

AMENDED IN ASSEMBLY APRIL 21, 2014
AMENDED IN ASSEMBLY MARCH 26, 2014
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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1576

Introduced by Assembly Member Hall

January 30, 2014

An act to amend Sections 6319.3 and 6401.7 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1576, as amended, Hall. Occupational safety and health: adult films.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. Violations of the act under certain circumstances are a crime.

Existing law requires every employer to establish, implement, and maintain an effective injury prevention program. Existing law requires the program to be written, except as specified, and to include certain elements, such as the employer's system for identifying and evaluating workplace hazards and the employer's system for communicating with employees on occupational health and safety matters.

Existing regulations require each employer having an employee with occupational exposure, defined as reasonably anticipated specified contact with blood or other potentially infectious materials that may result from the performance of an employee's duties, to establish, implement, and maintain an effective exposure control plan designed to eliminate or minimize employee exposure. Existing regulations

require, under specified circumstances, the employer to provide, at no cost to the employee, appropriate personal protective equipment that does not permit blood or other potentially infectious materials to pass through to or to reach the employee, as specified.

This bill would additionally require an adult film employer’s injury prevention program to include a log of information for all scenes produced ~~or purchased~~, including, but not limited to, documentation that each time an employee performing in an adult film engaged in vaginal or anal intercourse, personal protective equipment was used to protect the employee from exposure to bloodborne pathogens and each employee performing in an adult film was tested for sexually transmitted infections according to specified recommendations not more than 14 days prior to filming any scene in which the employee engaged in vaginal or anal intercourse and that the employer paid for the test. Because a violation of the act would be a crime under certain circumstances, the bill would impose a state-mandated local program by creating a new crime.

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: yes.

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

1 SECTION 1. Section 6319.3 of the Labor Code is amended to
2 read:
3 6319.3. (a) Except as provided in subdivision (b) of this section
4 and subdivision (k) of Section 6401.7, no civil penalty shall be
5 assessed against any new employer in the state for a violation of
6 any standard developed pursuant to subdivision (a) of Section
7 6401.7 for a period of one year after the date the new employer
8 establishes a business in the state.
9 (b) Subdivision (a) shall only apply to an employer who has
10 made a good faith effort to comply with any standard developed
11 pursuant to subdivision (a) of Section 6401.7, but shall not apply
12 if the employer is found to have committed a serious, willful, or

1 repeated violation of that standard, or fails to abate the violation
2 and is assessed a penalty pursuant to Section 6430.

3 SEC. 2. Section 6401.7 of the Labor Code is amended to read:

4 6401.7. (a) Every employer shall establish, implement, and
5 maintain an effective injury prevention program. The program
6 shall be written, except as provided in subdivision (e), and shall
7 include, but not be limited to, the following elements:

8 (1) Identification of the person or persons responsible for
9 implementing the program.

10 (2) The employer's system for identifying and evaluating
11 workplace hazards, including scheduled periodic inspections to
12 identify unsafe conditions and work practices.

13 (3) The employer's methods and procedures for correcting
14 unsafe or unhealthy conditions and work practices in a timely
15 manner.

16 (4) An occupational health and safety training program designed
17 to instruct employees in general safe and healthy work practices
18 and to provide specific instruction with respect to hazards specific
19 to each employee's job assignment.

20 (5) The employer's system for communicating with employees
21 on occupational health and safety matters, including provisions
22 designed to encourage employees to inform the employer of
23 hazards at the worksite without fear of reprisal.

24 (6) The employer's system for ensuring that employees comply
25 with safe and healthy work practices, which may include
26 disciplinary action.

27 (b) The employer shall correct unsafe and unhealthy conditions
28 and work practices in a timely manner based on the severity of the
29 hazard.

30 (c) The employer shall train all employees when the training
31 program is first established, all new employees, and all employees
32 given a new job assignment, and shall train employees whenever
33 new substances, processes, procedures, or equipment are introduced
34 to the workplace and represent a new hazard, and whenever the
35 employer receives notification of a new or previously unrecognized
36 hazard. An employer in the construction industry who is required
37 to be licensed under Chapter 9 (commencing with Section 7000)
38 of Division 3 of the Business and Professions Code may use
39 employee training provided to the employer's employees under a
40 construction industry occupational safety and health training

1 program approved by the division to comply with the requirements
2 of subdivision (a) relating to employee training, and shall only be
3 required to provide training on hazards specific to an employee's
4 job duties.

5 (d) The employer shall keep appropriate records of steps taken
6 to implement and maintain the program. An employer in the
7 construction industry who is required to be licensed under Chapter
8 9 (commencing with Section 7000) of Division 3 of the Business
9 and Professions Code may use records relating to employee training
10 provided to the employer in connection with an occupational safety
11 and health training program approved by the division to comply
12 with this subdivision, and shall only be required to keep records
13 of those steps taken to implement and maintain the program with
14 respect to hazards specific to an employee's job duties.

15 (e) (1) The standards board shall adopt a standard setting forth
16 the employer's duties under this section, on or before January 1,
17 1991, consistent with the requirements specified in subdivisions
18 (a), (b), (c), and (d). The standards board, in adopting the standard,
19 shall include substantial compliance criteria for use in evaluating
20 an employer's injury prevention program. The board may adopt
21 less stringent criteria for employers with few employees and for
22 employers in industries with insignificant occupational safety or
23 health hazards.

24 (2) Notwithstanding subdivision (a), for employers with fewer
25 than 20 employees who are in industries that are not on a
26 designated list of high hazard industries and who have a workers'
27 compensation experience modification rate of 1.1 or less, and for
28 any employers with fewer than 20 employees who are in industries
29 that are on a designated list of low hazard industries, the board
30 shall adopt a standard setting forth the employer's duties under
31 this section consistent with the requirements specified in
32 subdivisions (a), (b), and (c), except that the standard shall only
33 require written documentation to the extent of documenting the
34 person or persons responsible for implementing the program
35 pursuant to paragraph (1) of subdivision (a), keeping a record of
36 periodic inspections pursuant to paragraph (2) of subdivision (a),
37 and keeping a record of employee training pursuant to paragraph
38 (4) of subdivision (a). To any extent beyond the specifications of
39 this subdivision, the standard shall not require the employer to
40 keep the records specified in subdivision (d).

1 (3) (A) The division shall establish a list of high hazard
2 industries using the methods prescribed in Section 6314.1 for
3 identifying and targeting employers in high hazard industries. For
4 purposes of this subdivision, the “designated list of high hazard
5 industries” shall be the list established pursuant to this paragraph.

6 (B) For the purpose of implementing this subdivision, the
7 Department of Industrial Relations shall periodically review, and
8 as necessary revise, the list.

9 (4) For the purpose of implementing this subdivision, the
10 Department of Industrial Relations shall also establish a list of low
11 hazard industries, and shall periodically review, and as necessary
12 revise, that list.

13 (f) The standard adopted pursuant to subdivision (e) shall
14 specifically permit employer and employee occupational safety
15 and health committees to be included in the employer’s injury
16 prevention program. The board shall establish criteria for use in
17 evaluating employer and employee occupational safety and health
18 committees. The criteria shall include minimum duties, including
19 the following:

20 (1) Review of the employer’s periodic, scheduled worksite
21 inspections; investigation of causes of incidents resulting in injury,
22 illness, or exposure to hazardous substances; and investigation of
23 any alleged hazardous condition brought to the attention of any
24 committee member. When determined necessary by the committee,
25 the committee may conduct its own inspections and investigations.

26 (2) (A) Upon request from the division, verification of
27 abatement action taken by the employer as specified in division
28 citations.

29 (B) If an employer’s occupational safety and health committee
30 meets the criteria established by the board, it shall be presumed to
31 be in substantial compliance with paragraph (5) of subdivision (a).

32 (g) The division shall adopt regulations specifying the
33 procedures for selecting employee representatives for
34 employer-employee occupational health and safety committees
35 when these procedures are not specified in an applicable collective
36 bargaining agreement. No employee or employee organization
37 shall be held liable for any act or omission in connection with a
38 health and safety committee.

39 (h) The employer’s injury prevention program, as required by
40 this section, shall cover all of the employer’s employees and all

1 other workers who the employer controls or directs and directly
2 supervises on the job to the extent these workers are exposed to
3 worksite and job assignment specific hazards. Nothing in this
4 subdivision shall affect the obligations of a contractor or other
5 employer that controls or directs and directly supervises its own
6 employees on the job.

7 (i) (1) An adult film employer's injury prevention program
8 shall include a log of information for all scenes produced ~~or~~
9 ~~purchased~~, including, but not limited to, documentation that:

10 (A) Each time an employee performing in an adult film engaged
11 in vaginal or anal intercourse, personal protective equipment was
12 used to protect the employee from exposure to bloodborne
13 pathogens. This paragraph shall not be construed to require that
14 the personal protective equipment be visible to the consumer in
15 the finished film.

16 (B) Each employee performing in an adult film was tested for
17 sexually transmitted infections, according to the recommendations
18 of the Centers for Disease Control and Prevention and the State
19 Department of Public Health current at the time the testing takes
20 place, not more than 14 days prior to filming any scene in which
21 the employee engaged in vaginal or anal intercourse and that the
22 employer paid for the test.

23 (2) For the purposes of this subdivision, "adult film" means any
24 commercial film, video, multimedia, or other recorded
25 representation *made or distributed for financial gain* during the
26 production of which performers actually engage in sexual
27 intercourse, including oral, vaginal, or anal penetration.

28 (j) When a contractor supplies its employee to a state agency
29 employer on a temporary basis, the state agency employer may
30 assess a fee upon the contractor to reimburse the state agency for
31 the additional costs, if any, of including the contract employee
32 within the state agency's injury prevention program.

33 (k) (1) The division shall prepare a Model Injury and Illness
34 Prevention Program for Non-High-Hazard Employment, and shall
35 make copies of the model program prepared pursuant to this
36 subdivision available to employers, upon request, for posting in
37 the workplace. An employer who adopts and implements the model
38 program prepared by the division pursuant to this paragraph in
39 good faith shall not be assessed a civil penalty for the first citation

1 for a violation of this section issued after the employer's adoption
2 and implementation of the model program.

3 (2) For purposes of this subdivision, the division shall establish
4 a list of non-high-hazard industries in California. These industries,
5 identified by their Standard Industrial Classification Codes, as
6 published by the United States Office of Management and Budget
7 in the Manual of Standard Industrial Classification Codes, 1987
8 Edition, are apparel and accessory stores (Code 56), eating and
9 drinking places (Code 58), miscellaneous retail (Code 59), finance,
10 insurance, and real estate (Codes 60–67), personal services (Code
11 72), business services (Code 73), motion pictures (Code 78) except
12 motion picture production and allied services (Code 781), legal
13 services (Code 81), educational services (Code 82), social services
14 (Code 83), museums, art galleries, and botanical and zoological
15 gardens (Code 84), membership organizations (Code 86),
16 engineering, accounting, research, management, and related
17 services (Code 87), private households (Code 88), and
18 miscellaneous services (Code 89). To further identify industries
19 that may be included on the list, the division shall also consider
20 data from a rating organization, as defined in Section 11750.1 of
21 the Insurance Code, and all other appropriate information. The list
22 shall be established by June 30, 1994, and shall be reviewed, and
23 as necessary revised, biennially.

24 (3) The division shall prepare a Model Injury and Illness
25 Prevention Program for Employers in Industries with Intermittent
26 Employment, and shall determine which industries have historically
27 utilized seasonal or intermittent employees. An employer in an
28 industry determined by the division to have historically utilized
29 seasonal or intermittent employees shall be deemed to have
30 complied with the requirements of subdivision (a) with respect to
31 a written injury prevention program if the employer adopts the
32 model program prepared by the division pursuant to this paragraph
33 and complies with any instructions relating thereto.

34 (l) With respect to any county, city, city and county, or district,
35 or any public or quasi-public corporation or public agency therein,
36 including any public entity, other than a state agency, that is a
37 member of, or created by, a joint powers agreement, subdivision
38 (d) shall not apply.

39 (m) Every workers' compensation insurer shall conduct a
40 review, including a written report as specified below, of the injury

1 and illness prevention program (IIPP) of each of its insureds with
2 an experience modification of 2.0 or greater within six months of
3 the commencement of the initial insurance policy term. The review
4 shall determine whether the insured has implemented all of the
5 required components of the IIPP, and evaluate their effectiveness.
6 The training component of the IIPP shall be evaluated to determine
7 whether training is provided to line employees, supervisors, and
8 upper level management, and effectively imparts the information
9 and skills each of these groups needs to ensure that all of the
10 insured's specific health and safety issues are fully addressed by
11 the insured. The reviewer shall prepare a detailed written report
12 specifying the findings of the review and all recommended changes
13 deemed necessary to make the IIPP effective. The reviewer shall
14 be or work under the direction of a licensed California professional
15 engineer, certified safety professional, or a certified industrial
16 hygienist.

17 SEC. 3 No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.