

AMENDED IN SENATE JULY 12, 1999

AMENDED IN SENATE JUNE 29, 1999

AMENDED IN ASSEMBLY JUNE 1, 1999

AMENDED IN ASSEMBLY MAY 18, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1127

Introduced by Assembly Member Steinberg

February 25, 1999

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.

~~Under the California Occupational Safety and Health Act of 1973 (hereafter the 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 the 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 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, ~~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 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 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 ~~\$25,000~~ \$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 ~~standards board~~ *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:

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

21 (b) Each complaint of unlawful discharge or
22 discrimination shall be assigned to a discrimination
23 complaint investigator who shall prepare and submit a
24 report to the Labor Commissioner based on an
25 investigation of the complaint. The Labor Commissioner
26 may designate the chief deputy or assistant Labor
27 Commissioner or the chief counsel to receive and review
28 the reports. The investigation shall include, where
29 appropriate, interviews with the complainant,
30 respondent, and any witnesses who may have
31 information concerning the alleged violation, and a



1 review of any documents which may be relevant to the
2 disposition of the complaint. The identity of witnesses
3 shall remain confidential unless the identification of the
4 witness becomes necessary to proceed with the
5 investigation or to prosecute an action to enforce a
6 determination. The investigation report submitted to the
7 Labor Commissioner or designee shall include the
8 statements and documents obtained in the investigation,
9 and the findings of the investigator concerning whether
10 a violation occurred. The Labor Commissioner may hold
11 an investigative hearing whenever the Labor
12 Commissioner determines, after review of the
13 investigation report, that a hearing is necessary to fully
14 establish the facts. In the hearing the investigation report
15 shall be made a part of the record and the complainant
16 and respondent shall have the opportunity to present
17 further evidence. The Labor Commissioner shall issue,
18 serve, and enforce any necessary subpoenas.

19 (c) If the Labor Commissioner determines a violation
20 has occurred, he or she shall notify the complainant and
21 respondent and direct the respondent to cease and desist
22 from the violation and take such action as is deemed
23 necessary to remedy the violation, including, where
24 appropriate, rehiring or reinstatement, reimbursement
25 of lost wages and interest thereon, payment of reasonable
26 attorney's fees associated with any hearing held by the
27 Labor Commissioner in investigating the complaint, and
28 the posting of notices to employees. If the respondent
29 does not comply with the order within 10 working days
30 following notification of the Labor Commissioner's
31 determination, the Labor Commissioner shall bring an
32 action promptly in an appropriate court against the
33 respondent. If the Labor Commissioner fails to bring an
34 action in court promptly, the complainant may bring an
35 action against the Labor Commissioner in any
36 appropriate court for a writ of mandate to compel the
37 Labor Commissioner to bring an action in court against
38 the respondent. If the complainant prevails in his or her
39 action for a writ, the court shall award the complainant
40 court costs and reasonable attorney's fees,



1 notwithstanding any other provision of law. Regardless of
2 any delay in bringing an action in court, the Labor
3 Commissioner shall not be divested of jurisdiction. In any
4 such action, the court may permit the claimant to
5 intervene as a party plaintiff to the action and shall have
6 jurisdiction, for cause shown, to restrain the violation and
7 to order all appropriate relief. Appropriate relief
8 includes, but is not limited to, rehiring or reinstatement
9 of the complainant, reimbursement of lost wages and
10 interest thereon, and any other compensation or
11 equitable relief as is appropriate under the circumstances
12 of the case. The Labor Commissioner shall petition the
13 court for appropriate temporary relief or restraining
14 order unless he or she determines good cause exists for
15 not doing so.

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



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

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

23 SEC. 2. Section 6302 of the Labor Code is amended to
24 read:

25 6302. As used in this division:

26 (a) "Director" means the Director of Industrial
27 Relations.

28 (b) "Department" means the Department of
29 Industrial Relations.

30 (c) "Insurer" includes the State Compensation
31 Insurance Fund and any private company, corporation,
32 mutual association, and reciprocal or interinsurance
33 exchange, authorized under the laws of this state to insure
34 employers against liability for compensation under this
35 part and under Division 4 (commencing with Section
36 3201), and any employer to whom a certificate of consent
37 to self-insure has been issued.

38 (d) "Division" means the Division of Occupational
39 Safety and Health.



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

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

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

7 (h) “Serious injury or illness” means any injury or
8 illness occurring in a place of employment or in
9 connection with any employment which requires
10 inpatient hospitalization for a period in excess of 24 hours
11 for other than medical observation or in which an
12 employee suffers a loss of any member of the body or
13 suffers any serious degree of permanent disfigurement,
14 but does not include any injury or illness or death caused
15 by the commission of a violation of the Penal Code, except
16 the violation of Section 385 of the Penal Code, or an
17 accident on a public street or highway.

18 (i) “Serious exposure” means any exposure of an
19 employee to a hazardous substance when the exposure
20 occurs as a result of an incident, accident, emergency, or
21 exposure over time and is in a degree or amount sufficient
22 to create a substantial probability that death or serious
23 physical harm in the future could result from the
24 exposure.

25 SEC. 3. Section 6304.5 of the Labor Code is amended
26 to read:

27 6304.5. It is the intent of the Legislature that the
28 provisions of this division, and the occupational safety and
29 health standards and orders promulgated under this
30 code, are applicable to proceedings against employers for
31 the exclusive purpose of maintaining and enforcing
32 employee safety.

33 Neither the issuance of, or failure to issue, a citation by
34 the division shall have any application to, nor be
35 considered in, nor be admissible into, evidence in any
36 personal injury or wrongful death action, except as
37 between an employee and his or her own employer. This
38 division and the occupational safety and health standards
39 and orders promulgated under this code may have



1 application to, be considered in, or be admissible into,
2 evidence in any personal injury or wrongful death action.

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

5 6308. In enforcing this division, occupational safety
6 and health standards, orders, and special orders, the
7 division may do any of the following:

8 (a) Declare and prescribe the safety devices,
9 safeguards, or other means or methods of protection that
10 are well adapted to render the employees of every
11 employment and place of employment safe as required
12 by law or lawful order.

13 (b) Enforce Section 25910 of the Health and Safety
14 Code and standards and orders adopted by the standards
15 board pursuant to Chapter 6 (commencing with Section
16 140) of Division 1 of the Labor Code, for the installation,
17 use, maintenance, and operation of reasonable uniform
18 safety devices, safeguards, and other means or methods
19 of protection, which are necessary to carry out all laws
20 and lawful standards or special orders relative to the
21 protection of the life and safety of employees in
22 ~~employments~~ *employment* and places of employment.

23 (c) Require the performance of any other act that is
24 reasonably necessary for the protection of the life and
25 safety of the employees in ~~employments~~ *employment*
26 and places of employment.

27 An employer may request a hearing on a special order
28 or action ordered pursuant to this section, at which the
29 employer, owner, or any other person may appear. The
30 appeals board shall conduct the hearing at the earliest
31 possible time.

32 All orders, rules, regulations, findings, and decisions of
33 the division made or entered under this part, except
34 special orders and action orders, may be reviewed by the
35 Supreme Court and the courts of appeal as may be
36 provided by law.

37 SEC. 5. Section 6309 of the Labor Code is amended to
38 read:

39 6309. If the division learns or has reason to believe
40 that any employment or place of employment is not safe



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

36 The division shall keep complete and accurate records
37 of any complaints, whether verbal or written, and shall
38 inform the complainant, whenever his or her identity is
39 known, of any action taken by the division in regard to the
40 subject matter of the complaint, and the reasons for the



1 action. The records of the division shall include the dates
2 on which any action was taken on the complaint, or the
3 reasons for not taking any action on the complaint. The
4 division shall, pursuant to authorized regulations,
5 conduct an informal review of any refusal by a
6 representative of the division to issue a citation with
7 respect to any alleged violation. The division shall furnish
8 the employee or the representative of employees
9 requesting the review a written statement of the reasons
10 for the division's final disposition of the case.

11 The name of any person who submits to the division a
12 complaint regarding the unsafeness of an employment or
13 place of employment shall be kept confidential by the
14 division, unless that person requests otherwise.

15 The requirements of this section shall not relieve the
16 division of its requirement to inspect and assure that all
17 places of employment are safe and healthful for
18 employees. The division shall maintain the capability to
19 receive and act upon complaints at all times.

20 SEC. 6. *Section 6317 of the Labor Code is amended to*
21 *read:*

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



1 division officially and directly delivers the citation or
2 notice to the employer, the period specified for
3 abatement ~~shall commence running~~ *commences* on the
4 date of the delivery.

5 A “notice” in lieu of citation may be issued with respect
6 to violations found in an inspection or investigation ~~which~~
7 *that* meet either of the following requirements:

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

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

26 ~~Under no circumstances shall a~~

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

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

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

38 ~~No~~



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

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

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

9 *SEC. 7.* Section 6319.1 is added to the Labor Code, to
10 read:

11 6319.1. (a) Notwithstanding any other provision of
12 law, if the division, or its authorized representative,
13 determines that an alleged violation is serious and
14 presents such a substantial risk to the safety or health of
15 employees that the initiation of an appeal by the
16 employer should not suspend the running of the period
17 for abatement of that violation, the citation issued
18 pursuant to Section 6317 shall include a statement of that
19 determination.

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



1 *the division shall have the burden of establishing that*
2 *during the pendency of the appeal, the duty of an*
3 *employer to abate a violation should not be suspended*
4 *due to the initiation of an appeal because a substantial risk*
5 *to the safety or health of employes continues to exist. If*
6 *the division meets that burden, the employer shall have*
7 *the responsibility of establishing that irreparable injury*
8 *will occur to the employer if the duty of abatement is not*
9 *suspended during the pendency of an appeal.*

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

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

20 (c) Nothing in this section shall be construed to limit
21 the authority of the division to proceed under Section
22 6325, but the division may not proceed simultaneously
23 under this section and under Section 6325 as to any
24 individual alleged violation contained within any
25 individual citation.

26 ~~SEC. 7.—~~

27 *SEC. 8.* Section 6323 of the Labor Code is amended to
28 read:

29 6323. If the condition of any employment or place of
30 employment or the operation of any machine, device,
31 apparatus, equipment, or process constitutes a serious
32 menace to the lives or safety of persons about it, the
33 division may apply to the superior court of the county in
34 which the place of employment or employee is situated,
35 for an injunction restraining the use or operation thereof
36 until the condition is corrected.

37 ~~SEC. 8.—~~

38 *SEC. 9.* Section 6324 of the Labor Code is amended to
39 read:

1 6324. An application to the superior court for an
2 injunction shall be accompanied by an affidavit showing
3 that a place of employment, machine, device, apparatus,
4 equipment, or process is being operated in violation of a
5 safety order or standard, or in violation of Section 25910
6 of the Health and Safety Code, and that the use or
7 operation constitutes a menace to the life or safety of any
8 person employed thereabout or is likely to cause death,
9 serious injury or illness, or serious exposure to an
10 employee. The affidavit shall be accompanied by a copy
11 of the order or standard applicable thereto. The
12 application and affidavit are a sufficient prima facie
13 showing to warrant, in the discretion of the court, the
14 immediate granting of a temporary restraining order. No
15 bond shall be required from the division or any other state
16 or local prosecutor as a prerequisite to the granting of any
17 restraining order.

18 ~~SEC. 9.—~~

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

21 6325. If, in the opinion of the division, a place of
22 employment, machine, device, apparatus, or equipment,
23 or any part thereof, is in a dangerous condition, or if a
24 machine, device, apparatus, or piece of equipment is not
25 properly guarded or is dangerously placed so as to
26 constitute an imminent hazard to employees, or is likely
27 to cause death, serious injury or illness, or serious
28 exposure to an employee, entry therein, or the use
29 thereof, as the case may be, shall be prohibited by the
30 division, and a conspicuous notice to that effect shall be
31 posted thereon. The prohibition of use shall be limited to
32 the immediate area in which the imminent hazard or
33 condition exists, and the division shall not prohibit any
34 entry in or use of a place of employment, machine,
35 device, apparatus, or equipment, or any part thereof,
36 which is outside the area of imminent hazard or
37 condition. The notice only may be removed by an
38 authorized representative of the division if the place of
39 employment, machine, device, apparatus, or equipment
40 is made safe and the required safeguards or safety



1 appliances or devices are provided. This section does not
2 prevent the entry or use with the division's knowledge
3 and permission for the sole purpose of eliminating the
4 dangerous conditions.

5 ~~SEC. 10.~~

6 *SEC. 11.* Section 6400 of the Labor Code is amended
7 to read:

8 6400. Every employer shall furnish employment and
9 a place of employment that ~~are~~ *is* safe and healthful for
10 the employees therein. "Employer" includes, but is not
11 limited to, ~~a person~~ *an employer* in a multiemployer place
12 of employment who, with respect to any other employee
13 at the place of employment, does any of the following:

- 14 (a) Employs the exposed employee.
- 15 (b) Creates the hazard.
- 16 (c) Is *primarily* responsible, by contract or through
17 practice, for safety and health conditions *that resulted in*
18 *the hazard*.

19 (d) Is responsible for correcting the hazard.

20 ~~SEC. 11.~~

21 *SEC. 12.* Section 6423 of the Labor Code is amended
22 to read:

23 6423. Except where another penalty is specifically
24 provided, every employer and every officer,
25 management official, or supervisor having direction,
26 management, control, or custody of any employment,
27 place of employment, or of any other employee, who does
28 any of the following is guilty of a misdemeanor:

29 (a) Knowingly or negligently violates any standard,
30 order, or special order, or any provision of this division, or
31 of any part thereof in, or authorized by, this part the
32 violation of which is deemed to be a serious violation
33 pursuant to Section 6432.

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

38 (c) Fails or refuses to comply, after notification and
39 expiration of any abatement period, with any such
40 standard, order, special order, or provision of this division,



1 or any part thereof, which failure or refusal creates a real
2 and apparent hazard to employees.

3 (d) Directly or indirectly, knowingly induces another
4 to commit any of the acts in subdivisions (a), (b), or (c).
5 *Any violation of subdivision (a) is punishable by*
6 *imprisonment in the county jail for a period not to exceed*
7 *six months, or by a fine not to exceed five thousand dollars*
8 *(\$5,000), or by both that imprisonment and fine.*

9 Any violation of the provisions of subdivision (b), (c),
10 or (d) of this section is punishable by imprisonment in a
11 county jail for a term not exceeding one year, or by a fine
12 not exceeding ~~twenty-five thousand dollars (\$25,000)~~
13 *fifteen thousand dollars (\$15,000)*, or by both that
14 imprisonment and fine. If the defendant is a corporation
15 or a limited liability company, the fine ~~shall not be less~~
16 ~~than twenty-five thousand dollars (\$25,000), but may not~~
17 ~~exceed two hundred fifty thousand dollars (\$250,000).~~
18 ~~However, a court may impose a fine for a violation of this~~
19 ~~section by a corporation in an amount less than~~
20 ~~twenty-five thousand dollars (\$25,000) if the court finds~~
21 ~~that it is in the interest of justice to do so and states its~~
22 ~~findings and reasons on the record.~~

23 ~~SEC. 12.— may not exceed one hundred fifty thousand~~
24 ~~dollars (\$150,000).~~

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

32 *SEC. 13.* Section 6424 is added to the Labor Code, to
33 read:

34 6424. For purposes of construing the criminal
35 provisions of this chapter, to the extent that a word or
36 term of this chapter is defined in Section 7 of the Penal
37 Code, the definitions of Section 7 of the Penal Code
38 govern the interpretation of that word or term.

39 ~~SEC. 13.—~~



1 SEC. 14. Section 6425 of the Labor Code is amended
2 to read:

3 6425. (a) Any employer and any employee having
4 direction, management, control, or custody of any
5 employment, place of employment, or of any other
6 employee, who willfully violates any occupational safety
7 or health standard, order, or special order, or any
8 provision of this division or of Section 25910 of the Health
9 and Safety Code, and that violation caused death to any
10 employee, or caused permanent or prolonged
11 impairment of the body of any employee, is guilty of a
12 public offense punishable by imprisonment in a county
13 jail for a term not exceeding one year, or by a fine not
14 exceeding one hundred thousand dollars (\$100,000), or
15 by both that imprisonment and fine; or by imprisonment
16 in the state prison for 16 months, or two or three years, or
17 by a fine of not more than two hundred fifty thousand
18 dollars (\$250,000), or by both that imprisonment and fine;
19 and in either case, if the defendant is a corporation or a
20 limited liability company, the fine ~~shall not be less than~~
21 ~~two hundred fifty thousand dollars (\$250,000)~~ but may
22 not exceed two million dollars (\$2,000,000).

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

34 *(c) If the conviction is for a violation committed*
35 *within seven years after a first conviction of the*
36 *defendent for any crime involving a violation of*
37 *subdivision (a), punishment shall be by imprisonment in*
38 *the state prison for two, three, or four years, or by a fine*
39 *not exceeding two hundred fifty thousand dollars*
40 *(\$250,000), or by both that fine and imprisonment, but if*



1 the defendant is a corporation or a limited liability
2 company, the fine shall not be less than one million dollars
3 (\$1,000,000) but may not exceed four million dollars
4 (\$4,000,000).

5 ~~(e) However, a court may impose a fine for a violation~~
6 ~~of this section less than the minimum specified in this~~
7 ~~section if the court finds that it is in the interest of justice~~
8 ~~to do so and states its findings and reasons on the record.~~

9 ~~(d)~~

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

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

19 ~~SEC. 14.—~~

20 *SEC. 15.* Section 6427 of the Labor Code is amended
21 to read:

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

29 ~~SEC. 15.—~~

30 *SEC. 16.* Section 6428 of the Labor Code is amended
31 to read:

32 6428. Any employer who violates any occupational
33 safety or health standard, order, or special order, or any
34 provision of this division *relating to the health or safety*
35 *of employees* or of Section 25910 of the Health and Safety
36 Code, if that violation is a serious violation, shall be
37 assessed a civil penalty of up to twenty-five thousand
38 dollars (\$25,000) for each violation. Employers who do
39 not have an operative injury prevention program shall
40 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. 16.~~

4 *SEC. 17.* 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 *similar* violation by any employer
25 occurring anywhere within the state within the previous
26 five years of any occupational safety or health standard,
27 order, or special order, or any provision of this division
28 *relating to the health and safety of employees* or of
29 Section 25910 of the Health and Safety Code, shall be used
30 to establish whether a current *serious* violation is a repeat
31 violation, and shall constitute evidence of willfulness for
32 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. 17.~~

37 *SEC. 18.* 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. 18.—~~

36 *SEC. 19.* 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 ~~any~~
40 *either* of the following conditions exist:



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

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

9 ~~(B) The existence of an unsafe or unhealthful~~
10 ~~condition.~~

11 ~~(C)~~

12 (B) 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.

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

31 ~~SEC. 19.—~~

32 *SEC. 20.* Section 6434 of the Labor Code is repealed.

33 ~~SEC. 20.—~~

34 *SEC. 21.* Section 6719 is added to the Labor Code, to
35 read:

36 6719. The Legislature reaffirms its concern over the
37 prevalence of repetitive motion injuries in the workplace
38 and reaffirms the Occupational Safety and Health
39 Standards Board’s continuing duty to carry out Section
40 6357.



1 ~~SEC. 21.~~—

2 SEC. 22. No reimbursement is required by this act
3 pursuant to Section 6 of Article XIII B of the California
4 Constitution because the only costs that may be incurred
5 by a local agency or school district will be incurred
6 because this act creates a new crime or infraction,
7 eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section
9 17556 of the Government Code, or changes the definition
10 of a crime within the meaning of Section 6 of Article
11 XIII B of the California Constitution.

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