

AMENDED IN SENATE AUGUST 25, 2020

AMENDED IN SENATE AUGUST 20, 2020

AMENDED IN SENATE JUNE 29, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 685

Introduced by Assembly Member Reyes

February 15, 2019

An act to *amend, repeal, and add Sections 6325 and 6432 of, and to add and repeal Section ~~6406.9~~ to 6409.6 of,* the Labor Code, relating to occupational safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 685, as amended, Reyes. ~~Occupational safety: COVID-19 COVID-19: imminent hazard to employees: exposure: notification: notification: serious violations.~~

(1) Existing law, the California Occupational Safety and Health Act of 1973 (OSHA), requires the Division of Occupational Safety and Health, when, in its opinion, a place of employment, machine, device, apparatus, or equipment or any part thereof is in a dangerous condition, is not properly guarded, or is dangerously placed so as to constitute an imminent hazard to employees, to prohibit entry or use, as applicable, and to attach a conspicuous notice of that condition, as specified. OSHA requires that this prohibition be limited to the immediate area in which the imminent hazard exists. OSHA prohibits this notice from being removed except by an authorized representative of the division under certain conditions. OSHA makes a violation of this provision regarding dangerous conditions a crime.

This bill would authorize the division, when, in its opinion, a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2, also known as COVID-19), so as to constitute an imminent hazard to employees, to prohibit the performance of that operation or process, or entry into that place of employment. The bill would require the division to provide a notice thereof to the employer, to be posted in a conspicuous place at the place of employment. The bill would require such a prohibition to be limited to the immediate area in which the imminent hazard exists, as specified. The bill would require such a prohibition to be issued in a manner so as not to materially interrupt the performance of critical governmental functions essential to ensuring public health and safety functions or the delivery of electrical power or water. By expanding the scope of a crime, the bill would impose a state-mandated local program.

This COVID-19 imminent hazard provision would be repealed on January 1, 2023.

~~Existing~~

(2) Existing law requires an employer to file a report of every occupational injury or occupational illness, as defined, of each employee that results in lost time beyond the date of the injury or illness, and that requires medical treatment beyond first aid, with the Department of Industrial Relations, on a form prescribed by the department. Existing law requires an employer to immediately report a serious occupational injury, illness, or death to the ~~Division of Occupational Safety and Health~~ *division* by telephone or email, as specified.

~~Existing law makes a violation of certain of these provisions a crime.~~

This bill would require a public or private employer *or representative employer, except as specified, that receives a notice of potential exposure to COVID-19* to provide specified notifications to its employees, ~~the Division of Occupational Safety and Health, and the State Department of Public Health,~~ relating to the exposure of its employees to COVID-19 in the workplace, when the employer has been notified of the exposure, as specified. ~~The bill would provide for a specified civil penalty for an employer that violates the notification requirements of these provisions: employees within one business day of the notice of potential exposure. The bill would require the employer to provide prescribed notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as a qualifying individual, as defined, within the infectious~~

period, as defined, that they may have been exposed to COVID-19. The bill would require notice to the exclusive representative, if any, of notified employees. The bill would require an employer to provide those employees and any exclusive representative with certain information regarding COVID-19-related benefits and options. The bill would require an employer to notify all employees, the employers of subcontracted employees, and any exclusive representative on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control. The bill would require an employer to maintain records of notifications for at least 3 years. The bill would provide for a specified civil penalty for an employer that violates the notification requirements. The bill would define additional terms for its purposes.

The bill would require an employer, if the employer or representative of the employer is notified of the number of cases that meet the definition of a COVID-19 outbreak, as defined, within 48 hours, to report prescribed information to the local public health agency in the jurisdiction of the worksite. The bill would require an employer that has an outbreak to continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite. The bill would exempt a health facility, as defined, from this reporting requirement.

~~The bill would require the Division of Occupational Safety and Health and the State Department of Public Health to enforce certain of these provisions and to make the reported exposure specified information on outbreaks publicly available on their its internet websites, website, as specified. The bill would require local public health departments and the division to provide a link to this page on its internet websites. By requiring additional duties from local public health departments, this bill would impose a state-mandated local program.~~

These notice and reporting provisions would be repealed on January 1, 2023.

(3) OSHA creates a rebuttable presumption that a “serious violation” exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. OSHA requires the division, before issuing a citation alleging that a violation is serious, to make a reasonable attempt to determine and consider certain facts. This OSHA requirement is satisfied if the division sends, at least 15 days before issuing such a citation, a standardized form containing

descriptions of the alleged violation the division intends to cite as serious and clearly soliciting the prescribed information. OSHA permits an employer to rebut the presumption, as prescribed, and establishes inferences that may be drawn at hearing with regard to information provided by an employer in rebuttal.

This bill would exempt a citation alleging a serious violation relating to SARS-CoV-2 from the precitation standardized form provision and the rebuttal at hearing provision.

This exemption would be repealed on January 1, 2023.

(4) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(5) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) As COVID-19 continues to ravage California, one of the
- 4 best tools available for limiting exposure and minimizing spread
- 5 is to gather thorough and accurate data.
- 6 (b) As the average age of those falling ill from COVID-19 has
- 7 become younger, it is critical to track workplace exposure and to
- 8 use that data to find ways to keep workers safe on the job.
- 9 (c) With infections and deaths disproportionately high in the
- 10 Latino, Black, and Asian-Pacific Islander communities, more

1 information about workplace illness and industry clusters can
2 inform policy makers in addressing healthcare disparities and
3 protecting vulnerable workers.

4 (d) Current law lacks clarity as to an employer’s reporting
5 requirements, including to their own workforce. This deficiency
6 has led to workers and members of the public living in fear for
7 their own safety, unaware of where outbreaks may already be
8 occurring.

9 (e) Consistent with California’s efforts to track and trace
10 COVID-19 cases, it is imperative that positive COVID-19 tests or
11 diagnoses be reported immediately in the occupational setting, to
12 members of the public, and to relevant state agencies.

13 ~~SEC. 2.— Section 6409.6 is added to the Labor Code, to read:~~

14 ~~6409.6. (a) If an employer, or a manager, supervisor, or~~
15 ~~representative of the employer, is notified that an employee or~~
16 ~~employees were potentially exposed at the workplace to any person~~
17 ~~who has COVID-19 as defined in subdivision (d), the employer~~
18 ~~shall take all of the following actions within 24 hours of~~
19 ~~notification of the exposure in the workplace:~~

20 ~~(1) Provide a notice to all employees at the worksite where the~~
21 ~~exposure occurred that they may have been exposed to COVID-19.~~
22 ~~This notification shall be in writing. This includes a hand-delivered~~
23 ~~notice or a letter. If the written notification will not reach the~~
24 ~~employee within 24 hours, the employer shall additionally notify~~
25 ~~the employee in the form of an email or text. Written notifications~~
26 ~~shall be in both English and the language understood by the~~
27 ~~majority of the employees. Employers may also notify workers~~
28 ~~verbally, including, but not limited to, a phone call, voicemail, or~~
29 ~~in person, if written notice will not reach them within 24 hours.~~

30 ~~(2) Notify the exclusive representative, if any. This notification~~
31 ~~shall be in writing and employers shall also make every reasonable~~
32 ~~effort necessary to notify the exclusive representative verbally.~~
33 ~~Written notification can be in the form of a hand-delivered notice~~
34 ~~or a letter. If the written notification will not reach the exclusive~~
35 ~~representative within 24 hours, the employer shall additionally~~
36 ~~notify the exclusive representative in the form of an email or text.~~
37 ~~Employers may also notify exclusive representatives verbally,~~
38 ~~including, but not limited to, a phone call, voicemail, or in person,~~
39 ~~if written notice will not reach them within 24 hours.~~

1 ~~(3) Provide all employees who may have been exposed and the~~
2 ~~exclusive representative, if any, of instructions on home quarantine~~
3 ~~and or isolation and symptom monitoring, instructions to contact~~
4 ~~their medical provider or local health department about testing,~~
5 ~~referral to their local health department, and information regarding~~
6 ~~rights of the employee under applicable federal, state, or local~~
7 ~~laws, including sick leave and workers' compensation, company~~
8 ~~leave policies, or negotiated leave provisions.~~

9 ~~(4) Notify all employees and the exclusive representative, if~~
10 ~~any, on the cleaning, disinfecting, and safety plan that the employer~~
11 ~~plans to implement prior to resuming work.~~

12 ~~(b) If an employer or a manager, supervisor, or representative~~
13 ~~of the employer is notified that an employee has COVID-19, as~~
14 ~~defined in subdivision (d), within 24 hours of that notification, the~~
15 ~~employer shall notify the California Department of Public Health~~
16 ~~and the appropriate local public health agency of the names and~~
17 ~~number of employees by industry and occupation who have~~
18 ~~COVID-19 as defined in subdivision (d).~~

19 ~~(e) The notices required pursuant to paragraph (2) of subdivision~~
20 ~~(a) and subdivision (b) shall contain the same information as would~~
21 ~~be required in an incident report in a Cal/OSHA Form 300 injury~~
22 ~~and illness log unless the information is inapplicable or unknown~~
23 ~~to the employer. Notifications required by this section shall not~~
24 ~~impact any determination of whether or not the illness is~~
25 ~~work-related.~~

26 ~~(d) For purposes of this section, "COVID-19" means Severe~~
27 ~~Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), and~~
28 ~~"has COVID-19" means any of the following:~~

29 ~~(1) A positive COVID-19 test.~~

30 ~~(2) A positive COVID-19 diagnosis from a licensed health~~
31 ~~provider.~~

32 ~~(3) A COVID-19-related order to isolate provided by a public~~
33 ~~health officer.~~

34 ~~(4) A fatality that was caused by COVID-19.~~

35 ~~(e) An employer shall not require employees to disclose medical~~
36 ~~information unless otherwise required by law.~~

37 ~~(f) An employer shall not retaliate against a worker for~~
38 ~~disclosing a positive COVID-19 test, or diagnosis or order to~~
39 ~~quarantine or isolate. Workers who believe they have been~~
40 ~~retaliated against in violation of this section may file a complaint~~

1 with the Division of Labor Standards Enforcement pursuant to
2 Section 98.6. The complaint shall be investigated as provided in
3 Section 98.7.

4 (g) If an employer takes any adverse action against an employee
5 within 90 days of an employee disclosing a positive test or
6 diagnosis, requesting testing or personal protective equipment, or
7 reporting a possible violation of health or safety regulations, there
8 shall be a rebuttable presumption that the action was retaliatory.

9 (h) The State Department of Public Health shall make
10 occupation and industry information received pursuant to this
11 section available on their respective internet websites in a manner
12 that allows the public to track outbreaks, the number of COVID-19
13 cases reported by any workplace, and the occupation of employees
14 involved. The State Department of Public Health shall also
15 establish a procedure for employers to report the number of
16 COVID-19 cases and make this information available on its internet
17 website.

18 (i) This section shall apply to both private and public employers.

19 (j) No personally identifiable employee information shall be
20 subject to a California Public Records Act request or shared with
21 any other state or federal agency.

22 (k) An employer shall maintain records of the written
23 notifications required in subdivision (a) for a period of at least one
24 year.

25 (l) (l) The Division of Occupational Safety and Health shall
26 enforce paragraphs (1), (2), and (4) of subdivision (a) by the
27 issuance of a citation alleging a violation of these subdivisions and
28 a notice of civil penalty in a manner consistent with Section 6317.
29 A violation of these subdivisions shall result in a civil penalty of
30 ten thousand dollars (\$10,000).

31 *SEC. 2. Section 6325 of the Labor Code is amended to read:*
32 6325. (a) When, in the opinion of the division, a place of
33 employment, machine, device, apparatus, or equipment or any part
34 thereof is in a dangerous condition, is not properly guarded or is
35 dangerously placed so as to constitute an imminent hazard to
36 employees, entry therein, or the use thereof, as the case may be,
37 shall be prohibited by the division, and a conspicuous notice to
38 that effect shall be attached thereto. Such prohibition of use shall
39 be limited to the immediate area in which the imminent hazard
40 exists, and the division shall not prohibit any entry in or use of a

1 place of employment, machine, device, apparatus, or equipment,
2 or any part thereof, which is outside such area of imminent hazard.
3 Such notice shall not be removed except by an authorized
4 representative of the division, nor until the place of employment,
5 machine, device, apparatus, or equipment is made safe and the
6 required safeguards or safety appliances or devices are provided.
7 ~~This section~~ *subdivision* shall not prevent the entry or use with the
8 division's knowledge and permission for the sole purpose of
9 eliminating the dangerous conditions.

10 *(b) When, in the opinion of the division, a place of employment,*
11 *operation, or process, or any part thereof, exposes workers to the*
12 *risk of infection with severe acute respiratory syndrome*
13 *coronavirus 2 (SARS-CoV-2) so as to constitute an imminent*
14 *hazard to employees, the performance of such operation or process,*
15 *or entry into such place of employment, as the case may be, may*
16 *be prohibited by the division, and a notice thereof shall be provided*
17 *to the employer and posted in a conspicuous place at the place of*
18 *employment. Such prohibition of use shall be limited to the*
19 *immediate area in which the imminent hazard exists, and the*
20 *division shall not prohibit the performance of any operation or*
21 *process, entry into or use of a place of employment, or any part*
22 *thereof, which is not exposing employees to, or is outside such*
23 *area of imminent hazard. In addition, this prohibition shall be*
24 *issued in a manner so as not to materially interrupt the*
25 *performance of critical governmental functions essential to*
26 *ensuring public health and safety functions or the delivery of*
27 *electrical power or water. This notice shall not be removed except*
28 *by an authorized representative of the division, nor until the place*
29 *of employment, operation, or process is made safe and the required*
30 *safeguards or safety appliances or devices are provided. This*
31 *subdivision shall not prevent the entry or use with the division's*
32 *knowledge and permission for the sole purpose of eliminating the*
33 *dangerous conditions.*

34 *(c) This section shall remain in effect only until January 1, 2023,*
35 *and as of that date is repealed.*

36 *SEC. 3. Section 6325 is added to the Labor Code, to read:*

37 *6325. (a) When, in the opinion of the division, a place of*
38 *employment, machine, device, apparatus, or equipment or any*
39 *part thereof is in a dangerous condition, is not properly guarded*
40 *or is dangerously placed so as to constitute an imminent hazard*

1 to employees, entry therein, or the use thereof, as the case may
2 be, shall be prohibited by the division, and a conspicuous notice
3 to that effect shall be attached thereto. Such prohibition of use
4 shall be limited to the immediate area in which the imminent
5 hazard exists, and the division shall not prohibit any entry in or
6 use of a place of employment, machine, device, apparatus, or
7 equipment, or any part thereof, which is outside such area of
8 imminent hazard. Such notice shall not be removed except by an
9 authorized representative of the division, nor until the place of
10 employment, machine, device, apparatus, or equipment is made
11 safe and the required safeguards or safety appliances or devices
12 are provided. This section shall not prevent the entry or use with
13 the division's knowledge and permission for the sole purpose of
14 eliminating the dangerous conditions.

15 (b) This section shall become operative on January 1, 2023.

16 SEC. 4. Section 6409.6 is added to the Labor Code, to read:

17 6409.6. (a) If an employer or representative of the employer
18 receives a notice of potential exposure to COVID-19, the employer
19 shall take all of the following actions within one business day of
20 the notice of potential exposure:

21 (1) Provide a written notice to all employees, and the employers
22 of subcontracted employees, who were on the premises at the same
23 worksite as the qualifying individual within the infectious period
24 that they may have been exposed to COVID-19 in a manner the
25 employer normally uses to communicate employment-related
26 information. Written notice may include, but is not limited to,
27 personal service, email, or text message if it can reasonably be
28 anticipated to be received by the employee within one business
29 day of sending and shall be in both English and the language
30 understood by the majority of the employees.

31 (2) Provide a written notice to the exclusive representative, if
32 any, of employees under paragraph (1).

33 (3) Provide all employees who may have been exposed and the
34 exclusive representative, if any, with information regarding
35 COVID-19-related benefits to which the employee may be entitled
36 under applicable federal, state, or local laws, including, but not
37 limited to, workers' compensation, and options for exposed
38 employees, including COVID-19-related leave, company sick leave,
39 state-mandated leave, supplemental sick leave, or negotiated leave

1 provisions, as well as antiretaliation and antidiscrimination
2 protections of the employee.

3 (4) Notify all employees, and the employers of subcontracted
4 employees and the exclusive representative, if any, on the
5 disinfection and safety plan that the employer plans to implement
6 and complete per the guidelines of the federal Centers for Disease
7 Control.

8 (b) If an employer or representative of the employer is notified
9 of the number of cases that meet the definition of a COVID-19
10 outbreak, as defined by the State Department of Public Health,
11 within 48 hours, the employer shall notify the local public health
12 agency in the jurisdiction of the worksite of the names, number,
13 occupation, and worksite of employees who meet the definition in
14 subdivision (d) of a qualifying individual. An employer shall also
15 report the business address and NAICS code of the worksite where
16 the qualifying individuals work. An employer that has an outbreak
17 subject to this section shall continue to give notice to the local
18 health department of any subsequent laboratory-confirmed cases
19 of COVID-19 at the worksite.

20 (c) The notice required pursuant to paragraph (2) of subdivision
21 (a) shall contain the same information as would be required in an
22 incident report in a Cal/OSHA Form 300 injury and illness log
23 unless the information is inapplicable or unknown to the employer.
24 This requirement shall apply regardless of whether the employer
25 is required to maintain a Cal/OSHA Form 300 injury and illness
26 log. Notifications required by this section shall not impact any
27 determination of whether or not the illness is work related.

28 (d) For purposes of this section, the following definitions apply:

29 (1) "COVID-19" means severe acute respiratory syndrome
30 coronavirus 2 (SARS-CoV-2).

31 (2) "Infectious period" means the time a COVID-19-positive
32 individual is infectious, as defined by the State Department of
33 Public Health.

34 (3) "Notice of potential exposure" means any of the following:

35 (A) Notification to the employer or representative from a public
36 health official or licensed medical provider that an employee was
37 exposed to a qualifying individual at the worksite.

38 (B) Notification to the employer or representative from an
39 employee, or their emergency contact, that the employee is a
40 qualifying individual.

1 (C) Notification through the testing protocol of the employer
2 that the employee is a qualifying individual.

3 (D) Notification to an employer or representative from a
4 subcontracted employer that a qualifying individual was on the
5 worksite of the employer receiving notification.

6 (4) “Qualifying individual” means any person who has any of
7 the following:

8 (A) A laboratory-confirmed case of COVID-19, as defined by
9 the State Department of Public Health.

10 (B) A positive COVID-19 diagnosis from a licensed health care
11 provider.

12 (C) A COVID-19-related order to isolate provided by a public
13 health official.

14 (D) Died due to COVID-19, in the determination of a county
15 public health department or per inclusion in the COVID-19
16 statistics of a county.

17 (5) “Worksite” means the building, store, facility, agricultural
18 field, or other location where a worker worked during the
19 infectious period. It does not apply to buildings, floors, or other
20 locations of the employer that a qualified individual did not enter.
21 In a multiworksite environment, the employer need only notify
22 employees who were at the same worksite as the qualified
23 individual.

24 (e) An employer shall not require employees to disclose medical
25 information unless otherwise required by law.

26 (f) An employer shall not retaliate against a worker for
27 disclosing a positive COVID-19 test or diagnosis or order to
28 quarantine or isolate. Workers who believe they have been
29 retaliated against in violation of this section may file a complaint
30 with the Division of Labor Standards Enforcement pursuant to
31 Section 98.6. The complaint shall be investigated as provided in
32 Section 98.7.

33 (g) The State Department of Public Health shall make workplace
34 industry information received from local public health departments
35 pursuant to this section available on its internet website in a
36 manner that allows the public to track the number and frequency
37 of COVID-19 outbreaks and the number of COVID-19 cases and
38 outbreaks by industry reported by any workplace in accordance
39 with subdivision (b). Local public health departments and the
40 division shall provide a link to this page on their internet websites.

1 *No personally identifiable employee information shall be made*
2 *public or posted.*

3 *(h) This section shall apply to both private and public employers,*
4 *except that subdivision (b) shall not apply to a “health facility,”*
5 *as defined in Section 1250 of the Health and Safety Code.*

6 *(i) This section shall not apply to employees who, as part of*
7 *their duties, conduct COVID-19 testing or screening or provide*
8 *direct patient care or treatment to individuals who are known to*
9 *have tested positive for COVID-19, are persons under*
10 *investigation, or are in quarantine or isolation related to*
11 *COVID-19, unless the qualifying individual is an employee at the*
12 *same worksite.*

13 *(j) No personally identifiable employee information shall be*
14 *subject to a California Public Records Act request or similar*
15 *request, posted on a public internet website, or shared with any*
16 *other state or federal agency.*

17 *(k) An employer shall maintain records of the written*
18 *notifications required in subdivision (a) for a period of at least*
19 *three years.*

20 *(l) The division shall enforce paragraphs (1), (2), and (4) of*
21 *subdivision (a) by the issuance of a citation alleging a violation*
22 *of these paragraphs and a notice of civil penalty in a manner*
23 *consistent with Section 6317. Any person who receives a citation*
24 *and penalty may appeal the citation and penalty to the appeals*
25 *board in a manner consistent with Section 6319.*

26 *SEC. 5. Section 6432 of the Labor Code is amended to read:*

27 *6432. (a) There shall be a rebuttable presumption that a*
28 *“serious violation” exists in a place of employment if the division*
29 *demonstrates that there is a realistic possibility that death or serious*
30 *physical harm could result from the actual hazard created by the*
31 *violation. The demonstration of a violation by the division is not*
32 *sufficient by itself to establish that the violation is serious. The*
33 *actual hazard may consist of, among other things:*

34 *(1) A serious exposure exceeding an established permissible*
35 *exposure limit.*

36 *(2) The existence in the place of employment of one or more*
37 *unsafe or unhealthful practices, means, methods, operations, or*
38 *processes that have been adopted or are in use.*

1 (b) (1) Before issuing a citation alleging that a violation is
2 serious, the division shall make a reasonable attempt to determine
3 and consider, among other things, all of the following:
4 (A) Training for employees and supervisors relevant to
5 preventing employee exposure to the hazard or to similar hazards.
6 (B) Procedures for discovering, controlling access to, and
7 correcting the hazard or similar hazards.
8 (C) Supervision of employees exposed or potentially exposed
9 to the hazard.
10 (D) Procedures for communicating to employees about the
11 employer's health and safety rules and programs.
12 (E) Information that the employer wishes to provide, at any time
13 before citations are issued, including, any of the following:
14 (i) The employer's explanation of the circumstances surrounding
15 the alleged violative events.
16 (ii) Why the employer believes a serious violation does not
17 exist.
18 (iii) Why the employer believes its actions related to the alleged
19 violative events were reasonable and responsible so as to rebut,
20 pursuant to subdivision (c), any presumption established pursuant
21 to subdivision (a).
22 (iv) Any other information that the employer wishes to provide.
23 (2) The division shall satisfy its requirement to determine and
24 consider the facts specified in paragraph (1) if, not less than 15
25 days prior to issuing a citation for a serious violation, the division
26 delivers to the employer a standardized form containing the alleged
27 violation descriptions ("AVD") it intends to cite as serious and
28 clearly soliciting the information specified in this subdivision. The
29 director shall prescribe the form for the alleged violation
30 descriptions and solicitation of information. Any forms issued
31 pursuant to this section shall be exempt from the rulemaking
32 provisions of the Administrative Procedure Act (Chapter 3.5
33 (commencing with Section 11340) of Part 1 of Division 3 of Title
34 2 of the Government Code).
35 (c) If the division establishes a presumption pursuant to
36 subdivision (a) that a violation is serious, the employer may rebut
37 the presumption and establish that a violation is not serious by
38 demonstrating that the employer did not know and could not, with
39 the exercise of reasonable diligence, have known of the presence

1 of the violation. The employer may accomplish this by
 2 demonstrating both of the following:

3 (1) The employer took all the steps a reasonable and responsible
 4 employer in like circumstances should be expected to take, before
 5 the violation occurred, to anticipate and prevent the violation,
 6 taking into consideration the severity of the harm that could be
 7 expected to occur and the likelihood of that harm occurring in
 8 connection with the work activity during which the violation
 9 occurred. Factors relevant to this determination include, but are
 10 not limited to, those listed in subdivision (b).

11 (2) The employer took effective action to eliminate employee
 12 exposure to the hazard created by the violation as soon as the
 13 violation was discovered.

14 (d) If the employer does not provide information in response to
 15 a division inquiry made pursuant to subdivision (b), the employer
 16 shall not be barred from presenting that information at the hearing
 17 and no negative inference shall be drawn. The employer may offer
 18 different information at the hearing than what was provided to the
 19 division and may explain any inconsistency, but the trier of fact
 20 may draw a negative inference from the prior inconsistent factual
 21 information. The trier of fact may also draw a negative inference
 22 from factual information offered at the hearing by the division that
 23 is inconsistent with factual information provided to the employer
 24 pursuant to subdivision (b), or from a failure by the division to
 25 provide the form setting forth the descriptions of the alleged
 26 violation and soliciting information pursuant to subdivision (b).

27 (e) “Serious physical harm,” as used in this part, means any
 28 injury or illness, specific or cumulative, occurring in the place of
 29 employment or in connection with any employment, that results
 30 in any of the following:

31 (1) Inpatient hospitalization for purposes other than medical
 32 observation.

33 (2) The loss of any member of the body.

34 (3) Any serious degree of permanent disfigurement.

35 (4) Impairment sufficient to cause a part of the body or the
 36 function of an organ to become permanently and significantly
 37 reduced in efficiency on or off the job, including, but not limited
 38 to, depending on the severity, second-degree or worse burns,
 39 crushing injuries including internal injuries even though skin
 40 surface may be intact, respiratory illnesses, or broken bones.

1 (f) Serious physical harm may be caused by a single, repetitive
2 practice, means, method, operation, or process.

3 (g) A division safety engineer or industrial hygienist who can
4 demonstrate, at the time of the hearing, that ~~his or her~~ *their*
5 division-mandated training is current shall be deemed competent
6 to offer testimony to establish each element of a serious violation,
7 and may offer evidence on the custom and practice of injury and
8 illness prevention in the workplace that is relevant to the issue of
9 whether the violation is a serious violation.

10 (h) *Paragraph (2) of subdivision (b) and subdivision (d) shall*
11 *not apply to a citation alleging a serious violation relating to the*
12 *severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).*

13 (i) *This section shall remain in effect only until January 1, 2023,*
14 *and as of that date is repealed.*

15 *SEC. 6. Section 6432 is added to the Labor Code, to read:*

16 *6432. (a) There shall be a rebuttable presumption that a*
17 *“serious violation” exists in a place of employment if the division*
18 *demonstrates that there is a realistic possibility that death or*
19 *serious physical harm could result from the actual hazard created*
20 *by the violation. The demonstration of a violation by the division*
21 *is not sufficient by itself to establish that the violation is serious.*
22 *The actual hazard may consist of, among other things:*

23 (1) *A serious exposure exceeding an established permissible*
24 *exposure limit.*

25 (2) *The existence in the place of employment of one or more*
26 *unsafe or unhealthful practices, means, methods, operations, or*
27 *processes that have been adopted or are in use.*

28 (b) (1) *Before issuing a citation alleging that a violation is*
29 *serious, the division shall make a reasonable attempt to determine*
30 *and consider, among other things, all of the following:*

31 (A) *Training for employees and supervisors relevant to*
32 *preventing employee exposure to the hazard or to similar hazards.*

33 (B) *Procedures for discovering, controlling access to, and*
34 *correcting the hazard or similar hazards.*

35 (C) *Supervision of employees exposed or potentially exposed*
36 *to the hazard.*

37 (D) *Procedures for communicating to employees about the*
38 *employer’s health and safety rules and programs.*

39 (E) *Information that the employer wishes to provide, at any time*
40 *before citations are issued, including, any of the following:*

- 1 (i) *The employer’s explanation of the circumstances surrounding*
2 *the alleged violative events.*
- 3 (ii) *Why the employer believes a serious violation does not exist.*
- 4 (iii) *Why the employer believes its actions related to the alleged*
5 *violative events were reasonable and responsible so as to rebut,*
6 *pursuant to subdivision (c), any presumption established pursuant*
7 *to subdivision (a).*
- 8 (iv) *Any other information that the employer wishes to provide.*
- 9 (2) *The division shall satisfy its requirement to determine and*
10 *consider the facts specified in paragraph (1) if, not less than 15*
11 *days prior to issuing a citation for a serious violation, the division*
12 *delivers to the employer a standardized form containing the alleged*
13 *violation descriptions (“AVD”) it intends to cite as serious and*
14 *clearly soliciting the information specified in this subdivision. The*
15 *director shall prescribe the form for the alleged violation*
16 *descriptions and solicitation of information. Any forms issued*
17 *pursuant to this section shall be exempt from the rulemaking*
18 *provisions of the Administrative Procedure Act (Chapter 3.5*
19 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
20 *2 of the Government Code).*
- 21 (c) *If the division establishes a presumption pursuant to*
22 *subdivision (a) that a violation is serious, the employer may rebut*
23 *the presumption and establish that a violation is not serious by*
24 *demonstrating that the employer did not know and could not, with*
25 *the exercise of reasonable diligence, have known of the presence*
26 *of the violation. The employer may accomplish this by*
27 *demonstrating both of the following:*
- 28 (1) *The employer took all the steps a reasonable and responsible*
29 *employer in like circumstances should be expected to take, before*
30 *the violation occurred, to anticipate and prevent the violation,*
31 *taking into consideration the severity of the harm that could be*
32 *expected to occur and the likelihood of that harm occurring in*
33 *connection with the work activity during which the violation*
34 *occurred. Factors relevant to this determination include, but are*
35 *not limited to, those listed in subdivision (b).*
- 36 (2) *The employer took effective action to eliminate employee*
37 *exposure to the hazard created by the violation as soon as the*
38 *violation was discovered.*
- 39 (d) *If the employer does not provide information in response to*
40 *a division inquiry made pursuant to subdivision (b), the employer*

1 shall not be barred from presenting that information at the hearing
2 and no negative inference shall be drawn. The employer may offer
3 different information at the hearing than what was provided to the
4 division and may explain any inconsistency, but the trier of fact
5 may draw a negative inference from the prior inconsistent factual
6 information. The trier of fact may also draw a negative inference
7 from factual information offered at the hearing by the division that
8 is inconsistent with factual information provided to the employer
9 pursuant to subdivision (b), or from a failure by the division to
10 provide the form setting forth the descriptions of the alleged
11 violation and soliciting information pursuant to subdivision (b).

12 (e) “Serious physical harm,” as used in this part, means any
13 injury or illness, specific or cumulative, occurring in the place of
14 employment or in connection with any employment, that results in
15 any of the following:

16 (1) Inpatient hospitalization for purposes other than medical
17 observation.

18 (2) The loss of any member of the body.

19 (3) Any serious degree of permanent disfigurement.

20 (4) Impairment sufficient to cause a part of the body or the
21 function of an organ to become permanently and significantly
22 reduced in efficiency on or off the job, including, but not limited
23 to, depending on the severity, second-degree or worse burns,
24 crushing injuries including internal injuries even though skin
25 surface may be intact, respiratory illnesses, or broken bones.

26 (f) Serious physical harm may be caused by a single, repetitive
27 practice, means, method, operation, or process.

28 (g) A division safety engineer or industrial hygienist who can
29 demonstrate, at the time of the hearing, that their
30 division-mandated training is current shall be deemed competent
31 to offer testimony to establish each element of a serious violation,
32 and may offer evidence on the custom and practice of injury and
33 illness prevention in the workplace that is relevant to the issue of
34 whether the violation is a serious violation.

35 (h) This section shall become operative on January 1, 2023.

36 SEC. 7. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution for certain
38 costs that may be incurred by a local agency or school district
39 because, in that regard, this act creates a new crime or infraction,
40 eliminates a crime or infraction, or changes the penalty for a crime

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

5 However, if the Commission on State Mandates determines that
6 this act contains other costs mandated by the state, reimbursement
7 to local agencies and school districts for those costs shall be made
8 pursuant to Part 7 (commencing with Section 17500) of Division
9 4 of Title 2 of the Government Code.

10 SEC. 8. The Legislature finds and declares that Section 4 of
11 this act, which adds Section 6409.6 to the Labor Code, imposes a
12 limitation on the public's right of access to the meetings of public
13 bodies or the writings of public officials and agencies within the
14 meaning of Section 3 of Article I of the California Constitution.
15 Pursuant to that constitutional provision, the Legislature makes
16 the following findings to demonstrate the interest protected by this
17 limitation and the need for protecting that interest:

18 The need to protect the privacy of employees from the public
19 disclosure of their personally identifiable information outweighs
20 the interest in public disclosure of that information.