

Introduced by Senator Gonzalez
(Principal coauthor: Assembly Member Lorena Gonzalez)

February 18, 2021

An act to add Sections 6317.8, 6317.10, and 6409.7 to the Labor Code, relating to occupational safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 606, as introduced, Gonzalez. Workplace safety: citations: employer retaliation.

Existing law gives the Division of Occupational Safety and Health, within the Department of Industrial Relations, the power, jurisdiction, and supervision over every employment and place of employment in this state, which is necessary to adequately enforce and administer all laws requiring that employment and places of employment be safe, and requiring the protection of the life, safety, and health of every employee in that employment or place of employment. Existing law requires the division to enforce all occupational safety and health standards, as specified, and to issue a citation for a violation relating to those standards.

This bill would require the division to issue a citation to an egregious employer, as defined, for each willful violation, and each employee exposed to that violation would be required to be considered a separate violation for purposes of the issuance of fines and penalties, as provided.

This bill would authorize the division to issue to an employer with multiple places of employment a citation, seek a temporary restraining order against such an employer, or both issue a citation and seek an order, with regard to an employerwide written policy or practice that violates the Health and Safety Code or the Labor Code. The bill would authorize the Occupational Safety and Health Appeals Board to issue

an order of abatement for the employer-wide written policy or practice. The bill would establish a rebuttable presumption that a written employer policy or practice that violates the Health and Safety Code or the Labor Code exists at all places of employment of the employer and citations may be issued accordingly.

Existing law prohibits an employer from retaliating against a worker for disclosing a positive Coronavirus (COVID-19) test, diagnosis, or order to quarantine or isolate.

This bill would establish a rebuttable presumption that an employer's actions are retaliatory if an employer takes adverse action against an employee within 90 days of the employee doing certain things, including, but not limited to, disclosing a positive test or diagnosis resulting from an exposure at the place of employment or worksite or of a communicable disease, requesting testing as a result of an exposure at the place of employment or worksite, and reporting a possible violation of an occupational safety or health standard.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 6317.8 is added to the Labor Code, to
2 read:

3 6317.8. (a) Notwithstanding any other law, if, upon inspection
4 or investigation, the division believes that an egregious employer
5 has willfully violated an occupational safety or health standard,
6 order, special order, or regulation, the division, with reasonable
7 promptness, shall issue a citation to an egregious employer for
8 each violation, and each employee exposed to that violation shall
9 be considered a separate violation for purposes of the issuance of
10 fines and penalties.

11 (b) For the purposes of this section, an "egregious employer"
12 is an employer that has demonstrated one or more of the following
13 characteristics:

14 (1) The employer, intentionally, through conscious, voluntary
15 action or inaction, made no reasonable effort to eliminate the
16 known violation.

17 (2) The violations resulted in worker fatalities, a worksite
18 catastrophe, or a large number of injuries or illnesses.

1 (3) The violations resulted in persistently high rates of worker
2 injuries or illnesses.

3 (4) The employer has an extensive history of prior violations
4 of this part.

5 (5) The employer has intentionally disregarded their health and
6 safety responsibilities.

7 (6) The employer's conduct, taken as a whole, amounts to clear
8 bad faith in the performance of their duties under this part.

9 (7) The employer has committed a large number of violations
10 so as to undermine significantly the effectiveness of any safety
11 and health program that may be in place.

12 SEC. 2. Section 6317.10 is added to the Labor Code, to read:

13 6317.10. The division may issue to an employer with separate
14 places of employment a citation, seek a temporary restraining order
15 against such an employer, or both issue a citation and seek an
16 order, with regard to an employer-wide written policy or practice
17 that violates the Health and Safety Code or this code. The appeals
18 board may issue an order of abatement for the employerwide
19 written policy or practice. There shall be a rebuttable presumption
20 that a written employer policy or practice that violates the Health
21 and Safety Code or this code exists at all places of employment
22 of the employer and citations may be issued accordingly.

23 SEC. 3. Section 6409.7 is added to the Labor Code, to read:

24 6409.7. There shall be a rebuttable presumption that an
25 employer's action was retaliatory if an employer takes any adverse
26 action against an employee within 90 days of an employee doing
27 any of the following:

28 (a) Disclosing a positive test or diagnosis resulting from an
29 exposure at the place of employment or worksite or of a
30 communicable disease.

31 (b) Requesting testing as a result of an exposure at the place of
32 employment or worksite.

33 (c) Requesting personal protective equipment that is reasonable
34 under the circumstances.

35 (d) Reporting a possible violation of an occupational safety or
36 health standard, order, special order, or regulation.

O