

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

BOARD STAFF'S REVIEW OF THE PETITION

Petition File No. 548
Dennis J. Evans

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Date: September 29, 2015

Introduction

On July 14, 2015, the Occupational Safety and Health Standards Board (Board) received a petition from Dennis J. Evans, Chief Executive Officer, Toss Business Solutions, LLC (Petitioner). The Petitioner requested that the Board amend the General Industry Safety Orders to add requirements for all California businesses to utilize the Occupational Health and Safety Pundits' - Safety Management System (OHSP-SMS) to reduce injuries and their associated costs.

Labor Code Section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals and to render its decision no later than six months following their receipt. In accordance with Board policy, the purpose of this evaluation is to provide the Board with relevant information upon which to base a reasonable decision.

History

The OHSP-SMS is a system for reducing workplace injuries, which was developed by the Petitioner. No previous petitions on the subject have been received at the Board.

Reason for the Petition

The Petitioner states that the OHSP-SMS “[is] designed to eliminate contributory negligence known to be the cause [of] work-related accidents and injuries throughout the U.S.” The Petitioner defines contributory negligence as “the physical activity causing [work] related calamities and loss of life affecting employee[s] and their families and the employer’s bottom line.” He asserts that the Safety Pundits’ curriculum will make employers aware of the latest advances in employee safety technology, helping to reduce workplace injury.

National Consensus Standard

Board staff is unable to identify any national consensus standard regarding the OHSP-SMS.

Federal OSHA Standards

Federal OSHA has various requirements for employers to provide safe working environments for their employees. Some requirements are prescriptive, while others are performance based. Unsafe or unhealthful conditions in the workplace for which a specific regulation does not exist are regulated using the General Duty clause.

Division of Occupational Safety and Health (Division) Report

The Division submitted an evaluation report for Petition File No. 548 dated September 21, 2015, recommending that the Petitioner’s request be denied, citing a lack of necessity

for the OHSP-SMS to be added to Title 8. The Division points out that Section 3203 already requires many of OHSP-SMS's requirements and that the OHSP-SMS is one of many tools available to identify and correct workplace hazards. Furthermore, according to the Division, the Petitioner fails to explain why the "Safety Pundit" licensing requirement is necessary when a variety of nationally-recognized safety and health certification programs already exist.

Staff Evaluation

A thorough review of the Petition and follow up material supplied to the Division and Board has not led Board staff to a clear understanding of the Petitioner's request. At times the Petition appears to imply that liability for accidents should be placed on the injured worker, referred to as "contributory negligence," while at other times the application seems to be more focused on reducing the costs of workers compensation claims.

Board staff infers that the Petitioner seeks to require California employers to attend an intensive training course, which will educate safety professionals on methods to help employees work more safely. After successful completion of the course, a safety professional would obtain the designation "Safety Pundit."

Board staff applauds the Petitioner's efforts in controlling and reducing workplace injuries and illnesses, and shares his enthusiasm for making California workplaces safer. Board staff asserts that the existing Injury and Illness Prevention Program (IIPP) allows for a variety of strategies to reduce injuries in the workplace and that due to the diversity of California workplaces, no single solution should be prescribed. The Petitioner's program is available to any employer as an option for combatting injuries and their associated costs, but Board staff does not feel that the program should be imposed on California employers through specific regulation.

The California Administrative Procedures Act advocates the use of performance standards over prescriptive standards whenever the outcome of the two methods is expected to be similar. Government Code (GC) Section 11340(d) states:

The imposition of prescriptive standards upon private persons and entities through regulations where the establishment of performance standards could reasonably be expected to produce the same result has placed an unnecessary burden on California citizens and discouraged innovation, research, and development of improved means of achieving desirable social goals.

Furthermore, GC Section 11340.1 states:

It is the intent of the Legislature that agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards

can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

Finally, if the Board was determined to adopt a prescriptive standard, such as the OHSP-SMS, it would have a difficult time explaining why the IIPP, a performance standard, is not a reasonable alternative to the proposed OHSP-SMS as required by GC Section 11346.2(b) [Initial Statement of Reasons].

Recommendation

The existence of a variety of strategies for combatting workplace injuries and illnesses is beneficial to the overall safety and health of California workplaces. Based on the foregoing discussion, Board staff recommends that the Petition be denied.