

Senate Bill No. 606

CHAPTER 336

An act to amend Sections 6317, 6323, 6324, 6429, and 6602 of, and to add Sections 6317.8 and 6317.9 to, the Labor Code, relating to occupational safety.

[Approved by Governor September 27, 2021. Filed with
Secretary of State September 27, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 606, Gonzalez. Workplace safety: violations of statutes: enterprise-wide violations: egregious violations.

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 issue a citation for a violation of provisions relating to the spraying of asbestos, or any standard, rule, order, or regulation established pursuant to specified provisions of the California Occupational Safety and Health Act of 1973 if, upon inspection or investigation, the division believes that an employer has committed a violation. Existing law imposes penalties of certain maximum amounts depending on whether the violation is serious, uncorrected, or willful or repeated. Existing law authorizes the division to seek an injunction restraining certain uses or operations of employment that constitute a serious menace to the lives or safety of persons, as specified. Existing law establishes requirements for a prima facie showing by the division to warrant, in the discretion of the court, the granting of a temporary restraining order.

This bill would create a rebuttable presumption that a violation committed by an employer that has multiple worksites is enterprise-wide if the employer has a written policy or procedure that violates these provisions, except as specified, or the division has evidence of a pattern or practice of the same violation committed by that employer involving more than one of the employer's worksites. The bill would authorize the division to issue an enterprise-wide citation requiring enterprise-wide abatement if the employer fails to rebut such a presumption. The bill would impose specified requirements for a stay of abatement pending appeal of an enterprise-wide citation. The bill would subject an enterprise-wide violation to the same penalty provision as willful or repeated violations.

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

The bill would exempt certain state agencies from the rebuttable presumption, enterprise-wide citation, and egregious violation citation provisions.

The bill would authorize the division, in the investigation of the policies and practices of an employer or a related employer entity, to issue a subpoena if the employer or the related employer entity fails to promptly provide the requested information, and to enforce the subpoena if the employer or the related employer entity fails to provide the requested information within a reasonable period of time. The bill would authorize the division to seek an injunction restraining certain uses or operations of employment if it has grounds to issue a citation, as specified. The bill would expand grounds for granting a temporary restraining order to include grounds to issue a citation, as prescribed.

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

SECTION 1. Section 6317 of the Labor Code is amended to read:

6317. (a) If, upon inspection or investigation, the division believes that an employer has violated Section 25910 of the Health and Safety Code, any standard, rule, order, or regulation established pursuant to Chapter 6 (commencing with Section 140) of Division 1 of the Labor Code, or any standard, rule, order, or regulation established pursuant to this part, it shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the code, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the alleged violation. The period specified for abatement shall not commence running until the date the citation or notice is received by certified mail and the certified mail receipt is signed, or if not signed, the date the return is made to the post office. If the division officially and directly delivers the citation or notice to the employer, the period specified for abatement shall commence running on the date of the delivery.

(b) (1) If an employer has multiple worksites and either of the following is true, there shall be a rebuttable presumption that a violation is enterprise-wide:

(A) The employer has a written policy or procedure that violates Section 25910 of the Health and Safety Code, any standard, rule, order, or regulation established pursuant to Chapter 6 (commencing with Section 140) of Division 1, or any standard, rule, order, or regulation established pursuant to this division. Such a written policy or procedure shall not form the basis

for an enterprise-wide citation if it violates an emergency regulation adopted or amended within the last 30 days, commencing from the date of the vote of the standards board to adopt or amend the emergency regulation.

(B) The division has evidence of a pattern or practice of the same violation or violations committed by that employer involving more than one of the employer's worksites.

(2) If the employer fails to rebut a presumption raised pursuant to paragraph (1), the division may issue an enterprise-wide citation requiring enterprise-wide abatement.

(3) Abatement pending appeal of an enterprise-wide citation shall be stayed only as permitted by Section 362 of Title 8 of the California Code of Regulations, as that regulation existed as of January 1, 2021.

(4) This subdivision shall not apply to the Department of Corrections and Rehabilitation, the California Correctional Health Care Services, or the State Department of State Hospitals.

(c) (1) A "notice" in lieu of citation may be issued with respect to violations found in an inspection or investigation which meet either of the following requirements:

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

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

(2) A notice shall not be issued in lieu of a citation if either of the following are true:

(A) The violations are serious, repeated, willful, or arise from a failure to abate.

(B) The number of first instance violations found in the inspection, other than serious, willful, or repeated violations, is 10 or more violations.

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

(d) The division may impose a civil penalty against an employer as specified in Chapter 4 (commencing with Section 6423) of this part.

(e) (1) A citation or notice shall not be issued by the division more than six months after the occurrence of the violation. For purposes of issuing a citation or notice for a violation of subdivision (b) or (c) of Section 6410, including any implementing related regulations, an "occurrence" continues until it is corrected, or the division discovers the violation, or the duty to

comply with the violated requirement ceases to exist. Nothing in this subdivision is intended to alter the meaning of the term “occurrence” for violations of health and safety standards other than the recordkeeping requirements set forth in subdivision (b) or (c) of Section 6410, including any implementing related regulations.

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

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

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

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

(b) For the purposes of this section, a violation is an “egregious violation” if one or more of the following is true about that employer or the willful violations committed by it:

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

(2) The violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses. For purposes of this paragraph, “catastrophe” means the inpatient hospitalization, regardless of duration, of three or more employees resulting from an injury, illness, or exposure caused by a workplace hazard or condition.

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

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

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

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

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

(c) The conduct underlying a violation determined to be egregious shall have occurred within the five years preceding a citation for an egregious violation. Once a violation is determined to be egregious, that determination shall remain in effect for only five years. After that five-year period has elapsed, additional evidence as described in subdivision (b) shall be required to support any subsequent citation for an egregious violation.

(d) Notwithstanding subdivision (a), each employee exposed to a violation described in subdivision (a) shall not be considered a separate violation for purposes of a questionnaire described by Section 20101 of the Public Contract Code.

(e) This section shall not apply to the Department of Corrections and Rehabilitation, the California Correctional Health Care Services, or the State Department of State Hospitals.

SEC. 3. Section 6317.9 is added to the Labor Code, to read:

6317.9. In the investigation of the policies and practices of an employer or a related employer entity, the division may issue a subpoena if the employer or the related employer entity fails to promptly provide the requested information, and may enforce the subpoena if the employer or the related employer entity fails to provide the requested information within a reasonable period of time.

SEC. 4. Section 6323 of the Labor Code is amended to read:

6323. If the division has grounds to issue a citation pursuant to Section 6317, or 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 such place of employment, machine, device, apparatus, or equipment is situated, for an injunction restraining the use or operation thereof until such condition is corrected.

SEC. 5. Section 6324 of the Labor Code is amended to read:

6324. The application to the superior court accompanied by affidavit showing that the division has grounds to issue a citation pursuant to Section 6317 or a place of employment, machine, device, apparatus, or equipment is being operated in violation of a safety order or standard or in violation of Section 25910 of the Health and Safety Code, that the use or operation constitutes a menace to the life or safety of any person employed thereabout, and accompanied by a copy of the statute, order, or standard applicable thereto is a sufficient prima facie showing to warrant, in the discretion of the court, the immediate granting of a temporary restraining order. A bond shall not be required from the division as a prerequisite to the granting of any restraining order.

SEC. 6. Section 6429 of the Labor Code is amended to read:

6429. (a) (1) Any employer who willfully or repeatedly violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, or any employer who commits an enterprise-wide violation as specified in Section 6317, may be assessed a civil penalty of not more than one hundred twenty-four thousand seven hundred nine dollars (\$124,709) for each violation, but in no case less than eight thousand nine hundred eight dollars (\$8,908) for each willful violation.

(2) Commencing on January 1, 2018, and each January 1 thereafter, the penalty amounts specified in this section shall be increased based on the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), not seasonally adjusted, for the month of October immediately preceding the date of the adjustment, as compared to the prior year's October CPI-U. Any regulation issued pursuant to this section increasing penalty amounts based on the annual increase in the CPI-U shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of

the Government Code), except that the regulation shall be filed with the Office of Administrative Law for publication in the California Code of Regulations. Any penalty shall be calculated using the penalty amounts in effect during the calendar year in which the citation was issued.

(b) Any employer who repeatedly violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, shall not receive any adjustment of a penalty assessed pursuant to this section on the basis of the regulations promulgated pursuant to subdivision (c) of Section 6319 pertaining to the good faith of the employer or the history of previous violations of the employer.

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

SEC. 7. Section 6602 of the Labor Code is amended to read:

6602. If an employer notifies the appeals board that they intend to contest a citation issued under Section 6317, or notice of proposed penalty issued under Section 6319, or order issued under Section 6308, or if, within 15 working days of the issuance of a citation or order an employee or representative of an employee files a notice with the division or appeals board alleging that the period of time fixed in the citation or order for the abatement of the violation is unreasonable, the appeals board shall afford an opportunity for a hearing. The appeals board shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the division's citation, order, or proposed penalty, or directing other appropriate relief. If the division establishes an enterprise-wide violation, the appeals board shall include in its decision an enterprise-wide abatement order.