

State of California, Department of Industrial Relations
Division of Occupational Safety and Health

Memorandum

To: Marley Hart, Executive Officer
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Date: September 21, 2015

From: Juliann Sum, Chief 
Division of Occupational Safety and Health

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Subject: Evaluation Report, Petition No. 548
Dennis J. Evans

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

This letter is written in response to Petition No. 548 which was received by the Occupational Safety and Health Standards Board (OSHSB) on July 15, 2015. The petition was submitted by Dennis J. Evans who requested an amendment to the California Code of Regulations, Title 8, General Industry Safety Orders (GISO). The petitioner is requesting to add a new standard in the GISO to require the use of the Occupational Health & Safety Pundits - Safety Management System (OHSP-SMS).

The Division of Occupational Safety and Health recommends the petition be denied because it fails to establish a need for OHSP-SMS to be added to Title 8. In addition, the petition's description of the OHSP-SMS is vague and confusing.

BACKGROUND

The petitioner is an occupational health and safety professional with 26 years of experience. The petitioner developed the OHSP-SMS while performing a legislative analysis of California Senate Bill 863, which made changes to California's workers' compensation system.

ACTIONS REQUESTED BY THE PETITIONER

The petitioner proposes to add a new standard adopting the OHSP-SMS components to supplement existing Title 8 section 3203 to reduce work-related injuries and illnesses caused by "*contributory negligence*." According to the applicant, the OHP-SMS is a hazard identification and correction program, which requires a trained and licensed safety professional called "*Safety Pundit*" to perform a site safety audits utilizing digital photographs and standardized job safety analysis forms to identify hazardous conditions and train employees on those hazards to reduce work-related injuries and illnesses.

APPLICABLE STANDARDS

California Code of Regulations, Title 8 section 3203 requires employers to have an effective Injury and Illness Prevention Program to reduce work-related injuries and illnesses:

3203. Injury and Illness Prevention Program.

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

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

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

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

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

(4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards:

(A) When the Program is first established;

Exception: Those employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with previously existing section 3203.

(B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and

(C) Whenever the employer is made aware of a new or previously unrecognized hazard.

(5) Include a procedure to investigate occupational injury or occupational illness.

(6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:

- (A) When observed or discovered; and,
- (B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.
- (7) Provide training and instruction:
- (A) When the program is first established;
- Exception: Employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with the previously existing Accident Prevention Program in Section 3203.
- (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 to the workplace and represent a new hazard;
- (E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,
- (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

DISCUSSION

The OHSP-SMS, according to the applicant, is a:

Management System designed to eliminate contributory negligence known to be the cause of work-related injuries and illness.

The applicant did not provide a definition of "contributory negligence" or otherwise explain the term in a comprehensible manner.

The OHSP-SMS includes four components according to the applicant – "(1) *Universal Standard of Safety Protocols*, (2) *Management of Hazardous Hierarchies*, (3) *Detailed Commentary Verities* and (4) *J-peg Data*".

(1) Universal Standard of Safety Protocols

The applicant describes this component as:

An innovative & dynamic safety protocol with guidelines base on improving the overall health & safety of employees & their families exclusively using evidenced based medical evaluations & health technology assessments amplifying health & safety lowering the cost of health care.

The above language is vague, incoherent and provides no specific information on what the applicant believes should be added to Title 8. The Division of Occupational Safety and Health (Cal/OSHA) staff made repeated attempts to the applicant for more precise language and was provided the following, in part, by the applicant:

Policy & procedures shall conform to ethics & general industry standards solely using evidence based medical materials. The health technology assessments & appraisal of clinical journals using evidence based medical therapies integrating data from each health science library & shall observe Federal & State regulations, rules, laws an must include times, dates & data source.

...Using evidence based medical therapies the Safety Pundits' Health Technology Assessment tool which serves to rate a medical product's efficiency, effectiveness & cost benefits, assists employers in appraising the impact of occupational injuries & illnesses on their profitability.

HTA clinical tools have a potential to control costs by limiting the use of unnecessary, expensive or outdated procedures while improving health outcomes when evidence based medical evaluations are widely circulated, producing comprehensive federal & state reductions terminating the high cost of health care in the U.S...

The applicant's request concerns the treatment of injuries and illnesses. Cal/OSHA Title 8 regulations are specific to the prevention of workplace injuries and illnesses and Cal/OSHA does not have jurisdiction over treatment. The Division of Worker's Compensation (DWC) has jurisdiction over the occupational injury and illness medical care. The applicant should redirect the above request to DWC.

(2) Management of Hazardous Hierarchies

The applicant describes this component as:

A controlled management system used in the health & safety industry to minimize & eliminate exposure to hazardous environments. This analysis identifies & corrects predictable & preventable incidents in a work-related command structure.

The applicant appears to be requesting regular worksite inspections and correction of hazards similar to the requirements of Title 8 section 3203(a)(4) and 3203(a)(6). The applicant did not provide, despite repeated requests from Cal/OSHA staff, any additional requirements that the applicant believes need to be added to section 3203.

(3) Detailed Commentary Verities

According to the applicant:

A sentence structure employing true statement based on known facts solely using evidence based solutions & evidence based conclusions including times, dates & data source reducing the cost of labor.

Cal/OSHA was unable to understand the above language or get a clear description of what requirements that the applicant would recommend to add to Title 8.

(4) J-peg Data.

The applicant describes this component as:

A digital photographic format displaying work-related hazardous behavioral habits causing extensive accidents and injuries,

Cal/OSHA was able to decipher the above component as taking photographs of hazardous work conditions or practices as part of worksite inspections required by 3203(a)(4). The applicant again failed to provide any specific requirements it would like added to Title 8.

ANALYSIS

The petition fails to establish a need for OHSP-SMS to be added to Title 8:

- Section 3203 already requires employers to identify and evaluate workplace hazards, investigate occupational injuries and illnesses, implement corrective measures in a timely manner, provide employee and supervisor training, develop a system for ensuring compliance with workplace health and safety measures and establish a system of communication with employees regarding safety and health matters. It is a performance standard which sets forth a general requirement for employers to meet, while leaving the employer latitude in designing an appropriate means of compliance under various working conditions.
- The OHSP-SMS is one of many means or procedures that can be used to identify, evaluate and correct workplace hazards. The applicant did not provide evidence or data to demonstrate that the OHSP-SMS is more effective than other existing means or procedures in identifying and correcting hazards. The petitioner concurred with Cal/OSHA staff that if an employer already has an effective Injury and Illness Prevention Program as required by section 3203, it will not be necessary to adopt the OHSP-SMS components.
- The applicant failed to explain why a licensed "Safety Pundit" is needed or how the "Safety Pundit" would reduce occupational injuries and illnesses. A key element of the OHSP-SMS program is the "Safety Pundit", which requires the creation of a statewide license program for safety professionals in order to conduct safety audits at worksites using the OHSP-SMS components. It is impractical and unnecessary to create a new license program for safety professionals as there already exist numerous nationally recognized environmental, health and safety certification programs with specialties that require education, experience and examination as certification requirements.

In addition to all the above, the applicant's description of the OHSP-SMS program elements is vague and incomprehensible. The content of the individual program elements is meaningless and provide no criteria or methods for reducing occupational injuries and illnesses. Although performance standards do not require specific actions or measurements, they must provide an objective and criteria or methods for achieving the objective.

CONCLUSION

After review of the petition, discussions with the petitioner and examination of the existing standards, Cal/OSHA believes that the petition should be denied.

cc: Keummi Park
Eric Berg