

**AB 978 (LIMÓN) EMPLOYMENT SAFETY:
INJURY AND ILLNESS PREVENTION PROGRAM
OPPOSE**

****FLOOR ALERT****



GREATER RIVERSIDE
CHAMBERS OF COMMERCE



The Chamber
OF THE SANTA BARBARA REGION
Helping Business Succeed Since 1899



Association of California
Egg Farmers



May 30, 2017

TO: Members, California State Assembly

FROM: California Chamber of Commerce 
Almond Alliance of California
Associated General Contractors
Association of California Egg Farmers
California Association of Wheat Growers
California Construction and Industrial Materials Association
California Farm Bureau Federation
California Framing Contractors Association
California Grain & Feed Association
California Hotel & Lodging Association
California League of Food Processors
California Manufacturers and Technology Association
California Pear Growers Association
California Professional Association of Specialty Contractors
California Restaurant Association
California Retailers Association
California Seed Association
California State Floral Association
California Travel Association
California Warehouse Association
Camarillo Chamber of Commerce
Clovis Chamber of Commerce
Culver City Chamber
Greater Riverside Chamber of Commerce
National Federation of Independent Business
Oxnard Chamber of Commerce
Family Business Association of California
Fountain Valley Chamber of Commerce
Pacific Egg and Poultry Association
Rancho Cordova Chamber of Commerce
Residential Contractor's Association
San Gabriel Valley Economic Partnership
Southwest California Legislative Council
The Chamber of the Santa Barbara Region
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce
Western Growers
Western Steel Council
Yuba-Sutter Chamber of Commerce

****UPDATED****

**SUBJECT: AB 978 (LIMÓN) EMPLOYMENT SAFETY: INJURY AND ILLNESS
PREVENTION PROGRAM
OPPOSE – AS AMENDED MAY 26, 2017
THIRD READING**

The California Chamber of Commerce and the listed organizations are **OPPOSED** to **AB 978 (Limón)**, as amended May 26, 2017, because it allows unaffiliated organizations to access internal employer documents and it circumvents the rulemaking process now underway to provide for access by employees to their employer's Illness and Injury Prevention Program (IIPP).

All employers are required by Cal/OSHA Regulations (Section 3203) and the California Labor Code (Section 6401.7) to establish, implement and maintain an effective written IIPP. The Cal/OSHA Standards Board is currently evaluating a public request (Petition file No. 562) to revise Section 3203 to include a specific provision that provides for employee access to the IIPP. The recommendation to the Board is to proceed with the rulemaking process to address through a participatory process, how to process a request by an employee to review the IIPP. AB 978 pre-empts this appropriate regulatory process.

In addition, AB 978 allows not only an employee to obtain a copy of the IIPP, but also an organization unaffiliated with the employer or the employee to be designated by the employee to request and receive a copy of the IIPP. A request of the IIPP by this outside organization would also require the employer to provide “all required attachments,” a term that is not currently in statute and would be left open to interpretation.

As we understand it, the author’s intent is that “attachments” will include the employer’s internal records related to implementation of the program, which are now exclusively provided to Cal/OSHA in an enforcement action or to plaintiffs in a legal action. Furthermore, when these records are requested during legal proceedings, the scope of the request is limited by the laws governing Cal/OSHA investigations or litigation discovery laws. For example, Cal/OSHA document requests must not cause unreasonable disruptions to the employer’s work. No such limiting provisions are included in AB 978. The amendments of May 26, 2017 do not limit the scope, and appear to merely provide a defense for the employer in an appeal of a citation “impossibility of performance.” This provision would not limit any scope of documents that the employer would be requested to provide.

AB 978 unwarrantedly expands the scope of what we currently understand is an employee representative and currently agree is appropriate; the employee’s union representative recognized by the employer as such. AB 978, in contrast, regards as an employee representative as an expanded set of someone the employee designates – expanding beyond a connection the person has to the employee or to the employer. That person can request and receive a copy of the IIPP including its required attachments, whatever that vague and undefined term is ultimately determined to mean.

While the IIPP is generally a tool and resource for the employer and its supervisors to follow as a roadmap for safety in the workplace, from time to time employees may wish to review the program. To that end, we fully support the inclusion of explicit language to allow the employee access to the IIPP. However, we are opposed to the approach taken in this legislation because it will leave employers open to needless liability without due process protections. An employer is entitled to maintain confidential documents, including documents used for the sole purpose of training employees for their safety in the workplace. An outside organization without legal standing should not be given access to the documents that must be provided to Cal/OSHA during an investigation, or to litigants during discovery.

Allowing an employee to authorize this expansive selection of representatives for this purpose, especially without requiring disclosure to the employer, circumvents established pathways for legitimate requests for employer records and documents in situations where they are proven to be warranted. Furthermore, the number of requests that could be made and to which an employer would have to respond is unlimited, nor is there a limit to the scope of the workplace.

We believe the purpose of AB 978 goes well beyond employee access to the employers IIPP and will result in a “fishing expedition” in order to expose the employer to litigation and harassment.

For these and other reasons, the California Chamber of Commerce and the listed organizations **OPPOSE AB 978 (Limón).**

cc: The Honorable Monique Limón
Camille Wagner, Office of the Governor
Taylor Jackson, Assembly Labor and Employment Committee
Joshua White, Assembly Republican Caucus
District Offices, Members, California State Assembly

MF:ldl