California Workers at Risk -

A CALL FOR ACTION

A Report to Governor Gray Davis and the California Legislature

Prepared by: WORKSAFE!
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WORKSAFE! is a coalition of individuals and organizations dedicated to promoting safety and health in the workplace in order to preserve the health of all Californians. The coalition includes labor and community groups as well as individual workers, occupational safety and health and other professionals, environmentalists, and other interested persons.
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EXECUTIVE SUMMARY

I. INTRODUCTION. Work place deaths, injuries and illnesses take a tremendous, tragic and unnecessary toll in California.

A multi-faceted approach to solve problems quickly at the work place is key. We must emphasize workers’ rights and education as well as employers’ duties and education, and back this up with strong government enforcement and enhanced private rights of action. Our Call to Action involves far more than recommendations to improve the administration of Cal/OSHA. It is a plan to improve work place safety and health that takes into account a number of approaches.

The key focus is on providing workers and their employers the tools to address safety and health problems quickly at the work place, without waiting for government intervention. To support work place prevention efforts, however, government must set standards of care and also have adequate and effective resources to respond when workers need assistance.

WORKSAFE! believes that labor-management health and safety committees, whose worker members are educated and independent, are the key to preventing injuries, illnesses and deaths at work. Effective committees can recommend changes to the employer, and when disputes arise, government can intervene. Employers who recognize the economic value of preventing injuries through such cooperative efforts should be rewarded when, for example, they bid on government contracts. Health and safety is also dependent on protecting both workers and contractors who refuse unsafe work. Finally, employers who are recalcitrant and cause injuries should be punished criminally and civilly, and be subject to personal injury or wrongful death actions when they act willfully and intentionally.

WORKSAFE! also believes we need sufficient resources for government to do its part. For years California was widely recognized as having the best occupational safety and health program in the country, but over the last 16 years, the program has declined. We need changes to restore the effectiveness of the Cal/OSHA program, and equally important, we need to increase Cal/OSHA’s budget.

With the 1998 election of an Executive and Legislature committed to worker occupational safety and health protection, California can assure its working men and women a truly safe and healthful place to work. If we are successful, we will not only improve worker health and safety, we will protect our community health and environment as well.

Detailed information begins at page 1 in the body of this paper.

WORKSAFE! makes the following recommendations
II. STRENGTHEN THE RIGHT TO KNOW, RIGHT TO ACT and RIGHT TO REFUSE UNSAFE WORK. Workers need expanded avenues for participating in workplace activities to assure their safety and health. Before workers can protect themselves and their families, they must be able to recognize the nature of the hazards they face on the job. Workers need skills, confidence and legal protection to allow them to raise safety and health issues with their employer without the fear of retaliation. Workers must not be afraid of or punished for speaking up about safety and health protection.

We also need to explore innovative approaches to reward employers who maintain a safe and healthful workplace and to protect their ability to do so.

WORKSAFE! seeks to increase the participation of workers in occupational safety and health decisions in their workplaces, and recommends a legislative mandate to require safety and health committees and/or representatives.

**RECOMMEND:**

legislation to amend Labor Code §6401.7 to require safety and health committees for larger workplaces (50 or more employees), and a worker safety and health representative for smaller workplaces (fewer than 50 employees), each with independent and knowledgeable worker members. (See Appendix A at page 68.)

The worker representative or committee must be knowledgeable (see Appendix C at page 73) and independent (see Appendix D at page 79) in order to be effective.

**Several other actions are needed as well.** All employers in a multi-employer workplace must take responsibility for providing a safe place to work, and any impediments should be eliminated. See Appendix I-2 at page 95. Additionally, WORKSAFE! recommends improving the training of workers by their employers. See Appendix B at page 71. Workers also need improved information and training. See Sections III, IV, V and VI and Appendix C at page 73. Workers must have protection against discharge and discrimination when they exercise their rights. See Appendix D at page 79. Workers need effective private rights of action to help achieve safety and health compliance. When workers speak up about health and safety concerns and employers fail to protect them from serious injury or death or when employers willfully and intentionally refuse to comply with safety and health provisions, we need strong civil remedies. See Appendix E at page 84, Appendix L-1 at page 110, Appendix L-2 at page 111, and Appendix L-3 at page 112. Finally, we need strong criminal remedies as well. See Appendix J-1 at page 102.

WORKSAFE! also recommends that employers who comply with the law and provide a safe place to work must be rewarded. They must be assured at least a level playing field, if not a preference, when they bid for public work. See Appendix F at page 85. And they certainly must not face economic threats when they refuse unsafe work.

**Detailed information begins at page 4 in the body of this paper.**
III. IMPROVE WORK-RELATED INJURY, ILLNESS and EXPOSURE DATA.

The economic and human costs of occupational injuries, illnesses and deaths are too high. California currently spends about $21 billion annually for direct and indirect costs of workplace injuries and illnesses. Based on national estimates, Californians annually suffer approximately 780 job-related deaths from injury, 1.584 million nonfatal injuries, 7200 deaths from occupational disease, and 104,000 occupational illnesses among the civilian workforce. See footnote 17 at page 15.

Current information on the scope and causes of workplace deaths, injuries and illnesses is woefully inadequate. In addition, data systems are not fully integrated nor do they contain all necessary data. Occupational safety and health requires the use of statistical information for injury and illness prevention and workplace intervention as well as for treatment, standards development, and enforcement. Data are also necessary to evaluate the effectiveness of occupational safety and health programs in reducing the incidence of work related injuries and illnesses.

WORKSAFE! seeks one integrated data system, meeting privacy considerations, to be utilized by government and others to reduce the incidence of workplace injuries, illnesses and deaths through prevention and workplace intervention, treatment, standards development, and enforcement. The Department of Industrial Relations [hereafter DIR], in cooperation with the Department of Health Services [hereafter DHS] must improve worker injury and illness data and continually evaluate its effectiveness to assure ongoing, accurate and timely information. Electronic records from the Workers’ Compensation Information System [hereafter WCIS] or other systems to be developed must be accessible to government and to others as appropriate, meeting stringent privacy considerations.

Additionally, WORKSAFE! recommends legislative changes to Health & Safety Code §§ 103830 and 103885 to augment with occupational information the cancer and birth defect registries. The current lead registry should be expanded to require more comprehensive reporting. DIR and DHS should recommend additional occupational registries as well.

Detailed information begins at page 15 in the body of this paper.

IV. EXPAND PREVENTION and INTERVENTION ACTIVITIES.

A public health approach to workplace health and safety problems involves helping employers implement effective workplace interventions. It utilizes data to target identified problems within industries (broad-based intervention) or specific work places (follow-up of individual or clusters of cases). Primary emphasis should be on developing appropriate broad-based (e.g., industry-wide) interventions to address the causes of illness and injury, but intervention is needed for specific cases as well. A public health approach begins by educating employers about needed changes, but also includes referrals to Cal/OSHA for enforcement if employers are recalcitrant and refuse to correct serious hazards.
WORKSAFE! seeks to increase the funding for injury and illness prevention and work place intervention. We recommend legislation to assess a small percentage of each employer’s workers’ compensation insurance premiums or equivalent for self-insured employers, part of which would fund these activities. See Appendix C at page 73.

Detailed information begins at page 21 in the body of this paper.

V. IMPROVE OCCUPATIONAL HEALTH RESEARCH and TREATMENT OF WORK-RELATED INJURIES and ILLNESSES.

WORKSAFE! seeks to increase the funding for occupational health research in order to prevent and treat injuries and illnesses. Research leads to prevention and advances treatment. Research provides critical cost information. California has special research needs that it should address.

Additionally, WORKSAFE! seeks to assure we have the most effective treatments available for workers who are injured or become ill. Occupational health clinical services are essential resources to the people of California to follow up individual cases and/or clusters of occupational injuries or illnesses. We need to improve physician recognition, reporting and treatment of occupational injuries and illnesses. Physicians also need to be better trained to improve their understanding of workers’ Cal/OSHA rights. Health practitioners need an understanding of how work place exposures may be prevented. They also need to be aware of their legal reporting obligations, and understand requirements for consistent coding for surveillance. Reporting of occupational diseases should be one of the key quality assurance measures for hospitals and health maintenance organizations.

Detailed information begins at page 24 in the body of this paper.

VI. IMPROVE WORKER and EMPLOYER EDUCATION and TRAINING.

Employer and employee safety and health education and training are essential for preventing work place disease and injury. Education, training and outreach efforts must be an integral part of California's occupational safety and health program. The Division is required to "maintain an education and research program for the purpose of providing in-service training of Division personnel, safety education for employees and employers, research and consulting safety services." See Labor Code § 6350 et seq. But the Division is not meeting this mandate with respect to worker training and education, is understaffed with respect to providing in-service training of Division personnel, and allocates few resources to research.

WORKSAFE! seeks funding for worker education through a small percentage assessment of each employer’s workers’ compensation premium or equivalent for self-insured employers in an amount equal to the funding provided to the Cal/OSHA Consultation Service for its employer assistance programs.
RECOMMEND: legislation to amend Labor Code § 78 and add Labor Code § 6356 to establish an Occupational Safety and Health Research and Worker Education Revolving Fund. (See Appendix C at page 73.)

Additionally, WORKSAFE! recommends reinstating the injury and illness prevention training grants program of the Commission on Health and Safety and Workers’ Compensation, establishing funding criteria and a peer review for proposals, and seeking additional funds to support the training grants. Cal/OSHA should expand its multi-lingual task force, and assure personnel in compliance and consultation can communicate in the languages used by workers. Cal/OSHA should also be adequately funded for a separate Cal/OSHA training unit to fulfill three distinct education functions: professional development and training, worker training and employer education; the agency should develop an annual training plan with specific measurable goals. Finally, Cal/OSHA Consultation should implement an aggressive plan to advise employers of their services, and particularly target smaller employers who employ less than 25 employees.

Detailed information begins at page 27 in the body of this paper.

VII. IMPROVE STANDARDS and THE STANDARD SETTING PROCESS.

California's Occupational Safety and Health standards (regulations) should be preventive in nature and designed to minimize occupational injuries and illnesses and deaths for all California working men and women. Workers must not be denied protection because they work for a small employer. The Division must systematically evaluate California's occupational safety and health standards to determine whether they provide the best protection for California workers, eliminate aspects of the regulatory scheme which bureaucratically preclude worker protection, and clarify the mandate of Labor Code §6300 which states that the California Occupational Safety and Health Act is enacted for the purpose of assuring safe and healthful working conditions for all California working men and women.

To issue timely and effective regulations, WORKSAFE! also recommends increased funding and staffing for the Division.

WORKSAFE! also seeks a standard setting process more responsive to the needs of California’s working men and women. The process by which regulations are enacted has been seriously skewed against workers in the last 15 years. We need changes at the Occupational Safety and Health Standards Board [hereafter OSH Standards Board], within the Division, and a shift in the relationship between these two entities. First, we must modify the composition of the OSH Standards Board. See Appendix H-1 at page 88. Next, we must assure that the Division has the expertise to develop occupational safety and health standards. Finally, we must clarify that judicial deference with respect to expertise is owed when such expertise is the basis for a regulation. See Appendix H-3 at page 90.
We must also streamline the procedures for promulgating new or amended standards and assure more worker participation. See Appendix H-2 at page 89. The Division may recommend additional legislation to assure this.

The Division should institute a complete review of existing standards, utilizing an Advisory Committee, and within one year create a list of priorities for new and amended standards starting with the specific concerns set forth herein.

Simultaneously, the Division should immediately begin implementing several specific regulatory changes:

WORKSAFE! seeks immediate legislation to establish an interim standard to protect workers exposed to ergonomic hazards. First, there is a demonstrated need for a regulation. Since the mid-1980's, workers sought protection from work-related musculo-skeletal disorders, and were thwarted. **Work-related musculo-skeletal disorders are real, painful and preventable.** Work-related musculo-skeletal disorders account for 34% of all lost work days according to the Bureau of Labor Statistics. This amounted to 647,000 lost work days in 1996. These injuries account for $1 out of every $3 spent by the workers’ compensation system, and total between $15 and $20 billion dollars per year. Some 600,000 workers annually are affected.

Second, there is a firm scientific basis for an ergonomics regulation. A 65 member National Academy of Sciences expert panel reviewed 2000 articles and issued a report in 1998. The National Institute of Occupational Safety and Health reviewed 600 studies and issued a report in 1997. The Government Accounting Office issued a report in 1997 regarding successful interventions. **The studies show that reducing the risk factors to which workers are exposed does in fact reduce the incidence and severity of the injuries.**

Finally, the interim regulation WORKSAFE! seeks is reasonable and akin to what was ordered by the Superior Court during litigation. It requires the employer to identify hazardous operations, control the hazards, and train the workers. WORKSAFE! believes the Division should also immediately convene an advisory committee to propose a final comprehensive standard that includes medical management and protection for injured workers who are temporarily unable to do their usual tasks. See Appendix H-4 at page 92.

**RECOMMEND:** legislation to establish an interim standard regarding work-related musculo-skeletal disorders and to convene an advisory committee to propose a final standard designed to minimize injuries. (See Appendix H-3 at page 90.)

Additionally, WORKSAFE! recommends the Division convene advisory committees and propose amended standards for: better fall protection for workers on steel structures, lead in general industry and construction, general training requirements in 8 CCR 3203 (see Appendix B at page 71), monitoring and medical surveillance, and carcinogen reporting. Adoption of the proposed Federal TB standard is also a priority.
Recently regulations were issued in 8 CCR 344.85 limiting eligibility for occupational safety and health “licenses” to aliens; these should be immediately repealed.

Cal/OSHA and the Department of Pesticide Regulation [hereafter DPR] should have joint jurisdiction over the occupational safety and health of agricultural workers, at least with respect to complaints and accidents involving serious injuries or illnesses as was previously negotiated between Cal/OSHA and DPR in a master agreement.

Finally, WORKSAFE! recommends the variance process be revised to assure that worker health and safety is adequately protected, particularly with respect to requests for permanent variances. Cal/OSHA should recommend legislation to remedy inequities in the variance process, including provisions for due process to workers who may be affected adversely by a variance.

Detailed information begins at page 33 in the body of this paper.

**VIII. IMPROVE THE ADMINISTRATION OF THE DIVISION OF OCCUPATIONAL SAFETY AND HEALTH.** Cal/OSHA needs more staff, better trained staff, revised procedures and more effective penalties.

The Division needs a significant shift in attitude so that the mandate of the agency, to protect worker safety and health, is paramount. The working people of California need concrete evidence of a commitment by government so that the right to a safe and healthy work place is indeed a right and not a privilege.

Cal/OSHA staff need a better understanding of the conditions workers encounter on the job. Cal/OSHA’s mandate must include respect for the dignity and rights of all workers who are exposed to unsafe and unhealthful conditions on the job and risk losing their job when they try to make the work place safe. Cal/OSHA staff must recognize that working under conditions where basic amenities are not provided (hand washing and toilet facilities) is degrading and inhumane.

WORKSAFE! recommends training for all Cal/OSHA staff regarding the agency’s mandate as well as the continuation of current job specific training.

Additionally, Cal/OSHA’s mandate to protect worker safety and health, requires, among other things, Cal/OSHA representatives to act in the best interests of all workers: respond in a timely manner to all serious hazards; preserve evidence and information in pursuit of workers’ rights; and co-operate with all other law enforcement agencies in vindication of those rights. The Division must also take whatever steps are necessary to protect all workers, including an ever growing contingent workforce. See Appendix I-1 at page 94.

WORKSAFE! recommends a significant increase of Cal/OSHA staff to carry out effectively its program and a full statewide needs assessment for field compliance officers, technical and administrative support staff. The Division needs compliance officers as well as support and supervisory staff to respond timely to complaints, referrals from other agencies or health and safety professionals, reports of accidents, follow-up inspections when serious violations have been cited, and to carry out targeted and special program inspections.
We must fill unfilled positions in the agency with high quality staff immediately. We need additional field staff and administrative support to carry out the program, as well as additional senior technical and administrative support for supervising field staff. We also need staff for special units such as research and standards development, internal training, worker health and safety education, special emphasis programs, technical services, medical, legal and the Bureau of Investigations.

With additional staff, the Division can improve enforcement. Cal/OSHA should develop and implement a real targeted inspection program in addition to special inspection programs such as process safety management, lead-in-construction and asbestos.

With additional staff, the Division can respond more timely to serious complaints from a variety of sources. Formal complaints should not be narrowly construed; the agency should recognize the inherent veracity of complaints made on behalf of workers by family members, their health providers or other representatives, as well as by government representatives. See Appendix I-2 at page 95.

With additional staff, the Division can do a better job conducting the inspection. Cal/OSHA should involve workers more in the inspection process and take steps to talk to workers in an environment conducive to obtaining information.

Change of attitude and staffing alone, however, will not impact the most recalcitrant employers as long as current enforcement roadblocks and pitiful penalties exist. We need legislation and regulations to strengthen enforcement activities. See also Section IX on criminal enforcement at page 55. Cal/OSHA can enforce more effectively if the law is clear regarding what is serious, willful, repeat, etc. The Division must start citing not only the employer whose employee is exposed, but also the employer who creates the hazard, is responsible by contract or practice for conditions, or is responsible for correcting the conditions. See Appendix I-2 at page 95. Increased penalties, including minimum administrative penalties, deter violators and heighten employer attention to safety and health. Governmental entities that violate occupational safety and health regulations also need administrative penalties to encourage compliance. See Appendix I-3 at page 99.

We need innovative approaches to make use of other government agency staff to achieve occupational safety and health. The Division should convene a task force with representatives of other state and local agencies as well as with representatives of organized labor to determine innovative ways for increasing occupational safety and health enforcement.
Finally, when unsafe or unhealthful conditions exist, technicalities cannot be used as an excuse for delaying abatement. We need changes in the appeal procedure following the issuance of a Cal/OSHA citation. The composition, staffing for, and procedures of the Occupational Safety and Health Appeals Board [hereafter OSHAB] should be modified to make OSHAB more responsive to the needs of California’s working men and women. Employers must abate unsafe and unhealthful conditions as soon as possible after a citation is issued, without regard to the status of any appeal. See Appendix I-2 at page 95. In order to aid employers to meet this mandate, we need funds, some of which may be available from increased penalties and collection procedures, to set up a revolving low or no interest loan fund for small employers to achieve timely abatement.

If immediate steps must be taken to stop imminent hazards, the Division, local prosecutors and the courts must have clear guidelines. See Appendix J-2 at page 105 and Appendix J-3 at page 107.

Detailed information begins at page 44 in the body of this paper.

IX. IMPROVE THE ABILITY OF LOCAL AND STATE PROSECUTORS TO PURSUE VIOLATIONS OF OCCUPATIONAL SAFETY AND HEALTH. Aggressive enforcement should not only include administrative actions, but also local and state prosecutors should be regularly integrated into the enforcement scheme. The Cal/OSHA Bureau of Investigations should be fully staffed and upgraded.

WORKSAFE! recommends that Cal/OSHA conduct a vigorous criminal enforcement program and coordinate closely with local prosecutors throughout the state. Appropriate prosecutors should routinely be notified immediately after a fatality occurs in their jurisdiction and regularly kept informed of the progress of the investigation.

California needs better civil and criminal penalties to deter violators and heighten employer attention to safety and health. Criminal penalties should be significantly enhanced, and prosecutors should be given discretion to charge safety and health crimes as either misdemeanors or felonies. See Appendix J -1 at page 102. As well, prosecutors should have standing to bring actions for injunctive relief under Labor Code § 6323 et seq. See Appendix J-2 at page 105.

Detailed information begins at page 55 in the body of this paper.
X. INJURED WORKERS NEED FAIR AND EFFECTIVE REMEDIES IN THE WORKERS’ COMPENSATION SYSTEM. We seek to ensure that workers are adequately protected by the workers’ compensation system.

WORKSAFE! recommends an increase in workers' compensation to cover more adequately the injured workers' losses. Additionally, we recommend steps be taken to prosecute claims administrators who fail to give timely or proper benefits. We must also strengthen protection for injured workers who face discrimination by employers.

WORKSAFE! also recommends increased staffing and training of the Information and Assistance officers so they may be pro-active and contact all injured workers; this requires reporting of every injury to the DWC.

The current fee system for workers’ compensation applicants’ attorneys must change in order to assure effective assistance of counsel. The fee structure is too low. Simultaneously, DWC must explore other options outside the private bar such as legal services, including a legal services program within the DWC to advocate aggressively on behalf of injured workers who are unable to secure an attorney to represent them.

DWC should establish a program to respond to workers' complaints about their employers and inspect work places for posting and other informational requirements, and should use penalty monies for improved information and assistance services for workers. DWC should also establish a program to respond to workers' complaints with respect to their claims adjusters, and should establish a comprehensive system and set of remedies for bad faith, including remedies outside the workers’ compensation system.

WORKSAFE! recommends improved procedures for resolving disputes in workers' compensation. Medical disputes need to be resolved more fairly for workers. In particular, insurance companies should not be permitted to set off against medical expenses any overpayments that a worker may have received. A comprehensive study is needed of the treatment being provided to injured workers and whether changes in the system, which emphasize the treating doctor, have impacted litigation in any way.

WORKSAFE! is opposed to expanding carve-out programs absent facts showing that the incidence of injuries and illnesses has been reduced due to better health and safety on the job. A comprehensive study is needed of the construction industry programs which permit a privatized system for workers’ compensation (carve-outs) in order to determine if there are any differences between cases handled inside or outside the traditional workers’ compensation system. The data evaluated to date show no particular improvement with respect to the goals the program was to achieve: reduction of injuries, lower costs, and guarantees of the injured workers’ standard of living.

Finally, WORKSAFE! recommends that steps be taken immediately to resolve cost inequities in the workers’ compensation system. Although some efforts have been made to equalize the costs incurred by different employers who employ the same craft persons at different pay scales, more must be done. The workers’ compensation system must NOT set fees based upon a calculation of payroll, but rather on a calculation of person hours.

Detailed information begins at page 57 in the body of this paper.
XI. WORKERS NEED FAIR AND EFFECTIVE REMEDIES BEYOND THE WORKERS’ COMPENSATION SYSTEM.

The workers’ compensation system does not adequately compensate workers for their injuries. When an employer acts in a manner that is willful, that employer should not be permitted to take advantage of the protection afforded by a no-fault system.

WORKSAFE! recommends workers be permitted to sue the employer directly when the worker develops cancer or another life-threatening disease after being exposed to a toxic substance on the job that caused the cancer or other disease, or when the worker suffers a serious injury, illness or dies after the employer refused to make the workplace safe by failing to provide basic safety and health information and training, implementing engineering controls or safe work practices, or providing personal protective gear. Labor Code 3602 must be amended to reward employers who act responsibly with respect to providing occupational safety and health protection and to penalize willful and intentional inaction when workers’ lives and health are in the balance.

**RECOMMEND:** legislation to amend Labor Code § 3602(b) to permit an employee or dependents in the event of death, to bring an action at law for damages against the employer when the employer has willfully ignored occupational safety and health requirements. (See Appendix L-1 at page 110.)

WORKSAFE! also recommends legislation to address the inequities that workers confront when they do not make the connection between their injury or illness and the hazards to which they were exposed in the workplace (the work-related cause).

**RECOMMEND:** legislation to add Code of Civil Procedure §340.8 to clarify the one year statute of limitations for cumulative disorders or cumulative toxic exposures. (See Appendix L-2 at page 111.)

Additionally, WORKSAFE! recommends changes with respect to the burden on a worker in certain summary judgment motions. Workers who are injured on the job, particularly by hazardous materials, often are personally unaware of the specific product, substance or company that caused their injury. But this lack of personal knowledge of the source of the injury should not preclude workers from proving the cause of their injury through co-workers' testimony or other evidence identifying the culpable parties.

Finally, WORKSAFE! also recommends that when workers are injured by unsafe or unhealthful conditions, and bring a cause of action against their employer or a third party and settle the matter, that as a matter of public policy, they should not be required to sign a confidentiality agreement, although the amount of settlement may be kept confidential. To keep the facts and circumstances of the case confidential would permit other workers to suffer the same injuries needlessly.

**Detailed information begins at page 57 in the body of this paper.**

XII. CONCLUSION. We are presented with a challenge and an opportunity.
WORKSAFE! knows the cost of "business as usual" is too great. By enhancing occupational safety and health, we can reduce welfare costs incurred when a worker becomes disabled, help employers lower their workers’ compensation premiums, and avoid liability for injuries to third parties. When we stop hazards at the plant gate, we protect our community health and the environment as well. Companies can enjoy increased productivity and worker morale.

**Most important, the human suffering of victims and their families can be reduced. We don’t go to work to die; we go to work.**

**Detailed information begins at page 64 in the body of this paper.**
SECTION I.
INTRODUCTION

Work place deaths, injuries and illnesses take a tremendous, tragic and unnecessary toll in California. California workers today face significant risks of illness, injury and death on the job.

A multi-faceted approach to solve problems quickly at the work place is key. We must emphasize workers’ rights and education, employers’ duties and education, and back this up with strong government enforcement and enhanced private rights of action. This WORKSAFE! Call to Action involves far more than recommendations to improve the administration of Cal/OSHA. It is a plan to improve work place safety and health that takes into account a number of approaches. The key focus is on providing workers the tools to solve safety and health problems quickly at the work place with the employer, without waiting for government intervention. But workers also need government to set standards of care and respond with adequate and effective resources when workers need assistance.

Increasing workers’ rights and opportunities to take action is key. Employers are required by law to provide a safe work place, but the law gives workers only minimal tools to assist and promote this effort. Workers need an effective mechanism such as health and safety committees or representatives that permits and requires their participation. Concomitantly, the representatives or committees need to be educated to work effectively with their employer. Finally, workers and their representatives or committees need better laws and regulations to protect them when conflicts arise with an employer.

A voluntary system for worker participation is not sufficient. California’s injury and illness prevention program does not mandate joint labor-management committees which are required in some other states. And although Labor Code § 6401.7 permits these committees, Cal/OSHA has not enacted regulations to facilitate committees nor has the employer community implemented committees voluntarily. Although some employers make a real commitment to safety, from the top, and recognize they cannot succeed without active employee participation, most do not. Although some employers recognize the value of health and safety committees, in terms of lowering their workers’ compensation and related costs as well as reducing the human costs to workers, most do not.

California needs effective health and safety representatives or committees in order provide a concrete way for workers to help achieve work place safety.

However, health and safety representatives or committees are just one tool workers use to facilitate work place safety issues. Workers need additional tools to give reality to the concepts of right to know, right to act, and right to refuse unsafe work.

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1 Federal OSHA is committed to promulgating a health and safety program standard for the nation.
All workers, not just representatives or committee members, need a real right to know about the hazards they are facing on the job, a right to act, and a right to refuse unsafe work. Workers need training to evaluate potential hazards and know generally the rules with which their employer must comply. Workers need skills, confidence and legal protection to allow them to raise these issues with their employer without the fear of retaliation. Workers must not be afraid of or punished for speaking up about safety and health protection.

Finally, to back up workers’ activity at the work place, workers need assistance. Government agencies are important in the effort to make the work place safe, although not sufficient to achieve this goal. Workers need government and universities to help develop new prevention and intervention measures and to assure cutting edge research and effective treatment of work related injuries and illnesses. Government can be a resource for research and development of new technologies or strategies for making the work place safe. Workers need government to research and develop new standards for work place safety, based on accurate and complete data about injuries and illnesses from a variety of sources. Government provides a safety floor when promulgating standards.

Workers need effective government enforcement as well. We need aggressive government agencies committed to protecting the health and safety of California workers to set and enforce standards. We need a standard setting process that respects workers and has sufficient expertise to deserve the deference the law accords when courts review standard setting activity. We need changes in the administration of Cal/OSHA, including legislative and regulatory changes, to enforce the law more effectively. And we need a budget for Cal/OSHA that will allow it to meet all its mandates as well as to implement programs to prevent injuries, illnesses and deaths.

For years California was widely recognized as having the best occupational safety and health program in the country, but during the last 16 years, the program has weakened significantly. California was a leader in its efforts to protect workers from occupational diseases and injuries. The decline of the Cal/OSHA program began in the early 1980's and included a return of the program to the jurisdiction of the Federal government; the return reversed by Proposition 97 in 1988.

With the 1998 election of an executive and legislature committed to worker occupational safety and health protection, California’s program can once more be the best, becoming even more effective than it previously was. The people of California understand the importance of occupational safety and health: they voted to restore the California Occupational Safety and Health Program in 1988 and they elected Gray Davis as Governor in 1998. Although the passage of Proposition 97 allowed us to re-establish our state plan, the political climate at that time did not permit us to rebuild a comprehensive and effective occupational safety and health program for all California. Such can be achieved now.

We believe government should not be relied upon as the only or the main way to achieve a safe and healthful work place as there will never be sufficient government resources to oversee every work place. But government is a necessary partner.
An effective occupational safety and health program requires the involvement of many
government agencies and individuals with expertise, as well as strong and consistent input
from workers, organized labor, employers, and the community at large. If we are successful,
we will not only improve worker health and safety, we will protect our community health and
environment as well. The links between occupational, environmental and community health mean
that improving work place safety and health not only protects workers but also helps us to keep our
communities healthy and safe.

WORKSAFE! offers the following recommendations with the hope they will provide a basis
for a variety of legislative and executive actions to make California once more a leader in protecting
the safety and health of all its workers. Although these recommendations are by no means complete,
their implementation would represent a major step forward in enhancing safety in the work place.
We focus initially on proposals to allow workers to help themselves and to work confidently with
their employer to achieve a safe place to work. **Workers don’t go to work to die; they go to
work!**
 SECTION II.
STRENGTHEN THE RIGHT TO KNOW, RIGHT TO ACT,
AND RIGHT TO REFUSE UNSAFE WORK

Workers need expanded avenues for participating in work place health and safety activities to assure safety and health in the work place. Before workers can protect themselves and their families, they must first be able to recognize the nature of the hazards they face on the job. Workers need skills, confidence and legal protection to allow them to raise safety and health issues with their employer without the fear of retaliation. Workers must not be afraid of or punished for speaking up about safety and health protection.

We also need to explore innovative approaches to reward employers who maintain a safe and healthful work place and to protect their ability to do so.

A. Mandate Safety and Health Committees. Safety and health committees with independent and knowledgeable labor representatives have in fact reduced injuries, illnesses and accidents. They are effective. They are key to achieving real protection for workers. Although all California employers are currently required to have a written comprehensive injury and illness prevention program, safety and health committees are merely permitted, not required, by Labor Code § 6401.7 (f). We recommend employers be required to establish safety and health committee(s) or for smaller employers be required to have a worker safety and health representative.2 The recommendations here and the legislation proposed in Appendix A are a working draft.

The safety and health representative would have the same authority as a committee member. The committee and the individual representative would work with employer representative(s) designated by the employer (also designated in the employer’s safety and health program). All worker committee members, including the individual safety and health representative in smaller work places, must be independent of the employer, selected independently, receive compensation for safety and health related activities, and have protection from discrimination, discharge or retaliation. The individual safety and health representative would be trained to the same degree as a lead committee member is trained.

1. Authority. Committees/representatives should meet at least quarterly, monthly for employers on the high hazard list, and weekly for multi-employer non-permanent work sites (for limited tasks). Generally, committees/representatives should have broad oversight of work place safety and health. Among other things, they should from time to time evaluate the adequacy of the employer’s safety and health program as a whole, including the employer’s system of accountability on safety and health matters, and may at any time evaluate any other aspect of the employer’s health and safety program.

2 Employers with fewer than 50 employees, who are on the low hazard industries list that the Division developed pursuant to Labor Code § 6401.7(e)(4), and who also have an experience modification rate of 1 or lower (or an effective measurement of their rate of injuries and illnesses which indicates they average), may have less stringent requirements.
Committees/representatives should also conduct regular walk around inspections, at least quarterly, monthly for employers on the high hazard list, to identify unsafe working conditions; may participate in the investigation of all accidents and near misses and should review the employer’s report of same along with the employer’s reports of illnesses; may participate in the investigation and resolution of complaints and should review the employer’s reports of same; and should review any other action taken by management with respect to safety and health. Committees/representatives should recommend corrective actions to be implemented by the employer, and if the employer does not follow the recommendation, a written explanation should be provided. Committees/representatives should keep a list of action items so that all matters may be followed to resolution.

Finally, although the law is clear that it is the employer’s duty to make the work place safe, committees/representatives should have the ability to stop an activity if a hazard exists that constitutes an imminent danger to life or health. In these most dangerous situations, action needs to be taken promptly. Without shifting liability to committees/representatives or to individual workers, such authority should exist. Committees/representatives also should be able to recommend to the employer that work be stopped under other circumstances, and if the employer refuses to stop the activity and take corrective action, the employer should provide a written explanation of reasons. Additionally, WORKSAFE! believes legislation should make it absolutely clear that the person(s) responsible for implementing the employer’s injury and illness prevention program, who are required to be designated under Labor Code § 6401.7(a)(1), must have the authority to stop work under any circumstances.

Committees/representatives must have protection if they are to do their job well. They should be the last person laid off in their class or category while they serve and for at least one year after they are no longer serving in that capacity.

All activities should also be documented, which information should be available to all relevant government agencies, and available to employees or their representatives, except with respect to personal medical or other personal information regarding a worker. Committees/representatives will need resources from the employer to accomplish this task. The names of committee members/representatives should always be posted along with the outstanding action items and proposals for resolution as well as recent action items and their resolutions.

2. Structure. Committees may range in size from 4 to 12 workers or more, depending on the size of the employer. Committees should have an equal number of workers and management representatives as well as co-chairs from each. The employer co-chair should be the person designated in the employer’s safety and health program as responsible for implementing the employer’s safety program.
3. **Selection of Worker Representatives.** In order for committees or a worker representative to be effective, the worker member(s) must not be chosen by the employer. In union settings, the worker member(s) should be chosen in accordance with internal union procedures. In non-union settings, the worker member(s) should be chosen by a secret ballot of non-supervisory employees in a streamlined election supervised by the State Mediation and Conciliation Service. The Division and the State Mediation and Conciliation Service should develop appropriate regulations to assure there is no employer domination in the selection of the worker representatives, and thus to comply with recent labor law cases.

4. **Training.** Committees or the representative should be trained so as to be knowledgeable about basics of occupational safety and health. A worker representatives and the lead committee member should initially receive a minimum of 40 hours of health and safety training to be effective health and safety committee members.\(^3\) Committee members other than a lead committee person should initially receive training of a type and amount to be determined by Cal/OSHA. Additionally, the worker representative and all committee members should be permitted to take educational leave for a period of two normal working days to a maximum of 16 hours each year without loss of pay or other benefits for the purposes of attending workplace safety and health training seminars, programs or course of instruction offered by the Worker Occupational Safety and Health Program, Cal/OSHA, or provided by another approved training provider.\(^4\) The employer should pay for any incidental expenses related to training.

5. **Compensation.** The employer should compensate the representative and committee member(s) at the regular hourly wages while they attend safety and health meetings, do related work, or receive training.

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**RECOMMEND:** legislation to amend Labor Code §6401.7 and regulatory changes to 8 CCR 3203 and 1509 to require safety and health committee(s) for work places with 50 or more employees, and a worker safety and health representative for work places with fewer than 50 employees, each with independent and knowledgeable labor representatives. (See Appendix A at page 68.)

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\(^3\) Basic training for the representative and all committee members should include: 1) hazard identification and control; 2) incident investigation techniques; 3) principles of effective training and education; 4) mechanics of how the committee functions, its rights and authority; and 5) worker rights as such relate to occupational safety and health.

\(^4\) The Division should approve training providers and may want to approve curricula.
B.  **Assure that Cal/OSHA may issue Citations to All Responsible Employers who Create, Control, Fail to Correct or Expose their Employees to Unsafe or Unhealthful Conditions.** In a multi-employer setting, Cal/OSHA previously cited only the employer of the exposed or injured employee. Cal/OSHA adhered to this policy based on decisions of the Occupational Safety and Health Appeals Board which narrowly construed to whom a citation could be issued, permitting citations only to the exposing employer.5

This Cal/OSHA policy creates not only a grave injustice, but more importantly, fails to prevent injuries, illnesses and deaths. It allowed many employers to escape their duty to provide a safe place to work. For example, if an accident occurred at a refinery and the only person injured or exposed was an employee of an outside independent contractor, then only the outside independent contractor employer would be cited, despite the fact that the refinery employer had failed to meet its responsibilities to provide a safe place to work for that outside independent contractor and his or her employees. Sometimes this injustice was avoided because not only were outside independent contractor employees injured or exposed, but so were employees of the premises employer. A policy that relies on happenstance does not assure safety and health and is unacceptable.

After years of administrative wrangling, Cal/OSHA issued a multi-employer worksite regulation.6 However, it is not issuing many citations using the regulation, and the OSH Appeals Board has stated it may not uphold citations issued using the regulation as it perceives a conflict with provisions of the Labor Code. Thus legislation is required.

**RECOMMEND:** legislation to amend Labor Code §6400 to codify the multi-employer regulation. (See Appendix I-2 at page 95.)

C. **Assure Workers Know about the Hazards they Face on the Job.** Workers need training to evaluate potential hazards. Workers need to know what they can do on the job to protect themselves and assure they do not bring hazards home to their family. Workers must also know generally the rules with which their employer must comply. These rules give workers the basis to assert their rights. And workers need skills, confidence and legal protection to raise issues with their employer without the fear of retaliation. They need to know how effectively to assert their rights, and they need to be aware of the risks and how to minimize them. Workers must not be afraid of or punished for speaking up about safety and health protection.

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5 This case law contradicted the Federal OSHA policy requiring citations to be issued to any and all responsible employers.

6 A 1992 Petition to the Occupational Safety and Health Standards Board for a multi-employer regulation was denied. WORKSAFE! filed a Complaint Against State Program Administration (CASPA) in 1994, and in 1996 Federal OSHA found valid the CASPA and ordered Cal/OSHA to change their policy governing citations issued to employers at multi-employer worksites. In 1997, Cal/OSHA issued a regulation which became effective December 31, 1997.
To accomplish these goals, workers need more effective training in the work place from their employers and workers and their representatives also need training outside the work place setting. See Section VI infra at page 27 regarding the Worker Occupational Safety and Health Training Program for specific recommendations regarding training outside the work place.

Work place training can be more effective if there is a greater emphasis on training mandates and improved methods, trainer qualifications, evaluation and record keeping. Occupational safety and health training requirements in Title 8 California Code of Regulations [hereafter 8 CCR] vary greatly. Some regulations address training comprehensively, delineating the subjects to be covered, length of training, qualifications of the training provider, etc. Other regulations speak only generally of the need for training. Most, however, are silent regarding training. There are some specific regulations that require training generally, such as 8 CCR 3203 and 8 CCR 1509, but these regulations are deficient with respect to methods, trainer qualifications, evaluation and record keeping.

**RECOMMEND:** legislation to amend Labor Code § 6401.7 and Cal/OSHA should convene and Advisory Committee to amend 8 CCR 1509 and 3203 to improve work place training. (See Appendix B at page 71.)

**D. Improve Access to Information about Hazardous Substances (Right to Know laws and regulations and Proposition 65).** Workers need access to information about the toxic materials to which they are exposed in the work place.

1. **The Right to Know Should be a Real Right.** In 1980 the California Legislature passed the first worker right-to-know law in the country. Among other things, the law and regulations (8 CCR 5194) require the employer to develop a written hazard communication program, and as part of that program to maintain a list of all hazardous substances in the work place, have MSDSs for each, provide training, assure adequate labeling of work place containers, and address issues related to multi-employer work places. Most employers view this regulation as simply paperwork, but the real intent is to provide training.

   The law also required DIR to issue a list of work place hazardous substances.

   To assure that workers know about chemicals in their workplace, we need to strengthen their remedies. We recommend a clear statutory right to refuse to work with or handle chemical substances when a worker has not received training. A violation of the right to know training requirement should be considered a “willful” violation by Cal/OSHA when a worker has refused.

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7 Training of workers is at the time of initial assignment, whenever a new hazard is introduced, and when updated information shows increased risks. The training is directed not only at the requirements of the law and regulation, but must inform the worker about where they will encounter the hazardous substance, how to detect its presence, issues of employer monitoring, physical and health hazards, and measures the worker may take to protect themselves including required employer practices and procedures and personal protective gear.
a. **HESIS Must be Revived.** Jointly, DHS and DIR established the Hazard Evaluation System and Information Service [hereafter HESIS] to help address right to know requirements. The program provides practical, expert information about hazardous or toxic materials and chemicals, infectious diseases, ergonomic hazards and other information to prevent work-related injuries and illnesses. It operates a unique call-in system for workers, employers, and health care providers with questions about occupational safety and health. HESIS’ Hazard Alerts, fact sheets and other publications explain clearly how to recognize and control some of the most important workplace health risks. By continuous review of the latest research, HESIS discovers new or previously unrecognized hazards threatening California workplaces and alerts those affected. Since 1992, this program suffered cutbacks in funding, from 19 to just 3.5 positions, seriously compromising these valuable services. The budget and staffing should be fully restored.

b. **Enforcement Must be Increased.** Enforcement by Cal/OSHA of the right to know during the course of inspections for other matters has been spotty. We need routine right to know evaluations by Cal/OSHA during every workplace inspection.  

c. **MSDSs Must be Made Useful.** The Right to Know law also required DIR to issue a list of hazardous substances in the workplace and receive MSDSs provided by manufacturers pursuant to Labor Code § 6394. Proposition 65 chemicals are also on that list. Numerous MSDSs were received, but that material has been stored in boxes, and unfortunately, the MSDSs are generally of poor quality, often inaccurate or missing important information. Cal/OSHA and HESIS must take steps to make information about toxic material useful and available. We propose that Cal/OSHA and HESIS, in partnership with Federal OSHA, develop a plan to do this. The plan may include recommendations to change current law, if the goal is to provide useful information to workers and their employers. There must be standards for the type and quality of data in MSDSs. The information should be made available on-line as well as in other ways so that the affected community may easily access it. There would also need to be systematic review processes for the MSDSs. Finally, there would have to be effective enforcement mechanisms, particularly for the duties imposed on manufacturers. 

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8 Cal/OSHA should routinely check the effectiveness of the employer’s injury and illness prevention program and hazard communication program. The Policy & Procedure should so state and should be followed.

9 One possibility would be to require employers to report quantities of certain chemicals used and then Cal/OSHA, HESIS and others as appropriate could find and/or develop model MSDSs for chemicals, starting with those used the most. Manufacturers would concomitantly be required to report the components (not formulas) for mixtures so that employers would know what chemicals are involved.

10 Among other things the MSDS must specify more precisely personal protective equipment when it recommends such. For example, if a worker is required to wear gloves, the MSDS must specify what glove materials are suitable. Additionally, we need a better process for identifying the toxic compounds to be listed as well as the ingredients that make up those compounds. Labeling of products must also be evaluated. Additionally, should manufacturers claim trade secrets, they should at least be required to provide information regarding the chemical ingredients for use by emergency responders and medical or health and safety professionals, which information could be kept confidential.

11 If accurate and complete information is not provided within a reasonable period of time after a request to the manufacturer, a legal mechanism should be available to prohibit the sale and use of the manufacturer's products. Cal/OSHA should also work cooperatively with Federal OSHA to assure federal enforcement against out-of-state manufacturers who fail to provide accurate information to California employers or workers.
2. Proposition 65 Should Protect the Health of Workers as well as the Community. In 1986 Proposition 65, the Safe Drinking Water and Toxics Enforcement Act of 1986, was passed by California’s voters. Among other things, it required creation of a list of carcinogens and reproductive toxins. After the initial lists were developed, the pace of adding chemicals slowed to a crawl; it must be increased significantly. Additionally, the lists need an annual review based on the best available scientific evidence. For chemicals on this list, Proposition 65 bans discharge into water and requires clear and reasonable warnings if humans are exposed.

a. Workers Need Adequate Warnings for Chemicals on the Prop 65 List which are Not on the DIR List. There are more substances on the Proposition 65 list than on the DIR Right to Know list because Proposition 65 sets more protective standards for evaluating the potential harm of a chemical as a carcinogen or reproductive hazard. The lists should be cross-indexed. Workers must be warned with respect to chemicals on both lists.

The problem arises when a substance is listed on the Proposition 65 list as a carcinogen or reproductive hazard, and is NOT on the DIR list. In those instances, only the Proposition 65 warning is required, and such warnings are not adequate for workplace exposures. One solution would be to revise 8 CCR 5194(b)(6)(C) so that Prop 65 chemicals that are not on the Director’s list will have MSDSs and worker training. See infra.

Posting a notice that substances known to cause cancer may be found at a premises is not an adequate warning for many workers. Workers must be warned with respect to all chemicals on the Proposition 65 list in a meaningful way: akin to the requirements in 8 CCR 5194. A recent Attorney General Opinion found adequate a warning for pesticides which was buried in a large document. The information had not been conveyed in a meaningful way to the workers exposed to the pesticide. They were effectively deprived of knowledge regarding the exposure, and thus unable to demand their employer protect them or even to take steps to protect themselves adequately from the hazard.

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12 Proposition 65 requires a list of carcinogens and reproductive hazards; these are established by a statewide panel of experts, the Carcinogen Identification Committee and the Developmental and Reproductive Toxicants Identification Committee. These met only about once each year under the previous administration and reviewed information regarding only a few chemicals. The committees themselves acknowledged there capacity to meet more often and review more substances than those presented to them by Ca EPA. These committees need to meet more frequently and consider all current relevant chemical information in order to augment the list.

13 We do not believe these warnings are adequate for other exposures, but cannot address this further here.
RECOMMEND: Cal/OSHA should re-establish a Right to Know Unit to assist enforcement of right to know provisions in every workplace inspection, and to recommend statutory and regulatory changes to provide workers with adequate warnings for all chemicals, assure workers a right to refuse to work with chemicals if they have not been trained, and to make a violation of the training requirement a “willful” violation when workers have refused. HESIS should be adequately funded and staffed and make accessible a complete library and chemical data base. Cal/OSHA and HESIS should work with Federal OSHA to improve the quality and accessibility of MSDSs with the goal of making them accessible on the Internet. Cal/OSHA should work with Federal OSHA to develop an enforcement mechanism for manufacturers who fail to comply. Cal/OSHA should recommend necessary legislation or regulations to accomplish these goals.

E. Protect Workers against Discharge and Discrimination when they Exercise their Rights to a Safe and Healthy Work place. A worker must not be afraid of or punished for speaking up about safety and health protection. When a serious hazard is identified, workers need a real right to refuse unsafe work. Labor Code §§ 6310, 6311 and 6312 provide only minimal protection for workers. The laws protecting workers must be strengthened.

1. Workers who refuse unsafe work and are discharged or face discrimination must be protected. Workers are at a severe disadvantage in administrative proceedings because the time in which to commence an action is too short, there is no advocacy assistance provided to workers (and no mandate for reasonable attorney fees or reimbursement of investigatory expenses), remedies are inadequate (there are no punitive damages to deter employers from repeating illegal behavior), and there is inadequate staffing so that hearings before Labor Commissioners are delayed.

Workers need clearer guidelines for what constitutes the right to refuse unsafe work. Under current California law, a worker can refuse to perform a job if there is a violation of the Labor Code (if the employer breaches their general duty to provide a safe place to work pursuant to Labor Code § 6400 et. seq., or of a Cal/OSHA standard or order) so long as the violation creates a real and apparent hazard to the employee or fellow employees. One difficulty with the statutory language is it appears to require an actual violation of the code. A good faith reasonable belief that a violation of a standard exists should be sufficient grounds for refusing work under the section. Such an interpretation is consistent with the State plan taken as a whole. To not allow refusal where there is a good faith reasonable belief a violation exists would create an unfair burden on the employee to prove that in fact a violation occurred.

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14 This is not to be confused with a subjective belief, which would not be sufficient to create a protected right.

15 This interpretation is consistent with the analysis under federal law and with a recent California appeals court decision on wrongful discharge.
Additionally, before a violation of § 6311 arises, a worker must 1) bring the existence of the unsafe condition to the attention of a supervisor, and 2) offer to work elsewhere (for the same pay and benefits) until the unsafe condition is remedied. Legislation or regulations should clarify for the worker their duty. It should be the employer’s responsibility to assign the worker to a safe task, doing work for which the worker is qualified and permitted under any contractual obligation, and maintaining pay and benefits, while the unsafe condition is corrected.

**RECOMMEND:** legislation to amend Labor Code §§ 98.7, 6310, 6311 and 6312 to provide fairer procedures and more effective remedies for workers subjected to discrimination or discharge for asserting their right to a safe work place or for refusing unsafe. (See Appendix D at page 79.)

**F. Assure State and Local Prosecutors have Tools to Enforce Occupational Safety and Health.** State and local prosecutors need broad authority to pursue civilly occupational safety and health violations. Business and Professions Code §17200 *et seq.*, permits prosecutors to seek injunctive and other relief for violations of occupational safety and health laws and regulations. We need to clarify that Labor Code §§ 6323 and 6324 regarding injunctions for unsafe or unhealthful conditions may also be used by state and local prosecutors. See Appendix J-2 at page 105.

**G. Assure Workers Have Effective Private Rights of Action.** Workers need additional tools to give reality to the concepts of right to know, right to act, and right to refuse unsafe work. No amount of government resources can assure that every occupational safety and health concern is addressed; this leaves many workers without an effective means to protect themselves and without appropriate remedies.

**WORKSAFE! recognizes that significant monetary penalties can influence a wrongdoer and thereby achieve compliance.** Thus, we strongly support the individual workers’ right to bring third party personal injury or wrongful death tort actions against negligent parties for injuries on the job. These actions may provide for compensatory and punitive damages for injuries as well as pain and suffering. We also support the rights of workers or their representative to seek injunctive and other relief for occupational safety and health violations utilizing B&P § 17200. When those latter actions are brought by state and local prosecutors, the relief may include penalties as well. The significant sums involved in these types of actions have a deterrent effect and make the work place safer. We should clarify that none of these actions are pre-empted in any way by Labor Code § 6308. See Appendix J-2 at page 105.
Workers need a meaningful and effective tool to pursue willful acts by their employer that cause serious injury or death. Currently, a worker may bring a personal injury or wrongful death action only against a party who is not the employer. The workers’ compensation system has only limited punitive provisions for violations of safety and health that amount to a reckless disregard for the probable consequences. We must permit workers to choose to bring a lawsuit against their own employer outside the workers’ compensation system when an employer is asked to correct an unsafe condition and refuses, and to cover other willful acts by an employer. See Section XI at page 64 and Appendix L-1 at page 110.

Finally, we need to assure that evidence of unsafe or unhealthful conditions may be utilized in the pursuit of justice in all proceedings. Labor Code § 6304.5 and § 6315.5 must be amended to clarify that health and safety standards establish a minimum duty of care and are admissible in various types of civil and in criminal matters, whether or not the defendant is the employer of the injured worker.

**RECOMMEND:** legislation to amend Labor Code §§ 6304.5 and 6315.5 to assure workers a right to bring a private cause of action to enforce safety and health in the workplace and to assure that occupational safety and health standards may be introduced in third party litigation as evidence of the standard of care that is owed to workers. (See Appendix E at page 84.)

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16 A serious and willful violation increases the amount recoverable by one-half. See Labor Code § 4553.
H. Explore Innovative Measures to Reward Employers who Provide a Safe Place to Work.

1. One way to strengthen the right to act is to permit the State and other public agencies to give preference to bidders with good safety records and to withhold public funds from bidders with poor safety and health records. Workers and their representatives should have standing to enforce these requirements. We recommend legislation to include health and safety as part of the definition of lowest responsible bidders for state and local public works and other public contracts, and to permit pre-qualification based on the bidder’s occupational safety and health history and their current safety and health program.

State and local government, as purchasers of construction and other services, have a proprietary interest in assuring a safe and healthy work place. To require all contractors to have an effective injury and illness prevention program and a good occupational safety and health record, makes sense because it will ultimately save money for the construction purchaser. Not only should provisions be made for bidding preferences and pre-qualification, but also every contract for goods and services entered into by state and local governmental bodies should include contract language to assure compliance with all safety and health requirements.

RECOMMEND: legislation to amend Public Contract Code §1103 et seq. to assure lowest responsible bidder standards include consideration of occupational safety and health and to permit prequalification of bidders based upon occupational safety and health considerations. (See Appendix F at page 85.)

2. Another way to strengthen the right to act is to protect a contractor who may refuse, on behalf of his or her employees, to do work which is not safe. These contractors should not risk a breach of contractual obligations or be discriminated against and suffer the loss of future contracts. We recommend legislative changes to assure that contractors who are subjected to discrimination for exercising the right to a safe and healthy work place or refusing unsafe work on behalf of their workers, have a remedy and a defense to any lawsuit for breach of contractual obligation.
SECTION III.
IMPROVE WORK-RELATED INJURY, ILLNESS and EXPOSURE DATA

The economic and human costs of occupational injuries, illnesses and deaths are too high. Surveillance of occupational injuries and illnesses provides important information regarding the patterns and severity of occupational safety and health problems in the state. Based on national estimates, Californians annually suffer approximately 780 job-related deaths from injury, 1.584 million nonfatal injuries, 7200 deaths from occupational disease, and 104,000 occupational illnesses among the civilian workforce. The price tag is estimated at $21 billion annually in California (total direct costs are $8 billion and indirect costs are $13 billion). And this price tag is a low estimate because it ignores costs associated with pain and suffering and costs of in-home care provided by family members. Additionally, the number of occupational injuries and illnesses are significantly undercounted.

Data on California's youngest workers are particularly incomplete and inconsistently reported. Injury and illness data must routinely be collected on all workers age 12 and older. Such data must be reported by informative age groupings because different labor laws apply to each group.

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17 In 1997 there were 636 work-related fatalities in California. Of these 232 were related to transportation, 168 were related to violent acts, 77 related to contact with objects and equipment, 80 were falls, 54 were exposure to harmful substances or environments, and 22 were explosions. The data from the Census of Fatal Occupational Injuries (CFOI), which began in 1992, only include acute exposures causing death and NOT cumulative exposures to harmful substances (like asbestos).

18 Occupational diseases account each year in the United States for an estimated 50,000 to 70,000 deaths and 350,000 cases of illness. Phillip J. Landrigan & Dean H. Baker, 266 JAMA No. 5 (1991).


20 NIOSH reports in their website that the 1993 workers’ compensation costs were $57 billion nationally, but this amount reflected only a small portion of the social and economic consequences of occupational injuries and illnesses. <http://www.cdc.gov/niosh/nrsoce.html>.

21 Age groups should include the following ranges: 12-13, 14-15, 16-17.
Current information on the scope and causes of workplace deaths, injuries and illnesses is woefully inadequate.\textsuperscript{22} In addition, data systems are not fully integrated nor do they contain all necessary data. Occupational safety and health in the workplace requires the use of statistical information for research, treatment, and prevention; standards development; and enforcement.\textsuperscript{23} Finally, such information is necessary to evaluate the effectiveness of occupational safety and health programs in reducing the incidence of work related injuries and illnesses.

We must improve worker injury and illness surveillance and integrate all data systems pertaining to it as well as continually evaluate data effectiveness to assure ongoing, accurate, complete and timely information. Electronic records from the Workers’ Compensation Information System [WCIS] or other systems to be developed must be accessible to government agencies and to others as appropriate, meeting stringent privacy considerations.

\textsuperscript{22} Current occupational safety and health surveillance programs are ineffective in part because they consistently and seriously undercount both injuries and illnesses. California does not have a comprehensive surveillance system for occupational injuries and illnesses. The current federal Bureau of Labor Statistics [hereafter BLS] funded Annual Survey is the only state-wide system for the collection and analysis of occupational injuries and illnesses. However, the BLS data have a number of limitations that restrict the ability of DIR and other agencies to utilize this information for surveillance purposes: (1) chronic diseases and occupational illnesses are underestimated by the BLS Annual Survey (long latency periods, among other things, make the count inaccurate and so data are skewed toward acute injury); (2) information supplied by employers does not contain individual identifiers so that high-risk employers cannot be located for follow-up; (3) the data are not timely in that aggregate data analysis is only available 12-18 months following the calendar year end; and (4) using Standard Industrial Codes to classify industries is outmoded as it doesn’t reflect modern industrial profiles nor provide sufficient subsets within various industries.

Both the National Academy of Sciences [hereafter NAS] and the National Institute for Occupational Safety and Health [hereafter NIOSH] recommend the development of comprehensive, timely systems for collection of occupational injury and illness data. Several NIOSH funded programs in California have effectively utilized employer and doctors’ first reports of occupational injury and illness for the surveillance of workplace violence, occupational tuberculosis, carpal tunnel syndrome, asthma, and pesticide poisoning. Data collection has relied upon existing workers’ compensation reporting requirements. California is unique in the nation in the scope of physician reporting requirements for occupational injury and illness. Unfortunately, analysis and publication of this data was terminated due to lack of funding in 1992. The only State funded program for the collection and analysis of occupational illness and injury data for prevention purposes is within the DHS, and this program is underfunded with only 3.7 positions.

\textsuperscript{23} Statistical information is critical to develop targeted inspection programs of high hazard employers, which programs can more effectively utilize scarce inspection resources.
A. The DIR through the Division of Labor Statistics and Research [hereafter DLSR] and DHS, in cooperation with other government agencies, should develop a comprehensive computerized database for occupational injuries, illnesses and deaths in California. Labor Code 138.6 requires the Division of Workers’ Compensation [hereafter DWC] to establish a comprehensive electronic data system for occupational injuries and illnesses. However, this system, while meeting administrative and claims needs, is not adequate for occupational safety and health purposes. It may, however, include other data deemed appropriate by DWC, and thus may provide a vehicle for an integrated system.

The system must ensure that electronic data collection is comprehensive, accurate, timely and able to be used for 1) occupational injury and illness prevention, 2) workplace intervention activities, 3) standards development, and 4) enforcement. The system should be a comprehensive database of injury, illness and exposure data.

Data should come from a variety of sources. Data must be linked. New sources

24 The Cal EPA’s Office of Environmental Health Hazard Assessment (OEHHA) and the Worker Health and Safety Branch of the Department of Pesticide Regulation as well as the Department of Insurance must also be consulted so that their data are included in this comprehensive system.

25 The system must collect standardized information on injuries, diseases, exposures (when such is or becomes available), occupations, industry type [Standard Industrial Code (SIC) or North American Industry Classification System (NAICS) information], worker characteristics, employer characteristics, etc.

The system requires additional general data. For example, the system must include the hours worked by each employer so rates of injury can be calculated, number of employees employed at peak, and similar information usually available to the Employment Development Department.

All information coming into the system requires additional data to identify the employer accurately: Employer Identification Number (EIN); Contractor State License Board (CSLB) information (if applicable) including license number(s), type(s), and all certificates; type of business entity (sole proprietor, partnership, corporation, joint venture [if joint venture all info for each entity making up the venture must be included]); workers’ compensation insurance carrier information or information that the employer is self-insured; exact address of headquarters of the employer and address where injury or exposure occurred if different than the headquarters address; etc.

The system should include proof of coverage information obtained from sources other than the employer. It should require each workers’ compensation carrier to provide a list of who is covered, which along with data regarding who is self-insured, will permit Cal/OSHA to target uninsured employers.

All data coming into the system require additional data to identify an injured worker: identifiers for injured workers should include the name, date of birth, and social security number, designation of craft, designation of union and local or indication of non-union status, whether they received workers’ compensation. This information must be included on doctors’ or employers’ first report, in Division of Workers’ Compensation records, hospital or other medical records, etc.

The system requires additional injury information: task at time of incident; date of injury (for discrete incident); date of death; date of permanent disability for cumulative trauma or exposure; exact location of any incident or exposure; etc. As an example, doctors’ and employers’ first reports must include information to indicate if co-workers exist who may have potential similar problems.

26 This may be part of the existing WCIS or part of a separate system, whichever is more practical.

27 Sources should include, but not be limited to occupational safety and health information such as, Cal/OSHA and Federal OSHA inspections which are currently coded into the Integrated Management Information System (IMIS), employer and doctors’ first reports, Log 200 forms that may be compiled by the Bureau of Labor Statistics for California employers or which may be required to be submitted to the Department for compilation, data
should also be explored.  

**DLSR and DHS should have adequate staffing and resources to develop the data.** They should establish an advisory committee with representatives from concerned agencies, the research community, and organized labor to define the parameters of the comprehensive data system. The committee should also make recommendations to assure that data are accessible and individual privacy is preserved.

The system must include data of sufficient specificity (see eg. firefighter logs) so that workers wishing to access their own information at some point in the future to prove occupational exposure, will find it valuable. Workers and their representatives need and deserve access to information about their own injuries through a comprehensive system.

**Privacy considerations must be assured.** Access to individually-identified worker information must be limited to include only those with a specific need for such information. Workers should receive notice before information is used and have certain rights with respect to such use. Further, any violation of privacy should result in severe civil and/or criminal penalties. A worker, of course, must always be able to obtain their own information or permit another to obtain the same with specific authorization.

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in the workers’ compensation information system, timely data from the Workers’ Compensation Insurance Rating Board (WCIRB), data from DHS surveillance programs (eg. needle stick surveillance in health care institutions), etc.

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28 For example SIC/NAICS codes do not match the workers’ compensation occupation codes which classify risks. Something must be done to link or standardize data and increase usefulness for statistical purposes.

29 Employers currently provide results of biological monitoring for lead and in the future other biological monitoring results may be reported: carbon monoxide, toxic metals, etc. We should, however, also consider whether results of environmental and occupational monitoring for toxic substances should be submitted and integrated into a comprehensive database. Such information, linked to personal data, would be extremely useful for hazard and disease surveillance. Whether this data in and of itself should lead to an automatic citation if monitoring results show a violation of a Cal/OSHA standard needs to be further explored.

Another new source of data might be incident cases of occupational injury and illness in children who work in California. Additionally, occupational data gleaned from the existing birth defects registry (currently covering about ½ of California’s counties) and the California Cancer Registry should be included. Information should also be obtained from hospital discharge records, emergency room reports, death certificates, tumor registries, and poison control centers. Data from the State Disability Insurance system or Medi-Cal might also prove useful for a comprehensive database.

Information from other divisions of the Department of Industrial Relations (DAS, DLSE, etc.) should also be utilized.

30 Different data elements may be needed by different agencies and should be determined by mutual agreement among those agencies.
Assurance of privacy should be an integral part of a comprehensive computerized database. Safeguards must exist to prevent use of the data for insurance discrimination or other fraudulent use.

At the same time, researchers as well as workers and their representatives need access to data without worker personal identifiers so they may compile it in a way that helps profile problems in a specific industry or workplace. Additionally, public health practitioners or clinicians in government and in the private sector may need to follow-up specific information for treatment or intervention which requires access to personal identifiers. When necessary for other research, human subjects committee approval should be obtained and privacy must be assured to the extent feasible.

DLSR, DHS and the advisory committee should review confidentiality requirements pursuant to existing provisions of the Labor and Health and Safety Codes, and propose legislation and/or regulations, if necessary, to assure privacy while permitting legitimate research by government or private agencies concerned with protecting worker health and safety. The advisory committee should also review confidentiality requirements, particularly if genetic screening of workers becomes permissible in the future, as well as access to summary data from the system.

**RECOMMEND:** California needs a data system useful to workers and those acting on their behalf to assure 1) occupational injury and illness prevention, 2) workplace intervention activities, 3) standards development, and 4) enforcement. This system must be useful for other research as well. There must be variable, but strict limits on access to personally identified information (dependent upon the user). DLSR and DHS should convene an Advisory Committee to assist in developing the data system and assure that data is accessible and individual privacy is preserved.
B. Existing Registries Should be Expanded and New Registries Considered to Supplement Data.

WORKSAFE! recommends augmenting the existing cancer and birth defects registries with occupational information. Further, the current lead registry should be expanded to require more comprehensive reporting of blood-lead exposures. Finally, DIR and DHS should recommend the development of additional occupational registries\(^{31}\) that would aid in preventing workplace injuries, illnesses and deaths.

**RECOMMEND:** legislation to amend Health & Safety Code §§ 103830 and 103885 to augment with occupational data the existing cancer and birth defects registries. (See Appendix G at page 87.)

**RECOMMEND:** DHS OHB should recommend legislation or regulatory changes to expand reporting of biological results for lead so that *all* reports are included and not just those with elevated blood lead levels.

**RECOMMEND:** DHS OHB should recommend legislation for additional registries modeled after the DHS Occupational Lead Registry.

WORKSAFE! also recommends DIR study the feasibility of requiring the submission of monitoring (personal breathing zone monitoring, etc.) conducted by an employer pursuant to 8 CCR 5155 or other regulations, and whether such should be included in a comprehensive occupational safety and health data system.\(^{32}\)

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\(^{31}\) The types of registries that might be useful could include biological monitoring for carbon monoxide, toxic metals, and other chemical substances collected under 8 CCR 5155 or other regulations.

\(^{32}\) Whether this data in and of itself should lead to an automatic citation if monitoring results show a violation of a Cal/OSHA standard needs to be further explored.
SECTION IV.
EXPAND PREVENTION AND INTERVENTION ACTIVITIES

A. California must expand prevention and intervention activities to target industries and work places known to be at high risk based on surveillance data.

WORKSAFE! recommends expanding prevention and intervention activities modeled on current DHS programs. Research shows that pilot programs to intervene in high risk work places using a variety of approaches are more likely to lead to lasting change in a work place and to replication of change in other work places throughout a particular industry. DHS has experience with intervention programs and such activities should be expanded not only to target more industries but also to take successful interventions to an entire industry within California. The DHS programs target employers with workers at high risk, and include small employers, high hazard industries, and industries with large numbers of non-English speaking workers.

To create effective interventions, we need several things. First, we need a systematic review of comprehensive surveillance data regarding occupational injuries and illnesses to identify major existing and new problems. We also need to identify risk factors associated with occupational injuries and illnesses and target interventions to prevent injuries or illnesses which disable workers. We must develop specific activities which target identified problems within industries (broad-based intervention projects) and specific work places (follow-up of individual cases or clusters of cases). Evaluating what works provides a solid basis to support what may be costly interventions.

We need a public health approach. Such begins with educating employers about needed changes, but also includes referrals to Cal/OSHA for enforcement if employers are recalcitrant and refuse to correct serious hazards.

1. **We need broad based prevention and intervention projects.** Primary prevention calls for conducting prevention and intervention activities designed to improve work place conditions before workers get sick or injured. Broad-based intervention projects involve working with groups of employers (for example, within an industry) and their workers to assist them to work safely and comply with Cal/OSHA regulations. This type of assistance is especially important for small employers with limited technical expertise, high hazard industries, and industries with large numbers of non-English speaking workers.

There are many interventions available. Providing training for employers or workers is one type of intervention. Others include providing technical assistance to implement engineering controls (e.g., ventilation or better tools) and safer work practices. Employers without occupational health and safety staff may require technical assistance to understand Cal/OSHA standards (what is required of them), to conduct hazard assessment (evaluate their work place), to implement appropriate control measures (abate unsafe conditions), and to train effectively their workers (overcoming behavioral, educational, and cultural barriers). In addition, expertise is often needed to determine the most technically feasible and cost-effective means to comply with the standards.
Prevention and intervention projects can improve workplace safety and identify the effective measures to recommend for broader implementation throughout the state. Intervention projects can also lead to improved standards. Intervention projects, especially when key stakeholders such as trade associations and unions are involved, can have a broad impact on the targeted industry and lead to lasting change.

2. **We need to provide follow-up to serious cases or clusters of work-related injury or illness.** Investigation of known individual cases of work-related injury or illness or clusters of multiple cases in a single workplace, can direct us to seriously unsafe working conditions that must be corrected in order to prevent additional future injuries and illnesses. For each identified case, there are often other workers in the same workplace who, without public health intervention to correct the workplace problems, will continue to be exposed to the same hazard.

3. **We need significant funding to conduct prevention and intervention activities.** Currently, there are limited funds dedicated specifically to this activity. DHS Occupational Health Branch [hereafter OHB], however, has developed a model that can be expanded to other hazardous exposures identified through a statewide occupational and injury surveillance system. We recommend direct state funding to expand the DHS OHB program.

   WORKSAFE! also recommends developing a grant program to fund DHS OHB, university-based and other public and private programs to do this work. DHS OHB, in cooperation with the University of California Centers for Occupational and Environmental Health, should establish and administer an Occupational Safety and Health Research Program [hereafter OSHRP] as a comprehensive grant and contract program to support programs to prevent occupational injury and illness.

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33 The Cal/OSHA Consultation Service provides some resources for intervention activities, but acts primarily in response to requests for assistance. DHS OHB also assists large and small lead industry employers to improve workplace conditions and provides guidance to health providers who lack experience treating lead-exposed workers.

34 The DHS OHB should immediately be expanded to implement more occupational health and injury surveillance and interventions in California. At a minimum, funding is required for at least the equivalent of 2 occupational medicine physicians, 3 industrial hygienists, 3 epidemiologists, 2 health educators, and necessary support/clerical staff.

35 Funding should be provided not only to DHS OHB and the University of California Centers for Occupational and Environmental Health, but also to other public health entities (e.g., large county health departments) and occupational medical clinics. All intervention work, however, should be coordinated by DHS OHB and the UC Centers to achieve a maximum impact.
The grants should contribute directly to injury and illness prevention through improved injury and illness surveillance and epidemiology and through intervention research projects that identify innovative and effective hazard identification and control strategies and technologies in the work place.\textsuperscript{36} We recommend legislation to assess a small percentage of workers’ compensation insurance premiums or equivalent for self-insured employers, part of which would fund these activities. See Appendix C at page 73.

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\textbf{RECOMMEND:} provide adequate funding for prevention and intervention activities. See Appendix C at page 73.
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\textsuperscript{36} Priority should be for industries on the high hazard list; hazards that result in significant workers’ compensation costs; trades where workers are suffering numerous or significant injuries or illnesses; occupational groups with special needs such as those who do not speak English as their first language, those with limited literacy, pregnant workers, workers at risk for cancer and other illnesses not easily detected, etc.; small employers with few resources; and traditionally under-served industries or groups of workers.
SECTION V.
IMPROVE OCCUPATIONAL SAFETY and HEALTH RESEARCH and TREATMENT of WORK-RELATED INJURIES and ILLNESSES.

A. WORKSAFE! seeks to increase the funding for occupational safety and health research in order to prevent and treat injuries and illnesses. Occupational safety and health research is important because information derived forms the basis for clinical and public health interventions to prevent and treat occupational injury and illness. Existing programs for occupational disease surveillance and prevention must be augmented to begin to move towards comprehensive routine surveillance of occupational injuries and illnesses. Ongoing medical surveillance of high-risk workers may provide early detection of occupational health effects and prevent occurrence of more serious illness. Evaluation of groups of workers may enable recognition of new patterns of disease associated with new hazards.

1. Research into emerging occupational safety and health problems allows early identification of potential risks to the population at large. Much of what we know about the human health effects of environmental exposures to toxic substances comes from studies of occupational health problems. Increased funding for research is critical if we are to make progress in learning how to prevent occupational injury and illness and utilize knowledge from the workplace to reduce the incidence of community illness from environmental exposures.

2. Research leads to prevention and advances treatment. Findings from research form the bases for clinical and public health interventions to prevent occupational injury and illness. The findings also help in creating programs and policies to prevent the spread of illnesses into the community from exposures to chemicals and other agents originating in workplaces. Research is needed to identify risk factors associated with occupational injuries and illnesses and evaluate the effectiveness of various interventions to prevent these injuries and illnesses from occurring or leading to disabling conditions. Research is also needed to develop new methods to identify the onset of job-caused changes in the body before the changes progress and become irreversible.

3. Research provides critical cost information. Research is also critical because it can determine which interventions are more effective in preventing injuries and illnesses, providing a solid basis to support interventions in the workplace. A comprehensive research agenda should also include an analysis of the costs of occupational injury and illness in California. Research should also address costs of occupational injury and illness cases which are being provided medical care at public expense.

37 Cost analysis should be developed by the DHS and the University of California Centers for Occupational Safety and Health with the cooperation of DIR and the Department of Insurance.
4. **California has special research needs.** Because of the special character of the California economy, research into industries and problems unique to California is best performed by California researchers focusing on the state’s largest industries and those with the highest priority problems. Semiconductor, service, biotechnology, aerospace, and agricultural health and safety are a few examples of areas in which California has a special stake.

RECOMMEND: increase funding for occupational safety and health research, and increase DHS funding for coordinating case-based surveillance activities. (See Appendix C at page 73.)

**B. WORKSAFE! seeks to assure we have the most effective treatments available for workers who are injured or become ill.**

1. **Expand the Centers for Occupational and Environmental Health [hereafter COEH] Network.** Occupational health clinical services are essential resources to the people of California. We need to follow up individual cases and/or clusters of occupational injury or illness. Complex exposures require multi-disciplinary approaches available in occupational health clinics. Training of health care practitioners through occupational / environmental health clinics must be expanded. The current University of California network of occupational health clinics should be expanded to reach geographically under served populations and receive expanded funding to provide environmental as well as occupational health services. Funding is also needed, along the model developed in New York State, for coordinating case-based surveillance activities thought the DHS.

38 The State must find ways to gather, link, analyze available cancer incidence data as a key component in a strategy of preventing disease and saving workers’ lives. In this context, the resistance of semiconductor manufacturers to proposals by the State of California to study cancer among high tech workers illustrates why workers and work place health advocates are so determined to see changes made. As an illustration of how the Davis Administration could set the tone for the future, the Administration should pursue securing the semiconductor industry's cooperation in an effort which links cancer registry data bases with employment sector records in order to evaluate the nature and extent of the impact of this high profile industry on worker health.

39 Types of research that should be explored include: 1) social and economic costs of occupational disease and injury in California, 2) effectiveness of medical monitoring for exposure to occupational risk factors, 3) evaluation of effectiveness of occupational health and safety standards in California work places, 4) mechanisms of disease related to occupational exposures, 5) effectiveness of methods to prevent disability following occupational injuries, 6) special populations at risk, 7) emerging technologies, 8) control technology and personal protective equipment, 9) surveillance research methods, 10) mixed exposures, 11) work and family issues, 12) human health effects of the rapidly-changing conditions of work (e.g., increased workload, instability of jobs, irregular work hours) with recommendations for organizational programs and governmental policies to improve working conditions for workers and their families, etc.

40 There is in California a northern and southern group focusing on occupational and environmental safety and health. A consortium of the University of California at Davis, University of California at San Francisco and University of California at Berkeley make up the northern COEH. In the south, the University of California at Irvine has a program as does the University of California at Los Angeles.
RECOMMEND: increase staffing for the Occupational Health Clinics of the University of California, and increase funding to expand the occupational and environmental health clinic network statewide. (See Appendix C at page 73.)

2. Improve Physician Recognition, Reporting and Treatment of Occupational Injuries and Illnesses. Physicians need to be better trained in the diagnosis and recognition of occupational disease to improve their ability to identify occupationally related disease, the quality of treatment they provide, and their understanding of the rights of workers under Cal/OSHA regulations. Health practitioners need an understanding of how work place exposures may be prevented.

They also need to be trained regarding their legal reporting obligations, and understand requirements for consistent coding for surveillance. Reporting of occupational diseases should be one of the key quality assurance measures for hospitals and health maintenance organizations.

Some training of physicians can be required as part of continuing medical education for all licensed clinicians in California. Occupational health professionals from the University of California, Cal/OSHA, the DHS, and other organizations are a valuable resource for training knowledge and expertise, if funding is made available for this purpose.

Occupational health training should also be included in practitioner schools. The University of California health practitioner schools should be required to include in their curriculum increased in class and clinical training on the diagnosis and treatment of occupational and environmental illness. Most physicians learn little about occupational illness throughout their training. One study showed that the average medical school curriculum had less than four hours devoted to occupational health. Yet workers frequently rely on their personal physicians to properly diagnose and treat illnesses related to the work. Failure of physicians and other health practitioners to identify properly the work-related cause of illness means the individual patient is denied proper care. Further, it allows other workers to continue to be at risk of developing similar illnesses. If the doctor identifies the cause, the doctor can communicate with the work place so that the employer can take steps to reduce the hazardous exposures causing the problem.

41 A 1985 survey of American medical schools revealed the average medical student received less than 4 hours of training in occupational medicine. B.S. Levy, The Teaching of Occupational Health in United States Medical Schools: 5 year Follow-up of an Initial Survey, 75 AM JOURNAL OF PUBLIC HEALTH 79-80 (1985).


42 Even physicians in occupational medicine clinics, particularly those associated with workers’ compensation insurance carriers and the employers who they insure, need additional training regarding diagnosis and treatment.
SECTION VI.

IMPROVE WORKER AND EMPLOYER EDUCATION AND TRAINING

Employer and employee safety and health education and training are essential for preventing workplace disease and injury. Education, training and outreach efforts must be an integral part of the State's occupational safety and health program. The Division is required to "maintain an education and research program for the purpose of providing in-service training of Division personnel, safety education for employees and employers, research and consulting safety services." See Labor Code § 6350 et seq.

The Division is not meeting this mandate with respect to worker training and education, allocates few resources to research, and is understaffed with respect to providing in-service training of Division personnel. The Division does have a Consultation Service to provide services primarily to employers, funded in large part by federal grant monies. However, there are restrictions on the use of federal funds for most types of worker training.43

WORKSAFE! recommends assessing a small percentage of each California employer’s workers’ compensation premium or equivalent for self-insured employers to support worker education programs as well as research initiatives for worker protection. Funding for worker education portion would total an amount equal to the funding provided to the Cal/OSHA Consultation Service for its employer assistance programs. The Division has never adequately met its mandate for education and research as set forth in Labor Code § 6350 et seq., and does not have the infrastructure to carry out these tasks. We propose extending the scope of the Commission on Health and Safety and Workers' Compensation [hereafter Commission] so that the may administer these new initiatives with the University of California utilizing the latter’s well-developed education and research infrastructure. The results of this funded occupational safety and health research and education will ultimately benefit all Californians.

WORKSAFE! recommends additional funding for providing in-service training of Division personnel. And, a more innovative Cal/OSHA Consultation Program is needed to conduct better outreach and assistance for employers, particularly small employers with 25 or less employees.

43 There is a limitation on training money under the 7(c)(1) consultation portion of the federal grant; it may be used only to train employees of an individual employer. Although worker training of an individual employer’s employees may be done without the agreement of the employer, training would have to be delivered off-site under those circumstances. Further, training to workers from multiple employers cannot be funded under the federal grant, although such can be funded under the 23(g) or enforcement portion of the federal grant; however that money is primarily used for enforcement, not training.
A. Establish a Worker Occupational Safety and Health Training & Education Program [WOSHTEP] to include a Young Workers Resource Center. There is a pressing need to increase the availability of high quality health and safety training and education for California workers regarding workplace hazards and their solutions. While Cal/OSHA Consultation provides outreach and training for employers, the program has not proven effective in providing similar services for workers and labor organizations, nor is it funded to do so. The labor occupational health education programs at the University of California have proven track records in designing and delivering effective worker training and information. Building on this expertise, WOSHTEP can provide effective employee safety and health education and training essential for preventing workplace disease and injury.

WOSHTEP would be responsible for developing and delivering a certified (24-to 40-hour) training program for health and safety committee members. See proposal for mandated health and safety committees on page 4 and Appendix A at page 68). It would serve as a clearinghouse for existing employee training programs and materials, and develop new curricula and educational materials, as needed, for high-risk and under-served worker populations. WOSHTEP would be supported by the proposed new revolving fund.

WOSHTEP would also support a Resource Center on Young Workers’ Health and Safety. The California Study Group on Young Workers’ Health and Safety and the recent report and recommendations of the national Committee on the Health and Safety Implications of Child Labor have focused attention on our youngest workers. Every year 70 adolescents die from work injuries in the U.S. Approximately 200,000 are injured—70,000 severely enough to require treatment in hospital emergency rooms. Most of these injuries are preventable.

U.C. Berkeley’s statewide Resource Center on Young Workers’ Health and Safety should be expanded and receive permanent funding from DIR and other relevant state agencies, such as Department of Education, the Occupational Health Branch of the Department of Health Services, and the Employment Development Department. The Center should be fully funded to help coordinate and augment existing outreach and education efforts, and to provide technical assistance, educational materials and other support to schools, job training programs, employers and other organizations working to educate students and their communities about workplace health and safety and child labor laws. The long-term goals are to increase the ability of teens and their communities to identify and address workplace hazards, to prevent young workers from being injured on the job, and to develop their lifetime skills for safe work.

The Resource Center should be governed by a statewide advisory group, drawn from the existing Study Group on Young Workers’ Health and Safety, to include representatives from education, government enforcement agencies, business, labor, parents, students, and others with experience working with youth doing agricultural and non-agricultural work. The Resource Center should develop and employ a statewide network of resource organizations, including drawing on resources within the Department of Industrial Relations, in every region of California to ensure statewide access and impact.
RECOMMEND: legislation to add Labor Code § 6356 to establish a Worker Occupational Safety and Health Education and Research Revolving Fund. (See Appendix C at page 73.)

B. Reinstate the Injury and Illness Prevention Training Grants Program of the Commission on Health and Safety and Workers’ Compensation, Establish Funding Criteria and a Peer Review for Proposals, and Explore Additional Funding to Support the Training Grants. A Workplace Health and Safety Revolving Fund was created in 1993 in Labor Code § 78. Initially, unions and labor-management committees could apply to this fund to finance the development of training programs and materials. However, the Commission has not continued the training grants program in recent years.

The Commission should reinstate the training grants program. Priority should be given to funding education programs which effectively increase the ability of employers and workers to recognize and eliminate workplace hazards. Special emphasis should be given to reaching workers in high hazard industries, non-English speaking workers, young workers, workers with limited literacy skills and other under-served populations.

Clear funding criteria should be established by the Commission and an impartial, peer-review rating system should be instituted to rate all proposals. Funding categories should be expanded to include both one-year start-up training grants and multi-year implementation grants. Multi-year funding will allow for the development and evaluation of effective, replicable education interventions.

Additional funding mechanisms should be explored in order to increase the funding available for the training grants program without disrupting the Commission’s current activities. Possible funding mechanisms may include: taking the increases in Cal/OSHA fines, assessing a fraction of workers compensation premiums, or utilizing fees gathered from an employer permit system. A special committee should be formed to explore these options and make recommendations to the Legislature regarding funding sources.

RECOMMEND: legislation to amend Labor Code § 78 and reinstate the injury and illness prevention training grants program of the Commission on Health and Safety and Workers Compensation, establish funding criteria and a peer review for proposals, and seek additional funds to support the training grants.

C. Expand Cal/OSHA’s Multi-Lingual Task Force. Agencies concerned with occupational safety and health must communicate effectively with all California workers. An increasing proportion of California workers speak a language other than English. Cal/OSHA and other health and safety agencies must develop mechanisms for educating these workers about occupational safety and health issues and for ensuring that all governmental educational publications and other outreach activities are written at a literacy level, and in a language, that effectively communicates the information to California's diverse workforce.
Within one year, Cal/OSHA, and other State agencies with occupational safety and health responsibilities, such as Departments of Pesticide Regulation, DHS, Fair Employment and Housing, and the California Highway Patrol, should have 20% of their field staff bilingual in English and Spanish, and have readily available for field operations translation resources in Chinese, Korean, Tagalog, Vietnamese, Mixtec, Mong and other common language groups found within California's workforce. A Multi-Lingual Task Force of the state agencies with occupational safety and health responsibilities should be organized by Cal/OSHA to develop an implementation plan for ensuring the delivery of multi-lingual educational publications and services to California's workforce. Appropriate governmental agency representatives should serve on the Task Force as well as others representing labor unions, worker advocates, and employers.

Aside from participating in the Inter-governmental Multi-Lingual Task Force, Cal/OSHA should develop and adopt a plan to hire bilingual compliance and consultative personnel to adequately serve California's workforce. At a minimum, one clerical and one inspector in each office should be bilingual in English and Spanish to be able to answer phone complaints and interview workers during inspections. Additional personnel speaking other major languages should be distributed in offices in order to serve workers who complain of unsafe or unhealthful conditions at work.

RECOMMEND: Cal/OSHA should expand its multi-lingual task force, and assure personnel in compliance and consultation can communicate in the languages needed to communicate with California workers.

D. Create or Revive Separate Cal/OSHA Training Units which should fulfill Three Distinct Education Functions.

1. The Professional Development and Training Unit should develop and coordinate internal training for all Cal/OSHA compliance and consultative personnel. Cal/OSHA should immediately conduct a needs assessment of Cal/OSHA personnel to assess: a) effectiveness of past training efforts; b) strategies for improving staff training and development; and c) priority needs for future training. This needs assessment should be conducted by a team consisting of Cal/OSHA personnel (representative of training participants) and health and safety training experts. The team should advise the unit on an on-going basis regarding training priorities, training plans and assessment of effectiveness.

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44 If necessary a survey should be made of other state agencies for other language resources.

45 Staff should continue to be paid a premium for language skills if appropriate under the collective bargaining agreement.

46 With the language barrier, inspectors cannot interview field workers about unsafe conditions, whether it be sanitary facilities or complex issues concerning mechanical equipment hazards. For example, in the investigation of a August 1997 fatality of a tractor driver in Coalinga, the inspector did not speak Spanish nor have an interpreter; yet he concluded there were no reliable witnesses.
2. The Worker Training Unit\textsuperscript{47} should develop informational materials for workers regarding their rights under Cal/OSHA, understanding specific hazards, and working effectively with Cal/OSHA to promote health and safety in the workplace. This unit would work with the proposed University-based programs (see above) and with other local and state agencies, including the California Apprenticeship Council, with responsibility for occupational safety and health. The development and delivery of training for workers and the maintenance of a lending library of worker training materials should be done in a coordinated fashion so as to minimize duplication.

3. The Consultation Services Training and Education Unit should develop and conduct training, and develop publications for primarily for employers, and maintain a lending library of employer training materials. Cal/OSHA should make sufficient funding and personnel resources available to ensure that each of the three training units is successful in conducting effective training. Staff with appropriate training and experience in health and safety education should be employed. Each unit should develop an annual training plan which should set specific measurable goals.

RECOMMEND: create and sufficiently fund separate Cal/OSHA training units which should fulfill three distinct education functions: professional development and training, worker training, and Consultation Services Training and Education Unit for employers. Assure an annual training plan with specific measurable goals.

E. Implement an Aggressive Plan to Advise Employers of Cal/OSHA Consultation Services. The Cal/OSHA Consultation Service has an existing mandate to provide technical assistance and training to employers in businesses of all sizes and to assist those businesses in complying with Cal/OSHA standards with special emphasis on small employers and high hazard situations. In recent years, the mandate has shifted somewhat to services to larger employer involved in voluntary protection programs and to employer associations.

Cal/OSHA Consultation unit should develop a far more aggressive plan for advising all California business of their consulting services. Special emphasis should once more be placed on reaching and serving small employers (specifically those with less than 25 employees), as well as employers with workers at high risk, such as those in high hazard industries, and industries with large numbers of non-English speaking workers, teen workers, and other under-served populations.

To more effectively communicate, the Consultation Unit should hire staff with expertise in health education, including skills in teaching, development of materials and media communications. Staff should also have enforcement experience in addition to good hazard recognition skills in order to advise employers on compliance issues. Consultation should submit a report to the Cal/OSHA Advisory Committee as soon as possible specifying how they will

\textsuperscript{47} This unit existed at one time, although with very limited resources.
adequately publicize their services to California employers,\textsuperscript{48} target high risk work places, and expand staff skills in terms of health education expertise.

\begin{boxedminipage}{\textwidth}
\textbf{RECOMMEND:} implement an aggressive plan to advise employers of Cal/OSHA Consultation services, and particularly target smaller employers who employ less than 25 employees.
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\textsuperscript{48} For example, material could be enclosed in EDD correspondence with employers.
SECTION VII.
IMPROVE STANDARDS AND THE STANDARD SETTING PROCESS

A. California's Occupational Safety and Health standards (regulations) should be preventive in nature and designed to minimize occupational injuries and illnesses and deaths for all California working men and women.

1. California standards should be as protective as possible. The entire regulatory scheme must be pro-active, designed to prevent injuries and illnesses, and not conditioned upon an injury. Workers must not be denied protection because they work for a small employer. We must assure that all regulations are health and safety protective to the greatest extent.49

Historically, California standards have been more stringent and more comprehensive than Federal standards. During the past 15 years, however, California regulations have not kept up,50 and therefore the regulations should be systematically reviewed to eliminate any aspect of the regulatory scheme which bureaucratically precludes worker protection and clarify the mandate of Labor Code §6300 which states that the California Occupational Safety and Health Act is enacted for the purpose of assuring safe and healthful working conditions for all California working men and women.

RECOMMEND: legislation to assure regulations are as protective as possible. (See Appendix H-1 at page 88.)

49 The Standards Board should adopt a standard in keeping with proposed legislation and in keeping with the general mandates of the Labor Code §§6300 et seq. For all standards, WORKSAFE! believes the test to be applied for adoption should be whether the standard is the most protective standard reasonably feasible. Economic factors should be considered only with respect to establishing a phased-in time period for abatement, not in determining standard feasibility.

50 During the last 16 years, California has in effect given up its right to enact standards, and resorted to adopting federal standards “as is” without tailoring them to meet California’s needs. California has adopted several federal standards that were simply mediocre. For example, in 1993 California accepted a seriously flawed lead-in-construction standard despite agreement by labor and management for a more effective standard that not only met the federal mandate but also improved upon it. We must augment and improve upon federally mandated standards. And California must once more be a leader in promulgating new standards to protect workers.
2. If a Cal/OSHA inspector cites a more general regulation instead of a more specific one, the citation may be invalidated upon appeal. This is a disservice to workers who are exposed to unsafe or unhealthful conditions, and legislation or regulations are needed to assure that the Occupational Safety and Health Appeals Board rules in a manner consistent with the mandate of the agency — to provide for worker safety and health.

RECOMMEND: Cal/OSHA should propose legislation or a regulation to address the problem of which citation may appropriately be cited.

B. The standard setting process should be more responsive to the needs of California’s working men and women. We must clarify and assure that the Division and its Research & Standards Development Unit has the expertise to develop occupational safety and health standards. Additionally, we must modify the composition of the Occupational Safety and Health Standards Board and staff appropriately. Finally, we must streamline the procedures for promulgating new or amended standards, and assure more worker participation. The process by which regulations are enacted has been seriously skewed against workers in the last 15 years.

1. POLICY. The Division should be the agency with expertise to develop safety and health standards, the Research & Standards Development Unit should be staffed appropriately to carry out that function. The Standards Board should recognize the Division’s expertise, and courts should look to the Division’s expert recommendations when evaluating a regulation and applying principles of deference to the expertise of the administrative agency.

If a petition for a new or amended standard is received from the public or another governmental agency, the Standards Board should seek the Division’s expert advice regarding the petition. If the Standards Board grants the petition, it should re-refer the matter to the Division to draft a proposal. The Division’s Research and Standards Development Unit should consult with and utilize information available from other State agencies, such as DHS and the University of California as well as the regulated community and private sector experts.

RECOMMEND: legislation to clarify the role of the Standards Board and Division so that deference with respect to expertise is supported within the Division. (See Appendix H-1 at page 88.)

2. STANDARDS BOARD COMPOSITION: We must broaden the Standards Board to provide for labor and management representatives from additional sectors. We need legislation to broaden the Board to include representatives specifically from construction, general industry, transportation, and the service industry, and the Speaker of the Assembly and the President Pro Tempore of the Senate on a rotating basis should make these new appointments and fill these places when vacancies occur. All appointments should be subject to confirmation by the Senate.

All labor representatives should represent “organized labor.” When possible, the industrial hygiene and safety representatives should also represent one of the occupational health centers, an occupational safety association, an industrial hygiene association, an occupational
medicine association, or an occupational health nursing association. At least one of the seven members of the Standards Board should be a safety and health professional with expertise in occupational safety and health training. This person should give special attention to including appropriate training language in every standard enacted by the Board.

**RECOMMEND:** legislation to broaden the Standards Board. (See Appendix H-2 at page 89.)

3. **BUDGET. At a minimum certain experts should be on the Division staff.** At least one person in each of the following categories should be on the Division’s Research & Standards Development Unit staff: an occupational health physician, epidemiologist, toxicologist, safety professional, industrial hygienist, health educator and attorney. A reasonable number of support staff should be provided to the technical staff. When necessary, funds should be available for the Division’s Research & Standards Development Unit to contract for special studies.

**RECOMMEND:** increase funding and staffing, to include staff with necessary expertise, for the Cal/OSHA Research and Standards Development Unit.

4. **TIME LINE. A petition should be timely considered.** Petitions by the public or other government agencies for new or amended standards should be submitted to the Occupational Safety and Health Standards Board, and should be heard within 60 to 90 days. The Board should be required to respond to petitions or requests by government agencies as well from members of the public. If the Board grants the petition, it should within 10 days re-refer the matter to the Division for the development of the standard. If the Board denies the petition, it should within 30 days explain in writing why the request would not be feasible, and/or would not protect or improve the health and safety of some considerable number of California workers.

Upon a referral by the Board, or in anticipation of a referral by the Division to the Board, the Division may convene an Advisory Committee. When the Division determines a proposed regulatory change is controversial, it should convene an Advisory Committee, and should do so within 30 days of the referral. The Advisory Committee should consider a proposal for a period not to exceed six months, with a possible six month extension. The Division should submit to the Occupational Safety and Health Standards Board a proposed standard within three months of the expiration of the Advisory Committee.

The Standards Board should within 10 days notice a public hearing and, for contentious regulations, should notice at least two public hearings (one in northern and one in southern California).

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51 This includes internal Cal/OSHA Form 9 petitions requesting changes to existing standards.
If the Division or Standards Board fail to act in a timely manner as described in the above paragraphs, then review through the courts should be available.

**RECOMMEND:**  Cal/OSHA should recommend legislation to assure timely activities with respect to standards development.

5. Advisory Committees. When the Division determines a proposed regulatory change is controversial or a totally new regulation is being considered, it should convene a Advisory Committee. The Advisory Committee should be composed of interested persons, including safety and health professionals and representatives from other government agencies as appropriate. Advisory Committee members should be representatives of organized labor and management, with equal representation from both. The Advisory Committee should consider a proposal for a period not to exceed six months. Upon a vote of 3/4 of all members of the Advisory Committee, as determined by phone call, e-mail, or a written response, the life of the Advisory Committee may be extended for one additional six month period. The Division should attempt to achieve a consensus in the Advisory Committee, but if consensus cannot be achieved during that time period, the Division should make its own recommendation for a new or revised standard based on the information and advice gathered as well as based upon its own expertise.

**RECOMMEND:**  Cal/OSHA should utilize Advisory Committees in the development of new and amended standards.

C. The Division should review existing standards and implement several specific regulatory changes immediately.

1. The Division should identify standards that need to be strengthened and recommend new standards to assure workers protection. The Division should act through its Research & Standards Development Unit, in consultation with an Advisory Committee as set forth above and in consultation with the DHS and Cal EPA. The Division and Advisory Committee should, within the next year, identify standards to be strengthened or newly proposed. The initial review should cover existing California and federal standards, state of the art literature, and recommendations by expert bodies such as new Threshold Limit Values adopted by the American Conference of Governmental Industrial Hygienists (ACGIH), NIOSH recommended standards, etc. Additionally, the Division should review Appeals Board decisions which narrowly interpret regulatory language and impede effective enforcement and requirements needed to protect workers’ safety and health.
The Division should convene separate Advisory Committees to work on various standards, set priorities, and establish timetables for new or amended standards based on the severity of the health or safety risks which may be anticipated in failing to act and on the number of workers exposed.

The Division should schedule ongoing review of standards as part of its regular duties. The Division should also establish an ongoing mechanism to initiate regulatory changes when the Appeals Board thwarts effective enforcement.52

Among others, the following subjects should be considered for regulatory change: indoor air; confined space; formaldehyde; heat stress; hearing conservation in construction, agriculture, oil well drilling; pesticides; and reproductive hazards.

RECOMMEND: Cal/OSHA should convene an Advisory Committee to establish within one year a list of priorities for new and amended standards starting with the specific concerns set forth above.

2. The Division should immediately convene an advisory committee for several specific regulatory changes. Among others, we must immediately implement an effective program to control work-related musculo-skeletal disorders, better fall protection for workers on steel structures. Adoption of the proposed Federal TB standard is also a high priority.

   a. ERGONOMICS. We need immediate implementation of a pro-active comprehensive ergonomics regulation. While the current regulation is triggered by injuries, earlier proposals reflected a commitment to prevention by requiring action in response to existence of recognized risk factors. While the current regulation exempts from any protection millions53 of workers in small businesses, earlier proposals covered all California workers equally. While the current regulation is silent on injury and illness reporting mechanisms and medical management, earlier proposals required active surveillance of symptoms and medical management to ensure early detection and treatment. While the current regulation focuses solely on repetitive motion, earlier proposals addressed a range of risk factors associated with work-related musculo-skeletal disorders.

   We must review information concerning elements of a comprehensive ergonomics program and develop a more pro-active regulation to minimize and prevent ergonomic hazards. We propose that § 6357 should be amended, the amendment should include an INTERIM regulation, and that this legislative proposal be enacted as emergency legislation.

   52 The Cal/OSHA Form 9 may need to be modified to assure an effective means for proposing regulatory changes.

   53 According to EDD data, 75% (530,022) of California private sector employers (704,709) employ 10 or fewer employees; this represents 18% (1,900,509) of all private sector employees (10,702,848). Thus about 18% or a little less than 2 million California private sector workers are left completely unprotected by government regulation with respect to work-related musculo-skeletal disorders pursuant to the current proposed regulation which permits an exemption for work places of less than 10 employees. There are approximately 12.4 million employees in the private and public sector in California according to 1997 EDD data.
Since the mid-1980's, workers have been seeking protection from work-related musculo-skeletal disorders, and have been thwarted by the previous administration. Their injuries are real, painful and preventable. 34% of all lost work days according to the Bureau of Labor Statistics are work-related musculo-skeletal disorders. This amounted to 647,000 lost work days in 1996. These injuries account for $1 out of every $3 spent by the workers’ compensation system, and total between $15 and $20 billion dollars per year. Some 600,000 workers annually are affected.

There is a firm scientific basis for a regulation. A 65 member National Academy of Sciences expert panel reviewed 2000 articles and issued a report in 1998. The National Institute of Occupational Safety and Health reviewed 600 studies and issued a report in 1997. The Government Accounting Office issued a report in 1997 regarding successful The studies show that reducing the risk factors to which workers are exposed does in fact reduce the incidence and severity of the injuries. The regulation WORKSAFE! seeks is reasonable and akin to what was ordered by the Superior Court during litigation. It requires a management commitment to identify the hazardous operations, control the hazards, and train the workers. WORKSAFE! believes the Division should also convene an advisory committee to propose a final comprehensive standard that includes medical management and protection for injured workers who are temporarily unable to do their usual tasks.

**RECOMMEND:** legislation to establish an interim standard regarding work-related musculo-skeletal disorders and to convene an Advisory Board to propose a final standard. (See Appendix H-3 at page 90.)

b. FALL PROTECTION. We need a revision to the fall protection regulations for workers in construction in order to clarify that harnesses are needed for all work above a specified height on steel structures.

**RECOMMEND:** Cal/OSHA should convene an Advisory Committee and propose an amended standard for fall protection.

c. LEAD. The Cal/OSHA lead standards for construction and general industry must be improved as they are based on what was known about lead in 1978. Current scientific knowledge on the health effects of lead shows that these standards do not adequately protect worker health. Examples of needed changes are: lowering the blood lead level at which workers must be removed from lead exposure to at least 30 micrograms per deciliter; requiring blood lead monitoring schedules based on tasks and work experience rather than airborne exposure levels; requiring hygiene facilities and protective clothing wherever lead exposure occurs to prevent exposure to children of workers.
d. **INJURY & ILLNESS PREVENTION PROGRAM -- Safety and Health COMMITTEES.** We need a revision of the Injury and Illness Prevention Program requiring safety and health committees. (See page 4 above for a fuller discussion. See also Appendix A at page 68.)

**RECOMMEND:** Cal/OSHA should convene an Advisory Committee and propose amended standards for lead.

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e. **INJURY & ILLNESS PREVENTION PROGRAM -- TRAINING REQUIREMENTS.** We need a revision of the Injury and Illness Prevention Program.

Existing §§ 3203 and 1509 of Title 8 California Code of Regulations require each employer to have an injury and illness prevention program or accident prevention plan. Despite revisions to Labor Code § 6401.7 and resulting changes to 8 CCR 3203, citations for serious violations of § 3203 are still rare, and when issued by Cal/OSHA, are difficult to uphold on appeal. These standards must be amended in order to develop some objective measures for the employer community. Additionally, changes are needed to assure that training is conducted at least annually.

**RECOMMEND:** legislation to amend Labor Code § 6401.7 and Cal/OSHA should convene an Advisory Committee and propose an amendments to 8 CCR 3203 with respect to training requirements, among other things. (See Appendix A at page 68.)

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f. **RIGHT TO KNOW - TRAINING REGARDING TOXIC CHEMICALS.** The Division should convene an Advisory Committee to address changes needed to bring life to the right to know training requirements. See page 8 for a more detailed discussion.

**RECOMMEND:** Cal/OSHA should convene an Advisory Committee and propose changes.

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g. **Mandatory reporting of carcinogen use should include all carcinogens designated as such by the International Agency for Research on Cancer.**

**RECOMMEND:** Cal/OSHA should convene an Advisory Committee and propose an amended standard for carcinogen reporting.

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h. **The standard addressing work place monitoring (8 CCR 5155(e)) should be strengthened, and all specific standards which provide for exposure monitoring should, at a minimum, conform to the general strengthened requirements for exposure monitoring.** Overexposure to hazardous substances and processes in work places often occur because employers simply do not measure and assess those exposures. Commonly "we didn't know"
means "we didn't bother to check". Existing Cal/OSHA regulations contain a requirement to sample airborne contaminants "whenever it is reasonable to suspect that employees may be exposed to concentrations in excess of [Permissible Exposure Limits] (see 8 CCR 5155(e)(l)). Most employers are either unaware of this extremely important monitoring section\textsuperscript{54} or they choose to ignore it.\textsuperscript{55} Enforcement of this provision is meaningless because the language is subjective.

Requirements for monitoring airborne contaminants should be strengthened to require initial monitoring when specific clear conditions occur. There must be clear guidelines for the frequency of subsequent monitoring; whom to monitor; and the development of standards for collection and analysis of data as well as record keeping. Employees should be provided with all personal monitoring data as a matter of course and regardless of the results.

**RECOMMEND:** Cal/OSHA should convene an Advisory Committee and propose amended standards for monitoring.

i. The standard addressing medical surveillance (8 CCR 5155(f)) should be strengthened, and all specific standards which provide for medical monitoring should, at a minimum, conform to the general strengthened requirements for medical surveillance. The goal of medical surveillance standard is to protect workers' health through early detection of adverse health effects. Several important principals must be incorporated into a medical surveillance: medical monitoring programs cannot be used as a substitute for exposure monitoring, but should be part of an exposure assessment when such can provide useful information; abnormal results must trigger actions to control workplace exposures; medical monitoring programs must be under the supervision of a physician; medical monitoring results must be reported to the individual and remain confidential; finally, medical monitoring should never be used as a basis for adverse actions affecting a worker's job security, wages, or benefits.

There also must be provisions that measurements above specified levels trigger reporting requirements and action to reduce exposures. Requirements for biological monitoring should be clarified. Retention of, and access to, monitoring records is already adequately addressed in existing regulations. Employers should be required to provide all monitoring results to DHS and DIR for surveillance purposes.

**RECOMMEND:** Cal/OSHA should convene an Advisory Committee and propose an amended standard for medical surveillance.

\textsuperscript{54} Preventive exposure assessment is unusual outside companies with sophisticated health and safety staffs. The lack of existing exposure data for many common exposures also hampers government agencies who would use this information to target education, research, and compliance efforts.

\textsuperscript{55} Ignoring monitoring requirements contravenes a basic tenet of occupational safety and health which is to assess workplace hazards. An employer cannot be permitted to put their head in the sand, avoid monitoring, and then be permitted to argue they unintentionally exposed the workers, that they *didn't know*!
j. **Repeal 8 CCR 344.85 denying “licenses” to workers who are aliens.** These recently enacted regulations ignore the notion that licenses issued by Cal/OSHA are not for the benefit of the holder, but for the benefit of his or her employer.

**RECOMMEND:** Cal/OSHA should repeal 8 CCR 344.85.

D. **WORKSAFE! recommends that worker pesticide exposure be under the joint jurisdiction of Cal/OSHA and Cal EPA’s Department of Pesticide Regulation.** A meaningful worker right to know law should be extended to agricultural workers.

Occupational safety and health issues for agricultural workers exposed to pesticides now lies with the Department of Pesticide Regulation [hereafter DPR], whose primary mandate, fostering agriculture, may conflict with the interest of stringent safety and health standards. Ideally, jurisdiction should be joint. There is joint jurisdiction to evaluate health hazards with DHS, and there must be joint jurisdiction between the DPR and Cal/OSHA for purposes of enforcement. This makes eminent good sense, but powerful agricultural interests have thwarted proposals to allow Cal/OSHA any jurisdiction.

Since 1991 DPR has controlled the registration and regulation of pesticides in California. The subject of a great deal of controversy, DPR has overseen a dramatic increase in pesticide use in the state. In the period from 1991 to 1995 (the most recent year for which data are available), pesticide use has increased by 31%, and the use of the most dangerous pesticides has increased alarmingly. The use of cancer-causing pesticides has increased by 129% since the DPR was created.

California, more than any other state in the nation, has the most pesticide use, the largest exposed population, and the most labor-intensive agriculture. Rather than fulfilling its mandate to protect workers’ and the public's health, the Department has focused its energies on the registration of pesticides for use in California, and relies on the use of personal protective gear for workers and "buffer zones" in order to deal with human and environmental exposure. Such mitigation measures are unreliable, difficult to enforce, and impossible to use safely in hot weather. Another problem for DPR is they must rely on cooperation and information from local Agricultural Commissioners who are sometimes in a conflict situation between the local farm operations they wish to support and their duties to enforce pesticide regulations.

A great deal could be accomplished if the DPR were to implement and enforce existing laws. Though adequate enforcement would require a dramatic change in the orientation of DPR, existing laws and regulations allow for the substitution of the most toxic pesticides with safer alternatives and warning for workers who may be exposed to chemicals known to the state to cause cancer and/or reproductive harm. DPR must strengthen worker health and safety provisions by establishing mandatory minimum penalties for all violations of worker protection regulations and increasing the ceiling on administrative penalties.
In order to protect agricultural workers from future hazardous exposures, DPR’s Worker Health and Safety Branch must focus on examining patterns of worker exposure, pesticide use by crop, ways to reduce use (reducing use of the most harmful chemicals and chemical mixtures), and means to guarantee worker health and safety. DPR must stop approving new uses of pesticides most hazardous to workers on labor intensive crops, restore the repealed posting rules, and review the adequacy of re-entry intervals.

Finally, the Division must develop a Policy & Procedure to guide the compliance relationship between itself and DPR.

**RECOMMEND:** Cal/OSHA and DPR should have joint jurisdiction over the occupational safety and health of agricultural workers, at least with respect to serious injuries or illnesses as was previously negotiated between Cal/OSHA and DPR in a master agreement.

**E. The variance process should be revised to assure that worker health and safety is adequately protected, particularly requests for permanent variances.**

**RECOMMEND:** Cal/OSHA should propose legislation to remedy inequities in the variance process, including provisions for due process to workers who may be affected adversely by a variance.

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56 Recent privacy legislation prohibits DPR access to certain workers’ compensation information, including doctor’s first reports related to pesticide exposure. In order for DPR to examine patterns of exposure and develop programs to reduce injury and illness, they will need access to this information.
SECTION VIII.
IMPROVE THE ADMINISTRATION AND ENFORCEMENT
OF THE DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

Cal/OSHA needs more staff, better trained staff, revised procedures and more effective administrative penalties. It also needs a significant shift in attitude so that the mandate of the agency, to protect worker safety and health, is paramount.

Labor Code § 6300 embodies the intent of the California Occupational Safety and Health Act, stating it is “enacted for the purpose of assuring safe and healthful working conditions for all California working men and women by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health.” The Act is to be liberally construed to promote protection. Labor Code § 144.6, with respect to toxic materials or harmful physical agents, requires the “board should adopt that standard which most adequately assures, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to a hazard regulated by such standard for the period of his working life. ... In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations should be the latest available scientific data in the field, the reasonableness of the standards, and experience gained under this and other health and safety laws.”

Cal/OSHA’s mandate to protect worker safety and health, requires, among other things, Cal/OSHA representatives to act in the best interests of workers: respond in a timely manner to all serious hazards; preserve evidence and information in pursuit of workers’ rights; cooperate with all other law enforcement agencies in vindication of those rights; respect the dignity and rights of all workers who are exposed to unsafe and unhealthful conditions on the job and risk their jobs when they try to make the work place safe; and recognize that working under conditions where basic amenities are not provided (hand washing and toilet facilities) is degrading and inhumane.

Cal/OSHA staff must be trained regarding the mandate of the agency as well as continuing current training with respect to the specifics of the job.

We also need changes to Cal/OSHA inspection procedures to support this re-commitment to the agency’s mandate. For example, formal complaints should not be narrowly construed, but should recognize the inherent veracity of complaints made on behalf of workers by family members or other representatives as set forth more fully hereafter.
Cal/OSHA must also be able to protect all workers. Protection of a worker should not depend on for whom the employee works, nor should the ever growing contingent workforce\(^{57}\) be excluded because they are alleged to be independent contractors.

Federal OSHA has for many years, and Cal/OSHA has recently, included provisions for citing an entity other than the actual employer of the injured or exposed worker.\(^{58}\) Both systems now are in agreement that responsibility for work place safety does not lie merely with the employer of the exposed worker. Workers are entitled to a safe place to work, and responsibility for making the work place safe needs to be broad. Legislation is required to assure broad responsibility is maintained. See Appendix at page .

Although the Division has a policy to address contingent workers, it is inadequate and legislation is needed to assure a safe and healthful work place for every worker in California.

**RECOMMEND:** legislation to amend Labor Code § 6304.1 to assure that contingent workers are protected as employees. (See Appendix I-1 at page 94.)

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\(^{57}\) Estimates are that 25-30% of the U.S. workforce is contingent, i.e., temporary, part-time, on-call, leased workers, independent and day laborers.

\(^{58}\) The multi-employer regulation became effective December 31, 1997, and is codified at 8 CCR 336.10 and 336.11.
A. **We need a significant increase of Cal/OSHA staff**, including compliance officers as well as support and supervisory staff, to respond timely to complaints, referrals from other agencies or health and safety professionals, reports of accidents and to develop and implement a real targeted inspection program.

The Division must conduct a comprehensive needs assessment based on 1) current and past mandated and non-mandated workload and compliance officers in each District office, 2) capacity of senior technical and administrative staff to support field activity in the Districts and Regions, 3) current and past workload for the major support units such as Research and Standards Development, Medical, Legal and the Bureau of Investigations, 4) distribution of certain industries that need special concentration such as the oil and chemical industries, agriculture, construction, etc., and 5) the capacity of headquarters staff to support and coordinate all aspects of Division activity.

59 Innovative funding mechanisms can augment Cal/OSHA’s budget. Cal/OSHA should develop a greater number of fee for service plans (e.g. elevator inspections). (There is precedent for fee for services on the local level in regard to toxics control.) Such fees most appropriately would be imposed on high hazard industries.

60 **An expanding administrative work-load significantly impairs the ability of the District Managers to provide an adequate level of close, direct, on-the-job supervision for professional compliance personnel.** Absent sufficient direct supervision, compliance personnel are not being adequately developed and supervised, a situation which contributes to declining individual production and inefficient personal work organization.

The Job of the District Manager in the Compliance Unit of DOSH has changed radically over the last ten years. During the last ten years, the following factors have dramatically affected district office compliance operations and significantly added to the work volume and stress level of District Managers: 1) increased volume of employee complaints received, 2) increased number of serious accidents requiring investigation, 3) increased number of informal conferences requested, 4) increased number of appeals to DOSH enforcement action, 5) increased number of problematic cases requiring significant intervention by the District Manager, 6) increased number of special enforcement programs, such as ergonomics, lead-in-construction, local special emphasis programs and process safety management, requiring additional and creative administration by District Managers, 7) increased complexity of reporting paperwork following the introduction in California of the Fed/OSHA directed Integrated Management Information System (IMIS), and 8) overall volume of paperwork which must be reviewed and approved by the District Manager.

One solution to this problem would be to re-implement the concept of the District Supervisor in all District Offices with over six compliance personnel. The District Supervisor was utilized from 1975 to the mid-1980s but discarded as a cost-cutting measure. The District Supervisor was of the opposite technical discipline from the District Manager (i.e. safety engineer v. industrial hygienist). The second supervisor in the larger District Offices shared the administration and management burden, and significant time could be devoted to the regrettably overlooked function of direct supervision of field compliance personnel. Another solution would be to expand the number of District Offices and re-apportion the entire expanded staff more equally.

Serious consideration should be given to increasing the Region HQ Senior staff from two to four senior level personnel. At present the four Cal/OSHA Regions (not counting the Mining and Tunneling and High Hazard Unit) are authorized for one Senior Safety Engineer and one Senior Industrial Hygienist each.
Filling the currently unfilled positions in the agency with high quality staff should be an immediate priority. Staff pay inequities should be resolved. Consistent with collective bargaining, certified professionals should be considered for an increase in grade. Current professional salaries are significantly below comparable private sector and even many public sector employers making it difficult to recruit and retain competent experienced professionals.

61 The Exam Unit in the Department’s Personnel Unit should cooperate with the Division to offer “open” examinations for assistant and associate level safety engineer. Greater attention should be given to expediting the mechanics of Personnel Form 1 Approvals from the Division by the Department’s Personnel Unit.

New personnel should have advanced degrees and experience in order to be hired in as a journey person safety or health inspector. New personnel hired at the Junior Safety Engineer or Junior Industrial Hygienist level should be part of an intern program that Cal/OSHA should develop with various university graduate and undergraduate programs. **If an applicant does not have a degree, however, they should be qualified to apply for an entry level position if trained as journeymen through a bona fide apprentice program and if they worked at a trade or craft for a sufficient period so that they are familiar with workplace hazards.** Additionally, the Safety Engineering Technician program that upgrades administrative staff who show interest and promise should be continued. Cal/OSHA should conduct additional training as required and provide an extended apprenticeship period for compliance officers who come to the agency in this manner.

62 A longstanding pay inequity exists between compliance officers who are safety engineers and those who are industrial hygienists. The latter receive 5 - 7% less in salary while performing the same job. This serious morale problem must be resolved by raising the base pay of the industrial hygienists immediately.
Staffing levels should be increased to at least 339 compliance officers after 16 years of neglect. Staffing levels should then be indexed based on working population and other factors.

Many agricultural areas of California are quite a distance from the closest Cal/OSHA office. Increasing available staff in existing satellite offices in Monterey, Santa Barbara, Riverside and Imperial Counties is vital for adequate response to complaints and accidents.

We need additional staff for special units: research and standards development, medical, legal, carcinogen control, an expanded special studies unit, and the Bureau of Investigation.

We also must address other administrative needs.

63 Today Cal/OSHA has just below 200 compliance personnel. The Division needs adequate staffing to comply with all statutory mandates and conduct effective targeted enforcement. Inadequate staffing produced diminished credibility among workers, cynicism and bad morale among many of the enforcement staff, and contempt in the regulated business community. The 1982 Cal/OSHA budget, increased in accordance with the increase in California's working population, should be the minimum staffing level for Cal/OSHA.

Authorized personnel in the 1982-83 budget were 142 safety engineers and 84 industrial hygienists, a total of 226 compliance personnel. In 1982 the working population of California was 10.9 million; today it is almost 16.4 million in California, approximately a 50% increase. Thus, the minimum staffing levels should be increased by 50% to 213 safety engineers, and 126 industrial hygienists, a total of 339 compliance officers. Future increases in staffing levels should reflect increases in the working population and increased hazards to which Cal-OSHA must respond.

The 1982 staffing level, adjusted for the working population, is an absolute minimum because the challenge of regulating occupational safety and health hazards is greater today than it was seventeen years ago. Safety and health problems did not become simpler, they are more complex now than they were 16 years ago. Workers and the community at large have become acutely conscious of the threat to their lives and health from hazardous substances and operations in the work place. Recent reports by Communities for a Better Environment regarding toxic releases into our community highlight the need for greater involvement by Cal/OSHA.

64 In California in 1997 there was 1 inspector for every 72,000 workers. In 1987, there was 1 inspector for every 53,000 workers. Oregon has a ratio of about 1 to 18,000; Washington has about 1 to 22,000; North Carolina has about 1 to 29,000; and Michigan has about 1 to 46,000.

Another way to look at these numbers is by the number of inspections per employer establishment. In 1996, Cal/OSHA conducted 9184 inspections for a reported 950,000 employers. Thus 1 of every 1,000 work places was inspected in 1996.

65 Most California fields are some distance from a Cal/OSHA office, another factor severely hampering prompt investigation of complaints, accidents and fatalities as well as effective programs of surprise inspections. The closest office to the Coachella Valley is San Bernardino. The Imperial Valley is served by the San Diego office. Inspectors travel from San Jose to inspect the Salinas Valley and from Ventura to respond to Santa Maria. The vast Central Valley is served by the Fresno and Concord with satellite offices in Bakersfield and Modesto.

66 We must evaluate the laboratory services relied upon by Cal/OSHA compliance officers, the library resources in District offices, monitoring and other inspection related equipment, etc.
Targeted inspections and special emphasis programs must be adequately staffed.
A decade has passed since laws requiring permits and certifications, among other things, were
passed to protect workers exposed during asbestos-related work, yet Cal/OSHA has never been able
to staff adequately the unit designed to protect those workers. Until workers are protected from the
hazards of asbestos, they will continue to die. And without an effective special emphasis program,
enforcement of asbestos requirements will continue to take second place to the statutory demands
to respond to complaints and accidents. See page 52 for a more detailed discussion.

Cal/OSHA must also have adequate staffing for training, both for internal staff-
development and external training of workers and their representatives (a function not covered by
the Cal/OSHA Consultation Service). (See Section V at page 28.)

Finally, a quality assurance program must be developed by the Regional and District
Managers to evaluate the effectiveness of Cal/OSHA enforcement efforts and address how to
measure progress toward the 5 year goals set by the agency in keeping with Federal guidelines.
These may include the development of compliance officer performance standards, in cooperation
with the labor organizations that represent the compliance officers, and which take into account
variables such as the complexity of different types of inspections.

RECOMMEND: the Division must conduct a needs assessment
based upon past, current and projected workload for all its activities and
make recommendations regarding staffing and distribution of staffing.

1. Medical Unit. The medical unit should have at least one occupational health
physician and one occupational nurse in southern California, in northern California, and in the
central valley. Over the last 15 years, the medical unit staffing was reduced. The medical unit
nursing staff produced the nation's first guidelines on the use of anti-neoplastic drugs in hospitals,
guidelines for employers and employees dealing with AIDS, work place violence, a number of other
publications and guidelines on medical surveillance, and in the development of new standards. The
medical unit provided direct service to and involvement with the Cal-OSHA field staff and all other
units of the Cal-OSHA program. These activities included providing consultation on field
inspections, expert witnesses, training programs and support services.

Medical unit staffing was gradually reduced from the 1975 level of seven
physicians, three nurses and several physicians under contract to a total of one physician and three
nurses. It is currently staffed by one physician in Region I, a HESIS physician in Region II, and two
occupational health nurses in Region III. The compliance program should have a minimum
complement of medical staff of three physicians, one for each region, and six nurses, two for each
region, and a Chief Medical Officer appointed by and responsible to the Chief of Cal/OSHA.
2. **Legal Unit.** The Cal/OSHA Legal Unit workload has increased. A major part has arisen from the increased number of appeals in the last decade and from the increased complexity of the legal and evidentiary issues presented in those cases. Additionally the Legal Unit has several policy-mandated activities that require a pre-enforcement review (for willful citations, enforcement action under the ergonomics standard, and enforcement action under the multiple employer worksite regulation). The Legal Unit also reviews certain violations that have large penalties.

The Cal/OSHA Legal Unit is also responsible for evaluating defenses of independent employee action, providing inspection warrants, approving *subpoena duces tecum*, quashing subpoenas issued to compel Cal/OSHA personnel to testify during civil litigation, and providing representation to Cal/OSHA personnel deposed on major cases. It also provides instant legal advice when high priority/visibility matters are encountered by field enforcement personnel, and analyzes proposed legislation.

Cal/OSHA attorneys, who are generally highly qualified and dedicated, are overloaded, and their individual workload precludes them at times from providing effective representation. Far too often, overworked attorneys are so behind in their assigned work that they negotiate settlements from the weak position of not being prepared to “go to trial”. Instead they should have time to work with inspectors, review evidence, and direct additional work to assure they are able to prove each element of the violation.

The Cal/OSHA Legal Unit should be augmented by six additional attorneys. The Chief Counsel should be a Legal Counsel IV and two experienced attorneys should be Legal Counsel III to assist the Chief Counsel with supervision in the northern and southern California offices of the Cal/OSHA Legal Unit. Some consideration should also be given to investigating whether it would be more efficient to assign attorneys to each of the Cal/OSHA Regions so as to provide legal support almost exclusively to that Region, with technical and performance supervision vested in the Chief Counsel and his or her subordinates.

3. **BOI.** See page 55.

4. **The State Hazard Evaluation System and Information Services (HESIS) should be strengthened and adequately staffed.** HESIS provides critical services in identifying new or unrecognized occupational health hazards, alerting employers, workers, and health professionals to these hazards, and providing practical recommendations on how to protect workers from harmful chemical and physical agents. HESIS operates a unique hotline for individuals seeking information about work place hazards, and provides written materials about work place hazards. In recent years, HESIS staff has been cut from 19 to 6 positions, and the HESIS budget has been reduced approximately 40% percent from $1.3 million to $781,000 per year currently. These cuts have reduced the ability of HESIS to fulfill its legislative mandate, and have forced a reduction in services. The HESIS budget and staffing should be fully restored.

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67 Appeals also increased when penalties were raised.
B. **Cal/OSHA staff must be trained regarding the mandate of the agency as well as with respect to the specifics of the job.**⁶⁸ New Cal/OSHA staff must be recruited with the agency’s mandate in mind and must be properly oriented and trained.⁶⁹ Cal/OSHA needs to shift its attitude significantly so that the mandate of the agency, to protect worker safety and health, is paramount.⁷⁰ Division staff must be recognized for outstanding efforts. More must be done to build an internal *esprit de corps* among the staff.

C. **Cal/OSHA inspection procedures need to be changed.**

1. Cal/OSHA needs to prevent obstruction of inspections. The length of opening conferences should be reduced so that the time cannot be used by employers to hide violations. Cal/OSHA should not wait for employers to finish interrogating workers before they begin accident inspections. Cal/OSHA should prepare model orders to preserve evidence and inspection warrants, contact local judges to assure they are aware that Cal/OSHA may need to seek such ex parte orders expeditiously, and Cal/OSHA must respond immediately when any employer obstructs an inspection.

2. Formal complaints should not be narrowly construed but should recognize the inherent veracity of complaints made on behalf of workers by family members or other representatives, including but not limited to clinicians, attorneys, safety and health professionals, union officials, and other government officials.

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⁶⁸ Compliance professionals are reimbursed up to $100 to maintain one professional membership; this should be increased so that additional funds are available for at least two professional organizations. They should also be permitted to attend professional conferences on work time, and reimbursed for attendant expenses, particularly for activities required to maintain professional certification.

⁶⁹ A statewide orientation for all new hires within a certain time period would help to create uniform work practices and policy implementation. New hires also need to be paired with more experienced compliance officers and encouraged to be collaborative in their work and supportive of other compliance officers.

⁷⁰ Many compliance personnel are unfamiliar with the history of occupational safety and health legislation, the role of labor unions in securing the Federal OSH Act of 1970, the role of unions generally in representing organized as well as unorganized workers, and the deplorable conditions faced by workers in our most dangerous industries. Without this information, it is difficult to withstand pressures from angry employers, work with frightened workers and manage crushing paper work, all of which is necessary to issue and defend citations and ensure abatement of workplace hazards. Without an informed sense of mission among Division staff at all levels, the Division cannot achieve its potential or meet its mandate. Annual training is needed.
3. Cal/OSHA must assure that proper worker representatives are present at all stages of the inspection, and should offer to hold a separate additional closing conference for workers in complex cases.\textsuperscript{71} Cal/OSHA must recognize the difficulties inherent in interviewing workers at the job-site and make an effort to make other arrangements to conduct these interviews.

**RECOMMEND:** Cal/OSHA should implement changes in its Policy & Procedure to involve workers in the inspection process.

D. **Cal/OSHA must develop and implement a real targeted inspection program of industries and employers with the greatest and most serious potential hazards, thus better utilizing scarce resources.** Substantial attention must focus on improvement of the process of targeting Cal/OSHA safety and health inspections. Although adequate responses to reports of injuries and complaints are important, increased emphasis needs to be given to identification of high hazards industries and industries with serious potential safety and health problems as well as to identification of individual employers who have bad safety and health records.

Cal/OSHA should utilize a comprehensive data system which needs to be developed in order to target inspections. But until that comprehensive data is available, Cal/OSHA can use other available surveillance information to develop targeted inspection programs.

For example, information produced pursuant to the requirements of State and Federal Community Right to Know Legislation (AB 2185 and SARA Title III) can be utilized to identify high hazard occupational exposures and to target industries and employers for safety and health inspections. Cal/OSHA can also make better use of other government agencies' inspection records to identify potentially problematic work sites. For example, lists of violators of environmental regulations could be included for targeting occupational health concerns. DHS occupational health programs can play a significant role in conducting research needed to identify high health hazard industries. Local agencies, such as fire departments, health departments, sanitation districts, poison control centers, and local air pollution control districts, have important data which should be utilized. Information from the State Franchise Tax Board, and data from the California Workers' Compensation Insurance Rating Bureau, prepared for workers’ compensation experience rating, should be used in targeting inspections. Information on repeat violations should be maintained on a state-wide data base and utilized in scheduling periodic comprehensive inspections. Certain ultra hazardous industries, such as the oil and chemical industry, construction, agriculture, etc. should receive specific attention by specially trained dedicated compliance officers.

**RECOMMEND:** Cal/OSHA should develop a real targeted inspection program.

\textsuperscript{71} Workers and their representatives should, of course, also be permitted to be present at the closing conference with the employer and at all informal conferences.
E. We need legislation and regulations to strengthen administrative enforcement remedies. In particular we need more significant administrative penalties to deter violators and heighten employer attention to safety and health, changes in some of the basic definitions characterizing violations, an increase in administrative penalties, minimum administrative penalties, and administrative penalties applicable to governmental entities to the same degree they are applicable to private employers when those entities violate occupational safety and health regulations.

Administrative penalties were increased in response to Federal OSHA increases in 1991. But the civil penalties actually imposed are still woefully inadequate. The existing regulations regarding Cal/OSHA penalties provide for the repeated reduction of penalties. Overall, even without the reductions, the penalties are not sufficient to provide a significant deterrent to OSHA violations. The penalties imposed as a result of existing procedures can readily be treated as part of the cost of doing business.

WORKSAFE! recommends that the California Code of Regulations, § 332 to 336, be amended to redefine the conditions under which a violation will be considered repeat, and to narrow the circumstances under which reductions in civil penalties are allowed.

**RECOMMEND: legislation to amend Labor Code §§ 6427, 6428, 6429, 6430, 6434, 6435 to strengthen administrative remedies and penalties. (See Appendix H-3 at page 73.**

F. Modify the composition, staffing for, and procedures of the Occupational Safety and Health Appeals Board to make the Board more responsive to the needs of California’s working men and women. We need changes in the appeal procedure following the issuance of a Cal/OSHA citation. The composition, staffing for, and procedures of the Occupational Safety and Health Appeals Board should be modified to make the Board more responsive to the needs of California’s working men and women.

Legislation and regulations are needed to require employers to abate unsafe and unhealthful conditions as soon as possible after a citation is issued, without regard to the status of any appeal. In order to aid employers to meet this mandate, we need funds, some of which may be available from increased penalties and collection procedures, allocated to set up a revolving low or no interest loan fund for small employers to achieve timely abatement.

**RECOMMEND: legislation to amend Labor Code §6317 to require abatement pending appeal. (See Appendix I-2 at page 95.)**
G. Cal/OSHA should work with other agencies to maximize occupational safety and health enforcement. Cal/OSHA can work with various agencies to develop innovative strategies to maximize resources available for dealing with occupational safety and health problems. Even if Cal/OSHA compliance personnel is increased, the number of inspectors available to visit work sites will never provide for annual inspections. Right now California can inspect each employer nor more than once in 96 years according to the AFL-CIO Department of Occupational Safety and Health April 1998 report *Death on the Job: The Toll of Neglect*. Yet the vast majority of work sites do receive annual inspections from a variety of agencies (e.g., fire departments, hazardous waste permitting inspections). Thus, efforts should be made to identify simple ways in which these inspections by other agencies could be used to help target more specific occupational health and safety interventions. For example, other inspectors could ask to see the written injury and illness prevention program and hazard communication plan, and companies without such would be referred to Cal/OSHA. Cal/OSHA could also make better use of other agencies' inspection records to identify potentially problematic work sites. For example, lists of violators of environmental regulations could be included for targeting occupational health concerns.

Referrals should work in both directions. Cal/OSHA inspectors should become familiar with some basic requirements of other agencies and develop appropriate referral mechanisms.

**RECOMMEND:** Cal/OSHA should convene a task force with representatives of other state and local agencies to determine innovative ways for increasing occupational safety and health enforcement.
SECTION IX.

IMPROVE THE ABILITY OF LOCAL AND STATE PROSECUTORS TO PURSUE VIOLATIONS OF OCCUPATIONAL SAFETY AND HEALTH

California not only needs more significant administrative, but also needs better civil and criminal penalties to deter violators and heighten employer attention to safety and health. The Cal/OSHA Bureau of Investigations should be fully staffed and upgraded, including the addition of permanent safety and health technical staff.

Labor Code § 6315 creates within Cal/OSHA a Bureau of Investigation [hereafter BOI], with responsibilities for conducting accident investigation on death and serious injuries, and other instances where criminal prosecution may be appropriate. Although some District Attorneys’ Offices had programs to identify, develop, and prosecute fatalities and serious injury cases without reliance on the Cal/OSHA Bureau of Investigation, the proper functioning of the BOI is essential to a statewide program of prosecution of those who knowingly or negligently violate occupational safety and health standards.

In 1981, the BOI had 10 investigators and a Southern California attorney, Northern California attorney, and a supervising attorney. The role of the attorneys was to prepare cases for referral, supervise the work of the investigators, and work with local prosecutors to insure the filing and ultimate successful resolution of cases involving serious violations of occupational safety and health laws by providing technical backup, arranging for expert witnesses when necessary, serving as a clearinghouse for pleadings by prosecutors pursuing occupational safety and health cases, and researching unique legal issues, especially those related to opinions of the Cal/OSHA Appeals Board.

Staffing levels should be set at least at the 1981 level. Senior technical support staff must be hired and trained with respect to criminal investigation techniques.

Experienced investigators, knowledgeable in safety and health issues and investigative techniques, should be hired. Bureau of Investigation personnel should respond to the scene of every occupational fatality, secure evidence, and conduct interviews to determine whether the cause of the fatality was a violation of occupational safety and health laws, and if so, who were the responsible individuals. Evidence of knowledge and negligence should be garnered.

Cal/OSHA Bureau of Investigation attorneys should be responsible for tracking Cal/OSHA inspections, identifying cases, and contacting local prosecutors as soon as possible after a fatality has occurred and enlisting their assistance in deterring unsafe and unhealthful conditions by prosecuting appropriate cases. All willful, repeat, and serious violations involving known carcinogens and reproductive toxins, violations of the Proposition 65 warning requirements, and serious record keeping violations should be referred to local prosecutors, along with those cases for which there is already a statutory mandate for referral. The attorney should work with the appropriate Cal/OSHA District Managers and keep them informed.

Finally, all potential criminal cases must be coordinated at all stages of the investigation with the appropriate local prosecutor. Notice must be provided immediately after every fatality and catastrophic accident. Communication and cooperation must continue throughout the investigation.
RECOMMEND: Cal/OSHA should conduct a vigorous criminal enforcement program and should coordinate closely with local prosecutors throughout the state; all prosecutors should be routinely notified immediately after a fatality occurs in their jurisdiction and should be kept informed of the progress of the investigation.

In addition to civil penalties, criminal penalties should be enhanced in certain circumstances. As well prosecutors should have standing to bring actions for injunctive relief under Labor Code § 6323 et seq.

RECOMMEND: legislation to assure vigorous and meaningful enforcement by local or state prosecutors utilizing the Labor Code, Criminal Code and Business and Professions Code. (See Appendix I at page 77.)
SECTION X.
INJURED WORKERS NEED FAIR AND EFFECTIVE REMEDIES

A. Workers Need Fair and Effective Remedies in the Workers' Compensation System. Injured workers are supposed to receive compensation for their injuries quickly and easily. This was the heart of the bargain struck between labor and management representatives in the early 1900s — when workers' compensation laws were adopted to protect employers from large, unpredictable amounts of money awarded by juries to injured employees. Indeed, the California Constitution requires that state agencies administering workers' compensation programs "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const. § 4.) However, experiences in recent years suggest that many injured workers face enormous hurdles in receiving benefits to which they are entitled, are entitled to receive only meager compensation for their injuries, and/or face job loss and other forms of discrimination because of their injuries.72

1. Increase Workers' Compensation Payments and Services To Cover Injured Workers' Losses. For an injured worker who is recovering, the general formula for calculating workers' compensation "temporary disability" payments is two-thirds of the wages lost, and these payments are non-taxable. However, many injured workers are adversely affected by caps on TD payments. For example, for workers injured July 1996 or later, maximum limits on TD payments are $490 per week.

   For a worker who has a permanent disability caused by a job injury, "permanent disability" payments are usually much less than the limits on TD payments. For example, the total PD payments for a worker, injured July 1996 or later, who has permanently lost the ability to see in one eye is approximately $16,000 total (not adjusted for age or occupation).

   Injured workers, who cannot return to their old jobs and whose employers do not offer different work, are usually eligible for vocational rehabilitation services. However, recent legislative reforms have limited all vocational rehabilitation benefits to $16,000 total, which includes "maintenance allowance" payments to the worker while participating in vocational rehabilitation. (Labor Code § 139.5.) The cap severely limits the amount and quality of vocational rehabilitation services (e.g., job-placement counseling and job retraining) available to this group of injured workers. Some feel that the $16,000 amount is grossly inadequate.

   The Commission has sponsored research to evaluate PD benefits and the PD evaluation system overall, as well as vocational rehabilitation services. Preliminary finding by the Rand Corporation (which is studying the PD system) indicate that workers with permanent disabilities that are rated as "less severe" suffer significant, uncompensated losses in their wages over the course of time. The results of these studies and evaluations should be reviewed carefully reviewed in future efforts to create fairer payment-compensation systems for injured workers.

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2. Prosecute Claims Administrators Who Fail To Give Timely or Proper Benefits. No mechanism exists for a worker to trigger direct enforcement of laws and regulations that prohibit delays and improper conduct by other parties, either because the laws and regulations do not exist or because they are not enforced. Filing a complaint with the state Audit Unit will not necessarily trigger an investigation or audit of the particular claims office, and any audit that is conducted usually occurs months later. Requesting a workers' compensation administrative law judge to award penalties for delays (authorized by Labor Code §§ 4650 or 5814) is a complicated process for most people who are not attorneys, requiring preparation of legal documents and legal analysis and presentation of evidence. Laws prohibiting fraud by any party in workers' compensation (Insurance Code § 1871.4; Labor Code § 3820) are enforced by district attorneys — but mostly against claimants. The few involving conduct of claims administrators have alleged fraud committed against an employer/policyholder, but not against injured workers/claimants. The California workers' compensation system needs a statewide program to deter and punish deliberate delays, fraud, and other bad faith conducted by claims administrators, as affecting injured workers/claimants.

3. Strengthen Protections for Injured Workers Who Face Discrimination by Employers. The laws protecting injured workers against employment discrimination are severely limited. For example, Labor Code § 132a, which prohibits discrimination against an employee for filing a workers' compensation claims or for having an occupational injury, is difficult to enforce because employers can assert that they had a different, valid reason for taking a particular, adverse employment action. Therefore, administrative claims under § 132a (i.e., submitted to a workers' compensation administrative law judge) are infrequent, and there have been few or no cases involving enforcement of the criminal misdemeanor provisions of § 132a. In addition, the maximum penalty for violating § 132a is $10,000 (not including reimbursement for lost wages and benefits), and the maximum amount that is reimbursable for the costs and expenses of discovery to bring a § 132a claim is $250. Bringing a claim under § 132a is therefore not worthwhile in many cases.

(The federal Americans With Disabilities Act and the California Fair Employment and Housing Act are also difficult and expensive to enforce. There are no clear, easy-to-apply rules defining the "reasonable accommodations" that employers must make for employees who are "disabled," as defined under the ADA, but who are otherwise able to perform the "essential functions" of the job. The law in this area is complex. Cases alleging violation of the ADA or FEHA therefore require a great deal of preparation of evidence and analysis of law.)

Methods are needed to increase compliance with Labor Code § 132a. Possible methods to increase compliance might be to revise legal presumptions and burdens of proof and to increase the maximum penalty and the limit on reimbursable costs. In addition, workers' rights under § 132a are not well known; they need to be publicized widely to workers and employers.
4. **Ensure That All Workers Receive Necessary Information About Their Rights When Hurt on the Job.** It is widely acknowledged that many injured workers have difficulty obtaining 1) basic, introductory information about workers' compensation, 2) answers to simple questions about their request for workers' compensation benefits, 3) advice on steps to take in case of a problem or dispute, and 4) help in preparing their cases for hearings before an administrative law judge. This is due, in large part, to insufficient resources for both governmental staff and applicants' attorneys whose jobs are to inform and help injured workers. It is also caused by inadequate incentives for employers and insurers to communicate thoroughly with injured workers, insufficient coordination among agencies that administer and enforce workers' compensation laws in California, and complexities of the current California workers' compensation system.

   a. **Information from Information & Assistance Officers in the Division of Workers’ Compensation.** Currently there are only approximately 55 state Information & Assistance officers throughout California who are available to give information to injured workers upon request. I&A officers are employed within the DWC of the DIR. Yet approximately 1,000,000 workers are injured each year in California. A number of other state and federal systems employ greater numbers of governmental staff, as compared to their projected rates of occupational injury, and require their staff to pro-actively contact every injured worker soon after injury (e.g., systems under the laws of the State of Texas and the Federal Longshore and Harbor Workers' Compensation Act).

   **RECOMMEND:** increase staff and train the Information and Assistance officers to be pro-active with provisions to contact all injured workers, which requires reporting of every injury to the DWC.

   b. **Information and Help from Attorneys.** Workers' compensation applicants' attorneys are paid only 9 to 15 percent of an injured worker's award or settlement for permanent disability (if the worker has a permanent disability), plus a small portion of a worker's "maintenance allowance" payments while receiving vocational rehabilitation services (if the worker is receiving those services). Applicants' attorneys have reported that this low percentage requires them to maintain large caseloads in order to stay in business. Large caseloads make it difficult for attorneys to spend much time communicating and explaining issues to individual clients. Also the payment structure gives no incentive for attorneys to assist or represent injured workers who do not have a permanent disability. It also creates a disincentive for attorneys to help workers return to their jobs, if returning to work must be premised on a medical finding that the worker does not have a severe, permanent disability. Other systems allow applicants' attorneys to be paid in other ways. For example, under the Federal Longshore and Harbor Workers' Compensation Act, the defendant, rather than the injured worker, must pay the worker's attorney reasonable fees on an hourly basis if the defendant denies liability and the attorney successfully prosecutes the claim. (33 U.S.C. § 928(a).)
The current fee system in California should be examined to determine whether changes should and can be made that would enable all workers to obtain services of an attorney when needed. Other, additional methods for ensuring availability of attorney services include 1) providing funding to community legal services to assist and represent injured workers and 2) employing applicants' attorneys within the state DWC to provide information and assistance services to injured workers. (The "legal aid" program within the state Division of Labor Standards Enforcement [hereafter DLSE], which employs attorneys to represent worker pursuing wage claims in certain situations, might serve as a useful model for a program within the DWC. See Labor Code § 98.4.)

**RECOMMEND:** change the current fee system in order to assure effective assistance of counsel, explore other options outside the private bar such as legal services, including a legal services program within the DWC to advocate aggressively on behalf of injured workers.

c. **Information from Employers.** Some of the laws requiring employers to give employees basic information about workers' compensation are found at Labor Code §§ 3350, 3351, 3352, and 5401. However, there is no agency, equivalent to Cal/OSHA, that workers can call to report violations of these laws. Although Labor Code § 6431 authorizes a civil penalty of $7,000 for failure to post basic information about workers' compensation required by Labor Code § 3350, currently no agency employs this penalty provision. The Audit Unit of the DWC monitors only the activities of claims administrators. Also, the DLSE is inactive in this area.

DWC should establish a program to respond to workers' complaints and inspect work places for posting and other informational requirements. The appropriate agency to enforce the requirements need to be identified, and a regulatory penalty system needs to be established that provides legal remedies for enforcement actions. Penalty monies could be used to finance improved information and assistance services for workers.

**RECOMMEND:** DWC should establish a program to respond to workers' complaints with respect to their employers, and to inspect work places for posting and other informational requirements, and should use penalty monies for improved information and assistance services for workers.
d. **Information from Claims Administrators.** Many injured workers cannot get claims administrators (persons who handle workers' compensation claims for employers, usually employed by insurance companies) to return phone calls or treat the worker reasonably or respectfully. Insurance law that prohibits bad faith handling of insurance claims, including inadequate or inappropriate communications to claimants, expressly excludes conduct in the handling of workers' compensation claims prior to final award of benefits by the state Workers' Compensation Appeals Board [hereafter WCAB]. (See Insurance Code § 790.03(h); 10 Cal. Code Regs. §§ 2695.1(d), 2695.13.) The Audit Unit of the DWC is not required to respond to every complaint regarding the conduct of a claims administrator or to review the quality of communications or personal treatment of injured workers by claims administrators, and audit penalties do not deter many large claims offices from violating payment deadlines or notice requirements. (See Labor Code § 129.)

A California program is needed to respond directly to individual workers' complaints regarding problems with communications from claims administrators. Design of such a program should consider the following: 1) investigating every complaint, 2) authorizing sanctions for inappropriate treatment of injured workers by claims administrators, 3) assessing significant penalties for inappropriate communications to injured workers, 4) providing feedback to every complainant regarding actions taken by the agency, and 5) requiring professional licensing and continuing education of claims administrators in California. The appropriate agency or agencies to enforce such a program, either within the DIR, the Department of Insurance, and/or other departments, need to be identified, and penalty systems need to be established.

**RECOMMEND:** DWC should establish a program to respond to workers' complaints with respect to their claims adjusters, and should establish a comprehensive system and set of remedies for bad faith.

**RECOMMEND:** Injured workers should have a right to bring an action for bad faith against claims adjusters and insurance companies.

5. **Improve the Procedures for Resolving Disputes in Workers' Compensation.** Injured workers and other stakeholders in workers' compensation have complained about excessive delays and disputes in the California system. Although filing a workers' compensation claim is technically not the same as filing a lawsuit in superior court, often a claim is slowed to a crawl by litigation-like procedures, which can include multiple medical examinations, motions, depositions, mandatory conferences, adjudicatory hearings, and continuances. Many people argue that these procedures are unnecessary; others argue they are necessary to protect the injured worker's rights.
Medical disputes need to be resolved more fairly for workers.

Workers' compensation law, in practice, allows an employer's claims administrator to delay for 90 days, or even longer in many cases, accepting or denying a claim for workers' compensation benefits. (See Labor Code § 5402.) This severely affects a worker who needs, but cannot obtain, paid medical treatment for a job injury. It can cause aggravation of the injury while waiting for the claim to be accepted. This law should be revised to allow a worker to receive medical treatment and payments (if needed) right away, pending a decision on his or her claim.

**RECOMMEND:**  DWC should recommend legislation to assure that workers may obtain medical treatment before a claim is accepted or denied, that assures workers receive actual timely notices of acceptance or denial of claims, and prohibits the insurance company from setting off as against medical expenses any overpayments that a worker may have received.

Recent legislative reforms have created a (rebuttable) presumption that the findings and opinions of an injured worker's treating physician are correct. (See Labor Code §§ 4061.5, 4062.9.) Thus, treating physicians now have the burden of preparing carefully-worded reports that can be reviewed, evaluated, rated, and otherwise used to determine a worker's legal rights to workers' compensation benefits. Yet workers and others in workers' compensation have encountered some treating physicians who appear untrained and unqualified to write legally-crafted medical reports required in workers' compensation. Also, some people in workers' compensation believe that treating physicians may be unconsciously biased towards overrating the positive outcomes of their medical treatment. When a worker or claims administrator disagrees with a report of the treating physician, each or both can exercise their rights to additional medical examinations and reports by other physicians (a "qualified medical evaluator" or an "agreed medical evaluator"). Potential problems arising out of the recent laws involving treating physicians should therefore be examined further.

**RECOMMEND:**  A comprehensive study is needed of the treatment being provided to injured workers and whether the changes in the system which moved to the utilization of the treating doctor have impacted in any way the degree of litigation.
We need a comprehensive study construction industry programs which permit a privatized system for workers’ compensation (carve-outs) to determine whether these programs are a benefit to workers, employers, and achieve a safer and healthier workplace. In the construction industry, employers and unions are permitted to negotiate and utilize informal, privatized systems for resolving disputes that are separate from the more formal, public-agency system applicable to most employers and employees. (Labor Code § 3201.5.)

The H&S&W has sponsored research to determine the differences between selected carve-out programs and the public-agency system applicable to most employers and employees, but the study was not adequate. Data regarding all carve-out programs need to be collected and analyzed. Future studies should carefully examine and compare all factors that affect the rights and well-being of workers in carve-out programs and in the public-agency system — both procedural rights (e.g., whether injured workers are treated respectfully and are given an opportunity to voice their concerns and needs) and substantive rights (e.g., whether injured workers receive adequate medical care and maximum payments). These studies should also evaluate whether injuries and illnesses have been reduced and whether effective programs for health and safety committees are implemented as the law requires. Additionally, the studies must evaluate whether any other legal rights (e.g., third party tort or employment rights actions) are affected.

The data evaluated to date show no particular benefit with respect to the goals the program was to achieve: reduction of injuries, lower costs for employers, and guarantees of the injured workers’ standard of living. What the first limited study shows is that the unions involved in carve-outs need to monitor these programs to assure a modicum of fairness. Unfortunately, that need is neither funded by the legislation nor is it possible to assure considering the other duties of union representatives with respect to organizing and representing members.

Many critics of the program have grave concerns about whether workers’ legal rights are being adequately protected because attorneys are excluded from early stages of dispute resolution. Issues arise with respect to a variety of related legal matters, including whether potential third party actions are being identified, whether employment discrimination is being addressed, etc. The current study does not show that equal justice was afforded for those in the carve-out programs; no paired studies were pursued to compare compensation for workers suffering similar injuries in carve-out and non carve-out programs.

WORKSAFE! particularly opposes expanding carve-out programs absent facts showing a lowering of the incidence of injuries and illnesses.

RECOMMEND: a comprehensive study of the construction industry carve-out programs to determine differences with respect to employee compensation, employer savings, and safety and health on the job.

6. Resolve cost inequities in the workers’ compensation system. Although some steps have been taken to equalize the costs incurred by employers who employ the same crafts persons at different pay scales, more must be done. The workers’ compensation system must NOT charge based upon a calculation of payroll, but rather on a calculation of person hours. There is no reason why this change cannot be immediately implemented.
SECTION XI.
WORKERS NEED FAIR AND EFFECTIVE REMEDIES
BEYOND THE WORKERS’ COMPENSATION SYSTEM

When employers dispute the work-related nature of certain types of injuries, the challenges are vastly greater. The workers’ compensation system either excludes these workers entirely or if the worker manages to get an attorney and the attorney succeeds in convincing the workers’ compensation system that the injury is work-related, the payment system is ludicrous at best. Workers need a better no-fault approach to these types of injuries.

A. Workers need access to the courts to bring actions directly against their employer for egregious inaction with respect to providing rudimentary occupational safety and health protection.

The types of injuries consistently challenged include exposures that contribute to cancer. Virtually every worker who has ever asserted that workplace exposures contributed to cancer, a cardiac disorder or other chronic disease, has encountered a workers’ compensation system that is woefully ill-equipped to provide a remedy. As a result, the State of California shoulders an unfair burden of caring for and dealing with the human toll of unaddressed occupational disease.

Workers’ compensation insurance is typically seen as a "cost of doing business" which for occupational disease is unlikely to ever be paid. Employers face no penalty worse than a possible hike in premiums if, at some future time, they are ordered to pay benefits to occupational disease victims, and thus there is no pressure to protect their workers in order to avoid such claims. This dynamic contributes to a vicious circle in which generation after generation of workers suffer occupationally-related disease that goes unrecorded, uninvestigated, uncompensated and unredressed.

Many workers contract cancer having worked around carcinogens and believing they were safe. They are told the level of exposure was "OSHA approved." This is particularly tragic when the levels set by Proposition 65 are often more protective, but workers are not provided that information, nor given means to protect themselves.

An even more egregious case involves workers who endure high risk exposures for years ignorant of the fact that they are not being protected at all. The employer may have lied about the exposure or simply failed and refused to follow the occupational safety and health requirements to monitor for toxic substances. When these workers develop cancer, they have no remedy other than pursuit of a workers compensation claim, despite the fact that their employer knew or should have known about the consequences of exposing the workers above the permissible exposure limit (even one that is inadequate to begin with), and despite the fact that the employer failed to provide even the most basic of safety and health information and training, let alone implementing engineering controls or providing personal protective gear.

73 Besides cumulative toxic exposures, work-related musculo-skeletal disorders, such as back injuries or other repetitive motion disorders, are routinely challenged.
Labor Code 3602 must be amended to reward employers who act responsibly with respect to providing occupational safety and health protection and to penalize inaction when workers' lives and health are in the balance. The extremely limited exceptions in the Labor Code to the exclusive remedy requirement of workers' compensation actually encourage employers to ignore early signs of harmful exposure, not document complaints, and in general "look the other way" lest it later be claimed that they recognized an acute industrial exposure for what it was and failed to take responsible action, thus leading to an "aggravation" of the problem (e.g. the evolution from respiratory distress to respiratory cancer).

Given these institutional barriers to justice for workers with occupational disease claims, WORKSAFE! seeks reforms that encourage and reward pro-active, preventive strategies by employers rather than ones which reward inaction, indifference, and official ignorance on the part of employers. Such reform would be a long overdue first step at reversing the mentality that says, "let's wait until the body count gets so big that nobody would even dare question the contribution of the work place to disease." The tobacco industry and the asbestos industry have shown us all how bankrupt that approach truly is. We can do better and we owe it to the working people of California to do so.

RECOMMEND: legislation to amend Labor Code § 3602(b) to permit an employee or dependents in the event of death, to bring an action at law for damages against the employer when the employer has egregiously ignored occupational safety and health requirements. (See Appendix L-1 at page 110.)

B. Workers need clarity regarding the Statute of Limitations when they seek to file an action for a cumulative injury. An additional problem occurs for workers who become ill and/or die as a result of cumulative diseases with respect to the time in which an action must be commenced for a cause of action against a party other than the employer.

Case law follows the principles set forth in the statute that governs when an asbestos lawsuit must be filed. The statute of limitations for other cumulative diseases should be modeled after the asbestos statute of limitations, codifying the existing law, and streamlining litigation with respect to this issue. A specific statute is required to minimize the litigation around this particular issue. It must be clear that workers who are never informed about the nature of the hazards they are facing, in violation of occupational safety and health requirements, and thus do not make the connection between their injury or illness and the work-related cause, should not be required to bring a lawsuit until they make that connection.

RECOMMEND: legislation to add Code of Civil Procedure §340.8 to permit a one year statute of limitations for injury or illness based upon cumulative musculo-skeletal disorders or cumulative toxic exposures. (See Appendix L-2 at page 111.)
C. Additionally, WORKSAFE! recommends changes with respect to the burden in certain summary judgment motions. Workers who are injured on the job, particularly by hazardous materials, often are personally unaware of the specific product, substance or company that caused their injury. But this lack of personal knowledge of the source of the injury should not preclude workers from proving the cause of their injury through co-workers' testimony or other evidence identifying the culpable parties.

The Courts of Appeal nevertheless have struggled with questions concerning the extent to which a person's lack of personal knowledge of the specific party or parties that caused his or her injury is sufficient to support a summary judgment against that person. One case holds that a defendant moving for summary judgment must make a full evidentiary showing the plaintiff cannot reasonably expect to prove his or her case against the defendant at trial. [See Hagen v. Hickenbottom (1996) 41 Cal.App.4th 168, 186.] But another suggests that a defendant need only show that the plaintiff did not identify that defendant in deposition as a cause of his or her injuries, without demonstrating that the plaintiff lacks other evidence implicating the defendant. [See Hunter v. Pacific Mechanical Corp. (1995) 37 Cal.App.4th 1282, 1289.]

The proposed revision clarifies that before a moving party may obtain summary judgment, that party must affirmatively show that the opposing party does not have, and cannot reasonably expect to obtain, adequate evidence in support of one or more elements of that party's cause of action or defense.

**RECOMMEND:** legislation to amend Code of Civil Procedure §437c to clarify the law regarding whether a worker must personally know that a particular defendant caused his or her injuries or whether it is sufficient that the worker can produce evidence from another source that the defendant was at fault. (See Appendix L-3 at page 112.)

D. Workers injured by unsafe or unhealthful conditions, who bring a cause of action against their employer or a third party and settle the matter, should not, as a matter of public policy, be required by the settlement to sign a confidentiality agreement, although the amount of settlement may be kept confidential. To keep the facts and circumstances of the case and settlement confidential would permit other workers to suffer the same injuries needlessly and does a severe disservice to all workers.

**RECOMMEND:** legislation to amend Civil Code § 3426.5 and to add Code of Civil Procedure § 188 to prohibit confidentiality agreements as a condition of settlement.
SECTION XII.
CONCLUSION

We are presented with a challenge and an opportunity. There is increased national and local awareness of the importance of stemming the tide of workplace deaths, serious injuries and illnesses. The People of the State of California want a higher level of protection for workers. The cost of allowing "business as usual" is too great.

By enhancing our State safety and health program, we can reduce State welfare costs to support the disabled, help employers lower their worker compensation premiums, and avoid liability for injuries to third parties. Companies can enjoy increased productivity and worker morale. The human suffering of victims and their families can be reduced.

Proper occupational safety and health practices protect us from a wide range of hazards, such as explosions, fires, and the release of deadly gases. Toxics controlled in the workplace are not released into our communities.

We all benefit from improved worker safety and health programs. For that reason, a broad coalition of business, labor, health and safety organizations, environmental groups and government must join together to attain the most effective occupational safety and health program for California. We hope this WORKSAFE! proposal will provide a starting point for a dialogue regarding the type of worker safety and health program we want for California's future.
Amend § 6401.7 Labor Code

§ 6401.7(f)

(1) By June 1, 2000, the Division shall propose and by January 1, 2001, the Department shall adopt a standard to require employee participation in the employer's injury and illness prevention program, including a designated worker health and safety representative in work places with fewer than 50 employees, and for all employers with 50 or more employees. The standard adopted pursuant to subdivision (c) shall specifically permit employer and employee occupational safety and health committee(s) to be included in the employer's injury prevention program.

(a) For multi-employer non-permanent work places, the general or prime or principal contractor shall establish the committee.

(b) For multi-employer permanent work places, the facility shall establish a committee.

(c) For work places where there are multiple unions, committee(s) shall have at least one representative from each union and from each trade or craft of each contractor or subcontractor during the period of time that such are working on the premises.

(d) In work places where there is more than one shift, committee(s) shall have at least one representatives from each shift and meetings shall be held at a time when shifts most nearly overlap. If deemed necessary by the employees, however, there shall be committee(s) for each shift.

(2) If an employer’s occupational safety and health committee meets the criteria established by the board Division, it shall be presumed to be in substantial compliance with paragraph (5) of subsection division (a).

(3) The Division board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria Division criteria shall include address the following aspects of the health and safety committee: minimum duties authority, documentation, structure, selection, training, and compensation, including the following:

(4)(A) Activities of the Committee or Representative.

(i) The Representative in a work place with fewer than 50 employees shall have the same authority and rights as the Committee or any individual committee member in a work place with 50 or more employees.

(ii) All references to Committee shall also pertain to the Representative and to all individual committee members.

(iii) Periodic Meetings. The Committee shall, at a minimum, meet at least quarterly, monthly for employers on the high hazard list. Additionally, on multi-employer non-permanent work sites, the Committee shall meet weekly.
(iii) Authority. The Committee shall have broad oversight of workplace safety and health.

(a) The Committee shall annually evaluate the adequacy of the employer’s safety and health program as a whole, including the employer’s system of accountability on safety and health matters, and may at any other time evaluate any aspect of the employer’s health and safety program.

(b) The Committee shall be informed prior to changes in technology or production that may impact worker safety and health.

(c) The Committee shall review the employer’s (A) periodic, scheduled worksite inspections, (B) investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances, and near misses, and (C) investigation of any alleged hazardous condition brought to the attention of any committee member, or complaints, whether or not anonymous, and any action taken by the employer with respect to any of these.

(d) When determined necessary by the committee, the committee may conduct its own inspections and investigations, and may accompany the employer representative on his or her inspections or investigations.

(e) On multi-employer non-permanent work sites, the Committee shall review work to be done in the next period, the trades and crafts that will be doing the work, and safety and health hazards that cross craft lines; and may make recommendations to all employers at the work place.

(f) Committees may recommend corrective actions to be implemented by the employer within a specified time. If the employer does not implement the recommended corrective action within the specified time, the employer shall provide a written explanation to the Committee.

(g) The Committee shall keep a list of all action items in order to follow all to resolution.

(h) The Committee shall have the authority to stop an activity if a hazard exists that constitutes an imminent danger to life or health, and may recommend to the employer that work be stopped when the Committee deems it necessary. If the employer does not stop the activity and take corrective action, the employer shall provide a written explanation to the Committee.

(2)(B) Structure. Committee(s) shall have an equal number of employee and employer representatives as well as co-chairs from each group. The employer co-chair shall be the person designated in the employer’s safety and health program as responsible for implementing the employer’s safety program, and shall have the authority to stop work.

(C) Selection of Employee Representatives.

(i) Selection. In work places where there is a collective bargaining agreement, the worker representative(s) shall be selected according to internal union procedures. Where there are union and non-union workers at the same work place, the union representative shall serve as representative for all workers. Where there is no union representative, the employee representatives shall be chosen by secret ballot from amongst non-supervisory employees in an election supervised by the State Mediation and Conciliation Service according to procedures developed by them.

(ii) Committee members. The health and safety representatives will serve as the employee representatives on the joint labor-management health and safety committee.
(D) Training. Worker health and safety representatives shall be trained so as to be knowledgeable about basics of occupational safety and health. The lead member of the health and safety committee and in work places with fewer than 50 employees, the worker health and safety representative, shall initially receive a minimum of 40 hours of health and safety training to become effective health and safety representatives. The content of this training shall include hazard identification and control, incident investigation techniques, principles of effective worker training and education, mechanics of committee operations including committee rights and authority, workers’ rights with respect to occupational safety and health, and shall include an overview of this standard and other relevant standards. All other worker committee members shall initially receive a minimum of ___ hours of health and safety training covering the same topics. In addition, each worker representative shall also be permitted to take educational leave for a period of two normal working days, to a maximum of 16 hours each year, without loss of pay or other benefits, for the purposes of attending workplace safety and health training seminars, programs or course of instruction. Training shall be provided by the Worker Occupational Safety and Health Training & Education Program [hereafter WOSHTEP], the Division, a union, or provided by another approved trainer. The Division shall approve all training providers and curriculum and may further define training requirements. The training shall be provided at employer expense and during work hours. Future training shall be tailored to meet the needs of specific industries, occupations, specific hazards, and shall include new laws or regulations.

(E) Compensation. The employer shall compensate worker health and safety representatives at their regular rate of pay and benefits while they are attending safety and health committee meetings, doing related work, or receiving training.

(F) Documentation. All activities regarding safety and health shall be documented and made available to all relevant government agencies and to other employees or their representatives. Personal medical or other personal information regarding a worker shall not be available except to government agencies authorized by law to obtain such information or to others who have authority and permission from the affected employee. The names of all Committee members or of the Representative shall be permanently posted. Outstanding action items, proposed and actual resolutions shall be posted until 30 days after the item has been resolved. Upon request from the division, verification of abatement action taken by the employer as specified in division citations, shall be provided.

(G) No worker committee member or representative shall be laid off during his or her tenure as a worker health and safety representative or within one year of the end of such tenure unless he or she is the last person in his or her class or category on the job.

§ 6401.7(g) The division, in consultation with the State Mediation and Conciliation Service, and other affected parties shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.
APPENDIX B

Worker Training Requirements

Amend § 6401.7 Labor Code

§ 6401.7 (c)
(1) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard. The employer shall also train affected employees whenever an accident or near miss occurs, and shall provide the employees with information regarding the cause of such, any corrective action, and any other steps the employer has taken or will take to assure that such does not re-occur.

(2) The employer shall conduct additional periodic training, at least annually, which shall include, but not be limited to:

(A) A review of the employer’s injury and illness prevention program elements, including those specified in (a)(1) through (a)(6).

(B) A review of the hazardous substances to which employees may be exposed as set forth in Labor Code § 6398.

(C) A review of the training required by (a)(4).

(3) The employer shall train all employees in a language that may be understood by that employee.

(4) Beginning January 1, 1994, an employer in the construction industry ... [may use training from an outside provider approved by the Division for general training], and shall only be required to provide training on hazards specific to an employee’s job duties.

(5) Notwithstanding any exceptions elsewhere in this Section, the employer shall document all training sessions, other than “tailgate” or “toolbox” training or other short duration training, with respect to at least the following elements:

(A) the name, qualifications, and experience of the training provider;

(B) a brief description of the training, including its purpose;

(C) the date and length of the training;

(D) the names of those in attendance;

(E) an evaluation of the training by the trainees as well as by the trainer; and

(F) the signatures of all trainees and the trainer.

(6) By January 1, 2000, the Division shall propose, and by September 1, 2000, the Occupational Safety and Health Standards Board shall adopt standards for “tailgate” or “toolbox” training or training that is of short duration, which shall include, but not be limited to a review of upcoming work, the standards applicable to the work, the methods the employer will use to assure the work is safe, and a request to the employee participants for input. This standard shall also specify which industries, in addition to construction, shall conduct these types of training, and at what frequency.
(7) All new standards shall be evaluated to determine whether training requirements are effective. The Division shall review existing training provisions as well as standards where training is not specified, and by January 1, 2000, the propose amendments to assure employee training is effective. By September 1, 2000, the Occupational Safety and Health Standards Board shall adopt such amendments.
APPENDIX C

OCCUPATIONAL SAFETY AND HEALTH
RESEARCH and WORKER EDUCATION REVOLVING FUND

Amend Labor Code § 78

§ 78. Review of Applications – Establishment of Policies
(a) The commission shall review and approve applications from employers and employee organizations, as well as applications submitted jointly by an employer organization and an employee organization, for grants to assist in establishing effective occupational injury and illness prevention programs. The commission shall establish policies for the evaluation of these applications, including an impartial, peer-review process, and shall give priority to applications proposing to target high-risk industries and occupations, including those with high injury or illness rates, those industries and occupations where workers are not fluent in the English language, and those in which employees are exposed to one or more hazardous substances or conditions or where there is a demonstrated need for research to determine effective strategies for the prevention of occupational illnesses or injuries. Specific priorities and funding criteria shall be announced annually.

(b) Civil and administrative penalties assessed pursuant to Sections 129.5 and 4628 shall be deposited into a Workplace Health and Safety Revolving Fund, which is hereby created in the State Treasury. Proceeds of the fund, when appropriated by the Legislature, shall be expended by the department, upon approval by the commission, for funding the grants under subdivision (a), and by the commission for payment of the commission’s expenses incurred under this chapter. A minimum of 50% of the Fund shall be distributed annually in such grants.

Add Labor Code § 6356

§ 6356. Occupational Safety and Health Research and Worker Education Revolving Fund

(a) There shall be an Occupational Safety and Health Research and Worker Education Revolving Fund [hereafter OSH Research & Worker Education Fund] which is hereby created in the State Treasury. The fund shall consist of money from assessments made pursuant to this section. Proceeds of the fund, when appropriated by the Legislature, shall be expended by the Commission on Health and Safety and Workers’ Compensation as inter-agency agreements for injury and illness prevention activities, as follows:

(1) funding the University of California labor and occupational safety and health educational programs to establish a Worker Occupational Safety and Health Training & Education Program [hereafter WOSHTEP] to develop injury and illness prevention education programs for employees and their representatives, and to deliver such training programs through a statewide network of training providers, and

(2) funding the Department of Health Services Occupational Health Branch [hereafter DHS OHB] to establish and administer an Occupational Safety and Health Research Program [hereafter OSHRP] as a comprehensive grant and contract program to support programs to prevent occupational injury and illness.
(b) Assessments shall be levied by the Director of the Department of Industrial Relations upon all employers as defined in Section 3300. The total amount of the assessment shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall enact reasonable rules and regulations governing the manner of collection of the assessment. The rules shall require the assessment to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the assessment to be paid by insured employers expressed as a percentage of premium. In no event shall the assessment paid by insured employers be considered a premium for computation of a gross premium tax or agents’ commission. The total assessment and appropriate percentages shall be determined by the Director annually, and shall be sufficient to fund the activities set forth in (a). At a minimum funding for (a)(1) shall at least be equivalent to the total budget of the Cal/OSHA Consultation Service from federal grants and the General Fund. At a minimum funding for (a)(2) shall be at least equivalent to 13% of the National Institute of Occupational Safety and Health total budget.

(c) The programs established pursuant to § 6356 (a)(1) and (a)(2) may charge a reasonable fee to cover incidental costs for those who attend training programs, order materials, or those who utilize the technical support component of the program. However, no one shall be denied training, material or technical assistance if they cannot afford to pay.

(d) Worker Occupational Safety and Health Training & Education Program [WOSHTEP].

(1) The Legislature hereby requests the University of California to establish and administer a statewide Worker Occupational Safety and Health Training & Education Program [WOSHTEP]. It is the intent of the Legislature that this program be responsible for developing training material and providing training programs for workers and their representatives. Further, that this program should incorporate the expertise and infrastructure that already exists within the University through their labor and occupational safety and health educational programs, as well as contract with a statewide network of training providers, including, but not limited to, worker based organizations and labor studies programs at State Universities and Community Colleges in order to provide training programs. It is the intent of the Legislature that this program also incorporate the principles and organizational elements specified in this act.

(2) It is the intent of the Legislature that the university, as lead agency, do the following:

   (A) Establish a WOSHTEP worker advisory board.

   (i) The advisory board shall include workers, injured workers, and their representatives from organized labor, worker organizations, the legal community, the medical community, and occupational safety and health educators and other professionals who focus on worker oriented occupational illness and injury prevention.

   (ii) The members shall serve without pay, except that reasonable expenses incurred in order to attend advisory board meetings shall be reimbursed.

   (iii) The advisory board shall guide the development of curricula, teaching methods, and specific course material, as well as assist in providing links to the target audience and broadening the partnerships with worker based organizations, labor studies programs and others who are able to reach the target audience.
(B) In conjunction with the University based labor and occupational safety and health educational programs, develop and offer a 40-hour curriculum addressing core competencies for effective participation in joint labor-management health and safety committees and programs. The core curriculum shall include an overview of the requirements related to Injury and Illness Prevention Programs and Hazard Communication.

(C) In conjunction with the University based labor and occupational safety and health educational programs, develop and offer additional training programs for any of the following categories: industries on the Division’s high hazard list, hazards that result in significant workers’ compensation costs, trades where workers are suffering numerous or significant injuries or illnesses, occupational groups with special needs such as those who do not speak English as their first language, those with limited literacy, young workers, and for traditionally under-served industries or groups of workers.

(D) In conjunction with the University based labor and occupational safety and health educational programs, operate one or more libraries and distribution systems of occupational safety and health training material, which shall include, among other things, all material developed by WOSHTEP pursuant to government funding herein, all the worker oriented material developed pursuant to § 78, and material developed pursuant to § 6356(e) below.

(E) In conjunction with the University based labor and occupational safety and health educational programs, and upon request, assist the Health and Safety and Workers’ Compensation Commission to evaluate proposals for funds pursuant to § 78; to provide advice and assistance, by way of referrals to sources for technical support, to employee organizations who receive grants pursuant to § 78; and to evaluate completed projects funded pursuant to § 78.

(e) Occupational Safety and Health Research Program [hereafter OSHRP].

(I) The DHS OHB, working cooperatively with the University of California Centers for Occupational and Environmental Health, the Department of Industrial Relations, and all state programs that focus on occupational safety and health, shall establish and administer an Occupational Safety and Health Research Program [hereafter OSHRP] as a comprehensive grant and contract program to support programs to prevent occupational injury and illness. The research shall contribute directly to injury and illness prevention through improved injury and illness surveillance and epidemiology, and through intervention research projects that identify innovative and effective hazard identification and control strategies and technologies in the work place. Priority shall be given to funding projects in the following categories: industries on the high hazard list, hazards that result in significant workers’ compensation costs, trades where workers are suffering numerous or significant injuries or illnesses, occupational groups with special needs such as those who do not speak English as their first language and those with limited literacy, small businesses with limited health and safety resources, and traditionally under-served industries or groups of workers.
The DHS Occupational Health Branch shall:

(A) Establish and seek regular guidance from an advisory board of worker occupational safety and health advocates comprised as follows:
   (i) The advisory board shall include workers, injured workers, representatives from organized labor, representatives from worker advocacy organizations that focus on worker oriented occupational safety and health, representatives from industry, and representatives from the workers’ compensation insurance community.
   (ii) The members shall serve without pay, except that reasonable expenses incurred in order to attend advisory board meetings shall be reimbursed.

(B) Fund innovative and creative research, with a special emphasis on research that complements, rather than duplicates, the research funded by the federal government and other entities.

(C) Fund projects to disseminate and replicate proven strategies, education and training materials, and related products.

(D) Award grants on the basis of the research priorities established for the program and the scientific merit of the proposed research, as determined by an open, competitive peer review process that ensures objectivity, consistency, and high quality. All investigators, regardless of affiliation, including the DHS OHB, shall have equal access and opportunity to compete for program funds.

(E) Award grants to entities for the full cost, both direct and indirect, of conducting the sponsored research consistent with those federal guidelines governing all federal research grants and contracts.

(F) All intellectual property assets developed under this program shall be treated in accordance with state and federal law. Education and training materials developed with grant funding shall remain in the public domain. Any and all products developed under this program shall, if commercially viable, be produced in a not-for-profit manner and provided to consumers at cost.

(G) Provide overall coordination of the program.

(H) Provide staff assistance to the program.

(I) Develop administrative procedures relative to the solicitation, review, and awarding of grants to ensure an impartial, high quality peer review system.

(J) Recruit and supervise research review panels. The membership of these panels shall vary depending on the subject matter of the proposals and the review requirements, and shall draw on the most qualified individuals. The work of the review panels shall be administered pursuant to policies and procedures established for the implementation of the program. In order to avoid conflicts of interest and to ensure access to qualified reviewers, the DHS OHB may utilize reviewers not only from California but also from outside the state. When serving on review panels, institutions, corporations, or individuals who have submitted grant applications for funding by this program shall be governed by conflict-of-interest provisions consistent with the National Institutes of Health Manual (Chapter 4510 (item h)), and any applicable conflict-of-interest provisions in state law.
(K) Establish mandatory guidelines by which recipients of grants and contracts shall notify participants in research of the results of the project.

(L) Provide for periodic program evaluation to ensure that research funded is consistent with program goals.

(M) Maintain a system of financial reporting and accountability.

(N) Provide for the systematic dissemination of research results to the public and the occupational safety and health community.

(O) Transmit annually on or before each December 31, a report to the Legislature on grants made, grants in progress, program accomplishments, and future program directions. Each report shall include, but not be limited to, the following information:

(i) The number and dollar amounts of research grants, including the amount allocated to indirect costs.

(ii) The subject of research grants.

(iii) The relationship between each project and the overall strategy of the research program.

(iv) A summary of research findings including discussion of promising new areas.

(v) The names and affiliations of recipients of grant awards.

In addition, the first annual report shall include an evaluation and recommendations concerning the desirability and feasibility of maintaining the requirement that in the event that a grant results in the development of a profit-making product, that such be produced in a not-for-profit mode and provided at cost. This evaluation shall include, but not be limited to, the costs and benefits of requiring a for-profit grantee to repay the grant, to provide the product at cost under defined circumstances, and to pay the state a percentage of the royalties derived from the product.

(f) The Commission shall:

1. Recommend strategic objectives and research priorities of the program.
2. Participate in periodic program and financial review, including the report transmitted pursuant to paragraph (l) of subsection (2) herein.
3. Review DHS OHB guidelines to ensure fairness, neutrality, and adherence to the principles of merit and quality in the conduct of the program.
4. Review criteria and standards for granting awards and contracts.
5. Review recommendations for grant awards.
6. Review mechanisms for the dissemination of research results.
7. Participate in the identification and recruitment of the advisory committee as set forth in subsection (e)(2)(A).
8. The Commission may propose to assign a member of the Commission to sit as a nonvoting member of the peer review panels.

(g) It is the intent of the Legislature that no more than 10 percent of the funds distributed by the Health and Safety and Workers’ Compensation Commission through the University for the WOSHTEP and through the DHS OHB for OSHRP programs shall be used for the purposes of administration.
(h) The State Auditor shall conduct an audit of the WOSHTEP and OSHRP Programs after the first two years of operation. Prior to conducting the audit, the State Auditor shall review laws, rules, and regulations relevant to the WOSHTEP and OSHRP Programs. The State Auditor shall conduct its audit and report its findings to the Legislature on or before January 1, 200?. The actual and reasonable costs incurred by the audit shall be paid by the State Auditor. The audit by the State Auditor shall make the following determinations:

1. Whether WOSHTEP and OSHRP have adequate controls to safeguard the program's funds and assets, and whether those controls are operating as intended.

2. Whether WOSHTEP has expended funds solely for the education of workers and their representatives in a manner consistent with this legislation and so as to assure, as best possible, that workers and their representatives throughout the state, through worker based organizations, labor studies programs, etc., have had access to the material and training programs developed by WOSHTEP.

3. Whether OSHRP has expended funds in a manner consistent with this legislation and has adequate controls to ensure that the program is administered in a manner designed to minimize any potential conflicts that may arise from any dual role as program administrator and grant recipient, and concomitantly, whether OSHRP has provided equal access to grants for researchers affiliated with institutions other than DHS OHB and cooperating partner, the University of California.

4. OSHRP shall retain documents received and prepared in connection with grant applications or awards until the State Auditor has completed its audit. The DHS OHB, State Auditor, and their respective employees shall maintain these documents in a manner that will protect the privacy rights of any persons participating in OSHRP research.

5. Nothing in this subdivision shall be construed to prevent making publicly available, after awards for a cycle of funding have been publicly announced, those applicants receiving funding for that cycle from OSHRP, the names and affiliations of the peer reviewers of each study section, an abstract of grant awards, the amount of funding received from the program, and any other information not privileged.
APPENDIX D
Protecting Workers from Discrimination, Discharge for OSH Related Whistle blowing

Labor Code §§ 98.7, 6310, 6311 and 6312 shall be amended as follows:

Labor Code § 98.7 is amended to read:

§ 98.7. Discrimination Complaint Filing Procedure — Investigation — Action

(a) Any person who believes that he or she has been discharged or otherwise discriminated against in violation of any provision of this code under the jurisdiction of the Labor Commissioner may file a complaint with the division within 30 days one year after the occurrence of the violation. The 30-day one-year period may be extended for good cause. The complaint shall be investigated by a discrimination complaint investigator in accordance with this section. The Labor Commissioner shall establish procedures for the investigation of discrimination complaints. A summary of the procedures shall be provided to each complainant and respondent at the time of initial contact. The Labor Commissioner shall inform complainants charging a violation of Section 6310 or 6311, at the time of initial contact, of his or her right to file a separate, concurrent complaint with the United States Department of Labor within 30 days after the occurrence of the violation.

(b) Each complaint of unlawful discharge of discrimination shall be assigned to a discrimination complaint investigator who shall prepare and submit a report to the Labor Commissioner based on an investigation of the complaint. The Labor Commissioner may designate the chief deputy or assistant Labor Commissioner or the chief counsel to receive and review the reports. The investigation shall include, where appropriate, interviews with the complainant, respondent, and any witnesses who may have information concerning the alleged violation, and a review of any documents which may be relevant to the disposition of the complaint. The identity of witnesses shall remain confidential unless the identification of the witness becomes necessary to proceed with the investigation or to prosecute an action to enforce a determination. The investigation report submitted to the Labor Commissioner or designee shall include the statements and documents obtained in the investigation, and the findings of the investigator concerning whether a violation occurred. The Labor Commissioner may hold an investigative hearing whenever the Labor Commissioner determines, after review of the investigation report, that a hearing is necessary to fully establish the facts. In the hearing the investigation report shall be made a part of the record and the complainant and respondent shall have the opportunity to present further evidence. The Labor Commissioner shall issue, serve, and enforce any necessary subpoenas.

(c) If the Labor Commissioner determines a violation has occurred, he or she shall notify the complainant and respondent and direct the respondent to cease and desist from the violation and take such action as is deemed necessary to remedy the violation, including where appropriate, rehiring or reinstatement, reimbursement of lost wages and benefits and interest thereon, payment of reasonable attorney’s fees and costs associated with any hearing held by the Labor Commissioner in investigating the complaint, penalties that may be proscribed by any other provision of the Labor Code, and the posting of notices to employees. If the respondent does not comply with the order within 10 working days following notification of the Labor Commissioner’s determination, the Labor Commissioner shall bring an action in court promptly in an appropriate court against the respondent. If the labor Commissioner fails to bring an action in court promptly, the complainant may bring an action against the Labor Commissioner in any appropriate court for a writ of mandate
to compel the Labor Commission to bring an action in court against the respondent, or the complainant may bring an action directly to enforce the order of the Labor Commissioner. If the complainant prevails in his or her action for a writ or for direct enforcement of the order, the court shall award the complainant court costs and reasonable attorney’s fees, notwithstanding any other provision of law. Regardless of any delay in bringing an action in court, the Labor Commissioner shall not be divested of jurisdiction. In any such action, the court may permit the claimant to intervene as a party plaintiff to the action and shall have jurisdiction, for cause shown to restrain the violation and to order all appropriate relief. Appropriate relief includes, but is not limited to, rehiring or reinstatement of the complainant, reimbursement of lost wages and benefits and interest thereon, penalties that may be proscribed by any other provision of the Labor Code, and such other compensation or equitable relief as is appropriate under the circumstances of the case. The Labor Commissioner shall petition the court for appropriate temporary relief or restraining order unless he or she determines good cause exists for not doing so.

(d) If the Labor Commissioner determines no violation has occurred, he or she shall notify the complainant and respondent and shall dismiss the complaint. The Labor Commissioner may direct the complainant to pay reasonable attorney’s fees associated with any hearing held by the Labor Commissioner if the Labor Commissioner finds the complaint was frivolous, unreasonable, groundless, and was brought in bad faith. The complainant may, after notification of the Labor Commissioner’s determination to dismiss a complaint, bring an action in an appropriate court, which shall have jurisdiction to determine whether a violation occurred, and if so, to restrain the violation and order all appropriate relief to remedy the violation. Appropriate relief includes, but it not limited to, rehiring or reinstatement of the complainant, reimbursement of lost wages and benefits and interest thereon, and such other penalties, compensation or equitable relief as is appropriate under the circumstances of the case. When dismissing a complaint, the Labor Commissioner shall advise the complainant of his or her right to bring an action in an appropriate court if he or she disagrees with the determination of the Labor Commissioner, and in the case of an alleged violation of Section 6310 or 6311, to file a complaint against the state program with the United States Department of Labor.

(e) The Labor Commissioner shall notify the complainant and respondent of his or her determination under subdivision (c) or (d), not later than 60 days after the filing of the complaint. Determinations by the Labor Commissioner under subdivision (c) or (d) may be appealed by the complainant or respondent to the Director of Industrial Relations within 10 days following notification of the determination. The appeal shall set forth specifically and in full detail the grounds upon which the appealing party considers the Labor Commissioner’s determination to be unjust or unlawful, and every issue to be considered by the director. The director may consider any issue relating to the initial determination and may modify, affirm, or reverse the Labor Commissioner’s determination. The director’s determination shall be the determination of the Labor Commissioner. The director shall notify the complainant and respondent of his or her determination within 10 days of receipt of the appeal.

(f) The rights and remedies provided by this section do not preclude an employee from pursuing any other rights and remedies under any other provisions of law.

Appointment of Investigator: The discrimination complaint investigator shall be designated or appointed no later than 60 days after the effective date of this act. Personnel assigned to the investigation of discrimination complaints shall receive all necessary and appropriate training in the investigation of discrimination complaints upon designation or appointment as discrimination
complaint investigators. Discrimination complaints assigned for investigation shall have a higher priority than any other work assigned to these investigators.

Labor Code § 6310 is amended to read:

§ 6310. Complaining Employees – Discharge, Discrimination – Remedies

(a) No person shall discharge or in any manner discriminate against any employee because the employee has done any of the following:

(1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative.

(2) Given any information regarding work place conditions affecting the safety, health or welfare of that person or of any other worker to any other person in that work place or to any person representing any worker in that work place.

(2)(3) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded to him or her.

(3)(4) Participated in any occupational health and safety committee established pursuant to Section 6401.7.

(5) Refused to perform work under all of the following conditions:

(A) The employee believes and has reasonable grounds to believe that the particular work is dangerous, created a real hazard, or is likely to cause death or serious physical harm to any person.

(B) The employee in a timely manner reports his or her refusal and the reasons therefor to the immediate supervisor, foreman or any other person in charge at the work place.

(C) The employee agrees to work and does work until the dangerous condition reported by the employer is remedied, after a request is made by the employer for the employee to work at a task which is safe and which is not prohibited by any other law, administrative order, or by contract.
(b) Any person who causes any employee to be discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has done anything in subdivision (a) made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his representative of unsafe working conditions, or work practices, in his or her employment or place of employment, or has participated in an employer-employee occupational health and safety committee, shall be liable to the employee in an administrative action filed pursuant to Section 98.7 of the Labor Code, or in an administrative or civil action filed pursuant to any other law or administrative regulation or order or pursuant to contract. The employee shall be entitled to reinstatement, if the action is brought against the employer, and reimbursement for the lost wages and work benefits, and a penalty in the amount no less than $2,500 and no more than $25,000. In addition, the employer shall be liable for costs of any administrative, civil or criminal action, including attorney fees. caused by the acts of the employer.

(c) Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

(d) An employer shall not assign or require any other employee or any other person to perform the particular work that another employee or person refused to perform because the latter believed the particular work was dangerous, created a real hazard, or was likely to cause death or serious physical harm to any person, unless that employee or person is informed by the first employee, or by the person designated as in charge of the employer’s safety and health program of the first employee’s refusal to perform the work and the reason thereof. Any employer who violates this provision is guilty of a misdemeanor.

Labor Code § 6311 is repealed.

§ 6311. Employee Refusal to Work in Violation of Code

No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or standard or any safety or health standard or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because he or she refused to perform work in the performance of which this code, any occupational safety or health standard of any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or his or her fellow employees have a right of action for wages for the time the employee is without work as a result of the layoff or discharge.
Labor Code § 6312 is amended to read:

§ 6312. Discrimination Complaints – Investigation, Action

In addition to all other penalties provided by law, any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of Section 6310 or 6311 may file a complaint with the Labor Commissioner pursuant to Section 98.7 or an action for damages. There shall be a presumption that the discriminatory action was taken because the worker did the protected acts alleged, and the employer shall have the burden of proving that the decision to take discriminatory action was not in any way influenced by the conduct on the part of the employee.
APPENDIX E
SAFETY and HEALTH STANDARDS MAY BE EVIDENCE

Labor Code § 6304.5 and § 6315.5 shall be amended as follows:

Labor Code § 6304.5. Legislative Intent — Employee Safety Exclusively

It is the intent of the Legislature that the provisions of this division shall only be, and the standards and orders enacted under this code, are applicable to proceedings against employers brought pursuant to the provisions of Chapter 3 (commencing with Section 6500) and 4 (commencing with Section 6600) of Part 1 of this division for the exclusive purpose of maintaining and enforcing safety.

Neither this division nor any part of this division the issuance of, or failure to issue, a citation by the division shall have any application to, nor be considered in, nor be admissible into, evidence in any personal injury or wrongful death action arising after the operative date of this section, except as between an employee and his or her own employer. This division and the occupational safety and health standards and orders enacted under this code may have application to, be considered in, or be admissible into, evidence in any personal injury or wrongful death action.

Amend § 6315.5 of the Labor Code as follows:

§ 6315.5. Prosecution of Violations -- Admissible Evidence

All occupational safety and health standards and orders, rules, regulations, findings, and decisions of the division made and entered pursuant to this part are admissible as evidence in any prosecution for the violation of any provision of this part, civil or criminal matter, and shall, in every such prosecution, any such action, be presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirement of safety and health unless, prior to the institution of the prosecution for such violation action, proceedings for a hearing on a special order are instituted, or a petition is filed under Section 11426 of the Government Code.
APPENDIX F
Assuring Health & Safety on Public Contracts

Amend § 1103 of the Public Contract Code

§ 1103 “Responsible bidder,” as used in this part, means a bidder who has demonstrated the attributes of trustworthiness, as well as quality, fitness, and capacity to perform satisfactorily the public works contract. The occupational safety and health history of the bidder for a period of at least four years and a current evaluation of the bidder’s occupational safety and health program shall be considered when determining the quality, fitness, and capacity to perform satisfactorily the public works contract.

Add § 1103.5 to the Public Contract Code

1103.5. (a) A public entity subject to the Public Contract Code shall require that each prospective bidder for a contract submit information concerning its occupational safety and health history for at least four years prior to the date of submission in a form specified by the entity, and shall further require submission of the prospective bidder’s written injury and illness prevention program.

(b) The Department of Industrial Relations, in collaboration with affected state and local agencies and interested parties, shall develop a questionnaire for obtaining verified information and shall develop model guidelines for rating bidders with respect to the following:

1. The bidder’s history of occupational safety and health. This shall include, but not be limited to at least a four year review of:

   (A) the bidder’s history of occupational safety and health violations as established by citations, special orders, orders to take special action, and information memorandum, issued by the Division of Occupational Safety and Health or by other occupational safety and health agencies in other states or by Federal OSHA.

   (B) the bidder’s history of worker fatalities, injuries and illnesses as reflected in workers’ compensation costs, lost work days, etc.

   (C) the bidder’s history of worker fatalities, injuries and illnesses as reflected in other injury litigation,

   (D) the bidder’s history of worker fatalities, injuries and illnesses as reflected in Doctor’s First Reports, Employer’s Reports, and Log 200 forms, and

2. The bidder’s current occupational safety and health program.

3. This information shall be a public record except with respect to any personal identifiers.

(c) The bidder shall be defined as all entities that hold active licenses, if any, required by the bid, including the component licenses for any joint ventures, and including other entities that may be considered to be substantially the same business by virtue of overlapping corporate or other business structure.
(d) A public entity may establish a process for prequalifying prospective bidders pursuant to this section on a quarterly basis and a prequalification pursuant to this process shall be valid for one calendar year following the date of initial prequalification.

(e) A public entity shall establish an appeal process pursuant to this section whereby prospective bidders may appeal their prequalification rating.

Add § 1103.6 to the Public Contract Code

1103.6. (a) A public entity subject to the Public Contract Code shall require contractually that each successful bidder for a contract provide a safe and healthful workplace.

(b) The Department of Industrial Relations, in collaboration with affected state and local agencies and interested parties, shall develop for public entities model guidelines for contractual language to assure that the successful bidder provides a safe and healthful workplace.
APPENDIX G
Occupational Birth Defects and Cancer Registry

Amend §§ 103830 and 103885 of the Health & Safety Code

§ 103830 shall be amended to add the following language:

To implement the Legislative mandate that the Birth Defects Registry is to provide information to determine if environmental hazards are associated with birth defects, stillbirths, and miscarriages, the State Health Department shall establish occupational linkages with the current California State Health Department population-based data bases on birth defects and births collected by the California Birth Defects Monitoring Program and the Vital Statistics Branch.

The State Health Department shall establish a data base with information on the job title, occupation, and type of work for California workers within key industrial sectors. This data base shall have identifying information which will allow linkage with the above health outcome data bases. It shall be maintained by the Department of Health Services in a manner which assures confidentiality.

The California Department of Health shall also develop an ongoing uniform data collection system that will capture occupational information for use in linkages with existing population-based disease registries. The system shall be designed to monitor incidence rates for certain occupationally-linked birth defects in offspring of workers in various industries and job categories.

§ 103885 shall be amended to add the following language:

To implement the Legislative mandate that the Cancer Registry generate hypotheses and data about cancer risks among workers within various types of California industries and to provide information to determine if environmental and occupational hazards are associated with cancer, the State Health Department shall establish occupational linkages with the current California State Health Department population-based data bases on cancer, collected by the Cancer Control Branch and the Vital Statistics Branch.

The State Health Department shall establish a data base with information on the job title, occupation, and type of work for California workers within key industrial sectors. This data base shall have identifying information which will allow linkage with the above health outcome data bases. It shall be maintained by the Department of Health Services in a manner which assures confidentiality.

The California Department of Health shall also develop an ongoing uniform data collection system that will capture occupational information for use in linkages with existing population-based disease registries. The system shall be designed to monitor incidence rates for certain occupational illnesses in various industries and job categories.
Amend Labor Code § 140, 141, and § 142.3 (a)(1) as follows:

§ 140. Occupational Safety and Health Standards Board – Created

(a) There is in the Department of Industrial Relations, the Occupational Safety and Health Standards Board which consists of seven members who shall be appointed by the Governor. Two members shall represent be from the field of management, two members shall represent organized be from the field of labor, one member shall be from the field of occupational health, one member shall be from the field of occupational safety and one member shall be from the general public. Members representing occupational safety and health fields and the public member shall be selected from other than fields of management or labor. At least one of the seven members of the Standards Board appointed by the Governor shall be a safety and health professional with expertise in occupational safety and health training. In addition, the Standards Board shall consist of four members who shall be appointed by the Speaker of the Assembly, and four members who shall be appointed by the Senate President Pro Tempore. As to each, half shall represent management and half organized labor. These appointments shall be from industries or sectors not represented by the Governor’s appointments nor duplicate each other, and shall represent both the private and public sector, and shall include producers of goods as well as services. On a rotating basis representatives may come from general industry, construction, transportation, health care, agriculture, mining, etc.

§ 141. Board Members – Term of Office, Salary

(a) The terms of offices of the members of the board shall be four years and they shall hold office until the appointment and qualification approval of the State Senate of a successor. The terms of the members of the board first appointed shall expire as follows: ... The terms of two of the members of the board appointed by the Speaker of the Assembly and two of the members appointed by the Senate President Pro Tempore, each divided equally between representatives of management and organized labor, shall expire June 1, 2000, and June 1, 2001. The terms shall thereafter expire in the same relative order. Vacancies occurring shall be filled by appointment to the unexpired term.
Amend Labor Code § 142.2 as follows:

§ 142.2. Proposal of New Orders, Standards by Interested Persons

At each of its meetings, the board shall make time available to interested persons to propose new or revised orders or standards appropriate for adoption pursuant to this chapter or other items concerning occupational safety and health. The board shall consider such proposed orders or standards and report its decision no later than six months following receipt of such proposals.
Amend Labor Code § 142.3 (a)(1) as follows:

§ 142.3  Adoption, Amendment, Repeal of Standards, Orders

(a)(1) The board, by an affirmative vote of at least four eight members, may adopt, amend or repeal occupational safety and health standards and orders. The board shall be the only agency in the state authorized to adopt occupational safety and health standards. **In general, the board shall adopt standards that are preventive in nature and designed to minimize occupational injuries and illnesses for all California working men and women.** Standards adopted by the board shall apply to all places of employment, as defined in Section 6303, regardless of the number of employees. The application of any standard to an employer shall not be conditioned upon the occurrence of an injury, illness or exposure to an employee. The board shall give deference to recommendations of the Division of Occupational Safety and Health, which may incorporate advice from an advisory committee and shall incorporate advice from other government agencies vested with expertise in health or safety.

[continue with remainder of Section 142.3 (a)]

Amend Labor Code § 142.3 (d) and (e) as follows:

§ 142.3  Adoption, Amendment, Repeal of Standards, Orders

(d) Any occupational safety or health standard or order promulgated under this section shall prescribe the use of labels, or other appropriate forms of warning, **and general and specific training** as are necessary to ensure that employees are appraised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions for safe use or exposure. Where appropriate, such standards or orders shall also prescribe suitable protective equipment and control or technological procedures, **which shall be made available by the employer or at his or her expense, without cost to the affected employees,** to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such occupational safety or health standard or order shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employee is adversely affected by such exposure.

(e)(1) The results of such examinations or tests shall be furnished only to the Division of Occupational Safety and Health, **the Division of Labor Statistics and Research,** the State Department of Health Services, any other authorized state agency, the employer, the employee, and, at the request of the employee, to his or her physician **or duly authorized representative.**
(2) Any person who violates the privacy of any employee, with respect to such medical examinations or tests, by providing the information to any other person who is not authorized by statute or by the employee to receive that information, and any person who receives such information without statutory authority or without specific written authorization by the employee, and fails to return the information to the person from whom it was received and to inform the subject of the information, if possible, regarding the receipt of confidential information and its return, is guilty of a misdemeanor, and shall be punishable by imprisonment in the county jail not exceeding one year or by a fine not exceeding ten thousand dollars, or by both such fine and imprisonment.
Renumber § 6357 as § 6719 and amend as follows:

§ 6719.

(a) The Legislature finds and declares all of the following:
(1) In 1993, the Legislature adopted Section 6357 to require the Occupational Safety and Health Standards Board, on or before January 1, 1995, to adopt standards for ergonomics in the workplace designed to minimize the instances of injury from repetitive motion.
(2) The standards board failed to follow this mandate, by failing to adopt ergonomics standards by January 1, 1995, and then by adopting a regulation concerning ergonomics that was not designed to minimize the instances of injury from repetitive motion because it contained exemptions and loopholes.
(3) The ergonomics regulation adopted by the standards board was held to be invalid in part by a court because it did not fulfill the mandate of Section 6357, and litigation concerning the validity of the regulation is still pending.
(4) The purpose of this section is to mandate a minimum standard for ergonomics in the workplace so as to effectuate the original intent and purpose of Section 6357, as adopted in 1993, and to avoid continuing litigation.

(b) On and after January 1, 2000, the division shall enforce this section through all appropriate means, including, but not limited to, issuing citations and penalties for any violation of this section pursuant to section 6317. By January 15, 2000, the standards board also shall adopt as part of Title 8 California Code of Regulations the following requirements pertaining to a job, process, or operation if any of the following exists:

(1) a repetitive motion injury (RMI) has occurred to one or more employees engaged in the job, process, or operation. For the purposes of this section, an RMI is an injury or illness that results in any of the following:
   (A) Fatalities, regardless of the time between the injury and death, or the length of the illness.
   (B) Lost workday cases, other than fatalities, that result in lost workdays.
   (C) Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment, other than first aid, or involve loss of consciousness or restriction of work or motion. The injuries or illnesses specified in this subparagraph also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(2) A pattern of symptoms or physical signs of work-related RMIs (such as pain, numbness or positive Tinel’s, Phelan’s or Finkelstein test) among one or more employees engaged in a job, process or operation has been identified or reported.

(3) One or more employees are exposed to hazards causing or contributing to or likely to cause or contribute to RMI.
(4) One or more employees of an employer are in a work activity substantially similar to a job, process, or operation where an RMI or pattern of symptoms of an RMI has been identified or reported at the employer’s place of employment. “Substantially similar work activity” means that one or more employees are performing similar tasks, including, but not limited to, word processing, assembly, or loading.

(c) Each employer subject to this section shall establish and implement a program designed to prevent and minimize RMIs. The program shall include a worksite evaluation, control of exposures which are causing or contributing to or likely to cause or contribute to RMIs, and training of employees. The program shall provide for the participation of employees and employee representatives in the development and implementation of the program.

(1) Each job, process, or operation covered by this section, or a representative number of those jobs, processes, or operations, shall be evaluated for exposures that are causing or contributing to or likely to cause or contribute to RMIs.

(2) Any exposures that are causing or contributing to or likely to cause or contribute to RMIs shall be corrected in a timely manner or, if not capable of being corrected, shall be minimized to the extent feasible. The employer shall utilize a hierarchy of controls, beginning with engineering controls, such as work station redesign, adjustable fixtures, or tool redesign, and administrative controls such as job rotation, work pacing, or work breaks.

(3) Employees and supervisors performing or supervising a job, process, or operation to which this section applies shall be provided training that includes an explanation of at least the following:

(A) The employer’s program.
(B) Exposures which have been associated with RMIs.
(C) Symptoms and consequences of injuries caused by repetitive motion.
(D) The importance of reporting symptoms and injuries to the employer.
(E) Methods used by the employer to prevent and minimize RMIs.

(d) Regulations adopted pursuant to this section are expressly exempted from the provisions of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(e) This section does not prevent the Occupational Safety and Health Standards Board from acting pursuant to its authority to enact regulations in Section 142.3 to amend its regulations if the amendments do not reduce the protection with respect to RMIs afforded workers by the standard set forth in this section. On or before January 1, 1995, the Occupational Safety and Health Standards Board shall adopt standards for ergonomics in the work place designed to minimize the instances of injury from repetitive motion.
APPENDIX I-1
Contingent & “Contract” Workforce Entitled to Protection

Amend Labor Code § 6304.1 to read as follows:

§ 6304.1. Employee – Defined

“Employee” means every person who is required or directed by any employer, to engage in any employment, or to go to work or be at any time in any place of employment. An employee, for the purposes of enforcing safety in employment, may nevertheless be “self-employed,” that is working pursuant to a contractual relationship, so long as that employee is working at a location specified by the employer or nature of the employment.
APPENDIX I-2
Cal/OSHA Administrative Enforcement --- Procedural Issues
Clarifying Who Represents a Worker and Who may file a 3-day Complaint
Assuring Cal/OSHA may Cite a Labor Code provision as well as a Standard...
Assuring Abatement Pending Appeal for Serious Citations Unless Good Cause
Assuring Citations for Employers on Multi-employer Sites

Add Labor Code § 6302(j) to read as follows:

§ 6302. Definitions

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

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

(j) “Serious physical harm” means any of the following:

(1) Any injury involving a temporary, prolonged, or permanent impairment of the body in which any part of the body is rendered functionally useless or substantially reduced in efficiency on or off the job.

(2) Any illness involving a condition that may shorten life or significantly reduce physical or mental efficiency by inhibiting the normal function of a part of the body.

(3) Any injury or illness that results in temporary or permanent disability.
Amend Labor Code § 6309 to read as follows:

§ 6309. Investigation of Employment, Place of Employment; Complaints

Whenever the division learns or has reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee, it may, of its own motion, or upon complaint, summarily investigate the same employment or place of employment, with or without notice or hearings. However, when the division secures a complaint from an employee, the employee’s representative, including, but not limited to, an attorney, health or safety professional, union representative, or family member; a representative of a government agency; or an employer of an employee directly involved in an unsafe place of employment, that his or her employment or place of employment is currently not safe, it shall, with or without notice or hearing, summarily investigate the same employment or place of employment as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation. The division shall attempt to determine the period of time in the future that the complainant believes the unsafe condition may continue to exist, and shall allocate inspection resources so as to respond first to those situations in which time is of the essence. For purposes of this section, a complaint shall be deemed to allege a serious violation if the division determines that the complaint charges that there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in a place of employment. All other complaints shall be deemed to allege nonserious violations. The division may enter and serve any necessary order relative thereto. The division is not required to respond to any complaint within this period where if, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer or and is without any reasonable basis.

[continue with rest of section which addresses keeping records and responding to complainant, keeping name of complainant confidential, division must also do inspections NOT based on complaints]
Amend Labor Code § 6317 to read as follows:

§ 6317. Citations for Violation — Form, Contents; Notices

(a) If, upon inspection or investigation, the division believes that an employer has violated Section 25910 of the Health and Safety Code or, any standard, rule, order, or regulation established pursuant to Chapter 6 (commencing with Section 140) of Division 1 of the Labor Code, or any provision of this division, including any standard, rule, order, or regulation established pursuant to this division, it shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the code, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the alleged violation. The period specified for abatement shall not commence running until the date the citation or notice is received by certified mail and the certified mail receipt is signed, or if not signed, the date the return is made to the post office. If the division officially and directly delivers the citation or notice to the employer, the period specified for abatement shall commence running on the date of the delivery.

A citation requiring abatement may not be stayed by the filing of an appeal, except as provided in this subdivision. Upon an application accompanied by declarations and exhibits, submitted under penalty of perjury, an employer may petition the appeals board for a stay of abatement pending appeal at the time the employer files a notice of appeal. The employer shall have the burden of establishing good cause for a stay of citation requiring abatement. Within five business days of the date of receipt of the notice of appeal and request for stay of abatement pending appeal, the division may respond to the employer’s declarations and exhibits, and the division also may request an expedited hearing. Within 10 business days, the appeals board shall consider the evidence submitted by the employer and the division, and shall consider oral testimony if the division requests an expedited hearing, and upon all the evidence and proceedings may grant a stay of abatement pending appeal if it finds that (1) no employee may be exposed to the unsafe or unhealthful condition or 2) that the condition is not likely to cause death, serious injury or illness or serious exposure to any employee.

(b) A “notice” in lieu of citation ....

Under no circumstances shall a notice may not be issued in lieu of a citation if the violations are serious, repeated, willful, or arise from a failure to abate.

[continue with remainder of section which addresses civil penalty and the 6 month statute of limitations, etc.]
Amend Labor Code § 6400 to read as follows:

§ 6400. Employers Shall Furnish Safe Employment

Every employer shall furnish employment and a place of employment which that are safe and healthful for the employees therein. “Employer” includes, but is not limited to, a person in a multi-employer place of employment who, with respect to any other employee at the place of employment, does any of the following:

(a) Employs the exposed employee.

(b) Creates the hazard.

(c) Is responsible, by contract or through practice, for safety and health conditions.

(d) Is responsible for correcting the hazard.
Amend Labor Code § 6427 as follows:

§ 6427. Nonserious Safety Violations – Penalty

Any employer corporation or limited liability company, and every employer who creates a hazard, controls the work or the premises, or is responsible for correction of a hazard who violates any occupational safety or health standard, order, or special order, or any provision of this division or of Section 25910 of the Health and Safety Code, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to seven thousand dollars ($7,000) for each violation.

Amend § 6428 of the Labor Code as follows:

§ 6428. Serious Safety Violations – Penalty

Any employer corporation or limited liability company, and every employer who creates a hazard, controls the work or the premises, or is responsible for correction of a hazard who violates any occupational safety or health standard, order, or special order, or any provision of this division or of Section 25910 of the Health and Safety Code, if that violation is a serious violation, or Section 6325 of the Labor Code shall be assessed a civil penalty of up to twenty-five thousand dollars ($25,000) or seven thousand dollars ($7,000) for each violation. Employers who do not have an operative injury prevention program shall receive no adjustment for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.

Amend Labor Code § 6429 as follows:

§ 6429. Willful, Repeated Violations – Penalty

(a) Any employer corporation or limited liability company, and every employer who creates a hazard, controls the work or the premises, or is responsible for correction of a hazard who willfully or repeatedly violates any occupational safety or health standard, order, or special order, or any provision of this division or of Section 25910 of the Health and Safety Code, may be assessed a civil penalty of not more than seventy thousand dollars ($70,000) for each violation, but in no case less than twenty-five thousand dollars ($25,000) or five thousand dollars ($5,000) for each willful violation.
(b) Any corporation or limited liability company, and every employer who creates a hazard, controls the work or the premises, or is responsible for correction of the hazard, who repeatedly violates any occupational safety or health standard, order, or special order, or any provision of this division or of Section 25910 of the Health and Safety Code, shall not receive any adjustment of a penalty assessed pursuant to this section on the basis of the regulations enacted to subdivision (c) of Section 6319 pertaining to the good faith of the employer or the history of previous violations of the employer.

(c) Any past violation by a corporation, limited liability company or by any employer who creates a hazard, controls the work or the premises, or is responsible for correction of the hazard, occurring anywhere within the state within the previous five years of any occupational safety or health standard, order, or special order, or any provision of this division or of Section 25910 of the Health and Safety Code, shall be used to establish whether a current violation is a repeat violation, and shall constitute evidence of willfulness for purposes of this section.

(d) The division shall preserve and maintain records of its investigations and inspections and citations for a period of not less than seven years.

Amend Labor Code § 6430 as follows:

§ 6430. Failure to Correct Violations Within Permitted Time – Penalty

(a) Any employer corporation or limited liability company, and every employer who creates a hazard, controls the work or the premises, or is responsible for correction of a hazard who fails to correct a violation of any occupational safety or health standard, order or special order, or any provision of this division or of Section 25910 of the Health and Safety Code, within the period permitted for its correction shall be assessed a civil penalty of not more than seven twenty-five thousand dollars ($7,000) ($25,000) for each day during which the failure or violation continues.

(b) Notwithstanding subdivision (a), for any employer who submits a signed statement affirming compliance with the abatement terms pursuant to Section 6320, and is found upon a reinspection not to have abated the violation, any adjustment to the civil penalty based on abatement shall be rescinded and the additional penalty assessed for failure to abate shall not be adjusted for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.
(c) Notwithstanding subdivision (a), any corporation or limited liability company, and every employer who creates a hazard, controls the work or the premises, or is responsible for correction of a hazard, who submits a signed statement affirming compliance with the abatement terms pursuant to subdivision (b) of Section 6320, and is found not to have abated the violation, is guilty of a public offense punishable by imprisonment in the county jail for a term not exceeding one year, or by a fine not exceeding one hundred thousand dollars ($100,000), or by both that fine and imprisonment; or by imprisonment in the state prison for 16 months, two, or three years, or by a fine not less than fifty thousand dollars ($50,000) but not exceeding two hundred fifty thousand dollars ($250,000), or by both that fine and imprisonment; and in either case, if the defendant is a corporation or a limited liability company the fine shall be not less than one hundred thousand dollars ($100,000) but not exceed one million dollars ($1,000,000).

Repeal Labor Code § 6434 as follows:

§ 6434. Governmental Entities Exempt From Civil Penalties

The civil penalties provided for in this chapter shall not be assessed against employers that are governmental entities.

Amend Labor Code § 6435 as follows:

§ 6435. Chapter 6 Violations – Civil Penalty

(a) Any employer corporation or limited liability company, and every employer who creates a hazard, controls the work or the premises, or is responsible for correction of a hazard who violates any of the requirements of Chapter 6 (commencing with Section 6500) of this part shall be assessed a civil penalty under the appropriate provisions of Sections 6427 to 6430, inclusive.
Amend Labor Code § 6423 as follows:

§ 6423. Misdemeanor Violations

Except where another penalty is specifically provided, every employer, and every officer, management official, or supervisor Any corporation, limited liability company, or person having direction, management, control, or custody of any employment, place of employment; or of any other employee, who does any of the following shall be guilty of a misdemeanor:

(a) Knowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in, or authorized by, this part the violation of which is deemed to be a serious violation pursuant to Section 6432.

(b) Repeatedly violates any standard, order or special order, or provision of this division, or of any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to employees.

(c) Fails or refuses to comply, after notification and expiration of any abatement period, with any such standard, order, or special order, or any provision of this division, or of any part thereof, which failure or refusal creates a real and apparent hazard to employees.

(d) Directly or indirectly, knowingly induces another to do any of the acts in subdivisions (a), (b), or (c).

Any violation of the provisions of this section is punishable by imprisonment in the county jail not exceeding six months for a term not exceeding one year, or by a fine not exceeding five thousand dollars ($5,000) but may not exceed one million dollars ($1,000,000).

Add Labor Code § 6424 as follows:

§ 6424. Words and Phrases.

For the purposes of construing this chapter, the following rules of construction apply:

(a) To the extent that a word or term of this chapter is defined in Section 7 of the Penal Code, the definitions of Section 7 of the Penal Code govern the interpretation of that word or term.

(b) In addition to the definition of “negligence” in Section 7 of the Penal Code, any act or failure to act that is inconsistent with any standard, special order, or any provision of this division or of Section 25910 of the Health and Safety Code, constitutes evidence of negligence.
An “employer” includes, but is not limited to, a person in a multi-employer place of employment who, with respect to any other employee at the place of employment, does any of the following:

1. Employs the exposed employee.
2. Creates the hazard.
3. Is responsible, by contract or through practice, for safety and health conditions.
4. Is responsible for correcting the hazard.

Amend Labor Code § 6425 as follows:

§ 6425. Willful Violations Causing Death, Injury – Penalty

(a) Any employer, and every employee Every corporation, limited liability company, or person having direction, management, control, or custody of any employment, place of employment; or of any other employee, who willfully violates any occupational safety or health standard, order, or special order, or any provision of this division or of Section 25910 of the Health and Safety Code, and that violation caused death to any employee, or caused permanent or prolonged impairment of the body of any employee shall, upon conviction, be punished by a fine of not more than seventh thousand dollars ($70,000), by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of the person, punishment shall be by a fine not to exceed seventy thousand dollars ($70,000), but in no case less than thirty-five thousand dollars ($35,000), by imprisonment for not more than one year, or by both. Nothing in this section shall be guilty of a public offense punishable by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding two hundred fifty thousand dollars ($250,000), or by both that imprisonment and fine; or by imprisonment in the state prison for 16 months, or two or three years, or by a fine of not less than two hundred fifty thousand dollars ($250,000) but not exceeding one million dollars ($1,000,000), or by both that imprisonment and fine; and in either case, if the defendant is a corporation or a limited liability company, the fine shall not be less than five hundred thousand dollars ($500,000) but may not exceed five million dollars ($5,000,000).

(b) If the conviction is for a violation committed after a first conviction of the person or corporation for any crime involving a violation of occupational safety and health provisions, punishment shall be by imprisonment in the state prison for two, three or four years, or by a fine no less than five hundred thousand dollars ($500,000) but not exceeding five million dollars ($5,000,000), or by both that fine and imprisonment, but if the defendant is a corporation or a limited liability company, the fine shall not be less than one million dollars ($1,000,000) but may not exceed ten million dollars ($10,000,000).

(c) This section does not prohibit a prosecution under Section 192 of the Penal Code.
Amend § 6432 of the Labor Code as follows:

§ 6432. Serious Violations -- Defined
   (a) As used in this part, a “serious violation” shall be deemed to exist in a place of employment if there any of the following conditions exist:
      (I) There is a substantial probability that death or serious physical harm could result from a serious violation, including, but not limited to, any of the following circumstances:
         (A) An exposure exceeding an established permissible exposure limit or a condition which exists, or from
         (B) The existence of an unsafe or unhealthful condition.
         (C) The existence of one or more practices, means, methods, operations, or processes which have been adopted or are in use, in the place of employment unless
      (2) The violation results in occupational injuries or illnesses that are indicative of a condition that may result in serious physical harm.
   (b) Notwithstanding subdivision (a), a serious violation shall not be deemed to exist if unless the employer can demonstrate that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.
   (b c) As used in this section, “substantial probability” refers not to the probability that an accident or exposure will occur as a result of the violation, but rather to the probability that death or serious physical harm will result assuming an accident or exposure occurs as a result of the violation. A substantial probability of serious injury also shall exist if any single serious injury has been caused by the violation.
Amend Labor Code § 6323 as follows:

§ 6323. Injunction Restraining Use of Hazardous Machinery, Equipment

If the condition of any employment, including the inadequacy of any employee training, or place of employment or the operation of any machine, device, apparatus, or equipment or process, constitutes a serious menace to the lives or safety of persons about it, the division, the district attorney of the county in which such acts or practices occur, occurred, or will occur, or the Attorney General, may apply to the superior court of the county in which such the place of employment or exposed employee, machine, device, apparatus, or equipment is situated, for an injunction restraining the use or operation thereof until such condition is corrected or order enjoining such condition or operation, or for an order directing compliance. Upon a showing that such practices have occurred, are occurring, or are about to occur, a permanent or temporary injunction, restraining order, or other order may be granted. Nothing in this section shall prohibit a private right of action by any worker or his or her representative who may be affected by these conditions.

Amend Labor Code § 6324 as follows:

§ 6324. Application for Restraining Order, Affidavit -- Sufficient Showing.

An application to the superior court for an injunction shall be accompanied by an affidavit showing that such the condition of any employment, or a place of employment, machine, device, apparatus, or equipment, or process is being operated in violation of a health or safety order or standard, or in violation of Section 25910 of the Health and Safety Code, and that such the condition, use or operation constitutes a menace to the life or health or safety of any person employed thereabout, or is likely to cause death, serious injury or illness, or serious exposure to an employee. The affidavit shall be and accompanied by a copy of the order or standard applicable thereto. The application and affidavit are is a sufficient prima facie showing to warrant, in the discretion of the court, the immediate granting of a temporary restraining order. No bond shall be required from the division or any local or state prosecutor as a prerequisite to the granting of any restraining order.

Amend Labor Code § 6308 as follows:

Labor Code § 6308. Division Enforcement of Safety, Health Standards

The division, in enforcing this division, occupational safety and health standards and, orders, and special orders, the division may do any of the following:

(a) Declare and prescribe what the safety devices, safeguards, or other means or methods of protection that are well adapted to render the employees of employment and place of employment safe as required by law or lawful order.

(b) Enforce Section 25910 of the Health and Safety Code and standards and orders adopted by the standards board pursuant to Chapter 6 (commencing with Section 140) of
Division 1 of the Labor Code, for the installation, use, maintenance, and operation of reasonable uniform safety devices, safeguards, and other means or methods and lawful standards or special orders relative to the protection of the life and safety of employees in employments and places of employment.

(c) Require the performance of any other act which is reasonably necessary for the protection of the life and safety of the employees in employments and places of employment reasonably demands.

An employer may request a hearing on a special order or action ordered pursuant to this section, at which the employer, owner, or any other person may appear. The appeals board shall conduct the hearing at the earliest possible time.

All orders, rules, regulations, findings, and decisions of the division made or entered under this part, except special orders and action orders, may be reviewed by the Supreme Court and the courts of appeal as may be provided by law.

Nothing in this section shall prohibit a private right of action by any worker or his or her representative who may be affected by these conditions.
Amend Labor Code § 6325 as follows:

§ 6325. Hazardous Place of Employment, Machine --- Prohibition of Use

When If, in the opinion of the division, a place of employment, machine, device, apparatus, or equipment, or any part thereof, is in a dangerous condition, or if a machine, device, apparatus or piece of equipment is not properly guarded or is dangerously placed so as to constitute an imminent hazard to employees, or is likely to cause death, serious injury or illness, or serious exposure to an employee, entry therein, or the use thereof, as the case may be, shall be prohibited by the division, and a conspicuous notice to that effect shall be attached thereto posted thereon. Such The prohibition of use shall be limited to the immediate area in which the imminent hazard or condition exists, and the division shall not prohibit any entry in or use of a place of employment, machine, device, apparatus, or equipment, or any part thereof, which is outside such the area of imminent hazard or condition. Such The notice shall not only may be removed except by an authorized representative of the division, nor until if the place of employment, machine, device, apparatus, or equipment is made safe and the required safeguards or safety appliances or devices are provided. This section shall does not prevent the entry or use with the division's knowledge and permission for the sole purpose of eliminating the dangerous conditions.
APPENDIX K
Workers’ Compensation

Labor Code § 132a is amended to read:

§ 132a. Discrimination Against Injured Workers – Misdemeanor

It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment.

(1) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and the employee’s compensation shall be increased by one-half, but in no event more than one hundred ten thousand dollars ($100,000), together with attorneys’ fees, costs and expenses not in excess to two hundred fifty dollars ($250). Any such employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(2) Any insurer that advises, directs, or threatens an insured under penalty of cancellation or a raise in premium or for any other reason, to discharge an employee because he or she filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and subject to the increased compensation and costs provided in paragraph (1).

(3) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because the employee testified or made known his or her intentions to testify in another employee’s case before the appeals board, is guilty of a misdemeanor, and subject to the increased compensation and costs provided in paragraph (1). Any such employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(4) Any insurer that advises, directs, or threatens an insured employer under penalty of cancellation or a raise in premium or for any other reason, to discharge or in any manner discriminate against an employee because the employee testified or made known his or her intention to testify in another employee’s case before the appeals board, is guilty of a misdemeanor and subject to the increased compensation and costs provided in paragraph (1).
Proceedings for increased compensation as provided in paragraph (1), or for reinstatement and reimbursement for lost wages and work benefits, are to be instituted by filing an appropriate petition with the appeals board, but these proceedings may not be commenced more than one year from the discriminatory act or date of termination of the employee. The appeals board is vested with full power, authority, and jurisdiction to try and determine finally all matters specified in this section subject only to judicial review, except that the appeals board shall have no jurisdiction to try and determine a misdemeanor charge. The appeals board may refer and any worker may complain of suspected violations of the criminal misdemeanor provisions of this section to the Division of Labor Standards Enforcement, or directly to the office of the public prosecutor.
Amend Labor Code § 3602(b) as follows:

§ 3602. Concurrence of Conditions of Compensation

(b) An employee, or his or her dependents in the event of his or her death, may bring an action at law for damages against the employer, as if this division did not apply, in the following instances:

1. Where a cause of the employee’s injury or death is proximately caused by a willful:
   (A) Physical assault by the employer.
   (B) Failure or refusal of the employer to conduct medical, occupational, or environmental monitoring as required by any federal, state, or local law, or by administrative regulation, standard, or order, enacted or issued pursuant to any of those laws.
   (C) Failure or refusal of the employer to conduct medical, occupational, or environmental monitoring when a reasonable person having the employer’s knowledge of the risk would have instituted the monitoring.
   (D) Concealment or misrepresentation by the employer of the nature or extent of a health or safety hazard posed by the employee’s work environment or a work-related injury.
   (E) Failure or refusal of the employer to correct an unsafe or unhealthful condition, after oral or written notification by any person that an unsafe or unhealthful condition exists which condition may be a violation of any federal, state, or local law, or of any administrative regulation, standard, or order, enacted or issued pursuant to any of those laws.

2. Where the employee’s injury is aggravated by the employer’s fraudulent concealment of the existence or nature or extent of a health or safety hazard posed by the employee’s work environment or by an of the injury or exposure and its connection with the employment, in which case the employer’s liability shall be limited to those damages proximately legally caused by the aggravation. The burden of proof respecting apportionment of damages between the injury and any subsequent aggravation thereof is upon the employer.

3. Where a cause of the employee’s injury or death is proximately caused by a defective product manufactured by the employer and sold, leased, or otherwise transferred for valuable consideration to an independent third person, and that product is thereafter provided for the employee’s use by a third person.
Add Code of Civil Procedure § 340.8 as follows:

§ 340.8. Time for Commencement of Action Based on Exposure to Toxic Substances or Cumulative Traumas When Injury or Illness Manifestation is Delayed

(a) In any civil action for injury or illness based on exposure to toxic substances or cumulative trauma, the manifestation of which is delayed, the time for the commencement of the action shall be the later of the following:

(1) Within one year after the date the plaintiff first suffered disability.

(2) Within one year after the date the plaintiff either knew, or through the exercise of reasonable diligence should have known, that such disability was caused or contributed to by the exposure.

(b) “Disability” as used in subdivision (a) means the loss of time from work as a result of such manifestation of injury or illness which precludes the performance of the employee’s regular occupation.

(c) In an action for the wrongful death of any plaintiff’s decedent, based upon such manifestation of injury or illness, the time for commencement of an action shall be the later of the following:

(1) Within one year from the date of the death of the plaintiff’s decedent.

(2) Within one year from the date the plaintiff first knew, or through the exercise of reasonable diligence should have known, that the death was so caused.

(d) This section applies to all causes of action accruing prior to the effective date of this section which have not otherwise been adjudicated.
APPENDIX L-3
Worker Right to Act despite Lack of Personal Knowledge regarding What Caused the Injury or Illness

Amend Code of Civil Procedure § 437c(o) as follows:

§ 437c (o) Summary Judgment – Action Without Merit or Defense

(o) For purposes of motions for summary judgment and summary adjudication:

(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. In no event shall the burden shift to the defendant to show that a triable issue of one or more material facts exists as to a defense unless the plaintiff or cross-complainant first establishes the absence of material evidence, direct or circumstantial, in support of one or more elements of the defense. The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

(2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. In no event shall the burden shift to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to a cause of action unless the defendant or cross-defendant first establishes the absence of material evidence, direct or circumstantial, in support of one or more elements of the cause of action. The plaintiff or cross-complainant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.