

AMENDED IN ASSEMBLY MARCH 13, 2013

CALIFORNIA LEGISLATURE—2013—14 REGULAR SESSION

ASSEMBLY BILL

No. 1277

Introduced by Assembly Member Skinner

February 22, 2013

An act to amend Section ~~62.5~~ 6603 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1277, as amended, Skinner. Department of Industrial Relations.

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.

Existing law requires the rules of practice and procedure established by the appeals board to provide affected employees or representatives of affected employees an opportunity to participate as parties to a hearing contesting specified enforcement actions.

This bill would require that the board's rules of practice and procedure also provide for the scheduling of hearings in a manner designed to minimize inconvenience to the division, parties, and witnesses, and to provide for completion of the hearings without significant lapses in time, as specified.

~~Existing law creates various funds within the State Treasury that are administered by the Department of Industrial Relations, including,~~

~~among others, the Labor Enforcement and Compliance Fund and the Occupational Safety and Health Fund.~~

~~Under existing law, moneys in the Labor Enforcement and Compliance Fund are required to be expended by the department, upon appropriation by the Legislature, for the support of specified activities performed by the department's Division of Labor Standards Enforcement. Existing law imposes certain surcharges upon employers, as defined, which are deposited into these and other designated funds.~~

~~Under existing law the Labor Enforcement and Compliance Fund and related surcharges, as well as a limitation on the surcharge generating revenues for the Occupational Safety and Health Fund, become inoperative on July 1, 2013.~~

~~This bill would extend the dates upon which the provisions described above become inoperative, to July 1, 2017.~~

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 6603 of the Labor Code is amended to
2 read:

3 6603. (a) The rules of practice and procedure adopted by the
4 appeals board shall be consistent with Article 8 (commencing with
5 Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title
6 2 of, and Sections 11507, 11507.6, 11507.7, 11513, 11514, 11515,
7 and 11516 of, the Government Code, and shall provide affected
8 employees or representatives of affected employees an opportunity
9 to participate as parties to a hearing under Section 6602. *The rules*
10 *of practice and procedure also shall provide for the scheduling of*
11 *hearings in a manner designed to minimize inconvenience to the*
12 *division and all parties and witnesses who are required to attend*
13 *the hearings, and for the completion of the hearings without*
14 *significant lapses in time if the hearings are not completed within*
15 *the scheduled time.*

16 (b) The superior courts shall have jurisdiction over contempt
17 proceedings, as provided in Article 12 (commencing with Section
18 11455.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the
19 Government Code.

1 SECTION 1. ~~Section 62.5 of the Labor Code, as amended by~~
2 ~~Section 4 of Chapter 363 of the Statutes of 2012, is amended to~~
3 ~~read:~~

4 ~~62.5. (a) (1) The Workers' Compensation Administration~~
5 ~~Revolving Fund is hereby created as a special account in the State~~
6 ~~Treasury. Money in the fund may be expended by the department,~~
7 ~~upon appropriation by the Legislature, for all of the following~~
8 ~~purposes, and may not be used or borrowed for any 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) For the enforcement of the insurance coverage program~~
15 ~~established and maintained by the Labor Commissioner pursuant~~
16 ~~to Section 90.3.~~

17 ~~(2) The fund shall consist of surcharges made pursuant to~~
18 ~~paragraph (1) of subdivision (f).~~

19 ~~(b) (1) The Uninsured Employers Benefits Trust Fund is hereby~~
20 ~~created as a special trust fund account in the State Treasury, of~~
21 ~~which the director is trustee, and its sources of funds are as~~
22 ~~provided in paragraph (1) of subdivision (f). Notwithstanding~~
23 ~~Section 13340 of the Government Code, the fund is continuously~~
24 ~~appropriated for the payment of nonadministrative expenses of the~~
25 ~~workers' compensation program for workers injured while~~
26 ~~employed by uninsured employers in accordance with Article 2~~
27 ~~(commencing with Section 3710) of Chapter 4 of Part 1 of Division~~
28 ~~4, and shall not be used for any other purpose. All moneys collected~~
29 ~~shall be retained in the trust fund until paid as benefits to workers~~
30 ~~injured while employed by uninsured employers.~~
31 ~~Nonadministrative expenses include audits and reports of services~~
32 ~~prepared pursuant to subdivision (b) of Section 3716.1. The~~
33 ~~surcharge amount for this fund shall be stated separately.~~

34 ~~(2) Notwithstanding any other law, all references to the~~
35 ~~Uninsured Employers Fund shall mean the Uninsured Employers~~
36 ~~Benefits Trust Fund.~~

37 ~~(3) Notwithstanding paragraph (1), in the event that budgetary~~
38 ~~restrictions or impasse prevent the timely payment of administrative~~
39 ~~expenses from the Workers' Compensation Administration~~
40 ~~Revolving Fund, those expenses shall be advanced from the~~

1 Uninsured Employers Benefits Trust Fund. Expense advances
2 made pursuant to this paragraph shall be reimbursed in full to the
3 Uninsured Employers Benefits Trust Fund upon enactment of the
4 annual Budget Act.

5 (4) Any moneys from penalties collected pursuant to Section
6 3722 as a result of the insurance coverage program established
7 under Section 90.3 shall be deposited in the State Treasury to the
8 credit of the Workers' Compensation Administration Revolving
9 Fund created under this section, to cover expenses incurred by the
10 director under the insurance coverage program. The amount of
11 any penalties in excess of payment of administrative expenses
12 incurred by the director for the insurance coverage program
13 established under Section 90.3 shall be deposited in the State
14 Treasury to the credit of the Uninsured Employers Benefits Trust
15 Fund for nonadministrative expenses, as prescribed in paragraph
16 (1), and notwithstanding paragraph (1), shall only be available
17 upon appropriation by the Legislature.

18 (e) (1) The Subsequent Injuries Benefits Trust Fund is hereby
19 created as a special trust fund account in the State Treasury, of
20 which the director is trustee, and its sources of funds are as
21 provided in paragraph (1) of subdivision (f). Notwithstanding
22 Section 13340 of the Government Code, the fund is continuously
23 appropriated for the nonadministrative expenses of the workers'
24 compensation program for workers who have suffered serious
25 injury and who are suffering from previous and serious permanent
26 disabilities or physical impairments, in accordance with Article 5
27 (commencing with Section 4751) of Chapter 2 of Part 2 of Division
28 4, and Section 4 of Article XIV of the California Constitution, and
29 shall not be used for any other purpose. All moneys collected shall
30 be retained in the trust fund until paid as benefits to workers who
31 have suffered serious injury and who are suffering from previous
32 and serious permanent disabilities or physical impairments.
33 Nonadministrative expenses include audits and reports of services
34 pursuant to subdivision (e) of Section 4755. The surcharge amount
35 for this fund shall be stated separately.

36 (2) Notwithstanding any other law, all references to the
37 Subsequent Injuries Fund shall mean the Subsequent Injuries
38 Benefits Trust Fund.

39 (3) Notwithstanding paragraph (1), in the event that budgetary
40 restrictions or impasse prevent the timely payment of administrative

1 expenses from the Workers' Compensation Administration
2 Revolving Fund, those expenses shall be advanced from the
3 Subsequent Injuries Benefits Trust Fund. Expense advances made
4 pursuant to this paragraph shall be reimbursed in full to the
5 Subsequent Injuries Benefits Trust Fund upon enactment of the
6 annual Budget Act.

7 (d) ~~The Occupational Safety and Health Fund is hereby created~~
8 ~~as a special account in the State Treasury. Moneys in the account~~
9 ~~may be expended by the department, upon appropriation by the~~
10 ~~Legislature, for support of the Division of Occupational Safety~~
11 ~~and Health, the Occupational Safety and Health Standards Board,~~
12 ~~and the Occupational Safety and Health Appeals Board, and the~~
13 ~~activities these entities perform as set forth in this division, and~~
14 ~~Division 5 (commencing with Section 6300).~~

15 (e) ~~The Labor Enforcement and Compliance Fund is hereby~~
16 ~~created as a special account in the State Treasury. Moneys in the~~
17 ~~fund may be expended by the department, upon appropriation by~~
18 ~~the Legislature, for the support of the activities that the Division~~
19 ~~of Labor Standards Enforcement performs pursuant to this division~~
20 ~~and Division 2 (commencing with Section 200), Division 3~~
21 ~~(commencing with Section 2700), and Division 4 (commencing~~
22 ~~with Section 3200). The fund shall consist of surcharges imposed~~
23 ~~pursuant to paragraph (3) of subdivision (f).~~

24 (f) ~~(1) Separate surcharges shall be levied by the director upon~~
25 ~~all employers, as defined in Section 3300, for purposes of deposit~~
26 ~~in the Workers' Compensation Administration Revolving Fund,~~
27 ~~the Uninsured Employers Benefits Trust Fund, the Subsequent~~
28 ~~Injuries Benefits Trust Fund, and the Occupational Safety and~~
29 ~~Health Fund. The total amount of the surcharges shall be allocated~~
30 ~~between self-insured employers and insured employers in~~
31 ~~proportion to payroll respectively paid in the most recent year for~~
32 ~~which payroll information is available. The director shall adopt~~
33 ~~reasonable regulations governing the manner of collection of the~~
34 ~~surcharges. The regulations shall require the surcharges to be paid~~
35 ~~by self-insurers to be expressed as a percentage of indemnity paid~~
36 ~~during the most recent year for which information is available,~~
37 ~~and the surcharges to be paid by insured employers to be expressed~~
38 ~~as a percentage of premium. In no event shall the surcharges paid~~
39 ~~by insured employers be considered a premium for computation~~
40 ~~of a gross premium tax or agents' commission. In no event shall~~

1 the total amount of the surcharges paid by insured and self-insured
2 employers exceed the amounts reasonably necessary to carry out
3 the purposes of this section.

4 ~~(2) The surcharge levied by the director for the Occupational
5 Safety and Health Fund, pursuant to paragraph (1), shall not
6 generate revenues in excess of fifty-two million dollars
7 (\$52,000,000) on and after the 2009–10 fiscal year, adjusted for
8 each fiscal year as appropriate to reconcile any overassessments
9 or underassessments from previous fiscal years pursuant to Sections
10 15606 and 15609 of Title 8 of the California Code of Regulations,
11 and may increase by not more than the state-local government
12 deflator each year thereafter through July 1, 2013, and, as
13 appropriate, to reconcile any over/under assessments from previous
14 fiscal years. For the 2013–14 fiscal year, the surcharge level shall
15 return to the level in place on June 30, 2009, adjusted for inflation
16 based on the state-local government deflator.~~

17 ~~(3) A separate surcharge shall be levied by the director upon all
18 employers, as defined in Section 3300, for purposes of deposit in
19 the Labor Enforcement and Compliance Fund. The total amount
20 of the surcharges shall be allocated between employers in
21 proportion to payroll respectively paid in the most recent year for
22 which payroll information is available. The director shall adopt
23 reasonable regulations governing the manner of collection of the
24 surcharges. In no event shall the total amount of the surcharges
25 paid by employers exceed the amounts reasonably necessary to
26 carry out the purposes of this section.~~

27 ~~(4) The surcharge levied by the director for the Labor
28 Enforcement and Compliance Fund shall not exceed thirty-seven
29 million dollars (\$37,000,000) in the 2009–10 fiscal year, adjusted
30 as appropriate to reconcile any over/under assessments from
31 previous fiscal years, and shall not be adjusted each year thereafter
32 by more than the state-local government deflator, and, as
33 appropriate, to reconcile any overassessments or under assessments
34 from previous fiscal years pursuant to Sections 15606 and 15609
35 of Title 8 of the California Code of Regulations.~~

36 ~~(5) The regulations adopted pursuant to paragraph (1) to (4),
37 inclusive, shall be exempt from the rulemaking provisions of the
38 Administrative Procedure Act (Chapter 3.5 (commencing with
39 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
40 Code).~~

1 ~~(g) On and after July 1, 2017, subdivision (e) and paragraphs~~
2 ~~(2) to (4), inclusive, of subdivision (f) are inoperative, unless a~~
3 ~~later enacted statute, that is enacted before July 1, 2017, deletes~~
4 ~~or extends that date.~~

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