

CALIFORNIA INDUSTRIAL HYGIENE COUNCIL

*Advancing public policy to improve the health and safety
of workers and the community.*

November 28, 2018

RECEIVED

Ms. Christina Shupe
Executive Officer
California Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

DEC 03 2018

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

**Subject: Petition for Amendments to Title 8 California Code of Regulations
Section 3203**

Dear Ms. Shupe:

This petition is submitted in accordance with the Administrative Procedures Act, California Government Code, Section 11340.6, et. seq. and in conformance with petition procedures set forth by the Occupational Safety and Health Standards Board (OSHSB). On behalf of the California Industrial Hygiene Council (CIHC), please accept this petition for the OSHSB to amend four subsections of Title 8 California Code of Regulations Section 3203 (8 CCR 3203) to address much needed clarifications and additions for Injury and Illness Prevention Program (IIPP) requirements, which will improve work place safety for California workers.

Based on our collective experience, we are aware of challenges in determining the effectiveness of an IIPP. The current language in 8 CCR 3203(a) and 1509(a) requires that "...every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program)...". "Effective" has not been defined, and the Title 8 CCR general industry and construction standards for IIPPs (8 CCR 3203 and 1509) have a total of 9,883 violations recorded in CFYs 2014-2018, with 8 CCR 3203(a) being the most frequently cited during this time frame with 4,080 citations.

Examples of actual IIPP citation language include:

"Employer failed to identify and evaluate workplace hazards, including scheduled periodic inspections of power operated presses to identify unsafe conditions and work practices performed by employees in accordance with the written procedures of their written Injury and Illness Prevention Program, which is essential to their overall program."

"Employer failed to correct unsafe or unhealthy conditions (sticking foot pedal on a press brake) in a timely manner based on the severity of the hazard in accordance with the written procedures of their written Injury and Illness Prevention Program, which is essential to their overall program."

"The employer did not perform periodic inspections to identify unsafe conditions and work practices of their employees at different job delivery sites where they go to unload material as required by subsection 3203(a)(4)."

"The employer did not have effective methods and/or procedures for correcting unsafe or unhealthy conditions, material delivery employees are exposed to, when they arrive at job sites to deliver material as required by subsection 3203(a)(6)."

“Prior to and during the course of the inspection, including but not limited to, January 26, 2018, the employer failed to implement an effective Injury and Illness Prevention Program.

Instance 1 -Ineffective system for ensuring that employees comply with safe and healthy work practices in accordance with T8CCR§3203(a)(2).

Instance 2 -Ineffective procedures for identifying and evaluating work place hazards in accordance with T8CCR§3203(a)(4). Employers inspections of the worksite have not addressed blocked exits, blocked fire hoses, appropriate safety shoe use by employees, and appropriate use of powered industrial vehicles by employees.

Instance 3 -Ineffective investigation of occupational injury conducted for serious injury on 12/15/2017 in accordance with T8CCR§3203(a)(5).”

“Prior to and during the course of the inspection, including but not limited to, November 2, 2017, the employer failed to implement an effective Injury and Illness Prevention Program.

Instance 1 -There is no person with authority and responsibility for implementing the Program in accordance with T8CCR§3203(a)(1).

Instance 2 -Ineffective procedures for identifying and evaluating work place hazards associated with the Log Saw in accordance with T8CCR§3203(a)(4). As a result, a serious injury occurred on 10/26/2017 while the Log Saw was being operated in its normal operating configuration.

Instance 3 -No investigation of occupational injury conducted for serious injury on 10/26/2017 in accordance with T8CCR§3203(a)(5).”

“Prior to and during the course of the investigation, including but not limited to on January 20, 2017, the employer failed to effectively implement and maintain an Injury and Illness Prevention Program that included all of the required elements, which are essential to an effective Program, such that:

1. The employer failed to identify, evaluate and correct hazards that occur in or on machinery and/or equipment used in the workplace.
2. The employer failed to identify, evaluate and correct the unsafe work practices of the Machine Operators who routinely clean, set-up and adjust Milling Machines while the machines are running.”

“Prior to and during the course of the inspection, including, but not limited to, on January 23, 2017, the Employer failed to effectively implement and maintain their written Injury and Illness Prevention Program (IIPP), in that:

Instance 1: Employer failed to identify, evaluate and correct workplace hazards, unsafe conditions and work practices performed by employees in accordance with the written procedures of their written Injury and Illness Prevention Program, which is essential to their overall program. T8CCR 3203(a)(4) &(6).

Instance 2: Employer failed to provide effective training and instruction to employees in accordance with the written procedures of their Injury and Illness Prevention Program, which is essential to their overall program.”

1. We recommend amending 8 CCR 3203(a) to incorporate a definition of the word “effective”, and suggest adding a competent person(s) requirement.

Merriam-Webster defines “effective” as producing a decided, decisive or desired effect. “Effectiveness” is defined as a degree to which something is successful in producing a desired result. The challenge for the employer is to develop and implement a compliant IIPP that produces the desired effects or results.

The regulation needs to define what such effects or results would be in order for California’s employers to know when their IIPP achieves effectiveness. Cal/OSHA attempts to assist employers in defining “effectiveness” with a questionnaire found on the website, but there are no clear approaches for the employer to verify that they are meeting the required results as stated in 3203(a).

Our recommendation for determining an effective IIPP would be one that has a written program in compliance with the basic Cal/OSHA elements; has a “competent person” as the IIPP administrator; can demonstrate employee awareness and involvement; is providing training to line employees, supervisors, and upper level management which imparts information and skills each of these groups needs to ensure that all health and safety issues are fully addressed; and can document that planned activities are being realized.

We recommend amending subsection (a)(1) to require a competent person to be the IIPP administrator. The language we propose is consistent with many other regulations found in Title 8. Recommended language for (a)(1) is as follows:

The employer shall appoint a competent person to administer their health and safety duties. A competent person is someone with the necessary skills, knowledge and experience to manage health and safety, recognize the hazards and risks in operational activities, and assure availability of the correct measures to control and manage those hazards and risks.

2. We recommend amending subsection (a)(4) to incorporate a qualified person requirement.

The current (a)(4) requires:

“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”.

The qualified person could be an employee or a third party. A qualified person should be defined as a person designated by the employer who by reason of training, experience, instruction, or certification from a recognized occupational health and safety organization (e.g., ABIH, BCSP) has demonstrated the ability to identify and evaluate workplace hazards. As above, we propose to use language that is consistent with many other regulations found in Title 8 requiring a “qualified person.”

Limited use of qualified person in the IIPP process is already evident in the current practice of IIPP review as described in CA Labor Code 6401.7(l).

3. We recommend amending 8 CCR 3203(a)(5), to incorporate additional requirements for this element of the IIPP. The current language in 8 CCR 3203(a)(5) states, "Include a procedure to investigate occupational injury or occupational illness."

This is an accident investigation requirement, but does not incorporate requirements or qualifications as to who should conduct or be involved with accident investigations. We specifically recommend amending 8 CCR 3203(a)(5) to incorporate additional requirements relevant to accident investigations.

We recommend amending subsection (a)(5) to incorporate a qualified person requirement for accident investigation as defined above. The qualified person could be an employee or a third party.

4. We recommend amending subsection (c) to require that employers with greater than 20 employees be required to have a labor/management safety committee. Currently, subsection (c) language allows safety committees as an option.

We have included a reference list of documents and information we consulted in support of our request for these amendments. Please refer to page 5.

Please grant this petition and commence the process for amending 8 CCR 3203 by convening an advisory committee to consider these amendments. The petitioners request to be fully engaged and participate in any advisory committee that would be convened to amend the regulation as well as participate in any hearings on the matter. The petitioners would be pleased to provide additional testimony and evidence as needed. The petitioners look forward to working with the Board and staff to assist in the development of these amendments for 8 CCR 3203.

On behalf of the petitioners, please contact Pamela Murcell, President, CIHC, as needed, by telephone at (916) 712-4547, or by email at kwa-sacramento@att.net. Thank you for your consideration.

Sincerely,
California Industrial Hygiene Council



Pamela Murcell, MS, CIH
President, CIHC

Petition Reference List:

- 1) ISO 45001 March 2018
- 2) Health & Safety Executive, What is competence?,
<http://www.hse.gov.uk/pubns/indg420.htm>
- 3) RAND Corporation, "An Evaluation of the California Injury and Illness Prevention Program", 2012
- 4) Title 8 California Code of Regulations Sections 3203 and 1509
- 5) California Labor Code Section 6401.7
- 6) Division of Occupational Safety and Health, Policy and Procedure Manual, P&P C-45A, 4/1/2003, "Enforcement of 8CCR Section 3203: Injury and Illness Prevention Program"
- 7) Cal/OSHA, "Guide to Developing Your Workplace Injury and Illness Prevention Program with Checklists for Self-Inspection"
- 8) Cal OSHA Reporter, May 11, 2018, Vol 45, No 18
- 9) Cal OSHA Reporter, May 12, 2017, Vol 44, No 18
- 10) Cal OSHA Reporter, May 6, 2016, Vol 43, No 18