
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 2321	Hearing Date:	June 24, 2026
Author:	Ortega		
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Urgency:	No	Fiscal:	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Bureau of Investigations

KEY ISSUES

This bill 1) strengthens workplace safety protections by modifying case review procedures for the Division of Occupational Safety and Health (Cal/OSHA) and its Bureau of Investigations (BOI) to follow when investigating workplace injuries and 2) creates, upon Legislative appropriation, a five-year pilot program transferring investigative responsibilities from the BOI to the district attorneys in Alameda and Santa Clara counties for workplace health and safety violations that result in death in those counties.

ANALYSIS

Existing law:

- 1) Under the California Occupational Safety and Health Act, assures safe and healthful working conditions for all California workers by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health. (Labor Code §6300)
- 2) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6300 et seq.)
- 3) Requires every employer to file a complete report with Cal/OSHA of every occupational injury or occupational illness to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid. A report must be filed within five days after the employer obtains knowledge of the injury or illness. In addition to this report, in every case involving a serious injury or illness, or death, the employer is required to make an immediate report to Cal/OSHA by telephone or email. (Labor Code §6409.1)
- 4) Establishes the Bureau of Investigations (BOI) within Cal/OSHA and makes it responsible for directing accident investigations involving violations of laws, standards, and orders in which there is a serious injury to five or more employees, death, or request for prosecution by a division representative; reviewing inspection reports involving a serious violation if there have been serious injuries to one to four employees or a serious exposure; and may investigate cases where the BOI may find criminal violations have occurred; and preparing cases for the purpose of prosecution, as specified. (Labor Code §6315)

- 5) Requires Cal/OSHA to provide the BOI with all initial accident reports, the Cal/OSHA's inspection report for any inspection involving a serious violation if there is a fatality, as specified, and any other documents in Cal/OSHA's possession that are helpful to the investigation. (Labor Code § 6315)
- 6) Requires the BOI to refer the results of investigations it is required to conduct, in which there is a serious injury or death, to the appropriate prosecuting authority having jurisdiction for appropriate action unless it determines that there is legally insufficient evidence of a violation of the law. (Labor Code §6315(g))
- 7) Authorizes DIR, upon the request of a county district attorney, to develop a protocol for the referral of cases that may involve criminal conduct to the appropriate prosecuting authority in lieu of or in cooperation with an investigation by the BOI, as specified. (Labor Code §6315(i))
- 8) Requires the BOI to submit an annual report to Cal/OSHA, for submission to the director of DIR, on its activities including, among other things, a summary of investigations completed, as specified. (Labor Code §6315.3)
- 9) Establishes the Occupational Safety and Health Fund as a special account within the State Treasury and authorizes moneys in the account to be expended by the DIR, in support of Cal/OSHA, the Occupational Safety and Health Standards Board, and the Occupational Safety and Health Appeals Board, and the activities these entities perform. (Labor Code §62.5(d))

This bill:*BOI Directives:*

- 1) Requires the BOI to immediately, rather than in a timely manner after Cal/OSHA sends inspection reports, review inspection reports involving a serious violation and refer the results of an investigation to the appropriate prosecuting authority having jurisdiction for appropriate action, unless the BOI determines that there is legally insufficient evidence of a violation of the law.
 - a) Requires the BOI, if it determines there is legally insufficient evidence of a violation of the law, to immediately notify the appropriate prosecuting authority without first being requested to do so by the prosecuting authority.
- 2) Requires the BOI to immediately notify the appropriate prosecuting authority upon learning of an incident in which there is a serious injury to five or more employees, death, or request for prosecution by a division representative, and requires the BOI to cooperate with the prosecuting authority and Cal/OSHA on the investigation.
- 3) Requires the BOI to establish written policies and procedures for the process of reviewing cases and deciding whether to investigate or refer them for prosecution, including, but not limited to, a requirement that the BOI documents a rationale for why it has decided not to investigate or not to refer each case.
- 4) Requires Cal/OSHA to establish a routine or automated process for transmitting information to the BOI about incident cases with nonfatal injuries so that the BOI can review them.

- 5) Requires the BOI's annual report to Cal/OSHA to additionally be submitted to the Legislature and include the total number of BOI vacancies, each job classification in the prior fiscal year, and any additional positions needed to carry out its duties.

Pilot Program in Alameda and Santa Clara Counties:

- 6) Creates a five-year pilot program in Alameda and Santa Clara counties that, upon appropriation for the pilot by the Legislature, *and for any incident involving a workplace safety violations that **result in a death***, requires the Alameda County or Santa Clara County district attorney (DA), based on where the incident occurs, to investigate and prepare cases for the purpose of prosecution (rather than Cal/OSHA and the BOI investigating).
- 7) Requires Cal/OSHA to immediately notify the Alameda County DA or Santa Clara County DA of the incident and immediately provide them with all of the following:
 - a) All initial incident reports.
 - b) Any report for an inspection involving a serious violation where there is a death.
 - c) Any other Cal/OSHA report necessary for the Alameda County or the Santa Clara County DA's investigation.
 - d) Any other document in the possession of Cal/OSHA that is requested by the Alameda County or Santa Clara County DA for its review or investigation or that the division determines will be helpful to the DA in its investigation of the case.
- 8) Requires the Alameda County DA or the Santa Clara County DA, based on the county in which the incident occurs, to report to the incident scene within a reasonable time. Authorizes the BOI to report to the incident scene but, in any case fitting the criteria of the pilot, the Alameda County DA or the Santa Clara County DA shall be responsible for directing the incident investigation.
- 9) Authorizes moneys in the Occupational Safety and Health Fund or the Labor and Workforce Development Fund to be expended by the Alameda County DA and the Santa Clara County DA, upon appropriation by the Legislature, for the support of the activities these entities perform related to investigating and prosecuting such violations.
- 10) Provides that the pilot program provisions shall become operative upon appropriation by the Legislature and remain in effect only until January 1, 2032, and, as of that date, are inoperative.
- 11) Finds and declares that a special statute is necessary because of the unique circumstances facing the counties of Alameda and Santa Clara.

COMMENTS

1. Background:

Cal/OSHA Audit:

Cal/OSHA is tasked with protecting and improving the health and safety of California workers by 1) setting and enforcing labor standards; 2) providing outreach, education, and assistance to employers and employees; and 3) issuing permits, licenses, certifications, registrations and approvals. As part of their enforcement responsibilities, Cal/OSHA

investigates complaints of workplace hazards filed by employees, employee representatives, and others, as well as investigating reports of serious injury or illness violations or deaths. After receiving a complaint or learning of a worker fatality, injury or illness, Cal/OSHA personnel must decide whether to conduct an on-site inspection of a workplace and potentially issue citations and fines according to the results of the inspection.

In July 2025, the California State Auditor released an audit report on Cal/OSHA finding, among other things, that process deficiencies and staffing shortages have limit its ability to protect workers.¹ Among the audits key findings were that:

- Cal/OSHA did not inspect some complaints and accidents, despite evidence that an inspection may have better protected workers.
 - During fiscal year 2023-24, Cal/OSHA classified 13 % of the complaints it received as invalid and investigated 82% of the valid complaints it received with a letter instead of an on-site inspection.
- When it does conduct on-site inspections, Cal/OSHA’s process has critical weaknesses. The audit found:
 - Cal/OSHA took weeks or even months to initiate some complaint and accident inspections, which can hinder its ability to gather relevant evidence and identify violations that have put workers at risk.
 - Cal/OSHA enforcement personnel did not consistently document effective reviews of employers’ injury and illness prevention programs (IIPP)—which provide key safeguards against dangerous hazards—nor did they always include detailed and legible notes from interviews they conducted with workers.
 - Cal/OSHA did not always document rationales or evidence supporting its reduction of employer’s fines.
 - In fiscal years 2019–20 through 2023–24, of the 23,195 inspections that included initial fines, 8,362, or 36 percent, had subsequent fine reductions.
- Cal/OSHA could better ensure that employers maintain safe workplaces.
 - When Cal/OSHA identified hazards and cited employers, it did not always document whether those employers had abated the hazards.
 - Key Cal/OSHA policy documents have not been revised in years and contain inconsistent directives, and the division relies on paper-based case files which has likely contributed to poor documentation and data entry errors.
- Cal/OSHA must address shortcomings in its staffing levels and oversight.
 - Staffing shortages and process deficiencies—such as out-of-date policies— are root causes for many of the concerns identified by the audit. Cal/OSHA had a 32 percent vacancy rate in fiscal year 2023–24, and its vacancy rate was higher for certain district offices and inspector positions.

BOI Audit Findings:

As noted under existing law, the Bureau of Investigations is a unit within Cal/OSHA responsible for preparing accident cases for potential criminal prosecution where such conduct is found, and its work is separate from the inspections that the Cal/OSHA

¹ *The Division of Occupational Safety and Health: Process Deficiencies and Staffing Shortages Limit Its Ability to Protect Workers*. California State Auditor. <https://www.auditor.ca.gov/wp-content/uploads/2025/07/2024-115-Report.pdf>

enforcement branch conducts. The BOI is responsible for directing investigations for every case in which there is a fatality or a serious injury to five or more employees, or a request for prosecution from a Cal/OSHA representative. Public prosecutors ultimately decide whether to take cases to court and handle the prosecution. The BOI must also review Cal/OSHA inspection reports for cases in which there is a serious injury to one to four employees or a serious exposure and is authorized to investigate and refer such cases in which it finds there may have been criminal conduct.

With regards to the BOI, the Cal/OSHA audit found that it lacked the policies and staffing necessary to ensure that it consistently refers cases for potential criminal prosecution. According to the audit, the BOI's most recent publicly available report showed that it referred 31 cases for prosecution during the four-year period from 2019 to 2022, and it closed 1,800 cases without referral during the same period. The auditor further reported that, due to understaffing, the BOI is essentially only investigating fatalities, leaving other cases of serious workplace injuries and safety issues unaddressed.

Furthermore, the audit found that the BOI lacks written policies and procedures for reviewing cases and deciding whether to investigate or refer them for prosecution. The auditor provided numerous examples of cases it reviewed in which BOI investigators did not adequately document their rationale for referring, or not referring, a case to prosecutors. Lastly, the BOI does not routinely receive necessary information from Cal/OSHA inspectors about cases that the bureau is required to review for possible criminal conduct.

As noted above, understaffing has been a key limitation on Cal/OSHA and the BOI's work. State law, for example, requires the BOI to be staffed by as many attorneys and investigators as are necessary to carry out the purposes of the statutes (Labor Code Section 6315). However, the bureau had a total of three field investigators for the entire State from 2020 through 2022, despite processing hundreds of cases each year.

State Auditor Recommendations Specific to the BOI:

The State Auditor included various recommendations for improving Cal/OSHA, but specific to the BOI, the auditor recommended the following to ensure that the bureau refers cases for potential criminal prosecution when warranted:

- Establish written policies or procedures for how the bureau reviews cases, decides whether to investigate them, and decides whether to refer them for prosecution. This should include requiring the bureau to document a rationale for why it has decided not to investigate or not to refer each case.
- Establish a routine or automated process for the bureau to receive information about accident cases with non-fatal injuries so that it can review them in accordance with requirements in state law.

This bill:

This bill implements some of the recommendations identified by the State Auditor with regards to the policies and procedures that Cal/OSHA and the BOI must follow when deciding to investigate or refer cases for prosecution. The bill additionally requires the BOI to immediately investigate violations as opposed to waiting until Cal/OSHA finishes its initial inspection, thereby enabling the BOI to simultaneously gather evidence and relevant information necessary for potential prosecution. To address the issues of understaffing

leading to a lack of investigations and enforcement activities by Cal/OSHA and the BOI, the bill proposes, through a five-year pilot program, that the Alameda and Santa Clara County DA's investigate workplace health and safety violations that result in a death in those counties instead of Cal/OSHA and the BOI.

In terms of public prosecutor enforcement of labor law violations, what this bill proposes is consistent with recent Legislative actions that have leaned on public prosecutors to augment the work of the Department of Industrial Relations. In 2023, AB 594 (Maienschein, Chapter 659, Statutes of 2023) strengthened labor law enforcement by authorizing, until January 1, 2029, public prosecutors (such as the Attorney General, district attorneys, or city attorneys) to independently prosecute civil or criminal violations of the Labor Code.

Also in 2023, through AB 102 (Ting, Chapter 38, Statutes of 2023), the State allocated \$18 million to DIR for the creation of the Workers' Rights Enforcement Grant Program administered by the Labor Commissioner's Office. These grant funds enable local public prosecutors to defray costs expended on state labor law enforcement and serve the public purpose of assisting workers in combatting wage theft, prevent unfair competition, and protect state revenue. Activities may include evidence gathering, investigations, coordination with community organizations and law enforcement entities, criminal and/or civil prosecutions, resolutions, appeals, and settlements. As noted by the San Mateo County DA, a recipient of one of the grants, with the help of these grants they have "uncovered hundreds of thousands of dollars in stolen wages, filed criminal charges, launched several investigations, and built a strong network of community partners who ensure every victim's story reaches our team."²

2. Suggested Amendment:

The provisions of the bill that would authorize the Alameda County and Santa Clara County DA's to investigate workplace health and safety violations that result in a death in those counties specify that they are operative upon appropriation by the Legislature and are only in effect until January 1, 2032. If the pilot program is successful, at the end of the five years the Legislature could either extend it, expand it or let it sunset. *For the Legislature to evaluate the pilot program's success at the end of the five years, the author may wish to add a reporting requirement with information that could be helpful in measuring its success.*

3. Need for this bill?

According to the author:

"California continues to have a higher-than-average rate of workplace injuries and Cal/OSHA is ill-equipped to keep up the pace. AB 2321 will make important reforms to the BOI's processes, as well as deputize the district attorneys in Alameda and Santa Clara counties to alleviate some of the BOI's workload to ensure criminally-liable employers are held accountable and future criminal conduct is deterred.

This measure is intended to help the BOI by exploring a pilot program to alleviate some of its workload. Having public prosecutors in Alameda and Santa Clara counties investigate cases involving a fatality will ensure that the most egregious workplace tragedies in these counties

² <https://www.dir.ca.gov/DIRNews/2025/2025-73.html>

get the attention they deserve and that employers are held accountable. It also frees up BOI staff to focus on the thousands of cases that are currently going uninvestigated – helping to catch safety issues earlier and prevent more serious workplace injuries. AB 2321 would also implement some of the auditor’s recommendations related to internal process improvements within Cal/OSHA and its BOI.”

4. Proponent Arguments:

The California Federation of Labor Unions is in support and writes:

“This [measure] ensures that the most egregious workplace tragedies get the attention they deserve and that employers are held accountable. It also frees up BOI staff to focus on the thousands of cases that are currently going uninvestigated – helping to catch safety issues earlier and prevent more serious workplace injuries.

AB 2321 also makes important process reforms within the BOI. The Bureau currently lacks written policies and procedures for reviewing cases and deciding whether to investigate or refer them for prosecution. Indeed, in many of the cases it reviewed, the auditor found that BOI investigators did not adequately document their rationale for referring a case or not. Furthermore, the BOI does not routinely receive information from Cal/OSHA inspectors about cases it is required to review. AB 2321 will require the BOI and Cal/OSHA to implement processes to ensure that investigators are receiving such cases, as well as to have clear instructions for performing their jobs.

California’s 19 million workers deserve safe and healthy workplaces, and for their government to enforce the law when employers are uncompliant. AB 2321 is a commonsense measure that will support and enhance the work of Cal/OSHA and its BOI.”

5. Opponent Arguments:

The California Chamber of Commerce is opposed to the measure arguing that it will waste state resources by compelling prosecutors (who are not workplace safety experts) to handle workplace safety cases where no crime has been committed. Among other things, they write:

“Under present law, if a workplace injury occurs and it appears the conduct rises to the level of criminality, Cal/OSHA can already refer cases of workplace violations to prosecutors, and such prosecutors can already prosecute an employer under present law. In fact, Cal/OSHA has worked in recent years to staff up all of its enforcement staff, including adding staff to the unit tasked with referring criminal cases to prosecutors (the Bureau of Investigations unit)...

We do not believe that the mandatory involvement of prosecutors will improve accident analysis and believe it will increase costs and workload for all parties involved.

First and foremost: prosecutors are not workplace safety experts, so forcing them into the driver’s seat for investigations of all total disability or fatality cases will not improve the quality of that investigation or case preparation. These cases are best handled by the Division’s inspectors – who are more knowledgeable about workplace safety law – and employers’ representatives – who are also knowledgeable about workplace safety.”

6. Prior Legislation:

AB 594 (Maienschein, Chapter 659, Statutes of 2023) authorized public prosecutors to enforce labor code violations within their jurisdiction, including minimum wage, overtime, and meal/rest break violations.

AB 102 (Ting, Chapter 38, Statutes of 2023) appropriated \$18 million to create the Workers' Rights Enforcement Grant Program, administered by the Labor Commissioner, to provide grant funding to local public prosecutors to enforce existing laws related to wage theft.

AB 2738 (L. Rivas, Chapter 969, Statutes of 2024), among other things, authorized public prosecutor enforcement for violations of existing workplace safety laws for entertainment events venues.

SB 988 (Wiener, Chapter 870, Statutes of 2024) established the Freelance Worker Protection Act to impose minimum requirements relating to contracts between a hiring party and a freelance worker. Among other things, the measure authorized an aggrieved freelance worker or a public prosecutor to bring a civil action to enforce these provisions.

SUPPORT

Alameda Labor Council
California Federation of Labor Unions, AFL-CIO
California State Association of Electrical Workers
California State Pipe Trades Council
National Union of Healthcare Workers
Teamsters California
United Farm Workers
United Food and Commercial Workers, Western States Council
United Steelworkers District 12
Western States Council Sheet Metal, Air, Rail and Transportation

OPPOSITION

California Chamber of Commerce

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