



# "The Public Interest"

## Health/Safety and Environmental Issues

the PASMA way to shared knowledge

Public Agency Safety Management Association

May 31, 2015

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Reduction T8CCR336(k)** 1

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The unfortunate reality about playing a numbers game is the odds attached to that game. Examination of citation data suggests that when a CSHO issues a citation regarding a hazard, particularly a hazard controlled by a code that contains multiple subsections, the employer will typically receive more than one citation regarding that particular hazard, each of which will carry separate penalties. Fortunately, **T8CCR336(k)** contains provisions for a "discretionary penalty reduction" for just such a case. I highlight this option because this information could be deployed as "trade negotiations" throughout the course of the inspection rather than waiting for either the "Informal Conference" or the "Appeals" process making abatement more cost-effective and most certainly more efficient. Enjoy the read. (Ed.)

Reference Cal/OSHA Policy and Procedure Manual

<https://www.dir.ca.gov/DOSHPol/P&PC-10.htm>

"Discretionary Penalty Reduction for Multiple Violations Pertaining to a Single Hazard".

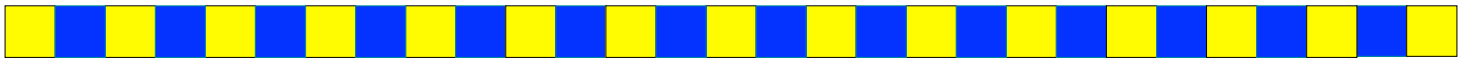
Under certain circumstances 8 CCR Sec. 336(k) permits the Division to reduce penalties for multiple violations based on a single hazard. Generally, the purpose of this section is to permit reduction of penalties based on the same hazard on a case-by-case basis, where the amount of the cumulative total would be unfair given the magnitude of the violations, or where a lower amount would be sufficient to further compliance with the Occupational Safety and Health Act. This penalty reduction does not apply to the following:

1. Violations which have resulted in death or serious injury, or illness.
2. Serious carcinogen violations.
3. All other violations which have resulted in serious exposure.
4. Willful violations.
5. Any employer who does not have an operative IIPP at the time of the inspection.

**NOTE:** A reduction can be applied to repeat or failure-to-abate penalties which are not disqualified by Items (1) through (5), but only under extraordinary circumstances and only with the written approval of the Deputy Chief for Field Operations.

To apply the discretionary reduction, determine which violations are based on a single hazard. The violation bearing the highest penalty shall not be reduced. Penalties for the remaining violations based on the same hazard may be reduced as follows: For serious violations not involving a serious exposure, the penalty may be reduced up to 90%.

For regulatory and general violations, the civil penalty may be reduced up to 100%, except where a minimum civil penalty is mandated by law.



## Outcome measures for "What Is Effective" in Injury and Illness Prevention (Ed.)

### **"EFFECTIVENESS" DETERMINATION**

<http://www.dir.ca.gov/DOSHPol/P&PC-45A.htm>

The Title 8 Cal. Code of Regulations (CCR) contains words such as "effective" and with rare exception; do not provide "examples" of the "evidence" required for compliance to that definition making compliance problematic. The IIPP Code language itself contains the term "effective" and in this case the Division's P & P does have some examples. It is my suggestion that these examples be reviewed in order to preclude any interpretive missteps on the part of the CSHO during their review process of your program. It may preclude the issuance of a citation.

"The Division's evaluation of the effectiveness of an employer's IIP Program includes, but is not limited to, a determination of the effectiveness of the following elements:

**Responsibility** -- Whether the employer's written IIP Program provides the name and/or job title of the person or persons with the authority and the responsibility for implementing the program. If job title alone is used to identify the responsible person(s), a method must be available, e.g., a list of persons by job titles, by which employees can identify the name of the individual whose title is designated as the person(s) responsible for the IIP Program.

**Sample effectiveness measure:** Are employees actually aware of who the person is with the authority and responsibility for their IIP Program and can they access the person if necessary?

**Compliance** -- Whether a system for ensuring that employees comply with safe and healthful work practices is set forth in the employer's written IIP Program.

**Sample effectiveness measure:** Have employees been recognized for performing safe and healthful work practices, disciplined for performing unsafe or unhealthful work practices, or offered training or retraining programs to ensure compliance with safe and healthful work practices?

**Communication** -- Whether a system for communicating with employees in a form readily understandable by all affected employees about safety and health matters, e.g., meetings, training programs, posting, written communications, an anonymous notification system, is set forth in the employer's written IIP Program, and whether employees are encouraged to inform their employer about hazards at the worksite without fear of reprisal.

**Sample effectiveness measure:** Are employees actually aware of methods to communicate with their employer about health and safety matters, and have they utilized the available communication methods?

**Hazard Assessment** -- Whether procedures for identifying and evaluating workplace hazards, such as scheduled periodic inspections performed by a competent observer, are set forth in the employer's written IIP Program, and are performed at the following times: (a) when the IIP Program is first established; (b) when new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and/or health hazard; and (c) whenever the employer is made aware of a new or previously unrecognized hazard.

**Sample effectiveness measure:** Does implementation of the procedures chosen by the employer result in a **comprehensive** evaluation of the hazards present at the workplace?

## "Effectiveness Determination - Cont'd"

**Accident/Exposure Investigation** -- whether a procedure to investigate the occurrence of occupational injuries or illnesses is set forth in the employer's written IIP Program.

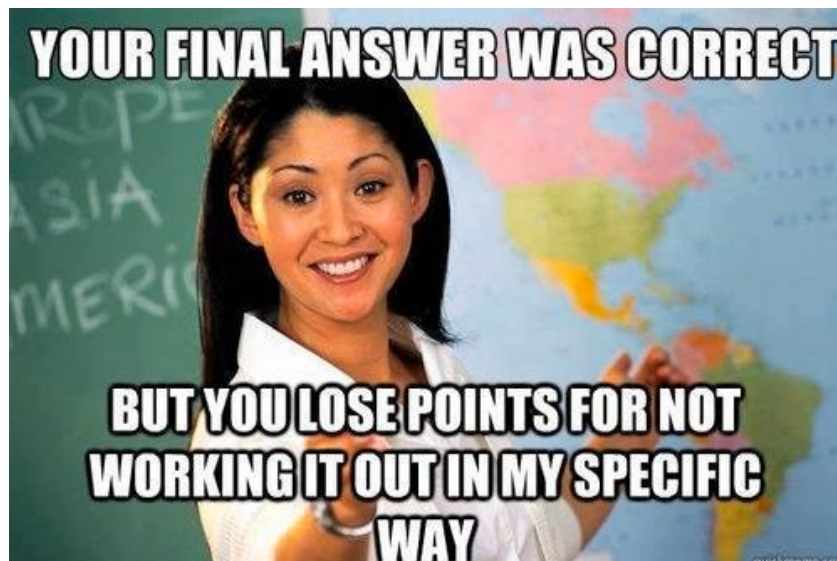
**Sample effectiveness measure:** Does implementation of the investigational procedures chosen by the employer result in a determination of the cause(s) of the occupational injury or illness?

**Hazard Correction** -- Whether methods and/or procedures for correcting unsafe or unhealthful work conditions, work practices and procedures, in a timely manner based on the severity of the hazard, are set forth in the employer's written IIP Program. Specific abatement methods must be included in the employer's IIP Program and must address: (a) when unsafe or unhealthful conditions, work practices or procedures are observed or discovered; and (b) when an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, all exposed personnel must be removed from the area except those necessary to correct the existing condition. Employees necessary to correct the condition must be provided the necessary safeguards.

**Sample effectiveness measure:** Does implementation of the methods and/or procedures chosen by the employer to correct a workplace hazard achieve abatement of the hazard?

**Training and Instruction** -- Whether an effective training program designed to instruct employees in general safe work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment is set forth in the employer's written IIP Program and whether the required training is provided: (a) when the Program is first established; (b) to all new employees; (c) to all employees given new job assignments for which training has not previously been received; (d) whenever new substances, processes, procedures or equipment are introduced into the workplace and represent a new hazard; (e) whenever the employer is made aware of a new or previously unrecognized workplace hazard; and (f) for supervisors to familiarize them with the safety and health hazards to which employees under their immediate direction and control may be exposed and how to communicate information about those hazards effectively.

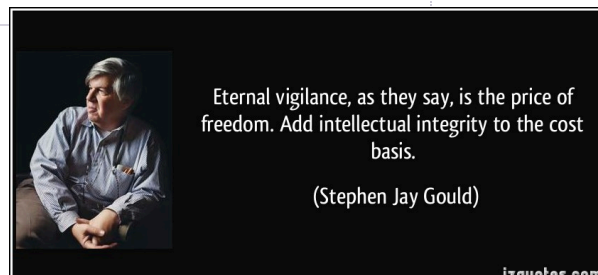
**Sample effectiveness measure:** Does training result in an increase in a worker's understanding of workplace hazards, and an improvement in a worker's performance of safe and healthy work practices?



### Keeping up with Proposed Regulations

Protecting and conserving organizational assets requires monitoring the proposed standards. Although the Advisory Council has more listed on the website, I've included those that might have impact on the majority of our Public Sector Employers. Please review the following...it's a window into the thinking of our Regulators. (Ed.) [http://www.dir.ca.gov/dosh/DoshReg/advisory\\_committee.html](http://www.dir.ca.gov/dosh/DoshReg/advisory_committee.html)

8 CCR Section	Subject	Dates & locations	Staff contact
Elevator Safety Orders	<b>Possible Amendments to Elevator Safety Orders</b> <a href="#">Meeting announcements and documents</a>	TBA	<a href="#">Debra Tudor</a> 408-362-2120
New Section	<b>Occupational Exposure to Antineoplastic Drugs</b> <a href="#">Meeting announcements and documents</a>	TBA	<a href="#">Grace Delizo</a> 619-278-3770 <a href="#">Bob Nakamura</a> 510-286-7005
New Section	<b>Workplace Violence in Healthcare</b> <a href="#">Meeting announcements and documents</a>	TBA	<a href="#">Bob Nakamura</a> 510-286-7005
	<b>Housekeeping in the Hotel and Hospitality Industry</b> <a href="#">Meeting announcements and documents</a>	TBA	<a href="#">Amalia Neidhardt</a> <a href="#">Steve Smith</a> 916-574-2993
	<b>Cal/OSHA Ad Hoc Advisory Committee on Timely Response to Complaints</b> <a href="#">Meeting announcements and documents</a>	TBA	<a href="#">Cora Gherga</a> 510-286-7000
334(d)	<b>Repeat Violations</b> <a href="#">Meeting announcements and documents</a>	TBA	<a href="#">Chris Grossgart</a> 415-557-0300
334, 335, 336 & 342	<b>Cal/OSHA Penalty Structure and Reporting Requirements</b> <a href="#">Meeting announcements and documents</a>	TBA	<a href="#">Amy Martin</a> 510-286-7348
336.10, 336.11	<b>Multi-Employer Worksites</b> <a href="#">Meeting announcements and documents</a>	TBA	<a href="#">Amy Martin</a> 510-286-7348
3400, 1512	<b>Medical services and first aid</b> <a href="#">Meeting announcements and documents</a>	TBA	<a href="#">Mike Horowitz</a> 510-286-7009
5198 and 1532.1	<b>Occupational Lead Exposure</b> <a href="#">Meeting announcements and documents</a>	<b>May 28, 2015</b> <b>10:00 am to 3:00 pm</b> Harris State Building	<a href="#">Peter Scholz</a> 510-622-2913



Eternal vigilance, as they say, is the price of freedom. Add intellectual integrity to the cost basis.

(Stephen Jay Gould)