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Senate Bill 198: Impact and Effectiveness on Workers' Health and Safety

Senate Committee on Industrial Relations

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CALIFORNIA LEGISLATURE
SENATE COMMITTEE ON
INDUSTRIAL RELATIONS

SENATE BILL 198

**IMPACT AND EFFECTIVENESS
ON
WORKERS' HEALTH AND SAFETY**

AN OVERSIGHT REPORT



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GOLDEN GATE UNIVERSITY

PHILLIP L. POLAKOFF, M.D., M.P.H.
SPECIAL CONSULTANT

SENATOR BILL GREENE
CHAIRMAN

December, 1992

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INTRODUCTION

In 1989 the California Legislature passed and the Governor signed SB 198, the most significant piece of Occupational Safety and Health legislation since the enactment of the OSHA Act. SB 198 shifts the focus of state policy in workplace safety and health to prevention. The changes weave the prevention approach into every aspect of Cal-OSHA: Standard enforcement sanctions; the use of data; and the providing of education information and technical assistance to employers.

On July 1, 1991, regulations became effective implementing the part of this bill requiring employers to establish, implement and maintain worksite injury prevention programs. Based on preliminary data, it appears that most companies are devoting more attention to safety and health. However, not enough time has lapsed to properly assess the impact of SB 198 in terms of lower accident statistics or higher business costs.

In order to carry out its oversight responsibilities, the Senate Committee on Industrial Relations desired to obtain additional information as to SB 198's impact and effectiveness.

To this end a questionnaire was forwarded to knowledgeable parties for their response.

METHODOLOGY

In May 1992 a comprehensive questionnaire was sent to sixty-eight individuals who have demonstrated an active interest in SB 198's impact and effectiveness on safety and health in the California workforce. These individuals represented labor; small and large businesses; government; insurance; safety, industrial hygiene and occupational medicine, and academia. All members of Cal-OSHA's Advisory Board were requested to complete the questionnaire.

The questionnaire consisted of sixteen questions divided into five areas of inquiry. These sections included the following: regulations, targeting of resources, inspections, consultation service and other resources. Additional comments were requested as well.

By September 15, 1992, twenty-five responses with twenty-two completed questionnaires were received. Fortunately, the information received adequately represented the views of the varied interest groups noted above.

RESULTS

The questions contained within each of the five areas of inquiry solicited by the questionnaire will be listed, followed by a summary of the responses received.

1. *Does Section 3203 of Title 8 (Calif. code of Regulations), provide clear direction to employers concerning requirements for injury and illness prevention programs?*

(a) *System for Identification of Responsible Person?*

RESPONSE: Yes - 14 No - 8

COMMENTS:

- Person or persons with authority and responsibility need or needs to be better defined.
- Unclear as to who has safety authority; top management or line/staff positions.
- Employees need to be better informed about employer responsibility.
- The CS-1 Guide to Developing Your Injury and Illness Prevention Program's provides valuable assistance
- Needs to specify what is acceptable, e.g. name and/or title. Criteria should be whether employees can easily identify the responsible person.

- Language should be placed into 3203 indicating that person should be identified by job title not name, that way the plan won't need to be updated each time a person changes employment status. Will know the person by job title alone.

(b) *System for Hazard Assessment?*

RESPONSE: Yes - 15 No - 6

COMMENTS:

- Define "scheduled periodic inspections". Qualification of individuals doing the assessments should be addressed.
- The checklists in the Cal OSHA Guide are very good
- There is a tendency to avoid designating hazards. Corrective action may be time consuming and expensive.

(c) *System for Hazard Abatement?*

RESPONSE: Yes - 15 No - 6

COMMENTS:

- Define "timely manner" and "severity of hazard"
- Needs to be individualized
- Employers fail to act in a timely manner

(d) *System for Communication?*

RESPONSE: Yes - 15 No - 7

COMMENTS:

- Need mandated joint committees. Employers must not be allowed to ignore the role that employees play in protecting their own safety & health
- It is unclear whether all of the items identified after "substantial compliance" 3203(a)(3) must be implemented to be in compliance with this section
- How are workers on a construction site able to keep track of a communications form for voicing safety concerns. Their best and only communication is verbal and signals. Daily safety talks and weekly meeting is sufficient communication.

(e) *System for Employee Compliance?*

RESPONSE: Yes - 14 No - 8

COMMENTS:

- Weakest section.
- There is virtually no language specifying employee responsibilities.
- The term "disciplinary actions" is vague. Employers are unsure of what they can do within the limits of the law.

(f) *System for Training?*

RESPONSE: Yes - 15 No - 7

COMMENTS:

- Generally supervisors are aware of risks associated with their operations. What they lack are skills in training their subordinates. Supervisors should be required to develop training and communicating skills.
- Cal OSHA materials provide information on training; however not always readily accessible.
- More resources and commitment is needed from employers.

(g) *Record Keeping?*

RESPONSE: Yes - 17 No - 5

COMMENTS:

- A common matter of confusion is the location of records. Should they be maintained centrally or in the field, or both.
- Needs closer compliance supervision.
- The exception in (b)(1) is contrary to usual business practices.

(h) *Accident Investigation?*

RESPONSE: Yes - 16 No - 6

COMMENTS:

- (a)(5) on investigation of occupational injury & illness is void of criteria for investigating accidents.
 - Mentioned but not specified well.
 - Near miss or close calls should be included.
 - Need broader compliance, i.e. white collar accidents or illnesses are often ignored or considered insignificant.
2. Does *Section 3203* provide adequate "substantial compliance" criteria?

RESPONSE: Yes - 8 No - 12

COMMENTS:

- The labor/management committee section is unclear. Can you have the committee do part of the seven criteria and have management do the rest.
 - A written "generic" statement for each of the elements may be deemed "effective"
 - This is the most frequent complaint heard from the regulated community. Suggest a performance standard (similar to the current one) with optional appendices for different workplace settings that provide detailed program element specifications. If an employer chose to follow one of these appendices he or she could be assured that they would be in compliance.
 - Some small employers have expressed their feeling that 3203 does not offer enough "specification" with respect to compliance. However Cal/OSHA Consultation Service's compliance documents provide detailed criteria.
 - There are neither criteria nor is there any system for an employer to self judge their own program or figure out how Cal/OSHA might judge them during a compliance inspection.
 - According to Cal/OSHA Policy & Procedure 45, if any one area is found to be in non-compliance the entire program is considered to be ineffective. This is not presented in the regulations.
 - Section 3203 simply restates SB 198 language -- it fails to provide detail and criteria.
 - Presumably, the more recommended criteria an employer implements, the more substantial the compliance.
- (a) *Are the "less stringent substantial compliance" criteria for small employers sufficient to prevent implementation from being an undue burden on small employers?*

RESPONSE: Yes - 10 No - 6

COMMENTS:

- More stringent compliance is needed.
- Exemptions from written requirements for employers with 5 or fewer employees
- This would be difficult to ascertain at this point without a thorough study. However considering that, in general, small employers head the list of high risk industries, it is critical to maintain the requirements for small employers. Otherwise, many workers' health will be jeopardized for lack of an adequate standard to protect their health. This should apply to non-hazardous industries as well, especially since they will have less of a problem complying.
- Smaller employers can throw out their inspection records after a hazard is corrected and keep fewer records regarding training.
- There is no compliance for small employers - 10 or fewer.

(b) *Should the Cal/OSHA Standards Board also adopt effective, yet less stringent compliance criteria for employers in non-hazardous industries?*

RESPONSE: Yes - 8 No - 14

COMMENTS:

- What is the definition of non-hazardous.
- Levels of under reporting in some industries need to be considered.
- Complete exemption for non-hazardous workplaces.
- All employers should have a full IIPP. All that is needed for less hazardous smaller (meeting both criteria) employers is for them to realize that they don't need an opus to be in compliance. They need to stop being so scared.
- The current requirements can be scaled down to be used by all types of business, both hazardous and non-hazardous.
- Depends on what "less stringent" includes.
- Small employers in non-hazardous industries should be exempted as originally presented in SB 496.
- Every employer should be able to comply. Compliance is naturally easier for a "non-hazardous" industry. No special exemptions are necessary.

4. *Are other regulations implementing SB 198 clear and effective:*

(a) *Selection of employee representatives for employer-employee occupational safety and health committees GISO number (Sec. 3203(a)(3), 3203(c)) where such procedures are not covered by collective bargaining?*

RESPONSE: Yes - 5 No - 12

COMMENTS:

- Labor/Management Committee here not defined.
- 3203(c) does not cover selection of committee membership.
- Need clearer language.
- DOSH should not have to approve a non-union's safety and health safety committee composition. This provides an undue burden on the employer and serves no useful purpose.

(b) *Penalty assessments for violations causing death, or serious injury, illness, or exposure GISO Number Sec. 336(d)(8)?*

RESPONSE: Yes - 12 No - 6

COMMENTS:

- California workers are still suffering work-related injuries and illnesses at same rate as 20 years ago, even though citations and penalties levied against employers have increased substantially and despite enactments and regulatory orders intended to make the system work.
- Usually OSHA targets "deep pockets" regardless of safety efforts.
- Penalty assessments are in general confusing to the employer and rely partly on subjective decisions on the part of the investigator.

(c) *Other penalty assessment changes?*

RESPONSE: Yes - 10 No - 6

COMMENTS:

- It should approve and monitor the programs and resort to sanctions only when every possible pro-active solution fails. Neither a simple nor popular solution but will work if real priority is protecting worker safety & health.
- Egregious policy is clear. For arrogant employers it is painfully clear.
- Usually OSHA targets "deep pockets" regardless of safety efforts.

- Penalty assessments are in general confusing to the employer and rely partly on subjective decisions on the part of the investigator.

a. *Was the list of the 100 highest hazard industries developed with the use of appropriate data on health and safety hazards?*

RESPONSE: Yes - 10 No - 3

COMMENTS::

- Do not feel that appropriate data is available.
- SIC Codes and Cal OSHA 200 logs should be used.
- Levels of under reporting in some industries need to be considered.
- This has been a great resource.
- The results make common sense -- may not be the best and most scientific approach but considering limited time and resources, it's adequate. More can be done later.

(b) *Are employers in the highest hazard industries generally aware their industries are among the most hazardous in the state?*

RESPONSE: Yes - 6 No - 13

COMMENTS:

- Top 20 may be aware through their insurance carriers and/or trade associations.
- List has not been publicized sufficiently to make employers aware they are on the list - in most cases not aware of it.

6. (a) *Are the regional plans developed for enforcement inspections useful to managers within Cal-OSHA?*

RESPONSE: Yes - 5 No - 7

COMMENTS:

- Plans seldom used. Mandated activities (complaints, accident & follow-ups) use lion's share of available resources.
- Never heard of plans; not publicized.

- Maybe, if inspectors are not too busy investigating complaints & fatalities.

(b) *Are they useful to employers and employer organizations?*

RESPONSE: Yes - 5 No - 7

COMMENTS:

- Would be more useful if plans were available from the Regional offices.
- No, because employers and employer organizations have no knowledge of this.

(c) *Are they useful to employees or employee organizations?*

RESPONSE: Yes - 6 No - 7

COMMENTS:

- Plans not publicized.
- Employees/employee organization have no knowledge of them.

(d) *Are employers in the industries identified in the regional plans generally aware their industries are targeted for enforcement inspections?*

RESPONSE: Yes - 3 No - 10

COMMENTS:

- Most employers not aware of regional plans.
- Plans not widely publicized.
- Most employers not aware of dangers in their industry.
- Letters to selected SIC Code employers would elicit more cooperation & heighten compliance awareness.

(e) *Are employers in the industries identified in the regional plans generally aware they have the highest priority for assistance from the Consultation Service, especially if they are small employers?*

RESPONSE: Yes - 1 No - 11

COMMENTS:

- Consultation Service most neglected part of system. Due to this, little practical employee or employer assistance realized.
- No marketing re this service.
- Consultation very busy and rarely has adequate time to visit & follow-up; they are understaffed.
- Probably most employers are not aware of this fact.

(a) *Are inspectors adequately trained in injury and illness prevention programs to evaluate them at the worksite?*

RESPONSE: Yes - 8 No - 9

COMMENTS:

- Yes, but aren't enough of them.
- No. Training seems limited to individual review of newly created P&P section - largely repeat of the standard itself.
- Inspectors have received some training, but since criteria has not been fully developed may have difficulty evaluating an employer's plan.
- Inspectors trained in general safety topics, not in high-hazard industries
- Approximately 50% are properly trained.
- Revised P&P for enforcing Section 3203 should facilitate evaluations.

(b) *Is enforcement policy and procedure consistent throughout Cal-OSHA?*

RESPONSE: Yes - 4 No - 11

COMMENTS:

- Key elements of individual responsibility, direct accountability, active participation, and ongoing, practical education do not fit with this approach. Employees given rights but no responsibility; guaranteed anonymity but have no accountability; participation is sanctioned confrontation; practical education is non-existent.
- District Managers operate on own interpretation; Safety Engineers lack knowledge about rules.
- Some districts are more conscientious than others.
- Consistency based on "effectiveness" of compliance officer.

- P&P guidance is slim & supplementary training not consistently provided
- Managers follow own dictum.
- Hopefully Cal-OSHA's revised P&P for enforcing 3203 will improve on consistency controversy.

8. *Are the Consultation Service publications on Section 3203 helpful documents to employers?*

(a) *Guide to Injury and Illness Prevention Programs?*

RESPONSE: Yes - 20 No 2

COMMENTS:

- Very helpful.
- Guide gives general overview but doesn't clearly set forth steps for setting up prevention program. Generic programs should be included to give employers a guide for developing own program specific to their industry.
- Could be better organized and provide more examples, forms, etc.

(b) *Sample Program for Small, Nonhazardous Employers?*

RESPONSE: Yes - 11 No - 4

COMMENTS:

- That's the problem; not enough samples of different programs.
- Not available as such; this type of employer must glean the information from the Sample & Guide.

(a) *Were the SB 198 seminars provided by the Consultation Service effective in helping employers understand the requirements and how to establish, implement, and maintain an effective injury and illness prevention program?*

RESPONSE: Yes - 10 No - 4

COMMENTS:

- Good program - more video taped series would be helpful.

- The more the Consultation Unit does to assist employers in setting up program the better; however Consultation Unit could be more effective if there were more specific guidelines for employer to follow, and the Guidebook was clearer
- Excellent programs.
- Seminars too short (4 hrs.) and too limited in number.
- There were inconsistencies re SB 198 between different seminars.
- Mixed reviews; generally employers have had specific concerns.

(b) *Should the Consultation Service continue to conduct seminars on SB 198 implementation:*

RESPONSE: Yes - 16 No - 6

COMMENTS:

- No, California saturated with SB 198 training.
- Scarce funding should be committed to enforcement now that law widely known
- Video taped & distributed at a nominal fee.
- Yes, and also develop model materials in conjunction with people who want comprehensive approach.
- Concentrate on the small business.
- Priority should be given to 1-to-1 assistance & review of completed programs.

(c) *Are there other forms of outreach in injury and illness prevention which the Consultation should engage in?*

RESPONSE: Yes - 13 No - 1

COMMENTS:

- Telephone consultation: Need more staffing
- Newsletter/publication: More required
- Pilot projects: Companies should be identified for voluntary participation;
More are needed;
Cal-OSHA should demonstrate in state government operations what they expect industry to do

- Other: Market / publicize the requirements and benefits of IIPPs
Re-do the Guides to make them more useful

DOSH should publicly reward employers with excellent IIPP's and make their written programs available to others

Get labor more involved

Use the insurance companies to provide consultation, especially to small employers

Develop videos on certain subjects pertaining to compliance and documentation

10. *Are the Consultation Service employees adequately trained in injury and illness prevention programs to assist employers?*

RESPONSE: Yes - 8 No - 3

COMMENTS:

- Insufficient resources.
- Suggest CSRs be used.

11. *Are small employers getting the help they need from Cal-OSHA in creating their injury and illness prevention programs?*

RESPONSE: Yes - 2 No - 7

COMMENTS:

- Complaint most often is that Consultation Service is too busy to respond in timely manner.
- Insufficient resources and staff.
- National Safety Council & many others now offering seminars & workshops on SB 198 compliance.
- If small employers were getting help from Cal-OSHA there wouldn't be so many companies selling canned IIPPs.

12. *Are small employers getting the help they need from their worker's compensation insurance carriers in creating their injury and illness prevention programs?*

RESPONSE: Yes - 4 No - 6

COMMENTS:

- Depends on carriers.
- Doesn't seem like it; may be some carriers doing a good job.
- If they ask.
- Yes, however some employers report carrier will not provide personal guidance
- Some do; most don't.

13. *Private occupational safety and health consultants are available to assist employers in developing and implementing injury and illness prevention programs. Concern has been raised that some are creating fear and misunderstanding concerning SB 198 through misrepresentation of the bill's purpose and provisions, particularly penalties for noncompliance. How significant a problem do you think this is?*

RESPONSE: Yes - 10 No - 3

COMMENTS:

- Some excesses occurred at first.
- They are unfortunately filling a void left by Cal-OSHA.
- On a decline.
- Not significant problem; ignorance of law is no excuse; fear is preferable to disrespect of a law designed to prevent human suffering.
- Personally experienced some of the scare tactics used by unscrupulous consultants. Better regulation with more guidance might reduce that kind of exploitation.
- Even in the best environments OSHA is described by employers as organization that ultimately will harm & take sanctions against employees.

14. *Does Cal-OSHA adequately interact with other state entities with resources to provide employers with assistance in injury and illness prevention?*

COMMENTS:

- See no evidence of proactive interaction by Cal/OSHA.
- Insufficient resources.
- Probably not as much as they should or want - due to budget constraints.
- Who is out there to help?
- Who has resources these days?

a. *Occupational Health Centers at the University of California?*

RESPONSE: Yes - 9 No - 5

COMMENTS:

- Cal-OSHA needs to rely upon the experts at U.C. more than it has.
- Should be more interacting.
- Yes, but have very limited resources to offer.

b. *Hazard Evaluation System and Information Service (HESIS) in the Department of Health Services?*

RESPONSE: Yes - 10 No - 5

COMMENTS:

- Again, Cal-OSHA needs to use these resources more extensively & timely act on recommendations & study results.
- Very valuable service.
- Not sure HESIS will remain under new Wilson Budget.
- HESIS should not be defunded; their ability to prevent injuries through accurate information is paramount.

c. *Other parts of the Department of Health Services?*

RESPONSE: Yes - 4 No - 5

COMMENTS:

- You mean CDHP which has turned into fairly insular research program, unrelated to the real world of work!

15. *Does Cal/OSHA adequately interact with private sector employer and/or employee organizations with resources to provide assistance in injury and illness prevention?*

a. *Worker's Compensation Insurance carriers?*

RESPONSE: Yes - 5 No - 8

COMMENTS:

- During 3203 public promulgation process Cal/OSHA proactively dealt with large insurance carriers in an attempt to develop model programs that would serve as basis for detailed P&P and inspector training. Somehow goal was transformed into creating model program for Consultation Service. Feel the original objective would have provided more credible guidance to employer community, i.e. establishing a stable link between the consultation and enforcement programs. Currently some evidence to suggest these two programs not in complete harmony. Employers need to know what inspection personnel will be looking for.

b. *Trade Associations?*

RESPONSE: Yes - 8 No - 7

COMMENTS:

- Cal-OSHA appears insensitive to industry concerns, perspective, or needs
- Could be done more systematically

c. *Professional Organizations?*

RESPONSE: Yes - 8 No - 6

COMMENTS:

- Should be done more systematically

d. *Labor Unions?*

RESPONSE: Yes - 10 No - 4

COMMENTS:

- Employers, with help of Republican Administrations have been able to exclude Labor from negotiations & discussions. There has been some improvement since the appointment of Chief John Howard but much remains to be done. Ridiculous to exclude the very people the Division is charged to protect!

e. *Advocacy Groups in Occupational Safety and Health?*

RESPONSE: Yes - 8 No - 4

COMMENTS:

- We keep trying for better communication; it's a bit better
 - Somewhat with WORKSAFE
 - Cal-OSHA overly responsive to "squeaky wheel", e.g. Worksafe, labor
16. *Currently there are proposals before the California Legislature to amend or repeal the provisions of SB 198. These include in part?*

- (a) *elimination of civil penalties for violations of the injury and illness prevention standards other than willful, repeat, or serious;*

RESPONSE: Yes - 6 No - 13

COMMENTS:

- Support more penalties, not less.
 - Penalties for violations of standard should be consistent with other penalty assessments.
 - Civil penalties necessary to ensure compliance.
 - A big mistake to eliminate.
 - Would be a boon to employers & result in higher degree of compliance.
 - Bad idea.
- (b) *addition of a requirement for the Consultation Service to develop model injury and illness prevention programs for industries identified in the regional plans with priority for industries with temporary, intermittent, or seasonal workers;*

RESPONSE: Yes - 11 No - 6

COMMENTS:

- Yes, definitely
- Burden of complying with SB 198 is employers not taxpayers
- Consultation should provide guidebook of model prevention programs for all types of industries
- Would be better to help all with model forms -- doesn't need to be industry-specific
- Especially temporary and seasonal workers; employers thoroughly confused how to include these workers in program

- Better materials for everyone!

(c) *deletion of the requirement that the injury and illness prevention program be written for small employers of nonhazardous industries;*

RESPONSE: Yes - 5 No - 14

COMMENTS:

- All California workers need protection - 80-90% work for small employers.
- Exemption from written requirements for employers with 5 or fewer employees; complete exemption for nonhazardous workplaces.
- No reason to delete this requirement; should have less trouble complying with the law.
- They can develop written plan with less detail.
- Depends on the industry & hazards.
- Bad idea; if small employer can't manage this, they probably shouldn't be in business.

(d) *complete repeal*

RESPONSE: Yes - 1 No - 19

COMMENTS:

- Worker safety and health can only be achieved through system designed, implemented, managed and willingly participated in by both employees & employers. Cal-OSHA should provide direction, assistance & resources to accomplish this. It should approve and monitor programs and resort to sanctions only when necessary.
- SB 198 important tool for protecting workers' health. Repeal would be setback in gains already made.
- In full support of retaining bill and would argue strongly against any repeal; strength of this bill is that of prevention.
- Most companies with any type of safety program have implemented 90% of SB 198.
- Complete repeal would be contrary to established rationale re safety & health.
- Terrible idea!

(e) *exemption from compliance by some employers*

RESPONSE: Yes - 3 No - 14

COMMENTS:

- Hazardous nature of employment should be criteria, not size.
- Any exemptions in standard are contrary to that established to protect all workers' health.
- All employees need health and safety.
- Small employers (fewer than 10 employees) not on 100 Most Hazardous list that can prove their exemplary record for a defined period of time should be exempted.
- Unfair to employees; unequal protection.

Please comment in the space below or on additional paper on what proposals you think would make SB 198 a more effective piece of legislation. Include those above and any others you find appropriate to comment on.

COMMENTS:

- Improved staffing.
- Avoidance of meaningless "boilerplate" IIPP's.
- Consistent enforcement policies.
- SB 198 has required companies to re-focus their Safety & Health Programs. Written programs essential for effective communication between management and employees. As a side note -- law and the associated orders have provided a means to achieve accountability for the development & implementation of effective Safety & Health programs. Law has been effective to standardize systems, procedures, methods, etc., which enhance communication.
- No need for change in law; need more resources for Cal/OSHA and less complaint investigation; change managerial system (or change managers).
- SB 198 one of most important pieces of legislation passed during past decade; in full support of retaining bill and would argue strongly against any repeal; strength of this bill is that of prevention.
- Recent suggestions that would allow increase in fines based on competitive advantage gained by employers in violation of safe work practices should be explored.
- Cal-OSHA misses beat by focusing on larger employers and missing small employers who usually have skeletal H&S programs and high hazard environments; regulatory approach is becoming so burdensome for the conscientious employers that they're taking their operations elsewhere. Need to find incentives rather than punishments to keep business in California - rewarding effective safety programs and aggressively pursuing public and private sector employers who ignore safety.
- SB 198 is not very productive in office environment except for maintenance & janitorial services - 100% compliance impossible to meet and enforce.
- All companies should have an IIPP - therefore SB 198 was needed. Maybe small non-hazardous companies should have less stringent requirements to make it easier for them to design program to meet their needs.
- Eliminate and substantially change responsible person section. This section has led to an adversary situation between Cal-OSHA and the responsible safety person. 3203 gives impression to that person that they are the ones that Division and the D.A.'s will be out to get. This threat should be eliminated in order to promote cooperation & respect.

DISCUSSION

In 1973 the State of California enacted a proposed state of the art safety and health program - Cal-OSHA. The legislation, through adoption of effective standards, enforcement of those standards by means of inspections and sanctions and consultation, was meant to assure safe and healthful working conditions for all Californians.

Unfortunately, with the passage of time, it became readily apparent that Cal-OSHA was not addressing illness and injury prevention. The system was primarily reactive, responding in enforcement mostly to complaints and accidents and in consultation to employer requests, rather than proactively identifying the worse problems at the worksite, and initiating a broad-based, targeted enforcement and educational effort aimed at injury and illness prevention.

SB 198 was introduced in 1989 as a result of three influences: a high annual number of disabling work injuries and illnesses, rapidly escalating workers' compensation costs, and years of legislative oversight. The essence of SB 198 was to shift the emphasis of Cal-OSHA and the State's occupational safety and health policies to prevention.

A prevention program should be designed to:

- anticipate problems before they occur;
- use outreach systems to attract attention to the problems and to identify those most affected;
- provide solutions to those affected which are likely to prevent occurrence;
- transmit appropriate education and technical assistance to those affected to implement the solutions; and
- create deterrence and an ability to require compliance when necessary through a vigorous enforcement program.

SB 198 made several significant changes to make Cal-OSHA more proactive. The changes covered standards, the use of data, the providing of education, information and technical assistance to employers, and enforcement.

Most importantly, for both Cal-OSHA and employers, as part of the prevention focus, the bill requires development of a standard to have an effective injury prevention

program at the workplace. The standard is the basis for measuring the employer's prevention effort at the worksite.

This standard sets forth the employer's duties in developing, implementing, and maintaining a written injury and illness prevention program. It must include the following:

- identification of the person responsible for the program;
- systems for hazard identification, correction and control;
- training, ensuring employee compliance with the program; and
- communication with employees

Although SB 198 was signed into law in October, 1989, insufficient public information activities were carried out prior to the standard mandated by SB 198 was to take effect on July 1, 1991. Specifically, there should have been a more comprehensive approach put forth to clarify enforcement questions for employers and to alert them of services afforded free of charge by Cal-OSHA Consultation Service, such as on-site visits by a consultant, seminars, written materials and guidelines to help establish an illness and injury prevention program. As a result, employers were inundated by vendors selling occupational safety and health services accompanied by propaganda designed to frighten and threaten them into buying materials and services for injury prevention programs. This scenario led many employers to become angry, and felt threatened by what they perceived to be the onerous requirements of SB 198.

In order to carry out its oversight responsibilities, the Senate Committee on Industrial Relations desired at this time to obtain additional information as to SB 198's impact and effectiveness. To this end a comprehensive questionnaire was forwarded to sixty-eight knowledgeable parties representing labor, small and large businesses, government, insurance, safety, industrial hygiene and occupational medicine and academia. The questionnaire solicited opinions in five areas: regulations, targeting of resources, inspections, consultation service and other resources.

Although the overall response was somewhat limited, the information received does appear to appropriately reflect the view of the varied interest groups.

The vast majority of respondents felt that SB 198 is an effective and necessary piece of legislation. Specifically, they pointed to the following reasons:

- SB 198 specifies what the key components in any effectively managed employer health and safety program should be. Elements such as communication, training and accident are fundamental to occupational health and safety. Prevention, rather than treatment, should be the core philosophy of public health;
- SB 198 requires that all employers maintain the Injury and Illness Prevention Program. This is an important requirement because safety and health issues are present in all workplaces, including "non-hazardous" industries;
- the regulations are generally perceived as clear and simply written. Examples of compliance are adequately provided in the regulations themselves.
- compliance with SB 198 need not cause hardship to employers. The complexity of the written program will vary with the complexity of the hazards present at each worksite. Small employers of non-hazardous industries may implement quite simple programs that can be developed without the help of outside consults and, if necessary, with the assistance of the Cal-OSHA Consultation Service.

However, specific concerns were raised with sufficient frequency that they merit mentioning and warrant further attention. These being:

- Person mentioned as responsible party should be identified by job title not name;
- System for employee compliance needs better definitions
- Section 3203 does not provide adequate "substantial compliance" criteria;
- Selection of employee representatives for employer-employee occupational safety and health committees requires clearer selection criteria;
- Employers in the highest hazard industries need to be better educated as to the risks associated with their line of business;
- Employers/Employee representatives have little knowledge pertaining to Cal-OSHA's regional plans and their potential usefulness;

- Cal-OSHA has to develop a more consistent enforcement policy and procedures statewide;
- Cal-OSHA Consultation Services provide valuable and competent professional assistance; however, they are in need of significant additional resources if they are to carry out their mission with greater impact and effectiveness, especially as it pertains to the needs of small businesses;
- Development of model injury and illness prevention programs for different industries
- Non-governmental organizations, i.e. insurance companies, trade associations, professional organizations, unions, etc. have to play a more dynamic role for SB 198 to achieve its intended objectives.

SB 198 has placed Cal-OSHA in a more appropriate, productive role, but even if all the regulations were followed, on-the-job injuries/illnesses would still occur. There will never be enough personnel in Cal-OSHA to ensure each worksite complies with all the safety and health regulations, but it will now be able to focus its limited enforcement and consultation resources on the most hazardous industries and on ensuring employers have appropriate injury prevention programs for their worksites.

SB 198 is best seen as a beginning of the rather large job of creating a prevention model for the State's Occupational Safety and Health Policy and clearly has the potential to enhance the safety and health of California workplaces, as well as stem the tide of ever escalating workers' compensation premiums.

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