



AMERICAN INDUSTRIAL HYGIENE ASSOCIATION
GOVERNMENT AFFAIRS DEPARTMENT
STATE UPDATE

August 30, 2010

CALIFORNIA

Here is the latest legislative/regulatory report for your State. AIHA government affairs will send the reports every week, detailing any legislative and/or regulatory pertinent to the profession in your state. The reports will also include the text of many bills (if available) and update activity on bills already reported. However, reports will only be sent if there has been new activity on the legislation and/or regulations already reported, or new legislation and/or regulations are found. Reports are sent to local section officers and may be forwarded to others if you wish. Questions contact Aaron Trippler at atrippler@aiha.org.

New Legislation

None to Report

Legislation Reported Earlier

CA A 2774 **AUTHOR:** Swanson (D)
TITLE: Occupational Safety and Health
INTRODUCED: 03/01/2010
LAST AMEND: 08/19/2010
DISPOSITION: To Governor
LOCATION: To enrollment
SUMMARY:
Amends existing law that requires an employer to provide employees with a safe workplace and authorizes the Division of Occupational Safety and Health to enforce health and safety standards in places of employment and to investigate and issue a citation when a employer causes an employee to suffer or potentially suffer serious serious injury or illness or serious physical harm. Establishes a rebuttable presumption as to when an employer commits a serious violation. Establishes new investigation standards.
STATUS:
08/26/2010 In ASSEMBLY. ASSEMBLY concurred in SENATE amendments. To enrollment.
Date: 10
Issue: MiscH&S

2009 CA A 2774: Bill Analysis - Assembly Floor - 08/25/2010

BILL ANALYSIS

CONCURRENCE IN SENATE AMENDMENTS

AB 2774 (Swanson)

As Amended August 19, 2010

Majority vote

ASSEMBLY: 44-29 (June 2, 2010) SENATE: 23-13 (August 24, 2010)
Original Committee Reference: L. & E.

SUMMARY: Revises the standards and process for the issuance of citations for "serious" violations of state occupational safety and health laws.

The Senate amendments:

1 Provide that there shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the Division of Occupational Safety and Health (DOSH) demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation is not sufficient by itself to establish that the violation is serious.

2) Require DOSH, before issuing a citation alleging that a violation is serious, to make a reasonable attempt to determine and consider specified information from the employer.

3) Specify that DOSH shall satisfy its requirement to determine and consider the specified information if, not less than 15 days prior to issuing a citation for a serious violation, it delivers to the employer a standardized form containing specified information.

4) Provide that an employer may rebut the presumption and prove that a violation is not serious by demonstrating that the employer did not and could not, with the exercise of reasonable diligence, have known of the presence of the violation. The employer may accomplish this by demonstrating both of the following:

a) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred; and,

b) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

5) Define "serious physical harm" to mean any injury or illness, specific or cumulative, occurring in the place of employment or in connection with any employment, that results in any of the following:

a) Inpatient hospitalization for purposes other than medical observation;

b) The loss of any member of the body;

c) Any serious degree of permanent impairment; and,

d) Impairment sufficient to cause a part of the body or the function of an organ to become

permanently and significantly reduced in efficiency on or off the job, including but not limited to, depending on the severity, second-degree or worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

6)Specify that serious physical harm may be caused by a single, repetitive practice, means, method, operation or process.

7)Provide that a DOSH safety engineer or industrial hygienist who can demonstrate, at the time of the hearing, that his or her DOSH-mandated training is current shall be deemed competent to offer testimony to establish each element of a serious violation, and may offer evidence on the custom and practice of injury and illness prevention in the workplace that is relevant to the issue of whether the violation is a serious violation.

8)Make other related changes as specified.

EXISTING LAWprovides that a "serious" violation of occupational safety and health law shall be deemed to exist in a place of employment if there is a "substantial probability" that death or "serious physical harm" could result from a violation.

AS PASSED BY THE ASSEMBLY, this bill:

1 Defined "serious physical harm" as any injury or illness, specific or cumulative, occurring in the place of employment or in connection with any employment, which results in any of the following:

a) Inpatient hospitalization for a period in excess of 24 hours for other than medical observation;

b) The loss of any member of the body;

c) Any serious degree of permanent disfigurement;

d) Impairment of the body in which part of the body is made functionally useless or is substantially reduced in efficiency on or off the job for more than 72 hours; or,

e) A serious illness or impairment of the function of an organ that substantially reduces efficiency on or off the job. An illness or impairment of this type would usually require treatment beyond first aid by a medical doctor or other licensed health care professional.

2)Specified that "serious physical harm" may be caused by a single, repetitive practice, means, method, operation or process.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill will result in between \$300,000 and \$600,000 in annual costs (special funds), with a likely overall reduction in appeals process costs in future years.

COMMENTS: This bill attempts to address an issue of significant concern that has been raised by, among others, worker advocates, the Division of Occupational Safety and Health (DOSH), and the federal Occupational Safety and Health Administration (OSHA): how "serious" violations are defined and cited under California law.

Supporters note that California's rate of serious citations is currently the lowest in the country. Moreover, California is likely out of compliance with the Federal OSHA program. In January, 2010, Federal OSHA informed both DOSH and the Appeals Board that it was conducting a Special Study of the state program. While Federal OSHA has not yet issued its findings, the

letters indicated the state plan was likely not as effective as the Federal OSHA program with respect to the definition of "serious physical harm."

As introduced, this bill attempted to establish a statutory definition for the term "serious physical harm." However, the bill was opposed by a large coalition of employers as being overly expansive.

Over the past several months, the interested stakeholders (including the Department of Industrial Relations) have engaged in lengthy negotiations over the issues addressed by this bill. The recent amendments reflect an agreement that has been reached by the parties for a comprehensive solution addressing many issues related to the issuance of citations for "serious" violations, beyond simply the issue of "serious physical harm."

This bill revamps the process by which "serious" violations are cited by DOSH and how those citations are addressed during the appeals process. Among other things, the bill sets forth a process whereby DOSH can establish a presumption of a "serious" violation, and the employer has an opportunity to rebut that presumption.

This bill also sets forth a process for dialogue and communication between DOSH and the employer during the investigation process before a citation is issued. Specifically, the bill requires DOSH, before issuing a citation alleging that a violation is serious, to make a reasonable attempt to determine and consider specified information from the employer. The bill specifies that DOSH shall satisfy this requirement if, not less than 15 days prior to issuing a citation for a serious violation, it delivers to the employer a standardized form containing specified information. While failure by DOSH to provide the form shall not constitute grounds for dismissing the citation, the trier of fact may draw a negative inference if DOSH fails to provide the form.

Analysis Prepared by: Ben Ebbink / L. & E. / (916) 319-2091

Regulatory Activity

None to Report