

OCCUPATIONAL SAFETY AND HEALTH
STANDARD BOARD

PETITION FILE NO. 562

BOARD STAFF EVALUATION

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INTRODUCTION

On January 27, 2017, the Occupational Safety and Health Standards Board received a petition from Mr. Dan Leacox of Leacox and Associates. The Petitioner requested that the Board amend Title 8, California Code of Regulations, Section 3203 of the General Industry Safety Orders to provide employee access to the written Injury and Illness Prevention Program (IIPP). Upon receipt, the petition was designated No. 562 (Petition).

BACKGROUND

On February 16, 2017, Assembly Bill No. 978 was introduced by Assembly Member Limon to amend Labor Code Sections 6319.3 and 6401.7. The bill would require an employer who receives a written request for a copy of the written Injury and Illness Program from a current employee, or authorized representative of the employee, to comply with the request as soon as practicable, but no later than 5 business days. The paper copy, or the electronic copy, of the written injury prevention program is to be provided free of charge, to the current employee or his or her authorized representative.

REQUESTED ACTION

The Petition requests to amend Title 8, Section 3203 to read:

§3203. Injury and Illness Prevention Program

(a) Effective July 1, 1991, every employer shall establish, implement ~~and maintain~~, and allow access to 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, means of access to the program, 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).

PETITIONER ASSERTIONS

The Petitioner stated that 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, employees may wish to review the program. The Petitioner characterizes his proposal as "small, but important changes, which will clarify whether employees have a right to access employer's IIPP if they so choose."

STAFF EVALUATION

The IIPP is a regulatory requirement mandating that employers establish and implement a management system to minimize, or where possible eliminate the risk to injury and illnesses to employees. It is a general program meant to apply to all employers. The IIPP is required to be in writing and must contain seven elements, which works in harmony to achieve a common purpose:

- Responsible person (accountability for management)
- System to assure compliance (accountability for employees)
- Communication between management and employees
- Hazard identification (inspections)
- Accident investigation
- Correction of identified hazards
- Training of supervisors and employees

Although the IIPP has a specific framework, Section 3203 is a performance-based standard. The employer is required to develop a safety management system or IIPP tailored to the operations of their company. The written IIPP for a restaurant is different in content and volume from the written safety program of a petroleum refinery. For example, a company with

complex operations that present a multitude of hazards will have a more extensive IIPP versus a company with simpler less hazardous operations. In specific industries where there is a need to specify the type and level of participation, the current vertical standards fulfill those needs.

Relevant Standards

Federal Standards

There is no federal standard requiring a written Injury and Illness prevention program. The principles of the IIPP, such as communication, hazard identification (inspections), control measures, and training are found in individual vertical standards.

International Consensus Standards

ISO 45001- Occupational Health and Safety Systems- Requirements

The ISO consensus standard provides guidance to international businesses in developing and implementing a safety management system. ISO 45001 has a framework containing the following elements (more comprehensive, but similar in concept to the IIPP):

- Context of the organization
- Leadership and Worker Participants
- Planning (hazard identification, assessment, and risk)
- Support (resources, competence, awareness, information and communication, documentation)
- Operation (hierarchy of controls, management of change, procurement, contractors, emergency preparedness and response)
- Performance evaluation (monitoring, measurement and analysis)
- Internal audit (audit objectives)
- Improvement (incident, nonconformity, and corrective action)

Position of the Division of Occupation Safety and Health

The Division believes the petition to allow employee access to the IIPP should be approved. Furthermore, the Division raised additional concerns beyond the scope of the Petitioner's request. In addition, the Division recommended convening an advisory committee meeting to discuss access to, and involvement and participation in the employer's IIPP.

Analysis

Board staff agrees with the Petitioner and the Division that employees should be provided access to the written IIPP. However, Board staff is not in support of the written proposal provided by the Petitioner. The proposal put forth by the Petitioner lacks clarity in describing how access to the IIPP can be obtained.

The IIPP program is written for the benefit of the employees. Reading of the employer's written IIPP will provide employees a better understanding of the responsibilities of both the management and employees in promoting safety and health.

To have an effective IIPP, active participation or partnership between management and employee is necessary. Section 3203(a)(3), through the communication provision, guarantees a level of participation between employees and management. Compliance with the subsection requires employees to participate in trainings and health and safety meetings. In addition, employers are required to have a system that allows anonymous notification of hazards without fear of reprisal.

Companies that have grown a certain size typically elect to form a labor/management safety committee. Requirements for such committees are found in Section 3203(c).

§3203. Injury and Illness Prevention Program

(c) Employers who elect to use a labor/management safety and health committee to comply with the communication requirements of subsection (a)(3) of this section shall be presumed to be in substantial compliance with subsection (a)(3) if the committee:

- (1) Meets regularly, but not less than quarterly;
- (2) Prepares and makes available to the affected employees, written records of the safety and health issues discussed at the committee meetings and, maintained for review by the Division upon request. The committee meeting records shall be maintained for at least one (1) year;
- (3) Reviews results of the periodic, scheduled worksite inspections;
- (4) Reviews investigations of occupational accidents and causes of incidents resulting in occupational injury, occupational illness, or exposure to hazardous substances and, where appropriate, submits suggestions to management for the prevention of future incidents;
- (5) Reviews investigations of alleged hazardous conditions brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspection and investigation to assist in remedial solutions;
- (6) Submits recommendations to assist in the evaluation of employee safety suggestions;
and
- (7) Upon request from the Division, verifies abatement action taken by the employer to abate citations issued by the Division.

The IIPP is further developed in detail in industries where it has been determined that there is a necessity to go beyond the general provision of Section 3203. These requirements are addressed in the industry specific vertical standards such as Section 3342. Violence Prevention in Health Care, Section 3395. Heat Illness Prevention, and Section 5120. Health Care Worker Back and Musculoskeletal Injury Prevention.

STAFF RECOMMENDATION

Board staff recommends that the petition be granted and direct Board staff to prepare rulemaking documents, which explicitly provides the regulated public access to the employer's written IIPP. The proposal should clarify the following:

- Who can request a copy of the Injury and Illness Prevention Program?
- How would access be provided?
- Should the request procedure be specified?
- Should requested access have to be provided within a specified period of time?

The Division's recommendation to convene an advisory committee to discuss employee involvement and participation in the employer's IIPP is already addressed under Section 3203, as a performance based standard.