel shall evaluate through employee interviews.

EFFECTIVENESS EVALUATION

The Division's evaluation of the effectiveness of an employer's IIP Program includes, but is not limited to, a determination of the effectiveness of the following elements:

- A. Responsibility -- Whether the employer's written IIP Program provides the name and/or job title of the person or persons with the authority and the responsibility for implementing the program. If job title alone is used to identify the responsible person(s), a method must be available, e.g., a list of persons by job titles, by which employees can identify the name of the individual whose title is designated as the person(s) responsible for the IIP Program.

Sample effectiveness measure: Are employees actually aware of who the person is with the authority and responsibility for their IIP Program and can they access the person if necessary?

- B. Compliance -- Whether a system for ensuring that employees comply with safe and healthful work practices is set forth in the employer's written IIP Program.

Sample effectiveness measure: Have employees been recognized for performing safe and healthful work practices, disciplined for performing unsafe or unhealthful work practices, or offered training or retraining programs to ensure compliance with safe and healthful work practices?

- C. Communication -- Whether a system for communicating with employees in a form readily understandable by all affected employees about safety and health matters, e.g., meetings, training programs, posting, written communications, an anonymous notification system, is set forth in the employer's written IIP Program, and whether employees are encouraged to inform their employer about hazards at the worksite without fear of reprisal.

Sample effectiveness measure: Are employees actually aware of methods to communicate with their employer about health and safety matters, and have they utilized the available communication methods?

- D. Hazard Assessment -- Whether procedures for identifying and evaluating workplace hazards, such as scheduled periodic inspections performed by a competent observer, are set forth in the employer's written IIP Program, and are performed at the following times: (a) when the IIP Program is first established; (b) when new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and/or health hazard; and (c) whenever the employer is made aware of a new or previously unrecognized hazard.

Sample effectiveness measure: Does implementation of the procedures chosen by the employer result in a comprehensive evaluation of the hazards present at the workplace?

- E. Accident/Exposure Investigation -- whether a procedure to investigate the occurrence of occupational injuries or illnesses is set forth in the employer's written IIP Program.

Sample effectiveness measure: Does implementation of the investigational procedures chosen by the employer result in a determination of the cause(s) of the occupational injury or illness?

- F. Hazard Correction -- Whether methods and/or procedures for correcting unsafe or unhealthful work conditions, work practices and procedures, in a timely manner based on the severity of the hazard, are set forth in the employer's written IIP Program. Specific abatement methods must be included in the employer's IIP Program and must address: (a) when unsafe or unhealthful conditions, work practices or procedures are observed or discovered; and (b) when an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, all exposed personnel must be removed from the area except those necessary to correct the existing condition. Employees necessary to correct the condition must be provided the necessary safeguards.

Sample effectiveness measure: Does implementation of the methods and/or procedures chosen by the employer to correct a workplace hazard achieve abatement of the hazard?

G. Training and Instruction -- Whether an effective training program designed to instruct employees in general safe work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment is set forth in the employer's written IIP Program and whether the required training is provided: (a) when the Program is first established; (b) to all new employees; (c) to all employees given new job assignments for which training has not previously been received; (d) whenever new substances, processes, procedures or equipment are introduced into the workplace and represent a new hazard; (e) whenever the employer is made aware of a new or previously unrecognized workplace hazard; and (f) for supervisors to familiarize them with the safety and health hazards to which employees under their immediate direction and control may be exposed and how to communicate information about those hazards effectively.

Sample effectiveness measure: Does training result in an increase in a worker's understanding of workplace hazards, and an improvement in a worker's performance of safe and healthy work practices?

H. Recordkeeping -- Whether there is adequate written documentation of the steps taken to implement and maintain the employer's Program including:

- a. Records of scheduled and periodic workplace inspections, including person(s) conducting the inspections, any unsafe condition and/or work practice which has been identified, the action and timetable for correction of the identified hazards, and whether, for employers with ten or more employees, the records have been maintained for at least three years;

EXCEPTION: Employers with fewer than ten employees may elect to maintain the inspection records only until the hazard is corrected.

- b. Records of safety and health training, including employee name or other identifier, training dates, the type(s) of training, training providers, and whether, for employers with ten or more employees, the records have been maintained for at least three years.

EXCEPTIONS: Exceptions to the three year maintenance rule include:

1. For employers with fewer than ten employees, a log of instructions can be maintained which provided instruction to the employee

with respect to the hazards unique to the employee's job assignment when first hired or assigned new duties;

2. Also, training records for employees who have worked for less than one year for the employer need not be retained beyond the term of employment if they are provided to the employee upon termination of employment.
- I. Labor/Management Safety and Health Committee -- Whether, if the employer utilizes a labor/management safety and health committee to comply with the communication requirements of the IIP Program standard, the committee meets the requirements found in 8 CCR §3203(c)(1)(7).

Attachments:

A -- List of High-Hazard Industries

B -- List of Non-High Hazard Industries, including List of Low- Hazard Industries

C -- Model IIP Program for Non-Hazard Employment

D -- Model IIP Program for Employers in Industries with Intermittent Employment

E -- List of Industries Which Have Historically Utilized Seasonal or Intermittent Employment - [EXAMPLES NOT AVAILABLE]