

ASSEMBLY BILL

No. 578

Introduced by Assembly Member Low

February 24, 2015

An act to amend Sections 6450 and 6451 of, and to add Section 6450.5 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 578, as introduced, Low. Occupational safety and health.

Existing law establishes the Division of Occupational Safety and Health in the Department of Industrial Relations to enforce employment safety laws. The California Occupational Safety and Health Act of 1973 authorizes an employer to apply to the division for a temporary order granting a variance from an occupational safety or health standard and requires the order to be granted only if the employer's application satisfies specified requirements. Existing law provides that a temporary order may be granted only after notice to employees and an opportunity for a hearing. Existing law specifies the information that an application for a temporary order is required to contain.

This bill would require an employer to also give notice to workers at the place of employment who will be affected by the temporary variance, or representatives of affected workers, who may be affected by or exposed to the hazards by the temporary variance from an occupational safety and health standard. The bill would require any affected worker, or representative of affected workers, upon request, to be granted party status to the variance proceedings. The bill would require the temporary variance application to include a certification that the employer has given notice to affected workers as required. Because a violation of the

new requirements for employers would be a crime under certain circumstances, 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: yes.

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

1 SECTION 1. Section 6450 of the Labor Code is amended to
2 read:

3 6450. (a) Any employer may apply to the division for a
4 temporary order granting a variance from an occupational safety
5 or health standard. ~~Such~~ A temporary order shall be granted only
6 if the employer files an application ~~which~~ that meets the
7 requirements of Section 6451, and establishes ~~that~~ (1) ~~he~~ *the*
8 *following:*

9 (1) *The employer* is unable to comply with a standard by its
10 effective date because of unavailability of professional or technical
11 personnel or of materials and equipment needed to come into
12 compliance with the standard or because necessary construction
13 or alteration of facilities cannot be completed by the effective ~~date,~~
14 ~~(2) he date.~~

15 (2) *The employer* is taking all available steps to safeguard ~~his~~
16 employees against the hazards covered by the ~~standard,~~ and (3) ~~he~~
17 *standard.*

18 (3) *The employer* has an effective program for coming into
19 compliance with the standard as quickly as practicable.

20 (b) Any temporary order issued under this section shall prescribe
21 the practices, means, methods, operations, and processes ~~which~~
22 the employer ~~must~~ *is required to* adopt and use while the order is
23 in effect and state in detail ~~his~~ *a* program for coming into
24 compliance with the standard. Such a temporary order may be
25 granted only after notice to employees *and other affected workers*
26 *as described in Section 6450.5* and an opportunity for a hearing.
27 However, the division may issue one interim order for a temporary
28 variance upon submission of an application showing that the

1 employment or place of employment will be safe for employees
2 *and other affected workers* pending a hearing on the application
3 for a temporary variance. ~~No~~ A temporary order ~~may~~ *shall not* be
4 in effect for longer than the period needed by the employer to
5 achieve compliance with the standard or one year, whichever is
6 shorter, except that such an order may be renewed not more than
7 twice provided that the requirements of this section are met and
8 an application for renewal is filed ~~prior to~~ *before* the expiration
9 date of the order. ~~No~~ A single renewal of an order ~~may~~ *shall not*
10 remain in effect for longer than 180 days.

11 SEC. 2. Section 6450.5 is added to the Labor Code, to read:

12 6450.5. The employer shall also give notice to workers at the
13 place of employment who will be affected by the temporary
14 variance, or representatives of affected workers, who may be
15 affected by or exposed to the hazards by the temporary variance
16 from an occupational safety and health standard. Upon request to
17 the division, or to the standards board upon appeal pursuant to
18 Section 6455, any affected worker, or representative of affected
19 workers, shall be granted party status to the variance proceedings.

20 SEC. 3. Section 6451 of the Labor Code is amended to read:

21 6451. An application for a temporary order under Section 6450
22 shall contain all of the following:

23 (a) A specification of the standard or portion thereof from which
24 the employer seeks a variance.

25 (b) A representation by the employer, supported by
26 representations from qualified persons having firsthand knowledge
27 of the facts represented, that ~~he~~ *the employer* is unable to comply
28 with the standard or portion thereof and a detailed statement of
29 the reasons therefor.

30 (c) A statement of the steps ~~he~~ *the employer* has taken and will
31 take, with specific dates, to protect employees against the hazard
32 covered by the standard.

33 (d) A statement of when ~~he~~ *the employer* expects to be able to
34 comply with the standard and what steps ~~he~~ *the employer* has taken
35 and ~~what steps~~ *he* will take, with dates specified, to come into
36 compliance with the standard.

37 (e) A certification that ~~he~~ *the employer* has informed ~~his~~
38 employees of the application by giving a copy thereof to their
39 authorized representative, posting a statement giving a summary
40 of the application and specifying where a copy may be examined

1 at the place or places where notices to employees are normally
2 posted, and by other appropriate means. A description of how
3 employees have been informed shall be contained in the
4 certification. The information to employees shall also inform them
5 of their right to petition the division for a hearing.

6 *(f) A certification that the employer has given notice as required*
7 *in Section 6450.5.*

8 SEC. 4. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.