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AMENDED IN SENATE JUNE 29, 1999

AMENDED IN ASSEMBLY JUNE 1, 1999

AMENDED IN ASSEMBLY MAY 18, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 1127**

**Introduced by Assembly Member Steinberg**

February 25, 1999

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An act to amend Sections 98.7, ~~6302~~, 6304.5, 6308, 6309, 6317, 6323, 6324, 6325, 6400, 6423, 6425, 6427, 6428, 6429, 6430, and 6432 of, to add Sections 6319.1, 6424, and 6719 to, and to repeal Section 6434 of, the Labor Code, relating to employee safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1127, as amended, 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.

Existing law provides that the provisions of the California Occupational Safety and Health Act of 1973 (hereafter the act) have no application to, may not be considered in, and 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 the division) has any application to, nor may be considered in, nor may 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 may 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, 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 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 if the division makes specified findings pertaining to employee safety and health, except that the employer would be authorized to file a motion requesting that the period for abatement be stayed during the appeal proceedings.

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 *that* 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 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 of certain provisions of law, or part thereof, authorized by the act, the violation of which is deemed to be a serious violation, as defined.

This 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 \$15,000 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. The bill also would authorize a court to impose a fine in an amount less than certain minimums specified in the bill if the court finds that it is in the interest of justice to do so and states its findings and reasons on the record.

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 Occupational Safety and Health Standards Board (hereafter 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 reaffirm the standards board's continuing duty to adopt those standards.

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:



1 98.7. (a) Any person who believes that he or she has  
2 been discharged or otherwise discriminated against in  
3 violation of this code under the jurisdiction of the Labor  
4 Commissioner may file a complaint with the division  
5 within one year after the occurrence of the violation. The  
6 one-year period may be extended for good cause. The  
7 complaint shall be investigated by a discrimination  
8 complaint investigator in accordance with this section.  
9 The Labor Commissioner shall establish procedures for  
10 the investigation of discrimination complaints. A  
11 summary of the procedures shall be provided to each  
12 complainant and respondent at the time of initial contact.  
13 The Labor Commissioner shall inform complainants  
14 charging a violation of Section 6310 or 6311, at the time  
15 of initial contact, of his or her right to file a separate,  
16 concurrent complaint with the United States  
17 Department of Labor within 30 days after the occurrence  
18 of the violation.

19 (b) Each complaint of unlawful discharge or  
20 discrimination shall be assigned to a discrimination  
21 complaint investigator who shall prepare and submit a  
22 report to the Labor Commissioner based on an  
23 investigation of the complaint. The Labor Commissioner  
24 may designate the chief deputy or assistant Labor  
25 Commissioner or the chief counsel to receive and review  
26 the reports. The investigation shall include, where  
27 appropriate, interviews with the complainant,  
28 respondent, and any witnesses who may have  
29 information concerning the alleged violation, and a  
30 review of any documents which may be relevant to the  
31 disposition of the complaint. The identity of witnesses  
32 shall remain confidential unless the identification of the  
33 witness becomes necessary to proceed with the  
34 investigation or to prosecute an action to enforce a  
35 determination. The investigation report submitted to the  
36 Labor Commissioner or designee shall include the  
37 statements and documents obtained in the investigation,  
38 and the findings of the investigator concerning whether  
39 a violation occurred. The Labor Commissioner may hold  
40 an investigative hearing whenever the Labor

1 Commissioner determines, after review of the  
2 investigation report, that a hearing is necessary to fully  
3 establish the facts. In the hearing the investigation report  
4 shall be made a part of the record and the complainant  
5 and respondent shall have the opportunity to present  
6 further evidence. The Labor Commissioner shall issue,  
7 serve, and enforce any necessary subpoenas.

8 (c) If the Labor Commissioner determines a violation  
9 has occurred, he or she shall notify the complainant and  
10 respondent and direct the respondent to cease and desist  
11 from the violation and take such action as is deemed  
12 necessary to remedy the violation, including, where  
13 appropriate, rehiring or reinstatement, reimbursement  
14 of lost wages and interest thereon, payment of reasonable  
15 attorney's fees associated with any hearing held by the  
16 Labor Commissioner in investigating the complaint, and  
17 the posting of notices to employees. If the respondent  
18 does not comply with the order within 10 working days  
19 following notification of the Labor Commissioner's  
20 determination, the Labor Commissioner shall bring an  
21 action promptly in an appropriate court against the  
22 respondent. If the Labor Commissioner fails to bring an  
23 action in court promptly, the complainant may bring an  
24 action against the Labor Commissioner in any  
25 appropriate court for a writ of mandate to compel the  
26 Labor Commissioner to bring an action in court against  
27 the respondent. If the complainant prevails in his or her  
28 action for a writ, the court shall award the complainant  
29 court costs and reasonable attorney's fees,  
30 notwithstanding any other provision of law. Regardless of  
31 any delay in bringing an action in court, the Labor  
32 Commissioner shall not be divested of jurisdiction. In any  
33 such action, the court may permit the claimant to  
34 intervene as a party plaintiff to the action and shall have  
35 jurisdiction, for cause shown, to restrain the violation and  
36 to order all appropriate relief. Appropriate relief  
37 includes, but is not limited to, rehiring or reinstatement  
38 of the complainant, reimbursement of lost wages and  
39 interest thereon, and any other compensation or  
40 equitable relief as is appropriate under the circumstances

1 of the case. The Labor Commissioner shall petition the  
2 court for appropriate temporary relief or restraining  
3 order unless he or she determines good cause exists for  
4 not doing so.

5 (d) If the Labor Commissioner determines no  
6 violation has occurred, he or she shall notify the  
7 complainant and respondent and shall dismiss the  
8 complaint. The Labor Commissioner may direct the  
9 complainant to pay reasonable attorney's fees associated  
10 with any hearing held by the Labor Commissioner if the  
11 Labor Commissioner finds the complaint was frivolous,  
12 unreasonable, groundless, and was brought in bad faith.  
13 The complainant may, after notification of the Labor  
14 Commissioner's determination to dismiss a complaint,  
15 bring an action in an appropriate court, which shall have  
16 jurisdiction to determine whether a violation occurred,  
17 and if so, to restrain the violation and order all  
18 appropriate relief to remedy the violation. Appropriate  
19 relief includes, but is not limited to, rehiring or  
20 reinstatement of the complainant, reimbursement of lost  
21 wages and interest thereon, and such other compensation  
22 or equitable relief as is appropriate under the  
23 circumstances of the case. When dismissing a complaint,  
24 the Labor Commissioner shall advise the complainant of  
25 his or her right to bring an action in an appropriate court  
26 if he or she disagrees with the determination of the Labor  
27 Commissioner, and in the case of an alleged violation of  
28 Section 6310 or 6311, to file a complaint against the state  
29 program with the United States Department of Labor.

30 (e) The Labor Commissioner shall notify the  
31 complainant and respondent of his or her determination  
32 under subdivision (c) or (d), not later than 60 days after  
33 the filing of the complaint. Determinations by the Labor  
34 Commissioner under subdivision (c) or (d) may be  
35 appealed by the complainant or respondent to the  
36 Director of Industrial Relations within 10 days following  
37 notification of the determination. The appeal shall set  
38 forth specifically and in full detail the grounds upon  
39 which the appealing party considers the Labor  
40 Commissioner's determination to be unjust or unlawful,

1 and every issue to be considered by the director. The  
2 director may consider any issue relating to the initial  
3 determination and may modify, affirm, or reverse the  
4 Labor Commissioner's determination. The director's  
5 determination shall be the determination of the Labor  
6 Commissioner. The director shall notify the complainant  
7 and respondent of his or her determination within 10 days  
8 of receipt of the appeal.

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

12 ~~SEC. 2. Section 6302 of the Labor Code is amended to~~  
13 ~~read:~~

14 ~~6302. As used in this division:~~

15 ~~(a) "Director" means the Director of Industrial~~  
16 ~~Relations.~~

17 ~~(b) "Department" means the Department of~~  
18 ~~Industrial Relations.~~

19 ~~(c) "Insurer" includes the State Compensation~~  
20 ~~Insurance Fund and any private company, corporation,~~  
21 ~~mutual association, and reciprocal or interinsurance~~  
22 ~~exchange, authorized under the laws of this state to insure~~  
23 ~~employers against liability for compensation under this~~  
24 ~~part and under Division 4 (commencing with Section~~  
25 ~~3201), and any employer to whom a certificate of consent~~  
26 ~~to self-insure has been issued.~~

27 ~~(d) "Division" means the Division of Occupational~~  
28 ~~Safety and Health.~~

29 ~~(e) "Standards board" means the Occupational Safety~~  
30 ~~and Health Standards Board, within the department.~~

31 ~~(f) "Appeals board" means the Occupational Safety~~  
32 ~~and Health Appeals Board, within the department.~~

33 ~~(g) "Aquaculture" means a form of agriculture as~~  
34 ~~defined in Section 17 of the Fish and Game Code.~~

35 ~~(h) "Serious injury or illness" means any injury or~~  
36 ~~illness occurring in a place of employment or in~~  
37 ~~connection with any employment which requires~~  
38 ~~inpatient hospitalization for a period in excess of 24 hours~~  
39 ~~for other than medical observation or in which an~~  
40 ~~employee suffers a loss of any member of the body or~~



1 ~~suffers any serious degree of permanent disfigurement,~~  
2 ~~but does not include any injury or illness or death caused~~  
3 ~~by the commission of a violation of the Penal Code, except~~  
4 ~~the violation of Section 385 of the Penal Code, or an~~  
5 ~~accident on a public street or highway.~~

6 (i) ~~“Serious exposure” means any exposure of an~~  
7 ~~employee to a hazardous substance when the exposure~~  
8 ~~occurs as a result of an incident, accident, emergency, or~~  
9 ~~exposure over time and is in a degree or amount sufficient~~  
10 ~~to create a substantial probability that death or serious~~  
11 ~~physical harm in the future could result from the~~  
12 ~~exposure.~~

13 ~~SEC. 3.—~~

14 *SEC. 2.* Section 6304.5 of the Labor Code is amended  
15 to read:

16 6304.5. It is the intent of the Legislature that the  
17 provisions of this division, and the occupational safety and  
18 health standards and orders promulgated under this  
19 code, are applicable to proceedings against employers for  
20 the exclusive purpose of maintaining and enforcing  
21 employee safety.

22 Neither the issuance of, or failure to issue, a citation by  
23 the division shall have any application to, nor be  
24 considered in, nor be admissible into, evidence in any  
25 personal injury or wrongful death action, except as  
26 between an employee and his or her own employer. This  
27 division and the occupational safety and health standards  
28 and orders promulgated under this code may have  
29 application to, be considered in, or be admissible into,  
30 evidence in any personal injury or wrongful death action.

31 ~~SEC. 4.—~~

32 *SEC. 3.* Section 6308 of the Labor Code is amended to  
33 read:

34 6308. In enforcing this division, occupational safety  
35 and health standards, orders, and special orders, the  
36 division may do any of the following:

37 (a) Declare and prescribe the safety devices,  
38 safeguards, or other means or methods of protection that  
39 are well adapted to render the employees of every

1 employment and place of employment safe as required  
2 by law or lawful order.

3 (b) Enforce Section 25910 of the Health and Safety  
4 Code and standards and orders adopted by the standards  
5 board pursuant to Chapter 6 (commencing with Section  
6 140) of Division 1 of the Labor Code, for the installation,  
7 use, maintenance, and operation of reasonable uniform  
8 safety devices, safeguards, and other means or methods  
9 of protection, which are necessary to carry out all laws  
10 and lawful standards or special orders relative to the  
11 protection of the life and safety of employees in  
12 employment and places of employment.

13 (c) Require the performance of any other act that is  
14 reasonably necessary for the protection of the life and  
15 safety of the employees in employment and places of  
16 employment.

17 An employer may request a hearing on a special order  
18 or action ordered pursuant to this section, at which the  
19 employer, owner, or any other person may appear. The  
20 appeals board shall conduct the hearing at the earliest  
21 possible time.

22 All orders, rules, regulations, findings, and decisions of  
23 the division made or entered under this part, except  
24 special orders and action orders, may be reviewed by the  
25 Supreme Court and the courts of appeal as may be  
26 provided by law.

27 ~~SEC. 5.—~~

28 *SEC. 4.* Section 6309 of the Labor Code is amended to  
29 read:

30 6309. If the division learns or has reason to believe  
31 that any employment or place of employment is not safe  
32 or is injurious to the welfare of any employee, it may, of  
33 its own motion, or upon complaint, summarily investigate  
34 the employment or place of employment, with or without  
35 notice or hearings. However, if the division secures a  
36 complaint from an employee, the employee's  
37 representative, including, but not limited to, an attorney,  
38 health or safety professional, union representative, or  
39 representative of a government agency, or an employer  
40 of an employee directly involved in an unsafe place of

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

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

1 requesting the review a written statement of the reasons  
2 for the division's final disposition of the case.

3 The name of any person who submits to the division a  
4 complaint regarding the unsafeness of an employment or  
5 place of employment shall be kept confidential by the  
6 division, unless that person requests otherwise.

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

12 ~~SEC. 6.—~~

13 *SEC. 5.* Section 6317 of the Labor Code is amended to  
14 read:

15 6317. If, upon inspection or investigation, the division  
16 believes that an employer has violated Section 25910 of  
17 the Health and Safety Code, any standard, rule, order, or  
18 regulation established pursuant to Chapter 6  
19 (commencing with Section 140) of Division 1 of the Labor  
20 Code, any provision of this division relating to the health  
21 and safety of employees, or any standard, rule, order, or  
22 regulation established pursuant to this part, it shall with  
23 reasonable promptness issue a citation to the employer.  
24 Each citation shall be in writing and shall describe with  
25 particularity the nature of the violation, including a  
26 reference to the provision of the code, standard, rule,  
27 regulation, or order alleged to have been violated. In  
28 addition, the citation shall fix a reasonable time for the  
29 abatement of the alleged violation. The period specified  
30 for abatement does not commence until the date the  
31 citation or notice is received by certified mail and the  
32 certified mail receipt is signed, or if not signed, the date  
33 the return is made to the post office. If the division  
34 officially and directly delivers the citation or notice to the  
35 employer, the period specified for abatement  
36 commences on the date of the delivery.

37 A "notice" in lieu of citation may be issued with respect  
38 to violations found in an inspection or investigation that  
39 meet either of the following requirements:

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

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

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

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

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

A citation or notice may not be issued by the division for a given violation or violations after six months have elapsed since occurrence of the violation.

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

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

~~SEC. 7.—~~

*SEC. 6.* Section 6319.1 is added to the Labor Code, to read:

1 6319.1. (a) Notwithstanding any other provision of  
2 law, if the division, or its authorized representative,  
3 determines that an alleged violation is serious and  
4 presents such a substantial risk to the safety or health of  
5 employees that the initiation of an appeal by the  
6 employer should not suspend the running of the period  
7 for abatement of that violation, the citation issued  
8 pursuant to Section 6317 shall include a statement of that  
9 determination.

10 (b) (1) If a citation issued pursuant to Section 6317  
11 includes a statement of the division's determination as  
12 provided in subdivision (a), the employer may,  
13 concurrent with the timely initiation of appeal  
14 proceedings as to the alleged violation, file a motion  
15 requesting that the running of the period for abatement  
16 of that violation be suspended during the appeal  
17 proceedings. The appeals board shall conduct an  
18 expedited hearing on the employer's motion within 15  
19 days of the filing of the motion and shall, in deciding that  
20 motion, balance the extent of any irreparable injury to  
21 the employer as a result of abatement of the alleged  
22 violation during the pendency of appeal proceedings, and  
23 the nature and degree of risk posed to employees by the  
24 employer's failure to immediately abate that violation.  
25 The appeals board shall also consider the likely success of  
26 the employer's appeal with respect to the alleged  
27 violation, whether that appeal is initiated in good faith  
28 and not for the purpose of delay or the avoidance of  
29 penalties, and whether the division's determination is  
30 unreasonable under the circumstances. At the hearing,  
31 the division shall have the burden of establishing that  
32 during the pendency of the appeal, the duty of an  
33 employer to abate a violation should not be suspended  
34 due to the initiation of an appeal because a substantial risk  
35 to the safety or health of employees continues to exist. If  
36 the division meets that burden, the employer shall have  
37 the responsibility of establishing that irreparable injury  
38 will occur to the employer if the duty of abatement is not  
39 suspended during the pendency of an appeal.

(2) In all cases where the employer files a motion as described in paragraph (1), the appeals board shall expedite the consideration and decision of the employer's appeal with respect to the alleged violation, and give that appeal priority over all other matters, except matters of a like kind.

(3) In its decision on the appeal with respect to the alleged violation, the appeals board may modify the citation's direction that the period for the abatement of the alleged violation not be suspended.

(c) Nothing in this section shall be construed to limit the authority of the division to proceed under Section 6325, but the division may not proceed simultaneously under this section and under Section 6325 as to any individual alleged violation contained within any individual citation.

~~SEC. 8.—~~

*SEC. 7.* Section 6323 of the Labor Code is amended to read:

6323. If the condition of any employment or place of employment or the operation of any machine, device, apparatus, equipment, or process 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 or employee is situated, for an injunction restraining the use or operation thereof until the condition is corrected.

~~SEC. 9.—~~

*SEC. 8.* Section 6324 of the Labor Code is amended to read:

6324. An application to the superior court for an injunction shall be accompanied by an affidavit showing that a place of employment, machine, device, apparatus, equipment, or process is being operated in violation of a safety order or standard, or in violation of Section 25910 of the Health and Safety Code, and that the use or operation 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. The affidavit shall be accompanied by a copy

1 of the order or standard applicable thereto. The  
2 application and affidavit are a sufficient prima facie  
3 showing to warrant, in the discretion of the court, the  
4 immediate granting of a temporary restraining order. No  
5 bond shall be required from the division or any other state  
6 or local prosecutor as a prerequisite to the granting of any  
7 restraining order.

8 ~~SEC. 10.—~~

9 *SEC. 9.* Section 6325 of the Labor Code is amended to  
10 read:

11 6325. If, in the opinion of the division, a place of  
12 employment, machine, device, apparatus, or equipment,  
13 or any part thereof, is in a dangerous condition, or if a  
14 machine, device, apparatus, or piece of equipment is not  
15 properly guarded or is dangerously placed so as to  
16 constitute an imminent hazard to employees, or is likely  
17 to cause death, serious injury or illness, or serious  
18 exposure to an employee, entry therein, or the use  
19 thereof, as the case may be, shall be prohibited by the  
20 division, and a conspicuous notice to that effect shall be  
21 posted thereon. The prohibition of use shall be limited to  
22 the immediate area in which the imminent hazard or  
23 condition exists, and the division shall not prohibit any  
24 entry in or use of a place of employment, machine,  
25 device, apparatus, or equipment, or any part thereof,  
26 which is outside the area of imminent hazard or  
27 condition. The notice only may be removed by an  
28 authorized representative of the division if the place of  
29 employment, machine, device, apparatus, or equipment  
30 is made safe and the required safeguards or safety  
31 appliances or devices are provided. This section does not  
32 prevent the entry or use with the division's knowledge  
33 and permission for the sole purpose of eliminating the  
34 dangerous conditions.

35 ~~SEC. 11.—~~

36 *SEC. 10.* Section 6400 of the Labor Code is amended  
37 to read:

38 6400. (a) Every employer shall furnish employment  
39 and a place of employment that is safe and healthful for  
40 ~~the employees therein. "Employer" includes, but is not~~



~~limited to, an employer in a multiemployer place of employment who, with respect to any other employee at the place of employment, does any of the following:~~

~~(a) Employs the exposed employee.~~

~~(b) Creates the hazard.~~

~~(c) Is primarily responsible, by contract or through practice, for safety and health conditions that resulted in the hazard.~~

~~(d) Is responsible for correcting the hazard.~~  
~~the employees therein.~~

*(b) On multiemployer worksites, both construction and nonconstruction, citations may be issued only to the following categories of employers when the division has evidence that an employee was exposed to a hazard in violation of any requirement enforceable by the division:*

*(1) The employer whose employees were exposed to the hazard.*

*(2) The employer who actually created the hazard.*

*(3) The employer who was responsible, by contract or through actual practice, for safety and health conditions on the worksite, which is the employer who had the authority for ensuring that the hazardous condition is corrected.*

*(4) The employer who had the responsibility for actually correcting the hazard.*

*(c) It is the intent of the Legislature, in adding subdivision (b) to this section, to codify existing regulations with respect to the responsibility of employers at multiemployer worksites. Subdivision (b) of this section is declaratory of existing law and shall not be construed or interpreted as creating a new law or as modifying or changing an existing law.*

~~SEC. 12.—~~

*SEC. 11.* Section 6423 of the Labor Code is amended to read:

6423. Except where another penalty is specifically provided, every employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment,

1 place of employment, or of any other employee, who does  
2 any of the following is guilty of a misdemeanor:

3 (a) Knowingly or negligently violates any standard,  
4 order, or special order, or any provision of this division, or  
5 of any part thereof in, or authorized by, this part the  
6 violation of which is deemed to be a serious violation  
7 pursuant to Section 6432.

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

12 (c) Fails or refuses to comply, after notification and  
13 expiration of any abatement period, with any such  
14 standard, order, special order, or provision of this division,  
15 or any part thereof, which failure or refusal creates a real  
16 and apparent hazard to employees.

17 (d) Directly or indirectly, knowingly induces another  
18 to commit any of the acts in subdivisions (a), (b), or (c).  
19 Any violation of subdivision (a) is punishable by  
20 imprisonment in the county jail for a period not to exceed  
21 six months, or by a fine not to exceed five thousand dollars  
22 (\$5,000), or by both that imprisonment and fine.

23 Any violation of the provisions of subdivision (b), (c),  
24 or (d) of this section is punishable by imprisonment in a  
25 county jail for a term not exceeding one year, or by a fine  
26 not exceeding fifteen thousand dollars (\$15,000), or by  
27 both that imprisonment and fine. If the defendant is a  
28 corporation or a limited liability company, the fine may  
29 not exceed one hundred fifty thousand dollars (\$150,000).

30 (e) In determining the amount of fine to impose under  
31 this section, the court shall consider all relevant  
32 circumstances, including, but not limited to, the nature,  
33 circumstance, extent, and gravity of the violation, any  
34 prior history of violations by the defendant, the ability of  
35 the defendant to pay, and any other matters the court  
36 determines the interests of justice require.

37 ~~SEC. 13.—~~

38 SEC. 12. Section 6424 is added to the Labor Code, to  
39 read:

1 6424. For purposes of construing the criminal  
2 provisions of this chapter, to the extent that a word or  
3 term of this chapter is defined in Section 7 of the Penal  
4 Code, the definitions of Section 7 of the Penal Code  
5 govern the interpretation of that word or term.

6 ~~SEC. 14.—~~

7 *SEC. 13.* Section 6425 of the Labor Code is amended  
8 to read:

9 6425. (a) Any employer and any employee having  
10 direction, management, control, or custody of any  
11 employment, place of employment, or of any other  
12 employee, who willfully violates any occupational safety  
13 or health standard, order, or special order, or ~~any~~  
14 ~~provision of this division or of~~ Section 25910 of the Health  
15 and Safety Code, and that violation caused death to any  
16 employee, or caused permanent or prolonged  
17 impairment of the body of any employee, is guilty of a  
18 public offense punishable by imprisonment in a county  
19 jail for a term not exceeding one year, or by a fine not  
20 exceeding one hundred thousand dollars (\$100,000), or  
21 by both that imprisonment and fine; or by imprisonment  
22 in the state prison for 16 months, or two or three years, or  
23 by a fine of not more than two hundred fifty thousand  
24 dollars (\$250,000), or by both that imprisonment and fine;  
25 and in either case, if the defendant is a corporation or a  
26 limited liability company, the fine may not exceed two  
27 million dollars (\$2,000,000).

28 (b) If the conviction is for a violation committed  
29 within seven years after a conviction under Section 6423  
30 or subdivision (c) of Section 6430, punishment shall be by  
31 imprisonment in state prison for a term of 16 months, two,  
32 or three years, or by a fine not exceeding two hundred  
33 fifty thousand dollars (\$250,000), or by both that fine and  
34 imprisonment, but if the defendant is a corporation or  
35 limited liability company, the fine may not be less than  
36 five hundred thousand dollars (\$500,000) or more than  
37 three million dollars (\$3,000,000).

38 (c) If the conviction is for a violation committed  
39 within seven years after a first conviction of the  
40 defendant for any crime involving a violation of

1 subdivision (a), punishment shall be by imprisonment in  
2 the state prison for two, three, or four years, or by a fine  
3 not exceeding two hundred fifty thousand dollars  
4 (\$250,000), or by both that fine and imprisonment, but if  
5 the defendant is a corporation or a limited liability  
6 company, the fine shall not be less than one million dollars  
7 (\$1,000,000) but may not exceed four million dollars  
8 (\$4,000,000).

9 (d) In determining the amount of fine to be imposed  
10 under this section, the court shall consider all relevant  
11 circumstances, including, but not limited to, the nature,  
12 circumstance, extent, and gravity of the violation, any  
13 prior history of violations by the defendant, the ability of  
14 the defendant to pay, and any other matters the court  
15 determines the interests of justice require.

16 (e) This section does not prohibit a prosecution under  
17 Section 192 of the Penal Code.

18 ~~SEC. 15.—~~

19 *SEC. 14.* Section 6427 of the Labor Code is amended  
20 to read:

21 6427. Any employer who violates any occupational  
22 safety or health standard, order, or special order, or any  
23 provision of this division relating to the health or safety  
24 of employees or of Section 25910 of the Health and Safety  
25 Code, and the violation is specifically determined not to  
26 be of a serious nature, may be assessed a civil penalty of  
27 up to seven thousand dollars (\$7,000) for each violation.

28 ~~SEC. 16.—~~

29 *SEC. 15.* Section 6428 of the Labor Code is amended  
30 to read:

31 6428. Any employer who violates any occupational  
32 safety or health standard, order, or special order, or any  
33 provision of this division relating to the health or safety  
34 of employees or of Section 25910 of the Health and Safety  
35 Code, if that violation is a serious violation, shall be  
36 assessed a civil penalty of up to twenty-five thousand  
37 dollars (\$25,000) for each violation. Employers who do  
38 not have an operative injury prevention program shall  
39 receive no adjustment for good faith of the employer or

1 history of previous violations as provided in paragraphs  
2 (3) and (4) of subdivision (c) of Section 6319.

3 ~~SEC. 17.—~~

4 *SEC. 16.* Section 6429 of the Labor Code is amended  
5 to read:

6 6429. Any employer who willfully or repeatedly  
7 violates any occupational safety or health standard, order,  
8 or special order, or any provision of this division relating  
9 to the health and safety of employees or of Section 25910  
10 of the Health and Safety Code, may be assessed a civil  
11 penalty of not more than seventy thousand dollars  
12 (\$70,000) for each violation, but in no case less than five  
13 thousand dollars (\$5,000) for each willful violation.

14 (b) Any employer who repeatedly violates any  
15 occupational safety or health standard, order, or special  
16 order, or any provision of this division relating to the  
17 health and safety of employees or of Section 25910 of the  
18 Health and Safety Code, shall not receive any adjustment  
19 of a penalty assessed pursuant to this section on the basis  
20 of the regulations promulgated pursuant to subdivision  
21 (c) of Section 6319 pertaining to the good faith of the  
22 employer or the history of previous violations of the  
23 employer.

24 (c) Any past *substantially* similar violation by any  
25 employer occurring anywhere within the state within the  
26 previous five years of any occupational safety or health  
27 standard, order, or special order, or any provision of this  
28 division relating to the health and safety of employees or  
29 of Section 25910 of the Health and Safety Code, shall be  
30 used to establish whether a current serious violation is a  
31 repeat violation, ~~and shall constitute evidence of~~  
32 ~~willfulness for purposes of this section.~~

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

36 ~~SEC. 18.—~~

37 *SEC. 17.* Section 6430 of the Labor Code is amended  
38 to read:

39 6430. (a) Any employer who fails to correct a  
40 violation of any occupational safety or health standard,

1 order, or special order, or any provision of this division  
2 relating to the health or safety of employees or of Section  
3 25910 of the Health and Safety Code, within the period  
4 permitted for its correction shall be assessed a civil  
5 penalty of not more than twenty-five thousand dollars  
6 (\$25,000) for each day during which the failure or  
7 violation continues.

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

18 (c) Notwithstanding subdivision (a), any employer  
19 who submits a signed statement affirming compliance  
20 with the abatement terms pursuant to subdivision (b) of  
21 Section 6320, and is found not to have abated the  
22 violation, is guilty of a public offense punishable by  
23 imprisonment in a county jail for a term not exceeding  
24 one year, or by a fine not exceeding one hundred  
25 thousand dollars (\$100,000), or by both that fine and  
26 imprisonment; but if the defendant is a corporation or a  
27 limited liability company the fine shall be not less than  
28 one hundred thousand dollars (\$100,000) but not exceed  
29 one million dollars (\$1,000,000). However, a court may  
30 impose a fine for a violation of this subdivision in an  
31 amount less than the minimum specified in this  
32 subdivision if the court finds that it is in the interest of  
33 justice to do so and states its findings and reasons on the  
34 record.

35 ~~SEC. 19.—~~

36 *SEC. 18.* Section 6432 of the Labor Code is amended  
37 to read:

38 6432. (a) As used in this part, a “serious violation”  
39 shall be deemed to exist in a place of employment if ~~either~~  
40 ~~of the following conditions exist:~~

1 ~~(1) There~~ *there* is a substantial probability that death  
2 or serious physical harm could result from a violation,  
3 including, but not limited to, circumstances where there  
4 is a substantial probability that either of the following  
5 could result in death or great bodily injury:

6 ~~(A)–~~

7 *(1)* An exposure exceeding an established permissible  
8 exposure limit.

9 ~~(B)–~~

10 *(2)* The existence of one or more practices, means,  
11 methods, operations, or processes which have been  
12 adopted or are in use, in the place of employment.

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

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

21 *(c)* As used in this section, “substantial probability”  
22 refers not to the probability that an accident or exposure  
23 will occur as a result of the violation, but rather to the  
24 probability that death or serious physical harm will result  
25 assuming an accident or exposure occurs as a result of the  
26 violation.

27 ~~SEC. 20.—~~

28 *SEC. 19.* Section 6434 of the Labor Code is repealed.

29 ~~SEC. 21.—~~

30 *SEC. 20.* Section 6719 is added to the Labor Code, to  
31 read:

32 6719. The Legislature reaffirms its concern over the  
33 prevalence of repetitive motion injuries in the workplace  
34 and reaffirms the Occupational Safety and Health  
35 Standards Board’s continuing duty to carry out Section  
36 6357.

37 ~~SEC. 22.—~~

38 *SEC. 21.* No reimbursement is required by this act  
39 pursuant to Section 6 of Article XIII B of the California  
40 Constitution because the only costs that may be incurred

1 by a local agency or school district will be incurred  
2 because this act creates a new crime or infraction,  
3 eliminates a crime or infraction, or changes the penalty  
4 for a crime or infraction, within the meaning of Section  
5 17556 of the Government Code, or changes the definition  
6 of a crime within the meaning of Section 6 of Article  
7 XIII B of the California Constitution.

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