

ASSEMBLY BILL

No. 1127

Introduced by Assembly Member Steinberg

February 25, 1999

An act to amend Sections 98.7, 6302, 6304.5, 6308, 6309, 6315.5, 6317, 6323, 6324, 6325, 6400, 6423, 6425, 6427, 6428, 6429, 6430, 6432, and 6435 of, to add Sections 6424 and 6719 to, and to repeal Sections 6357 and 6434 of, the Labor Code, relating to employee safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1127, as introduced, Steinberg. Employee safety: violations.

Under existing law, any person who believes that he or she has been discharged or otherwise discriminated against in violation of the Labor Code under the jurisdiction of the Labor Commissioner may file a complaint with the Division of Labor Standards Enforcement within 30 days after the occurrence of the violation.

This bill would extend from 30 days to one year that period of time within which a complaint may be filed with the division.

Under the California Occupational Safety and Health Act of 1973 (hereafter Act), the term "serious exposure" is defined for purposes of establishing a violation of standards and orders of the Occupational Safety and Health Standards Board (hereafter standards board) governing employee safety.

This bill would include within the definition of a serious exposure, for those purposes, any exposure in excess of an established permissible exposure limit.

Existing law provides that the provisions of the Act have no application to, may not be considered in, may not be admitted into, evidence in any personal injury or wrongful death action arising after January 1, 1972, except as between an employee and his or her employer.

This bill instead would provide that neither the issuance of, or failure to issue, a citation by the Division of Occupational Safety and Health (hereafter division) has any application to, nor be considered in, nor be admitted into, evidence in any personal injury or wrongful death action, except as between an employee and his or her employer. The bill also would provide that the Act and the occupational safety and health standards and orders promulgated under the Labor Code may have application to, may be considered in, or be admissible into, evidence in any personal injury or wrongful death action.

Existing law provides that if the division secures a complaint from an employee, the employee's representative, or an employer of the employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, the division is required to summarily investigate the complaint as soon as possible, but not later than 3 working days after receipt of a complaint charging a serious violation, and not later than 14 days after receipt of a complaint charging a nonserious violation. Under existing law the division is not required to respond to a complaint if it determines that either the complaint is intended to willfully harass an employer or is without reasonable basis.

This bill also would require the division to conduct those investigations if a complaint is received by the employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, family member, or representative of a government agency. The bill would also provide that the division is not required to respond to a complaint if, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer and is without any reasonable basis.



Existing law states that all occupational safety and health standards and orders, rules, regulations, findings, and decisions of the division made and entered pursuant to the Act are admissible as evidence in any prosecution for the violation of the Act.

This bill instead would provide that all occupational safety and health standards and orders are admissible as evidence in any civil or criminal matter.

Existing law authorizes the division to issue a citation to an employer requiring the abatement of a violation of the Act.

This bill would prohibit a citation requiring abatement from being stayed unless the employer establishes good cause for a stay of the citation requiring abatement, as specified, and the division makes specified findings pertaining to employee safety and health.

Existing law provides that if the condition of any employment or place of employment or the operation of any machine, device, apparatus, or equipment constitutes a serious menace to the lives or safety of persons about it, the division may apply to the superior court of the county in which the place of employment, machine, device, apparatus, or equipment is located for an injunction restraining the use or operation of the machine, device, apparatus, or equipment until the condition is corrected. Existing law requires an affidavit to accompany that application showing the place of employment, machine, device, apparatus, or equipment is being operated in violation of specified requirements and that its use or operation constitutes a menace to the life or safety of any person employed thereabout.

This bill would instead authorize the division to apply to the superior court of the county in which the place of employment or employee is located for an injunction under those circumstances. The bill would also require the affidavit accompanying that application to show that the use or operation of the machine, device, apparatus, equipment, or process violates the specified requirements and constitutes a menace to the life or safety of any person employed thereabout or is likely to cause death, serious injury or illness, or serious exposure to an employee.



Existing law requires every employer to furnish employment and a place of employment that are safe and healthful for employees therein.

This bill would define an employer to include, but not be limited to, a person in a multiemployer place of employment who, with respect to any other employee at the place of employment, employs the exposed employee, creates the hazard, is responsible, by contract or through practice, for safety and health conditions, or is responsible for correcting the hazard.

Existing law provides that every employer, and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or other employee is guilty of a misdemeanor if it, among other things, knowingly or negligently violates any standard, order, or special order, or any certain provisions of law, or part thereof, or authorized by the Act, the violation of which is deemed to be a serious violation, as defined.

This bill would instead make any corporation, limited liability company, or person guilty of a misdemeanor under those circumstances. The bill would also make conforming changes to other provisions of law that impose civil and criminal penalties on employers for violation of specified occupational safety and health requirements. The bill would increase from \$5,000 to \$200,000 the maximum fine that may be imposed for a violation of those provisions. The bill also would increase the length of incarceration and the monetary penalties that may be imposed for a willful or repeated violation of certain employee safety standards that cause death to any employee, or cause permanent or prolonged impairment of the body of any employee.

Existing law prohibits civil penalties from being assessed against employers that are governmental agencies for violations of certain employee safety standards.

This bill would repeal that prohibition.

Existing law requires the standards board, on or before January 1, 1995, to adopt standards for ergonomics in the workplace designed to minimize the instances of injury from repetitive motion.



This bill would repeal that provision and instead would require the standards board to enforce specified standards applicable to a job, process, or operation governing the prevention of repetitive motion injuries.

By making certain violations of employee safety standards by employers subject to criminal penalties, the 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 98.7 of the Labor Code is
 2 amended to read:
 3 98.7. (a) Any person who believes that he or she has
 4 been discharged or otherwise discriminated against in
 5 violation of ~~any provision~~ of this code under the
 6 jurisdiction of the Labor Commissioner may file a
 7 complaint with the division within ~~30 days~~ *one year* after
 8 the occurrence of the violation. The ~~30-day~~ *one-year*
 9 period may be extended for good cause. The complaint
 10 shall be investigated by a discrimination complaint
 11 investigator in accordance with this section. The Labor
 12 Commissioner shall establish procedures for the
 13 investigation of discrimination complaints. A summary of
 14 the procedures shall be provided to each complainant
 15 and respondent at the time of initial contact. The Labor
 16 Commissioner shall inform complainants charging a
 17 violation of Section 6310 or 6311, at the time of initial
 18 contact, of his or her right to file a separate, concurrent
 19 complaint with the United States Department of Labor
 20 within 30 days after the occurrence of the violation.
 21 (b) Each complaint of unlawful discharge or
 22 discrimination shall be assigned to a discrimination



1 complaint investigator who shall prepare and submit a
2 report to the Labor Commissioner based on an
3 investigation of the complaint. The Labor Commissioner
4 may designate the chief deputy or assistant Labor
5 Commissioner or the chief counsel to receive and review
6 the reports. The investigation shall include, where
7 appropriate, interviews with the complainant,
8 respondent, and any witnesses who may have
9 information concerning the alleged violation, and a
10 review of any documents which may be relevant to the
11 disposition of the complaint. The identity of witnesses
12 shall remain confidential unless the identification of the
13 witness becomes necessary to proceed with the
14 investigation or to prosecute an action to enforce a
15 determination. The investigation report submitted to the
16 Labor Commissioner or designee shall include the
17 statements and documents obtained in the investigation,
18 and the findings of the investigator concerning whether
19 a violation occurred. The Labor Commissioner may hold
20 an investigative hearing whenever the Labor
21 Commissioner determines, after review of the
22 investigation report, that a hearing is necessary to fully
23 establish the facts. In the hearing the investigation report
24 shall be made a part of the record and the complainant
25 and respondent shall have the opportunity to present
26 further evidence. The Labor Commissioner shall issue,
27 serve, and enforce any necessary subpoenas.

28 (c) If the Labor Commissioner determines a violation
29 has occurred, he or she shall notify the complainant and
30 respondent and direct the respondent to cease and desist
31 from the violation and take such action as is deemed
32 necessary to remedy the violation, including, where
33 appropriate, rehiring or reinstatement, reimbursement
34 of lost wages and interest thereon, payment of reasonable
35 attorney's fees associated with any hearing held by the
36 Labor Commissioner in investigating the complaint, and
37 the posting of notices to employees. If the respondent
38 does not comply with the order within 10 working days
39 following notification of the Labor Commissioner's
40 determination, the Labor Commissioner shall bring an



1 action promptly in an appropriate court against the
2 respondent. If the Labor Commissioner fails to bring an
3 action in court promptly, the complainant may bring an
4 action against the Labor Commissioner in any
5 appropriate court for a writ of mandate to compel the
6 Labor Commissioner to bring an action in court against
7 the respondent. If the complainant prevails in his or her
8 action for a writ, the court shall award the complainant
9 court costs and reasonable attorney's fees,
10 notwithstanding any other provision of law. Regardless of
11 any delay in bringing an action in court, the Labor
12 Commissioner shall not be divested of jurisdiction. In any
13 such action, the court may permit the claimant to
14 intervene as a party plaintiff to the action and shall have
15 jurisdiction, for cause shown, to restrain the violation and
16 to order all appropriate relief. Appropriate relief
17 includes, but is not limited to, rehiring or reinstatement
18 of the complainant, reimbursement of lost wages and
19 interest thereon, and ~~such~~ any other compensation or
20 equitable relief as is appropriate under the circumstances
21 of the case. The Labor Commissioner shall petition the
22 court for appropriate temporary relief or restraining
23 order unless he or she determines good cause exists for
24 not doing so.

25 (d) If the Labor Commissioner determines no
26 violation has occurred, he or she shall notify the
27 complainant and respondent and shall dismiss the
28 complaint. The Labor Commissioner may direct the
29 complainant to pay reasonable attorney's fees associated
30 with any hearing held by the Labor Commissioner if the
31 Labor Commissioner finds the complaint was frivolous,
32 unreasonable, groundless, and was brought in bad faith.
33 The complainant may, after notification of the Labor
34 Commissioner's determination to dismiss a complaint,
35 bring an action in an appropriate court, which shall have
36 jurisdiction to determine whether a violation occurred,
37 and if so, to restrain the violation and order all
38 appropriate relief to remedy the violation. Appropriate
39 relief includes, but is not limited to, rehiring or
40 reinstatement of the complainant, reimbursement of lost



1 wages and interest thereon, and such other compensation
2 or equitable relief as is appropriate under the
3 circumstances of the case. When dismissing a complaint,
4 the Labor Commissioner shall advise the complainant of
5 his or her right to bring an action in an appropriate court
6 if he or she disagrees with the determination of the Labor
7 Commissioner, and in the case of an alleged violation of
8 Section 6310 or 6311, to file a complaint against the state
9 program with the United States Department of Labor.

10 (e) The Labor Commissioner shall notify the
11 complainant and respondent of his or her determination
12 under subdivision (c) or (d), not later than 60 days after
13 the filing of the complaint. Determinations by the Labor
14 Commissioner under subdivision (c) or (d) may be
15 appealed by the complainant or respondent to the
16 Director of Industrial Relations within 10 days following
17 notification of the determination. The appeal shall set
18 forth specifically and in full detail the grounds upon
19 which the appealing party considers the Labor
20 Commissioner's determination to be unjust or unlawful,
21 and every issue to be considered by the director. The
22 director may consider any issue relating to the initial
23 determination and may modify, affirm, or reverse the
24 Labor Commissioner's determination. The director's
25 determination shall be the determination of the Labor
26 Commissioner. The director shall notify the complainant
27 and respondent of his or her determination within 10 days
28 of receipt of the appeal.

29 (f) The rights and remedies provided by this section
30 do not preclude an employee from pursuing any other
31 rights and remedies under any other provisions of law.

32 SEC. 2. Section 6302 of the Labor Code is amended to
33 read:

34 6302. As used in this division:

35 (a) "Director" means the Director of Industrial
36 Relations.

37 (b) "Department" means the Department of
38 Industrial Relations.

39 (c) "Insurer" includes the State Compensation
40 Insurance Fund and any private company, corporation,



1 mutual association, and reciprocal or interinsurance
2 exchange, authorized under the laws of this state to insure
3 employers against liability for compensation under this
4 part and under Division 4 (commencing with Section
5 3201), and any employer to whom a certificate of consent
6 to self-insure has been issued.

7 (d) “Division” means the Division of Occupational
8 Safety and Health.

9 (e) “Standards board” means the Occupational Safety
10 and Health Standards Board, within the department.

11 (f) “Appeals board” means the Occupational Safety
12 and Health Appeals Board, within the department.

13 (g) “Aquaculture” means a form of agriculture as
14 defined in Section 17 of the Fish and Game Code.

15 (h) “Serious injury or illness” means any injury or
16 illness occurring in a place of employment or in
17 connection with any employment which requires
18 inpatient hospitalization for a period in excess of 24 hours
19 for other than medical observation or in which an
20 employee suffers a loss of any member of the body or
21 suffers any serious degree of permanent disfigurement,
22 but does not include any injury or illness or death caused
23 by the commission of a *violation of the* Penal Code
24 ~~violation~~, except the violation of Section 385 of the Penal
25 Code, or an accident on a public street or highway.

26 (i) “Serious exposure” means any exposure of an
27 employee to a hazardous substance when the exposure
28 occurs as a result of an incident, accident, emergency, or
29 exposure over time and is in a degree or amount sufficient
30 to create a substantial probability that death or serious
31 physical harm in the future could result from the
32 exposure. *Any exposure in excess of an established*
33 *permissible exposure limit is a serious exposure.*

34 (j) “Serious physical harm” means any of the
35 following:

36 (1) *Any injury involving a temporary, prolonged, or*
37 *permanent impairment of the body in which any part of*
38 *the body is rendered functionally useless or substantially*
39 *reduced in efficiency on or off the job.*



1 (2) Any illness involving a condition that may shorten
2 life or significantly reduce physical or mental efficiency
3 by inhibiting the normal function of a part of the body.

4 (3) Any injury or illness that results in temporary or
5 permanent disability.

6 SEC. 3. Section 6304.5 of the Labor Code is amended
7 to read:

8 6304.5. It is the intent of the Legislature that the
9 provisions of this division ~~shall only be, and the~~
10 *occupational safety and health standards and orders*
11 *promulgated under this code, are applicable to*
12 *proceedings against employers brought pursuant to the*
13 *provisions of Chapter 3 (commencing with Section 6500)*
14 *and 4 (commencing with Section 6600) of Part 1 of this*
15 *division for the exclusive purpose of maintaining and*
16 *enforcing employee safety.*

17 Neither ~~this division nor any part of this division the~~
18 *issuance of, or failure to issue, a citation by the division*
19 *shall have any application to, nor be considered in, nor be*
20 *admissible into, evidence in any personal injury or*
21 *wrongful death action arising after the operative date of*
22 *this section, except as between an employee and his or*
23 *her own employer. This division and the occupational*
24 *safety and health standards and orders promulgated*
25 *under this code may have application to, be considered*
26 *in, or be admissible into, evidence in any personal injury*
27 *or wrongful death action.*

28 SEC. 4. Section 6308 of the Labor Code is amended to
29 read:

30 6308. ~~The division, in~~ *In enforcing this division,*
31 *occupational safety and health standards and, orders, and*
32 *special orders, the division may do any of the following:*

33 (a) Declare and prescribe ~~what the~~ *the* safety devices,
34 safeguards, or other means or methods of protection *that*
35 are well adapted to render the employees of every
36 employment and place of employment safe as required
37 by law or lawful order.

38 (b) Enforce Section 25910 of the Health and Safety
39 Code and standards and orders adopted by the standards
40 board pursuant to Chapter 6 (commencing with Section



1 140) of Division 1 of the Labor Code, for the installation,
2 use, maintenance, and operation of reasonable uniform
3 safety devices, safeguards, and other means or methods
4 of protection, which are necessary to carry out all laws
5 and lawful standards or special orders relative to the
6 protection of the life and safety of employees in
7 employments and places of employment.

8 (c) Require the performance of any other act ~~which~~
9 *that is reasonably necessary for* the protection of the life
10 and safety of the employees in employments and places
11 of employment ~~reasonably demands~~.

12 An employer may request a hearing on a special order
13 or action ordered pursuant to this section, at which the
14 employer, owner, or any other person may appear. The
15 appeals board shall conduct the hearing at the earliest
16 possible time.

17 All orders, rules, regulations, findings, and decisions of
18 the division made or entered under this part, except
19 special orders and action orders, may be reviewed by the
20 Supreme Court and the courts of appeal as may be
21 provided by law.

22 SEC. 5. Section 6309 of the Labor Code is amended to
23 read:

24 6309. ~~Whenever~~ *If* the division learns or has reason to
25 believe that any employment or place of employment is
26 not safe or is injurious to the welfare of any employee, it
27 may, of its own motion, or upon complaint, summarily
28 investigate the ~~same~~ *employment or place of*
29 *employment*, with or without notice or hearings.
30 However, ~~when~~ *if* the division secures a complaint from
31 an employee, the employee's representative, *including,*
32 *but not limited to, an attorney, health or safety*
33 *professional, union representative, family member, or*
34 *representative of a government agency,* or an employer
35 of an employee directly involved in an unsafe place of
36 employment, that his or her employment or place of
37 employment is not safe, it shall, with or without notice or
38 hearing, summarily investigate the ~~same~~ *employment or*
39 *place of employment* as soon as possible, but not later
40 than three working days after receipt of a complaint



1 charging a serious violation, and not later than 14
2 calendar days after receipt of a complaint charging a
3 nonserious violation. *The division shall attempt to*
4 *determine the period of time in the future that the*
5 *complainant believes the unsafe condition may continue*
6 *to exist, and shall allocate inspection resources so as to*
7 *respond first to those situations in which time is of the*
8 *essence.* For purposes of this section, a complaint shall be
9 deemed to allege a serious violation if the division
10 determines that the complaint charges that there is a
11 substantial probability that death or serious physical harm
12 could result from a condition which exists, or from one or
13 more practices, means, methods, operations, or processes
14 which have been adopted or are in use in a place of
15 employment. All other complaints shall be deemed to
16 allege nonserious violations. The division may enter and
17 serve any necessary order relative thereto. The division
18 is not required to respond to any complaint within this
19 period ~~where~~ *if*, from the facts stated in the complaint, it
20 determines that the complaint is intended to willfully
21 harass an employer ~~or~~ *and* is without any reasonable
22 basis.

23 The division shall keep complete and accurate records
24 of any complaints, whether verbal or written, and shall
25 inform the complainant, whenever his or her identity is
26 known, of any action taken by the division in regard to the
27 subject matter of the complaint, and the reasons for the
28 action. The records of the division shall include the dates
29 on which any action was taken on the complaint, or the
30 reasons for not taking any action on the complaint. The
31 division shall, pursuant to authorized regulations,
32 conduct an informal review of any refusal by a
33 representative of the division to issue a citation with
34 respect to any alleged violation. The division shall furnish
35 the employee or the representative of employees
36 requesting the review a written statement of the reasons
37 for the division's final disposition of the case.

38 The name of any person who submits to the division a
39 complaint regarding the unsafeness of an employment or



1 place of employment shall be kept confidential by the
2 division, unless that person requests otherwise.

3 The requirements of this section shall not relieve the
4 division of its requirement to inspect and assure that all
5 places of employment are safe and healthful for
6 employees. The division shall maintain the capability to
7 receive and act upon complaints at all times.

8 SEC. 6. Section 6315.5 of the Labor Code is amended
9 to read:

10 6315.5. All occupational safety and health standards
11 and orders, ~~rules, regulations, findings, and decisions of~~
12 ~~the division made and entered pursuant to this part~~ are
13 admissible as evidence in any ~~prosecution for the~~
14 ~~violation of any provision of this part~~ *civil or criminal*
15 *matter*, and shall, in ~~every such prosecution~~ *any such*
16 *action*, be presumed to be reasonable and lawful and to
17 fix a reasonable and proper ~~standard and~~ requirement of
18 safety unless, prior to the institution of the ~~prosecution for~~
19 ~~such violation~~ *action*, proceedings for a hearing on a
20 special order are instituted, or a petition is filed under
21 Section 11426 of the Government Code.

22 SEC. 7. Section 6317 of the Labor Code is amended to
23 read:

24 6317. (a) If, upon inspection or investigation, the
25 division believes that an employer has violated Section
26 25910 of the Health and Safety Code ~~or~~ any standard,
27 rule, order, or regulation established pursuant to Chapter
28 6 (commencing with Section 140) of Division 1 of the
29 Labor Code, or any *provision of this division, including*
30 *any* standard, rule, order, or regulation established
31 pursuant to this ~~part~~ *division*, it shall with reasonable
32 promptness issue a citation to the employer. Each citation
33 shall be in writing and shall describe with particularity
34 the nature of the violation, including a reference to the
35 provision of the code, standard, rule, regulation, or order
36 alleged to have been violated. In addition, the citation
37 shall fix a reasonable time for the abatement of the
38 alleged violation. The period specified for abatement
39 ~~shall~~ *does* not commence ~~running~~ until the date the
40 citation or notice is received by certified mail and the



1 certified mail receipt is signed, or if not signed, the date
2 the return is made to the post office. If the division
3 officially and directly delivers the citation or notice to the
4 employer, the period specified for abatement ~~shall~~
5 ~~commence—running~~ commences on the date of the
6 delivery.

7 *A citation requiring abatement may not be stayed by*
8 *the filing of an appeal, except as provided in this*
9 *subdivision. Upon an application accompanied by*
10 *declarations and exhibits, submitted under penalty of*
11 *perjury, an employer may petition the appeals board for*
12 *a stay of abatement pending appeal at the time the*
13 *employer files a notice of appeal. The employer shall have*
14 *the burden of establishing good cause for a stay of the*
15 *citation requiring abatement. Within five business days of*
16 *the date of receipt of the notice of appeal and request for*
17 *stay of abatement pending appeal, the division may*
18 *respond to the employer's declarations and exhibits, and*
19 *the division also may request an expedited hearing.*
20 *Within 10 business days, the appeals board shall consider*
21 *the evidence submitted by the employer and the division,*
22 *and shall consider oral testimony if the division requests*
23 *an expedited hearing, and upon all the evidence and*
24 *proceedings may grant a stay of abatement pending*
25 *appeal if it finds that (1) no employee may be exposed to*
26 *the unsafe or unhealthful condition or (2) that the*
27 *condition is not likely to cause death, serious injury or*
28 *illness, or serious exposure to any employee.*

29 (b) A “notice” in lieu of citation may be issued with
30 respect to violations found in an inspection or
31 investigation which meet either of the following
32 requirements:

33 (1) The violations do not have a direct relationship
34 upon the health or safety of an employee.

35 (2) The violations do not have an immediate
36 relationship to the health or safety of an employee, and
37 are of a general or regulatory nature. A notice in lieu of
38 a citation may be issued only if the employer agrees to
39 correct the violations within a reasonable time, as
40 specified by the division, and agrees not to appeal the



1 finding of the division that the violations exist. A notice
2 issued pursuant to this paragraph shall have the same
3 effect as a citation for purposes of establishing repeat
4 violations or a failure to abate. Every notice shall clearly
5 state the abatement period specified by the division, that
6 the notice may not be appealed, and that the notice has
7 the same effect as a citation for purposes of establishing
8 a repeated violation or a failure to abate. The employer
9 shall indicate agreement to the provisions and conditions
10 of the notice by his or her signature on the notice.

11 ~~Under no circumstances shall a~~

12 A notice *may not* be issued in lieu of a citation if the
13 violations are serious, repeated, willful, or arise from a
14 failure to abate.

15 The director shall prescribe guidelines for the issuance
16 of these notices.

17 The division may impose a civil penalty against an
18 employer as specified in Chapter 4 (commencing with
19 Section 6423) of this part. A notice in lieu of a citation may
20 not be issued if the number of first instance violations
21 found in the inspection (other than serious, willful, or
22 repeated violations) is 10 or more violations.

23 No citation or notice shall be issued by the division for
24 a given violation or violations after six months have
25 elapsed since occurrence of the violation.

26 The director shall prescribe procedures for the issuance
27 of a citation or notice.

28 The division shall prepare and maintain records
29 capable of supplying an inspector with previous citations
30 and notices issued to an employer.

31 SEC. 8. Section 6323 of the Labor Code is amended to
32 read:

33 6323. If the condition of any employment or place of
34 employment or the operation of any machine, device,
35 apparatus, ~~or~~ equipment, *or process* constitutes a serious
36 menace to the lives or safety of persons about it, the
37 division may apply to the superior court of the county in
38 which ~~such~~ *the* place of employment, ~~machine, device,~~
39 ~~apparatus,~~ or ~~equipment~~ *employee* is situated, for an



1 injunction restraining the use or operation thereof until
2 ~~such~~ the condition is corrected.

3 SEC. 9. Section 6324 of the Labor Code is amended to
4 read:

5 6324. ~~The~~ *An* application to the superior court *for an*
6 *injunction shall be* accompanied by *an* affidavit showing
7 that ~~such~~ a place of employment, machine, device,
8 apparatus, ~~or~~ equipment, *or process* is being operated in
9 violation of a safety order or standard, or in violation of
10 Section 25910 of the Health and Safety Code, and that
11 ~~such~~ the use or operation constitutes a menace to the life
12 or safety of any person employed thereabout ~~and~~ *or is*
13 *likely to cause death, serious injury or illness, or serious*
14 *exposure to an employee. The affidavit shall be*
15 accompanied by a copy of the order or standard
16 applicable thereto ~~is~~. *The application and affidavit are* a
17 sufficient prima facie showing to warrant, in the
18 discretion of the court, the immediate granting of a
19 temporary restraining order. No bond shall be required
20 from the division *or any other state or local prosecutor* as
21 a prerequisite to the granting of any restraining order.

22 SEC. 10. Section 6325 of the Labor Code is amended
23 to read:

24 6325. ~~When~~ *If*, in the opinion of the division, a place
25 of employment, machine, device, apparatus, or
26 equipment, or any part thereof, is in a dangerous
27 condition, *or if a machine, device, apparatus, or piece of*
28 *equipment* is not properly guarded or is dangerously
29 placed so as to constitute an imminent hazard to
30 employees, *or is likely to cause death, serious injury or*
31 *illness, or serious exposure to an employee*, entry therein,
32 or the use thereof, as the case may be, shall be prohibited
33 by the division, and a conspicuous notice to that effect
34 shall be ~~attached thereto~~ *posted thereon. —Such* *The*
35 prohibition of use shall be limited to the immediate area
36 in which the imminent hazard *or condition* exists, and the
37 division shall not prohibit any entry in or use of a place of
38 employment, machine, device, apparatus, or equipment,
39 or any part thereof, which is outside ~~such~~ the area of
40 imminent hazard *or condition*. ~~Such~~ *The* notice shall ~~not~~



1 *only may* be removed ~~except~~ by an authorized
2 representative of the division, ~~nor until~~ *if* the place of
3 employment, machine, device, apparatus, or equipment
4 is made safe and the required safeguards or safety
5 appliances or devices are provided. This section ~~shall~~ *does*
6 not prevent the entry or use with the division's
7 knowledge and permission for the sole purpose of
8 eliminating the dangerous conditions.

9 SEC. 11. Section 6357 of the Labor Code is repealed.

10 ~~6357. On or before January 1, 1995, the Occupational~~
11 ~~Safety and Health Standards Board shall adopt standards~~
12 ~~for ergonomics in the workplace designed to minimize~~
13 ~~the instances of injury from repetitive motion.~~

14 SEC. 12. Section 6400 of the Labor Code is amended
15 to read:

16 6400. Every employer shall furnish employment and
17 a place of employment ~~which~~ *that* are safe and healthful
18 for the employees therein. *“Employer” includes, but is*
19 *not limited to, a person in a multiemployer place of*
20 *employment who, with respect to any other employee at*
21 *the place of employment, does any of the following:*

22 *(a) Employs the exposed employee.*

23 *(b) Creates the hazard.*

24 *(c) Is responsible, by contract or through practice, for*
25 *safety and health conditions.*

26 *(d) Is responsible for correcting the hazard.*

27 SEC. 13. Section 6423 of the Labor Code is amended
28 to read:

29 ~~6423. Except where another penalty is specifically~~
30 ~~provided, every employer, and every officer,~~
31 ~~management official, or supervisor~~ *Any corporation,*
32 *limited liability company, or person* having direction,
33 management, control, or custody of any employment,
34 place of employment, or *of any* other employee, who does
35 any of the following ~~shall be~~ *is* guilty of a misdemeanor:

36 *(a) Knowingly or negligently violates any standard,*
37 *order, or special order, or any provision of this division, or*
38 *of any part thereof in, or authorized by, this part the*
39 *violation of which is deemed to be a serious violation*
40 *pursuant to Section 6432.*



1 (b) Repeatedly violates any standard, order, or special
2 order, or provision of this division, or any part thereof in,
3 or authorized by, this part, which repeated violation
4 creates a real and apparent hazard to employees.

5 (c) Fails or refuses to comply, after notification and
6 expiration of any abatement period, with any such
7 standard, order, special order, or provision of this division,
8 or any part thereof, which failure or refusal creates a real
9 and apparent hazard to employees.

10 (d) Directly or indirectly, knowingly induces another
11 to ~~do any of the above~~ commit any of the acts in
12 subdivisions (a), (b), or (c).

13 Any violation of the provisions of this section is
14 punishable by imprisonment in ~~the~~ a county jail ~~not~~
15 ~~exceeding six months for a term not exceeding one year,~~
16 or by a fine not exceeding ~~five~~ two hundred thousand
17 dollars (~~\$5,000~~) (\$200,000), or by both that imprisonment
18 and fine. If the defendant is a corporation or a limited
19 liability company, the fine shall not be less than one
20 hundred thousand dollars (\$100,000) but may not exceed
21 one million dollars (\$1,000,000).

22 SEC. 14. Section 6424 is added to the Labor Code, to
23 read:

24 6424. For purposes of construing this chapter, the
25 following rules of construction apply:

26 (a) To the extent that a word or term of this chapter
27 is defined in Section 7 of the Penal Code, the definitions
28 of Section 7 of the Penal Code govern the interpretation
29 of that word or term.

30 (b) In addition to the definition of “negligence” in
31 Section 7 of the Penal Code, any act or failure to act that
32 is inconsistent with any standard, special order, or any
33 provision of this division or of Section 25910 of the Health
34 and Safety Code, constitutes evidence of negligence.

35 (c) An “employer” includes, but is not limited to, a
36 person in a multiemployer place of employment who,
37 with respect to any other employee at the place of
38 employment, does any of the following:

39 (a) Employs the exposed employee.

40 (b) Creates the hazard.



1 (c) Is responsible, by contract or through practice, for
2 safety and health conditions.

3 (d) Is responsible for correcting the hazard.

4 SEC. 15. Section 6425 of the Labor Code is amended
5 to read:

6 ~~6425. Any employer, and every employee (a) Every~~
7 ~~corporation, limited liability company, or person having~~
8 ~~direction, management, control, or custody of any~~
9 ~~employment, place of employment, or of any other~~
10 ~~employee, who willfully violates any occupational safety~~
11 ~~or health standard, order, or special order, or any~~
12 ~~provision of this division or of Section 25910 of the Health~~
13 ~~and Safety Code, and that violation caused death to any~~
14 ~~employee, or caused permanent or prolonged~~
15 ~~impairment of the body of any employee, shall, upon~~
16 ~~conviction, be punished by a fine of not more than~~
17 ~~seventy thousand dollars (\$70,000), by imprisonment for~~
18 ~~not more than six months, or by both; except that if the~~
19 ~~conviction is for a violation committed after a first~~
20 ~~conviction of the person, punishment shall be by a fine~~
21 ~~not to exceed seventy thousand dollars (\$70,000), but in~~
22 ~~no case less than thirty five thousand dollars (\$35,000), by~~
23 ~~imprisonment for not more than one year, or by both.~~
24 ~~Nothing in this section shall~~ *is guilty of a public offense*
25 *punishable by imprisonment in a county jail for a term not*
26 *exceeding one year, or by a fine not exceeding two*
27 *hundred fifty thousand dollars (\$250,000), or by both that*
28 *imprisonment and fine; or by imprisonment in the state*
29 *prison for 16 months, or two or three years, or by a fine*
30 *of not less than two hundred fifty thousand dollars*
31 *(\$250,000) but not exceeding one million dollars*
32 *(\$1,000,000), or by both that imprisonment and fine; and*
33 *in either case, if the defendant is a corporation or a limited*
34 *liability company, the fine shall not be less than five*
35 *hundred thousand dollars (\$500,000) but may not exceed*
36 *five million dollars (\$5,000,000).*

37 (b) *If the conviction is for a violation committed after*
38 *a first conviction of the person or corporation for any*
39 *crime involving a violation of occupational safety and*
40 *health provisions, punishment shall be by imprisonment*



1 *in the state prison for two, three, or four years, or by a fine*
2 *no less than five hundred thousand dollars (\$500,000) but*
3 *not exceeding five million dollars (\$5,000,000), or by both*
4 *that fine and imprisonment, but if the defendant is a*
5 *corporation or a limited liability company, the fine shall*
6 *not be less than one million dollars (\$1,000,000) but may*
7 *not exceed ten million dollars (\$10,000,000).*

8 *(c) This section does not prohibit a prosecution under*
9 *Section 192 of the Penal Code.*

10 SEC. 16. Section 6427 of the Labor Code is amended
11 to read:

12 6427. Any ~~employer~~ *corporation or limited liability*
13 *company, and every employer who creates a hazard,*
14 *controls the work or the premises, or is responsible for*
15 *correction of a hazard who violates any occupational*
16 *safety or health standard, order, or special order, or any*
17 *provision of this division or of Section 25910 of the Health*
18 *and Safety Code, and the violation is specifically*
19 *determined not to be of a serious nature, may be assessed*
20 *a civil penalty of up to seven thousand dollars (\$7,000) for*
21 *each violation.*

22 SEC. 17. Section 6428 of the Labor Code is amended
23 to read:

24 6428. Any ~~employer~~ *corporation or limited liability*
25 *company, and every employer who creates a hazard,*
26 *controls the work or the premises, or is responsible for*
27 *correction of a hazard who violates any occupational*
28 *safety or health standard, order, or special order, or any*
29 *provision of this division or of Section 25910 of the Health*
30 *and Safety Code, if that violation is a serious violation,*
31 *shall be assessed a civil penalty of up to ~~seven~~ twenty-five*
32 *thousand dollars (~~\$7,000~~) (\$25,000) for each violation.*
33 *Employers who do not have an operative injury*
34 *prevention program shall receive no adjustment for good*
35 *faith of the employer or history of previous violations as*
36 *provided in paragraphs (3) and (4) of subdivision (c) of*
37 *Section 6319.*

38 SEC. 18. Section 6429 of the Labor Code is amended
39 to read:



1 6429. (a) Any corporation or limited liability
2 company who creates a hazard, controls the work or the
3 premises, or is responsible for correction of a hazard, and
4 every employer who willfully or repeatedly violates any
5 occupational safety or health standard, order, or special
6 order, or any provision of this division or of Section 25910
7 of the Health and Safety Code, may be assessed a civil
8 penalty of not more than seventy thousand dollars
9 (\$70,000) for each violation, but in no case less than five
10 thousand dollars (\$5,000) for each willful violation.

11 (b) Any corporation or limited liability company, who
12 creates a hazard, controls the work or the premises, or is
13 responsible for correction of the hazard, and every
14 employer who repeatedly violates any occupational
15 safety or health standard, order, or special order, or any
16 provision of this division or of Section 25910 of the Health
17 and Safety Code, shall not receive any adjustment of a
18 penalty assessed pursuant to this section on the basis of
19 the regulations promulgated pursuant to subdivision (c)
20 of Section 6319 pertaining to the good faith of the
21 employer or the history of previous violations of the
22 employer.

23 (c) Any past violation by any corporation or limited
24 liability company, and every employer who creates a
25 hazard, controls the work or the premises, or is
26 responsible for correction of the hazard, occurring
27 anywhere within the state within the previous five years
28 of any occupational safety or health standard, order, or
29 special order, or any provision of this division or of Section
30 25910 of the Health and Safety Code, shall be used to
31 establish whether a current violation is a repeat violation,
32 and shall constitute evidence of willfulness for purposes
33 of this section.

34 (d) The division shall preserve and maintain records
35 of its investigations and inspections and citations for a
36 period of not less than seven years.

37 SEC. 19. Section 6430 of the Labor Code is amended
38 to read:

39 6430. (a) Any corporation or limited liability
40 company who creates a hazard, controls the work or the



1 *premises, or is responsible for the correction of a hazard,*
2 *and every employer who fails to correct a violation of any*
3 *occupational safety or health standard, order, or special*
4 *order, or any provision of this division or of Section 25910*
5 *of the Health and Safety Code, within the period*
6 *permitted for its correction shall be assessed a civil*
7 *penalty of not more than ~~seven~~ twenty-five thousand*
8 *dollars (~~\$7,000~~) (\$25,000) for each day during which the*
9 *failure or violation continues.*

10 (b) Notwithstanding subdivision (a), for any
11 employer who submits a signed statement affirming
12 compliance with the abatement terms pursuant to
13 Section 6320, and is found upon a reinspection not to have
14 abated the violation, any adjustment to the civil penalty
15 based on abatement shall be rescinded and the additional
16 civil penalty assessed for failure to abate shall not be
17 adjusted for good faith of the employer or history of
18 previous violations as provided in paragraphs (3) and (4)
19 of subdivision (c) of Section 6319.

20 (c) *Notwithstanding subdivision (a), any corporation*
21 *or limited liability company and every employer who*
22 *creates a hazard, controls the work or the premises, or is*
23 *responsible for correction of a hazard, who submits a*
24 *signed statement affirming compliance with the*
25 *abatement terms pursuant to subdivision (b) of Section*
26 *6320, and is found not to have abated the violation, is*
27 *guilty of a public offense punishable by imprisonment in*
28 *a county jail for a term not exceeding one year, or by a fine*
29 *not exceeding one hundred thousand dollars (\$100,000),*
30 *or by both that fine and imprisonment; or by*
31 *imprisonment in the state prison for 16 months, or two or*
32 *three years, or by a fine not less than fifty thousand dollars*
33 *(\$50,000) but not exceeding two hundred fifty thousand*
34 *dollars (\$250,000), or by both that fine and imprisonment;*
35 *and in either case, if the defendant is corporation or a*
36 *limited liability company the fine shall be not less than*
37 *one hundred thousand dollars (\$100,000) but not exceed*
38 *one million dollars (\$1,000,000).*

39 SEC. 20. Section 6432 of the Labor Code is amended
40 to read:



1 6432. (a) As used in this part, a “serious violation”
2 shall be deemed to exist in a place of employment if ~~there~~
3 *any of the following conditions exist:*

4 (1) *There is a substantial probability that death or*
5 *serious physical harm could result from a serious*
6 *violation, including, but not limited to, any of the*
7 *following circumstances:*

8 (A) *An exposure exceeding an established permissible*
9 *exposure limit* ~~or a condition which exists, or from.~~

10 (B) *The existence of an unsafe or unhealthful*
11 *condition.*

12 (C) *The existence of one or more practices, means,*
13 *methods, operations, or processes which have been*
14 *adopted or are in use, in the place of employment* ~~unless.~~

15 (2) *The violation results in occupational injuries or*
16 *illnesses that are indicative of a condition that may result*
17 *in serious physical harm.*

18 (b) *Notwithstanding subdivision (a), a serious*
19 *violation shall not be deemed to exist if the employer can*
20 *demonstrate that it did not, and could not with the*
21 *exercise of reasonable diligence, know of the presence of*
22 *the violation.*

23 ~~(b)~~

24 (c) As used in this section, “substantial probability”
25 refers not to the probability that an accident or exposure
26 will occur as a result of the violation, but rather to the
27 probability that death or serious physical harm will result
28 assuming an accident or exposure occurs as a result of the
29 violation. *A substantial probability of serious injury also*
30 *shall exist if any single serious injury has been caused by*
31 *the violation.*

32 SEC. 21. Section 6434 of the Labor Code is repealed.

33 ~~6434. The civil penalties provided for in this chapter~~
34 ~~shall not be assessed against employers that are~~
35 ~~governmental entities.~~

36 SEC. 22. Section 6435 of the Labor Code is amended
37 to read:

38 ~~6435. (a) Any corporation or limited liability~~
39 ~~company and every employer who creates a hazard,~~
40 ~~controls the work or premises, or is responsible for~~



1 *correction of a hazard*, who violates any of the
2 requirements of Chapter 6 (commencing with Section
3 6500) of this part shall be assessed a civil penalty under the
4 appropriate provisions of Sections 6427 to 6430, inclusive.

5 ~~(b) This section shall become inoperative on January~~
6 ~~1, 1987, and shall remain inoperative until January 1, 1991,~~
7 ~~at which time it shall become operative, unless a later~~
8 ~~enacted statute, which becomes effective on or before~~
9 ~~January 1, 1991, deletes or extends that date.~~

10 SEC. 23. Section 6719 is added to the Labor Code, to
11 read:

12 6719. (a) The Legislature finds and declares all of the
13 following:

14 (1) In 1993, the Legislature adopted Section 6357 to
15 require the Occupational Safety and Health Standards
16 Board, on or before January 1, 1995, to adopt standards for
17 ergonomics in the workplace designed to minimize the
18 instances of injury from repetitive motion.

19 (2) The standards board failed to follow this mandate,
20 by failing to adopt ergonomics standards by January 1,
21 1995, and then by adopting a regulation concerning
22 ergonomics that was not designed to minimize the
23 instances of injury from repetitive motion because it
24 contained exemptions and loopholes.

25 (3) The ergonomics regulation adopted by the
26 standards board was held to be invalid in part by a court
27 because it did not fulfill the mandate of Section 6357, and
28 litigation concerning the validity of the regulation is still
29 pending.

30 (4) The purpose of this section is to mandate a
31 minimum standard for ergonomics in the workplace so as
32 to effectuate the original intent and purpose of Section
33 6357, as adopted in 1993, and to avoid continuing
34 litigation.

35 (b) On and after January 1, 2000, the division shall
36 enforce this section through all appropriate means,
37 including, but not limited to, issuing citations and
38 penalties for any violation of this section pursuant to
39 Section 6317. By January 15, 2000, the standards board also



1 shall enforce the following requirements pertaining to a
2 job, process, or operation if any of the following exists:

3 (1) A repetitive motion injury (RMI) has occurred to
4 one or more employees engaged in the job, process, or
5 operation. For the purposes of this section, an RMI is an
6 injury or illness that results in any of the following:

7 (A) Fatalities, regardless of the time between the
8 injury and death, or the length of the illness.

9 (B) Lost workday cases, other than fatalities, that
10 result in lost workdays.

11 (C) Nonfatal cases without lost workdays which result
12 in transfer to another job or termination of employment,
13 or require medical treatment, other than first aid, or
14 involve loss of consciousness or restriction of work or
15 motion. The injuries or illnesses specified in this
16 subparagraph also includes any diagnosed occupational
17 illnesses which are reported to the employer but are not
18 classified as fatalities or lost workday cases.

19 (2) A pattern of symptoms or physical signs of
20 work-related RMIs among one or more employees
21 engaged in a job, process, or operation has been identified
22 or reported.

23 (3) One or more employees are exposed to hazards
24 causing or contributing to or likely to cause or contribute
25 to RMI.

26 (4) One or more employees of an employer are in a
27 work activity substantially similar to a job, process, or
28 operation where an RMI or pattern of symptoms of an
29 RMI has been identified or reported at the employer's
30 place of employment. "Substantially similar work
31 activity" means that one or more employees are
32 performing similar tasks, including, but not limited to,
33 word processing, assembly, or loading.

34 (c) Each employer subject to this section shall
35 establish and implement a program designed to prevent
36 and minimize RMIs. The program shall include a worksite
37 evaluation, control of exposures which are causing or
38 contributing to or likely to cause or contribute to RMIs,
39 and training of employees.



1 (1) Each job, process, or operation covered by this
2 section, or a representative number of those jobs,
3 processes, or operations, shall be evaluated for exposures
4 that are causing or contributing to or likely to cause or
5 contribute to RMIs.

6 (2) Any exposures that are causing or contributing to
7 or likely to cause or contribute to RMIs shall be corrected
8 in a timely manner or, if not capable of being corrected,
9 shall be minimized to the extent feasible. The employer
10 shall utilize a hierarchy of controls, beginning with
11 engineering controls, such as work station redesign,
12 adjustable fixtures, or tool redesign, and administrative
13 controls such as job rotation, work pacing, or work breaks.

14 (3) Employees and supervisors performing or
15 supervising a job, process, or operation to which this
16 section applies shall be provided training that includes an
17 explanation of at least the following:

18 (A) The employer's program.

19 (B) Exposures that have been associated with RMIs.

20 (C) Symptoms and consequences of injuries caused by
21 repetitive motion.

22 (D) The importance of reporting symptoms and
23 injuries to the employer.

24 (E) Methods used by the employer to prevent and
25 minimize RMIs.

26 (d) Regulations adopted pursuant to this section are
27 expressly exempted from the provisions of Article 5
28 (commencing with Section 11346) of Chapter 3.5 of Part
29 1 of Division 3 of Title 2 of the Government Code.

30 (e) This section does not prohibit the Occupational
31 Safety and Health Standards Board from acting pursuant
32 to its authority to promulgate regulations in Section 142.3
33 to amend its regulations if the amendments do not reduce
34 the protection with respect to RMIs afforded workers by
35 the standard set forth in this section.

36 SEC. 24. No reimbursement is required by this act
37 pursuant to Section 6 of Article XIII B of the California
38 Constitution because the only costs that may be incurred
39 by a local agency or school district will be incurred
40 because this act creates a new crime or infraction,



1 eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section
3 17556 of the Government Code, or changes the definition
4 of a crime within the meaning of Section 6 of Article
5 XIII B of the California Constitution.

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