

injury, or illness, requested access to occupational injury or illness reports and records, or exercised any other rights protected by the federal Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.), as specified. (Labor Code §6310)

- 6) Entitles any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by their employer because of their exercise of their rights under (5) above to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. (Labor Code §6310(b))
- 7) Prohibits an employee from being laid off or discharged for refusing to perform work in violation of prescribed safety standards, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of this right shall have a right of action for lost wages for the time the employee is without work as a result of the layoff or discharge. (Labor Code §6311)
- 8) Authorizes officers of specified departments as well as specified police and peace officers, whenever a menace to the public health or safety is created by a calamity including a flood, storm, fire, earthquake, explosion, accident, or other disaster, to close the area (and the immediate surrounding area) where the menace exists to any and all persons not authorized to enter or remain within the enclosed area. (Penal Code §409.5)
- 9) Specifies that any unauthorized person who willfully and knowingly enters an area closed pursuant to the above closure and who willfully remains within the area after receiving notice to evacuate or leave shall be guilty of a misdemeanor. (Penal Code §409.5)
- 10) Provides that a person who, after receiving notice to evacuate or leave, willfully and knowingly directs an employee to remain in, or enter, an area closed due to a menace to the public health or safety as set forth in Section 409.5 of the Penal Code shall be guilty of a misdemeanor. (Labor Code §6311.5)

This bill:

- 1) Defines, for purposes of this bill, “state of emergency” to mean the existence of any of the following:
 - a. A Presidential declaration of a major disaster or emergency, caused by natural forces, in accordance with specified federal law.
 - b. A declared state of emergency or local emergency due to conditions of disaster or extreme peril to the safety of persons or property within the affected area caused by natural forces, as specified by state law.
 - c. A federal, state, regional, or county alert of imminent threat to life or property due to a natural disaster or emergency.
- 2) Defines, for purposes of this bill, “emergency condition” to mean the existence of either of the following:

- a. An event that poses serious danger to the structure of a workplace or to a worker's immediate health and safety.
 - b. An order to evacuate a workplace, a worker's home, or the school of a worker's child.
- 3) Specifies that in the event of a state of emergency or an emergency condition, an employer shall not do either of the following:
- a. Take or threaten adverse action against any employee for refusing to report to, or leaving, a workplace within the affected area because the employee feels unsafe.
 - b. Prevent any employee from accessing the employee's mobile device or other communications device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to verify their safety.

COMMENTS

1. Background:

In California, every employer has a legal obligation to provide and maintain a safe and healthful workplace for their employees. Among other things, employers are required to have a written Injury and Illness Prevention Program (IIPP) with specific elements set forth in the Labor Code and Cal/OSHA regulations including, among other things, the following:

- Safety communications system with employees;
- System for assuring employee compliance with safe work practices;
- Scheduled inspections/evaluation system;
- Accident investigation;
- Procedures for correcting unsafe/ unhealthy conditions;

Employers must regularly review and update the IIPP in order for it to remain effective. Cal/OSHA has a duty and authority to investigate a workplace for safety and welfare of employees, on its own motion or upon complaints. Additionally, Cal/OSHA has various standards that employers must abide by in order to render employment safe for workers. Existing law prohibits an employee from being laid off or discharged for refusing to perform work in violation of prescribed safety standards, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of the law, has a right of action for lost wages for the time the employee is without work as a result of the layoff or discharge.

For the most part, existing law directs employers to be proactive in the identification of hazards with a focus on corrective actions for addressing these, *but less on the requirements around emergency situations that may arise in the course of employment where previous knowledge and time are not an option*. Regarding these emergencies, existing law provides that a person who, after receiving notice to evacuate or leave, willfully and knowingly directs an employee to remain in, or enter, an area closed due to a menace to the public health or safety as set forth in Section 409.5 of the Penal Code shall be guilty of a misdemeanor.

2. Need for this bill?

According to the author, “We have already seen that in the midst of disasters, workers are frequently expected to continue working. During the Getty Fire, domestic workers and gardeners were required to continue working in Los Angeles evacuation zones. Agricultural workers in Sonoma County were required to continue picking produce during the Atlas/Tubbs fires. There were landscapers and housekeepers, along with children, among the 23 lost and 167 injured in the 2018 Montecito debris flow.

In recent tornados in Illinois, Amazon refused to let workers leave or stop making deliveries. The warehouse was destroyed and several workers were killed. They also refused to let workers access communications devices to track the dangerous conditions. As one the largest employers in the California, these policies apply here too and there have already been similar incidents in Los Angeles based Amazon warehouses where workers were not permitted to leave.

As climate-related disasters increase in intensity and frequency, we must ensure our laws are adequate to protect vulnerable workers. There should be clear rules in place as to what employers should do in the face of these emergencies. Beyond natural disasters, another workplace emergency on the rise is active shooters. We have seen repeated gun-related incidents around the state, including the most recent one at the VTA maintenance yard in San Jose. In that shooting, workers were also prevented from accessing communications devices, leaving them at greater risk.

SB 1044 would enhance existing workers’ protections during natural disasters by providing clear requirements for employers during these emergencies. Specifically, SB 1044 would require employers to allow workers to have access to their phones and would allow workers to leave the premises if they must do so for their safety.”

3. Staff Comments and Amendments:

Existing law authorizes the State to issue various declaration of emergencies to mitigate the effects of natural, manmade, or war-caused emergencies that result in conditions of disaster or in extreme peril to life, property, and the resources of the state, and generally to protect the health and safety and preserve the lives and property of the people of the state. (Government Code §8550 et seq.) State of emergency declarations can remain in effect for significant periods of time, sometimes long past the time of a pressing emergency. According to data provided by the opposition, on December 23, 2019, Governor Newsom terminated more than 70 ongoing states of emergency that had been declared at various times over the last decade and again on February 25, 2022, the Governor issued an executive order terminating twelve more ongoing states of emergency, some dating back to 2015.

To address this and other concerns, committee staff is working with the author and sponsors to address the following amendment recommendations:

- 1) *Specify that the requirements of the bill pertain to new emergency declarations for which safety mitigation efforts have not yet been adopted.*

- 2) *Specify that the bill's provisions apply to emergency declarations applicable in the area where the employee lives or works, rendering work or their ability to get to work unsafe.*
- 3) *Require the employee to provide notice to the employer, when feasible, notifying them of the emergency situation.*

4. Proponent Arguments:

According to the sponsors of the measure, the Los Angeles County Federation of Labor and the California Teamsters Public Affairs Council, “Over the past two years of the pandemic, worker health and safety has routinely been sacrificed in the pursuit of profits. Many companies have failed to inform workers of workplace outbreaks, permit them to use sick leave, or allow them to file workers compensation claims when they are exposed at the workplace. But Covid is far from the only threat to worker safety. With the effects of climate change impacting vulnerable communities most, workers in fields, food packing plants, and warehouses will again be on the frontlines. As wildfires increase in frequency and intensity, workers are often expected or required to continue working in extreme heat, unhealthy smoke, and dangerous conditions.

When Ventura County mudslides rushed through Montecito, it was gardeners and nannies who perished because they had stayed behind. When the Getty Fire raged through Los Angeles, it was domestic workers and landscapers who continued to enter evacuation zones to work. During North Bay fires, the counties granted passes to agricultural employers to send workers into smoke-laden fire zones to protect the crops, even while homeowners were advised to flee. When tornados hit Illinois, Amazon warehouse workers were not permitted to leave or access their phones to assess the danger they faced. Six workers were killed when the warehouse collapsed. An Amazon delivery driver asked permission to stop deliveries in the tornado's path and was told if they did so, they would not have a job the next day.

We have already experienced fires in an Amazon warehouse in California where worker safety was ignored. With Amazon emerging as our state's biggest employer, it's essential to address these policies to protect California workers. In addition to threats from natural disasters, workers increasingly face the risk of gun violence on the job. Workers have experienced active shooter incidents where they were not permitted to access phones or communication devices, leaving them in greater danger. SB 1044 will provide basic safety measures for California workers who face emergencies on the job.”

5. Opponent Arguments:

A coalition of employer organizations, including the California Chamber of Commerce, are opposed to the measure arguing that existing Cal/OSHA regulations and state and federal law include substantial safety protections, provide employees the right to a safe workplace, and protect employees from retaliation if those laws are violated. They argue that across industries and workplaces, employers must at a minimum have 1) an Emergency Action Plan, 2) Fire Prevention Plan, and 3) Injury and Illness Prevention Program.

Regarding existing Cal/OSHA regulations, they write, “More importantly – these regulations *address the underlying workplace hazards*, meaning that an employee is *already protected from these hazards* in all but the most extreme cases. If an employee reasonably believes that

their employer has violated any safety laws and that the work creates a real and apparent safety hazard or there is imminent danger of death or serious injury and the employer fails to eliminate the danger, under both California and federal law they can refuse to work. They are also protected from retaliation for reporting such conduct. Cal/OSHA or a court will evaluate whether there were legal violations or evidence of an unsafe workplace. Further, in 2020, the Legislature made it a crime to require an employee to remain in their place of work if there was a notice to evacuate or leave.”

Opponents argue that SB 1044 completely ignores the protections that these regulations already provide in making long-term emergency topics – such as wildfire and heat – safer for California’s workplaces and instead, this bill just allows workers to walk away regardless of how outdated the state of emergency is or how distant it is from the workplace. Additionally, they write, “An employer who disciplines an employee for leaving the workplace would be subject to a lawsuit and penalties under the Private Attorneys General Act (PAGA). And any employer who replaces the worker in order to keep the workplace functioning or to provide time sensitive services could face a retaliation suit. In other words – SB 1044 gives such broad discretion to employees that if they walk away from a completely safe workplace, the employer could do little in response without risking litigation.”

Opponents also argue that, “Police, firefighters, healthcare workers, couriers, food service workers, agriculture workers and more all provide essential services that others depend on. Some sectors or professions even have legally mandated staffing ratio requirements, such as hospitals. SB 1044 contains no exceptions for those industries. By failing to consider the safety consequences of allowing emergency response personnel to walk-off the job, SB 1044 fails to take into account the safety of the public.”

Further, they argue, “SB 1044 does not require workers to give any sort of notice to the employer if they leave or choose not to show up and does not require workers to consider the safety of others in their workplace. In many industries, it is imperative that workers not be left alone while conducting hazardous operations. However, SB 1044’s lack of notice and consideration for interdependent roles in the workplace will reduce workplace safety. In addition, a blanket prohibition on employers’ ability to restrict use of personal cell phones is also problematic. During an emergency or evacuation, it is often necessary to limit use of cell phones to carry out certain functions or disseminate emergency instructions. An employer may need to place some limitations on the use of cell phones to ensure duties are carried out and that emergency communications can be promptly disseminated.”

Regarding states of emergency, opponents argue that the issue is state of emergencies often remain in effect for significant periods, long past the time of a pressing emergency. They offer the March 4, 2020, COVID-19 State of Emergency as an example arguing that this state of emergency remains in place - despite considerable improvement in California’s COVID-19 status. They write that, “under SB 1044, every single employee in California would have the right to walk out of work or stay home indefinitely simply because the March 4th state of emergency is still in place. All they have to do is say they feel unsafe. *Nothing else is needed.* It is irrelevant whether the employer is following all rules set forth by Cal/OSHA or the Labor Code to address the cause of the state of emergency, whether personnel are needed to provide emergency services to the public, or even if the employer has even gone above and beyond those requirements.”

Lastly, they write, “Because SB 1044 adds a section to Division 2 of the Labor Code, it bypasses the DOSH notice and investigation process – despite SB 1044 being focused on workplace safety. This undermines the Legislature’s intent that DOSH enforce health and safety standards and that a citation promptly be issued rather than pursuing a lengthy court case. Instead, SB 1044 allows private attorneys to profit by bringing a court case without investigation of the claims and *delays* correction of the safety issue.

6. Prior Legislation:

AB 2658 (Burke, Chapter 288, Statutes of 2020) extended existing employee rights and anti-retaliation protections regarding the reporting of unsafe working conditions, or refusing to work in hazardous conditions, to domestic work employees. This bill also made it a crime for a person, after receiving notice to evacuate or leave, to willfully and knowingly direct an employee to remain in, or enter, an area closed due to a menace to the public health or safety, including domestic work employees.

SUPPORT

Asian Pacific Environmental Network (APEN)
California Iatse Council
California Labor Federation, Afl-cio
California Rural Legal Assistance Foundation (crla Foundation)
California Teamsters Public Affairs Council
Consumer Attorneys of California
Los Angeles County Federation of Labor
United Food and Commercial Workers, Western States Council
Individual Support: 1 Letter

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
Anaheim Chamber of Commerce
Association of California Healthcare Districts
Auburn Chamber of Commerce
Brea Chamber of Commerce
California Assisted Living Association
California Association for Health Services At Home
California Association of Health Facilities
California Attractions and Parks Association
California Chamber of Commerce
California Farm Bureau Federation
California Farm Labor Contractors Association
California Grocers Association
California Hispanic Chamber of Commerce
California Hospital Association
California Lodging Industry Association
California Manufacturers and Technology Association
California Restaurant Association

California Special Districts Association
California State Association of Counties
Cawa - Representing the Automotive Parts Industry
Coalition for Small and Disabled Veteran Businesses
Construction Employers' Association
Corona Chamber of Commerce
El Dorado County Chamber of Commerce
Elk Grove Chamber of Commerce
Flasher Barricade Association
Fountain Valley Chamber of Commerce
Fremont Chamber of Commerce
Fresno Chamber of Commerce
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater Stockton Chamber of Commerce
LA Canada Flintridge Chamber of Commerce
League of California Cities
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Gatos Chamber of Commerce
Modesto Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Federation of Independent Business
Newport Beach Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Orange County Hispanic Chamber of Commerce
Palos Verdes Peninsula Chamber of Commerce
Roseville Area Chamber of Commerce
San Jose Chamber of Commerce
San Marcos Chamber of Commerce
San Ramon Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Simi Valley Chamber of Commerce
Tulare Chamber of Commerce
Valley Industry and Commerce Association
West Ventura County Business Alliance
Western Electrical Contractors Association
Western Growers Association
Wine Institute

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