

“Operative” Injury/Illness Program Essential to Surviving AB 1127’s Increased Penalties

To avoid the substantially increased penalties for any serious violation that accompanies an Injury and Illness Prevention Program (IIPP) infraction, **all** employers will need to be able to produce a written IIPP as well as ***proof of its effective implementation***.

Labor Code § 6428 makes IIPP compliance essential:

“Any employer who violates any occupational safety or health standard, order or special order or Section 25910 of the Health and Safety Code, if that violation is a serious violation, shall be assessed a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation. Employers who do not have an operative injury prevention program shall receive no adjustment for good faith of the employer or history of previous as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.”

In order for CSRMA members to avoid the increased penalties for any serious violation that accompanies an IIPP infraction, it must have a written program containing all the mandatory elements of the IIPP and show that it implements the program effectively.

Written Program

To be considered effective, the written program needs to include the following elements:

➤ **Identity of the person or persons with authority and responsibility for implementation.**

A named person or position title that clearly defines the responsible person is necessary. The named person or persons must have authority to implement the program.

Flaws in identifying responsible persons would include naming persons: who no longer work for the Agency; who do not know they are responsible for the IIPP; who are in a position where they are unable to take action to correct the deficiency; or who do not have the time available for training or safety inspections.

➤ **A description of procedures for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.**

The routine periodic scheduled inspection provision allows the member to select the frequency — which should be both reasonable and clearly stated in the IIPP.

In addition, inspections and other methods of hazard identification and evaluation are required when new substances, processes, procedures or equipment are introduced to the workplace that may represent a new occupational safety and health hazard; and/or when the employer is made aware of a new or previously unrecognized hazard.

- **A requirement to investigate occupational injuries and illnesses, including the criteria that triggers the investigation.**

At a minimum this would include any case reportable on an OSHA 200 log.

- **A procedure that requires and provides the means of correcting unsafe or unhealthy conditions or work practices in a timely manner.**

- **Communications with employees on safety topics and to encourage employees to report unsafe conditions to the member.**

The standard permits various methods: safety meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees. The program has to identify the method or methods selected.

- **A system to ensure employee compliance with safe and healthy work practices.**

Available options include: 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. The written program must include a selection of the method or methods used by the employer.

- **Training is required in six situations:**

- when the program is first established;
- for new employees;
- for employees given new job assignments for which training has not previously been received;
- whenever a new hazard is associated with changes in materials, equipment, processes and procedures;
- whenever a new hazard is identified;
- and for supervisors to familiarize them with the hazards their employees face.

Implementation Is Key

Where most employers have problems complying with the IIPP standard is proving effective implementation. Consequently, the member should specify the particular forms or how you will document compliance with each element as part of the member's written program.

Although most employers have no difficulty in proving implementation of required obligations such as periodic scheduled inspections or training of new employees, they often have difficulty producing the documentation of more subjective requirements like enforcement of employee compliance with safety

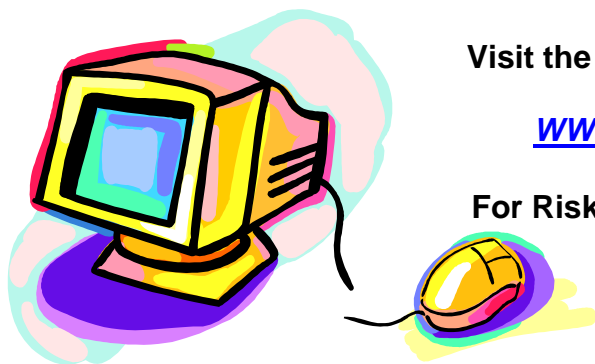
rules. This frequently occurs when supervisors are not **required** to take some action and document it in response to every violation.

Persuasive proof of such requirements are records demonstrating effective IIPP implementation. These records could include inspection logs and/ or checklists, along with proof of correction of deficiencies noted; accident investigation reports; training records that show the date of training, the topic and the attendee; reports from any special hazard evaluation; documentation of safety meeting attendance or of other safe communication methods; and records of safety rule enforcement.

Proactive Documentation

Documentation of employee discipline or other methods to ensure compliance with safety rules is also important. Many supervisors are reluctant to use standard disciplinary warning forms and procedures. In such cases, the member should devise a separate safety warning procedure in which all violations are acted upon. Documentation should be simplified — like warning tickets or notes to the file after counseling or retraining. These actions will help lead to lower penalties and a better defensive position should the need arise.

For information on how to construct and effectively implement your IIPP, contact David Patzer, CSRMA Risk Control at 415. 371. 5430 or at dpatzer@rfdriver.com.



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