

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2774

**Introduced by Committee on Labor and Employment—(~~Monning~~
(~~Swanson~~ (Chair), ~~Eng~~, ~~Furutani~~, ~~Ma Monning~~, and ~~Portantino~~)
~~Yamada~~)**

March 1, 2010

An act to amend Section ~~6432~~ 6325 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2774, as amended, Committee on Labor and Employment. ~~Health and safety: term defined.~~ *Occupational safety and health.*

Existing law, the California Occupational Safety and Health Act of 1973, establishes enforcement procedures for the requirements related to safe and healthful working conditions for Californians. The Division of Occupational Safety and Health of the Department of Industrial Relations is charged with enforcing occupational health and safety laws, orders, and standards, including the investigation of alleged violations of those provisions.

Existing law requires the division, when it decides that a place of employment, machine, device, apparatus, or equipment constitutes an imminent hazard to employees, to prohibit entry to the workplace or use of the machine, device, apparatus, or equipment.

This bill would specify that a place of employment may be deemed dangerous because a particular machine, device, apparatus, or piece of equipment, as well as a condition or practice in a place of employment, constitutes an imminent hazard to employees.

Existing law defines the term “serious violation” for purposes of enforcement of health and safety regulations.

This bill would make nonsubstantive changes to this provision.

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

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

1 SECTION 1. Section 6325 of the Labor Code is amended to
2 read:

3 6325. When, in the opinion of the division, a place of
4 employment, ~~is dangerous to employees because of a condition~~
5 ~~or practice, or because a machine, device, apparatus, or piece of~~
6 ~~equipment or any part thereof is in a dangerous condition, is not~~
7 ~~properly guarded, or is dangerously placed so as to constitute that~~
8 ~~the condition or practice of the workplace or the machine, device,~~
9 ~~apparatus, or piece of equipment constitutes an imminent hazard~~
10 ~~to employees, entry therein, or the use thereof, as the case may be,~~
11 ~~shall be prohibited by the division, and a conspicuous notice to~~
12 ~~that effect shall be attached thereto. Such~~ The prohibition of use
13 shall be limited to the immediate area in which the imminent hazard
14 exists, and the division shall not prohibit any entry in or use of a
15 place of employment, machine, device, apparatus, or *piece of*
16 *equipment, or any part thereof, which is outside such the area of*
17 *imminent hazard. Such* The notice shall not be removed except by
18 an authorized representative of the division, nor until the place of
19 employment, machine, device, apparatus, or equipment is made
20 safe and the required safeguards or safety appliances or devices
21 are provided. This section shall not prevent the entry or use with
22 the division’s knowledge and permission for the sole purpose of
23 eliminating the dangerous conditions.

24 SECTION 1. Section 6432 of the Labor Code is amended to
25 read:

26 6432. (a) As used in this part, a “serious violation” shall be
27 deemed to exist in a place of employment if there is a substantial
28 probability that death or serious physical harm could result from
29 a violation, including circumstances where there is a substantial
30 probability that either of the following could result in death or
31 great bodily injury:

1 ~~(1) A serious exposure exceeding an established permissible~~
2 ~~exposure limit.~~

3 ~~(2) The existence of one or more practices, means, methods,~~
4 ~~operations, or processes which have been adopted or are in use in~~
5 ~~the place of employment.~~

6 ~~(b) Notwithstanding subdivision (a), a serious violation shall~~
7 ~~not be deemed to exist if the employer can demonstrate that it did~~
8 ~~not, and could not with the exercise of reasonable diligence, know~~
9 ~~of the presence of the violation.~~

10 ~~(c) As used in this section, “substantial probability” refers not~~
11 ~~to the probability that an accident or exposure will occur as a result~~
12 ~~of the violation, but rather to the probability that death or serious~~
13 ~~physical harm will result assuming an accident or exposure occurs~~
14 ~~as a result of the violation.~~