

AMENDED IN ASSEMBLY MAY 14, 2014
AMENDED IN ASSEMBLY APRIL 21, 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 establishes the Department of Industrial Relations to, among other things, foster, promote, and develop the welfare of the wage earners, to improve their working conditions, and to advance their opportunities for profitable employment.*

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~~ *exposure control plan* to include a log of information for all scenes produced, 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, *that the employee consented to disclosing to the Department of Industrial Relations that the employee was the subject of an HIV test*, 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

1 any standard developed pursuant to subdivision (a) of Section
2 6401.7 for a period of one year after the date the new employer
3 establishes a business in the state.

4 (b) Subdivision (a) shall only apply to an employer who has
5 made a good faith effort to comply with any standard developed
6 pursuant to subdivision (a) of Section 6401.7, but shall not apply
7 if the employer is found to have committed a serious, willful, or
8 repeated violation of that standard, or fails to abate the violation
9 and is assessed a penalty pursuant to Section 6430.

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

11 6401.7. (a) Every employer shall establish, implement, and
12 maintain an effective injury prevention program. The program
13 shall be written, except as provided in subdivision (e), and shall
14 include, but not be limited to, the following elements:

15 (1) Identification of the person or persons responsible for
16 implementing the program.

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

20 (3) The employer's methods and procedures for correcting
21 unsafe or unhealthy conditions and work practices in a timely
22 manner.

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

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

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

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

37 (c) The employer shall train all employees when the training
38 program is first established, all new employees, and all employees
39 given a new job assignment, and shall train employees whenever
40 new substances, processes, procedures, or equipment are introduced

1 to the workplace and represent a new hazard, and whenever the
2 employer receives notification of a new or previously unrecognized
3 hazard. An employer in the construction industry who is required
4 to be licensed under Chapter 9 (commencing with Section 7000)
5 of Division 3 of the Business and Professions Code may use
6 employee training provided to the employer's employees under a
7 construction industry occupational safety and health training
8 program approved by the division to comply with the requirements
9 of subdivision (a) relating to employee training, and shall only be
10 required to provide training on hazards specific to an employee's
11 job duties.

12 (d) The employer shall keep appropriate records of steps taken
13 to implement and maintain the program. An employer in the
14 construction industry who is required to be licensed under Chapter
15 9 (commencing with Section 7000) of Division 3 of the Business
16 and Professions Code may use records relating to employee training
17 provided to the employer in connection with an occupational safety
18 and health training program approved by the division to comply
19 with this subdivision, and shall only be required to keep records
20 of those steps taken to implement and maintain the program with
21 respect to hazards specific to an employee's job duties.

22 (e) (1) The standards board shall adopt a standard setting forth
23 the employer's duties under this section, on or before January 1,
24 1991, consistent with the requirements specified in subdivisions
25 (a), (b), (c), and (d). The standards board, in adopting the standard,
26 shall include substantial compliance criteria for use in evaluating
27 an employer's injury prevention program. The board may adopt
28 less stringent criteria for employers with few employees and for
29 employers in industries with insignificant occupational safety or
30 health hazards.

31 (2) Notwithstanding subdivision (a), for employers with fewer
32 than 20 employees who are in industries that are not on a
33 designated list of high hazard industries and who have a workers'
34 compensation experience modification rate of 1.1 or less, and for
35 any employers with fewer than 20 employees who are in industries
36 that are on a designated list of low hazard industries, the board
37 shall adopt a standard setting forth the employer's duties under
38 this section consistent with the requirements specified in
39 subdivisions (a), (b), and (c), except that the standard shall only
40 require written documentation to the extent of documenting the

1 person or persons responsible for implementing the program
2 pursuant to paragraph (1) of subdivision (a), keeping a record of
3 periodic inspections pursuant to paragraph (2) of subdivision (a),
4 and keeping a record of employee training pursuant to paragraph
5 (4) of subdivision (a). To any extent beyond the specifications of
6 this subdivision, the standard shall not require the employer to
7 keep the records specified in subdivision (d).

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

13 (B) For the purpose of implementing this subdivision, the
14 Department of Industrial Relations shall periodically review, and
15 as necessary revise, the list.

16 (4) For the purpose of implementing this subdivision, the
17 Department of Industrial Relations shall also establish a list of low
18 hazard industries, and shall periodically review, and as necessary
19 revise, that list.

20 (f) The standard adopted pursuant to subdivision (e) shall
21 specifically permit employer and employee occupational safety
22 and health committees to be included in the employer’s injury
23 prevention program. The board shall establish criteria for use in
24 evaluating employer and employee occupational safety and health
25 committees. The criteria shall include minimum duties, including
26 the following:

27 (1) Review of the employer’s periodic, scheduled worksite
28 inspections; investigation of causes of incidents resulting in injury,
29 illness, or exposure to hazardous substances; and investigation of
30 any alleged hazardous condition brought to the attention of any
31 committee member. When determined necessary by the committee,
32 the committee may conduct its own inspections and investigations.

33 (2) (A) Upon request from the division, verification of
34 abatement action taken by the employer as specified in division
35 citations.

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

39 (g) The division shall adopt regulations specifying the
40 procedures for selecting employee representatives for

1 employer-employee occupational health and safety committees
2 when these procedures are not specified in an applicable collective
3 bargaining agreement. No employee or employee organization
4 shall be held liable for any act or omission in connection with a
5 health and safety committee.

6 (h) The employer's injury prevention program, as required by
7 this section, shall cover all of the employer's employees and all
8 other workers who the employer controls or directs and directly
9 supervises on the job to the extent these workers are exposed to
10 worksite and job assignment specific hazards. Nothing in this
11 subdivision shall affect the obligations of a contractor or other
12 employer that controls or directs and directly supervises its own
13 employees on the job.

14 (i) (1) An adult film employer's ~~injury prevention program~~
15 *exposure control plan* shall include a log of information for all
16 scenes produced, including, but not limited to, documentation that:

17 (A) Each time an employee performing in an adult film engaged
18 in vaginal or anal intercourse, personal protective equipment was
19 used to protect the employee from exposure to bloodborne
20 pathogens. This paragraph shall not be construed to require that
21 the personal protective equipment be visible to the consumer in
22 the finished film.

23 (B) Each employee performing in an adult film was tested for
24 sexually transmitted infections, according to the recommendations
25 of the Centers for Disease Control and Prevention and the State
26 Department of Public Health current at the time the testing takes
27 place, not more than 14 days prior to filming any scene in which
28 the employee engaged in vaginal or anal intercourse, *that the*
29 *employee consented to disclosing to the Department of Industrial*
30 *Relations that the employee was the subject of a human*
31 *immunodeficiency virus (HIV) test*, and that the employer paid for
32 the test.

33 (2) For the purposes of this subdivision, "adult film" means any
34 commercial film, video, multimedia, or other recorded
35 representation made or distributed for financial gain during the
36 production of which performers actually engage in sexual
37 intercourse, including oral, vaginal, or anal penetration.

38 (j) When a contractor supplies its employee to a state agency
39 employer on a temporary basis, the state agency employer may
40 assess a fee upon the contractor to reimburse the state agency for

1 the additional costs, if any, of including the contract employee
2 within the state agency's injury prevention program.

3 (k) (1) The division shall prepare a Model Injury and Illness
4 Prevention Program for Non-High-Hazard Employment, and shall
5 make copies of the model program prepared pursuant to this
6 subdivision available to employers, upon request, for posting in
7 the workplace. An employer who adopts and implements the model
8 program prepared by the division pursuant to this paragraph in
9 good faith shall not be assessed a civil penalty for the first citation
10 for a violation of this section issued after the employer's adoption
11 and implementation of the model program.

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

33 (3) The division shall prepare a Model Injury and Illness
34 Prevention Program for Employers in Industries with Intermittent
35 Employment, and shall determine which industries have historically
36 utilized seasonal or intermittent employees. An employer in an
37 industry determined by the division to have historically utilized
38 seasonal or intermittent employees shall be deemed to have
39 complied with the requirements of subdivision (a) with respect to
40 a written injury prevention program if the employer adopts the

1 model program prepared by the division pursuant to this paragraph
2 and complies with any instructions relating thereto.

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

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

26 SEC. 3 No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

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