



Memorandum

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

Date: April 28, 2017

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

A handwritten signature in black ink, appearing to be "Juliann Sum", written over the "From:" field.

Re: Petition No. 562 for amendment of Title 8 Section 3203(a), and (a)(3)

1.0 INTRODUCTION AND BACKGROUND

On January 27, 2017, the Division of Occupational Safety and Health (Cal/OSHA) received a petition from Dan Leacox (petitioner) to amend Title 8 of the General Industry Safety Orders contained in the California Code of Regulations. The petitioner requests a change to Title 8 subchapter 7, section 3203(a) and (a)(3), Injury and Illness Prevention Program. The section contains requirements for the establishment and implementation of an effective Injury and Illness Prevention Program (IIPP).

2.0 PETITIONER'S REQUEST

The petitioner is requesting additions to subsections 3203(a) and 3203(a)(3). The proposed changes would ensure employees would have access to the written IIPP.

3.0 PROPOSED ADDITIONS TO SECTION 3203

Additions and renumbering of existing section 3203, proposed by the petitioner, are shown below in underline/strikeout format.

3203 (a) Effective July 1, 1991, every employer shall establish, implement, and maintain and allow employee access to an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

* * * * *

(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, means of access to the program, or any other means that ensures communication with employees.

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4.0 ADDITIONAL TITLE 8 REGULATIONS AFFECTED

In addition to subsections 3203(a) and (a)(3) above, the following regulations are applicable to establishing, implementing and maintaining an Injury and Illness Prevention Program and would be affected by the proposed change.

Subchapter 4. Construction Safety Orders

Article 3. Section 1509(a). Every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders.

Subchapter 14. Petroleum Safety Orders--Drilling and Production

Article 3. Section 6507. The employer shall establish, implement and maintain an Injury and Illness Prevention Program in accordance with the requirements of Section 3203 of the General Industry Safety Orders.

Subchapter 15. Petroleum Safety Orders--Refining, Transportation and Handling

Article 3. Section 6760(a). The employer shall establish, implement and maintain an Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders.

Subchapter 18. Ship Building, Ship Repairing and Ship Breaking Safety Orders

Article 1. Section 8350. All employers shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders.

Since the above noted regulations all reference Section 3203 for implementation, no textual changes would be required based on this Petitioner's proposal.

5.0 APPLICABLE FEDERAL OSHA WHITE PAPER

While there are no current federal regulations governing injury and illness prevention programs, a federal OSHA publication (OSHA IIPP White Paper)¹ cites to evidence of the benefits of such programs and provides information and guidance on implementing these programs.

The overall benefits are discussed as follows:

Based on the positive experience of employers with existing programs, OSHA believes that injury and illness prevention programs provide the

¹ U.S. Department of Labor, Injury and Illness Prevention Programs White Paper, January 2012. Available at: <https://www.osha.gov/dsg/topics/safetyhealth/OSHAwhite-paper-january2012sm.pdf>

foundation for breakthrough changes in the way employers identify and control hazards, leading to a significantly improved workplace health and safety environment. Adoption of an injury and illness prevention program will result in workers suffering fewer injuries, illnesses and fatalities. In addition, employers will improve their compliance with existing regulations, and will experience many of the financial benefits of a safer and healthier workplace cited in published studies and reports by individual companies, including significant reductions in workers' compensation premiums.

Most successful injury and illness prevention programs include a similar set of common sense elements that focus on finding all hazards in the workplace and developing a plan for preventing and controlling those hazards. Management leadership and *active worker participation* [emphasis added] are essential to ensuring that all hazards are identified and addressed. Finally, workers need to be trained about how the program works and the program needs to be periodically evaluated to determine whether improvements need to be made.

These basic elements - management leadership, *worker participation* [emphasis added], hazard identification and assessment, hazard prevention and control, education and training, and program evaluation and improvement - are common to almost all existing health and safety management programs. Each element is important in ensuring the success of the overall program, and the elements are interrelated and interdependent.

The importance of employee participation and involvement in an effective IIPP is discussed in greater detail as follows:

The literature on injury and illness prevention programs also includes numerous studies that attempt to identify the critical success features associated with superior health and safety performance. Gallagher (2001)² concludes that management commitment and employee involvement are the keys to program success: "[R]ecurring findings across these studies were the critical role played by senior managers in successful health and safety management systems, and the importance of effective communication, employee involvement and consultation."

Worker participation, a fundamental element of injury and illness prevention programs, makes an important contribution to an employer's bottom line. When workers are encouraged to offer their ideas and they see their contributions being taken seriously, they tend to be more satisfied and more productive (Huang et al., 2006)³. Engaging employees in dialogue with management and each other about safety and health can lead

² Gallagher, C. et al. (2003). Occupational safety and health management systems in Australia: Barriers to success. *Policy and Practice in Health and Safety* 1(2), 67-81.

³ Huang, Y. H. et al. (2009). Financial decision-makers' views on safety: What SH&E professionals should know. *Professional Safety* (April), 36-42.

to improved relationships and better overall communication, along with reduced injury rates. Improved employee morale and satisfaction translates to greater loyalty, lower absenteeism and higher productivity.

6.0 APPLICABLE CONSENSUS STANDARDS

6.1 ANSI/AIHA Z10-2012

The American National Standards Institute (ANSI) addresses the program elements and processes for development of effective safety management programs in its standard, Z10-2012 Occupational Health and Safety Management Systems (OHSMS)⁴. This document provides various guidelines and recommendations for the development of a safety and health program by employers. Within this document, the following sections are noted:

Section 1.2 Purpose

The primary purpose of this standard is to provide a management tool to reduce the risk of occupational injuries, illnesses and fatalities.

Section 3.1.2 OHS Policy

* * * * *

This policy shall include a commitment to:

- A. Protection and continual improvement of employee health and safety;
- B. *Effective employee participation* [emphasis added];
- C. Conformance with the organization's health and safety requirements; and
- D. Compliance with applicable occupational health and safety laws and regulations.

Section 3.1.3 Responsibility and Authority

Top management shall provide leadership and assume overall responsibility for implementing, maintaining, and monitoring performance of the OHSMS; including:

- A. Providing appropriate financial, human and organizational resources to plan, implement, operate, check, correct, and review the OHSMS;
- B. Defining roles, assigning responsibilities, establishing accountability, and delegating authority to implement an effective OHSMS for continual improvement;
- C. Integrating the OHSMS into the organizations other business systems and processes and assuring the organization's performance review, compensation, reward and recognition systems are aligned with the OHS policy and the OHSMS performance objectives.

Employees shall assume responsibility for aspects of health and safety over which they have control, including adherence to the organization's health and safety rules and requirements.

⁴ This standard is not incorporated by reference in Title 8.

Section 3.2 Employee Participation

The organization shall establish a process to ensure effective participation in the OHSMS by its employees at all levels of the organization, including those working closest to the hazards by:

- A. Providing employees and employee representatives employed by the organization with the mechanisms, time, and resources necessary to participate in at a minimum, the processes of:
 - Planning
 - Implementation
 - Evaluation, corrective action, and preventive action;
- B. Providing employees, and employee representatives with timely access to information relevant to the OHSMS; and
- C. Identifying and removing obstacles or barriers to participation.

7.0 BACKGROUND ON PETITIONER

The petitioner is a Government Affairs Consultant with Leacox and Associates, located in Carmichael, CA. The petitioner has been actively engaged in the Cal/OSHA rule-making process for several years, and has represented a number of clients before the Occupational Safety and Health Standards Board (OSHSB).

8.0 PETITIONER'S BASIS FOR NEW REGULATION

The petitioner explains the reason for the requested changes as follows:

While the IIPP is generally a tool and resource for the employer and its supervisors to follow as a roadmap for safety in the workplace, from time to time employees may wish to review the program. This small but important change to 3203 for General Industry will clarify whether employees have a right to access the employer's IIPP if they so choose.

The petitioner's basis for this change is that employees may wish to review the employer's written IIPP and the proposed change will clarify the employees' right to access this document.

9.0 ANALYSIS

The OSHA IIPP White Paper cites to evidence that well implemented IIPPs significantly reduce injuries. The White Paper emphasizes that employee participation is a critical element necessary for an IIPP to be successful.

While the petition does not propose to require employee participation in developing or implementing the employer's IIPP, establishing the right of employees to access the employer's IIPP is an initial step toward fuller employee participation.

Employee access to safety and health programs and employee participation the programs are required in numerous Title 8 regulations. Examples include the following:⁵

§3395. Heat Illness Prevention

* * * * *

(1) Heat Illness Prevention Plan. The employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request...

* * * * *

§5120. Health Care Worker Back and Musculoskeletal Injury Prevention

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(c) Patient protection and health care worker back and musculoskeletal injury prevention plan...The Plan applicable to the unit shall be available to employees in each patient care unit at all times.

* * * * *

(5) Procedures for identifying and evaluating patient handling hazards, in accordance with Section 3203(a)(4) including all of the following:

* * * * *

(A)... The procedures shall include how designated health care workers can participate in the evaluations.

* * * * *

(7) Procedures for correcting hazards related to patient handling, including:

(A) The evaluation and selection of patient handling equipment, including the involvement of designated registered nurses and other designated health care workers, and, where utilized, lift team members;

* * * * *

(8) Procedures for communicating with employees regarding safe patient handling matters, including:

* * * * *

(C) The means by which designated health care workers, lift team members, designated registered nurses, and their supervisors can participate in reviewing the effectiveness of the Plan in their work areas or departments.

(11) Procedures for reviewing, at least annually, the effectiveness of the Plan in each patient care unit, which shall include a review of injury data and trends. The Plan shall include an effective procedure for obtaining the active involvement of employees in reviewing and updating the Plan with respect to the procedures performed by employees in their respective work areas or departments...

* * * * *

§5189. Process Safety Management of Acutely Hazardous Materials

* * * * *

(d) Process Safety Information. The employer shall develop and maintain a compilation of written safety information to enable the employer and the employees operating the process to identify and understand the hazards posed by processes involving acutely hazardous, flammable and explosive material before conducting any process hazard analysis required by this regulation. The employer shall provide for

⁵ Nearly all substance specific Title 8 regulations require a written program and employee access to the program. The substance specific regulations are not listed here.

employee participation in this process. Copies of this safety information shall be made accessible and communicated to employees involved in the processes...

* * * * *

(4) A copy of the process safety information and communication shall be accessible to all employees who perform any duties in or near the process.

* * * * *

(e) Process Hazard Analysis.

* * * * *

(3)(A) ...The final report containing the results of the hazard analysis for each process shall be available in the respective work area for review by any person working in that area.

* * * * *

(4) The employer shall establish a system to promptly address the team's findings and recommendations...make them available to operating, maintenance and any other persons whose work assignments are in the facility, and who are affected by the recommendations or actions...

* * * * *

(7) Upon request of any worker or any labor union representative of any worker in the area, the employer shall provide or make available a copy of the employer's RMPP.

* * * * *

(f) Operating Procedures.

* * * * *

(2) A copy of the operating procedures shall be readily accessible to employees who work in or near the process area or to any other person who works in or near the process area.

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(i) Pre-start Up Safety Review.

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(3) The Pre-Start Up Safety Review shall involve employees with expertise in process operations and engineering.

* * * * *

(j) Mechanical Integrity.

(1) Written procedures.

(A) The employer shall establish and implement written procedures to maintain the ongoing integrity of process equipment and appurtenances. These procedures shall include a method:

1. for allowing employees to identify and report potentially faulty or unsafe equipment; and
2. to record their observations and suggestions in writing.

(B) The employer shall respond regarding the disposition of the employee's concerns contained in the report(s) in a timely manner.

(C) The employer shall provide employees and their representatives access to the information required in subsection (j)(1).

* * * * *

(p) Employee Participation. The employer shall develop a written plan of action to ensure employee participation in process safety management which includes:

(1) Employer consultation with employees and their representatives on the conduct and development of the elements of process safety management required by this section; and

(2) Providing employees and their representatives with access to all information required to be developed by this section without regard to possible trade secret status of such information.

* * * * *

§5192. Hazardous Waste Operations and Emergency Response

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(b) Safety and health program.

(1) General.

* * * * *

(E) Program availability. The written safety and health program shall be made available to any contractor or subcontractor or their representative who will be involved with the hazardous waste operation; to employees; to employee designated representatives; to Division representatives, and to personnel of other Federal, state, or local agencies with regulatory authority over the site.

* * * * *

(1) Emergency Response by Employees at Uncontrolled Hazardous Waste Sites.

(1) Emergency response plan.

(A) An emergency response plan shall be developed and implemented by all employers within the scope of subsections (a)(1)(A)-(B) of this section to handle anticipated emergencies prior to the commencement of hazardous waste operations. The plan shall be in writing and available for inspection and copying by employees, their representatives, Division personnel, and other governmental agencies with relevant responsibilities.

* * * * *

(p) Certain Operations Conducted Under the Resource Conservation and Recovery Act of 1976 (RCRA)...

* * * * *

(1) Safety and health program: The employer shall develop and implement a written safety and health program for employees involved in hazardous waste operations that shall be available for inspection by employees, their representatives, and Division personnel. The program shall be designed to identify, evaluate, and control safety and health hazards in their facilities for the purpose of employee protection; to provide for emergency response meeting the requirements of subsection (p)(8) of this section; and to address as appropriate site analysis, engineering controls, maximum exposure limits, hazardous waste handling procedures, and uses of new technologies.

* * * * *

(q) Emergency Response to Hazardous Substance Releases...

* * * * *

(1) Emergency response plan: An emergency response plan shall be developed and implemented to handle anticipated emergencies prior to the commencement of emergency response operations. The plan shall be in writing and available for inspection and copying by employees, their representatives, and Division personnel...

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§5191. Occupational Exposure to Hazardous Chemicals in Laboratories

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(e) Chemical hygiene plan.

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(2) The Chemical Hygiene Plan shall be readily available to employees, employee representatives and, upon request, to the Chief.

* * * * *

§5193. Bloodborne Pathogens

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(c) Exposure Response, Prevention and Control.

(1) Exposure Control Plan.

* * * * *

(C) Each employer shall ensure that a copy of the Exposure Control Plan is accessible to employees in accordance with Section 3204(e).

* * * * *

(E) Employees responsible for direct patient care. In addition to complying with subsections (c)(1)(B)6. and (c)(1)(B)8., the employer shall solicit input from non-managerial employees responsible for direct patient care who are potentially exposed to injuries from contaminated sharps in the identification, evaluation, and selection of effective engineering and work practice controls, and shall document the solicitation in the Exposure Control Plan.

* * * * *

§5194. Hazard Communication

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(e) Written Hazard Communication Program.

* * * * *

(3) The employer shall make the written hazard communication program available, upon request, to employees, their designated representatives, the Chief, and NIOSH, in accordance with the requirements of section 3204(e).

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§5199. Aerosol Transmissible Diseases

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(d) Aerosol Transmissible Diseases Exposure Control Plan.

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(2) The Plan shall contain all of the following elements:

* * * * *

(P) An effective procedure for obtaining the active involvement of employees in reviewing and updating the exposure control plan with respect to the procedures performed in their respective work areas or departments in accordance with subsection (d)(3).

* * * * *

(3) The ATD Plan shall be reviewed at least annually by the program administrator, and by employees regarding the effectiveness of the program in their respective work areas...

* * * * *

(4) The Plan shall be made available to employees, employee representatives, the Chief and NIOSH for examination and copying, in accordance with subsection (j)(4).

* * * * *

(f) Laboratories.

* * * * *

(4) Biosafety Plan (BSP)...

* * * * *

(M) Include an effective procedure for obtaining the active involvement of employees in reviewing and updating the Biosafety Plan with respect to the procedures performed by employees in their respective work areas or departments on an annual (or more frequent) basis.

§3342. Violence Prevention in Health Care

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(c) Workplace Violence Prevention Plan...

* * * * *

(2) Effective procedures to obtain the active involvement of employees and their representatives in developing, implementing, and reviewing the Plan, including their

participation in identifying, evaluating, and correcting workplace violence hazards, designing and implementing training, and reporting and investigating workplace violence incidents.

* * * * *

While subsection 3203(a)(3) requires employers to implement a system for communicating with employees on safety and health matters, it does not require employers either to provide employees with access to the program or to obtain employee participation in developing or implementing the program.

Allowing employees to access the employer's IIPP will likely reduce hazards in workplaces because employees will better understand the decision-making processes involved in selecting and implementing necessary control measures. They will also be better aware of the importance of the control measures in the context of the employer's entire injury and illness prevention program. Finally, employees will be better equipped to discuss with the employer any areas needing improvement.

Moreover, obtaining the active involvement of employees in developing and implementing the employer's IIPP will further reduce hazards by encouraging greater participation by all employees in identifying and addressing hazards. Active employee involvement will also foster teamwork by everyone involved to maintain a safe and healthful workplace. In addition, by involving employees in developing and implementing the employer's IIPP, employers can incorporate employees' first-hand knowledge, experience, and expertise to identify and develop or select the most effective procedures, practices, and equipment. A program based entirely on theory without employee input is less likely to be practical, effective, or followed by the employees.

10.0 Conclusion

Cal/OSHA has reviewed the petition requesting a change to the language in Title 8 subsection 3203(a) and 3203(a)(3). Cal/OSHA believes the petition to allow employee access to the IIPP should be approved. In addition, although the proposed language does not provide for employee participation and involvement in developing and implementing the IIPP, such language should be included in any modification to section 3203. Cal/OSHA recommends that an advisory committee be convened to consider requirements providing for employee access to, and involvement and participation in, the employer's IIPP.