

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
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TITLE 8. CALIFORNIA CODE OF REGULATION

General Industry Safety Orders Section 3203 (Published on February 1, 2019)

Employee Access to Injury and Illness Prevention Program

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **March 21, 2019** in the **Council Chambers**, of the **Pasadena City Hall, 100 North Garfield Avenue, Pasadena, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

In addition to written or oral comments submitted at the public hearing, written comments may also be submitted to the Board's office. The written comment period commences on **February 1, 2019** and closes at 5:00 p.m. on **March 21, 2019**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments can be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational safety and health standards that are at least as effective as federal occupational safety and health standards.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT **OVERVIEW**

On June 15, 2017, the Board adopted the Proposed Petition Decision regarding Petition File No. 562. The petition decision directed Board staff to convene an advisory committee for the purpose of developing a rulemaking proposal to ensure timely employee access to the employer's injury and illness prevention program (IIPP).

Section 3203 *Injury and Illness Prevention Program* does not explicitly state that employees are entitled to receive, review, or copy their employer's IIPP. The current proposal is intended to ensure employee access to the IIPP by specifying who can request such access, what information is to be provided, and a timeframe for requests to be fulfilled. The amendments are necessary to clarify that employees have a right of access to the employer's IIPP, and what that access entails.

The Board evaluated the proposed regulations pursuant to Government Code section 11346.5(a)(3)(D) and has determined that the regulations are not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemakings be channeled through a single entity (the Standards Board).

The proposed rulemaking differs from federal regulations in that there is no comparable federal regulation.

Anticipated Benefits

The anticipated benefit of the proposal is to clarify to employers that employees have the right to access the IIPP as an integral part of an effective IIPP. Ensuring that employees have sufficient access to the employer's IIPP is beneficial because it will: (1) help employees understand how to communicate hazards to their employer, and (2) aid in the understanding of the IIPP and the role of the employee in creating a safe workplace.

The specific changes are as follows:

Section 3203. Injury and Illness Prevention Program.

Section 3203 requires employers to establish, implement, and maintain an effective IIPP. The section requires employers to identify and correct workplace hazards, develop a means to communicate hazards to employees, ensure employee compliance with provisions of the IIPP, investigate injuries and illnesses, and provide training and instruction to affected employees. The employer must also identify a person (or persons) with the authority and responsibility to implement the IIPP.

The proposed amendments provide means for employees to receive access to their employer's IIPP, if they so choose. The amendments also provide employees the option of obtaining such

access through the use of a third party representative. Furthermore, details for providing access are included, such as a time frame for providing the IIPP, employer protections for repeat requests, and provisions for some employers to provide the required access online.

Subsection 3203(a)(8) is proposed to be added to clarify to employers that employees have the right to access the IIPP as an integral part of an effective IIPP. Ensuring that employees have sufficient access to the employer's IIPP will: (1) help employees understand how to communicate hazards to their employer, and (2) aid in the understanding of the IIPP and the role of the employee in creating a safe workplace.

Subsection 3203(a)(8)(A) provides definitions for use in complying with the proposed amendments. The definitions for "access" and "designated representative" are based substantially on corresponding definitions found in Section 3204 *Access to Employee Exposure and Medical Records*. A third definition, "written authorization," is also based on information from Section 3204 [see subsection 3204(c)(12)]. The definitions will aid employers in understanding key terms, which are important for compliance with the proposed amendments.

Subsection 3203(a)(8)(B) requires the employer to provide access to the IIPP using one of two options. The first option, subsection 3203(a)(8)(B)1(a) and (b) requires the employer to provide a printed copy of the IIPP, free of charge, within five business days of receipt of the request. Where an employee (or designated representative) agrees to receive an electronic copy of the IIPP in lieu of a printed copy, the employer has the option of providing the IIPP electronically. The proposed language will ensure that employees and their designated representatives have timely access to the IIPP, at no cost to themselves.

Subsection 3203(a)(8)(B)1.b reduces the likelihood of repeated requests for an IIPP, which has not been updated, by allowing the employer to charge for additional copies requested within one year of a previous request. Employers are prohibited from charging for an IIPP which has been updated with new information since the last copy was provided, even if the request comes within one year of a previous request.

The second option for providing access to the IIPP only applies to employers whose employees predictably and routinely use electronic means to communicate with coworkers or management and as part of their work duties. Proposed subsection 3203(a)(8)(B)2 allows employers to comply with the proposed access requirements by providing unobstructed access to the IIPP through a company server or website.

Because of the growing trend of businesses toward paperless communication, employers are increasingly likely to provide access to the IIPP using barrier-free electronic means. The requirement is designed to allow employees that do not work at a single workstation with printing capabilities to utilize the online access option as long as the employee predictably and routinely has access to the electronic means necessary to review, email, and print the IIPP.

The second option was developed for businesses whose employees typically use electronic means for communication with management or coworkers and as part of their work duties. The subsection will provide reasonable and less burdensome means for ensuring employee access to

the IIPP. Employers are required to provide the same information to employees, whether the IIPP is provided via the first or second option.

The proposed language of subsection 3203(a)(8)(C) places limitations on the information an employer is required to provide as part of the IIPP. The language will inform employers that only the program elements required by subsection 3203(a) are required to be provided for compliance with this subsection, and not the records of any steps taken to implement or maintain the IIPP.

Proposed subsection 3203(a)(8)(D) allows employers with multiple programs to provide only the IIPP (or IIPPs) applicable to the employee requesting access. Allowing employers to provide only the information applicable to the requesting employee will ensure that the employee is provided with the appropriate and relevant access to the IIPP.

Subsection 3203(a)(8)(E) requires employers to inform employees of their right to access the IIPP. The subsection also requires the employer to establish a procedure for providing such access. Requiring employers to inform employees of their right to access the IIPP and the procedure to obtain such access will ensure employees can access the information contained in the IIPP.

Subsection 3203(a)(8)(F) informs and clarifies that the proposed amendments are not intended to infringe upon the rights of collective bargaining agents to collectively bargain for more access to safety and health information than is provided by the current proposal. The subsection will ensure that existing and future collective bargaining rights are not affected by the proposal.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on Local Agencies and School Districts: None.

Costs or Savings to State Agencies: None.

Cost to any Local Government or School District which must be Reimbursed in Accordance with Government Code Sections 17500 through 17630: None.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

Cost or Savings in Federal Funding to the State: None.

Cost Impacts on a Representative Private Person Or Business:

The Board is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. A representative business would necessarily need to inform its employees of their right to access the IIPP, and the procedure to obtain such access. When requested, the business may need to provide the employee, or his/her designated representative, with a printed copy of the IIPP.

The Board estimates that informing employees of the right and procedure to access the IIPP could have a one-time cost impact of up to \$10 per business, and that each printed copy supplied will cost about \$0.25. A limited number of printed copies are anticipated to be requested, however, because many employers already provide access to the IIPP by making it available in employee common areas and/or online.

Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals, Including the Ability of California Businesses to Compete:

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses or individuals, including the ability of California businesses to compete with businesses in other states. All businesses will need to inform their employees of the right to access the IIPP and the procedure to obtain such access. When requested, the business may need to provide the employee, or his/her designated representative, with a printed copy of the IIPP.

The Board estimates that informing employees of the right and procedure to access the IIPP could have a one-time cost impact of up to \$10 per business, and that each printed copy supplied will cost about \$0.25. A limited number of printed copies are anticipated to be requested, however, because many employers already provide access to the IIPP by making it available in employee common areas and/or online.

Significant Effect on Housing Costs: None.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendment may affect small businesses; however, no significant economic impact is anticipated. All businesses will need to inform their employees of the right to access the IIPP and the procedure to obtain such access. When requested, the business may need to provide the employee, or his/her designated representative, with a printed copy of the IIPP.

The Board estimates that informing employees of the right and procedure to access the IIPP could have a one-time cost impact of up to \$10 per business, and that each printed copy supplied will cost about \$0.25. A limited number of printed copies are anticipated to be requested, however, because many employers already provide access to the IIPP by making it available in employee common areas and/or online.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The proposed regulation will not affect the: (1) creation or elimination of California jobs, (2) creation of new businesses or elimination of existing California businesses, or (3) expansion of existing California businesses. The proposed amendments clarify that employers must make the IIPP available to employees and their designated representatives, but do not place significant additional requirements on them.

Many employers already provide employee access to the IIPP through the readily available printed and/or electronic copies. For employers that do not currently provide such access, they will need to ensure that employees can access a copy of the IIPP directly or through a designated representative, upon request.

BENEFITS OF THE PROPOSED ACTION

The proposal promotes worker safety by ensuring that employees have sufficient access to the employer's IIPP, which helps employees understand how to communicate hazards to their employer and aids in the understanding of the IIPP and the role of the employee in creating a safe workplace. Employees who may have difficulty understanding the IIPP and its implementation, or who may be hesitant to ask a supervisor for clarification of a matter related to the IIPP, now have an explicit right to obtain a copy of the IIPP for review. No significant environmental impact is anticipated from the proposed action.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled public hearing or during the written comment period.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Christina Shupe (Executive Officer) and the back-up contact person is Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

AVAILABILITY OF STATEMENT OF REASONS, TEXTS OF THE PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice of Proposed Action is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its web site. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed Action and the Initial Statement of Reasons can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.