

## EXCLUSIVE REPORTS

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# Small businesses criticize HIOSH tactics

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Steve Cunningham, owner of Cunningham Cabinets on Oahu, knows firsthand about what he terms the "wrath" of the state Labor Department's Hawaii Occupational Safety and Health division -- HIOSH.

For the last three years, he's paid a high price -- around \$40,000 -- for citations a HIOSH inspector assessed him starting in 1996. This, he says, despite the fact his workers' comp claims are low -- so low his insurance company gives him a 30 percent discount.

But that hasn't stopped HIOSH from assessing fines for violations Cunningham says are "ridiculous."

Cunningham says he was fined \$8,000 for too much paint in his spray booth; \$12,000 for a missing maximum weight sign; another \$12,000 for placing a cabinet 2 feet, 10 inches away from his spray booth rather than the required 3-foot distance; and \$25 for an exposed electrical outlet. He admits he received a smaller fine first, made some adjustments on his work site, only to be severely fined again when he didn't completely comply with HIOSH's recommendations.

HIOSH says investigators gave Cunningham ample opportunity to adjust his work site and issued the heavier penalties only after Cunningham took too long to comply. Even the fines were not as severe as HIOSH investigators could have issued -- up to \$1,000 per day per violation.

It took Cunningham several months to pay off the fines -- but three weeks later, another inspector issued a \$300 fine for another "minor" violation.

"Safety is important and good, but enforcing rules for rules' sake just doesn't make any sense. It is detrimental to business and to the community," Cunningham says.

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Cunningham is just one of several Hawaii employers who shared "horror" stories after reading PBN's coverage of conflicts between local business and HIOSH.

An Oct. 29 PBN article detailed complaints by business owners who say they were unfairly targeted by HIOSH. It also quoted two pages of an 11-page Oct. 6 Small Business Task Force on Regulatory Relief report. Authored by a task force member, the report criticized the agency and detailed a number of concerns, including what it calls an adversarial role taken by HIOSH inspectors.

HIOSH responded to the report and to allegations by businesses by saying its motivation is saving lives, and sometimes its enforcement needs to be harsh to do so.

Often HIOSH has to mediate between businesses that say the agency is too strict and unions that say the agency isn't strict enough, says HIOSH administrator Jennifer Shishido.

HIOSH may be disliked, she says, but it is essential to prevent serious injuries or lives from being lost in the workplace.

But in the last week there were even more allegations unfair treatment against businesses brought forward by business owners themselves.

Part of the contention between business and HIOSH is the agency chooses which employers it will inspect through a formula that looks at the number of workers' compensation medical claims divided by the number of employees, small business owners say.

If the number is greater than 10 percent, that company gets inspected -- even if the injuries are nothing more than paper cuts, according to a HIOSH inspector.

Shishido maintains HIOSH inspections are initiated through a proven formula, the 10 percent ratio, based on wholly objective data, including workers' compensation claims.

She also admits anyone can report a violation, and HIOSH will likely look into it. She says ex-wives, union and nonunion and competitors have called HIOSH to report violations.

With just 20 inspectors for 31,000 establishments, HIOSH needs assistance from people outside its force. HIOSH looks into the claims, Shishido says, but asks for evidence of the violations including photographs, times and dates.

But many business owners who have experienced inspections, still say the system is illogical and unfair.

Take James Merriman and his father Wally, who with other family members, own and operate Mid Pacific Testing & Inspection Services Inc., an Oahu-based company that performs testing and inspections on construction materials.

Up until last year, not one workers' comp claim was filed at this nearly 8-year-old company, James says. But in 1998 James cut his finger, and another employee sprained an ankle and two claims totaling \$9,000 were filed. Because Mid Pacific has just four full-time and two part-time employees, these claims drew a HIOSH inspection. The inspector came in September 1999 demanding an immediate audit. He said the audit would take one to two days and that an employee of the company should be present throughout the audit. But for James, who was on his way to an important meeting, that meant gaining or losing a client so said he couldn't stay on site and no one else was at the office.

He asked the inspector to return at another time or investigate the property unassisted, but James says the investigator said no.

Eventually Wally appeared, told the inspector to leave and come back with a warrant. A week later the inspector was back and issued a list of citations and three fines.

James said all three fines revolved around office renovations, including a \$600 fine for a cutting torch rented from Gaspro; \$750 for an uncovered outlet (no electricity was going to it); and \$600 for a missing midrail on a short stairwell.

He told the inspector the violations were due to temporary renovations and "not representative of what the office is normally like," but HIOSH issued the fines anyway.

James says HIOSH is worried about money quotas first and "safety is way down on the list."

Shishido says she cannot comment on the case because it is not closed, but stressed the majority of accidents occur when companies have a nonroutine situation such as construction or renovation. James is appealing the fines, and says he expects the agency to fight back.

"There is no doubt in my mind we are flagged by those inspectors forever, and they are going to be tough on us," James says. "Our business will probably suffer. But someone has to stand up and say this treatment is wrong."

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