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AMENDED IN ASSEMBLY MAY 18, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1127**

**Introduced by Assembly Member Steinberg**

February 25, 1999

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An act to amend Sections 98.7, 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 *Sections 452 and 669 of the Evidence Code would apply to 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~~ *in the same manner as any other statute, ordinance, or regulation.*

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:

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  
32 review of any documents which may be relevant to the  
33 disposition of the complaint. The identity of witnesses  
34 shall remain confidential unless the identification of the  
35 witness becomes necessary to proceed with the  
36 investigation or to prosecute an action to enforce a  
37 determination. The investigation report submitted to the  
38 Labor Commissioner or designee shall include the



1 statements and documents obtained in the investigation,  
2 and the findings of the investigator concerning whether  
3 a violation occurred. The Labor Commissioner may hold  
4 an investigative hearing whenever the Labor  
5 Commissioner determines, after review of the  
6 investigation report, that a hearing is necessary to fully  
7 establish the facts. In the hearing the investigation report  
8 shall be made a part of the record and the complainant  
9 and respondent shall have the opportunity to present  
10 further evidence. The Labor Commissioner shall issue,  
11 serve, and enforce any necessary subpoenas.

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



1 includes, but is not limited to, rehiring or reinstatement  
2 of the complainant, reimbursement of lost wages and  
3 interest thereon, and any other compensation or  
4 equitable relief as is appropriate under the circumstances  
5 of the case. The Labor Commissioner shall petition the  
6 court for appropriate temporary relief or restraining  
7 order unless he or she determines good cause exists for  
8 not doing so.

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

34 (e) The Labor Commissioner shall notify the  
35 complainant and respondent of his or her determination  
36 under subdivision (c) or (d), not later than 60 days after  
37 the filing of the complaint. Determinations by the Labor  
38 Commissioner under subdivision (c) or (d) may be  
39 appealed by the complainant or respondent to the  
40 Director of Industrial Relations within 10 days following



1 notification of the determination. The appeal shall set  
2 forth specifically and in full detail the grounds upon  
3 which the appealing party considers the Labor  
4 Commissioner's determination to be unjust or unlawful,  
5 and every issue to be considered by the director. The  
6 director may consider any issue relating to the initial  
7 determination and may modify, affirm, or reverse the  
8 Labor Commissioner's determination. The director's  
9 determination shall be the determination of the Labor  
10 Commissioner. The director shall notify the complainant  
11 and respondent of his or her determination within 10 days  
12 of receipt of the appeal.

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

16 SEC. 2. Section 6304.5 of the Labor Code is amended  
17 to read:

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

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

33 *Sections 452 and 669 of the Evidence Code shall apply to*  
34 *this division and to occupational safety and health*  
35 *standards adopted under this division in the same manner*  
36 *as any other statute, ordinance, or regulation.*

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



1 6308. In enforcing this division, occupational safety  
2 and health standards, orders, and special orders, the  
3 division may do any of the following:

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

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

19 (c) Require the performance of any other act that is  
20 reasonably necessary for the protection of the life and  
21 safety of the employees in employment and places of  
22 employment.

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

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

33 SEC. 4. Section 6309 of the Labor Code is amended to  
34 read:

35 6309. If the division learns or has reason to believe  
36 that any employment or place of employment is not safe  
37 or is injurious to the welfare of any employee, it may, of  
38 its own motion, or upon complaint, summarily investigate  
39 ~~the employment or place of employment, same~~ with or  
40 without notice or hearings. However, if the division



1 secures a complaint from an employee, the employee's  
2 representative, including, but not limited to, an attorney,  
3 health or safety professional, union representative, or  
4 representative of a government agency, or an employer  
5 of an employee directly involved in an unsafe place of  
6 employment, that his or her employment or place of  
7 employment is not safe, it shall, with or without notice or  
8 hearing, summarily investigate the ~~employment or place~~  
9 ~~of employment~~ *same* as soon as possible, but not later  
10 than three working days after receipt of a complaint  
11 charging a serious violation, and not later than 14  
12 calendar days after receipt of a complaint charging a  
13 nonserious violation. The division shall attempt to  
14 determine the period of time in the future that the  
15 complainant believes the unsafe condition may continue  
16 to exist, and shall allocate inspection resources so as to  
17 respond first to those situations in which time is of the  
18 essence. For purposes of this section, a complaint shall be  
19 deemed to allege a serious violation if the division  
20 determines that the complaint charges that there is a  
21 substantial probability that death or serious physical harm  
22 could result from a condition which exists, or from one or  
23 more practices, means, methods, operations, or processes  
24 which have been adopted or are in use in a place of  
25 employment. *When a complaint charging a serious*  
26 *violation is received from a state or local prosecutor, the*  
27 *division shall summarily investigate the employment or*  
28 *place of employment within 24 hours of receipt of the*  
29 *complaint.* All other complaints shall be deemed to allege  
30 nonserious violations. The division may enter and serve  
31 any necessary order relative thereto. The division is not  
32 required to respond to any complaint within this period  
33 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. 5. 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, any standard, rule, order, or  
25 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 does not commence until the date the  
38 citation or notice is received by certified mail and the  
39 certified mail receipt is signed, or if not signed, the date  
40 the return is made to the post office. If the division



1 officially and directly delivers the citation or notice to the  
2 employer, the period specified for abatement  
3 commences on the date of the delivery.

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

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

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

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

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

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

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

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



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

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

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

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



1 the division meets that burden, the employer shall have  
2 the responsibility of establishing that irreparable injury  
3 will occur to the employer if the duty of abatement is not  
4 suspended during the pendency of an appeal.

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

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

15 (c) Nothing in this section shall be construed to limit  
16 the authority of the division to proceed under Section  
17 6325, but the division may not proceed simultaneously  
18 under this section and under Section 6325 as to any  
19 individual alleged violation contained within any  
20 individual citation.

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

23 6323. If the condition of any employment or place of  
24 employment or the operation of any machine, device,  
25 apparatus, equipment, or process constitutes a serious  
26 menace to the lives or safety of persons about it, the  
27 division may apply to the superior court of the county in  
28 which the place of employment ~~or employee~~, *machine*,  
29 *device*, *apparatus*, or *equipment* is situated, for an  
30 injunction restraining the use or operation thereof until  
31 the condition is corrected.

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

34 6324. An application to the superior court for an  
35 injunction shall be accompanied by an affidavit showing  
36 that a place of employment, machine, device, apparatus,  
37 equipment, or process is being operated in violation of a  
38 safety order or standard, or in violation of Section 25910  
39 of the Health and Safety Code, and that the use or  
40 operation constitutes a menace to the life or safety of any



1 person employed thereabout or is likely to cause death,  
2 serious injury or illness, or serious exposure to an  
3 employee. The affidavit shall be accompanied by a copy  
4 of the order or standard applicable thereto. The  
5 application and affidavit are a sufficient prima facie  
6 showing to warrant, in the discretion of the court, the  
7 immediate granting of a temporary restraining order. No  
8 bond shall be required from the division ~~or any other state~~  
9 ~~or local prosecutor~~ as a prerequisite to the granting of any  
10 restraining order.

11 SEC. 9. Section 6325 of the Labor Code is amended to  
12 read:

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

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

1 6400. (a) Every employer shall furnish employment  
2 and a place of employment that is safe and healthful for  
3 the employees therein.

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

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

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

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

18 (4) The employer who had the responsibility for  
19 actually correcting the ~~hazard~~ hazard (*the correcting*  
20 *employer*).

21 *The employers listed in paragraphs (1) to (4),*  
22 *inclusive, of this subdivision may be cited regardless of*  
23 *whether their own employees were exposed to the*  
24 *hazard.*

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

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

34 6423. Except where another penalty is specifically  
35 provided, every employer and every officer,  
36 management official, or supervisor having direction,  
37 management, control, or custody of any employment,  
38 place of employment, or of any other employee, who does  
39 any of the following is guilty of a misdemeanor:



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

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

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

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

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

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

35 ~~SEC. 12. Section 6424 is added to the Labor Code, to~~  
36 ~~read:~~

37 ~~6424. For purposes of construing the criminal~~  
38 ~~provisions of this chapter, to the extent that a word or~~  
39 ~~term of this chapter is defined in Section 7 of the Penal~~



1 ~~Code, the definitions of Section 7 of the Penal Code~~  
2 ~~govern the interpretation of that word or term.~~

3 ~~SEC. 13.—~~

4 *SEC. 12.* Section 6425 of the Labor Code is amended  
5 to read:

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

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

12 (e) *As used in this section, “willfully” has the same*  
13 *definition as it has in Section 7 of the Penal Code. This*  
14 *subdivision is intended to be a codification of existing law.*

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

17 ~~SEC. 14.—~~

18 *SEC. 13.* Section 6427 of the Labor Code is amended  
19 to read:

20 6427. Any employer who violates any occupational  
21 safety or health standard, order, or special order, or any  
22 provision of this division relating to the health or safety  
23 of employees or of Section 25910 of the Health and Safety  
24 Code, and the violation is specifically determined not to  
25 be of a serious nature, may be assessed a civil penalty of  
26 up to seven thousand dollars (\$7,000) for each violation.

27 ~~SEC. 15.—~~

28 *SEC. 14.* Section 6428 of the Labor Code is amended  
29 to read:

30 6428. Any employer who violates any occupational  
31 safety or health standard, order, or special order, or any  
32 provision of this division relating to the health or safety  
33 of employees or of Section 25910 of the Health and Safety  
34 Code, if that violation is a serious violation, shall be  
35 assessed a civil penalty of up to twenty-five thousand  
36 dollars (\$25,000) for each violation. Employers who do  
37 not have an operative injury prevention program shall  
38 receive no adjustment for good faith of the employer or  
39 history of previous violations as provided in paragraphs  
40 (3) and (4) of subdivision (c) of Section 6319.



1 ~~SEC. 16.~~—

2 *SEC. 15.* Section 6429 of the Labor Code is amended  
3 to read:

4 6429. Any employer who willfully or repeatedly  
5 violates any occupational safety or health standard, order,  
6 or special order, or any provision of this division relating  
7 to the health and safety of employees or of Section 25910  
8 of the Health and Safety Code, may be assessed a civil  
9 penalty of not more than seventy thousand dollars  
10 (\$70,000) for each violation, but in no case less than five  
11 thousand dollars (\$5,000) for each willful violation.

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

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

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

33 ~~SEC. 17.~~—

34 *SEC. 16.* Section 6430 of the Labor Code is amended  
35 to read:

36 6430. (a) Any employer who fails to correct a  
37 violation of any occupational safety or health standard,  
38 order, or special order, or any provision of this division  
39 relating to the health or safety of employees or of Section  
40 25910 of the Health and Safety Code, within the period



1 permitted for its correction shall be assessed a civil  
2 penalty of not more than twenty-five thousand dollars  
3 (\$25,000) for each day during which the failure or  
4 violation continues.

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

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

32 ~~SEC. 18.—~~

33 *SEC. 17.* Section 6432 of the Labor Code is amended  
34 to read:

35 6432. (a) As used in this part, a “serious violation”  
36 shall be deemed to exist in a place of employment if there  
37 is a substantial probability that death or serious physical  
38 harm could result from a violation, including, but not  
39 limited to, circumstances where there is a substantial



1 probability that either of the following could result in  
2 death or great bodily injury:

3 (1) ~~An~~ A *serious* exposure exceeding an established  
4 permissible exposure limit.

5 (2) The existence of one or more practices, means,  
6 methods, operations, or processes which have been  
7 adopted or are in use, in the place of employment.

8 (b) Notwithstanding subdivision (a), a serious  
9 violation shall not be deemed to exist if the employer can  
10 demonstrate that it did not, and could not with the  
11 exercise of reasonable diligence, know of the presence of  
12 the violation.

13 (c) As used in this section, “substantial probability”  
14 refers not to the probability that an accident or exposure  
15 will occur as a result of the violation, but rather to the  
16 probability that death or serious physical harm will result  
17 assuming an accident or exposure occurs as a result of the  
18 violation.

19 ~~SEC. 19.—~~

20 *SEC. 18.* Section 6434 of the Labor Code is repealed.

21 ~~SEC. 20.—~~

22 *SEC. 19.* Section 6719 is added to the Labor Code, to  
23 read:

24 6719. The Legislature reaffirms its concern over the  
25 prevalence of repetitive motion injuries in the workplace  
26 and reaffirms the Occupational Safety and Health  
27 Standards Board’s continuing duty to carry out Section  
28 6357.

29 ~~SEC. 21.—~~

30 *SEC. 20.* No reimbursement is required by this act  
31 pursuant to Section 6 of Article XIII B of the California  
32 Constitution because the only costs that may be incurred  
33 by a local agency or school district will be incurred  
34 because this act creates a new crime or infraction,  
35 eliminates a crime or infraction, or changes the penalty  
36 for a crime or infraction, within the meaning of Section  
37 17556 of the Government Code, or changes the definition



1 of a crime within the meaning of Section 6 of Article  
2 XIII B of the California Constitution.

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