

The True Value of Injury and Illness Prevention Programs

**Charles Craig, MPA, CSP
The Craig Group
Ceres California**

Introduction

On October 17, 2012 the law offices of Munger, Tolles & Olson LLP and attorney Catherine E. Lhamon, filed suit against the California Division of Occupational Safety and Health and the office of Cal/OSHA's chief, Ellen Widess. Their clients: Margarita Alvarez Baustista; Ana Rosa Bautista; Socorro Rivera; Mauricia Calvillo; Natividad Carrillo, and United Farm Workers of America as well as the UFW Foundation, allege that the division has "failed and continues to fail to satisfy their statutory obligations to enforce the Heat Illness Prevention regulations of California Code of Regulations, Title 8, 3395. " ¹ It should be noted that the Heat Illness Prevention Program is a required addendum (for affected employers) to California's, Injury and Illness Prevention Program, commonly referred to as the IIPP.²

The introduction of the lawsuit states:" Heat illness is totally preventable and should not occur if proper procedures are followed."³ The underlying basis of it is a purported lack of regulatory enforcement on behalf of Cal/OSHA, leading to continued heat related illnesses, injuries and deaths, particularly among California's migrant farm workers. These assertions allegedly exemplify the agency's somewhat apathetic approach regarding effective enforcement efforts of, not only the heat regulations, but towards California's Injury and Illness Prevention Program as well.

As further support to their position that Cal / OSHA "denies, misinterprets, and systematically fails to perform its statutory enforcement duties," the UFW and complaining parties name at least ten employers throughout California as specific examples where a lack of

¹ Margarita Alvarez Bautista; Ana Rosa Bautista; Socorro Rivera; Mauricia Calvillo; Natividad Carrillo; United Farm Workers of America; UFW Foundation vs. State of California Division of Occupational Safety and Health; Ellen Widess, (In Her Official Capacity as Chief of The State of California Division of Occupational Safety and Health

² The Injury and Illness Prevention Program, California Code of Regulations, Title 8 3203, is the 1992 codified statute of Senate Bill 198 authored by Senator Bill Greene and signed into law by Governor George Deukmejian.

³ California Department of Industrial Relations, "Cal/OSHA issues citations in first confirmed heat related fatality of 2011" January 11, 2012 (quoting Cal/OSHA Chief Ellen Widess), available at <http://www.dir.ca.gov/DIRNews/2012-01.html>.

Cal OSHA enforcement actions are reflected.⁴ By direct implication, the UFW complains these employers, as well as over 55 more, should have been subjected to more serious enforcement actions. As the result of what is perceived as inappropriate or lack of action, the contention is that Cal OSHA's has contributed to an increased risks of death, injury and illness to Migrant Farm Workers as well as others.⁵

The United Farm Workers (et.al.) are not the only ones who believe that this civil action showcases inherent agency behavior considered as a systemic problem within the enforcement and leadership ranks of Cal OSHA. The 2009 Federal Annual Monitoring and Evaluation (FAME) report assessing the overall administrative effectiveness of California's Occupational Safety and Health plan, conducted by the U.S. Department of Labor's Occupational Safety and Health Administration, identified areas of enforcement and response times as "opportunities for improvement."⁶ In addition it found inconsistency in inspections, interpretation of codes, issuing of citations, informal appeals processes, and an overall lack of expertise and organizational support. In short, the report noted deficiencies similar to those outlined in the UFW lawsuit and consistent with findings resulting from yet another evaluative, yet boarder based, technical report conducted by the Rand Center for Health and Safety in the Workplace.⁷

The report; "The Evaluation of the California Injury and Illness Prevention Program," conducted at the request of the Commission on Health and Safety and Workers Compensation, focused primarily on the effectiveness of this mandated employer compliance regulation in the prevention of employee injury and illness in the workplace.^{8,9} While the recent suited filed by the UFW against Cal OSHA promotes the theory of "***a Failure to Enforce leads to a Failure to Prevent***" heat illnesses and injuries, the findings in the Rand study reflect a similar underpinning theme of... "***Ineffective enforcement leads to Ineffective Injury Prevention efforts by employers.***" As a result, Rand found it difficult to truly evaluate the legitimacy of the Injury and Illness Prevention Program as a convincing approach by California employers in the protection of their workers.

⁴ Margarita Alvarez Bautista; Ana Rosa Bautista; Socorro Rivera; Mauricia Calvillo; Natividad Carrillo; United Farm Workers of America; UFW Foundation vs. State of California Division of Occupational Safety and Health; Ellen Widess, (In Her Official Capacity as Chief of The State of California Division of Occupational Safety and Health

⁵ Ibid.

⁶ FY 2009 California Occupational Safety and Health Program, Federal Annual Monitoring and Evaluation (FAME) Report October 1, 2008 – September 30, 2009.

⁷ Rand Center for Health and Safety in the Workplace technical report " An Evaluation of the California Injury and Illness Prevention Program.

⁸ CHSWC is a joint labor-management body created by the workers' compensation reform legislation of 1993. CHSWC is charged with examining the health and safety and workers' compensation systems in California and recommending administrative or legislative modifications to improve their operation. The Commission was established to conduct a continuing examination of the workers' compensation system and of the state's activities to prevent industrial injuries and occupational illnesses and to examine those programs in other states.

⁹ (Notation of Exception of Scope: The Rand Technical Report referenced in this presentation denotes the study excluded the agricultural and construction industries as well as the retail, financial, and real estate industries.⁹ Rand Center for Health and Safety in the Workplace technical report " An Evaluation of the California Injury and Illness Prevention Program (page 4- Limitations in Scope)

The Rand findings noted Cal/ OSHA enforcement inspects between 8,000 and 10,000 facilities annually. Additionally, it found that California's IIPP "was the most frequently cited workplace safety standard, with violations in about 25 percent of the inspections conducted."¹⁰ It also concluded that two-thirds of those facilities cited for IIPP violations, the most common violation was California Code of Regulations Title 8, 3203(a), "failure on the part of the facility to have a written IIPP."¹¹

Rand, referencing interviews with Cal/OSHA leaders, formulated the belief that inspectors did not regularly probe to find out whether employers actually had implemented the more specific subsections of the IIPP. The report findings contend that the enforcement process "Often failed to look beyond paper compliance with the provisions of the IIPP"¹² and the statements made by the Cal/OSHA leaders an admission that Inspectors are clearly not adhering to established Cal OSHA Policies and Procedures. Specifically, there is a lack of adherence to P&P C-45A sections B. as follows: "The Division shall evaluate the effectiveness of an employer's IIP Program in the course of every inspection and shall document the results of the evaluation."¹³

A conclusion in the referenced Technical Report also asserts that, as safety professionals, the value we see in the elements of the California IIPP may be misplaced. Rand indicated in the findings and conclusions ... "To most safety professionals, the elements of the California IIPP are all obvious ingredients of a good safety program. Despite that agreement, there is surprisingly little good research that confirms their effectiveness. Moreover, it is not at all clear that a mandate to adopt these practices will result in the same outcomes as when they are adopted voluntarily."¹⁴

In stark contrast to the conclusion of the Rand study is the U.S. Department of Labor's Occupational Safety and Health Administration "White Paper."¹⁵ In fact, where the Rand Study findings indicated it was difficult to evaluate the true effectiveness of California's IIPP in the prevention of workplace injuries and illnesses, OSHA opines ... "We know these programs can be effective at reducing injuries, illnesses, and fatalities."¹⁶ Further, it is their conclusion that employers experience not only a reduction in injuries but also a transformation of workplace culture. Since 2009, Federal OSHA has advocated the development and implementation of an employer mandated Injury and Illness Prevention Program. To this end, Federal OSHA has commenced regulatory "rulemaking process" forward, albeit slow and arduous.¹⁷

¹⁰ Rand Center for Health and Safety in the Workplace technical report " An Evaluation of the California Injury and Illness Prevention Program (page xii)

¹¹ Rand Center for Health and Safety in the Workplace technical report " An Evaluation of the California Injury and Illness Prevention Program (pages xii-xiii)

¹² Rand Center for Health and Safety in the Workplace technical report " An Evaluation of the California Injury and Illness Prevention Program (pages xii-xiii)

¹³ <http://www.dir.ca.gov/doshpol/p&pc-45a>

¹⁴ Rand Center for Health and Safety in the Workplace technical report " An Evaluation of the California Injury and Illness Prevention Program (page-xiii)

¹⁵ The full details of the OSHA Injury and Illness Prevention Program White Paper can be found at <http://www.osha.gov/dsg/topics/safetyhealth/OSHAwhite-paper-january2012sm.pdf>

¹⁶ OSHA Injury and Illness Prevention Program White Paper (page 1 Introduction / Executive Summary) <http://www.osha.gov/dsg/topics/safetyhealth/OSHAwhite-paper-january2012sm.pdf>

¹⁷ "Rule Making Process:" There are six stages to the development of OSHA rules, commencing with PRELIMINARY RULE MAKING ACTIVITIES as stage 1 and concluding with stage 6, OMB Review and

Not surprising, the mere suggestion of such regulation has generated a plethora of opinions amongst employers, trade groups, labor organizations, associations and safety professionals. Each group provides a dichotomy of perspectives, touting the rewards or passionate opposition of such programs.

However, opinions notwithstanding, according to Federal Occupational Safety and Health Administration, “Thirty-four states have some type of program initiatives for worker safety and health protection.” These programs have a variety of names, come in a variety of forms, and are administered (regulated) in conjunction with or independent of state oversight agencies. They may be voluntary or mandatory, comprehensive or partial, applicable to all employers or only to a subset.

So what is the issue? In all of the rhetoric, position posturing, and political ranglings; studies for and against the effectiveness mandated or regulated employer safety programs; speeches made and presentations given, what seems to have been lost is the true value of an Injury and Illness Prevention Program.

The True Value of an Injury and Illness Prevention Program

Arguably, the Rand report and OSHA White Paper may have missed the real purpose of California’s IIPP by gauging effectiveness on enforcement efforts. The premise that enforcement of the standard equates to prevention of injuries is fraught challenges to validate. As safety professionals, we recognize that the sole purpose of regulatory enforcement of any mandated is to ensure application and compliance with the standard. As such, monetary sanctions, civil, (and in some cases,) criminal penalties are associated consequences for failure to effectively execute any workplace order.

While foundationally, a case can be made that cite examples of enforcement problems from the inception of California’s IIPP regulation, the true relevance of program effectiveness predicated upon enforcement alone is overly broad and short sighted. This is profoundly obvious when consideration is given to the Rand Report’s findings that the most frequently cited violation under California’s IIPP is based upon total absences of a written program in twenty-five percent of the employers they inspect annually.

In order for any program to be effective communication of purpose must be clearly conveyed to the employer. Additionally, conflict in program application cannot exist between regulatory compliance groups. As such, California’s IIPP may create a conflict if not a paradox rest within the (would be) structure of such injury and illness prevention programs and” the perspective of federal OSHA and the philosophy of its director Dr. David Michaels.¹⁸

Dr. Michaels has made his view clear relative to employee discipline. In an article published in the, according to Dr. Michaels “... Although the agency supports programs in which workers are rewarded for demonstrating safe work practices and reporting hazards, OSHA is concerned with programs based primarily on injury and illness numbers.” In addition, Dr. Michaels states, ...“ We strongly disapprove of programs offering workers parties and prizes for

¹⁸ Publication of Final Rule. The time frame can be anywhere from 4 ½ to 9 years. The complete outline can be found at: <http://www.osha.gov/law-regs.html>

not reporting injuries, or bonuses for managers that drive down injury rates, or that discipline workers for reporting an injury,”¹⁹

Mr. Morrison continues. “According to Michaels, such programs discourage workers from reporting injuries and illnesses. As a result, problems are concealed, investigations cannot take place and workers remain exposed to harm.” ... “Michaels indicated his agency could do more than criticize negative programs”: ‘OSHA will not tolerate programs that provide negative reinforcement.’

A key component in CCR T8 3203 is compliance that includes the development and implementation of means and methods to recognize those employees who work safely and sanctioning those employees who fail to follow established safety rules. While the idea of cognitive behavior²⁰ is the ultimate goal of any Injury and Illness prevention program, the achievement of that goal is structure.

The true value of these programs lay within how well the structure is formed, executed, managed, enforced and evaluated. The structure must be transparent and transmittable to the employees who are expected to carry out the program edicts. In essence, the bulwark of the program relies upon workers to understand and adhere to the program purpose and expectations. To accomplish this understanding, employers must see tangible value and purpose for such programs. While operating under the premise that employers are moral, ethical and truly wish no harm to come to their employees, the program must demonstrate an integrated benefit to the business if employer commitment is to be garnered.

Additionally, as safety professionals we must steward the notion that the value of an effective program is NOT garnered by employer regulatory compliance, but appreciates from employee who takes personal and committed ownership to its cannons. Frequently, our fall back approach in order to obtain employer cooperation, agreement, acceptance, or commitment is to use phrases such as “it is mandated by OSHA,” “it is a regulatory requirement,” “you can receive serious fines for not being in compliance,” and a host of other phrases that, while true, frequently miss the intended mark associated with defining the significance of Injury and Illness Prevention programs. This tactic is affectionately referred to as “COMPLIANCE BY SAFETY PROFESSIONAL INTIMIDATION.”

It is our responsibility to partner with employers and employees in effort to develop an attitude that showcases the worth of the program and facilitates:

1. Understanding why the requirement to establish an Injury and Illness prevention program already exists.
2. Understand the fundamental components of an Injury and Illness Program.
3. Understand the four reasons Why Employers should have an IIPP regardless of or regulatory mandates.
4. Recognize the challenges of implementing these programs.

¹⁹ National Safety Councils online [SAFETY + HEALTH](#), magazine, by *senior associate editor Kyle W. Morrison*

²⁰ CCR T8 3203.

5. Understand why the efforts associated with developing and maintaining such programs make good safety sense.
6. Learn “first things first; by putting safety first” is the most practical approaches to implementing an IIPP

The True Value of Program Structure & Why Employers Are Already Required to Have An IIPP

While the debate for or against the effectiveness of California’s IIPP or any IIPP for that matter; and, if or when the federal government will mandate a program nationwide, continues, it can be easily argued that such requirement for employers already exists. The OSHA Act of 1970²¹ is said to be the first and most formable directive towards employers in the creation of means and methods “to assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.”

Within the context of the OSHA Act of 1970, is found a very general and broadly written employer duty commonly referred to as the “general duty clause,”²² Sec. 5 29 USC 654 which states,

- (a) Each employer --
 - (1) Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;
 - (2) shall comply with occupational safety and health standards promulgated under this Act.
- (b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act that are applicable to his own actions and conduct.

Many state programs have similar broadly written regulations outlining a generalized duty for employers to safeguard employment operations and environments free from recognized hazards that are causing or likely to cause death or serious physical harm to their employees. California has an established regulation through California Labor Code 6400²³, which subscribes a series of employer responsibilities more defined and structured in which to effectively carry out the safeguarding of employees. Included in this regulation is the requirement to establish an effective Injury and Illness prevention program²⁴

The True Value of an IIPP: The Cornerstone of an effective safety program and efficient operations

For California the requirement set forth in Labor Code 6400 to establish an IIPP as outlined in CCR T8 3203 became the structural foundation in which employers may more aptly adhere to the

²¹ www.osha.gov

²² Sec. 5 29 USC 654

²³ California Labor Code 6400

²⁴ California Labor Code 6401.7

general duty requirements of the state and federal mandates. As an example of a structured Injury and Illness Prevention program, California's IIPP has eight distinctive components:

1. Responsibility
2. Compliance
3. Communication
4. Hazard Assessment
5. Accident/Exposure Investigations
6. Hazard Corrections
7. Training and Instruction
8. Recordkeeping

The composition of this IIPP structure serves as a cornerstone for employers to create a formalized, methodical, and operationally specific employee safety program. A program that can further aid in the development of a performance metric to measure not only the overall effectiveness of the safety program, but operational integration as well.

The most critical aspect in the structural application of these components is that they must be employer and operationally specific. Often, employers, in the throes of a Cal OSHA inspection, are asked to produce copies of their IIPP, only to place a call to their workers compensation insurance broker who states, "No worries I will run one off for you and send it back dated to your policy renewal date." Applying the component structure of an IIPP is much more than a process and to think otherwise only supports the Rand Study findings that often the California IIPP is "paper compliance," only. Boilerplate or fill in the blank generated programs minimize the true value of a developed operationally integrated safety program as a successful and sustainable organization.

While the structure serves as a compartmentalized process for safety professionals to use in overall program elevation, these "BIG EIGHT," (implemented correctly,) can promote organizational efficiency for the employer. Each component plays a part in defining the employer's organization:

1. **Responsibility:** Establishing a well-defined organizational structure by delineating roles and associated responsibilities is imperative to organizational safety and operational success. The IIPP standard denotes organizational responsibility as "All managers and supervisors are responsible for implementing and maintaining the California's Written Work Place Safety Program."²⁵ In both large and small organizations it can be difficult to cultivate a formalized hierarchy and associated roles because of gaps in small organizational operations and overlaps or redundancy in large and multi-faceted organizations. However, implementation and exercise in identifying persons responsible and accountable provide for the identification of gaps in program application, as well as expose similar gaps in operational responsibility and accountability.

²⁵ CCR T8 3203

2. **Compliance:** Frequently, the focus to establish, and ensure employee compliance, of a workplace safety program, (as well as California's IIPP,) is directed only upon the employer. While the components of an IIPP mandates employer responsibilities to include:
- a. Ensuring all organizational and operational safety and health policies and procedures are clearly communicated to, and understood, by all employees;
 - b. Ensure compliance by enforcement of those policies and procedures fairly and uniformly;
(And)
 - c. Create and maintain a safe working environment through effective employee training, communication, hazard assessments, and hazard corrections;
 - d. Such responsibilities also includes the creation and implementation of a program which mandates EMPLOYEE compliance with the defined program provisions, established safe & healthy work practices, as well as the identification of environmental or and associated recognized workplace hazards.

Employers' responsibility to ensure employee compliance with the program provision includes:

- a. Recognition of employees who follow safe and healthful work practices.
- b. Effective employee training and retraining programs which support the safe and efficient interface between the employee, and operational or organizational processes.
(And)
- c. Establish effective employee disciplinary actions (sanctions,) or any other such means, which corrects an employee's failure to comply with these practices and ensures compliance in the future.

However, there are defined obligations for employees as well.

- a. The employee responsibilities
- b. for program compliance are as equally critical to the effectiveness of any organizational safety program. Under California's IIPP, employee compliance responsibility includes:
- c. Working safely
 - I. Follow all safety policies and procedures
 - II. Report unsafe working conditions
 - III. Meet mandated training requirements
 - IV. Demonstrate competency in job duties and assignments.
(And)
 - V. Assisting in maintaining a safe working environment

The true value of this component creates a mutually vested obligation for the employer and employee to engage in the development and implementation of elements for ensuring safe workplace operations. It builds a defined Minimum commitment between the employer and employee to share in, and steward the platform for safety at work while outlining the exclusive expectations and onuses.

Ensuring employee compliance to established safe work practices includes the employer obligation to "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.”²⁶ The presence of employee compliance within the program is an indication by the Framers of the regulation that accountability of employee behavior is crucial to the effective application of safe work practices.

Under the California program, this IIPP subsection defines structural obligations of program implantation that requires an employer to take specific reinforcement actions based upon employee performance adhering to or contrary to the established safety policies. Such actions may conflict with Dr. Michaels and Federal OSHA philosophies. Such conflict includes a fear that methods of recognition or employee sanctions may lead to under reporting. However, while the merits of program disciplinary components will continue to be fodder for ongoing debates, the true value of this element aids the employee and the employer by defining clear behavioral obligations and consequences for each.

California’s IIPP is not the only standard with associated safe work practice obligations and consequences. Two California Labor Code regulations pertaining to the awarding and administration of workers compensation benefits outline potential impact to the employee and the employer if during the course of subsequent injury investigations it has been determined either acted in a serious and willful manner.

Labor code section 4551 states, “Where the injury is caused by the serious and willful misconduct of the injured employee, the compensation otherwise recoverable therefor shall be reduced one-half, except:²⁷

- a) (a)Where the injury results in death.
- b) (b)Where the injury results in a permanent disability of 70 percent or over.
- c) (c)Where the injury is caused by the failure of the employer to comply with any provision of law, or any safety order of the Division of Occupational Safety and Health, with reference to the safety of places of employment.
- d) (d)Where the injured employee is under 16 years of age at the time of injury.

Labor code section 4553 defines consequences to employers for serious and willful misconduct as, “The amount of compensation otherwise recoverable shall be increased one-half, together with costs and expenses not to exceed two hundred fifty dollars (\$250), where the employee is injured by reason of the serious and willful misconduct of any of the following:²⁸

- a. The employer, or his managing representative.
- b. If the employer is a partnership, on the part of one of the partners or a managing representative or general superintendent thereof.
- c. representative or general superintendent thereof.
- d. If the employer is a corporation, on the part of an executive, managing officer, or general superintendent thereof.
- e. superintendent thereof.

²⁶ California Code of Regulation Title 8 3203(a)(2)

²⁷ California Labor Code 4551

²⁸ California Labor Code 4553

Findings of employer violation of this regulation may also lead to additional regulatory and civil penalties and sanctions on behalf of the injured employee outside what is commonly assumed to be an exclusive remedy mandate.²⁹ Clearly defined and established safe work practices and procedures, which includes purpose, attributes and consequences for compliance, continue the foundational development of an effective, efficient, and sustainable organizational infra-structure.

3. **Communication:** The program requirement to create and maintain communication avenues between the employer and employee is perhaps one of the most crucial, if not the most crucial element to employee safety and operational integrity.

This component of California's program outlines the following: The program must "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, or any other means that ensures communication with employees."³⁰

An evocative Employer / Employee relationships relies upon an effective and varietal communication process. Complex, encumbered or one-sided communication only serves to minimize the purpose of a safety program, builds barriers wherein operational critique and development is stymied, and ultimately leads to limited or erosive organizational sustainability.

Insincere or marginalized communication relative to the establishment and implementation of any safety program is the under pending reason for a lack of mutual commitment to the execution of safe work practices, and the predictable collapse of a safety programs usefulness. It is not enough for employers to say "safety is important," post signage with catchy slogans, or mount "suggestion box," programs if the organizational actions, and leadership behaviors do not reflect the messages being conveyed. Such superficial, one-way communication creates process driven programs, such as safety committee meetings, tailgate programs, or safety gram communiqués designed only to meet a mandate and not promote employee safety program improvement.

The true value to employer of incorporating communication into the Injury and Illness program is reflective of the workforce composition of California. Steeped with a diverse population and employment opportunities, the challenge for employers to effectively

²⁹ California Labor Code 3602(a) Where the conditions of compensation set forth in Section 3600 concur, the right to recover such compensation is, except as specifically provided in this section and Sections 3706 and 4558, the sole and exclusive remedy of the employee or his or her dependents against the employer, and the fact that either the employee or the employer also occupied another or dual capacity prior to, or at the time of, the employee's industrial injury shall not permit the employee or his or her dependents to bring an action at law for damages against the employer.

³⁰ California Code of Regulation T8 3203(a)(3)

communicate with their employees is not as simple as converting communications into two or three languages. Today's employees are dependent on communication forms that are promoted not only in cultural languages, but are native to the regions and dialects of their place of origin. As such, enhanced communication efforts must break free of traditional avenues of approach and promotes methods which serve to elicit understanding and experiential points of view from employee's whose ethnic nuisances were once relationship-building roadblocks.

By integrating communication elements into the IIPP, the program provides employers structure for addressing methods of effective safety communication in the workplace. Utilization of "Safety Mentors,"³¹ as peer workforce liaisons is only one of several unique and creative ways in which existing communication barriers can be overcome. By defining within the program, a component requirement to create such methods, the IIPP gives employers and employees a "launching pad," in which such communications techniques can be developed and utilized not only to promote the safety elements of the program within the workplace, but also to create dialog for operational aspects as well.

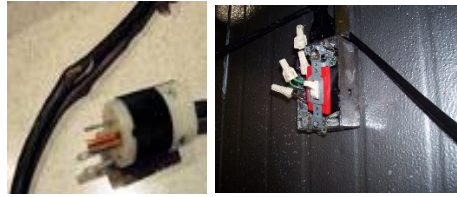
While the purpose of creating the communication technique may be to promote safety awareness, its effects and utilization can reach far beyond a singular topic. It is important to remember, nothing can be more frustrating to employees wishing to participate or contribute to workplace welfare and betterment, than to not having the means or opportunity to do so.

4. **Hazard Identification:** The California program sums this aspect of the IIPP up into two sentences with three distinctive events, as follows; the program must "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."³²
 - (A) When the Program is first established;
 - (B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and
 - (C) Whenever the employer is made aware of a new or previously unrecognized hazard

While the program requirement mandates a procedure for evaluating the workplace to address hazards, the true value of this element is an established method in which to evaluate the effectiveness of safety program principles, a reflection of commitment to the core values of organizational safety, training, maintenance, equipment utilization and employee interaction with equipment and the workplace environment.

³¹ Safety Mentors is referenced as a program development utilized by the author in 1995 where in designees meeting specific safety, performance and leadership criterion were and are used to serve as peer liaisons with employees representative of a specific language or cultural diversity.

³² CCR T8 3203(4)



While employers may be reluctant to engage in a process or requirement to conduct workplace hazard evaluations, the integration of a routine and developed systematic approach, not only minimizes hazards, but leads to opportunities to correct behaviors which translate into conditions that impact operational efficiencies and deteriorate operational infrastructure. Most, if not every, condition in the workplace is a behavior that has been left unchecked culminating into a hazard that leads to a potential employee illness or injury.

As employers, the conditions we allow, reflect the behaviors we promote in our employees. These conditions reflect the IIPP leadership commitment of every line supervisor, manager and organizational leader. As important as the communication process is, hazard assessment and identification process is truly the “walk” of the program talk.

In addition to workplace Hazard Identification, program element six “Hazard Correction,” seems to be more akin to this process than what is chronologically listed IIPP element five “Accident Investigation.” In an effort to create continuity the true value of Hazard Corrections will be addressed.

5. **Hazard Correction:** Program element six, “Hazard Correction,” is simply identified in the regulation as “Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard.”³³

- (A) When observed or discovered; and,
- (B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

The corollary between element four and six of the program mandates seems quite obvious in that the documentation and correction of hazards identified follow a logical pattern of responsible actions. The IIPP requires employers to actively and continuously engage in evaluating the workplace for hazards and unsafe behaviors and, once found, Fix them.

The true value of this element to the employer is the ability to determine if, and how, an established safety program outlined by the regulation is being implemented and stewarded. Additionally, those conditions that are found but cannot be immediately corrected can be incorporated into an established repair process based upon hazard severity.

³³ CCR T8 3203(a)(6)



Well-documented and timely correction of identified hazards and unsafe behavior also serves as defensible support against charges of serious and willful allegations or regulatory citations. In addition, when routinely employed, these audits and corrective actions can favorably impact the operational “bottom-line.”

The photo above is of an agricultural based operation currently facing serious California OSHA investigation and was taken subsequent to an inspection by the agency. The picture is of a workplace area in the operational area of the business. Employees and organizational leaders, supervisors and managers encounter this disarray every day. Aside from the obvious violations and profound negative message /image, fiscally, such conditions will adversely impact profits and this employer’s competitive edge.

The true value of Hazard Identification and Hazard Correction to the employer should be clear. Taking the time to look at the operation, while engaging the employees to participate, and correcting hazardous conditions and behaviors systematically and timely has a financial impact to the business. These activities establish the leadership tone and expectations to every employee, vendor, business partner or visitor not only as it pertains to safety but to overall business operations. Most importantly, these processes reflect the effectiveness of developed safety policies and procedures, not only at the point of implementation but also consistent and continual application. As the photograph depicts, it is easy to imagine the impression this situation left on those who were involved in the investigation.

6. **Accident Investigations:** This mandated program component, while non-descript, requires an established procedure to ‘Include a procedure to investigate occupational injury or occupational illness.’³⁴

While there is no specific procedure established by program guidelines, considerable studies, research, and professional safety recommendations have surfaced throughout the years to guide employers in how to effectively conduct occupational injury and illness investigations. Analytical tools such as “Root Cause Analysis,”³⁵ is often touted as a process driven method to identify underlying causations without subjective inferences. Unfortunately, some employers find this process cumbersome and time consuming.

³⁴ CCR T8 3203 (a)(5)

³⁵ (RCA.) history of: “Sakichi Toyoda,” <http://www.nndb.com/people/434/000173912/>
Forbes.com. “Twenty Most Influential Businessmen: Sakichi Toyoda (1867-1930),”
http://www.forbes.com/2005/07/13/toyoda-toyota-automation-cx_0713bizmantoyoda.html

Conversely, frequently the application of injury and illness investigations limits employers from deriving the full benefit of this program dimension because it is process driven. Many employers view the investigative mandate as a required course of action with little more value than a part of meeting minimum program requirements. Others, utilize the process only once an injury or illness has occurred.

The true value of investigations is derived from committing the time and energy necessary to identify Strengths, Weaknesses, Opportunities, and Threats,(SWOT)³⁶ associated with any event or behavior which has caused or is likely to cause injury, illness, property damage, or loss. Frequently employers utilize investigations only after an injury or illness has occurred.

Retrospective investigations are crucial to determination of the current event, and can provide insight as to why the injury or illness may have occurred. However, investigations conducted with a preemptive purpose often identify those SWOT elements of an established employer program before an injury or illness happens.

Sometimes identified as Leading Indicators, or referred to as “near misses,” in their “Principles of Occupational Safety and Health” certification course, the National Safety Council, defines an Incident as “...any event in the workplace which has the potential of causing injury, illness, or property damage.³⁷ Employer driven investigations predicated on Audits, Hazard Identification & Correction, as well as employee behavior, BEFORE, the consequences of an incident transpires, aids in program corrections and the identification of operational vulnerabilities. Structured investigations do not focus only on the resulting injuries and illnesses in the workplace, but also the state of operational infrastructure, production processes, quality controls, and training needs.

7. **Training:** In composing the mandated program dimensions defined by 3203, training is/ was recognized as the epicenter of injury and illness prevention. The program requires employers to “Provide training and instruction.³⁸
- (A) When the program is first established;
 - (B) To all new employees;
 - (C) To all employees given new job assignments for which training has not previously been received;
 - (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;
 - (E) Whenever the employer is made aware of a new or previously unrecognized hazard .
- (And)
- (F) For supervisors to familiarize themselves with the safety and health hazards to

³⁶ Albert Humphrey The "Father" of TAM". TAM UK. <http://www.tamplc.com/Humphsprofile.htm>. Retrieved 2012-06-03 Albert Humphrey, who led a convention at the Stanford Research Institute (now SRI International) in the 1960s and 1970s using data from Fortune 500 companies.

³⁷ National Safety Council Principles of Occupational Safety and Health certification <http://train.nsc.org/ntc/TCALDet01.aspx?id=49>

³⁸ CCR T8 3203(a)(7)

which employees under their immediate direction and control may be exposed.

Many employers struggle with the processes and procedures associated with training employees. Faced with this daunting task; time, resources, methods of communication, and records management can create significant roadblocks to effective employee training. For these reasons there can be a tendency for employers to Train for Compliance, rather than to Train for Performance. In doing so, this approach diminishes the application and implementation efforts of any safety program, and can render the employer vulnerable to regulatory sanctions and escalating operational costs associated with injuries, illnesses, loss of production, and competitiveness.

The true value of employee training is obvious. Well-trained employees perform better and more efficiently. Well-executed training programs develop and maintain employee competency as well as exposing program deficiencies and employee performance limitations.

Employers must recognize that for training programs to have true value they must be well structured and effectively executed. Additionally, these programs must be designed and presented in a manner and language in which the employee can understand and then demonstrate competency associated with that understanding.

While training program content is important, regulatory compliance requires employees to be able to demonstrate clear understanding of the safety rules and requirements being trained, as well as the ability to apply such understanding within their working environment.

In California, the lack of effective employee training, is a primary reason the assertion of an Affirmative Defense fails when challenging Cal OSHA citations. It is also the fundamental reason employers do not prevail when the California Workers Compensation Appeals Board presents findings associated with the workers compensation benefit reductions required when claiming employee serious and willful misconduct.

8. **Recordkeeping:** As defined in CCR T8 3203(b)³⁹ the regulations require the following: Records of the steps taken to implement and maintain the Program shall include:
- 1) Records of scheduled and periodic inspections required by subsection (a)(4) to identify unsafe conditions and work practices, including person(s) conducting the inspection, the unsafe conditions and work practices that have been identified and action taken to correct the identified unsafe conditions and work practices. These records shall be maintained for at least one (1) year; and
 - 2) Documentation of safety and health training required by subsection (a)(7) for each employee, including employee name or other identifier, training dates, type(s) of training, and training providers. This documentation shall be maintained for at least one (1) year.
 - A. A: Written documentation of the identity of the person or persons with authority and responsibility for implementing the program as required by subsection (a)(1).
 - B. Written documentation of scheduled periodic inspections to identify unsafe conditions and work practices as required by subsection (a)(4).
 - C. Written documentation of training and instruction as required by subsection (a)(7).

³⁹ CCR T8 3203(b) Recordkeeping. Some content (Exceptions to the provisions) has been redacted

- D. Reviews investigations of alleged hazardous conditions brought to the attention of any
- E. *safety* committee member.
- F. Submits recommendations to assist in the evaluation of employee safety suggestions; and
- G. Upon request from the Division, verifies abatement action taken by the employer to abate citations issued by the California Department of Labor, Division of Occupational Safety and Health Administration.
- H. The value of recordkeeping to the employer is much more than simply to satisfy regulatory mandate. Accurate and well-maintained records provide an organizational roadmap for operational deficiencies and attributes, safety and health program implementation effectiveness, employee performance aptitude and skills development as well as consistent and fair application of organizational policies and procedures.
- I. In short, recordkeeping chronicles the efforts the employer has made to meet regulatory requirements and provide a safe and healthful workplace for the employee. Moreover, it may also serves as a means of providing support to defend against regulatory enforcement actions and civil litigation.

Conclusion

The debate regarding the effectiveness of an employer mandated Injury and Illness prevention program will continue well after the dust has settled and regulatory implementation takes place. What the program components will entail and how enforcement will be imposed remains to be seen. However, despite assertions made in technical reports written by the Rand Center for Health and Safety in the Workplace questioning the effectiveness of such programs, or a White Papers published by OSHA touting the accolades and inherent benefits of existing programs , there does exist a need to create and maintain a uniform process for employee occupational safety.

What is being purposed by OSHA's I2P2, California's existing IIPP, or some thirty other mandated or voluntary state programs is nothing new to employers. Hundreds of systems, processes, training methods, and policy developments exist worldwide devoted to employee safety and the inherent obligation created by an employer / employee relationship.

The Professional Responsibility

A compilation of safety programs and processes exists which promotes many of the elements outlined in California's IIPP and other programs. Workplace Safety methodologies and program strategies, to include Behavior Based Safety,⁴⁰ DuPont Safety Systems,⁴¹ Leading Indicator management,⁴² as well as many others have been part of the Safety Professional repository for decades. Additionally, these concepts and programs are promoted and sold daily to employers

⁴⁰ Behavior Based Safety originated with the work of Herbert William Heinrich.^[8] In the 1930s, Heinrich, who worked for Traveler's Insurance Company, reviewed thousands of accident reports completed by supervisors and from these drew the conclusion that most accidents, illnesses and injuries in the workplace are directly attributable to "man-failures", or the unsafe actions of workers

⁴¹ Dupont Safety Systems elicits experts to help employers implement customized **safety** management **systems** that reduce injury, create employee ownership, and promote safety sustainable solutions. www2.dupont.com/sustainable-solutions/en-us/dss/safety-resources.

⁴² Prove It, ... managing Leading Indicators www.asse.org/education/proveit

who desire to create a safety program but don't know where to begin, or fear the consequences of not being in compliance yet fail to see the difference between compliance and effectiveness.

It is the responsibility of the Safety Professional to assist, support and lend credence to structural processes, which guide employers and employees in creating a safe working environment. Moreover, promote those structures which integrate safety as a component within overall organizational operations, and not as a stand-alone outlier utilized when convenient, operationally affordable, or perceived not to interfere with organizational efficiencies.

Unfortunately, we are culpable at times for the confusion surrounding program effectiveness because of our varied opinions on what works best. Often, while we pontificate the "for and against" merits of occupational safety philosophies, many employers and employees wait on the sidelines hoping we will reach a conclusion and provide sound direction. In the meantime, program fundamentals which serve as the foundation for an effective employer developed safety program are not being implemented in the workplace. In essence, while being professional consults to occupational safety, we cannot fall into the analogy of "*debating doctors discussing the best approach to performing open heart surgery while failing to recognize that the patient is not breathing.*"

Dispelling the myths of enforcement versus effectiveness

There is no question that regulatory enforcement serves as a reminder to all of us that there are minimum standards (laws,) we must abide by, be they social or occupational. While the enforcement of social laws is critical to the protection of social mores such action does not in itself ensure compliance nor does it prevent criminal misconduct. Likewise, while occupational standards establish minimum safety requirements, enforcement alone does not prevent injuries.

Prevention of occupational injuries relies upon a variety of interdiction methods and participant compliance in order to be successful. While the Rand Technical Report cites a lack of Cal OSHA enforcement as one reason for the possible ineffectiveness of the IIPP, it fails to point out some formable shortcomings in creating employer compliance well before Cal OSHA enforcement involvement. To the Report's failure to disclose California has an employer mandated process component designed as the "first line," of employee protection relative to the development and implementation of an occupational IIPP.

That first line of defense began with the provisions of workers compensation insurance after California labor Code 6401.7 was enacted in 1989 mandating employers establish an IIPP as required by CCR T8 3203. In 1995 California Labor Code 6345.5 was added to obligate insurance companies writing workers compensation insurance to provide loss control services to include safety program review, at no charge to insured employers. In 2003 labor code 6401.7 was amended again to "require every workers compensation insurer to review every policyholder's IIPP within four months of the beginning of the initial policy term and to prepare a detailed written report with recommendations." The review of the IIPP shall be or work under the direction of a licensed California professional engineer, certified safety professional, or certified industrial hygienist. A year later, the code was once again amended to require review only for employers with a modification rate of 2.0 or greater. One can assume that the requirement was

amended due to associated costs. California labor code 15353⁴³ established a similar requirement for an employer seeking California state approval for workers compensation self- insured status.

Regardless of the statute, neither regulation is being actively pursued. In preparation of this material I spoke to Mr. John Mendel off co- author of the referenced Rand Technical Report and specifically asked about the cited labor code regulations. He responded, “ We looked at the regulation but our research indicated this labor code section (6401.7) was no longer applicable.” In addition, I also spoke to Ms. Jaime Myers, supervisor for the California Office of Self Insurance Plans regarding labor code (15353.) She informed me that “they (the Office of Self Insurance Plans,) did not have a processes other than relying upon the employer’s word that they (the employer,) had an IIPP. She did indicate the state was moving towards making some changes in the regard to compliance but did not elaborate.

There is plenty of room for improvement when it comes to the development, application, support and compliance enforcement of California’s Injury and Illness Prevention Program. Responsibility for lack of these program aspects rests equally among safety professionals, employers, employees, ancillary providers and compliance enforcement personnel. Throughout the years since inception, what was intended as a regulation designed to provide equal footing for all employers to provide a safe working environment for their employees has been diluted, modified, vilified and simply ignored. Each action eroding the potential effectiveness of program purpose... keeping our employees safe. That is, after all, The True Value of an Injury and Illness Prevention Program.

Bibliography

California Code of Regulations

- California Code of Regulations (all Titles, 1 through 28)
- DLSE regulations (Title 8, Division 1, Chapter 6, Sections 11701 through 13694)

Margarita Alvarez Bautista: Ana Rosa Bautista; Socorro Rivera; Mauricia Calvillo; Natividad Carrillo; United Farm Workers of America; UFW Foundation vs. State of California Division of Occupational Safety and Health; Ellen Widess, (In Her Official Capacity as Chief of The State of California Division of Occupational Safety and Health

The Injury and Illness Prevention Program, California Code of Regulations, Title 8 3203, is the 1992 codified statue of Senate Bill 198 authored by Senator Bill Greene and signed into law by Governor George Deukmejian.

⁴³ (a) As part of the application process, an individual private sector applicant for a Certificate to Self- Insure shall provide one of the following:

- (1) an independent evaluation of the applicant employer's injury and illness prevention program as set forth in Labor Code Section 6314.5 and 6401.7 and Section 3203 of Title 8, California Code of Regulations prepared by an independent, licensed, California professional engineer, a Certified Safety Professional certified by the Board of Certified Safety Professionals, and/or a Certified Industrial Hygienist.

California Department of Industrial Relations, "Cal/OSHA issues citations in first confirmed heat related fatality of 2011" January 11, 2012 (quoting Cal/OSHA Chief Ellen Wides), available at <http://www.dir.ca.gov/DIRNews/2012-01.html>

Sec. 5 29 USC 654

California Labor Code 6400

California Labor Code 6401.7