

AMENDED IN SENATE JUNE 12, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1988

Introduced by Assembly Member Swanson

February 14, 2008

An act to amend Sections 6325, 6600, 6602, and 6603 of, and to add Section 6595 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1988, as amended, Swanson. Employee safety.

Existing federal law, the Occupational Safety and Health Act of 1970, establishes requirements for the furtherance of occupational safety and health and authorizes states with individually approved plans on the subject to operate their own occupation health and safety programs. Existing state law, the California Occupational Safety and Health Act of 1973, was enacted to ensure 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 health and safety. The Division of Occupational Safety and Health of the state Department of Industrial Relations is charged with enforcing occupational health and safety laws, orders, and standards, including the investigation of alleged violations of those provisions.

Existing law requires the division, when it decides that a place of employment, machine, device, apparatus, or equipment constitutes an

imminent hazard to employees, to prohibit entry to the workplace or use of the machine, device, apparatus, or equipment.

This bill would clarify that a place of employment may be deemed dangerous because of a particular machine, device, apparatus, or equipment, as well as a condition or practice in a place of employment, constituting an imminent hazard to employees.

Existing law establishes the Occupational Safety and Health Appeals Board within the department and requires the board to conduct hearings about specified orders and actions of the division related to violations of occupational health and safety laws. An employer is required to notify the board of its intent, if any, to appeal a citation, order, or notice issued by the division within 15 working days of receipt of the citation, order, or notice. However, existing law provides that an employee or representative of an employee alleging to the board that the time period fixed for the abatement of a violation is unreasonable is required to file that notice with the division or appeals board within 15 working days of the issuance of the citation or order.

This bill would state the purpose of the appellate process and would require the appeals board to resolve appeals in a manner designed to maximize the furtherance of safe and healthy working conditions, or public safety consistent with public safety mandates enforceable by the division, consistent with due process and with specified principles of reasonableness. ~~An employer with 25 or more employees would be required to pay to the appeals board, for an appeal of a notice of civil penalty, a \$250 filing fee, recoverable by the employer if the citation is dismissed.~~ The bill also would provide that an abatement measure required by the division through an instrument that an employer intends to contest is not stayed pending appeal unless specified procedures are followed and the board decides to grant the stay. The authority of an employee or representative of an employee to file an allegation of unreasonableness of time for abatement would be limited to filing with the appeals board, rather than the division or the appeals board.

Existing law requires the board to adopt practices and procedures that conform with specified provisions related to the conduct of hearings.

This bill would require that the practices and procedures also provide for the scheduling of hearings in a manner designed to minimize inconvenience to the division and all parties and witnesses who are required to attend hearings and establish a settlement program designed to bring the parties to agreement at the earliest possible stage of the appeal.

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

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

1 SECTION 1. Section 6325 of the Labor Code is amended to
2 read:

3 6325. When, in the opinion of the division, a place of
4 employment is dangerous to employees because of a condition or
5 practice, or because a machine, device, apparatus, or equipment
6 or any part thereof is in a dangerous condition, is not properly
7 guarded, or is dangerously placed so that the condition or practice
8 of the workplace or the machine, device, apparatus, or equipment
9 constitutes an imminent hazard to employees, entry therein, or the
10 use thereof, as the case may be, shall be prohibited by the division,
11 and a conspicuous notice to that effect shall be attached thereto.
12 The prohibition of use shall be limited to the immediate area in
13 which the imminent hazard exists, and the division shall not
14 prohibit any entry in or use of a place of employment, machine,
15 device, apparatus, or equipment, or any part thereof, which is
16 outside the area of imminent hazard. The notice shall not be
17 removed except by an authorized representative of the division,
18 nor until the place of employment, machine, device, apparatus, or
19 equipment is made safe and the required safeguards or safety
20 appliances or devices are provided. This section shall not prevent
21 the entry or use with the division's knowledge and permission for
22 the sole purpose of eliminating the dangerous conditions.

23 SEC. 2. Section 6595 is added to the Labor Code, immediately
24 after the heading for Chapter 7 of Part 1 of Division 5, to read:

25 6595. The purpose of the appellate process prescribed by this
26 chapter is to adjudicate, in an expeditious manner, whether the
27 division has acted unreasonably regarding any actions taken by it
28 resulting in an appeal pursuant to this chapter, including the actions
29 taken by the division that are subject to appeal pursuant to Section
30 6600. The appeals board shall resolve appeals in a manner designed
31 to maximize the furtherance of safe and healthy working conditions
32 for the working men and women of California, or the furtherance
33 of public safety consistent with public safety mandates enforceable
34 by the division, consistent with due process and with the principles

1 of reasonableness described in Sections 6400, 6401, 6403, and
2 6406.

3 SEC. 3. Section 6600 of the Labor Code is amended to read:

4 6600. An employer served with a citation or notice pursuant
5 to Section 6317, or a notice of proposed penalty under this part,
6 or any other person obligated to the employer as specified in
7 subdivision (b) of Section 6319, may appeal to the appeals board
8 within 15 working days from the receipt of the citation or notice
9 with respect to violations alleged by the division, abatement
10 periods, amount of proposed penalties, and the reasonableness of
11 the changes required by the division to abate the condition. ~~An
12 employer with 25 or more employees shall pay to the appeals
13 board, for an appeal of a notice of civil penalty, a filing fee of two
14 hundred fifty dollars (\$250), recoverable by the employer if the
15 citation is dismissed.~~

16 SEC. 4. Section 6602 of the Labor Code is amended to read:

17 6602. (a) If an employer notifies the appeals board that he or
18 she intends to contest a citation issued under Section 6317, or
19 notice of proposed penalty issued under Section 6319, or order
20 issued under Section 6308, or if, within 15 working days of the
21 issuance of a citation or order any employee or representative of
22 an employee files a notice with the appeals board alleging that the
23 period of time fixed in the citation or order for the abatement of
24 the violation is unreasonable, the appeals board shall afford an
25 opportunity for a hearing. The appeals board shall thereafter issue
26 a decision, based on findings of fact, affirming, modifying, or
27 vacating the division's citation, order, or proposed penalty, or
28 directing other appropriate relief.

29 (b) (1) An abatement measure required by the division through
30 an appealable enforcement action described in subdivision (a) shall
31 not be stayed pending appeal unless the employer indicates, by
32 verified petition in its notice of appeal to the appeals board, that
33 it seeks a stay of abatement and the reasons why abatement is not
34 necessary to protect the health or safety of employees.

35 (2) After the board receives a notice pursuant to paragraph (1),
36 it shall do both of the following:

37 (A) Schedule a hearing within 30 days of receipt of the notice
38 to determine whether abatement shall be stayed pending full
39 resolution of the appeal.

1 (B) Issue a written order within 10 days of completion of the
2 hearing granting or denying the requested stay of abatement with
3 an explanation of the reasons for its decision.

4 (3) The board may grant a stay of abatement pending appeal if
5 it finds either of the following:

6 (A) No employee will be exposed to the unsafe or unhealthy
7 condition.

8 (B) The condition is unlikely to cause death, serious injury or
9 illness, or serious exposure to an employee.

10 (4) Notwithstanding subparagraph (B) of paragraph (2), the
11 board may take an additional 30 days to complete the hearing
12 process if it determines that the complexity of the matter requires
13 the additional 30 days for an adequate resolution and that employee
14 safety will not be jeopardized by the delay in issuing the written
15 order, and issues an interim order to that effect.

16 (5) The board may order the employer to implement interim
17 safety or health measures as part of a determination that the matter
18 will be extended for the additional 30 days pursuant to paragraph
19 (4) or that a stay of abatement shall be granted.

20 SEC. 5. Section 6603 of the Labor Code is amended to read:

21 6603. (a) The rules of practice and procedure adopted by the
22 appeals board shall do all of the following:

23 (1) Be consistent with Article 8 (commencing with Section
24 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and
25 Sections 11507, 11507.6, 11507.7, 11513, 11514, 11515, and
26 11516 of, the Government Code.

27 (2) Provide affected employees or representatives of affected
28 employees an opportunity to participate as parties to a hearing held
29 pursuant to Section 6602.

30 (3) Provide for the scheduling of hearings in a manner designed
31 to minimize inconvenience to the division and all parties and
32 witnesses who are required to attend the hearings.

33 (4) Establish a settlement program designed to bring the parties
34 to an agreement at the earliest possible stage of the appeal.

35 (b) The superior courts shall have jurisdiction over contempt
36 proceedings, as provided in Article 12 (commencing with Section
37 11455.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the
38 Government Code.

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