

AMENDED IN ASSEMBLY APRIL 29, 2004

AMENDED IN ASSEMBLY APRIL 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 3037

Introduced by Assembly Member Yee

February 26, 2004

An act to amend Sections 6302 and 6401.7 of, and to add Sections 6401.8 and 6401.9 to, the Labor Code, and to amend Section 1103 of, and to add Chapter 1.5 (commencing with Section 1200) to Part 1 of Division 2 of, the Public Contract Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 3037, as amended, Yee. Employment: occupational safety and health.

Existing law requires every employer to establish an effective injury prevention program, and specifically permits employer and employee occupational safety and health committees to be included in the employer's injury prevention program.

This bill would require the injury and illness prevention program (IIPP) of an employer to include either a joint employer-employee occupational safety and health committee or an employer-employee safety liaison team, except as specified. The bill would require the Division of Occupational Safety and Health to adopt regulations to implement this new requirement on or before January 1, 2006, and to establish minimum criteria regarding committee duties and selection of employee representatives.

Existing law creates a presumption that an employer is in substantial compliance with the communication requirement of the employer’s injury prevention program if the employer’s occupational safety and health committee conforms with specified criteria.

This bill would require the Department of Industrial Relations or one of its divisions to establish criteria for a certificate of merit for employers with an effective IIPP with an effective joint employer-employee occupational safety and health committee. The certificate would entitle the employer to additional incentives, including a 5% discount on the employer’s workers’ compensation premium and a presumption that an employer meets responsible bidding requirements for safety and health.

The bill would require employers to submit certificate applications under penalty of perjury. By creating a new crime, the bill would impose a state-mandated local program.

The bill would impose related responsible bidder requirements for public contracts, that would require demonstration of the effectiveness of the bidder’s IIPP. The bill would require the Department of Industrial Relations to develop model guidelines for contractual language for public entities to assure that the successful bidder provides a safe and healthful work place.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that
2 workplace deaths, injuries, and illnesses take a tremendous, tragic,
3 costly, and unnecessary toll in California. A significant means of
4 reducing the costs of workplace deaths, injuries, and
5 illnesses--personal and economic costs borne by the injured
6 worker and workers’ compensation costs borne by the
7 employer--is to reduce the incidence of these events. This requires
8 a multi-faceted approach involving education of both workers and



1 employers as to their respective rights and duties, encouragement
2 to work cooperatively, and ultimately strong government as well
3 as private enforcement efforts. To strengthen this multi-faceted
4 approach, it is the intent of the Legislature to focus on effective
5 means to assure that workers and employers can, at the workplace,
6 solve problems quickly and cooperatively. The Legislature
7 believes labor-management health and safety cooperation, so long
8 as it includes knowledgeable, independent worker participation,
9 will reduce workplace deaths, injuries, and illnesses. The
10 Legislature believes that employers who have effective
11 cooperative occupational safety and health programs should be
12 rewarded when, for example, they bid on government contracts,
13 and they should also receive discounts on their workers'
14 compensation insurance premiums. It is also the intent of the
15 Legislature to assure that workers have effective and enforceable
16 rights to secure safe and healthful working conditions through
17 meaningful participation in the employer's injury and illness
18 prevention program and further that workers be protected against
19 reprisals for participation in occupational safety and health
20 matters. The following rights and remedies shall be available and
21 rigorously enforced.

22 SEC. 2. Section 6302 of the Labor Code is amended to read:
23 6302. As used in this division:

24 (a) "Director" means the Director of Industrial Relations.

25 (b) "Department" means the Department of Industrial
26 Relations.

27 (c) "Insurer" includes the State Compensation Insurance Fund
28 and any private company, corporation, mutual association, and
29 reciprocal or interinsurance exchange, authorized under the laws
30 of this state to insure employers against liability for compensation
31 under this part and under Division 4 (commencing with Section
32 3201), and any employer to whom a certificate of consent to
33 self-insure has been issued.

34 (d) "Division" means the Division of Occupational Safety and
35 Health.

36 (e) "Standards board" means the Occupational Safety and
37 Health Standards Board, within the department.

38 (f) "Appeals board" means the Occupational Safety and
39 Health Appeals Board, within the department.



1 (g) “Aquaculture” means a form of agriculture as defined in
2 Section 17 of the Fish and Game Code.

3 (h) “Serious injury or illness” means any injury or illness
4 occurring in a place of employment or in connection with any
5 employment which requires inpatient hospitalization for a period
6 in excess of 24 hours for other than medical observation or in
7 which an employee suffers a loss of any member of the body or
8 suffers any serious degree of permanent disfigurement, but does
9 not include any injury or illness or death caused by the commission
10 of a Penal Code violation, except the violation of Section 385 of
11 the Penal Code, or an accident on a public street or highway.

12 (i) “Serious exposure” means any exposure of an employee to
13 a hazardous substance when the exposure occurs as a result of an
14 incident, accident, emergency, or exposure over time and is in a
15 degree or amount sufficient to create a substantial probability that
16 death or serious physical harm in the future could result from the
17 exposure.

18 (j) “Serious physical harm” means any injury or illness
19 occurring in a place of employment or in connection with any
20 employment that meets the following criteria:

21 (1) An injury is a temporary, prolonged, or permanent
22 impairment of the body in which part of the body is made
23 functionally useless or substantially reduced in function on or off
24 the job or which results in permanent disfigurement. Injuries
25 involving impairment or disfigurement would usually require
26 treatment by a physician and may include, but are not limited to,
27 the following:

28 (A) Amputation (loss of all or part of a body appendage that
29 includes the loss of bone).

30 (B) Concussion or other head injury resulting in an altered level
31 of consciousness.

32 (C) Crushing (internal, even though the skin surface may be
33 intact).

34 (D) Simple or compound fracture.

35 (E) Thermal, electric, or chemical burn or scald.

36 (F) Cut, laceration, or puncture involving significant bleeding
37 or requiring suturing.

38 (2) An illness is an acute or chronic condition that could shorten
39 life or result in significant impairment of physical or mental



1 function or impairment of a part of the body. These conditions
2 include, but are not limited to, the following:

3 (A) Cancer.

4 (B) Respiratory diseases, such as silicosis, byssinosis,
5 asbestosis, or work-related asthma.

6 (C) Infectious diseases, such as human immunodeficiency
7 virus (HIV), hepatitis, and tuberculosis (TB).

8 (D) Poisoning from the inhalation, ingestion, or skin
9 absorption of a toxic substance that adversely affects a bodily
10 system.

11 (E) Noise-induced hearing loss.

12 ~~SEC. 3.—Section 6401.7 of the Labor Code is amended to read:~~

13 ~~6401.7.—(a) Every employer shall establish, implement, and~~
14 ~~maintain an effective injury and illness prevention program. The~~
15 ~~program shall be written, except as provided in subdivision (e);~~
16 ~~and shall include, but not be limited to, all of the following~~
17 ~~elements:~~

18 ~~(1) Identification of the person or persons responsible for~~
19 ~~implementing the program.~~

20 ~~(2) The employer's system for identifying and evaluating~~
21 ~~workplace hazards, including scheduled periodic inspections to~~
22 ~~identify unsafe conditions and work practices.~~

23 ~~(3) The employer's methods and procedures for correcting~~
24 ~~unsafe or unhealthy conditions and work practices in a timely~~
25 ~~manner.~~

26 ~~(4) An occupational health and safety training program~~
27 ~~designed to instruct employees in general safe and healthy work~~
28 ~~practices and to provide specific instruction with respect to~~
29 ~~hazards specific to each employee's job assignment.~~

30 ~~(5) The employer's system for communicating with employees~~
31 ~~on occupational health and safety matters, including provisions~~
32 ~~designed to encourage employees to inform the employer of~~
33 ~~hazards at the worksite without fear of reprisal.~~

34 ~~(6) The employer's system for ensuring that employees comply~~
35 ~~with safe and healthy work practices, which may include~~
36 ~~disciplinary action.~~

37 ~~(b) The employer shall correct unsafe and unhealthy conditions~~
38 ~~and work practices in a timely manner based on the severity of the~~
39 ~~hazard.~~



1 ~~(c) The employer shall train all employees when the training~~
2 ~~program is first established, all new employees, and all employees~~
3 ~~given a new job assignment, and shall train employees whenever~~
4 ~~new substances, processes, procedures, or equipment are~~
5 ~~introduced to the workplace and represent a new hazard, and~~
6 ~~whenever the employer receives notification of a new or~~
7 ~~previously unrecognized hazard. Beginning January 1, 1994, an~~
8 ~~employer in the construction industry who is required to be~~
9 ~~licensed under Chapter 9 (commencing with Section 7000) of~~
10 ~~Division 3 of the Business and Professions Code may use~~
11 ~~employee training provided to the employer's employees under a~~
12 ~~construction industry occupational safety and health training~~
13 ~~program approved by the division to comply with the requirements~~
14 ~~of subdivision (a) relating to employee training, and shall only be~~
15 ~~required to provide training on hazards specific to an employee's~~
16 ~~job duties.~~

17 ~~(d) The employer shall keep appropriate records of steps taken~~
18 ~~to implement and maintain the program. Beginning January 1,~~
19 ~~1994, an employer in the construction industry who is required to~~
20 ~~be licensed under Chapter 9 (commencing with Section 7000) of~~
21 ~~Division 3 of the Business and Professions Code may use records~~
22 ~~relating to employee training provided to the employer in~~
23 ~~connection with an occupational safety and health training~~
24 ~~program approved by the division to comply with the requirements~~
25 ~~of this subdivision, and shall only be required to keep records of~~
26 ~~those steps taken to implement and maintain the program with~~
27 ~~respect to hazards specific to an employee's job duties.~~

28 ~~(e) (1) The standards board shall adopt a standard setting forth~~
29 ~~the employer's duties under this section, on or before January 1,~~
30 ~~1991, consistent with the requirements specified in subdivisions~~
31 ~~(a), (b), (c), and (d). The standards board, in adopting the standard,~~
32 ~~shall include substantial compliance criteria for use in evaluating~~
33 ~~an employer's injury and illness prevention program. The board~~
34 ~~may adopt less stringent criteria for employers with few~~
35 ~~employees and for employers in industries with insignificant~~
36 ~~occupational safety or health hazards.~~

37 ~~(2) Notwithstanding subdivision (a), for employers with fewer~~
38 ~~than 20 employees who are in industries that are not on a~~
39 ~~designated list of high hazard industries and who have a workers'~~
40 ~~compensation experience modification rate of 1.1 or less, and for~~



1 any employers with fewer than 20 employees who are in industries
2 that are on a designated list of low hazard industries, the board
3 shall adopt a standard setting forth the employer's duties under this
4 section consistent with the requirements specified in subdivisions
5 (a), (b), and (c), except that the standard shall only require written
6 documentation to the extent of documenting the person or persons
7 responsible for implementing the program pursuant to paragraph
8 (1) of subdivision (a), keeping a record of periodic inspections
9 pursuant to paragraph (2) of subdivision (a), and keeping a record
10 of employee training pursuant to paragraph (4) of subdivision (a).
11 To any extent beyond the specifications of this subdivision, the
12 standard shall not require the employer to keep the records
13 specified in subdivision (d).

14 (3) The division shall establish a list of high hazard industries
15 using the methods prescribed in Section 6314.1 for identifying and
16 targeting employers in high hazard industries. For purposes of this
17 subdivision, the "designated list of high hazard industries" shall
18 be the list established pursuant to this paragraph.

19 For the purpose of implementing this subdivision, the
20 Department of Industrial Relations shall periodically review, and
21 as necessary revise, the list.

22 (4) For the purpose of implementing this subdivision, the
23 Department of Industrial Relations shall also establish a list of low
24 hazard industries, and shall periodically review, and as necessary
25 revise, that list.

26 (f) The employer's injury and illness prevention program, as
27 required by this section, shall cover all of the employer's
28 employees and all other workers who the employer controls or
29 directs, in conformity with subdivision (b) of Section 6400.
30 Nothing in this subdivision shall diminish the obligations of a
31 contractor or other employer that controls or directs its own
32 employees on the job.

33 (g) Where a contractor supplies its employee to a state agency
34 employer on a temporary basis, the state agency employer may
35 assess a fee upon the contractor to reimburse the state agency for
36 the additional costs, if any, of including the contract employee
37 within the state agency's injury and illness prevention program.

38 (h) (1) The division shall prepare a Model Injury and Illness
39 Prevention Program for Non-High-Hazard Employment, and shall
40 make copies of the model program prepared pursuant to this



1 subdivision available to employers, upon request, for posting in
2 the workplace. An employer who adopts and implements the
3 model program prepared by the division pursuant to this paragraph
4 in good faith shall not be assessed a civil penalty for the first
5 citation for a violation of this section issued after the employer's
6 adoption and implementation of the model program.

7 (2) For purposes of this subdivision, the division shall establish
8 a list of non-high-hazard industries in California, that may include
9 the industries that, pursuant to Section 14316 of Title 8 of the
10 California Code of Regulations, are not currently required to keep
11 records of occupational injuries and illnesses under Article 2
12 (commencing with Section 14301) of Subchapter 1 of Chapter 7
13 of Division 1 of Title 8 of the California Code of Regulations.
14 These industries, identified by their Standard Industrial
15 Classification Codes, as published by the United States Office of
16 Management and Budget in the Manual of Standard Industrial
17 Classification Codes, 1987 Edition, are apparel and accessory
18 stores (Code 56), eating and drinking places (Code 58),
19 miscellaneous retail (Code 59), finance, insurance, and real estate
20 (Codes 60-67), personal services (Code 72), business services
21 (Code 73), motion pictures (Code 78) except motion picture
22 production and allied services (Code 781), legal services (Code
23 81), educational services (Code 82), social services (Code 83),
24 museums, art galleries, and botanical and zoological gardens
25 (Code 84), membership organizations (Code 86), engineering,
26 accounting, research, management, and related services (Code
27 87), private households (Code 88), and miscellaneous services
28 (Code 89). To further identify industries that may be included on
29 the list, the division shall also consider data from a rating
30 organization, as defined in Section 11750.1 of the Insurance Code,
31 the Division of Labor Statistics and Research, including the logs
32 of occupational injuries and illnesses maintained by employers on
33 Form CAL/OSHA No. 200, or its equivalent, as required by
34 Section 14301 of Title 8 of the California Code of Regulations, and
35 all other appropriate information. The list shall be established by
36 June 30, 1994, and shall be reviewed, and as necessary revised,
37 biennially.

38 (3) The division shall prepare a Model Injury and Illness
39 Prevention Program for Employers in Industries with Intermittent
40 Employment, and shall determine which industries have



1 ~~historically utilized seasonal or intermittent employees. An~~
2 ~~employer in an industry determined by the division to have~~
3 ~~historically utilized seasonal or intermittent employees shall be~~
4 ~~deemed to have complied with the requirements of subdivision (a)~~
5 ~~with respect to a written injury and illness prevention program if~~
6 ~~the employer adopts the model program prepared by the division~~
7 ~~pursuant to this paragraph and complies with any instructions~~
8 ~~relating thereto.~~

9 ~~(i) With respect to any county, city, city and county, or district,~~
10 ~~or any public or quasi-public corporation or public agency therein,~~
11 ~~including any public entity, other than a state agency, that is a~~
12 ~~member of, or created by, a joint powers agreement, subdivision~~
13 ~~(d) shall not apply.~~

14 ~~(j) Every workers' compensation insurer shall conduct a~~
15 ~~review, including a written report as specified below, of the injury~~
16 ~~and illness prevention program (IIPP) of each of its insureds~~
17 ~~within four months of the commencement of the initial insurance~~
18 ~~policy term. The review shall determine whether the insured has~~
19 ~~implemented all of the required components of the IIPP, and~~
20 ~~evaluate their effectiveness. The training component of the IIPP~~
21 ~~shall be evaluated to determine whether training is provided to line~~
22 ~~employees, supervisors, and upper level management, and~~
23 ~~effectively imparts the information and skills each of these groups~~
24 ~~needs to ensure that all of the insured's specific health and safety~~
25 ~~issues are fully addressed by the insured. The reviewer shall~~
26 ~~prepare a detailed written report specifying the findings of the~~
27 ~~review and all recommended changes deemed necessary to make~~
28 ~~the IIPP effective. The reviewer shall be an independent licensed~~
29 ~~California professional engineer, certified safety professional, or~~
30 ~~a certified industrial hygienist.~~

31 *SEC. 3. Section 6401.7 of the Labor Code is amended to read:*

32 6401.7. (a) Every employer shall establish, implement, and
33 maintain an effective injury *and illness* prevention program. The
34 program shall be written, except as provided in subdivision (e),
35 and shall include, but not be limited to, *all of* the following
36 elements:

37 (1) Identification of the person or persons responsible for
38 implementing the program.



1 (2) The employer's system for identifying and evaluating
2 workplace hazards, including scheduled periodic inspections to
3 identify unsafe conditions and work practices.

4 (3) The employer's methods and procedures for correcting
5 unsafe or unhealthy conditions and work practices in a timely
6 manner.

7 (4) An occupational health and safety training program
8 designed to instruct employees in general safe and healthy work
9 practices and to provide specific instruction with respect to
10 hazards specific to each employee's job assignment.

11 (5) The employer's system for communicating with employees
12 on occupational health and safety matters, including provisions
13 designed to encourage employees to inform the employer of
14 hazards at the worksite without fear of reprisal.

15 (6) The employer's system for ensuring that employees comply
16 with safe and healthy work practices, which may include
17 disciplinary action.

18 (b) The employer shall correct unsafe and unhealthy conditions
19 and work practices in a timely manner based on the severity of the
20 hazard.

21 (c) The employer shall train all employees when the training
22 program is first established, all new employees, and all employees
23 given a new job assignment, and shall train employees whenever
24 new substances, processes, procedures, or equipment are
25 introduced to the workplace and represent a new hazard, and
26 whenever the employer receives notification of a new or
27 previously unrecognized hazard. Beginning January 1, 1994, an
28 employer in the construction industry who is required to be
29 licensed under Chapter 9 (commencing with Section 7000) of
30 Division 3 of the Business and Professions Code may use
31 employee training provided to the employer's employees under a
32 construction industry occupational safety and health training
33 program approved by the division to comply with the requirements
34 of subdivision (a) relating to employee training, and shall only be
35 required to provide training on hazards specific to an employee's
36 job duties.

37 (d) The employer shall keep appropriate records of steps taken
38 to implement and maintain the program. Beginning January 1,
39 1994, an employer in the construction industry who is required to
40 be licensed under Chapter 9 (commencing with Section 7000) of



1 Division 3 of the Business and Professions Code may use records
2 relating to employee training provided to the employer in
3 connection with an occupational safety and health training
4 program approved by the division to comply with the requirements
5 of this subdivision, and shall only be required to keep records of
6 those steps taken to implement and maintain the program with
7 respect to hazards specific to an employee’s job duties.

8 (e) (1) The standards board shall adopt a standard setting forth
9 the employer’s duties under this section, on or before January 1,
10 1991, consistent with the requirements specified in subdivisions
11 (a), (b), (c), and (d). The standards board, in adopting the standard,
12 shall include substantial compliance criteria for use in evaluating
13 an employer’s injury *and illness* prevention program. The board
14 may adopt less stringent criteria for employers with few
15 employees and for employers in industries with insignificant
16 occupational safety or health hazards.

17 (2) Notwithstanding subdivision (a), for employers with fewer
18 than 20 employees who are in industries that are not on a
19 designated list of high hazard industries and who have a workers’
20 compensation experience modification rate of 1.1 or less, and for
21 any employers with fewer than 20 employees who are in industries
22 that are on a designated list of low hazard industries, the board
23 shall adopt a standard setting forth the employer’s duties under this
24 section consistent with the requirements specified in subdivisions
25 (a), (b), and (c), except that the standard shall only require written
26 documentation to the extent of documenting the person or persons
27 responsible for implementing the program pursuant to paragraph
28 (1) of subdivision (a), keeping a record of periodic inspections
29 pursuant to paragraph (2) of subdivision (a), and keeping a record
30 of employee training pursuant to paragraph (4) of subdivision (a).
31 To any extent beyond the specifications of this subdivision, the
32 standard shall not require the employer to keep the records
33 specified in subdivision (d).

34 (3) The division shall establish a list of high hazard industries
35 using the methods prescribed in Section 6314.1 for identifying and
36 targeting employers in high hazard industries. For purposes of this
37 subdivision, the “designated list of high hazard industries” shall
38 be the list established pursuant to this paragraph.



1 For the purpose of implementing this subdivision, the
2 Department of Industrial Relations shall periodically review, and
3 as necessary revise, the list.

4 (4) For the purpose of implementing this subdivision, the
5 Department of Industrial Relations shall also establish a list of low
6 hazard industries, and shall periodically review, and as necessary
7 revise, that list.

8 ~~(f) The standard adopted pursuant to subdivision (e) shall~~
9 ~~specifically permit employer and employee occupational safety~~
10 ~~and health committees to be included in the employer's injury~~
11 ~~prevention program. The board shall establish criteria for use in~~
12 ~~evaluating employer and employee occupational safety and health~~
13 ~~committees. The criteria shall include minimum duties, including~~
14 ~~the following:~~

15 ~~(1) Review of the employer's (A) periodic, scheduled worksite~~
16 ~~inspections, (B) investigation of causes of incidents resulting in~~
17 ~~injury, illness, or exposure to hazardous substances, and (C)~~
18 ~~investigation of any alleged hazardous condition brought to the~~
19 ~~attention of any committee member. When determined necessary~~
20 ~~by the committee, the committee may conduct its own inspections~~
21 ~~and investigations.~~

22 ~~(2) Upon request from the division, verification of abatement~~
23 ~~action taken by the employer as specified in division citations.~~

24 ~~If an employer's occupational safety and health committee~~
25 ~~meets the criteria established by the board, it shall be presumed to~~
26 ~~be in substantial compliance with paragraph (5) of subdivision (a).~~

27 ~~(g) The division shall adopt regulations specifying the~~
28 ~~procedures for selecting employee representatives for~~
29 ~~employer-employee occupational health and safety committees~~
30 ~~when these procedures are not specified in an applicable collective~~
31 ~~bargaining agreement. No employee or employee organization~~
32 ~~shall be held liable for any act or omission in connection with a~~
33 ~~health and safety committee.~~

34 ~~(h) The employer's injury and illness prevention program, as~~
35 ~~required by this section, shall cover all of the employer's~~
36 ~~employees and all other workers who the employer controls or~~
37 ~~directs and directly supervises on the job to the extent these~~
38 ~~workers are exposed to worksite and job assignment specific~~
39 ~~hazards, in conformity with subdivision (b) of Section 6400.~~
40 Nothing in this subdivision shall affect *diminish* the obligations of



1 a contractor or other employer that controls or directs ~~and directly~~
2 ~~supervises~~ its own employees on the job.

3 (†)

4 (g) When a contractor supplies its employee to a state agency
5 employer on a temporary basis, the state agency employer may
6 assess a fee upon the contractor to reimburse the state agency for
7 the additional costs, if any, of including the contract employee
8 within the state agency's injury *and illness* prevention program.

9 (†)

10 (h) (1) The division shall prepare a Model Injury and Illness
11 Prevention Program for Non-High-Hazard Employment, and shall
12 make copies of the model program prepared pursuant to this
13 subdivision available to employers, upon request, for posting in
14 the workplace. An employer who adopts and implements the
15 model program prepared by the division pursuant to this paragraph
16 in good faith shall not be assessed a civil penalty for the first
17 citation for a violation of this section issued after the employer's
18 adoption and implementation of the model program.

19 (2) For purposes of this subdivision, the division shall establish
20 a list of non-high-hazard industries in California. These industries,
21 identified by their Standard Industrial Classification Codes, as
22 published by the United States Office of Management and Budget
23 in the Manual of Standard Industrial Classification Codes, 1987
24 Edition, are apparel and accessory stores (Code 56), eating and
25 drinking places (Code 58), miscellaneous retail (Code 59),
26 finance, insurance, and real estate (Codes 60–67), personal
27 services (Code 72), business services (Code 73), motion pictures
28 (Code 78) except motion picture production and allied services
29 (Code 781), legal services (Code 81), educational services (Code
30 82), social services (Code 83), museums, art galleries, and
31 botanical and zoological gardens (Code 84), membership
32 organizations (Code 86), engineering, accounting, research,
33 management, and related services (Code 87), private households
34 (Code 88), and miscellaneous services (Code 89). To further
35 identify industries that may be included on the list, the division
36 shall also consider data from a rating organization, as defined in
37 Section 11750.1 of the Insurance Code, the Division of Labor
38 Statistics and Research, and all other appropriate information. The
39 list shall be established by June 30, 1994, and shall be reviewed,
40 and as necessary revised, biennially.



1 (3) The division shall prepare a Model Injury and Illness
2 Prevention Program for Employers in Industries with Intermittent
3 Employment, and shall determine which industries have
4 historically utilized seasonal or intermittent employees. An
5 employer in an industry determined by the division to have
6 historically utilized seasonal or intermittent employees shall be
7 deemed to have complied with the requirements of subdivision (a)
8 with respect to a written injury *and illness* prevention program if
9 the employer adopts the model program prepared by the division
10 pursuant to this paragraph and complies with any instructions
11 relating thereto.

12 ~~(k)~~

13 (i) With respect to any county, city, city and county, or district,
14 or any public or quasi-public corporation or public agency therein,
15 including any public entity, other than a state agency, that is a
16 member of, or created by, a joint powers agreement, subdivision
17 (d) shall not apply.

18 ~~(l)~~

19 (j) Every workers' compensation insurer shall conduct a
20 review, including a written report as specified below, of the injury
21 and illness prevention program (IIPP) of each of its insureds with
22 an experience modification of 2.0 or greater within six months of
23 the commencement of the initial insurance policy term. The
24 review shall determine whether the insured has implemented all of
25 the required components of the IIPP, and evaluate their
26 effectiveness. The training component of the IIPP shall be
27 evaluated to determine whether training is provided to line
28 employees, supervisors, and upper level management, and
29 effectively imparts the information and skills each of these groups
30 needs to ensure that all of the insured's specific health and safety
31 issues are fully addressed by the insured. The reviewer shall
32 prepare a detailed written report specifying the findings of the
33 review and all recommended changes deemed necessary to make
34 the IIPP effective. The reviewer shall be or work under the
35 direction of a licensed California professional engineer, certified
36 safety professional, or a certified industrial hygienist.

37 SEC. 4. Section 6401.8 is added to the Labor Code, to read:

38 6401.8. (a) On or before January 1, 2006, the division shall
39 adopt regulations to require joint employer and employee
40 occupational safety and health committees or safety liaisons to be



1 included in the employer's injury and illness prevention program,
2 except as provided in subdivision (b). The division shall establish
3 minimum criteria for employer and employee occupational safety
4 and health committees or safety liaisons, including both of the
5 following:

6 (1) Employers with 50 or more employees shall have a joint
7 employer-employee occupational safety and health committee.

8 (2) Employers with fewer than 50 employees shall have at least
9 one employee and one employer representative as a safety liaison
10 team.

11 (b) (1) Notwithstanding paragraphs (2) and (3), an employer
12 who, in the last four years from the date of the most recent incident,
13 has had an occupational safety and health citation for any
14 work-related fatality, shall not be exempt from subdivision (a).

15 (2) An employer who has sufficient workers' compensation
16 premiums to generate an experience modification rate shall be
17 exempt from subdivision (a) unless any of the following apply:

18 (A) The employer has an experience modification rate of 1.25
19 or more.

20 (B) The employer is in a high hazard industry as determined
21 pursuant to the following:

22 (i) The industry is not on the list of non-high hazard industries
23 in California, as established pursuant to paragraph (2) of
24 subdivision (h) of Section 6401.7.

25 (ii) The industry is not on the low hazard industry list, as
26 established pursuant to paragraph (4) of subdivision (e) of Section
27 6401.7.

28 (3) An employer who does not have sufficient workers'
29 compensation premiums to generate an experience modification
30 rate shall be exempt from subdivision (a) unless either of the
31 following apply:

32 (A) An employee of the employer has, within the last two years,
33 had a work-related serious injury or illness, as defined in
34 subdivision (h) of Section 6302, or an injury or illness that resulted
35 in serious physical harm, as defined in subdivision (j) of Section
36 6302.

37 (B) The employer is in an industry on the designated list of high
38 hazard industries established pursuant to paragraph (3) of
39 subdivision (e) of Section 6401.7.



1 (c) Employers exempted pursuant to subdivision (b) may
2 institute a joint employer-employee occupational safety and health
3 committee or safety liaison in order to apply for a certificate of
4 merit pursuant to Section 6401.9.

5 (d) (1) In determining employment levels under subdivisions
6 (a) and (b), the employer shall count all permanent, contract,
7 temporary, and seasonal workers under the employer's direction
8 and control, and shall base the number on peak employment.

9 (2) Temporary services employers and labor contractors shall
10 determine employment levels based upon the total number of
11 workers over which the employer or contractor exercises direction
12 and control.

13 (e) (1) For agricultural workplaces, the agricultural employer
14 shall establish the committee and include representatives of labor
15 contractors when those subcontractors are active at the premises.

16 (2) For multiemployer nonpermanent workplaces, the general
17 or prime or principal contractor shall establish the committee and
18 include representatives of each subcontractor when those
19 subcontractors are active at the premises.

20 (3) For multiemployer permanent workplaces, the facility shall
21 establish the committee and include representatives of each
22 subcontractor when those subcontractors are active at the
23 premises.

24 (f) The duties of the joint employer-employee occupational
25 safety and health committee or safety liaison shall be addressed by
26 the minimum criteria established pursuant to subdivision (a), and
27 shall include, among other things, all of the following:

28 (1) Review of the employer's injury and illness prevention
29 program.

30 (2) Participation in and review of any periodic, scheduled
31 worksite inspections, including evaluating the effectiveness of
32 new safety equipment and health and safety procedures. For
33 multiemployer nonpermanent workplaces, the committee or
34 liaison shall review the work to be done in the next period for all
35 trades and crafts, the associated safety and health hazards that cross
36 craft lines, and may make recommendations to all employers
37 involved.

38 (3) Participation in and review of any investigation of causes
39 of incidents involving near-misses or death, injury, illness, or
40 exposure to hazardous substances.



1 (4) Participation in and review of any investigation of any
2 alleged hazardous condition or complaints.

3 (5) Participation in follow-up, abatement, and reporting back
4 to complainants regarding the complaints and, upon the request of
5 the division, regarding citations issued by the division.

6 (6) Development of a system for encouraging employees to
7 bring complaints or problems to the attention of the committee or
8 team, including anonymous complaints.

9 (7) Additional inspections and investigations by the committee
10 or liaison, when determined necessary by the committee or liaison.

11 (8) Recommendations to the employer regarding corrective
12 actions to be implemented within a specified time period. If a
13 recommendation is not implemented, the employer shall provide
14 a written explanation to the committee or liaison.

15 (9) Quarterly meetings if the employer is on the low hazard list,
16 twice monthly meetings if the employer is on the high hazard list
17 or has an experience modification rate of greater than 1.25, or
18 weekly meetings for multiemployer nonpermanent workplaces.

19 (10) A written agenda for each meeting, accurate and thorough
20 committee meeting minutes, and documentation of all other
21 activities.

22 (11) Complete documentation of the activities of the
23 committee or liaison team included with the employer's injury and
24 illness prevention program and made available for inspection and
25 copying by the division or any other government agency, upon
26 request, and by employees or their representatives at reasonable
27 times and in a reasonable manner. Medical or other personal
28 information regarding a worker shall be available only to
29 government agencies authorized by law to obtain that information
30 and other authorized requesters with the permission of the affected
31 employee.

32 (12) Prominent posting of the committee's agenda, outstanding
33 action items, and proposed and actual resolutions of health and
34 safety concerns within 30 days after the item has been resolved.

35 (13) Prominent posting of the names of all committee members
36 or liaison team members.

37 (14) The committee or liaison team may also recommend to the
38 employer that work stop if the committee or liaison team believes
39 the situation constitutes an imminent hazard or serious menace to
40 the lives or safety of employees. If a recommendation is not



1 followed, the employer shall provide a written explanation to the
2 committee or liaison team, and shall post the recommendation
3 until 30 days after the matter is resolved.

4 (g) The structure of the joint employer-employee occupational
5 safety and health committee or safety liaison shall be addressed by
6 the minimum criteria established pursuant to subdivision (a), and
7 shall include, among other things, all of the following:

8 (1) An equal number of employer and employee
9 representatives. The employer and employees may agree to a
10 greater number of employee representatives.

11 (2) At least two employee and two management members for
12 the first 50 employees, and at least one additional employee and
13 one additional management member for each subsequent 50
14 employees. The employer and employees may agree to a
15 maximum of 20 members or more in workplaces where over 20
16 members would be required pursuant to this paragraph. The
17 employer and employees may agree to one or more subcommittees
18 in large workplaces to accommodate shifts and other needs of large
19 workplaces.

20 (3) Reasonable efforts to ensure representation of various
21 shifts, trades and crafts, unions, and work activities.

22 (4) Majority vote on all recommendations to the employer.

23 (5) Annual rotation of the chair between labor and
24 management.

25 (h) The selection of the committee or liaison member shall be
26 addressed by the minimum criteria established pursuant to
27 subdivision (a), and shall include, among other things, all of the
28 following:

29 (1) The employer shall designate management representatives
30 and direct their activities. The responsible person identified
31 pursuant to paragraph (1) of subdivision (a) of Section 6401.7 shall
32 be among the management representatives.

33 (2) If there is a collective bargaining agreement, the employee
34 representatives shall be selected according to internal union
35 procedures, and the union shall direct their activities. If there are
36 multiple unions at the same workplace, each union shall be entitled
37 to at least one representative, unless the unions decide among
38 themselves to allocate representation in another manner. If there
39 are union and nonunion workers at the same workplace, the union
40 representative may serve as representative for all the employees.



1 (3) If there is no collective bargaining agreement, all of the
2 following shall apply:

3 (A) The employee representatives shall be nonsupervisory
4 employees selected randomly from among volunteers, or chosen
5 by secret ballot in an election supervised by the State Mediation
6 and Conciliation Service according to its procedures.

7 (B) If possible, at least one-half of the employee members of
8 the committee or liaison shall have been employed at least 24
9 months with the present employer.

10 (C) The terms of employee representatives shall be three years,
11 without term limits, and staggered or alternated so as to maintain
12 some continuity on the committee.

13 (D) The division, in consultation with the State Mediation and
14 Conciliation Service and other affected parties, shall adopt
15 regulations specifying the procedures for selecting representatives
16 for joint employer-employee occupational safety and health
17 committees or safety liaison teams if there is no collective
18 bargaining agreement between the employer and any union
19 representing the employees.

20 (i) All committee or liaison members shall be trained regarding
21 the basics of occupational safety and health and effective adult
22 learning methods, as follows:

23 (1) Each member shall initially receive a minimum of 32 hours
24 of health and safety training to help them become effective liaison
25 or committee members. The content of this training shall include
26 all of the following:

27 (A) Hazard identification and control.

28 (B) Incident investigation techniques.

29 (C) Principles of effective worker training and education.

30 (D) Mechanics of committee operations, including committee
31 rights and duties.

32 (E) Workers' rights with respect to occupational safety and
33 health.

34 (F) An overview of this standard and other relevant standards.

35 (2) Each member shall receive a minimum of eight hours of
36 refresher health and safety training every three years.

37 (3) Training shall be provided by the Worker Occupational
38 Safety and Health Training and Education Program (WOSHTEP),
39 the division, a union, or an approved trainer. The division shall
40 approve all training providers and curriculum and may further



1 define training requirements. The training shall be provided at
2 employer expense, without loss of pay or other benefits, and
3 during work hours. Refresher training shall be tailored to meet the
4 needs of specific industries, occupations, or hazards, and shall
5 include new laws and regulations. Upon satisfactory completion
6 of any training program, each member shall receive a certificate
7 of completion indicating the date and type of program.

8 (j) Each member shall be compensated with his or her regular
9 wages and benefits while attending any safety and health
10 committee meeting, doing related safety and health committee
11 work, or receiving safety and health training.

12 (k) No committee or liaison member shall be laid off during his
13 or her tenure or within one year of the end of tenure unless he or
14 she is the last person in his or her class or category on the job,
15 except as otherwise provided by a collective bargaining
16 agreement.

17 (l) Upon application, the division may approve any safety
18 committee that is innovative or different in form or function, if the
19 committee meets the intent of this section and the regulations
20 promulgated by the division.

21 (m) The employee committee members or liaison shall act in
22 an advisory capacity to the employer, and individual employee
23 participants do not assume the employer's exclusive responsibility
24 for providing a safe and healthful workplace or any related
25 liability. No employee or employee organization shall be held
26 liable for any act or omission in connection with the activities of
27 a committee or liaison.

28 SEC. 5. Section 6401.9 is added to the Labor Code, to read:

29 6401.9. (a) On or before January 1, 2006, the Department of
30 Industrial Relations or one or more of its divisions shall establish
31 criteria for a certificate of merit based on whether an employer has
32 an effective injury and illness prevention program (IIPP),
33 including an effective joint employer-employee occupational
34 safety and health committee or safety liaison.

35 (b) An eligible employer may apply for a certificate of merit
36 that shall entitle the employer to a ~~5-percent~~ discount from the
37 insurance carrier or group self-insurance fund beyond any
38 experience modification rate or other discount standard to the
39 workers' compensation insurance industry. *The amount of the*
40 *discount to which the employer is entitled, which shall not exceed*



1 5 percent, is dependent upon an evaluation by the Department of
2 Industrial Relations, or one or more of its divisions, of the injury
3 and illness prevention program that includes an
4 employer-employee occupational safety and health committee or
5 safety liaison team. An eligible employer may also use the
6 certificate of merit to establish a presumption that it has an
7 effective safety program as may be required from a responsible
8 bidder pursuant to Sections 1200 and 1201 of the Public Contract
9 Code.

10 (c) The criteria for the certificate of merit shall include, at a
11 minimum, all of the following:

12 (1) The employer has in place an effective IIPP and an effective
13 joint employer-employee occupational safety and health
14 committee or liaison team. If an employer is not required to have a
15 committee or liaison, he or she may voluntarily implement a
16 committee or liaison in order to take advantage of the incentives
17 described in subdivision (b).

18 (2) The employer shall not be eligible to apply for a certificate
19 of merit until the committee or liaison has been operating
20 effectively for at least six months.

21 (3) The criteria for the certificate of merit shall conform with
22 criteria developed by the Division of Occupational Safety and
23 Health for an effective IIPP and joint employer-employee
24 occupational safety and health committee or liaison team.

25 (4) At a minimum, the criteria will take into account the size of
26 the employer, whether or not the employer is a high or low hazard
27 industry, the lost-workday case incident rate, and the employer's
28 experience modification rate, if any.

29 (d) The employer shall submit an application, under penalty of
30 perjury, for an initial certificate or biannual renewal certificate to
31 the Department of Industrial Relations according to procedures
32 developed by the department.

33 SEC. 6. Section 1103 of the Public Contract Code is amended
34 to read:

35 1103. "Responsible bidder," as used in this part, means a
36 bidder who has demonstrated the attribute of trustworthiness, as
37 well as quality, fitness, capacity, and experience to satisfactorily
38 perform the public works contract, in compliance with Chapter 1.5
39 (commencing with Section 1200).



1 SEC. 7. Chapter 1.5 (commencing with Section 1200) is
2 added to Part 1 of Division 2 of the Public Contract Code, to read:

3

4 CHAPTER 1.5 BIDDER INJURY AND ILLNESS PREVENTION
5 PROGRAM
6

7 1200. A public entity subject to this code shall require bidders
8 to be responsible with respect to worker occupational safety and
9 health. To that end, the bidder, or its component parts if the bidder
10 is a joint venture, shall be required to submit information as set
11 forth in subdivision (a) of Section 1201 regarding the effectiveness
12 of its injury and illness prevention program (IIPP) for a period of
13 at least four years, or for whatever period less than four years the
14 bidder has been in business, prior to the date of bid, in a form
15 specified by the public entity. A certificate of merit issued pursuant
16 to Section 6401.9 of the Labor Code shall demonstrate
17 presumptively that the employer has an effective IIPP and may be
18 submitted in lieu of the information required by subdivision (a) of
19 Section 1201. The certificate of merit shall also satisfy any
20 requirements for prequalification that the entity may establish.

21 1201. (a) A public entity subject to this code shall require that
22 each prospective bidder for a contract that does not have a
23 certificate of merit issued pursuant to Section 6401.9 of the Labor
24 Code, submit the following information in order for the entity to
25 evaluate the effectiveness of the bidder’s injury and illness
26 prevention program:

27 (1) A copy of the prospective bidder’s written injury and illness
28 prevention program.

29 (2) The bidder’s history of occupational safety and health. The
30 history shall include, but not be limited to, at least a four-year
31 review prior to the date of the bid, or for whatever period less than
32 four years the bidder has been in business, of both of the following:

33 (A) The bidder’s history of worker injuries and illnesses as
34 reflected by workers’ compensation costs, lost work days, injury
35 litigation, doctor’s first reports, employer’s first reports, and Log
36 300 forms.

37 (B) The bidder’s history of safety and health violations as
38 established by citations, special orders, and orders to take special
39 action, as well as any information memorandum issued by the
40 Division of Occupational Safety and Health, federal Occupational



1 Safety and Health Administration, or other occupational safety
2 and health agencies in other states or federal jurisdictions.

3 (b) Information submitted pursuant to subdivision (a) shall be
4 a public record except with respect to any individual’s personal
5 identifiers.

6 (c) For purposes of this section, “bidder” includes all entities
7 holding active licenses required by the bid, if any, including the
8 component licenses for any joint ventures, and including other
9 entities that may be considered to be substantially the same
10 business by virtue of overlapping corporate or other business
11 structure.

12 (d) A public entity may establish a process for prequalifying
13 prospective bidders for purposes of this section. Any
14 prequalification pursuant to this process shall be valid for one
15 calendar year following the date of the initial prequalification. As
16 part of any prequalification process established pursuant to this
17 subdivision, the entity also shall establish an appeal process
18 whereby prospective bidders may appeal the failure to prequalify
19 and the public may appeal the granting of prequalification to a
20 prospective bidder.

21 1202. (a) A public entity subject to this code shall include a
22 provision in the contract of each successful bidder to provide a safe
23 and healthful workplace.

24 (b) The Department of Industrial Relations, in collaboration
25 with affected state and local agencies and interested parties, shall
26 develop model guidelines for contractual language for public
27 entities to assure that the successful bidder provides a safe and
28 healthful workplace.

29 SEC. 8. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

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