

AMENDED IN ASSEMBLY MAY 23, 2002  
AMENDED IN ASSEMBLY APRIL 29, 2002  
AMENDED IN ASSEMBLY APRIL 17, 2002  
AMENDED IN ASSEMBLY APRIL 8, 2002  
AMENDED IN ASSEMBLY APRIL 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2752**

---

---

**Introduced by Assembly Member Alquist**  
**(Coauthors: Assembly Members Aroner, Diaz, and Koretz)**  
(Coauthor: Senator Romero)

February 25, 2002

---

---

An act to amend Sections 6310 and 6312 of, and to repeal Section 6311 of, the Labor Code, relating to employment discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 2752, as amended, Alquist. Discrimination against injured workers.

(1) Existing law provides that no person shall discharge or in any manner discriminate against an employee because the employee made an oral or written complaint to the Division of Occupational Safety and Health, or other agencies, with reference to employee safety or health, his or her employer, or his or her representative, instituted or caused to be instituted a proceeding relating to his or her rights or testified, or participated in an occupational health and safety committee. Existing law provides for reinstatement and reimbursement for lost wages and

benefits if an employee's rights have been violated under these provisions. Existing law provides that any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee whose rights are so violated, as specified, is guilty of a misdemeanor offense.

This bill would provide that it is an unlawful employment practice for an employer ~~or agent of an employer~~ to subject an employee to adverse employment action, as defined, if the employee participates in protected activities including those in existing law, and also including refusal to work under dangerous or hazardous conditions, as specified. This bill also would modify existing law regarding the protected activity of making oral or written complaints in that it adds that one may not be subjected to adverse employment action for making a complaint to any agent of his or her employer or to his or her labor, legal, or medical representative.

(2) This bill would modify the penalties provided by existing law as summarized in paragraph (1) above to provide for liability of an employer for \$25,000 or 3 times the value of the employee's lost wages and benefits, whichever is greater, other losses caused by the violation, reinstatement, and reasonable attorney's fees and costs.

(3) This bill would impose ~~another~~ a state-mandated local program by providing in conjunction with the offenses as summarized in paragraph (1) above that an employer ~~or agent of an employer who has management control of the workplace~~ who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law commits a misdemeanor offense punishable by imprisonment for a period not to exceed one year or by a fine not exceeding \$15,000, or a fine not exceeding \$150,000 if the defendant is a corporation or limited liability company, or by both that imprisonment and fine.

(4) ~~This bill provides for an action for damages against an employer or agent of an employer with management control of the workplace who willfully fails to inform a person of a working condition that another employee has reported as unsafe, with certain requirements. This bill would impose a state-mandated local program by providing that an employer is guilty of a misdemeanor offense if the employer concealed an unsafe working condition and an employee refused to perform work under that condition, or the unsafe working condition had been reported by the employee, or by his or her labor, legal, or medical representative,~~



*or by a government representative, to the employer or agent of the employer, and the unsafe working condition caused death or serious physical harm to an employee.*

(5) Existing law provides that no employee may be laid off or discharged for refusing to perform work if health standards or safety orders will be violated, and where the violation would create a real and apparent hazard to the employee or his or her fellow employees and provides a right of action for lost wages on behalf of the employee.

This bill would delete, but otherwise subsume as summarized above, these provisions.

(6) Existing law provides that any employee who believes that he or she has been discharged or otherwise discriminated against with regards to the protections relating to occupational health and safety may file a complaint with the Labor Commissioner.

This bill would alter this procedure in that it would provide that a complaint may be filed with the division, or that the employee may pursue a civil action, within 6 months of the violation, which may be extended for good cause.

(7) This bill would provide for an administrative complaint procedure in connection with alleged violations of its provisions.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(9) This bill makes technical, nonsubstantive changes to existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. It is the intent of the Legislature that employees
- 2 in this state have effective and enforceable rights to secure safe and
- 3 healthful working conditions, and to this end, shall be protected
- 4 against reprisals for complaints about hazardous conditions and
- 5 refusals to work thereupon. The following enumeration of rights
- 6 and remedies shall be available and rigorously enforced.
- 7 SEC. 2. Section 6310 of the Labor Code is amended to read:



1 6310. (a) It is an unlawful employment practice for an  
2 employer to subject an employee to adverse employment action  
3 because the employee has done any of the following:

4 (1) Filed or made known his or her intention to file any oral or  
5 written complaint to the division, other governmental agency  
6 having statutory responsibility for or assisting the division with  
7 reference to employee safety or health, his or her employer or any  
8 agent of his or her employer, or his or her labor, legal, or medical  
9 representative.

10 (2) Instituted or caused to be instituted any proceeding under  
11 or relating to his or her rights or has testified or is about to testify  
12 in the proceeding or because of the exercise by the employee on  
13 behalf of himself, herself, or others of any rights afforded him or  
14 her pursuant to Division 5 (commencing with Section 6300).

15 (3) Participated in an occupational health and safety  
16 committee.

17 (4) Refused to perform unsafe work, as defined by subdivision  
18 ~~(h)~~-(f).

19 (b) An employer or agent of an employer who has management  
20 control of the workplace who violates subdivision (a) is liable for  
21 the following:

22 (1) Twenty-five thousand dollars (\$25,000) or three times the  
23 value of the employee's lost wages and benefits, whichever is  
24 greater.

25 (2) Other losses caused by the violation of subdivision (a).

26 (3) Reinstatement.

27 (4) Reasonable attorney's fees and costs.

28 ~~(C) If an employer or agent of an employer who has  
29 management control of the workplace willfully fails to inform a  
30 person exposed to an unsafe working condition that another  
31 employee has reported the condition as unsafe, or has refused to  
32 perform unsafe work, as defined by subdivision (h), or if the  
33 employer or agent of the employer fails to provide the reasons  
34 contained in the other employee's report, and failure to inform the  
35 person exposed to an unsafe working condition causes injury or  
36 death to the person, then the person or his or her dependents may  
37 bring an action against the employer or agent, or both, for damages  
38 in a court of competent jurisdiction.~~



1 ~~(d) An action for damages pursuant to subdivision (c) is not~~  
2 ~~subject to the provisions of Chapter 3 (commencing with Section~~  
3 ~~3600) of Part 1 of Division 4.~~

4 ~~(e)–~~

5 *(c) An employer is guilty of a misdemeanor punishable by*  
6 *imprisonment in the county jail for a period not to exceed one year,*  
7 *or by a fine not to exceed one hundred thousand dollars*  
8 *(\$100,000), or by both fine and imprisonment, but if the defendant*  
9 *is a corporation or limited liability company, the fine may not*  
10 *exceed one million five hundred thousand dollars (\$1,500,000), if*  
11 *all of the following have occurred:*

12 *(1) An employee refused to perform unsafe work as defined in*  
13 *subdivision (f), or an unsafe working condition was reported by an*  
14 *employee, or by his or her labor, legal, or medical representative,*  
15 *or by a government representative, to the employer or an agent of*  
16 *the employer who has management control of the workplace.*

17 *(2) The employer or an agent of the employer concealed the*  
18 *unsafe working condition.*

19 *(3) The unsafe working condition was likely to cause death or*  
20 *serious physical harm.*

21 *(4) The unsafe working condition did cause death or serious*  
22 *physical harm to an employee.*

23 ~~(d) An employer or agent of an employer who has management~~  
24 ~~control of the workplace who willfully refuses to rehire, promote,~~  
25 ~~or otherwise restore an employee or former employee who has~~  
26 ~~been determined to be eligible for rehiring or promotion by a~~  
27 ~~grievance procedure, arbitration, or hearing authorized by law, is~~  
28 ~~guilty of a misdemeanor punishable by imprisonment in the~~  
29 ~~county jail for a period of not exceeding one year or by a fine not~~  
30 ~~exceeding fifteen thousand dollars (\$15,000) or by both that~~  
31 ~~imprisonment and fine. If the defendant is a corporation or limited~~  
32 ~~liability company, the fine imposed pursuant to this subdivision~~  
33 ~~may not exceed one hundred fifty thousand dollars (\$150,000). In~~  
34 ~~determining the amount of fine to impose under this subdivision,~~  
35 ~~the court shall consider all relevant circumstances including, but~~  
36 ~~not limited to, the nature, circumstance, extent, and gravity of the~~  
37 ~~violation, any prior history of violations by the defendant, the~~  
38 ~~ability of the defendant to pay, and any other matter the court~~  
39 ~~determines the interests of justice require.~~



1 ~~(f) It is an affirmative defense to a charge that an employer~~  
2 ~~violated subdivision (c), (d), or (f) if the employer can prove all of~~  
3 ~~the following by clear and convincing evidence:~~

4 ~~(1) The employer had a good faith belief that the work was not~~  
5 ~~dangerous, did not create a real and apparent hazard, and was not~~  
6 ~~likely to cause death or serious physical harm.~~

7 ~~(2) The employer informed the person to whom the work was~~  
8 ~~offered or assigned, in writing, prior to the commencement of the~~  
9 ~~work, of the prior refusal and the reasons given by the refusing~~  
10 ~~person.~~

11 ~~(3) The employer had reasonable grounds for believing the~~  
12 ~~work did not pose a substantial hazard as set forth in paragraph (1).~~

13 ~~(g)~~

14 (e) For purposes of this section, “adverse employment action”  
15 is a discharge, demotion, or suspension of an employee, or an  
16 action that threatens to discharge an employee, or in any other  
17 manner discriminates against an employee in a term or condition  
18 of employment.

19 ~~(h)~~

20 (f) For purposes of this section, “refused to perform unsafe  
21 work” means a refusal to perform work under all of the following  
22 conditions:

23 (1) The employee had a good faith belief that the particular  
24 work was dangerous, created a real and apparent hazard, or was  
25 likely to cause death or serious physical harm to the employee, his  
26 or her fellow employees, or to the employees of another employer.

27 (2) As soon as practicable, and immediately upon request, the  
28 employee reported his or her refusal and the reasons for the refusal  
29 to his or her immediate supervisor, foreman, or any person in  
30 authority.

31 (3) Performed alternative work if requested by the employer.

32 SEC. 3. Section 6311 of the Labor Code is repealed.

33 SEC. 4. Section 6312 of the Labor Code is amended to read:

34 6312. (a) An employee who believes that he or she has been  
35 subjected to adverse employment action by any person in violation  
36 of Section 6310 may file a complaint with the division or may  
37 pursue a civil action in a court of competent jurisdiction.

38 (b) A complaint pursuant to subdivision (a) must be filed  
39 within six months after the occurrence of the violation. This period  
40 may be extended for good cause.



1 (c) The division shall commence an investigation within 10  
2 days of the date that a complaint is received by the division and  
3 shall provide written notice of the commencement of the  
4 investigation to the complainant and the employer. The written  
5 notice shall inform the complainant and the employer of their  
6 rights and responsibilities and of all procedures involved in  
7 resolving the complaint.

8 (d) Within 10 days of the date the division orders the  
9 commencement of an investigation pursuant to subdivision (c), the  
10 party against whom the complaint is brought shall, without a  
11 request for discovery, provide all of the following to the employee  
12 and to the division:

13 (1) The name and, if known, the address and telephone number  
14 of each individual likely to have discoverable information that the  
15 employee may use to support any claim or rebut any defense  
16 identifying the subject of the discoverable information.

17 (2) A copy, or description by category and location, of all  
18 documents, data compilations, and tangible items that are in the  
19 possession, custody, or control of the party that the employee may  
20 use to support a claim or rebut a defense pursuant to this section.

21 (3) The employee's personnel file.

22 (e) The division shall issue subpoenas, upon showing of good  
23 cause, for additional evidence in any form or to compel the  
24 attendance of potential witnesses.

25 (f) The investigation shall be conducted by an inspector,  
26 investigator or attorney designated by the division, and shall  
27 obtain and consider, at a minimum, the following information:

28 (1) All written statements and transcripts of oral statements  
29 submitted by the complainant in response to questioning by the  
30 division, which shall include all the elements of a prima facie case.

31 (2) All written statements submitted by the employer.

32 (3) All written statements or transcripts of oral statements  
33 submitted by the complainant in response to questioning by the  
34 division, which shall include questioning the complainant  
35 regarding evidence that might tend to rebut statements offered by  
36 the employer.

37 (4) Documents subpoenaed from the employer or any other  
38 relevant source to support or rebut the evidence of the complainant  
39 or the employer.



1 (5) Written statements or transcripts of oral statements given by  
2 witnesses who have information concerning the alleged violation.  
3 The identity of any witnesses shall remain confidential unless  
4 revealing his or her identity is necessary to proceed with the  
5 investigation.

6 (g) The official conducting the investigation shall, within 50  
7 days of the date that a complaint is received by the division, file  
8 a written investigation report summarizing the findings of the  
9 investigation and all the information obtained pursuant to  
10 subdivision (f).

11 (h) The division may conduct a hearing to assist or supplement  
12 the investigation. If a hearing is conducted, the complainant and  
13 the employer have the right to be present, to present evidence, and  
14 to present and cross-examine witnesses. The complainant and the  
15 employer have the right to cross-examine witnesses presented by  
16 the division. The division may issue, serve, and enforce subpoenas  
17 on behalf of the division, the complainant, or the employer to  
18 compel the attendance of witnesses at the hearing.

19 (i) The division is vested with full power, authority, and  
20 jurisdiction to try and determine all matters specified in this  
21 section and Section 6310 subject only to judicial review, except  
22 that the division shall have no jurisdiction to try and determine any  
23 criminal charge. The division may refer suspected violations of the  
24 criminal provisions of Section 6310 to a local district attorney or  
25 the Attorney General.

26 (j) The division shall issue a decision including findings of fact  
27 and conclusions of law within 60 days of the date that a complaint  
28 is received by the division.

29 (k) If the division finds that a violation of Section 6310 has  
30 occurred, the division shall notify the complainant and employer  
31 of the decision within 10 days of the time the decision is issued and  
32 direct the employer to cease and desist from the violation and to  
33 take any action deemed necessary to remedy the violation,  
34 including, but not limited to, the penalties set forth in subdivision  
35 (b) of Section 6310. If the employer does not comply with the  
36 order within 10 working days following the notice of a decision,  
37 the division shall promptly bring an action in a court of competent  
38 jurisdiction against the employer. If the division fails to bring an  
39 action promptly, the complainant may bring an action against the  
40 division for a writ of mandate to compel the division to bring an



1 action against the employer. If the complainant prevails in his or  
2 her action, the court shall award the complainant reasonable  
3 attorney's fees and costs. Regardless of any delay, the division  
4 maintains jurisdiction over the matter. In an action pursuant to this  
5 section, the court may permit the complainant to intervene as a  
6 party and has jurisdiction to restrain the violation and to order all  
7 appropriate relief, including, but not limited to, the penalties set  
8 forth in subdivision (b) of Section 6310. Unless the division  
9 determines good cause exists otherwise, the division shall petition  
10 the court for appropriate temporary relief or for a restraining order.

11 (l) If the division finds that no violation of Section 6310 has  
12 occurred, the division shall notify the complainant and employer  
13 of the decision within 10 days of the time the decision is issued and  
14 shall dismiss the complaint. When dismissing a complaint, the  
15 division shall advise the complainant of his or her right to bring an  
16 action in a court of competent jurisdiction if he or she disagrees  
17 with the decision of the division, and of the complainant's right to  
18 file a complaint with the United States Department of Labor.

19 (m) Upon notification of the dismissal of the complaint  
20 pursuant to subdivision (m), the complainant may bring an action  
21 in a court of competent jurisdiction to determine whether a  
22 violation occurred.

23 (n) If the division finds that the complaint was frivolous,  
24 unreasonable, groundless, and was brought in bad faith, the  
25 division may order the complainant to pay reasonable attorney's  
26 fees and costs to the division.

27 (o) Decisions of the division pursuant to this section may be  
28 appealed by the complainant or the employer to the Director of  
29 Industrial Relations within 10 days following notification of the  
30 decision. The appeal must set forth specifically and in full detail  
31 the grounds upon which the appealing party considers the  
32 division's decision to be unjust or unlawful, and every issue to be  
33 considered by the director. The director may consider any issue  
34 relating to the initial determination and may modify, affirm, or  
35 reverse the decision of the division. The director shall notify the  
36 complainant and respondent of his or her decision within 10 days  
37 of the receipt of the appeal.

38 (p) The provisions of this section do not preclude an employee  
39 from pursuing any other rights or remedies available to the  
40 employee.



1 SEC. 5. *Section 6312.5 is added to the Labor Code to read:*  
2 *6312.5. (a) In order to more effectively protect employees’*  
3 *rights to secure, safe, and healthful working conditions, and to*  
4 *assure effective and enforceable rights in the event of reprisal for*  
5 *involvement with occupational safety and health issues, there is*  
6 *within the Division of Labor Standards Enforcement a unit or*  
7 *personnel designated solely to handle matters pursuant to Sections*  
8 *6310 to 6312.5.*

9 *(b) The Division shall file an annual report with the Legislature*  
10 *by December 1 of each year, that shall coincide with the Federal*  
11 *OSHA fiscal year. This report shall provide an accounting of all*  
12 *matters involving Sections 6310 to 6312.5 including, but not*  
13 *limited to, information regarding cases filed, investigated,*  
14 *dismissed, settled, heard, or appealed, the caseload of the division,*  
15 *the timeliness of dispositions, and other information as the*  
16 *Legislature may request in advance of the report.*

17 SEC. 6. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.

