



PROFESSIONAL ENGINEERS



IN CALIFORNIA GOVERNMENT

March 8, 2010

Vanessa L. Holton
Department of Industrial Relations
Office of the Director Legal
455 Golden Gate Avenue, Suite 9516
San Francisco, CA 94102

Via E-Mail and U.S. Mail

Re: March 1, 2010 Memorandum Regarding the Internal Investigation Into the Teaching, Training, and Presentation Activities of DOSH Professional Staff

Dear Ms. Holton:

This follows my phone call to you on Thursday, March 4, 2010. PECG represented employees received a memorandum dated March 1, 2010 from Frank Dickey regarding an OD Legal Investigation. The memorandum instructs employees to answer certain questions concerning teaching, training and presentation material and to provide documents related to any teaching, training or presentation activities. I am writing to seek clarification of the information being sought from PECG represented employees. As the date for compliance is March 15, 2010, time is of the essence to clarify the information sought and to communicate the clarification to all PECG represented employees.

PECG sent an e-mail to Lynda Christy with a copy to Len Welsh on March 2, 2010 questioning the scope of the DOSH Audit. PECG did not receive a response to that e-mail.

Initially, I understand that the background for the investigation is a draft Bureau of State Audits report regarding a former individual employee's activity while working for DOSH. Obviously asking questions of employees regarding their teaching, training, or presentations concerning occupational safety and health is within the right of management. However, the March 1, 2010 DOSH Audit questions seek information beyond what the scope of a reasonable investigation should entail.

HEADQUARTERS: 455 Capitol Mall, Suite 501, Sacramento, CA 95814 • (916) 446-0400
LOS ANGELES: 130 N. Brand Boulevard, Suite 301, Glendale, CA 91203 • (818) 500-9941
SAN FRANCISCO: 1 Sutter Street, Suite 800, San Francisco, CA 94104 • (415) 861-5720
TELEFAX: Headquarters (916) 446-0489; Los Angeles (818) 247-2348; San Francisco (415) 861-5360

Question number one states:

During your tenure with the Division of Occupational Health and Safety (DOSH), have you conducted teaching, training, or presentations in any form? This includes those for which you were compensated in any form or not and performed during work hours or not.

The scope of this question is too broad as it seeks information that is not relevant to the audit, or to any legitimate management inquiry into the personal activities of employees and seeks information from too broad a period of time. As you know, the "statute of limitations" for employee discipline is three years. The inquiry into employee activity should be no longer than that time frame. If DOSH then needs to follow up with an individual with a question covering a longer time frame, they could do so at a later time. The question should be modified as follows:

During ~~your tenure~~ *the past three years* with the Division of Occupational Health and Safety (DOSH), have you conducted teaching, training, or presentations *concerning occupational safety and health* in any form?

If an employee answers "No" to question number one, that should end the employees response to the audit. That direction should be included on the audit form.

The form I reviewed has two questions numbered "2." The second number two reads:

What is your understanding of DOSH's current or past policy or practice regarding DOSH employee teaching, training and presentation activities?

Requiring each employee to list the current or past policy or practice is not a useful exercise. DOSH has an incompatible activities policy which has changed over the years. Asking each employee to provide their understanding of the policy, and or any amendments to that policy over time, is not relevant to whether an employee has complied with the policy. If there is a need to follow up with individual employees about their understanding of the policy relative to specific instances of teaching or presenting occupational safety and health, DOSH should ask those specific questions. This question should be eliminated.

Question number 3 seeks Form 700 material which DOSH has, or should have, in its possession. This question should be eliminated.


Question number 4 should again be specifically limited to teaching, training, or presenting occupational safety and health.

Vanessa Holton
March 8, 2010
Page 3

PECG's concerns about the overbroad nature of these inquiries are similar to the concerns expressed in 2005 and again in 2008 over the proposed changes to the DIR Incompatible Activities Policy. As you may recall, we met and conferred and PECG's concerns were addressed with DIR limiting the application of the policy to outside activities related to DIR's programs and to other outside activities during business hours.

I am hopeful you will agree that the inquiry here must be limited to occupational safety and health and that you will make the other suggested changes to the audit questions for the reasons listed above. Thank you for consideration of these concerns. Please contact me as soon as possible to provide DOSH's position on these issues.

Very truly yours,


Gerald James
PECG Counsel