

ASSEMBLY BILL

No. 517

Introduced by Assembly Member Achadjian

February 20, 2013

An act to amend Sections 62.5 and 6434 of the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

AB 517, as introduced, Achadjian. Occupational safety and health: local public entities: penalty moneys: grants.

Existing law requires the Commission on Health and Safety and Workers' Compensation in the Department of Industrial Relations to review and approve applications from employers and employee organizations, as well as applications submitted jointly by an employer organization and an employee organization, for grants to assist in establishing effective occupational injury and illness prevention programs, as specified.

Existing law requires certain civil and administrative penalties relating to workers' compensation to be deposited in the Workers' Compensation Administration Revolving Fund. Existing law authorizes the department to expend these funds upon approval by the commission, and upon appropriation from the fund by the Legislature, to fund the above-described grants and other activities and expenses of the commission.

Existing law requires any civil or administrative penalty assessed pursuant to the California Occupational Safety and Health Act of 1973 against a school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers

agency performing education functions to be deposited with the Workplace Health and Safety Revolving Fund. Existing law authorizes these entities to apply for a refund of the civil penalties assessed against them if specified conditions are met. Existing law requires moneys in the fund that are not refunded to be expended as provided for in the above-described grant provisions to assist schools in establishing effective occupational injury and illness prevention programs.

This bill would, instead, require any civil or administrative penalty assessed pursuant to the California Occupational Safety and Health Act of 1973 against a school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers agency performing education functions to be deposited with the Workers' Compensation Administration Revolving Fund.

In addition, the bill would require any civil or administrative penalty assessed pursuant to the California Occupational Safety and Health Act of 1973 against a city, county, city and county, special district, public authority, public agency, joint powers agency or authority to be deposited with the Workers' Compensation Administration Revolving Fund. The bill would authorize these local public entities to apply for a refund of the civil penalties assessed against them if specified conditions are met. The bill would require moneys in the fund that are not refunded to be expended as provided for in the above-described grant provisions to assist these local public entities, regardless of whether any penalty has been assessed against them, in establishing and maintaining effective occupational injury and illness prevention programs.

This bill would add funding the above-described grants to the list of purposes for which moneys in the Workers' Compensation Administration Revolving Fund may be expended. This bill would make other nonsubstantive changes to these provisions.

Existing law, the Labor Code Private Attorneys General Act of 2004, allows aggrieved employees to bring civil actions to recover penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions are distributed 75% to the agency to be continuously appropriated for purposes of enforcement and education and 25% to the aggrieved employee, except as specified.

This bill would provide that the above provisions pertaining to civil or administrative penalties assessed pursuant to the California Occupational Safety and Health Act of 1973 shall not apply to that portion of any civil or administrative penalty that is distributed directly to an aggrieved employee pursuant to the above-described provisions.

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 62.5 of the Labor Code is amended to
2 read:

3 62.5. (a) (1) The Workers' Compensation Administration
4 Revolving Fund is hereby created as a special account in the State
5 Treasury. ~~Money Moneys~~ in the fund ~~may shall~~ be expended by
6 the department, upon appropriation by the Legislature, for all of
7 the following purposes, and may not be used or borrowed for any
8 other purpose:

9 (A) For the administration of the workers' compensation
10 program set forth in this division and Division 4 (commencing
11 with Section 3200), other than the activities financed pursuant to
12 ~~paragraph (2) of subdivision (a) of Section 3702.5.~~

13 ~~(B) For the Return-to-Work Program set forth in Section 139.48.~~

14 ~~(C)~~

15 (B) For the enforcement of the insurance coverage program
16 established and maintained by the Labor Commissioner pursuant
17 to Section 90.3.

18 (C) *For the purposes described in Sections 78 and 6434.*

19 (2) The fund shall consist of surcharges made pursuant to
20 paragraph (1) of subdivision (f).

21 (b) (1) The Uninsured Employers Benefits Trust Fund is hereby
22 created as a special trust fund account in the State Treasury, of
23 which the director is trustee, and its sources of funds are as
24 provided in paragraph (1) of subdivision (f). Notwithstanding
25 Section 13340 of the Government Code, the fund is continuously
26 appropriated for the payment of nonadministrative expenses of the
27 workers' compensation program for workers injured while
28 employed by uninsured employers in accordance with Article 2
29 (commencing with Section 3710) of Chapter 4 of Part 1 of Division
30 4, and shall not be used for any other purpose. All moneys collected

1 shall be retained in the trust fund until paid as benefits to workers
2 injured while employed by uninsured employers.
3 Nonadministrative expenses include audits and reports of services
4 prepared pursuant to subdivision (b) of Section 3716.1. The
5 surcharge amount for this fund shall be stated separately.

6 (2) Notwithstanding any other provision of law, all references
7 to the Uninsured Employers Fund shall mean the Uninsured
8 Employers Benefits Trust Fund.

9 (3) Notwithstanding paragraph (1), in the event that budgetary
10 restrictions or impasse prevent the timely payment of administrative
11 expenses from the Workers' Compensation Administration
12 Revolving Fund, those expenses shall be advanced from the
13 Uninsured Employers Benefits Trust Fund. Expense advances
14 made pursuant to this paragraph shall be reimbursed in full to the
15 Uninsured Employers Benefits Trust Fund upon enactment of the
16 annual Budget Act.

17 (4) Any moneys from penalties collected pursuant to Section
18 3722 as a result of the insurance coverage program established
19 under Section 90.3 shall be deposited in the State Treasury to the
20 credit of the Workers' Compensation Administration Revolving
21 Fund created under this section, to cover expenses incurred by the
22 director under the insurance coverage program. The amount of
23 any penalties in excess of payment of administrative expenses
24 incurred by the director for the insurance coverage program
25 established under Section 90.3 shall be deposited in the State
26 Treasury to the credit of the Uninsured Employers Benefits Trust
27 Fund for nonadministrative expenses, as prescribed in paragraph
28 (1), and notwithstanding paragraph (1), shall only be available
29 upon appropriation by the Legislature.

30 (c) (1) The Subsequent Injuries Benefits Trust Fund is hereby
31 created as a special trust fund account in the State Treasury, of
32 which the director is trustee, and its sources of funds are as
33 provided in paragraph (1) of subdivision (f). Notwithstanding
34 Section 13340 of the Government Code, the fund is continuously
35 appropriated for the nonadministrative expenses of the workers'
36 compensation program for workers who have suffered serious
37 injury and who are suffering from previous and serious permanent
38 disabilities or physical impairments, in accordance with Article 5
39 (commencing with Section 4751) of Chapter 2 of Part 2 of Division
40 4, and Section 4 of Article XIV of the California Constitution, and

1 shall not be used for any other purpose. All moneys collected shall
2 be retained in the trust fund until paid as benefits to workers who
3 have suffered serious injury and who are suffering from previous
4 and serious permanent disabilities or physical impairments.
5 Nonadministrative expenses include audits and reports of services
6 pursuant to subdivision (c) of Section 4755. The surcharge amount
7 for this fund shall be stated separately.

8 (2) Notwithstanding any other law, all references to the
9 Subsequent Injuries Fund shall mean the Subsequent Injuries
10 Benefits Trust Fund.

11 (3) Notwithstanding paragraph (1), in the event that budgetary
12 restrictions or impasse prevent the timely payment of administrative
13 expenses from the Workers' Compensation Administration
14 Revolving Fund, those expenses shall be advanced from the
15 Subsequent Injuries Benefits Trust Fund. Expense advances made
16 pursuant to this paragraph shall be reimbursed in full to the
17 Subsequent Injuries Benefits Trust Fund upon enactment of the
18 annual Budget Act.

19 (d) The Occupational Safety and Health Fund is hereby created
20 as a special account in the State Treasury. Moneys in the account
21 may be expended by the department, upon appropriation by the
22 Legislature, for support of the Division of Occupational Safety
23 and Health, the Occupational Safety and Health Standards Board,
24 and the Occupational Safety and Health Appeals Board, and the
25 activities these entities perform as set forth in this division, and
26 Division 5 (commencing with Section 6300).

27 (e) The Labor Enforcement and Compliance Fund is hereby
28 created as a special account in the State Treasury. Moneys in the
29 fund may be expended by the department, upon appropriation by
30 the Legislature, for the support of the activities that the Division
31 of Labor Standards Enforcement performs pursuant to this division
32 and Division 2 (commencing with Section 200), Division 3
33 (commencing with Section 2700), and Division 4 (commencing
34 with Section 3200). The fund shall consist of surcharges imposed
35 pursuant to paragraph (3) of subdivision (f).

36 (f) (1) Separate surcharges shall be levied by the director upon
37 all employers, as defined in Section 3300, for purposes of deposit
38 in the Workers' Compensation Administration Revolving Fund,
39 the Uninsured Employers Benefits Trust Fund, the Subsequent
40 Injuries Benefits Trust Fund, and the Occupational Safety and

1 Health Fund. The total amount of the surcharges shall be allocated
2 between self-insured employers and insured employers in
3 proportion to payroll respectively paid in the most recent year for
4 which payroll information is available. The director shall adopt
5 reasonable regulations governing the manner of collection of the
6 surcharges. The regulations shall require the surcharges to be paid
7 by self-insurers to be expressed as a percentage of indemnity paid
8 during the most recent year for which information is available,
9 and the surcharges to be paid by insured employers to be expressed
10 as a percentage of premium. In no event shall the surcharges paid
11 by insured employers be considered a premium for computation
12 of a gross premium tax or agents' commission. In no event shall
13 the total amount of the surcharges paid by insured and self-insured
14 employers exceed the amounts reasonably necessary to carry out
15 the purposes of this section.

16 (2) The surcharge levied by the director for the Occupational
17 Safety and Health Fund, pursuant to paragraph (1), shall not
18 generate revenues in excess of fifty-two million dollars
19 (\$52,000,000) on and after the 2009–10 fiscal year, adjusted for
20 each fiscal year as appropriate to reconcile any over/under
21 assessments from previous fiscal years pursuant to Sections 15606
22 and 15609 of Title 8 of the California Code of Regulations, and
23 may increase by not more than the state-local government deflator
24 each year thereafter through July 1, 2013, and, as appropriate, to
25 reconcile any over/under assessments from previous fiscal years.
26 For the 2013–14 fiscal year, the surcharge level shall return to the
27 level in place on June 30, 2009, adjusted for inflation based on the
28 state-local government deflator.

29 (3) A separate surcharge shall be levied by the director upon all
30 employers, as defined in Section 3300, for purposes of deposit in
31 the Labor Enforcement and Compliance Fund. The total amount
32 of the surcharges shall be allocated between employers in
33 proportion to payroll respectively paid in the most recent year for
34 which payroll information is available. The director shall adopt
35 reasonable regulations governing the manner of collection of the
36 surcharges. In no event shall the total amount of the surcharges
37 paid by employers exceed the amounts reasonably necessary to
38 carry out the purposes of this section.

39 (4) The surcharge levied by the director for the Labor
40 Enforcement and Compliance Fund shall not exceed thirty-seven

1 million dollars (\$37,000,000) in the 2009–10 fiscal year, adjusted
2 as appropriate to reconcile any over/under assessments from
3 previous fiscal years, and shall not be adjusted each year thereafter
4 by more than the state-local government deflator, and, as
5 appropriate, to reconcile any over/under assessments from previous
6 fiscal years pursuant to Sections 15606 and 15609 of Title 8 of the
7 California Code of Regulations.

8 (5) The regulations adopted pursuant to paragraph (1) to (4),
9 inclusive, shall be exempt from the rulemaking provisions of the
10 Administrative Procedure Act (Chapter 3.5 (commencing with
11 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
12 Code).

13 (g) On and after July 1, 2013, subdivision (e) and paragraphs
14 (2) to (4), inclusive, of subdivision (f) are inoperative, unless a
15 later enacted statute, that is enacted before July 1, 2013, deletes
16 or extends that date.

17 SEC. 2. Section 6434 of the Labor Code is amended to read:

18 6434. (a) Any civil or administrative penalty assessed pursuant
19 to this chapter against a school district, county board of education,
20 county superintendent of schools, charter school, community
21 college district, California State University, University of
22 California, or joint powers agency performing education functions
23 shall be deposited ~~with in the Workplace Health and Safety~~
24 *Workers' Compensation Administration Revolving Fund*
25 established pursuant to Section ~~78. 62.5.~~

26 (b) Any school district, county board of education, county
27 superintendent of schools, charter school, community college
28 district, California State University, University of California, or
29 joint powers agency performing education functions may apply
30 for a refund of ~~their~~ *its* civil penalty, with interest, if all conditions
31 previously cited have been abated, ~~they have~~ *it has* abated any
32 other outstanding citation, and if ~~they have~~ *it has* not been cited
33 by the division for a serious violation at the same school within
34 two years of the date of the original violation. Funds not applied
35 for within two years and six months of the time of the original
36 violation shall be expended as provided for in Section 78 to assist
37 schools in establishing effective occupational injury and illness
38 prevention programs.

39 (c) *Any civil or administrative penalty assessed pursuant to this*
40 *chapter against a city, county, city and county, special district,*

1 *public authority, public agency, or joint powers agency or authority*
2 *shall be deposited in the Workers' Compensation Administration*
3 *Revolving Fund established pursuant to Section 62.5.*

4 *(d) Any entity listed in subdivision (c) may apply for a refund*
5 *of its civil penalty, with interest, if all conditions previously cited*
6 *have been abated, it has abated any other outstanding citation,*
7 *and if it has not been cited by the division for a serious violation*
8 *within two years of the date of the original violation. Funds not*
9 *applied for within two years and six months of the time of the*
10 *original violation shall be expended as provided for in Section 78*
11 *to assist the entities listed in subdivision (c), regardless of whether*
12 *any penalty has been assessed against them, in establishing and*
13 *maintaining effective occupational injury and illness prevention*
14 *programs.*

15 *(e) This section does not apply to the portion of any civil or*
16 *administrative penalty that is distributed directly to an aggrieved*
17 *employee pursuant to Section 2699.*