September 21, 2015

TO: Steve Smith, Director of the California Department of Industrial Relations
Amalia Neidhardt, Senior Safety Engineer, Division of Occupational Safety & Health

RE: Comments of the California Hotel & Lodging Association: Housekeeping in the Hotel and Hospitality Industry Advisory Committee Discussion Draft of August 13, 2015

Executive Summary

The California Hotel & Lodging Association (CH&LA), on behalf of itself and its member companies, submits these comments in response to the Housekeeping in the Hotel and Hospitality Industry Advisory Committee's August 13, 2015 Discussion Draft.

Originally founded in 1893, CH&LA represents thousands of lodging establishments across the state, ranging from large hotels with well over 1,000 rooms to smaller inns. CH&LA provides educational opportunities including conferences, seminar, webinars, and industry alerts, and has an educational foundation (CH&LA Education Foundation) that funds training, research and scholarships for high school and university students as well as industry professionals. CH&LA also supports strategic alliances to promote and protect California tourism and travel. CH&LA has always been and remains committed to a safe, comfortable and efficient workplace.

Additionally, CH&LA manages a specific boutique and bed & breakfast association. The California Association of Boutique & Breakfast Inns (CABBI) promotes the interests and protects the rights of the independent properties in this market segment with advocacy, communication and education.

If promulgated, the Advisory Committee's Discussion Draft standard would upend Cal/OSHA's longstanding regulatory framework by undermining the very essence of a job hazard analysis—workplace-wide, objective scientific inquiry—in favor of an anecdotal survey of subjective signs and symptoms governed by a predetermined conclusion. The Discussion Draft would impose specific and sweeping new obligations on hotel and hospitality employers without any scientific evidence to demonstrate the existence of the alleged hazards or the effectiveness of mandated interventions. This unwarranted change, therefore, does not further the objectives of Cal/OSHA which are adequately covered by existing regulations. Furthermore, the multi-million dollar cost of compliance with this Discussion Draft would have enormous impact on the hotel and lodging industry and the State of California.

As an initial matter, credible advice or expertise on the existing law and regulatory framework are threshold issues that are the exclusive province of the Standards Board, which is the agency that is charged with promulgating and interpreting Cal/OSHA regulations and establishing a coherent consistent regulatory scheme. The issue of regulatory overlap and reconciliation is, therefore, in the exclusive jurisdiction of the Board and should have been resolved as a predicate to the convening of any advisory committee. Indeed, the advisory committee process in this instance has not served its purpose well by holding repetitive

meetings where scores of housekeepers and their union made identical and repetitive subjective points—a process that can only be described as theater rather than substance. The only party that has provided substantial and original science in this advisory process has been the industry. CH&LA has conducted conferences on housekeeper issues, published materials, provided and distributed a model IIPP to every hotel in California, and commissioned primary research - all in furtherance of the mitigation of housekeeper musculoskeletal issues.

The contents of the Discussion Draft suffer from clear and irreconcilable conflicts with Cal/OSHA's existing regulations at 8 C.C.R. §§ 5110 and 3203, among others. These existing regulations occupy the field of the Discussion Draft standard by requiring employers to reduce "repetitive motion injuries" under specific circumstances (§ 5110) and to "find and fix" workplace hazards (§ 3203), among other things. The standard set out in the Discussion Draft would create irreconcilable differences with these requirements, such as by circumventing Section 5110's evidentiary threshold and by grafting the requirement of a housekeeper-specific "hazard analysis" on top of Section 3203. Employers and enforcement personnel would be left to guess about uneasy overlaps and different terminology. Lacking any justification for housekeepers' special treatment, the standard would invite other job classifications in all other industries to seek similar treatment (thus further undermining the existing regulatory framework).

California, uniquely, has a repetitive motion injury safety standard, published at 8 C.C.R. § 5110. All California employers, including those in the lodging industry, must take affirmative steps to address ergonomic injury in every case where a licensed physician objectively identifies and diagnoses more than one repetitive motion injury (a very low threshold) within a 12-month period. The standard proposed by the Discussion Draft, by contrast, replaces the assessment of a medical professional with the subjective opinions of individual housekeepers and their union representatives. Although input from the employees performing the work is an important part of gathering information, it is counterproductive to replace the assessment of a medical professional with that of a layperson. Such a practice amounts to denial of science.

Additionally, California's injury and illness prevention program standard (8 C.C.R. § 3203) ("the IIPP Standard") requires employers to train employees on workplace hazards and to investigate workplace injuries, among other measures, which provides employees with a further layer of protection. The Discussion Draft, however, presumes as a fact that a hazard—a causal relationship between hotel housekeeping tasks and musculoskeletal injury—exists. The definitive study, "Evaluation of Musculoskeletal Disorder Risk in Hotel Housekeeping Jobs," by Steven F. Wiker, Ph.D, CPE (the Wiker study), disproves this fundamental assumption underlying the Discussion Draft. Furthermore, the Discussion Draft ignores the present regulatory regime's preference (shared by CH&LA) for objective and consistent assessment and planning and seeks to impose a preference for subjectivity, individualization and mandates.

Background

In January 2012, the California Occupational Safety and Health Standards Board (Board) received Petition 526, filed by Unite Here Local 11 (Los Angeles). The petition requested that the Board amend Title 8, California Code of Regulations, to address what Unite Here perceived as a causal relationship between hotel housekeeping tasks and musculoskeletal injuries to housekeepers. The Board forwarded it to the Division of Occupational Safety and Health (Division), which (along with Board staff) evaluated the petition. The Division submitted a written report to the Board on March 27, 2012, and conceded that the Union's petition "d[id] not provide sufficient information to establish the necessity of each proposed control measure [or] analyze alternative measures that may be as effective." Notwithstanding that conclusion, the Division nevertheless recommended that the Board should convene an advisory committee to further consider the petition. The Board's staff reached similar conclusions in a report dated April 23, 2012.[1] In a May 17, 2012 business meeting, the Board, by a vote of four to two, rejected the recommendation to convene a representative advisory committee to determine whether a rulemaking action should be initiated.

As the Board explained in a public meeting, the petition raised clear conflicts with the Board's existing regulations at 8 C.C.R. §§ 3203 and 5110, among others. The Board found no justification for the proposal to graft housekeeper-specific regulations onto the longstanding and well-established Injury and Illness Prevention Program that all employers must maintain pursuant to Section 3203. The Board concluded that such carve-outs would encourage other groups to seek special treatment for other job categories, which would erode the Board's existing regulatory framework. Finally, the Board found that "quotas or restrictions limiting the amount of work an employee can be assigned are typically not addressed in Title 8 standards, but rather are . . . addressed in collective bargaining agreements."

As Steve Smith, Director of the California Department of Industrial Relations, noted in the May 13, 2015 Advisory Committee meeting, what happened next was "unique." Three new Board Members were appointed about three weeks after the initial ruling, apparently replacing three members who voted against Petition 526. In June 2012, the Board reversed its decision. Subsequently, the Division convened an advisory committee to discuss perceived occupational hazards in the hotel housekeeping industry. The committee met once in four successive years, 2012 through 2015, during which meetings labor and industry representatives presented arguments for and against a hotel housekeeping-specific regulatory regime. The committee has issued two "Hotel Housekeeping Musculoskeletal Injury Prevention (MIPP) Discussion Drafts," the most recent on August 13, 2015.

[1] As the Board noted in its petition decision in 2012, "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" (emphasis added).

The August 13, 2015 Discussion Draft Is Both Redundant And Conflicts With 8 C.C.R. § 5110 Thereby Creating Confusion in the Hotel Industry

All employers already must "establish and implement a program designed to minimize [repetitive motion injuries]," as per the dictates of 8 C.C.R. § 5110. Section 5110 only applies where "a licensed physician objectively identified and diagnosed" the injuries and if there is work-related causation (that is, when the injuries "were predominantly caused (i.e. 50% or more) by" work), among other criteria. Under Section 5110, the employer's injury-minimization program must include an evaluation of "exposures that have caused RMIs," as well as measures to "control" RMIs and to train workers accordingly. However, the employer need not adopt any specific "controls" or abatement measures except for ones that are "substantially certain to cause a greater reduction in [RMIs]" and "would not impose additional unreasonable costs." The Discussion Draft not only overlaps with Section 5110 (and therefore is redundant) but it also undermines this longstanding regulatory regime.

Section 5110 and the Discussion Draft both seek to prevent "musculoskeletal injuries." Both define that term the same way. *See* 8 C.C.R. § 5120; Discussion Draft Section (b). Further, both Section 5110 and the Discussion Draft aim to eliminate injuries stemming specifically from repetitive motions[2]. Section 5110 mandates evaluation of "work activities . . . which have caused RMIs," where such RMIs "were musculoskeletal injuries." The Discussion Draft seeks to mandate an assessment "including but not necessarily limited to" nine particular types of work activities or working conditions "with respect to potential causes of musculoskeletal injury to housekeepers." The Discussion Draft specifies, for example, that "repetitive reaches" and "prolonged . . . postures" are particularly insidious workplace activities and conditions. It also lists other actions—bending, twisting, and kneeling to name just a few—unaccompanied by adjectives, but with the clear implication that it is the force, repetition and/or duration of those actions that could or would cause musculoskeletal injury.

The Discussion Draft proposal's overlap with Section 5110—and hence its redundancy—is apparent. Like Section 5110, the Discussion Draft proposal is concerned with reducing the frequency of "awkward" and allegedly-harmful movements that characterize every-day life. The Discussion Draft's specific emphasis on housekeeping is immaterial since Section 5110 is broad enough to apply to all job classifications, including housekeeping. Indeed, citations have been issued against CH&LA members under Section 5110 for precisely the same conduct covered under the Discussion Draft.

Although both address the same issue, and do so in similar ways, the standard proposed in the Discussion Draft conflicts with Section 5110 in a variety of ways. The Discussion Draft would circumvent Section 5110's minimal evidentiary standards: It would presume that housekeeping tasks are hazardous without allowing the employer to conduct a worksite-specific assessment and without regard to medical diagnoses. There is no requirement that a medical professional diagnose an injury. The reasons for this are twofold:

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[2] To the extent the job hazard analysis envisioned by the Discussion Draft also includes traumatic injuries from "slips, trips, and falls," as well as "falling and striking of objects," it is entirely irrelevant to the threat of musculoskeletal injuries envisioned by UNITE HERE in Petition 526.

throughout, the Discussion Draft replaces objective professional analysis with subjective experiences and opinions. Most importantly, the draft also simply presumes that hotel housekeeping causes injuries, a conclusion that belies the very purpose of a job hazard analysis.

The Discussion Draft's emphasis on subjective inquiry clashes with Section 5110's reliance on objective professional assessments. "[A] job hazard analysis is an assessment to evaluate housekeeping tasks with respect to potential causes of musculoskeletal injury," yet the Discussion Draft would mandate involvement of "housekeepers and their representative in *designing* and *conducting* the job hazard analysis." *See* Section (c)(4)(B). Housekeepers and union representatives are not qualified to "examine[] the relationship between the worker, the task, the tools, and the work environment" with an eye towards injury causation. *See also* Section (c)(5)(C) (mandating solicitation of the "[o]pinions of the injured housekeeper . . . regarding whether any other control measure, procedure, or tool would have prevented the injury"). While housekeepers' input and opinions matter, housekeepers and their representatives are neither physicians nor epidemiologists trained in assessing injury causation, and they are not trained in assessing injury prevention. Nonetheless, the Discussion Draft requires "involving housekeepers and their representative in identifying and evaluating possible corrective measures." *See* Section (c)(6)(A).

Further, the Discussion Draft standard would impose particular practices and particular devices upon housekeepers. *See* Section (c)(2). The Discussion Draft would mandate specific administrative controls (termed "safe workplace housekeeping practices") regardless of the employer's assessment, regardless of whether they were "substantially certain" to work (as Section 5110 requires), and regardless of whether they would impose "additional unreasonable costs." If the assumptions behind the Discussion Draft were valid, it should be no major burden under Section 5110 to demonstrate that two housekeepers had suffered repetitive motion injuries "in the last 12 months," and to propose abatement measures that were "substantially certain" to work and not "unreasonably" costly. This minimal burden should be especially easy to meet given the numerous housekeeper comments at each Advisory Committee meeting. To the degree the alleged epidemic of housekeeper violations were real, Section 5110 would be the appropriate enforcement tool to cure it.

Against this backdrop, it would be impossible for hotel employers to reconcile their respective obligations under Section 5110 and the Discussion Draft's rule. It is not clear, for example, how Section 5110's mandate to evaluate jobs "for exposures which have caused [repetitive motion injuries]" is any different from the Discussion Draft's proposed mandate of "an assessment that focuses on job tasks as a way to identify potential hazards." Similarly, the "system for ensuring . . . safe workplace housecleaning practices" required in the Discussion Draft would appear to co-opt Section 5110's mandate for a worksite-specific "program designed to minimize RMIs." Given the inconsistent prescriptive requirements of the Section 5110 RMI standards and the Discussion Draft Musculoskeletal IIPP, hospitality employers will be put in an unlawful quandary as to how to comply with their legal obligations.

The Discussion Draft Is Both Redundant And Conflicts With 8 C.C.R. § 3203

The Discussion Draft standard also conflicts with 8 C.C.R. § 3203, which requires employers to "establish, implement and maintain an effective Injury and Illness Prevention Program ["IIPP"]" having specific elements. Among other things, an IIPP must provide for training on safe work practices, must ensure employees' compliance with such practices, and must establish a procedure for identifying, evaluating, and correcting workplace hazards. Section 3203 is meant to supplement Cal/OSHA's other safety regulations by requiring employers to proactively identify and correct hazards. Thus, it does not oblige employers to provide training on any specific topics, to ensure compliance with any specific work practices, or to establish procedures to identify, evaluate, and correct any specifically identified hazards.

In relation to Section 3203 citations issued in California (latest data available is 10-13 from 9-14), accommodations represents 0.01% of all citations for all industries, or less than two monthly. In the latest reporting period, 28 industries had more citations than the hotel industry, including administrative & support services, food services & drinking places, warehousing & storage, and food & beverage stores, among others.

The Discussion Draft would graft on top of Section 3203 a requirement that "as part of" their IIPP, hospitality employers must adopt a "written[] musculoskeletal injury prevention program (MIPP) that addresses hazards specific to housekeeping." Consistent with Section 3203, this housekeeper-specific MIPP within the IIPP will include elements of training and hazard-assessment. But in complete disregard for the purpose and function of Section 3203, the Draft's minimum requirements for the MIPP job hazard analysis prejudge the causal relationship between musculoskeletal injury and "prolonged or awkward static postures;" "extreme reaches and repetitive reaches above shoulder height;" "torso bending, twisting, lifting, kneeling, and squatting;" "pushing and pulling;" and various other work activities and working conditions. The Discussion Draft also instructs that the MIPP must include a "system for ensuring that [housekeepers] use the housekeeping tools or equipment deemed appropriate for each cleaning task." This would require a one-size-fits-all approach and the disciplining of housekeepers who do not follow the mandated practices and/or use the required tools.

If employers can be subjected to MIPP citations for failing to identify and correct specific hazards, then the programmatic purpose of Section 3203 is lost and the door is opened for other duplicative and baseless citations. We emphasize that Section 3203 is *not a specification standard*; yet that is precisely what this industry-specific IIPP purports to be.[3] Whereas the purpose of Section 3203 is to identify hazards, the Discussion Draft purports to have concluded that musculoskeletal RMIs are a foregone conclusion—an inexorable result of hotel housekeeping work. This Discussion Draft applies only to housekeepers within the hotel industry, excluding almost one-half of all housekeepers in California (SOC 37-2012 Maids & Housekeeping Cleaners includes those in hotels, hospitals, nursing care facilities, continued

[3] As DOSH noted in its March 27, 2012 memorandum responding to Petition 526, "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 [Union] . . . [and does not] require the specific control measures advocated by the [Union]."

care, retirement facilities and assisted living facilities.) Whereas Section 3203 mandates "investigat[ion of] occupational injury," the Discussion Draft specifically mandates "investigat[ion of] *musculoskeletal* injuries" in three specific ways. *See* Section (c)(6). Further, as part of the specific mandatory investigative procedures, employers would be required to solicit injury-prevention "opinions" from the housekeeper's collective bargaining agent and supervisor, but not from a medical or ergonomic professional. Finally, as the Board determined in its initial 2012 ruling, the "work-rate for housekeepers," *see* Section (c)(4)(E)(2), is a matter to be determined via collective bargaining, and is not a topic for regulatory fiat.

The purpose of Section 3203 is to mandate an across-the-board unified program at the employer level. Cal/OSHA guidance indicates that IIPPs should involve health professionals at all steps of the process. *See* Cal/OSHA Guide to Developing Your Workplace Injury & Illness Prevention Program at 9. In fact, Cal/OSHA offers "free professional assistance" for employers developing an IIPP. *Id.* at 15. Yet the Discussion Draft reflects a preference for individualized information-gathering, assessment, and treatment. One of the three mandatory investigative procedures would be soliciting "[o]pinions of the injured housekeeper . . . regarding whether any other control measure, procedure, or tool would have prevented the injury." Section (c)(5)(C). The MIPP would have to include procedures for correcting hazards by, among other things, "providing appropriate . . . tools to each housekeeper." In other words, the subjective opinions of a single housekeeper could trump the objective views of physicians and ergonomists. In sum, the dissonance between the programmatic requirements of Section 3203 and the prescriptive requirements of the MIPP could not be clearer.

The Discussion Draft Will Lead To Special Treatment For Other Job Classifications

Aside from directly conflicting with the previously referenced policies and regulations and inviting confusion in their administration and enforcement, the Discussion Draft establishes a historic precedent for employees in all industries with "awkward static postures" and "bending, twisting, [and] lifting," etc. to seek and obtain their own overlapping and inconsistent standard. Intuitively, it makes no sense to allow housekeeper-specific carve-outs and add-ons to Section 5110, Section 3203, and other Cal/OSHA standards when other job classifications do not receive similar treatment. There is no justification for a job-specific, workplace-specific, and industry-specific regulatory regime. This is especially apparent considering that the Discussion Draft addresses common tasks, such as "collecting and disposing of trash" and "moving furniture," among others; common motions, such as "twisting, lifting, kneeling, and squatting," among others; and common hazards, such as "falling and striking objects." Absent any evidence or even assertion of how much physical activity is too much—regulating commonplace tasks is unsupportable. That is precisely why the present regulatory regime—Sections 5110 and 32013—properly relies on diagnosis or analysis by an objective third-party professional to determine the necessity and effectiveness of costly ergonomic measures.

Not only are many of the actions contemplated by the Discussion Draft commonplace in everyday life, but they are commonplace in a variety of jobs performed in a variety of industries. Custodial staff in academic institutions and office complexes also reach and bend and twist and lift and push and pull. Indeed, for example, the exertion activities in warehouses

and the repetitive motions in poultry plants dwarf housekeeping activities in their force, repetition and duration. There is simply no basis for singling out a particular type of employer or a particular job description. The Discussion Draft's unduly narrow application—not just to housekeepers and not just to hotel employees (both of which would also be unduly narrow), but to *hotel housekeepers*—reflects the Advisory Committee's refusal to consider the voice of any stakeholder besides UNITE HERE, the union seeking to organize and leverage their influence in collective bargaining with the hospitality industry.

If special regulations are appropriate for housekeepers (and perhaps janitors), where work tasks are closely aligned with daily life tasks, then it is entirely logical that employees in industries where tasks are genuinely unique (e.g., carrying trays of bricks or operation of jackhammers in construction) will be able to demonstrate compelling reasons that their tasks also warrant special regulatory treatment. Every union or interest group involved in an industry that performs materials handling or other physical activity would understandably desire to have the same regulatory treatment as hotel housekeepers, and would have at least as strong a claim to this treatment. Such specific regulation would render Section 5110, Section 3203 and other regulations even more of an overlapping and contradictory patchwork. The clarity and comprehensiveness of the RMI Standard and IIPP Standard would be replaced by a broad constellation of confusing and unworkable regulations. At a time when Cal/OSHA's diluted enforcement is the subject of extensive federal OSHA criticism as to whether the state is "at least as effective" under Section 18 of the OSH Act, 29 U.S.C. § 650 et seq., opening this Pandora's Box is poor public policy.

The 2015 Discussion Draft Is A Substantial Step Backwards From The 2014 Discussion Draft

The Advisory Committee issued its first Discussion Draft on February 27, 2014, and its second Discussion Draft on August 13, 2015. The recent Draft reflects even greater regulatory capture by UNITE HERE and the Advisory Committee's refusal to consider the views of other stakeholders. While the 2014 Discussion Draft made few references to union representatives, the 2015 Discussion Draft increases the union's role by inserting representatives' subjective, non-professional opinion as a mandatory feature of musculoskeletal injury investigations, *see* Section (c)(5)(C), and annual MIPP reviews. *See* Section (c)(7).

The Discussion Draft's standard seeks to "control the risk" of injuries that are primarily repetitive motion injuries. These injuries are the product of "cumulative trauma." Ignoring the inherently progressive nature of these injuries, the 2015 Discussion Draft for the first time now mandates assessment of the "tasks being performed *at the time of the injury*." *See* Section (c)(5)(A) (emphasis added). But, by definition, there is no "time of the injury." Even assuming the medical legitimacy of the "cumulative trauma" paradigm, by definition the task performed at the time of the subjective complaints is not the task necessarily and cumulatively linked to the "time of injury." This type of internal inconsistency contributes to the already substantial confusion stemming from a potential regulatory regime that is duplicative and conflicts with extant regulations.

As mentioned above, the original 2012 Board ruling repudiated UNITE HERE's attempt to circumvent collective bargaining with mandated work-rate restrictions. The 2014 Discussion Draft did not broach the subject. However, the Advisory Committee's latest Draft reinserted discussion of work-rate limits. *See* Section (c)(4)(E)(2). As recently as the September 17, 2015 meeting of the Standards Board, UNITE HERE and housekeepers once again raised their principal issue—room quotas. Finally, in contrast to Sections 3203 and 5110—and to the 2014 Discussion Draft—the recent Discussion Draft imposes for the first time an artificial and arbitrary three-month deadline to complete an analysis of the purported job hazards. *See* Section (c)(4)(A). Each of these additions between the first and second Discussion Drafts reflects the Advisory Committee's refusal, despite its stated goal, to consider the range of stakeholders.

The Advisory Committee also systematically ignored CH&LA's comments on the 2014 Discussion Draft. In only one instance did the Advisory Committee even arguably heed a CH&LA comment, and even then the change only served to obfuscate the meaning of the provision. For example, CH&LA's April 29, 2014 comments to the 2014 draft dealt with what was then Section (c)(2)(B), and which is now Section (c)(4)(E). The comments urged the Advisory Committee to clarify that a job hazard analysis must address "*whether* hazards are related to [certain] housekeeping activities" (emphasis in original). The 2015 Discussion Draft standard would mandate an "assessment of the *potential* injury risks" stemming from falls, repetitive motions, falling objects, and excessive work-rate. Section (c)(4)(E)(1) (emphasis added). But this edit to the 2015 Discussion Draft only muddies the waters. The modifier "potential," particularly in the context of the remaining MIPP provisions, clearly means the potential for the *existence* of falls, repetitive motions, etc. If "potential" refers to whether or not those conditions exist, then the Discussion Draft assumes from the start that simple actions like "pushing and pulling" cause injuries. Clearly the assessment of *potential* injury risks was not meant to capture industry's concerns that any IIPP regulation *not presume* the existence of hazards related to housekeeping activities.

Economic Analysis Makes Clear That The Discussion Draft's Regime Would Irreparably Harm the Hospitality Industry and Compromise California's Tourist Industry

As previously discussed, existing regulations, particularly Sec. 5110, protect industry in general from incurring "unreasonable costs." The Discussion Draft does not even address costs. As demonstrated in the Table below, it proposes a regulation that would impose unpredictable yet staggering costs on California's hotel and lodging industry. Thus, under Cal/OSHA's existing Section 3203 regulation, every business with 10 or more employees will be required to comply with a tailored IIPP under which conservative estimates would result in cost estimates summarized in the following table.

Cal/OSHA Housekeeping in the Hotel and Hospitality Industry
Advisory Committee August 2015 Discussion Draft - Economic Impact Analysis

Proposed Standard	Costs Per Segment		Total Cost
	Full Service	Limited Service	
1. Job Hazard Analysis	$2.5 mil	$6.8 mil	**$9.3 mil**
2. Musculoskeletal Injury & Illness Program	$425,000	$659,000	**$1.1 mil**
3. Housekeeper Training	$3.25 mil	$3.16 mil	**$6.4 mil**
4. Monitoring & Evaluation	$1.7 mil	$2.6 mil	**$4.3 mil**
5. Recordkeeping	$212,500	$329,700	**$542,200**
6. Motorized Carts	$50.0 mil	$50.4 mil	**$100.4 mil**
7. Sq. Ft. Limit on Daily Cleaning	$162.1 mil	$163.2 mil	**$325.3 mil**
8. Fitted Sheet Requirement	$7.2 mil	$7.3 mil	**$14.5 mil**
	Total Costs		**$461.8 mil**
	Annual Recurring Costs		**$345.8 mil**
	5 Year Total Cost		**$1.85 Billion**

Sources: Smith Travel Research, Wage Watch (2012)

1. Costs are estimated at between $2,000 - $5,000 per property to hire a professional qualified to evaluate Musculoskeletal Disorders (MSD) hazards. For estimation purposes, $2,000 per property was utilized.

2. Estimations are for eight hours to complete such a plan. Cost estimates are for a Human Resources Manager at a full service property or the General Manager at a limited service property. Formula: 8 hours x $42.80 (HR hourly wage) = $342.40; 8 hours x $24.20 (GM hourly wage) = $193.60.

3. It is estimated there would be all housekeepers and the General Manager involved in training with a total meeting time of four hours per year. Formula:
Limited Service: (1 housekeeper per eight rooms x $10.40 average salary per hour x 8 hours) + (1 GM x $24.20 average salary per hour limited service hotel x 8 hours = $193.60);
Full Service: (1 housekeeper per eight rooms X$10.40 salary per hour x 8 hours) + (1 GM x $73.55 average salary per hour full service hotel x 8 hours = $588.40)

4. It is estimated this will take the Human Resources Manager at a full service property or the General Manager at a limited service property four days per year (32 hours).

5. It is estimated this will take the Human Resources Manager at a full service property or the General Manager at a limited service property four hours per year. Formula: 4 hours x $42.80 (HR hourly wage full service) = $171.20 4 hours x $24.20(GM hourly wage limited service) = $96.80.

6. The range in cost is between $2,500 and $5,000 per motorized cart. Hotels with over 24 rooms total 482,056 rooms and it is estimated there is a need for 1 cart for every 12 rooms. For estimation purposes, $2,500 per cart was utilized. 482,056/12 = 40,171 total number of carts needed x $2,500 = $100,427,500.

7. It is estimated there will be a *minimum* of 15%, and up to 35% productivity loss per property based on this regulation. For estimation purposes, a 25% increase in wages for housekeeping staff was utilized for limited service and full service properties. Formula: $21,632 (average housekeeper salary) - 25% = $5,400 (loss in productivity per housekeeper) x total number of housekeepers at limited service hotels (30,230) or full service hotel (30,027).

8. Costs are estimated on an inventory level of 150% of the number of rooms, with a cost of $20 per sheet, meaning $30 per room. At a total number of rooms of 482,056, this means the total cost is $14,461,680.

The foregoing table reflects the estimated costs of a range of definite and potential costs that would arise due to the Discussion Draft. For example, the costs for motorized carts and fitted sheets are examples of housekeeper initiatives that have been the subject of Advisory Committee meetings. Those, among many others, are specific changes that other stakeholders previously requested and there is no indication that they have abandoned their insistence on such specific items. In fact, the recent Discussion Draft is a form of IIPP that will allow such demands through the "back door" mechanism of employee and union participation in the IIPP process. There is little doubt that a hotel's refusal to accede to such demands will result in complaints to Cal/OSHA and subsequent enforcement actions. The crushing costs that the California hotel and lodging industry would incur cannot be entirely predicted but their impact on room rates will be profound.

Data-Driven Medicine Does Not Support The Discussion Draft

There is no scientifically-valid study that has shown that common housekeeping tasks lead to any increased musculoskeletal injury risk. The Advisory Committee has heard first-person descriptions of pain and discomfort that have been associated by housekeepers with their workplace activities. But such anecdotes, with which CH&LA and its members are of course sympathetic and concerned, and to which we are responsive, are no substitute for data-driven assessments of scientific causality. The comfort and efficiency of our housekeepers is paramount in the hospitality industry for our housekeepers are the face of our industry. However, the definitive evaluation of causality and risk by Steven F. Wiker, Ph.D. CPE demonstrates that rigorous analysis finds no causal link between housekeeping tasks and increased musculoskeletal injury risk. Dr. Wiker's study, "Evaluation of Musculoskeletal Disorder Risk in Hotel Housekeeping Jobs," is the first comprehensive biomechanical analysis of the full range of hotel housekeeping tasks. It has been submitted earlier to the Advisory Committee and is attached as Appendix A to this letter.

Objective science shows no link between housekeeping tasks and increased musculoskeletal injury. This, of course, is intuitively correct, because a housekeeper's tasks are substantially the same as those performed in a variety of workplaces and non-workplace settings. Given the plethora of confounders that contribute to musculoskeletal pain, science has not been able to establish a causal nexus between variable amounts and sequence of housekeeping tasks and injury risk. This is one of the major difficulties associated with prospective separate regulatory treatment for housekeeping tasks.

Dr. Wiker's study was initiated to determine if housekeeper job tasks presented the risk for development of musculoskeletal disorders (MSDs). Work sampling, biomechanical and metabolic burden analyses were conducted with housekeepers performing their jobs using a variety of individually preferred methods. The results showed a wide range of forces and postures were employed to complete hotel house-keeping tasks, all of which fell into acceptable zones of ergonomic design. The housekeeper's job was found to be strongly compliant with the National Institute for Occupational Safety and Health (NIOSH) recommended administrative controls for mitigation or elimination of MSD hazards (e.g., task variety, job rotation, adequate exposure to micro-breaks, decision latitude in execution of work,

etc.). Furthermore, the measured MSD risk factor exposures were deemed safe by NIOSH assessment protocol.

Specifically, Dr. Wiker's study showed that housekeepers' heart rates ranged from "light" to "moderate" on the Borg's Ratings of Perceived Exertion scale, and averaged less than one-third of their age-predicted cardiac reserves, which is the NIOSH-recommended limit. The study determined that all work surfaces meet NIOSH's recommended frictional coefficient to prevent slips. Cart-pushing and bed-making cause disc compression that is well below NIOSH's limits.

Dr. Wiker also explained that the data from the Bureau of Labor and Statistics (BLS) did not show any pattern of shoulder or elbow MSDs from reaches and stretches to clean mirrors and headboards. Finally, the study showed that disc compression is highest when a housekeeper is in a stooping position, which is especially prevalent when fitted bedsheets are used. These findings counter the union's long-held positions favoring fitted sheets.

Existing regulations' emphasis on objective and professional diagnosis and assessment reflects expert authorities' understanding that the regulatory regime advanced by UNITE HERE, and reflected in the Discussion Draft, is defective.

Other Scientific Evidence Refutes The Assumed Causal Link Between Housekeeping And Musculoskeletal Injuries

The assumption, which is reflected throughout the Discussion Draft, that there is a causal link between hotel housekeeping tasks and musculoskeletal injuries is contrary to the weight of credible data-driven medicine. The relevant scientific literature has categorically refuted any causal link between repetitive job tasks and regional musculoskeletal pain. No credible scientific study has ever purported to find an association, let alone a causal nexus under the Bradford-Hill framework, between the specific housekeeping tasks referenced in the Discussion Draft and musculoskeletal injuries. None of the materials that the Advisory Committee cites in its Discussion Draft even purports to be an objective study that shows a causal relationship between hotel housekeeping and musculoskeletal injuries. The Advisory Committee cites five sources: a series of PowerPoint presentations devoid of any scientific inquiry or data of any kind; a list of "tips" composed by an insurance company; a Cal/OSHA publication that reinforces that Section 3203 "is a blanket or umbrella safety program that can incorporate other required Cal/OSHA regulations"; a 1998 Canadian document that does not cite any academic research of any kind; and a study that never once refers to hotel housekeepers and is based upon "workers' compensation data, previous job analyses, recorded injury history, and interviews and feedback from managers, supervisors and employees" (as opposed to ergonomic assessments). Nothing cited by the Advisory Committee draws the scientific literature into question.

The Discussion Draft's underlying assumption is that human musculoskeletal systems are analogous to machines: that they break down with use, and the more repetitive and forceful the use, the sooner the break-down. But a robust and mature scientific literature has

examined this hypothesis and has reached a consensus that it is absolutely untenable. Two sources are especially informative:

1. *Occupational Musculoskeletal Disorders*. Since 1993, this leading textbook, endorsed by the American College of Occupational and Environmental Medicine, has undergone continual updates to account for the most current evidence on musculoskeletal disorders. Its author, Dr. Nortin Hadler, is a foremost expert on the topics of low back pain and regional musculoskeletal disorders, who serves both as a Professor at the University of North Carolina at Chapel Hill School of Medicine and as an Attending Rheumatologist in the University of North Carolina Hospital System. In the most recent edition of this text, published in 2005, Dr. Hadler emphasizes the absence of any link between customary job tasks and musculoskeletal injuries. Among other things, Dr. Hadler finds that regional musculoskeletal pain is a "ubiquitous, recurrent" experience among the general population; that "psychosocial challenges at the workplace outstrip psychometrics, anthropometrics, [and] ergonomic challenges" as an explanation for discrete instances of experienced pain; and that "reports of the success of 'ergonomic' modifications" are unreliable because they are "bedeviled by Hawthorne effects [and] reporting bias . . . ." *See* Nortin A. Hadler, Occupational Musculoskeletal Disorders 10, 14, 16, 280 (3d ed. 2005).

2. *The Cochrane Collaboration*. The Cochrane Collaboration an international association of thousands of physicians who collaborate to prepare and disseminate systematic reviews on the effects of specific health care interventions. The physicians select medical topics for review, and then analyze the existing literature according to pre-set criteria, which prioritize randomized clinical trials (RCTs) as the "gold standard" for objective research. Finally, the physicians draw conclusions about the available evidence on the selected topic, including any observed associations between specific interventions and specific health outcomes, and document these conclusions in a written report. The medical community recognizes Cochrane Collaboration reports as authoritative guides for the evidence-based practice of medicine. And in several recent reports, the Cochrane Collaboration has specifically addressed issues pertaining to alleged "cumulative trauma" and "repetitive motion" injuries and has found *no credible evidence* that any "ergonomic" interventions can reduce the incidence of these injuries. *See, e.g.*, Verhagen AP et al. "Ergonomic and physiotherapeutic interventions for treating work-related complaints of the arm, neck or shoulder in adults." *Cochrane Database of Systematic Reviews* 2006, Issue 3 Art. No.: CD003471. DOI: 10.1002/14651858.CD003471.pub3; Martimo KP et al. "Manual material handling advice and assistive devices for preventing and treating back pain in workers (Review)." *Cochrane Database of Systematic Reviews* 2007, Issue 3, Art. No.: CD005958. DOI: 10.1002/14651858. CD005958.pub2; 2007; Verbeek JH et al. "Manual material handling advice and assistive devices for preventing and treating back pain in workers." *Cochrane Database of Systematic Reviews* 2011, Issue 6, Art. No.: CD005958. DOI: 10.1002/14651858.CD005958.pub3.

Many more recent studies have echoed the above sources by finding: (a) no evidence that specific job tasks are independently causative of musculoskeletal injuries, and (b) no evidence that "ergonomic" interventions can reduce these injuries. *See, e.g.*, Boocock MG et al. "Interventions for the prevention and management of neck/upper extremity musculoskeletal conditions: a systematic review." Occup. Environ. Med. 2007; 64: 291-303; Burton AK et al. "Management of upper limb disorders and the biopsychosocial model." Health and Safety

Executive, London. Publication RR596, 2008; Cote P et al. "The burden and determinants of neck pain in workers." Spine, 2008; 33: S60-S74; Lles RA et al. "Psychosocial predictors of failure to return to work in non-chronic low back pain: a systematic review." Occup. Environ. Med. 2008; 65: 507-17; Martimo KP et al. "Effect of training and lifting equipment for preventing back pain in lifting and handling: a systematic review." BMJ 2008; 336: 429-31; Driessen MT et al. "The effectiveness of physical and organizational ergonomic interventions on low back pain and neck pain: a systematic review." Occup. Environ. Med. 2010; 67: 277-85; Roffey DM et al. "Causal assessment of workplace manual handling or assisting patients and low back pain: results of a systematic review," *Spine Journal*, 2010; 10(7): 639-651; Roffey DM et al. "Causal assessment of occupational pushing and pulling and low back pain: results of a systematic review," *Spine Journal*, 2010; 10(6): 544-553; Roffey DM et al. "Causal assessment of occupational standing or walking and low back pain: results of a systematic review," *Spine Journal*, 2010, 10(3): 262-67; Wai EK et al., 2010 "Causal assessment of occupational lifting and low back pain: results of a systematic review," *Spine Journal*, 2010; 10(6); 153: 246-55; Wai EK et al. "Causal assessment of occupational carrying and low back pain: results of a systematic review," *Spine Journal*, 201.0; 10(7): 628-38.

In addition, other materials have suggested that "repetitive" motions are essential to workers' cardiovascular and musculoskeletal health, and that "ergonomic" interventions to limit allegedly "repetitive" motions may exacerbate or impede workers' recovery from the experience of musculoskeletal pain. *See, e.g.*, Jorgensen MB "A randomized controlled trial among cleaners—effects on strength, balance and kinesiophobia." *BMC Public Health*, 2011; 11:776; Hadler, Occupational Musculoskeletal Disorders.

Conclusion

Unlike CH&LA's comments to the Advisory Committee's prior Discussion Draft, CH&LA does not suggest revisions to the current iteration. CH&LA prides itself on being part of the solution and wants to be part of any solution that would serve the needs of its workforce, however, the 2015 Discussion Draft is so thoroughly flawed that this Discussion Draft is neither workable nor acceptable. Modifications could not remedy the premise of the one-sided Discussion Draft, which is that certain actions and conditions and tasks are presumed to cause a particular type of injury, rather than the established process of "finding and fixing" workplace hazards. This Discussion Draft, which proposes a regulation in search of a scientifically-verified problem, is irredeemably flawed.