

AMENDED IN ASSEMBLY APRIL 9, 2013  
AMENDED IN ASSEMBLY MARCH 13, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1277**

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**Introduced by Assembly Member Skinner**  
*(Principal coauthor: Senator DeSaulnier)*

February 22, 2013

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An act to amend ~~Section~~ *Sections 143.1, 148.5, 6317, 6409.1, 6601, 6601.5, 6602, 6603, 6614, and 6625* of, to add *Sections 148.3, 6600.1, 6602.5, 6602.6, and 6626.5* to, and to repeal and add *Section 6309* to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1277, as amended, Skinner. ~~Department of Industrial Relations.~~ *Occupational safety and health: procedures.*

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 also establishes the Occupational Safety and Health Standards Board in the department and authorizes the standards board to adopt, amend, or repeal occupational safety and health standards and orders and prescribes procedures for the standards board to*

*conduct a hearing on a request for a permanent variance from a standard or order upon request from an employer, as specified.*

~~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.~~

*This bill would revise and recast various provisions regarding the investigations and citations issued by the division, the persons or entities who are authorized to participate as parties in an appeal before the appeals board, the procedures that govern the standards board in conducting a hearing on a permanent variance, the procedures that govern the appeals board in hearing, deciding, and reconsidering appeals, and procedures that govern the judicial review of the appeals board's decisions. The bill would make other related clarifying and conforming changes.*

*Existing law requires an employer to file a complete report of every occupational injury or occupational illness, as defined, to each employee that results in lost time beyond the date of the injury or illness, or that requires medical treatment beyond first aid, with the department, or if an insured employer, with the insurer. Under existing law, in every case involving a serious injury or illness, or death, an additional report is required to be made immediately by the employer to the division, as specified. Under existing law, an employer is required to be assessed a civil penalty not less than \$5,000 for a violation of the requirement to make the additional report to the division.*

*This bill would authorize the division to increase the penalty in a settlement or decrease it to no less than \$2,500 under specified conditions, including that the employer has declared, under penalty of perjury, that it made a timely report to its workers' compensation carrier or to a state, county, or local fire or police agency and that it was informed by that entity that the report satisfied the requirement to report to the division. By expanding the scope of the crime of perjury, 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.

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

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

1 SECTION 1. Section 143.1 of the Labor Code is amended to  
2 read:

3 143.1. (a) The board shall conduct ~~hearings~~ a hearing on such  
4 requests a request for a permanent variance after affected  
5 employees or employee representatives are properly notified  
6 pursuant to subdivision (b) and given an opportunity to ~~appear~~ be  
7 heard. All board decisions on permanent variance requests shall  
8 be final except for any rehearing or judicial review provided for  
9 by law.

10 (b) An affected employee has a right to due process when a  
11 permanent variance from a standard or order is sought pursuant  
12 to Section 143. The employer shall post a notice of the variance  
13 prepared by the board and shall provide that notice to each  
14 collective bargaining agent who represents an employee.

15 (c) For the purposes of this section, "affected employee" means  
16 an employee who would be affected by the grant or denial of a  
17 variance, limitation, variation, tolerance, or exemption from a  
18 standard or order sought by an employer pursuant to Section 143.

19 SEC. 2. Section 148.3 is added to the Labor Code, to read:

20 148.3. In adjudicating appeals, the appeals board shall do  
21 both of the following:

22 (a) Apply the regulations adopted by the department regarding  
23 occupational safety and health.

24 (b) Liberally construe the provisions of Division 5 (commencing  
25 with Section 6300), as well as the standards and orders adopted  
26 by the Division of Occupational Safety and Health or the  
27 department pursuant to that division, and the standards and orders  
28 adopted by the Occupational Safety and Health Standards Board  
29 pursuant to Chapter 6 (commencing with Section 140), in order  
30 to promote safe and healthy working conditions for the working  
31 men and women of this state.

1     *SEC. 3. Section 148.5 of the Labor Code is amended to read:*

2     148.5. A decision of the appeals board is final, except for any  
3 rehearing or judicial review as permitted by Chapter—4 7  
4 (commencing with Section 6600) of Part 1 of Division 5.

5     *SEC. 4. Section 6309 of the Labor Code is repealed.*

6     ~~6309. If the division learns or has reason to believe that an  
7 employment or place of employment is not safe or is injurious to  
8 the welfare of an employee, it may, on its own motion, or upon  
9 complaint, summarily investigate the same with or without notice  
10 or hearings. However, if the division receives a complaint from  
11 an employee, an employee’s representative, including, but not  
12 limited to, an attorney, health or safety professional, union  
13 representative, or government agency representative, or an  
14 employer of an employee directly involved in an unsafe place of  
15 employment, that his or her employment or place of employment  
16 is not safe, it shall, with or without notice or hearing, summarily  
17 investigate the complaint as soon as possible, but not later than  
18 three working days after receipt of a complaint charging a serious  
19 violation, and not later than 14 calendar days after receipt of a  
20 complaint charging a nonserious violation. The division shall  
21 attempt to determine the period of time in the future that the  
22 complainant believes the unsafe condition may continue to exist,  
23 and shall allocate inspection resources so as to respond first to  
24 those situations in which time is of the essence. For purposes of  
25 this section, a complaint is deemed to allege a serious violation if  
26 the division determines that the complaint charges that there is a  
27 substantial probability that death or serious physical harm could  
28 result from a condition which exists, or from one or more practices,  
29 means, methods, operations, or processes which have been adopted  
30 or are in use in a place of employment. When a complaint charging  
31 a serious violation is received from a state or local prosecutor, or  
32 a local law enforcement agency, the division shall summarily  
33 investigate the employment or place of employment within 24  
34 hours of receipt of the complaint. All other complaints are deemed  
35 to allege nonserious violations. The division may enter and serve  
36 any necessary order relative thereto. The division is not required  
37 to respond to a complaint within this period where, from the facts  
38 stated in the complaint, it determines that the complaint is intended  
39 to willfully harass an employer or is without any reasonable basis.~~

1 ~~The division shall keep complete and accurate records of all~~  
2 ~~complaints, whether verbal or written, and shall inform the~~  
3 ~~complainant, whenever his or her identity is known, of any action~~  
4 ~~taken by the division in regard to the subject matter of the~~  
5 ~~complaint, and the reasons for the action, within 14 calendar days~~  
6 ~~of taking any action. The records of the division shall include the~~  
7 ~~dates on which any action was taken on the complaint, or the~~  
8 ~~reasons for not taking any action on the complaint. The division~~  
9 ~~shall, pursuant to authorized regulations, conduct an informal~~  
10 ~~review of any refusal by a representative of the division to issue~~  
11 ~~a citation with respect to an alleged violation. The division shall~~  
12 ~~furnish the employee or the representative of employees requesting~~  
13 ~~the review a written statement of the reasons for the division's~~  
14 ~~final disposition of the case.~~

15 ~~The name of a person who submits to the division a complaint~~  
16 ~~regarding the unsafe condition of an employment or place of~~  
17 ~~employment shall be kept confidential by the division, unless that~~  
18 ~~person requests otherwise.~~

19 ~~The division shall annually compile and release on its Web site~~  
20 ~~data pertaining to complaints received and citations issued.~~

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

25 *SEC. 5. Section 6309 is added to the Labor Code, to read:*

26 *6309. (a) If the division learns or has reason to believe that*  
27 *an employment or place of employment is not safe or is injurious*  
28 *to the welfare of an employee, the division, on its own motion, or*  
29 *upon complaint, may summarily investigate the same with or*  
30 *without notice or hearings.*

31 *(b) The division shall investigate and conduct an onsite*  
32 *inspection of the employment or place of employment as soon as*  
33 *possible, but not later than three working days after receipt of a*  
34 *complaint charging a serious violation, except as provided in*  
35 *subdivision (e), and shall investigate and may conduct an onsite*  
36 *inspection not later than 14 calendar days after receipt of a*  
37 *complaint charging a nonserious violation, from the following:*

38 *(1) An employee or former employee.*

39 *(2) An employee's or former employee's representative,*  
40 *including, but not limited to, an attorney; a union, workers'*

1 organization, or community organization; or a family member of  
2 an employee or former employee.

3 (3) A health or safety professional.

4 (4) A government agency representative.

5 (5) A joint labor-management committee established pursuant  
6 to the federal Labor Management Cooperation Act of 1978 (Section  
7 175a of Title 29 of the United States Code).

8 (6) An employer of an employee who is or may be exposed to  
9 an unsafe or unhealthful condition in his or her employment or at  
10 his or her place of employment.

11 (c) The division may investigate and conduct an onsite  
12 inspection of a serious violation charged in a complaint from a  
13 person other than those described in paragraphs (1) to (6),  
14 inclusive, of subdivision (b) before investigating any nonserious  
15 violation in order to best effectuate the purposes of this division.

16 (d) For purposes of this section, a complaint is deemed to allege  
17 a serious violation if the division determines that the complaint  
18 charges that there is a realistic possibility that death or serious  
19 physical harm could result from a condition that exists, or from  
20 one or more practices, means, methods, operations, or processes  
21 that have been adopted or are in use in a place of employment.  
22 All other complaints are deemed to allege nonserious violations.

23 (e) If a complaint charging a serious violation is received from  
24 a state or local prosecutor, or a local law enforcement agency,  
25 the division shall investigate and conduct an onsite inspection of  
26 the employment or place of employment within 24 hours of receipt  
27 of the complaint.

28 (f) The division is not required to respond to a complaint within  
29 the time period required by subdivision (b) if the division  
30 determines, from the facts stated in the complaint, that the  
31 complaint is intended to willfully harass an employer or is without  
32 any reasonable basis.

33 (g) The division shall attempt to determine the period of time  
34 in the future that the complainant believes the unsafe condition  
35 may continue to exist, and shall allocate inspection resources so  
36 as to respond first to those situations in which time is of the  
37 essence.

38 (h) The division may enter and serve any necessary order  
39 relative to the complaint.

1 (i) *The division shall keep complete and accurate records of all*  
2 *complaints, whether oral or written, and shall inform the*  
3 *complainant, whenever his or her identity is known, of any action*  
4 *taken by the division in regard to the subject matter of the*  
5 *complaint, and the reasons for the action, within 14 calendar days*  
6 *of taking any action. The records of the division shall include the*  
7 *dates on which any action was taken on the complaint, or the*  
8 *reasons for not taking any action on the complaint. The division,*  
9 *pursuant to authorized regulations, shall conduct an informal*  
10 *review of any refusal by a representative of the division to issue*  
11 *a citation with respect to an alleged violation. The division shall*  
12 *furnish the employee or the representative of employees requesting*  
13 *the review a written statement of the reasons for the division's*  
14 *final disposition of the case.*

15 (j) *The division shall keep confidential the name of a person*  
16 *who submits to the division a complaint regarding the unsafe*  
17 *condition of an employment or place of employment, unless that*  
18 *person requests otherwise.*

19 (k) *The division shall annually compile and release on its*  
20 *Internet Web site the data pertaining to complaints received and*  
21 *citations issued.*

22 (l) *The requirements of this section do not relieve the division*  
23 *of its requirement to inspect and ensure that all places of*  
24 *employment are safe and healthful for employees. The division*  
25 *shall maintain the capability to receive and act upon complaints*  
26 *at all times.*

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

28 6317. (a) *If, upon inspection or investigation, the division*  
29 *believes that an employer has violated Section 25910 of the Health*  
30 *and Safety Code, this division, Article 4 (commencing with Section*  
31 *3550) of Chapter 2 of Part 1 of Division 4, or any standard, rule,*  
32 *order, or regulation established pursuant to Chapter 6 (commencing*  
33 *with Section 140) of Division 1 of the Labor Code, or any standard,*  
34 *rule, order, or regulation established adopted pursuant to this part*  
35 *code regarding occupational safety and health, it shall, with*  
36 *reasonable promptness, issue a citation to the employer. Each*

37 (b) *Each citation shall be in writing and shall describe with*  
38 *particularity the nature of the violation, including a reference to*  
39 *the provision of the code, standard, rule, regulation, or order alleged*  
40 *to have been violated. In addition, the citation shall fix a reasonable*

1 time for the abatement of the alleged violation. The period specified  
2 for abatement shall not commence running until the date the  
3 citation or notice is received by certified mail and the certified  
4 mail receipt is signed, or if not signed, the date the return is made  
5 to the post office. If the division officially and directly delivers  
6 the citation or notice to the employer, the period specified for  
7 abatement shall commence running on the date of the delivery.

8 ~~A~~ "notice"

9 (c) (1) ~~The division may issue a notice in lieu of a citation may~~  
10 ~~be issued~~ with respect to violations found in an inspection or  
11 investigation ~~which~~ *that* meet either of the following requirements:

12 (1)

13 (A) The violations do not have a direct relationship upon the  
14 health or safety of an employee.

15 (2)

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

30 ~~Under~~

31 (2) (A) *Under* no circumstances shall a notice be issued in lieu  
32 of a citation if the violations are serious, repeated, willful, or arise  
33 from a failure to abate.

34 ~~The~~

35 (B) *The* director shall prescribe guidelines for the issuance of  
36 ~~these notices~~ *a notice in lieu of citation.*

37 ~~The division may impose a civil penalty against an employer as~~  
38 ~~specified in Chapter 4 (commencing with Section 6423) of this~~  
39 ~~part.~~ *A*

1 (C) A notice in lieu of a citation ~~may~~ shall not be issued if the  
2 number of first instance violations found in the inspection (other  
3 than serious, willful, or repeated violations) is 10 or more  
4 violations.

5 ~~No~~

6 (d) (1) No citation or notice shall be issued by the division for  
7 a given violation or violations after six months have elapsed since  
8 occurrence of the violation.

9 (2) The division may impose a civil penalty against an employer  
10 as specified in Chapter 4 (commencing with Section 6423) of this  
11 part.

12 ~~The~~

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

15 ~~The~~

16 (4) The division shall prepare and maintain records capable of  
17 supplying an inspector with previous citations and notices issued  
18 to an employer.

19 SEC. 7. Section 6409.1 of the Labor Code is amended to read:

20 6409.1. (a) Every employer shall file a complete report of  
21 every occupational injury or occupational illness, as defined in  
22 subdivision (b) of Section 6409, to each employee ~~which that~~  
23 results in lost time beyond the date of the injury or illness, or ~~which~~  
24 that requires medical treatment beyond first aid, with the  
25 Department of Industrial Relations or, if an insured employer, with  
26 the insurer, on a form prescribed for that purpose by the  
27 department. A report shall be filed concerning each injury and  
28 illness ~~which that~~ has, or is alleged to have, arisen out of and in  
29 the course of employment, within five days after the employer  
30 obtains knowledge of the injury or illness. Each report of  
31 occupational injury or occupational illness shall indicate the social  
32 security number of the injured employee. In the case of an insured  
33 employer, the insurer shall file with the division, immediately upon  
34 receipt, a copy of the employer's report, ~~which that~~ has been  
35 received from the insured employer. In the event an employer has  
36 filed a report of injury or illness pursuant to this subdivision and  
37 the employee subsequently dies as a result of the reported injury  
38 or illness, the employer shall file an amended report indicating the  
39 death with the department or, if an insured employer, with the  
40 insurer, within five days after the employer is notified or learns of

1 the death. A copy of any amended reports received by the insurer  
2 shall be filed with the division immediately upon receipt.

3 (b) In every case involving a serious injury or illness, or death,  
4 in addition to the report required by subdivision (a), a report shall  
5 be made immediately, *but no longer than eight hours after the*  
6 *employer knew or should have known of the death or serious*  
7 *illness*, by the employer to the Division of Occupational Safety  
8 and Health by telephone ~~or telegraph~~, fax, or other electronic  
9 means approved by the division. An employer who violates this  
10 subdivision ~~may~~ shall be assessed a civil penalty of ~~not less than~~  
11 five thousand dollars (\$5,000) *that may be adjusted pursuant to*  
12 *subdivision (d) either by the division in a settlement agreement*  
13 *between the employer and the division, or by the Occupational*  
14 *Safety and Health Appeals Board when approving a settlement*  
15 *agreement or when making a finding*. Nothing in this subdivision  
16 shall be construed to ~~increase~~ affect the ~~maximum~~ civil penalty,  
17 *penalty that may be imposed* pursuant to Sections 6427 to 6430,  
18 inclusive, ~~that may be imposed for a violation of this section~~.

19 (c) When making a report pursuant to subdivision (b), the  
20 employer shall inform the division of all information in its  
21 possession relating to the time, location, and circumstances of the  
22 incident. The employer shall also inform the division if the  
23 employee subsequently dies as a result of the reported injury or  
24 illness, *within five days after the employer is notified or learns of*  
25 *the death*.

26 (d) The civil penalty assessed pursuant to subdivision (b) may  
27 be adjusted according to the following:

28 (1) The penalty may be reduced if there is a finding on the  
29 record of any of the following:

30 (A) The employer has 10 or fewer employees.

31 (B) The employer delayed in reporting to the division by no  
32 more than 48 hours.

33 (C) The employer delayed in reporting to the division by more  
34 than 48 hours or failed to report to the division, but states under  
35 penalty of perjury that it did timely report to its workers'  
36 compensation carrier or to a state, county, or local fire or police  
37 agency, and that it was informed by that entity that reporting to  
38 that entity was sufficient to comply with the requirement to report  
39 to the division.

1 (2) *The penalty may be increased if there is a finding on the*  
2 *record of any of the following:*

3 (A) *The employer failed to report a death resulting from the*  
4 *reported injury or illness.*

5 (B) *The injured or ill employee did not receive prompt and*  
6 *adequate first aid, medical care, or both.*

7 (C) *The employer did not provide evidence that it had an*  
8 *effective injury and illness prevention program.*

9 (D) *The employer previously failed to report a serious injury*  
10 *or illness, or death.*

11 (E) *The employer interfered with the division's investigation by*  
12 *withholding evidence or witnesses or materially altering the*  
13 *worksite.*

14 (3) *Additional penalty reductions afforded by regulations*  
15 *promulgated pursuant to subdivision (c) of Section 6319 shall not*  
16 *apply to the adjustment of the civil penalty assessed pursuant to*  
17 *subdivision (b).*

18 (4) *The penalty shall not be decreased if the division determines*  
19 *that the failure to report or report timely impaired its investigation.*

20 (5) *The adjusted civil penalty shall not be less than two thousand*  
21 *five hundred dollars (\$2,500).*

22 (e) *In addition to any other penalty provided, an employer who*  
23 *willfully or repeatedly fails to report, or to report timely, an*  
24 *occupational injury or occupational illness, or a death resulting*  
25 *from a reported injury or illness, as required by subdivision (b),*  
26 *or an employer who intentionally interferes with the division's*  
27 *investigation by withholding evidence or witnesses or materially*  
28 *altering the worksite, shall be assessed a civil penalty of not more*  
29 *than seventy thousand dollars (\$70,000) for each violation, but in*  
30 *no case less than five thousand dollars (\$5,000) for each willful*  
31 *violation.*

32 SEC. 8. *Section 6600.1 is added to the Labor Code, to read:*

33 6600.1. *Any affected employee may appeal the terms and*  
34 *conditions of abatement in a citation or notice pursuant to Section*  
35 *6317 or order pursuant to Section 6308. A notice of appeal shall*  
36 *be filed with the division or the appeals board within 15 working*  
37 *days of the issuance of a citation or order, by any of the following:*

38 (a) *An affected employee, individually or through his or her*  
39 *designated representative, or if the affected employee is deceased,*  
40 *then the employee's surviving spouse or domestic partner,*

1 *surviving issue, or personal representative as defined in Section*  
 2 *58 of the Probate Code.*

3 *(b) A union that represents an affected employee.*

4 *(c) A union that has a collective bargaining agreement with the*  
 5 *cited or ordered employer.*

6 *(d) For purposes of this chapter, “affected employee” means*  
 7 *an employee who is exposed to or who, due to assigned work in*  
 8 *the vicinity, may be exposed to an unsafe or unhealthful condition*  
 9 *out of circumstances, conditions, practices, or operations that are*  
 10 *the basis of a citation issued by the division to any employer,*  
 11 *whether or not the direct employer of the employee.*

12 *SEC. 9. Section 6601 of the Labor Code is amended to read:*  
 13 *6601. If, within 15 working days from receipt of the citation*  
 14 *or notice of civil penalty issued by the division, the employer fails*  
 15 *to notify the appeals board that ~~he~~ *the employer* intends to contest*  
 16 *the citation or notice of proposed penalty, and no notice contesting*  
 17 *the terms or conditions of the abatement ~~period~~ is filed by any*  
 18 *affected employee or representative of ~~the~~ *an affected* employee*  
 19 *within ~~such~~ *that* time, the citation or notice of proposed penalty*  
 20 *shall be deemed a final order of the appeals board and not subject*  
 21 *to review by any court or agency. The 15-day period may be*  
 22 *extended by the appeals board for good cause.*

23 *SEC. 10. Section 6601.5 of the Labor Code is amended to read:*  
 24 *6601.5. If, within 15 working days from receipt of a special*  
 25 *~~order,~~ *order* or action order by the division, the employer fails to*  
 26 *notify the appeals board that ~~he or she~~ *the employer* intends to*  
 27 *contest the order, and no notice contesting the terms or conditions*  
 28 *of the abatement ~~period~~ is filed by any affected employee or*  
 29 *representative of ~~the~~ *an affected* employee within that time, the*  
 30 *order shall be deemed a final order of the appeals board and not*  
 31 *subject to review by any court or agency. The 15-day period may*  
 32 *be extended by the appeals board for good cause.*

33 *SEC. 11. Section 6602 of the Labor Code is amended to read:*  
 34 *6602. If an employer notifies the appeals board that he or she*  
 35 *intends to contest a citation issued under Section 6317, or notice*  
 36 *of proposed penalty issued under Section 6319, or order issued*  
 37 *under Section 6308, or if, within 15 working days of the issuance*  
 38 *of a citation or order any affected employee or representative of*  
 39 *an affected employee files a notice with the division or appeals*  
 40 *board alleging that the period of time fixed in the citation or order*

1 ~~for contesting the terms or conditions of the abatement of the~~  
 2 ~~violation is unreasonable~~, the appeals board shall afford an  
 3 opportunity for a hearing. The appeals board shall thereafter issue  
 4 a decision, based on findings of fact, affirming, modifying, or  
 5 vacating the division’s citation, or order, ~~or~~ *and may modify the*  
 6 *proposed penalty if the penalty modification would not violate a*  
 7 *requirement of this code or a regulation of the department, or*  
 8 ~~directing~~ *direct* other appropriate relief.

9 *SEC. 12. Section 6602.5 is added to the Labor Code, to read:*

10 *6602.5. The appeals board, upon request, shall permit the*  
 11 *following to participate as a party in an appeal:*

12 *(a) An affected employee, individually or through his or her*  
 13 *designated representative, or if the affected employee is deceased,*  
 14 *then the employee’s surviving spouse or domestic partner,*  
 15 *surviving issue, or personal representative as defined in Section*  
 16 *58 of the Probate Code.*

17 *(b) A union that represents an affected employee.*

18 *(c) A union that has a collective bargaining agreement with the*  
 19 *cited or ordered employer.*

20 *SEC. 13. Section 6602.6 is added to the Labor Code, to read:*

21 *6602.6. Parties shall have the opportunity to participate fully*  
 22 *in a hearing, receive notices, be permitted to subpoena witnesses*  
 23 *and documents at any time before the completion of the hearings,*  
 24 *offer evidence, examine and cross-examine witnesses, and argue*  
 25 *and submit briefs. Parties representing an affected employee shall*  
 26 *also have the right to participate and object to terms or conditions*  
 27 *during settlement discussions between the division and the*  
 28 *employer at any formal or informal prehearing conference or*  
 29 *discussion prior to or during the hearing, and shall be timely*  
 30 *informed of any final settlement.*

31 ~~SECTION 1.~~

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

33 *6603. (a) The rules of practice and procedure adopted by the*  
 34 *appeals board shall be consistent with Article 8 (commencing with*  
 35 *Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title*  
 36 *2 of, and Sections 11507, 11507.6, 11507.7, 11513, 11514, 11515,*  
 37 *and 11516 of, the Government Code, and shall provide affected*  
 38 *employees or representatives of affected employees an opportunity*  
 39 *to participate as parties to a hearing under Section 6602. The rules*  
 40 *of practice and procedure also shall provide for the scheduling of*

1 hearings in a manner designed to minimize inconvenience to the  
 2 division and all parties and witnesses who are required to attend  
 3 the hearings, and for the completion of the hearings without  
 4 significant lapses in time if the hearings are not completed within  
 5 the scheduled time.

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

10 *SEC. 15. Section 6614 of the Labor Code is amended to read:*

11 6614. (a) At any time within 30 days after the service of any  
 12 final order or decision made and filed by the appeals board or a  
 13 hearing officer, any party aggrieved directly or indirectly by any  
 14 final order or decision, made and filed by the appeals board or a  
 15 hearing officer under ~~any provision contained in this division,~~ may  
 16 petition the appeals board for reconsideration in respect to any  
 17 matters determined or covered by the final order or decision and  
 18 specified in the petition for reconsideration. ~~Such~~ *The* petition shall  
 19 be made only within the time and in the manner specified in this  
 20 chapter.

21 (b) *At any time within 30 days after the service of any final order*  
 22 *or decision made and filed by the appeals board, any person*  
 23 *aggrieved directly or indirectly by any final order or decision*  
 24 *made and filed by the appeals board under this division may*  
 25 *petition the appeals board for reconsideration in respect to any*  
 26 *matters determined or covered by the final order or decision and*  
 27 *specified in the petition for reconsideration. The petition shall be*  
 28 *made only within the time and in the manner specified in this*  
 29 *chapter.*

30 ~~(b)~~

31 (c) At any time within 30 days after the filing of an order or  
 32 decision made by a hearing officer and the accompanying report,  
 33 the appeals board may, on its own motion, grant reconsideration.

34 *SEC. 16. Section 6625 of the Labor Code is amended to read:*

35 6625. The filing of a petition for reconsideration shall suspend  
 36 for a period of 10 days the order or decision affected, insofar as it  
 37 applies to the parties to the petition, unless otherwise ordered by  
 38 the appeals board. The appeals board upon the terms and conditions  
 39 ~~which~~ *that* it by order directs, may stay, suspend, or postpone the

1 order or decision during the pendency of the reconsideration *except*  
2 *as to the requirements for abatement.*

3 *SEC. 17. Section 6626.5 is added to the Labor Code, to read:*

4 *6626.5. (a) An affected person who was not a party to the case*  
5 *prior to the appeals board issuing the decision after*  
6 *reconsideration who plans to seek judicial review of a decision*  
7 *pursuant to Section 6627 shall provide a written notice to the*  
8 *appeals board, including a statement that the affected person*  
9 *intends to seek judicial review of the decision, a brief statement*  
10 *regarding the nature of the challenge to the decision after*  
11 *reconsideration, and a request that the appeals board modify or*  
12 *rescind its decision.*

13 *(b) The notice and statement shall be filed with the appeals*  
14 *board within 30 days of the appeals board order or decision and*  
15 *shall toll, for 30 days or until the board acts, whichever is sooner,*  
16 *both the finality of the decision after reconsideration and the filing*  
17 *deadline set forth in Section 6627. After receiving notice, the*  
18 *appeals board may either rescind, modify, and reissue the decision*  
19 *after reconsideration, or deny the request either summarily or in*  
20 *writing with the reasons stating the basis for the denial. The*  
21 *appeals board's failure to act on the notice within 30 days shall*  
22 *be deemed a summary denial. An affected person shall not be*  
23 *required to file more than one notice prior to seeking judicial*  
24 *review.*

25 *(c) Nothing in this section is intended to eliminate or limit any*  
26 *other exceptions to any requirement under law that administrative*  
27 *remedies be exhausted before judicial action is sought.*

28 *SEC. 18. No reimbursement is required by this act pursuant*  
29 *to Section 6 of Article XIII B of the California Constitution because*  
30 *the only costs that may be incurred by a local agency or school*  
31 *district will be incurred because this act creates a new crime or*  
32 *infraction, eliminates a crime or infraction, or changes the penalty*  
33 *for a crime or infraction, within the meaning of Section 17556 of*  
34 *the Government Code, or changes the definition of a crime within*  
35 *the meaning of Section 6 of Article XIII B of the California*  
36 *Constitution.*

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