

Injury & Illness Prevention Program: The California Experience

John Howard

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California: IIPP History

- **1989** – California Legislature
 - Enacted SB 198 which required *every* employer to develop and implement a *written* injury and illness prevention plan (IIPP).
 - SB 198 applied to all businesses, regardless if they had only one employee or operated in a low-hazard industry
- **1991** – Cal/OSHA
 - Adopted IIPP in regulations (8 CCR Section 3203)
 - Changed paradigm from hazard-by-hazard approach to management program approach

CA Labor Code Section 6401.7(a)

- “Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following [specific] elements....”

IIPP Elements

- Person with authority & responsibility
- System for assuring employee compliance with safe practices
- System for communicating with employees
- Procedures for identifying and evaluating hazard
- Procedures to investigate occurrence of injury or illness
- Methods or procedures for correcting unsafe/unhealthful conditions
- Effective safety and health training program
- Recordkeeping and documentation

Early Implementation Bumps

- **Overly Broad and Burdensome**
 - In implementing SB 198, however, it became clear that the law, although well-intentioned, was overly *broad* and *burdensome*.
- **High Costs**
 - Many employers, especially small employers, lacked the expertise to develop an effective program.
 - These businesses were forced to spend thousands of dollars on professional consultants to develop an IIPP.
- **Risk Proportionality**
 - Employers in low-hazard industries saw little justification in these costs because their businesses pose little hazard to employees.
 - Argument was strongest for a traditionally risky workplace (auto plant or a sawmill) versus low hazard workplace (real estate or insurance office).

Council on California Competitiveness

- Appointed by Governor Pete Wilson to identify ways to reduce regulation without reducing desired purposes
- Found “great potential for improvement” in SB 198.
- Council found that SB 198 was imposing:
 - “Unnecessary and unproductive costs on many businesses for which application of the program makes little sense and literally millions of dollars in needless hard costs and
 - And lost productivity will result from the current application of this program to businesses whose work environments pose virtually no risk to the safety of their employees.”

Outcry and Quick Legislative Fixes

- Why A *Quick* Legislative Fix?
 - Because CA economy looked much different in 1992 than it did in 1989
- Legislature “reformed” some SB 198 requirements:
 - Businesses in low-hazard industries and employers with seasonal or intermittent employees could use a *model* IIPP designed by Cal/OSHA
 - New businesses were provided a *one-year moratorium* on assessment of civil penalties for not having an IIPP.
 - Businesses with 20 or fewer employees, and not on the list of high hazard industries, are required only to keep only limited written records

The *Model* Program Approach

- Low-hazard industry
 - How do you know you are in a low hazard industry?
 - Cal/OSHA developed Lists of High Hazard Industries and Non-high-hazard industries
- Industries with only seasonal or intermittent employees
 - Employers with Intermittent Employees
 - Employers with Intermittent Employees in Agriculture

Model IPPs

- By 1994, Cal/OSHA had several *Model* IIPP Programs
 - Prevention Model Program for High Hazard Employers
 - Prevention Model Program for Non-High Hazard Employers
 - Prevention Model Program for Employers with Intermittent Workers
 - Prevention Model Program for Employers with Intermittent Workers in Agriculture
 - Prevention Model Program for Workplace Security

Then, Model Programs *with* Checklists

- Does the written Injury and Illness Prevention Program contain the elements required by Section 3203(a)?
- Are the person or persons with authority and responsibility for implementing the program identified?
- Is there a system for ensuring that employees comply with safe and healthy work practices (i.e., employee incentives, training and retraining programs, and/or disciplinary measures)?
- Is there a system that provides communication with affected employees on occupational safety and health matter (i.e., meetings, training programs, posting, written communications, a system of anonymous notification concerning hazards and/or health and safety committees)?
- Does the communication system include provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal?
- Is there a system for identifying and evaluating workplace hazards whenever new substances, processes, procedures, or equipment are introduced to the workplace and whenever the employer receives notification of a new or previously unrecognized hazard?
- Were workplace hazards identified when the program was first established?
- Are periodic inspections for safety and health hazards scheduled?
- Are records kept of inspections made to identify unsafe conditions and work practices, if required?
- Is there an accident and near-miss investigation procedure?
- Are unsafe or unhealthy conditions and work practices corrected expeditiously, with the most hazardous exposures given correction priority?
- Are employees protected from serious or imminent hazards until they are corrected?
- Have employees received training in general safe and healthy work practices?
- Do employees know the safety and health hazards specific to their job assignments?
- Is training provided for all employees when the training program is first established?
- Are training needs of employees evaluated whenever new substances, processes, procedures, or equipment are introduced to the workplace and whenever the employer receives notification of a new or previously unrecognized hazard?
- Are supervisors knowledgeable of the safety and health hazards to which employees under their immediate direction and control may be exposed?
- Are records kept documenting safety and health training for each employee by name or other identifier, training dates, type(s) of training and training providers?
- Does the employer have a labor-management safety and health committee?
- Does the committee meet at least quarterly?
- Is a written record of safety committee meetings distributed to affected employees and maintained for Division review?
- Does the committee review results of the periodic, scheduled worksite inspections?
- Does the committee review accident and near-miss investigations and, where necessary, submit suggestions for prevention of future incidents?
- When determined necessary by the committee does it conduct its own inspections and investigations, to assist in remedial solutions?
- Does the committee verify abatement action taken by the employer as specified in Division citations upon request of the Division?

Risks of the Model Program/Checklist Approach

- Positive
 - Checklists are easy for employers to use
 - Saves employers money by not having to hire a consultant – government can do it for you
- Negative
 - Leads to a “paper” program of questionable effectiveness
 - Mere “presence” was substantial compliance not how well program works

Ongoing Issues

- How does an inspector evaluate “effectiveness”?
 - Cal/OSHA Policy & Procedures Manual C-45A
 - “The Division shall evaluate the effectiveness of an employer’s IIPP in the course of *every* inspection...”
 - P&P sets forth sample effectiveness measures for each element
 - <http://www.dir.ca.gov/DOSHPol/P&PC-45A.HTM>

Ongoing Issues 2

- Accident Investigations vs. Other Types of Inspections
 - One Dimension:
 - Does the employer's IIPP set forth a *procedure* to investigate the occurrence of occupational injuries and illnesses?
 - Another Dimension:
 - Is an accident *per se* evidence of a lack of IIPP effectiveness?
 - Or is evidence needed that employer lacked a *procedure* to investigate an accident?

Ongoing Issues 3

- Can *Specific* Risks Be Regulated Under IIPP?
 - Regulate hazards for which the agency has *no* health or safety standard
 - CA has gone in both directions on occasion
 - On the one hand: No, IIPP is a procedural regulation not a substantive standard
 - On the other hand:
 - Prevention Model Program for *Workplace Security*
 - Demonstrates the remarkable plasticity of the “procedural and systems” approach from an enforcement *policy* perspective
 - Is CA a special case?
 - Can one “bundle up” unregulated risks into the IIPP?
 - Was that the intent of SB 198?
 - Does CA IIPP Serve as a general duty clause?

Does CA Have a General Duty Clause?

- CA Labor Code Section 6400(a)
 - Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.
- CA Labor Code Section 6401
 - Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

CA Labor Code Section 6401.7(a)

- “Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following [specific] elements....”

Ongoing Issues 4

- If the CA IIPP were Federal, would it be a *regulation* or a *standard*?
 - Examples from Federal law
- Has the CA IIPP been effective as implemented?
 - Are there any studies of effectiveness?

Federal: Standard v. Regulation?

- *Louisiana Chemical Ass'n v. Bingham*
 - Access to Employee Exposure and Medical Records (R)
 - “Standards aim toward correction rather than mere inquiry into possible hazards”
- *United Steelworkers v. Auchter*
 - Hazard Communication (S)
 - Aimed at eliminating a specific hazard that employees handling hazardous substances are more likely to suffer
- *Chamber of Commerce v. United States*
 - OSHA’s Cooperative Compliance Program (S)
 - Obligated employers to adopt a safety and health plan and thereby imposes new standards more demanding than those required by the Act or by pre-existing regulation implementing the Act
- *Workplace Health & Safety Council v. Reich*
 - Reporting of fatalities and multiple hospitalizations (R)
 - Aimed at information gathering rather than correction of a *particular* significant risk

Studies of Effectiveness

- RAND (2008)
 - “There is evidence to suggest that firms that *voluntarily* and conscientiously administer safety and health programs achieve reductions in injuries and illnesses.”
 - Review of a limited set of studies found that although “mostly suggest that *mandatory* safety and health programs reduced injuries and illnesses, there are methodological and confounding factors that render their conclusions uncertain.”
 - “Thus, these studies do not permit confidence in the effectiveness of mandatory safety and health programs.”
- RAND (pending study of effectiveness of CA IIPP regulation)
 - RAND study will examine whether inspected workplaces in California in compliance with the regulation have lower injury and illness rates.
 - Do companies that have been cited for IIPP violations show improving injury and illness rates relative to companies that are not cited?
 - See John Mendeloff @ RAND -- jmendel@rand.org

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