



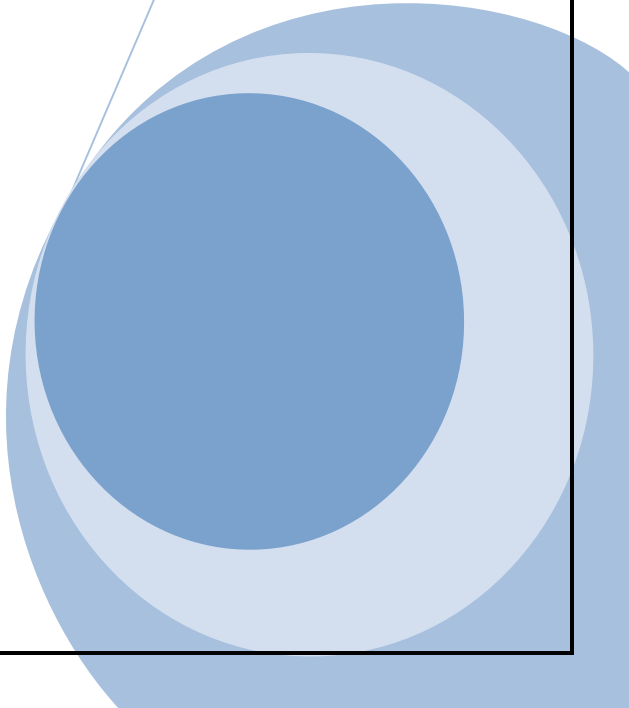
RECEIVED
May 20, 2015
*Commission on
State Mandates*

The Legislative Analyst of SB-863

Principles of Eliminating Workers Compensation & Disability
Case Claims

The Safety Pundit provides a better understanding of
(Contributory Negligence) known to be the cause work-related
accidents, injury, illness or death.

5/19/2015



Written Narrative

The Integrated Benefits Institute-(IBI) President Thomas Parry “said” “There are two fundamental issues that are tightly coupled through health’s impact on productivity & profit which shapes our standards of living”.

1: Contributory Negligence has triggered costly work-related casualties which generate workers compensation & disability case claims annually manufacturing extensive liabilities throughout the U.S, however governing agencies & employers continuously use venerable outdated safety practices that have been passed down over the years operating on the effects of costly work-related accident, illness, injuries & death.

2: Major U.S. employers & business coalitions, agree that poor health alone costs the U.S. economy \$576 billion per year. According to the 2014 (AFL-CIO death of the job report) of that amount 39% or \$227 billion is from lost productivity & employee “**absenteeism**” due to illness or what researchers called “**presenteeism**”. It’s when employees report to work but illness keeps them from performing at their best.

The two reasons above clarify the basis of everyones worries about the economy & the rising cost of health care. Advising politicians, policymakers, economist & major business coalition’s to equally support investing in evidence based medical evaluations eliminating work-related casualties with cost exceeding \$250 billion dollars per year in the U.S.

Benefiting government agencies, major corporations & employees alike reducing the remaining \$576 billion tallied in the cost of wage replacement. \$117 billion from Absences due to illness & workers compensation cost from both short & long-term disability. Meanwhile, another \$232 billion from health costs, medical treatment & pharmacy related issues due in part to chronic conditions like diabetes, heart disease or depression & stress which can all lead to a prolonged illness & poor health.

The estimate is drawn using 2011-2014 data from the U.S. Bureau of Labor Statistics that shows 128.3 million people in the U.S. workforce & their total wages & benefits of more than \$7 Trillion dollars; that coincide with BLS “benchmarking data based on 60,000 U.S employers.”



The Initial Statement of Reasons describes the purpose, rationales & necessity of the new Occupational Health & Safety Pundits’ - Safety Management System. (**OHSP-SMS**) Legislative Analyst of (SB-863) Chapter 363: Introduced by Senator De León (Principal coauthor: Assembly Member Solorio): Approved by Governor Edmund G Brown Jr & Filed with the Secretary of State as of 09/19/2012.

Providing a higher level of safety management services which are not currently available in the public or private sectors. Designed to eliminate Contributory Negligence known to be the cause of Work-Related Accidents, Incidents & Illness or Death. Reducing costly workers compensation & disability case claims 65% or six hundred fifty million dollars \$650,000,000 per year in California.

Pursuant to SB-863 Pg 2 Paragraph (3) establishing within the Department of Industrial Relations a turn-to-work program. To be funded by Non-General Fund revenues of one hundred twenty million dollars \$120,000,000 & would annually appropriate from the Workers’ Compensation Administration Revolving Fund which imposes a reimbursement cost of \$120 Million per year.

Declaration Supporting Written Narrative

The Safety Pundit's – Safety Management System is of such a special & unique nature that it must be contracted pursuant to Article 4 standards concerning the use of personal services contracts Section (19130) of the Government Code paragraph (3) of subdivision (b). & Pursuant to section (1) of (SB-863) line (h) describing the need for Independent, unbiased findings & determinations that requires this new state function to be contracted pursuant to paragraph (2) subdivision (b) Section 19130 of the Government Code.

Returning to the fellow-servant rule of law in the 14th Amendment concerning departures in the Lochner, Coppage & Adkins cases. This philosophy neutrality allocates the responsibility of health & safety equally among employers & employees as peers.

Considering site specific safety agreements using accident calamity control analyst. Surveying jobsites, processes & products systems for safety compliance; applying the four unique systematic review components below.

1: (The Universal Standard of Safety Protocols–USSP) is an innovative & dynamic safety protocol & guideline based on improving the overall health & safety of employees & their families using evidence based medical evaluations & evidences based solutions increasing productivity & profitability.

2: (The Management of Hazardous Hierarchies–MHH) is a controlled management system used in industry to minimize or eliminate exposure to hazardous environments. The analysis identifies & corrects predictable & preventable hazards conditions.

3: (Detailed Commentary Verities–DCV) are true statements based on known facts or evidence based solutions & evidence based conclusions including the times, dates & data source.

4: (J-peg Data) is a digital photograph format displaying the hazardous behavioral habits or conditions Example below.



The Quality Assurance Specialist conducts daily audits of reports assuring compliance with Federal & State standards regarding laws, codes & regulations resolving major & minor evaluation issues with a corrective action plan. Assisting in the development of USSP safety protocols this position has no supervisory responsibilities & serves as a coach educating safety professionals.

Highlighting the importance of a dynamic safety culture paradoxically making work even safer than being at home. Exceeding existing Federal & State requirements & determinations of medical necessity guiding clientele too nix injury levels, eliminating work-related injuries throughout the U.S.

The safety consultants opinion is subject to a material conflict of interest that is in violation of Section 139.5. of the labor code (4) If the determination was the result of bias on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability. (5) The determination must not be a result that is plainly erroneous express or implied finding of fact. Provided that the mistake of fact is a matter of ordinary knowledge based on the information submitted for review & not a matter that is subject to expert opinion.

The Impairment Liaison Officer – ILO

Institutes a return to work program training injured employees using the cost saving action of vocational rehabilitation. Enabling employees with functional, psychological, developmental or cognitive & emotional impairments or health conditions to overcome barriers & maintaining or return to other useful employment or occupation. Reducing civil injury cases with a philosophy of preemptive casualty controls or utilization review.

Pursuant to California Code of Regulations, Title 8 section 9797.20 et seq Labor Code section 5307.27 these policies & procedures, describing the utilization process, shall be filed with the administrative director & shall be disclosed by the employer to employees physician & the general public upon request.

The ILO's management functions involve acting on the employees behalf as a agent in the utilization review & concurrently refines occupational health & safety issues intergrating evidence based medical evaluations. As defined in Section 3209.3, of the labor code prior to or parallel with the provision of evidence based medical therapy services.

Pursuant to 9792.9 Utilization Review Standards section 4600 (b) every employer shall establish the utilization review process in compliance with this section, either directly or through the insurance & entity with which an employer or insurer contracts for these services. (c) Each utilization review process shall be governed by written policies & procedures.

The OHSP-SMS policies & procedures shall ensure that decisions based on the medical necessity to cure & relieve employees when using proposed evidence based medical evaluations. Remaining uniform & consistent with the utilization process & schedule of medical therapy.



Pursuant to SB-863 Page 2; paragraph (2) would impose a state mandated local program by creating a new crime as of 01/01/2015 12:00 A.M PST, & would provide that a violation of these provisions is a misdemeanor & would authorize civil penalties of up to \$15,000 for each offense. By creating a new crime, this bill would impose a state-mandated local program & that proper notification to the employee is not delayed.

As of 01/01/2013 SB-863 pg 6 would prohibit an employer from engaging in any conduct that delays medical review process the effect of delaying the independent review process or engaging in that conduct that fails to promptly comply with this section is a violation of state law in addition to any other fines or penalties.

Other remedies available to the administrative director & the employer shall be subject to an administrative penalty in an amount determined pursuant to regulations to be adopted by the administrative director, not to exceed five thousand dollars (\$5,000) per day.

The administrative penalties shall be paid to the Workers' Compensation Administration Revolving Fund. For purposes of this section, an employee may designate apparent, guardian, conservator, relative, or other designee of the employee as an agent to act on his or her behalf. A designation of an agent executed prior to the utilization review decision shall not be valid.

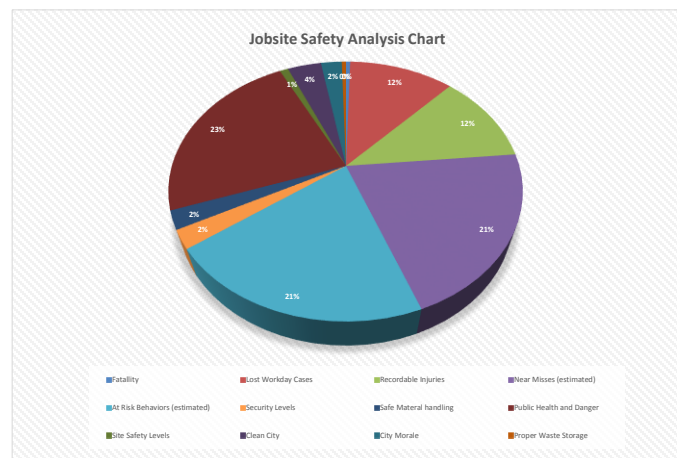
The Safety Management Officer (SMO)

Is a doctor, nurses or physician's assistant eliminating questionable claims of disability when alleged to be caused by a disabling physical injury arising during the course of employment while guaranteeing medical treatment as required by California Code Division 4 Workers Compensation & Insurance (commencing with Section 3200) of the Labor Code.

Working on site he or she shall apply first aid to injured employees reporting each incident & may suggest a mandatory visit to the employee's primary physician before returning to work & correcting hazardous conditions expeditiously. Injured personal must receive additional safety training before returning to work duties.

Snapping out of it making safety first & continuing the march toward **Code Green** conditions reducing injuries while lowering insurance liabilities & expanding health, safety & general welfare.

At the start shift each a Supervisor or Forman has a safety meeting with an active discussion of preventive safety or at risk behaviors & corrective action guide-lines. The SMO reviews each California Job Safety Analysis (Cal-JSA) which is signed by each employee three times daily.



Instituting safe jobsite protocols reducing injury conditions & promoting healthy jobsites that lower insurance liability & worker compensation & disability cases in California by 65% per year with proactive accident, incident & injury preventions & daily safety assessments.

Promoting safety awareness & health incentives; subsequently upon reaching 3 months injury free. Employees receives safety awareness prize & 90 days injury free pins or safety prize or gift cards, gas cards up from 25\$ - \$500, or PPE featuring safety equipment with company logos. 180 days without an incident the jobsite receives a quarterly safety lunch & meeting.

Safety prize winners promote safety awareness improving morale. In an emergency the SMO can transport an employee to superior medical facilities providing first aid & writing an incident report giving copies to emergency responders or treating physician having 24 hrs to report any accident to the ILO.

Pursuant to SB-863 section 1 pg 15 line 30 (d) The Occupational Safety & Health Fund is hereby created as a special account in the State Treasury. Moneys in the account may be expanded by the department, upon appropriation by the Legislature, for Support of the Division of Occupational Safety & Health, the Occupational & Health Appeals Bord, & the activies these entities perform as set forth in this division, & Division 5 (commencing with Section 6300).

Documentary Evidence

The Safety Triangle or Safety Pyramid states that reducing minor injuries begins with the large number at the bottom. Which leads to a proportionate reduction in severe injuries & deaths however the small number at the top is misleading. As statistics over the past 10 years have shown that minor injuries have steadily gone unreported & have not declined while the number of serious injuries & deaths have not changed but has increased over the years.

According to the Economic Policy Institute J. Paul Leigh a professor of Health Economics at UC Davis. "Workplace injuries & illness cost the U.S. over \$250 billion annually". The Bureau of Labor Statistics "states", "on average, there are 23,000 on-the-job injuries reported every day $365.242 = \$8,400,566$ Million dollars per day in the U.S." Approximately \$192 billion per year is a huge cost for the economy, employers, employees & there families.

The Safety Pundits' estimate of approximately 99,434 unreported injuries per year is generating over 150 calamities per day & as a result 5,000 work-related deaths per year costing employers & employees an additional $\$8,500,000 \times 365.242 = \$3,104,557,000$ or Three billion 104 million 557 thousand dollars per year.



"The Economic Burden of Occupational Injury & Illness in the United States." In a recent study published in the "Milbank Quarterly" As of January 3, 2013 at 3:16 P.M: by J. Paul Leigh estimates these costs to be roughly \$250-330 billion per year only counting Federal & State employees. Occupational injuries & illnesses are typically overlooked by contributors.

The amount above exceeds the overall national costs of all diseases, injuries & deaths of several other major diseases, including aids, ebola, cancer, diabetes & chronic obstructive pulmonary disease (COPD) for the same year.

An article in Forbes from contributor Bruce Japsen "States", "The institute represents some of the nation's biggest employers, including Caterpillar (CAT), Chevron (CVX) Google (GOOG), Microsoft (MSFT) & Wells Fargo (WFC) also representing municipalities, unions & universities".

As of May 06, 2015 the Safety Pundit brings attention to the BLS productivity & cost report advising politicians, who institute officials say have focused on the cost of health care but not the "impact" that health care has on productivity sinking 1.9% in the 1st quarter. Primarily focused on the "effects" or billing issues of workers compensation ignoring the cause of work-related incidence expanding unit labor cost by 5% in the 1st quarter.

The medical costs associated with occupational disease & injury are very large at \$ 67 billion, but are exceeded by the lost productivity costs at \$183 billion, which include current & future lost earnings, fringe benefits & home production (e.g., cooking, cleaning, rearing children & doing home repairs).

These costs do not in any way account for the pain & suffering caused by this heavy toll of injury & illness; glossing over the horror of many of the truly gruesome workplace injuries that occur daily, including suffocation in corn sloes, drowning in sewer pipes, electrocution & being ground or crushed by machinery, train derailment & natural gas pipeline explosions.

The Unsustainable Cost of Health Care

Dorcas R. Hardy is a Member of the Board (2002 – present) & a former Commissioner of SSA (1986 – 1989). She is currently President of DRHardy & Associates, a government relations & public policy firm serving a diverse portfolio of clients.

She “said”, “The previous efforts to address disability reform have made little progress”. In 1986, as Commissioner of SSA, she charged the Congressionally-Mandated Disability Advisory Council to study numerous issues including the role of functional analysis in evaluating disability claims, the development of new or additional criteria to determine claimants’ readiness for employment services, & the possibility of making improvements in incentives & services for beneficiaries to return to work.

The Social Security Advisory Board long-range projections are by nature difficult & carry a larger degree of uncertainty, the Congressional Budget Office (**CBO**) makes projections of total health 2 care expenditures over the next 75 years. Extrapolating the historical rate of health care spending growth relative to GDP growth into the future, however, produces projections that are growing 2% faster than GDP over 75 years, spending on health care will consume virtually the entirety of the national income.

For these reasons & more, it is essential that policymakers take action to restrain the rising cost of health care in ways that also lead to better quality of care. This health issue is at the very heart of the long-term economic security of the American public. It is urgent that action be taken & the time for action is now.

Injury Type	Instances	Direct Cost	Indirect Cost	Total Cost	Additional Sale (Indirect)	Additional Sale (Total)
Fracture	1	\$ 45,377	\$ 49,914	\$ 95,291	\$ 1,663,823	\$ 3,176,366

Total Estimated Cost \$ 3,176,366

The Safety Pundits’ Health Technology Assessment is a systematic evaluation of properties that effects & informs policymakers & improves the practice of health care “technology” in this sense including medical devices, pharmaceuticals, procedures, therapies, or systems in clinical terms.

The (HTA) serves to assess a product’s efficiency, effectiveness, & cost benefits assists employers in appraising the impact of occupational injuries & illnesses on their profitability. The indirect cost multiplier projects the amount of sales a company would need to generate to cover those costs using a profit margin & average costs of an injury or illness this type of information is important to patients, clinicians, health plans, hospitals, lawmakers & manufactures improving healthcare & decision making.

Comparative clinical effectiveness is used to decide whether insurance should cover a new technology & in what circumstances & how much to pay. Comparative tools have a potential to control cost by limiting the use of unnecessary, expensive or outdated procedures while improving health outcomes when evidence based medical data is widely disseminated. Producing comprehensive federal & state reductions of 65% terminating the high cost of health care in the U.S.

The Cost of Workplace injuries & illness

Direct Costs include workers' compensation payments, medical expenses & costs for legal services. In addition to the social costs of workplace injuries & illnesses which have a major impact on the employer's bottom line. Employers pay approximately \$1 billion per week for direct workers' compensation costs alone.

Indirect Costs include training, replacement employees, accident investigation & implementation of corrective measures & lost productivity, repairs of damaged equipment & property costs associated with lower employee morale & absenteeism.

The following resources provide background on the costs of workplace injuries & illnesses & how employers can estimate these costs at their workplaces. The State of California is not one of the NCCI States which covers approximately 1/3 of total workers compensation benefits paid out annually in the U.S.

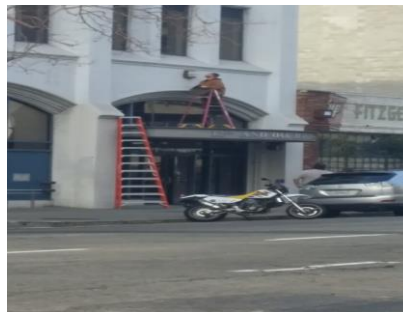
Estimates of Workers' Compensation Costs in NCCI States

- 36 States (AK, AL, AZ, AR, CO, CT, DC, FL, GA, HI, ID, IL, IA, KS, KY, LA, ME, MD, MS, MO, MT, NE, NV, NH, NM, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WV) report workers' compensation data for insured employers to the National Council on Compensation Insurance, Inc. (NCCI). On following charts, these are labeled as NCCI states.
- Several states maintain either exclusive state funds or have independent rating bureaus and do not report to NCCI.
- Self insured employers do not report to NCCI
- NCCI covers approximately 1/3 of total workers' compensation benefits paid out annually in the US

OSHA



04/10/2014 P.M.



04/28/2015 P.M.

The J-peg Data above reveals two examples contributory negligence generating 500 ubiquitous work-related safety violations & rampant at risk behavior. On the left in the city of Pittsburg & on the right the city of Oakland.

USSP (B). (0) Advocates the use of personal fall arrest & fall restraint systems above 6 ft please note that personal fall arrest system components are not used in the J-peg data above. Employees must use fall restraint systems conforming to the criteria either of body belts or body harnesses adhering to OHSA standard regulation 1926.502(d).

Private Industry Falls are the Most Expensive

A study by OSHA in (2012): shows that the average costs of falls including roofers, carpenters, painters & window washer are the most expensive. The employers pays an employees' workers' compensation claims on average \$31.93 per hour worked as of March 2014.

Pursuant to SB-863 pg 8 paragraph (16) Existing law authorizes the appeals board to receive as evidence & use as proof on any fact in dispute various reports & publications. This bill would add the report of vocational experts.

The U.S. Bureau of Labor Statistics reports wages & salaries averaged \$21.96 per hour & accounting for 68.8% of these costs; while benefits averaged \$9.97 & account for the remaining 31.2 %.



07/24/2014 12:25 P.M

07/29/2014 12:36 P.M

Employer Costs for Employee Compensation (ECEC), is a product of the National Compensation Survey which measures an employer costs for wages, salaries & employee benefits for nonfarm private, state & local government employees.

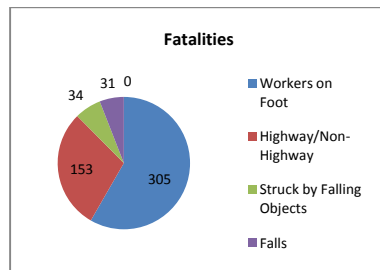
DCV: (b). (1) the total employer compensation costs for private industry workers average \$29.99 per hour worked in March 2014. Total employer compensation costs for state & local government employees averaged \$43.10 per hour worked as of May 12, 2015.

A total compensation costs for the **15 Combined & Metropolitan Statistical Areas (CSAs & MSAs)** metropolitan areas ranged from \$24.10 - \$45.93 per hour worked for the San Jose - San Francisco - Oakland, CA CSA, Included in this release for wages, salaries & benefit costs in the private industry worked in the Miami - Fort Lauderdale - Pompano Beach, FL MSA..

Transition Areas & Accidents

USSP (B) (1): Advocates educational training on traffic controls promoting health & safety reducing liability of Cities, Counties, Contractors, & Project Owners & requires all construction workers to properly use PPE & Barricades to protect the employees. An shall conform to Part VI of the Manual on Uniform Traffic Control Devices (1988) Edition, Revision 3. Supplementing OSHA regulations Sec 1926.6. it's the law in many states.

Construction workers have the highest percentage of side swipe & rear end accidents with over 40% more victims of accidents occurring in transition areas with more than **1000** Fatalities annually. 2-3% of all reported accidents occur in or around work zones, driver inattention & excessive speeds are the leading cause of casualty. The Pleasant Hill CA bridge project on Golf Club Road 94523 07/29/2014 11:53 A.M **Code Red**



The fundamental breakdown of safety communications & guidelines suggest inferior safety protocols & guidelines, requiring safety education incorporating the Cal-JSA report performing a daily safety meetings. A jobsite & first aid educational program will be installed with daily notations of any injuries.

The contractor will be asked to provide copies of it's safety guidelines demonstrating injury action procedures, to be made available within 48 hrs & reviewed by the SMO on site he or she will e-mail a PDF copy to the QAS. The truth is that lost workday cases, recordable injuries & near misses regularly manufacture wider casualty events each year. Advancing contributory negligence causing accidents & work-related afflictions, even fatality.

As set forth in the County of Los Angeles v State of California decision in (1987) 43 Cal.3d 46: which defines "**program**" as one that carries out governmental function of providing services to the public, or laws which implement state policy & impose a unique requirement on local governments & do not generally apply to all residents & entities in the state. Please note that Code Red may be only modified to Yellow or Green being subject to a safety inspections by the Safety Pundit.

CODE YELLOW

Pursuant to SB-863 Section (1) The Legislature finds & declares all the following: (a) That Section 4 of Article XIV of the California Constitution authorizes the creation of a workers' compensation system that includes adequate provision for the comfort, health, safety & general welfare of workers & their dependents to relieve them of the consequences of any work-related injury or death, irrespective of fault of any party & requires the administration of workers' compensation system to accomplish substantial justice in all cases expeditiously, inexpensively & without encumbrance of any character, all of which matters are expressly declared to be social public policy of this state.

The Safety Pundits conducts an internal or external inspection of facilities & jobsites to determine any cracks in safety guidelines providing guidance & assistance filling in the gaps with retrospective case reviews reporting any findings with recommendations & focus group evaluating hazardous jobsites condition level.

The moderate safety protocols use in the J-peg below using modest guide lines lacking general safety concern causing higher risk behaviors displaying below average safety standings & requiring updated protocols with safety management system including a daily safety meeting using the Cal-JSA program to minimize occupational health issues, including improper waste & material handling guide lines.



Analyzing & summarized data in accordance with OHSP-SMS regulations including QAS assurance plans & cycles. Data collection activities include records review, interviews, site visits & reports. Insufficient outdated safety protocols are placing employees & the general public in danger of serious accident or injuries causing newer workers compensation cases.

Pursuant to SB-863 pg 2 (4) Existing law requires the Department of Industrial Relations & courts of this state except as provided as valid & binding any labor-management agreement that meets certain requirements. Existing law applies this recognition only in relation to employers that meet specified requirements. This bill would add the State of California to the list of authorized employers for these purposes.

Pursuant to SB-863 pg 5 paragraph (10) As of 01/01/2015 12:00 A.M PST: Existing law generally provides for the reimbursement of medical providers for services rendered in connection with the treatment of a worker's injury.

Pursuant to SB-863 Page 5 paragraph (11): Existing law requires every employer to establish a medical treatment utilization review process, in compliance with specified requirements, either directly or through its insurer or an entity with which the employer or insurer contracts for these services.

Code Green Safety



Occupational Health & Safety Pundit

Code Green Safety excellences standing in accordance with applicable OHSP-SMS regulations including city, county, state & federal laws & OSHA regulations, accompanied by internal QAS standards. Promoting worksite safety reducing liabilities, cost & decrease work-related injuries, & eliminating costly worker compensation & disability cases claims using evidence based medical evaluations.

Reviewing Common Use Arrangements CUA • Internal Audits • Five Day Turnaround Assessment • Corporate Governance Reviews • Procurement advice • Performance (Operational Audits) • Compliance Audits • Development of Policies & Procedures • Risk Assessment Reviews.

The Project Labor Agreement-PLA is a multi-employer, multi-union, pre-hire collective bargaining agreement. Proponents market to public & private construction owners using the PLA as a tool to systemize labor relations between the contractors & their trade unions concerning fair & equal conditions incorporating work site safety programs.

Pursuant to the California Code of Regulations Title 2. Administration Division 2. Financial Operations Chapter 2.5. Commission on State Mandates Article 1. 1181.1 (c). Article 7. Quasi-Judicial Hearing Procedures & Decisions, 1187.4. Informal Conference, 1187.5. Evidence Submitted to the Commission & The Bagley-Keen Open Meeting Act, Special meetings 11125.4 (7). The need to protect the public 11125.5 Emergency meetings. Concerning; 1182.9. Written Comments & Legislative Analyst of (SB-863) File # SB-863TC 2.

There has no attempt have been made by the Legislative Body, Administrative Office or courts of the United States to invalidate the module of eliminating Contributory Negligence as the cause of work related accident, injuries, illness or death.

As of 01/13/2015 15:35 P.M PST: upon visiting the office of Congresswoman Barbara Lee Representing the 13th District; Toss Business Solutions LLC has provided information to contact the collective bargaining representative or representatives to the Commission on State Mandates.

The Guide to State Mandated Process Commission on States Mandates "Test Claim & Test Amendment form" is theorized by Government code sections 17553 & 17557 (e). As required by article XIII B, section 6 of the California Constitution. This Declaration signed under penalty of perjury that the written comments are in fact, true & complete to the best the declarant's personal knowledge or information or belief.

safetypundit@gmail.com

Contact # 925-771-0735