

Assembly Bill No. 2837

CHAPTER 885

An act to add Section 102346 to the Health and Safety Code, 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.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2837, Koretz. Safety in employment.

Existing law provides that the local registrar of births and deaths shall transmit each week to the State Registrar all original certificates accepted for registration by him or her during the preceding week.

In addition, this bill would require the local registrar of births and deaths to transmit a copy of each certificate of death for which the death has been marked as work related.

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 the division to make all efforts to ensure that limited-English-proficient persons can communicate effectively with the division. The division would further be required to prepare a progress report containing specified information, by July 30, 2004, on the provision of information and services to non-English-speaking persons.

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 permit 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 not less than \$5,000 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. The bill would prohibit the department from receiving or accepting a contribution made from proceeds of a judgment in certain criminal actions, relating to violations of the California Occupational Safety and Health Act of 1973.

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 that person or entity, 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, the violation of which is deemed to be a serious violation, as defined.

This bill would also provide that an employer, officer, management official, or supervisor who knowingly fails to report a death to the division or knowingly induces another to do so is guilty of a misdemeanor. This bill would prescribe a penalty of up to one year in jail, a fine of up to \$15,000, or both. If the violator is a corporation or a limited liability company, this bill would impose a fine of up to \$150,000.

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.

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

SECTION 1. Section 102346 is added to the Health and Safety Code, to read:

102346. (a) The local registrar of births and deaths shall transmit each month to the Division of Labor Statistics and Research of the Department of Industrial Relations a copy of each certificate of death for



which the death has been marked as work-related and which was accepted for registration by him or her during the preceding month.

(b) This section shall become operative on January 1, 2003.

SEC. 2. Section 176 is added to the Labor Code, to read:

176. (a) The Legislature hereby finds and declares that the Dymally-Alatorre Bilingual Services Act, Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code, was enacted in 1973 to provide for the removal of language barriers that prevent the people of this state who are not proficient in English from effectively accessing government services and otherwise communicating with their government.

The Legislature further finds and declares that limited-English-proficient individuals will benefit from increased language-based access to the programs and services of the Division of Occupational Safety and Health.

The Legislature further finds and declares that federal statistics show that from 1996 to 2000, while overall worker fatalities dropped 14 percent, immigrant worker fatalities rose 17 percent. Immigrant workers die on the job at higher rates because they frequently work in more dangerous industries with little or no training. Language barriers compound the problem because training and warning signs are often only in English.

(b) As used in this section, a “public contact position” means any position responsible for responding to telephone or in-office inquiries or taking complaints from the general public regarding matters pertaining to occupational safety and health.

(c) As used in the section, an “investigative position” means any position responsible for investigating complaints, injuries, or deaths related to occupational safety and health.

(d) As used in this section, “limited-English-proficient” refers to persons who speak English less than “very well,” in accordance with United States Census data.

(e) The division shall make all efforts to ensure that limited-English-proficient persons can communicate effectively with the division. Examples of potential measures include, but are not limited to, the hiring of bilingual persons in public contract positions and investigative positions, the use of contract based interpreters, and the use of telephone-based interpretation services. Nothing contained in this section relieves the division of its separate obligations under the Dymally-Alatorre Bilingual Services Act, Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code, or any other state or federal laws requiring the provision of its services in languages other than English.



(f) On July 30, 2004, the Division of Occupational Health and Safety shall issue a progress report to the Legislature on the implementation of this section that shall, at a minimum, include all of the following:

(1) The most recent information provided to the California State Personnel Board pursuant to Section 7299.4 of the Government Code.

(2) The number of bilingual employees in public contract and investigative positions in each local office of the division and the languages they speak, other than English.

(3) A description of any centralized system or other resources for providing translation and interpretation services within the division.

(4) A description of any quality control measures or evaluations undertaken by the division to evaluate whether limited-English-proficient persons are able to communicate effectively with the division.

(5) A description of any means, such as contracted interpreters, telephone-based interpretation services, or video conferencing, used by the division to communicate with individuals who are limited-English-proficient in the event that bilingual employees in public contract or investigative positions are not available, and the frequency in which these services were used by the division during the most recent fiscal year.

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

6309. If the division learns or has reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee, it may, of its own motion, or upon complaint, summarily investigate the same with or without notice or hearings. However, if the division secures a complaint from an employee, the employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, or representative of a government agency, or an employer of an employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, it shall, with or without notice or hearing, summarily investigate the same as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation. The division shall attempt to determine the period of time in the future that the complainant believes the unsafe condition may continue to exist, and shall allocate inspection resources so as to respond first to those situations in which time is of the essence. For purposes of this section, a complaint is deemed to allege a serious violation if the division determines that the complaint charges that there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices,



means, methods, operations, or processes which have been adopted or are in use in a place of employment. When a complaint charging a serious violation is received from a state or local prosecutor, or a local law enforcement agency, the division shall summarily investigate the employment or place of employment within 24 hours of receipt of the complaint. All other complaints are deemed to allege nonserious violations. The division may enter and serve any necessary order relative thereto. The division is not required to respond to any complaint within this period where, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer or is without any reasonable basis.

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

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

The requirements of this section do not relieve the division of its requirement to inspect and assure that all places of employment are safe and healthful for employees. The division shall maintain the capability to receive and act upon complaints at all times.

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

6313. (a) The division shall investigate the causes of any employment accident that is fatal to one or more employees or that results in a serious injury or illness, or a serious exposure, unless it determines that an investigation is unnecessary. If the division determines that an investigation of an accident is unnecessary, it shall summarize the facts indicating that the accident need not be investigated and the means by which the facts were determined. The division shall establish guidelines for determining the circumstances under which an investigation of these accidents and exposures is unnecessary.

(b) The division may investigate the causes of any other industrial accident or occupational illness which occurs within the state in any



employment or place of employment, or which directly or indirectly arises from or is connected with the maintenance or operation of the employment or place of employment, and shall issue any orders necessary to eliminate the causes and to prevent reoccurrence. The orders may not be admitted as evidence in any action for damages, or any proceeding to recover compensation, based on or arising out of injury or death caused by the accident or illness.

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

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

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

(1) All initial accident reports.

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

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

(c) The supervisor of the bureau is the administrative chief of the bureau, and must be an attorney.

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

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

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

(g) In any case where the bureau is required to conduct an investigation, and in which there is a serious injury or death, the results of the investigation shall be referred in a timely manner by the bureau



to the appropriate prosecuting authority having jurisdiction for appropriate action, unless the bureau determines that there is legally insufficient evidence of a violation of the law.

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

(i) Upon the request of a county district attorney, the department may develop a protocol for the referral of cases that may involve criminal conduct to the appropriate prosecuting authority in lieu of or in cooperation with an investigation by the bureau. The protocol shall provide for the voluntary acceptance of referrals after a review of the case by the prosecuting authority. In cases accepted for investigation by the prosecuting authority, the protocol must provide for cooperation between the prosecuting authority, the division, and the bureau. Where a referral is declined by the prosecuting authority, the bureau shall comply with subdivisions (a) through (h), inclusive.

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

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

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

(c) The department may not receive or accept a contribution of funds under this section made from the proceeds of a judgment in a criminal action filed pursuant to Section 6423 or 6425 of the Labor Code.

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

6409.1. (a) Every employer shall file a complete report of every occupational injury or occupational illness, as defined in subdivision (b) of Section 6409, to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid, with the Department of Industrial Relations, through its Division of Labor Statistics and Research or, if an insured employer, with the insurer, on a form prescribed for that purpose by the Division of Labor Statistics and Research. A report shall be filed concerning each injury and illness which has, or is alleged to have, arisen out of and in the course of employment, within five days after the employer obtains knowledge of the injury or illness. Each report of occupational injury or occupational illness shall indicate the social security number of the injured employee. In the case of an insured employer, the insurer shall



file with the division immediately upon receipt, a copy of the employer's report, which has been received from the insured employer. In the event an employer has filed a report of injury or illness pursuant to this subdivision and the employee subsequently dies as a result of the reported injury or illness, the employer shall file an amended report indicating the death with the Department of Industrial Relations, through its Division of Labor Statistics and Research or, if an insured employer, with the insurer, within five days after the employer is notified or learns of the death. A copy of any amended reports received by the insurer shall be filed with the division immediately upon receipt.

(b) In every case involving a serious injury or illness, or death, in addition to the report required by subdivision (a), a report shall be made immediately by the employer to the Division of Occupational Safety and Health by telephone or telegraph. An employer who violates this subdivision may be assessed a civil penalty of not less than five thousand dollars (\$5,000). Nothing in this subdivision shall be construed to increase the maximum civil penalty, pursuant to Sections 6427 to 6430, inclusive, that may be imposed for a violation of this section.

SEC. 7. Section 6409.2 of the Labor Code is amended to read:

6409.2. Whenever a state, county, or local fire or police agency is called to an accident involving an employee covered by this part in which a serious injury or illness, or death occurs, the responding agency shall immediately notify the nearest office of the Division of Occupational Safety and Health by telephone. Thereafter, the division shall immediately notify the appropriate prosecuting authority of the accident.

SEC. 8. Section 6423 of the Labor Code is amended to read:

6423. (a) Except where another penalty is specifically provided, every employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who does any of the following is guilty of a misdemeanor:

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

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

(3) Knowingly fails to report to the division a death, as required by subdivision (b) of Section 6409.1.



(4) Fails or refuses to comply, after notification and expiration of any abatement period, with any such standard, order, special order, or provision of this division, or any part thereof, which failure or refusal creates a real and apparent hazard to employees.

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

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

(c) Any violation of paragraph (3) of subdivision (a) is punishable by imprisonment in county jail for up to one year, or by a fine not to exceed fifteen thousand dollars (\$15,000), or by both that imprisonment and fine. If the violator is a corporation or a limited liability company, the fine prescribed by this subdivision may not exceed one hundred fifty thousand dollars (\$150,000).

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

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

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

