

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 3, 2011

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 829

Introduced by Senator DeSaulnier

February 18, 2011

An act to amend Sections 148.5, 148.6, 148.8, ~~149.5~~, 6309, 6317, 6600, 6601, 6601.5, 6602, 6603, 6610, ~~6620, 6621, 6622~~, 6625, ~~6627~~, and 6630 of, ~~and~~ to add Sections 6319.6, 6603.1, 6603.2, and 6603.3 to, *and to repeal Section 149.5 of*, the Labor Code, relating to employment safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 829, as amended, DeSaulnier. Division of Occupational Safety and Health: Occupational Safety and Health Appeals Board.

Existing law establishes the Division of Occupational Safety and Health in the Department of Industrial Relations to enforce employment safety laws. Existing law authorizes the division to conduct hearings, inspections, and investigations regarding alleged violations of employment safety laws and to issue citations to employers. Existing law establishes the Occupational Safety and Health Appeals Board in the department and prescribes procedures for the appeals board to hear and decide employer appeals of the division's enforcement actions.

This bill would revise and recast various provisions regarding citations issued by the department, the persons or entities who are authorized to participate as a party in an appeal before the appeals board, and the procedures that govern the appeals board in hearing and deciding

appeals. The bill also would make other related clarifying and conforming changes.

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

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

1 SECTION 1. Section 148.5 of the Labor Code is amended to
2 read:

3 148.5. The appeals board, in adjudicating appeals, shall liberally
4 construe the provisions of Division 5 (commencing with Section
5 6300), as well as the standards and orders adopted by the Division
6 of Occupational Safety and Health or the department pursuant to
7 that division, and the standards and orders adopted by the
8 Occupational Safety and Health Standards Board pursuant to
9 Chapter 6 (commencing with Section 140) in order to ensure safe
10 and healthy working conditions for the working men and women
11 of this state. A decision of the appeals board is final, except for
12 any rehearing or judicial review as permitted by Chapter 7
13 (commencing with Section 6600) of Part 1 of Division 5.

14 SEC. 2. Section 148.6 of the Labor Code is amended to read:

15 148.6. A decision of the appeals board is binding on the director
16 and the Division of Occupational Safety and Health with respect
17 to the parties involved in the particular appeal. The director, a
18 party, and any affected person may seek judicial review of an
19 appeals board decision irrespective of whether or not he or she
20 appeared or participated in the appeal to the appeals board or its
21 hearing officer.

22 SEC. 3. Section 148.8 of the Labor Code is amended to read:

23 148.8. The appeals board and its duly authorized representatives
24 in the performance of its duties has the powers of a head of a
25 department as set forth in Article 2 (commencing with Section
26 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the
27 Government Code, except for Section 11185 of the Government
28 Code. In adjudicating appeals, the appeals board is subject to and
29 shall apply the rules and regulations adopted by the department
30 for the purpose of assisting in the enforcement of the provisions
31 of this code regarding occupational safety and health.

32 ~~SEC. 4. Section 149.5 of the Labor Code is amended to read:~~

1 ~~149.5.— (a) The appeals board may award reasonable costs,~~
2 ~~including attorney’s fees, consultant’s fees, and witness’ fees, not~~
3 ~~to exceed five thousand dollars (\$5,000) in the aggregate, to any~~
4 ~~employer who appeals a citation resulting from an inspection or~~
5 ~~investigation conducted on or after January 1, 1980, issued for a~~
6 ~~violation of Division 5 (commencing with Section 6300) or of an~~
7 ~~occupational safety and health standard, rule, order, or regulation~~
8 ~~adopted pursuant to Chapter 6 (commencing with Section 140) of~~
9 ~~Division 1 if (1) the employer prevails in the appeal or the citation~~
10 ~~is withdrawn, and (2) the appeals board finds that the issuance of~~
11 ~~the citation was the result of arbitrary or capricious action or~~
12 ~~conduct by the division. The appeals board may award reasonable~~
13 ~~costs, including attorney’s fees, consultant’s fees, and witness’~~
14 ~~fees, not to exceed five thousand dollars (\$5,000) in the aggregate,~~
15 ~~to the division if (1) it prevails in an appeal filed by the employer~~
16 ~~or the appeal is withdrawn, and (2) the appeals board finds that~~
17 ~~the employer acted in bad faith or had no factual basis for filing~~
18 ~~the appeal.~~

19 ~~(b) Costs and fees awarded to the division shall be deposited~~
20 ~~into the division’s regular operating budget.~~

21 ~~(c) The payment of costs and fees by the division pursuant to~~
22 ~~this section shall be from funds in the division’s regular operating~~
23 ~~budget. The division shall show in its proposed budget for each~~
24 ~~fiscal year the following information with respect to the prior fiscal~~
25 ~~year:~~

26 ~~(1) The total costs paid.~~

27 ~~(2) The number of cases in which costs were paid.~~

28 ~~SEC. 4. Section 149.5 of the Labor Code is repealed.~~

29 ~~149.5.— The appeals board may award reasonable costs,~~
30 ~~including attorney’s fees, consultant’s fees, and witness’ fees, not~~
31 ~~to exceed five thousand dollars (\$5,000) in the aggregate, to any~~
32 ~~employer who appeals a citation resulting from an inspection or~~
33 ~~investigation conducted on or after January 1, 1980, issued for~~
34 ~~violation of an occupational safety and health standard, rule, order,~~
35 ~~or regulation established pursuant to Chapter 6 (commencing with~~
36 ~~Section 140) of Division 1, if (1) either the employer prevails in~~
37 ~~the appeal, or the citation is withdrawn, and (2) the appeals board~~
38 ~~finds that the issuance of the citation was the result of arbitrary or~~
39 ~~capricious action or conduct by the division.~~

1 The appeals board shall adopt rules of practice and procedure
2 to implement this section.

3 The payment of costs pursuant to this section shall be from funds
4 in the regular operating budget of the division. The division shall
5 show in its proposed budget for each fiscal year the following
6 information with respect to the prior fiscal year:

- 7 (a) The total costs paid.
- 8 (b) The number of cases in which costs were paid.

9 SEC. 5. Section 6309 of the Labor Code is amended to read:

10 6309. (a) If the division learns or has reason to believe that an
11 employment or place of employment is not safe or is injurious to
12 the welfare of an employee, it may, on its own motion, or upon
13 complaint, summarily investigate the same with or without notice
14 or hearings. However, if the division receives a complaint from
15 (1) an employee, (2) an employee’s representative, including, but
16 not limited to, an attorney, a family member, a union representative,
17 regardless of whether the representative’s union has a collective
18 bargaining agreement with the employer, or a community,
19 employee, or legal organization, (3) a health or safety professional,
20 (4) a government agency representative, or (5) an employer of an
21 employee directly involved in an unsafe place of employment, that
22 ~~his or her~~ *the* employment or place of employment is not safe, it
23 shall, with or without notice or hearing, summarily investigate the
24 complaint as soon as possible, but not later than three working
25 days after receipt of a complaint charging a serious violation, and
26 not later than 14 calendar days after receipt of a complaint charging
27 a nonserious violation. *The division may investigate and conduct*
28 *an onsite inspection of a serious violation charged in a complaint*
29 *from a source other than those described in (1) to (5), inclusive,*
30 *of this subdivision before investigating any nonserious violation.*
31 The division shall attempt to determine the period of time in the
32 future that the complainant believes the unsafe condition may
33 continue to exist, and shall allocate inspection resources so as to
34 respond first to those situations in which time is of the essence.
35 For purposes of this section, a complaint is deemed to allege a
36 serious violation if the division determines that the complaint
37 charges that there is a substantial probability that death or serious
38 physical harm could result from a condition which exists, or from
39 one or more practices, means, methods, operations, or processes
40 which have been adopted or are in use in a place of employment.

1 When a complaint charging a serious violation is received from a
2 state or local prosecutor, or a local law enforcement agency, the
3 division shall summarily investigate the employment or place of
4 employment within 24 hours of receipt of the complaint. All other
5 complaints are deemed to allege nonserious violations. The division
6 may enter and serve any necessary order relative thereto. The
7 division is not required to respond to a complaint within this period
8 where, from the facts stated in the complaint, it determines that
9 the complaint is intended to willfully harass an employer or is
10 without any reasonable basis.

11 (b) The division shall keep complete and accurate records of
12 all complaints, whether verbal or written, and shall inform the
13 complainant, whenever his or her identity is known, of any action
14 taken by the division in regard to the subject matter of the
15 complaint, and the reasons for the action, within 14 calendar days
16 of taking any action. The records of the division shall include the
17 dates on which any action was taken on the complaint, or the
18 reasons for not taking any action on the complaint. The division
19 shall, pursuant to authorized regulations, conduct an informal
20 review of any refusal by a representative of the division to issue
21 a citation with respect to an alleged violation. The division shall
22 furnish the employee or the representative of employees requesting
23 the review a written statement of the reasons for the division's
24 final disposition of the case.

25 (c) The name of a person who submits to the division a
26 complaint regarding the unsafe condition of an employment or
27 place of employment shall be kept confidential by the division,
28 unless that person requests otherwise.

29 (d) The division shall annually compile and release on its
30 Internet Web site data pertaining to complaints received and
31 citations issued.

32 (e) The requirements of this section do not relieve the division
33 of its requirement to inspect and ensure that all places of
34 employment are safe and healthful for employees. The division
35 shall maintain the capability to receive and act upon complaints
36 at all times.

37 SEC. 6. Section 6317 of the Labor Code is amended to read:

38 6317. (a) If, upon inspection or investigation, the division
39 believes that an employer has violated Section 25910 of the Health
40 and Safety Code, *Article 4 (commencing with Section 3550) of*

1 *Chapter 2 of Part 1 of Division 4 of this code*, Division 5
2 (commencing with Section 6300) of this code, or any standard,
3 rule, order, or regulation adopted pursuant to Chapter 6
4 (commencing with Section 140) of Division 1 of this code, or any
5 standard, rule, order, or regulation established pursuant to this code
6 *regarding occupational safety and health*, it shall with reasonable
7 promptness issue a citation to the employer. Each citation shall be
8 in writing and shall describe with particularity the nature of the
9 violation, including a reference to the provision of the code,
10 standard, rule, regulation, or order alleged to have been violated.
11 In addition, the citation shall fix a reasonable time for the
12 abatement of the alleged violation. The period specified for
13 abatement shall not commence running until the date the citation
14 or notice is received by certified mail and the certified mail receipt
15 is signed, or if not signed, the date the return is made to the post
16 office. If the division officially and directly delivers the citation
17 or notice to the employer, the period specified for abatement shall
18 commence running on the date of the delivery.

19 (b) A “notice” in lieu of citation may be issued with respect to
20 violations found in an inspection or investigation which meet either
21 of the following requirements:

22 (1) The violations do not have a direct relationship upon the
23 health or safety of an employee.

24 (2) The violations do not have an immediate relationship to the
25 health or safety of an employee, and are of a general or regulatory
26 nature. A notice in lieu of a citation may be issued only if the
27 employer agrees to correct the violations within a reasonable time,
28 as specified by the division, and agrees not to appeal the finding
29 of the division that the violations exist. A notice issued pursuant
30 to this paragraph shall have the same effect as a citation for
31 purposes of establishing repeat violations or a failure to abate.
32 Every notice shall clearly state the abatement period specified by
33 the division, that the notice may not be appealed, and that the notice
34 has the same effect as a citation for purposes of establishing a
35 repeated violation or a failure to abate. The employer shall indicate
36 agreement to the provisions and conditions of the notice by his or
37 her signature on the notice.

38 (c) Under no circumstances shall a notice be issued in lieu of a
39 citation if the violations are serious, repeated, willful, or arise from
40 a failure to abate.

1 (d) The director shall prescribe guidelines for the issuance of
2 these notices.

3 (e) The division may impose a civil penalty against an employer
4 as specified in Chapter 4 (commencing with Section 6423). A
5 notice in lieu of a citation may not be issued if the number of first
6 instance violations found in the inspection (other than serious,
7 willful, or repeated violations) is 10 or more violations.

8 (f) No citation or notice shall be issued by the division for a
9 given violation or violations after six months have elapsed since
10 occurrence of the violation, except that a citation may be amended
11 pursuant to Section 6603.2.

12 (g) The director shall prescribe procedures for the issuance of
13 a citation or notice.

14 (h) The division shall prepare and maintain records capable of
15 supplying an inspector with previous citations and notices issued
16 to an employer.

17 SEC. 7. Section 6319.6 is added to the Labor Code, to read:

18 ~~6319.6.—(a) The appeals board shall not stay an abatement
19 measure required by the division as part of an enforcement action
20 pending appeal unless the employer indicates, by verified petition
21 in its notice of appeal to the appeals board, that it seeks a stay of
22 abatement and states the reasons why abatement is not necessary
23 to protect the health or safety of employees. The employer may
24 submit additional evidence, under penalty of perjury,
25 accompanying the verified petition, upon which a decision may
26 be made. Any party may, within 10 calendar days of the employer's
27 notice of appeal, submit declarations or other evidence, under
28 penalty of perjury, as to why abatement should not be stayed. The
29 employer may request a hearing before the appeals board on this
30 issue upon payment of a filing fee of two hundred fifty dollars
31 (\$250).~~

32 ~~(b) The appeals board may make a determination regarding the
33 request for a stay of abatement based on the employer's verified
34 petition and the evidence submitted under penalty of perjury by
35 the employer and any other party, or may hold a hearing within
36 30 calendar days of receipt of the verified petition. The abatement
37 shall be stayed pending the determination.~~

38 ~~(c) The appeals board shall issue a written determination within
39 30 calendar days of receipt of the employer's petition for a stay
40 of abatement, or within 10 days of completion of the hearing if a~~

1 hearing is held, granting or denying the requested stay of abatement
2 with an explanation of the reasons for its decision.

3 ~~(d) The appeals board may grant a stay of abatement pending
4 appeal if it finds either of the following:~~

5 ~~(1) No employee will be exposed to an unsafe or unhealthy
6 condition.~~

7 ~~(2) The condition is unlikely to cause death, serious injury or
8 illness, or serious exposure to any worker.~~

9 ~~(e) Notwithstanding subdivision (c), the appeals board may take
10 an additional 30 days to complete the hearing process if it
11 determines that the complexity of the matter requires the additional
12 time for an adequate resolution and that employee safety will not
13 be jeopardized by the delay.~~

14 ~~(f) The appeals board may order the employer to implement
15 interim safety or health measures as part of a determination that
16 the matter will be extended for the additional 30 days pursuant to
17 subdivision (e) or should it grant a stay of abatement.~~

18 *6319.6. If an employer or employee contests the period of time
19 fixed for correction of a violation classified and cited as serious,
20 willful, repeated serious, or a failure to abate a serious violation,
21 any hearing on that issue shall be conducted as soon as possible
22 and shall take precedence over other hearings conducted by the
23 board.*

24 SEC. 8. Section 6600 of the Labor Code is amended to read:

25 6600. (a) Any employer served with a citation or notice
26 pursuant to Section 6317, or a notice of proposed penalty under
27 this part, or any other person obligated to the employer as specified
28 in subdivision (b) of Section 6319, may appeal to the appeals board
29 within 15 working days from the receipt of the citation or the notice
30 with respect to violations alleged by the division, abatement
31 periods, amount of proposed penalties, and the reasonableness of
32 the changes required by the division to abate the condition.

33 (b) Whenever a citation has been issued or a notice served
34 pursuant to Section 6308 or 6317, the appeals board shall permit
35 any of the following, within 15 working days of actual notice of
36 the citation or notice, to participate in an appeal and to contest the
37 reasonableness of the ~~period of time fixed in the citation or order
38 for terms and conditions of the abatement of the violation, the
39 sufficiency of the changes required to abate the condition, or the
40 characterization of the violation, or both:~~

1 (1) An employee or his or her representative, as described in
2 Section 6309.

3 (2) A union that has a collective bargaining agreement with any
4 employer that covers the cited employer's place of employment.

5 (3) A deceased worker's successor in interest, heir, beneficiary,
6 or other representative.

7 ~~(e) The appeals board may allow any other person or entity to
8 participate as a party in an appeal in the interests of justice.~~

9 ~~(d)~~

10 (c) The division is a party to all proceedings before the appeals
11 board, whether or not the division has appeared or participated in
12 a given proceeding.

13 SEC. 9. Section 6601 of the Labor Code is amended to read:

14 6601. If, within 15 working days from receipt of the citation
15 or notice of civil penalty issued by the division, the employer fails
16 to notify the appeals board that it intends to contest the citation or
17 notice of proposed penalty, and no notice contesting the *terms and*
18 *conditions of abatement period, the sufficiency of the changes*
19 ~~required to abate the condition, or~~, the characterization of any
20 violation, *or both*, is filed by any party described in subdivision
21 (b) of Section 6600 within that time, the citation or notice of
22 proposed penalty shall be deemed a final order of the appeals board
23 and not subject to review by any court or agency. The 15-day
24 period may be extended by the appeals board for good cause.

25 SEC. 10. Section 6601.5 of the Labor Code is amended to read:

26 6601.5. If, within 15 working days from receipt of a special
27 order or action order by the division, the employer fails to notify
28 the appeals board that he or she intends to contest the order, and
29 no notice contesting the ~~abatement period, the sufficiency of the~~
30 ~~changes required to abate the condition, or~~ *terms and conditions*
31 *of abatement*, the characterization of any violation, *or both*, is filed
32 by any party described in subdivision (b) of Section 6600 within
33 that time, the order shall be deemed a final order of the appeals
34 board and not subject to review by any court or agency. The 15-day
35 period may be extended by the appeals board for good cause.

36 SEC. 11. Section 6602 of the Labor Code is amended to read:

37 6602. If an employer notifies the appeals board that he or she
38 intends to contest a citation issued under Section 6317, or notice
39 of proposed penalty issued under Section 6319, or order issued
40 under Section 6308, or if, within 15 working days of the issuance

1 of a citation or order, any employee or representative of an
 2 employee files a notice with the division or appeals board alleging
 3 ~~that the period of time fixed in the citation or order for the~~
 4 ~~abatement of the violation is unreasonable, that the changes~~
 5 ~~required to abate the condition are insufficient, or that the~~ *that the*
 6 *terms and conditions of abatement are unreasonable or that the*
 7 characterization of any violation is improper, the appeals board
 8 shall afford an opportunity for a hearing. The appeals board shall
 9 thereafter issue a decision, based on findings of fact, affirming,
 10 modifying, or vacating the division's citation or order, and may
 11 modify the proposed penalty, if the penalty modification is not in
 12 conflict with any other section of this code or regulation of the
 13 department, or direct other appropriate relief.

14 SEC. 12. Section 6603 of the Labor Code is amended to read:

15 6603. (a) The rules of practice and procedure adopted by the
 16 appeals board shall do all of the following:

17 (1) Be consistent with Article 8 (commencing with Section
 18 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and
 19 Sections 11507, 11507.6, 11507.7, 11513, 11514, 11515, and
 20 11516 of, the Government Code, and shall provide affected
 21 employees or representatives of affected employees an opportunity
 22 to participate as parties to a hearing under Section 6602.

23 (2) Ensure that all parties participate fully in any hearing, receive
 24 notices, be permitted to subpoena witnesses and documents at any
 25 time before the completion of the hearing, offer evidence, examine
 26 and cross-examine witnesses, and argue and submit briefs. Parties
 27 shall also have the right to participate fully in the settlement of a
 28 matter at the prehearing conference, hearing, or in any other
 29 proceedings where settlement may be reached. ~~A party described~~
 30 ~~in subdivision (b) of Section 6600 may object, within 15 working~~
 31 ~~days of notice of the settlement agreement between the employer~~
 32 ~~and the division, to provisions regarding the characterization of a~~
 33 ~~violation, the amount of time in which abatement is to be~~
 34 ~~accomplished, or the nature and sufficiency of abatement in a~~
 35 ~~settlement agreement, if any of those are at issue in the appeal.~~

36 ~~(3) Provide for the scheduling of hearings in a manner designed~~
 37 ~~to minimize inconvenience to the division and all parties and~~
 38 ~~witnesses who are required to attend the hearings, and to be~~
 39 ~~completed without significant lapses in time should the hearing~~
 40 ~~not be completed within the time originally scheduled. The appeals~~

1 board shall set initial hearing dates, subject to change upon
2 agreement of the parties within 30 days of the notice of the initial
3 hearing date, and shall not grant subsequent continuances absent
4 good cause.

5 (4) ~~Establish a settlement program designed to bring the parties
6 to an agreement at the earliest possible stage of the appeal.~~

7 (b) The superior courts shall have jurisdiction over contempt
8 proceedings, as provided in Article 12 (commencing with Section
9 11455.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the
10 Government Code.

11 SEC. 13. Section 6603.1 is added to the Labor Code, to read:

12 6603.1. (a) The Legislature finds and declares that it is the
13 duty of the appeals board to further the purposes of this division,
14 which include ensuring safe and healthful working conditions for
15 all working men and women in the state. The appeals board and
16 its administrative law judges shall, in the conduct of hearings,
17 gather evidence through oral testimony and records that is best
18 calculated to ascertain the substantial rights of the parties and carry
19 out justly the letter and spirit of this division, make a complete
20 inquiry into the facts as to whether the employer committed the
21 violation or violations alleged in the citation, and ensure that a full
22 hearing record is obtained.

23 (b) It is the intent of the Legislature that hearings held pursuant
24 to this division be conducted in an informal setting that preserves
25 the rights of the parties. In conducting hearings, the appeals board
26 shall permit hearsay and opinion evidence, according it the weight
27 that is appropriate under the circumstances, call and examine a
28 party or any witness, and on its own motion may admit any relevant
29 and material evidence.

30 SEC. 14. Section 6603.2 is added to the Labor Code, to read:

31 6603.2. (a) The appeals board shall, at any time before an
32 appeal is submitted for decision *at the close of the hearing*,
33 regardless of whether the statute of limitations has run, allow the
34 division to add or delete a citation ~~or amend a citation or order by~~
35 ~~adding or striking out the name of any party, correcting a mistake~~
36 ~~in the name of a party, or correcting a clerical error or mistake in~~
37 ~~any other respect. The appeals board~~ *or amend a citation or order*
38 *according to proof presented. The appeals board* may allow the
39 employer to amend, according to proof presented by the employer,
40 the basis of its appeal. Leave to amend shall be liberally granted

1 if the factual circumstances serving as the basis for the amendments
2 have been litigated by the parties.

3 (b) Each party shall be given notice of the intended amendment
4 and an opportunity to object on the basis of prejudice. If prejudice
5 is shown, the amendment shall not be granted. However, if the
6 prejudice can be remedied by a continuance of the hearing, a
7 continuance for further proceedings shall be granted in lieu of
8 denying the amendment.

9 SEC. 15. Section 6603.3 is added to the Labor Code, to read:

10 6603.3. Whenever a case is within the jurisdiction of the Bureau
11 of Investigations pursuant to Section 6315, the appeals board shall
12 continue any hearing upon the written request of the division,
13 employer, or any prosecuting attorney with jurisdiction over a
14 criminal case involving the citation for which an appeal has been
15 filed pursuant to Section 6602. In lieu of a continuance, the appeals
16 board may dismiss the employer’s appeal with leave to refile within
17 15 calendar days of the completion of the criminal case.
18 Completion of the criminal case shall be deemed to occur on the
19 date of a verdict of not guilty or the date of sentencing after a
20 verdict or plea of guilty or no contest.

21 SEC. 16. Section 6610 of the Labor Code is amended to read:

22 6610. (a) Any notice, order, or decision required by this part
23 to be served upon any person either before, during, or after the
24 institution of any proceeding before the appeals board, shall be
25 served in the manner provided by Chapter 5 (commencing with
26 Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure,
27 unless otherwise directed by the appeals board. In the latter event,
28 the document shall be served in accordance with the order or
29 direction of the appeals board. The appeals board may, in the
30 circumstances addressed in the Code of Civil Procedure, order
31 service to be made by publication of notice of time and place of
32 hearing. Where service is ordered to be made by publication, the
33 date of the hearing shall be fixed more than 30 days from the date
34 the application was filed.

35 (b) The employer shall give notice of any appeal filed pursuant
36 to Section 6602 to its employees by posting the docketed appeal
37 form, participation notice, and notice of hearing at or near the site
38 of the alleged violation, or, if that is not practicable, at a
39 conspicuous place where it will be readily observable by employees
40 or at a location where employees report each day. The employer

1 shall provide notice to each union, if any, with which it has a
2 collective bargaining agreement. If the employer is cited as a
3 controlling employer pursuant to paragraph (3) of subdivision (b)
4 of Section 6400, it shall provide notice to the employers at the
5 place of employment on the dates of any alleged violations. If an
6 employee was injured, made ill, or killed as a result of the alleged
7 violation that is being appealed, the employer shall also provide
8 notice to the employee or, if the employee is deceased, the
9 employee's family.

10 SEC. 17. Section 6620 of the Labor Code is amended to read:

11 ~~6620. Upon the filing of a petition for reconsideration, or~~
12 ~~having granted reconsideration upon its own motion, the appeals~~
13 ~~board may, with or without further proceedings and with or without~~
14 ~~notice, affirm, rescind, alter, or amend the order or decision made~~
15 ~~and filed by the appeals board or hearing officer on the basis of~~
16 ~~the evidence previously submitted in the case, and shall issue an~~
17 ~~opinion or order within 90 days of the filing of the petition for~~
18 ~~reconsideration. If the appeals board grants reconsideration and~~
19 ~~directs the taking of additional evidence, it shall set a hearing for~~
20 ~~the taking of additional evidence within 60 days of the filing of~~
21 ~~the petition for reconsideration. Notice of the time and place of~~
22 ~~any hearing on reconsideration shall be given to the petitioner and~~
23 ~~adverse parties and to any other persons as the appeals board~~
24 ~~orders.~~

25 SEC. 18. Section 6621 of the Labor Code is amended to read:

26 ~~6621. If at the time of granting reconsideration, it appears to~~
27 ~~the satisfaction of the appeals board that no sufficient reason exists~~
28 ~~for taking further testimony, the appeals board may affirm, rescind,~~
29 ~~alter or amend the order or decision made and filed by the appeals~~
30 ~~board or hearing officer and may, without further proceedings,~~
31 ~~without notice, and without setting a time and place for further~~
32 ~~hearing, enter its findings, order or decision based upon the record~~
33 ~~in the case. The appeals board shall issue an opinion or order within~~
34 ~~90 days of the filing of the petition for reconsideration.~~

35 SEC. 19. Section 6622 of the Labor Code is amended to read:

36 ~~6622. After the taking of additional evidence and a~~
37 ~~consideration of all of the facts the appeals board may affirm,~~
38 ~~rescind, alter, or amend the original order or decision. An order~~
39 ~~or decision made following reconsideration which affirms, rescinds,~~
40 ~~alters, or amends the original order or decision shall be made by~~

1 the appeals board but shall not affect any right or the enforcement
2 of any right arising from or by virtue of the original order or
3 decision unless so ordered by the appeals board. The appeals board
4 shall issue an opinion or order within 90 days after the hearing at
5 which additional evidence is received.

6 ~~SEC. 20.~~

7 *SEC. 17.* Section 6625 of the Labor Code is amended to read:

8 6625. The filing of a petition for reconsideration shall suspend
9 for a period of 10 days the order or decision affected, insofar as it
10 applies to the parties to the petition, unless otherwise ordered by
11 the appeals board. The appeals board upon the terms and conditions
12 that it by order directs, may stay, suspend, or postpone the order
13 or decision during the pendency of the reconsideration, except as
14 to requirements for abatement set forth in Section 6319.6.

15 ~~SEC. 21.~~ Section 6627 of the Labor Code is amended to read:

16 6627. ~~Any person affected by an order or decision of the~~
17 ~~appeals board may, within the time limit specified in this section,~~
18 ~~apply to the superior court of the county in which he or she resides,~~
19 ~~in which the employer is located, or in which the appeals board is~~
20 ~~located, for a writ of mandate, for the purpose of inquiring into~~
21 ~~and determining the lawfulness of the original order or decision~~
22 ~~or of the order or decision following reconsideration. For purposes~~
23 ~~of this section, "any person affected" includes the division, the~~
24 ~~employer, a party, an intervenor, and any person seeking to enforce~~
25 ~~the public's right to safe and healthful working conditions on behalf~~
26 ~~of employees within the state, regardless of whether that person~~
27 ~~has a beneficial interest in the order or decision at issue. The~~
28 ~~application for writ of mandate must be made within 30 days after~~
29 ~~a petition for reconsideration is denied, or, if a petition is granted~~
30 ~~or reconsideration is had on the appeals board's own motion, within~~
31 ~~30 days after the filing of the order or decision following~~
32 ~~reconsideration.~~

33 ~~SEC. 22.~~

34 *SEC. 18.* Section 6630 of the Labor Code is amended to read:

35 6630. The findings and conclusions of the appeals board on
36 questions of fact are conclusive and final and are not subject to
37 review. Such questions of fact shall include ultimate facts and the
38 findings and conclusions of the appeals board. The appeals board
39 and each party to the action or proceeding before the appeals board,
40 and any person affected as defined in Section 6627, shall have the

1 right to appear in the mandate proceeding. Upon the hearing, the
2 court shall enter judgment either affirming or annulling the order
3 or decision, or the court may remand the case for further
4 proceedings before the appeals board.

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