

AMENDED IN ASSEMBLY MAY 23, 2002

AMENDED IN ASSEMBLY APRIL 3, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2837

Introduced by Assembly Member Koretz

February 25, 2002

An act to amend Sections 6309, 6313, 6315, 6409.1, 6409.2, and 6423 of, and to add Sections 176 and 6356 to, the Labor Code, relating to employment safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 2837, as amended, Koretz. Safety in employment.

Under existing law, the Division of Occupational Safety and Health is not required to provide bilingual persons to assist in taking and investigating complaints, or to provide interpreters at hearings.

This bill would require that the division provide bilingual persons to provide information and services to non-English-speaking persons, and interpreters at specified hearings, interviews, and inspections related to occupational safety and health. The division would further be required to prepare and distribute materials explaining services available, and to prepare and use written materials in specified local offices, in English and non-English languages.

Under existing law, the division is required to investigate, within 24 hours of receipt, a complaint from a state or local prosecutor charging that there is a substantial probability that death or serious physical harm could result from a condition or practice at a place of employment.

This bill would *require the division to investigate a complaint within 48 hours of receipt and would* further require that the division also investigate complaints received from a local law enforcement agency.

Existing law requires that the division investigate the causes of specified serious employment accidents unless it determines that an investigation is unnecessary.

This bill would require the division to investigate an accident resulting in a fatality within 24 hours of learning of the accident.

Existing law provides for a Bureau of Investigations in the Division of Occupational Safety and Health to direct investigations of specified employment accidents.

This bill would require the bureau to communicate with the appropriate prosecuting authority in any case where a reasonable suspicion exists that a crime has occurred. The bureau may not limit any criminal investigation in those cases.

This bill would further require the Department of Industrial Relations, upon request by a county district attorney, to develop a protocol containing specified provisions for the immediate referral of cases by the bureau to the appropriate prosecuting authority.

Existing law requires an employer to immediately file a report to the division in every case involving a serious injury or illness, or death.

This bill would impose a civil penalty of between \$5,000 and \$25,000 against any employer who fails to file a report as specified.

This bill would create in the General Fund the Worker Safety Bilingual Investigative Support, Enforcement, and Training Account (hereafter the account), to be expended by the department, upon appropriation, for employment safety purposes, as defined. The department would be authorized to receive and accept contributions for those purposes, to be immediately deposited in the account.

Existing law requires a state, county, or local fire or police agency called to an industrial accident in which a serious injury or illness, or death occurs to report the accident to the nearest office of the division.

This bill would require that the division then notify the appropriate prosecuting authority of the accident.

Existing law provides that every employer, and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or employee is guilty of a misdemeanor if it, among other things, knowingly or negligently violates any standard, order, or special order, or any of certain provisions of law, or part thereof, authorized by the



California Occupational Safety and Health Act of 1973 (hereafter the act), the violation of which is deemed to be a serious violation, as defined.

This bill would also make it a misdemeanor where an employer, officer, management official, or supervisor fails to report a death to the division or knowingly induces another to do so. This bill would prescribe a penalty of up to one year in jail, a fine of up to \$25,000, or both. If the violator is a corporation or a limited liability company, this bill would impose a fine of up to \$250,000.

By making certain violations of employee safety standards by employers subject to criminal penalties, this bill would impose a state-mandated local program.

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.

This bill also 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. Section 176 is added to the Labor Code, to read:
2 176. (a) As used in this section, a “public contact position”
3 means any position responsible for responding to telephone or
4 in-office inquiries or taking complaints from the general public
5 regarding matters pertaining to occupational safety and health.
6 (b) As used in the section, an “investigative position” means
7 any position responsible for investigating complaints, injuries, or
8 deaths related to occupational safety and health.
9 (c) The Division of Occupational Safety and Health shall
10 provide a sufficient number of qualified bilingual persons in
11 public contact positions and investigative positions, or interpreters
12 as needed to assist persons in those positions, to provide
13 information and services to limited or non-English-speaking
14 persons. At a minimum, the division shall provide services in
15 non-English languages in local offices that serve a substantial



1 number of non-English-speaking people, as that term is defined in
2 Section 7296.2 of the Government Code.

3 (d) The division shall provide an interpreter at all hearings
4 where appropriate. An interpreter or qualified bilingual staff shall
5 be present at all interviews and inspections conducted in
6 connection with investigations of complaints, injuries, or deaths
7 related to occupational safety and health where the complainant or
8 a substantial number of the on-site employees or witnesses are
9 non-English-speaking persons.

10 (e) (1) The division shall prepare and distribute to the public,
11 through its local offices, materials in non-English languages, as
12 well as English, explaining services available. In addition, the
13 division shall prepare and use written materials in non-English
14 languages as well as in English for use by local offices if the local
15 office serves a substantial number of non-English-speaking
16 people, as that term is defined in Section 7296.2 of the
17 Government Code.

18 (2) As used in this subdivision, “written materials” includes,
19 but is not limited to, complaint forms, notices, and information
20 regarding the process for filing a complaint relating to
21 occupational safety and health, and health and safety advisories
22 distributed to the general public regarding specific industries
23 employing a substantial number of non-English-speaking persons,
24 including, but not limited to, the agriculture, garment, and
25 restaurant industries.

26 SEC. 2. Section 6309 of the Labor Code is amended to read:

27 6309. If the division learns or has reason to believe that any
28 employment or place of employment is not safe or is injurious to
29 the welfare of any employee, it may, of its own motion, or upon
30 complaint, summarily investigate the same with or without notice
31 or hearings. However, if the division secures a complaint from an
32 employee, the employee’s representative, including, but not
33 limited to, an attorney, health or safety professional, union
34 representative, or representative of a government agency, or an
35 employer of an employee directly involved in an unsafe place of
36 employment, that his or her employment or place of employment
37 is not safe, it shall, with or without notice or hearing, summarily
38 investigate the same as soon as possible, but not later than three
39 working days after receipt of a complaint charging a serious
40 violation, and not later than 14 calendar days after receipt of a



1 complaint charging a nonserious violation. The division shall
2 attempt to determine the period of time in the future that the
3 complainant believes the unsafe condition may continue to exist,
4 and shall allocate inspection resources so as to respond first to
5 those situations in which time is of the essence. For purposes of this
6 section, a complaint ~~shall be~~ *is* deemed to allege a serious
7 violation if the division determines that the complaint charges that
8 there is a substantial probability that death or serious physical
9 harm could result from a condition which exists, or from one or
10 more practices, means, methods, operations, or processes which
11 have been adopted or are in use in a place of employment. When
12 a complaint charging a serious violation is received from a state or
13 local prosecutor, or a local law enforcement agency, the division
14 shall summarily investigate the employment or place of
15 employment within ~~24~~ 48 hours of receipt of the complaint. All
16 other complaints ~~shall be~~ *are* deemed to allege nonserious
17 violations. The division may enter and serve any necessary order
18 relative thereto. The division is not required to respond to any
19 complaint within this period where, from the facts stated in the
20 complaint, it determines that the complaint is intended to willfully
21 harass an employer or is without any reasonable basis.

22 The division shall keep complete and accurate records of any
23 complaints, whether verbal or written, and shall inform the
24 complainant, whenever his or her identity is known, of any action
25 taken by the division in regard to the subject matter of the
26 complaint, and the reasons for the action. The records of the
27 division shall include the dates on which any action was taken on
28 the complaint, or the reasons for not taking any action on the
29 complaint. The division shall, pursuant to authorized regulations,
30 conduct an informal review of any refusal by a representative of
31 the division to issue a citation with respect to any alleged violation.
32 The division shall furnish the employee or the representative of
33 employees requesting the review a written statement of the reasons
34 for the division's final disposition of the case.

35 The name of any person who submits to the division a complaint
36 regarding the unsafeness of an employment or place of
37 employment shall be kept confidential by the division, unless that
38 person requests otherwise.

39 The requirements of this section ~~shall~~ *do* not relieve the division
40 of its requirement to inspect and assure that all places of



1 employment are safe and healthful for employees. The division
2 shall maintain the capability to receive and act upon complaints at
3 all times.

4 SEC. 3. Section 6313 of the Labor Code is amended to read:

5 6313. (a) The division shall investigate the causes of any
6 employment accident that is fatal to one or more employees or that
7 results in a serious injury or illness, or a serious exposure, unless
8 it determines that an investigation is unnecessary. An investigation
9 of an accident resulting in a fatality shall take place within 24 hours
10 from the time the division learns of the accident. If the division
11 determines that an investigation of an accident is unnecessary, it
12 shall summarize the facts indicating that the accident need not be
13 investigated and the means by which the facts were determined.
14 The division shall establish guidelines for determining the
15 circumstances under which an investigation of these accidents and
16 exposures is unnecessary.

17 (b) The division may investigate the causes of any other
18 industrial accident or occupational illness which occurs within the
19 state in any employment or place of employment, or which directly
20 or indirectly arises from or is connected with the maintenance or
21 operation of the employment or place of employment, and shall
22 issue any orders necessary to eliminate the causes and to prevent
23 reoccurrence. The orders ~~shall~~ may not be admitted as evidence in
24 any action for damages, or any proceeding to recover
25 compensation, based on or arising out of injury or death caused by
26 the accident or illness.

27 SEC. 4. Section 6315 of the Labor Code is amended to read:

28 6315. (a) There ~~shall be~~ is within the division a Bureau of
29 Investigations. The bureau ~~shall be~~ is responsible for directing
30 accident investigations involving violations of standards, orders,
31 or special orders, or Section 25910 of the Health and Safety Code,
32 in which there is a serious injury to five or more employees, death,
33 or request for prosecution by a division representative. The bureau
34 shall review inspection reports involving a serious violation where
35 there have been serious injuries to one to four employees or a
36 serious exposure, and may investigate those cases in which the
37 bureau finds criminal violations may have occurred. The bureau
38 ~~shall be~~ is responsible for preparing cases for prosecution,
39 including evidence and findings.



1 (b) The division shall provide the bureau with all of the
2 following:

3 (1) All initial accident reports.

4 (2) The division's inspection report for any inspection
5 involving a serious violation where there is a fatality, and the
6 reports necessary for the bureau's review required pursuant to
7 subdivision (a).

8 (3) Any other documents in the possession of the division
9 requested by the bureau for its review or investigation of any case.

10 (c) The supervisor of the bureau ~~shall be~~ *is* the administrative
11 chief of the bureau, and ~~shall~~ *must* be an attorney.

12 (d) The bureau shall be staffed by as many attorneys and
13 investigators as are necessary to carry out the purposes of this
14 chapter. To the extent possible, the attorneys and investigators
15 shall be experienced in criminal law.

16 (e) The supervisor of the bureau and bureau representatives
17 designated by the supervisor ~~shall~~ have a right of access to all
18 places of employment necessary to the investigation, may collect
19 any evidence or samples they deem necessary to an investigation,
20 and ~~shall~~ have all of the powers enumerated in Section 6314.

21 (f) The supervisor of the bureau and bureau representatives
22 designated by the supervisor may serve all processes and notices
23 throughout the state.

24 (g) In any case where the bureau is required to conduct an
25 investigation, and in which there is a serious injury or death, the
26 results of the investigation shall be immediately referred by the
27 bureau to the appropriate prosecuting authority having jurisdiction
28 for appropriate action, unless the bureau determines that there is
29 legally insufficient evidence of a violation of the law.

30 (h) The bureau may communicate with the appropriate
31 prosecuting authority at any time the bureau deems appropriate.

32 (i) The bureau shall communicate with the appropriate
33 prosecuting authority in any case where there is a reasonable
34 suspicion that a crime has occurred and may not limit any criminal
35 investigation in those cases.

36 (j) Upon the request of a county district attorney, the
37 department shall develop a protocol for immediate referral of
38 cases to the appropriate prosecuting authority in lieu of or in
39 cooperation with an investigation by the bureau. The protocol shall
40 provide for the voluntary acceptance of referrals after a review of



1 the case by the prosecuting authority. Where a case has been
2 referred, the prosecuting authority ~~shall have~~ *has* authority to
3 direct the investigation. Both the bureau and the division shall
4 cooperate with the prosecuting authority's investigation. Where a
5 referral is declined by the prosecuting authority, the bureau shall
6 investigate the case as provided by subdivisions (a) through (i),
7 inclusive.

8 SEC. 5. Section 6356 is added to the Labor Code, to read:

9 6356. (a) There is hereby created, in the General Fund, the
10 Worker Safety Bilingual Investigative Support, Enforcement, and
11 Training Account. The moneys in the account may be expended by
12 the department, upon appropriation by the Legislature, for the
13 purposes of this part.

14 (b) The department may receive and accept any contribution of
15 funds from an individual or private organization, including the
16 proceeds from a judgment in a state or federal court, if the
17 contribution is made to carry out the purposes of this part. The
18 department shall immediately deposit the contribution in the
19 account established by subdivision (a).

20 SEC. 6. Section 6409.1 of the Labor Code is amended to read:

21 6409.1. (a) Every employer shall file a complete report of
22 every occupational injury or occupational illness, as defined in
23 subdivision (b) of Section 6409, to each employee which results
24 in lost time beyond the date of the injury or illness, or which
25 requires medical treatment beyond first aid, with the Department
26 of Industrial Relations, through its Division of Labor Statistics and
27 Research or, if an insured employer, with the insurer, on a form
28 prescribed for that purpose by the Division of Labor Statistics and
29 Research. A report shall be filed concerning each injury and illness
30 which has, or is alleged to have, arisen out of and in the course of
31 employment, within five days after the employer obtains
32 knowledge of the injury or illness. Each report of occupational
33 injury or occupational illness shall indicate the social security
34 number of the injured employee. In the case of an insured
35 employer, the insurer shall file with the division immediately upon
36 receipt, a copy of the employer's report, which has been received
37 from the insured employer. In the event an employer has filed a
38 report of injury or illness pursuant to this subdivision and the
39 employee subsequently dies as a result of the reported injury or
40 illness, the employer shall file an amended report indicating the



1 death with the Department of Industrial Relations, through its
2 Division of Labor Statistics and Research or, if an insured
3 employer, with the insurer, within five days after the employer is
4 notified or learns of the death. A copy of any amended reports
5 received by the insurer shall be filed with the division immediately
6 upon receipt.

7 (b) In every case involving a serious injury or illness, or death,
8 in addition to the report required by subdivision (a), a report shall
9 be made immediately by the employer to the Division of
10 Occupational Safety and Health by telephone or telegraph. An
11 employer who violates this subdivision may be assessed a civil
12 penalty of not less than five thousand dollars (\$5,000) or more than
13 twenty-five thousand dollars (\$25,000).

14 SEC. 7. Section 6409.2 of the Labor Code is amended to read:
15 6409.2. Whenever a state, county, or local fire or police
16 agency is called to an accident involving an employee covered by
17 this part in which a serious injury or illness, or death occurs, the
18 responding agency shall immediately notify the nearest office of
19 the Division of Occupational Safety and Health by telephone.
20 Thereafter, the division shall immediately notify the appropriate
21 prosecuting authority of the accident.

22 SEC. 8. Section 6423 of the Labor Code is amended to read:
23 6423. (a) Except where another penalty is specifically
24 provided, every employer and every officer, management official,
25 or supervisor having direction, management, control, or custody
26 of any employment, place of employment, or of any other
27 employee, who does any of the following is guilty of a
28 misdemeanor:

29 (1) Knowingly or negligently violates any standard, order, or
30 special order, or any provision of this division, or of any part
31 thereof in, or authorized by, this part the violation of which is
32 deemed to be a serious violation pursuant to Section 6432.

33 (2) Repeatedly violates any standard, order, or special order, or
34 provision of this division, or any part thereof in, or authorized by,
35 this part, which repeated violation creates a real and apparent
36 hazard to employees.

37 (3) Fails to report to the division a death, as required by
38 subdivision (b) of Section 6409.1.

39 (4) Fails or refuses to comply, after notification and expiration
40 of any abatement period, with any such standard, order, special



1 order, or provision of this division, or any part thereof, which
2 failure or refusal creates a real and apparent hazard to employees.

3 (5) Directly or indirectly, knowingly induces another to
4 commit any of the acts in paragraph (1), (2), (3), or (4) of
5 subdivision (a).

6 (b) Any violation of paragraph (1) of subdivision (a) is
7 punishable by imprisonment in the county jail for a period not to
8 exceed six months, or by a fine not to exceed five thousand dollars
9 (\$5,000), or by both that imprisonment and fine.

10 (c) Any violation of paragraph (3) of subdivision (a) is
11 punishable by imprisonment in county jail for up to one year, or
12 by a fine not to exceed twenty-five thousand dollars (\$25,000), or
13 by both that imprisonment and fine. If the violator is a corporation
14 or a limited liability company, the fine prescribed by this
15 subdivision may not exceed two hundred fifty thousand dollars
16 (\$250,000).

17 (d) Any violation of paragraph (2), (4), or (5) of subdivision (a)
18 is punishable by imprisonment in a county jail for a term not
19 exceeding one year, or by a fine not exceeding fifteen thousand
20 dollars (\$15,000), or by both that imprisonment and fine. If the
21 defendant is a corporation or a limited liability company, the fine
22 may not exceed one hundred fifty thousand dollars (\$150,000).

23 (e) In determining the amount of fine to impose under this
24 section, the court shall consider all relevant circumstances,
25 including, but not limited to, the nature, circumstance, extent, and
26 gravity of the violation, any prior history of violations by the
27 defendant, the ability of the defendant to pay, and any other matters
28 the court determines the interests of justice require.

29 SEC. 9. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

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