

AMENDED IN SENATE JUNE 15, 2017

AMENDED IN ASSEMBLY MAY 26, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 978

Introduced by Assembly Member Limón

February 16, 2017

An act to amend Sections 6319.3 and 6401.7 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 978, as amended, Limón. Employment safety: injury and illness prevention program.

Existing law, the California Occupational Safety and Health Act of 1973, establishes certain safety and other responsibilities of employers and employees. Violations of the act under certain circumstances are a crime. Under existing law, the Division of Occupational Safety and Health enforces and administers the act's provisions. The act requires the division to issue a citation to an employer for specified violations of the act's provisions, as provided.

Existing law requires every employer to establish, implement, and maintain an effective injury prevention program. Existing law requires the program to be written, except as specified, and to include certain elements. Existing law requires the employer to identify a person responsible for implementing the program and to correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

This bill would require an employer who receives a written request for a paper or electronic copy of the written injury prevention program

from a current employee, or his or her authorized representative, to comply with the request as soon as practicable, but no later than 10 business days from the date the employer receives the request. The bill would require the employer to provide the copy of the written injury prevention program free of charge. The bill would authorize the employer to take reasonable steps to verify the identity of a current employee or his or her authorized representative and to designate the person to whom a request is to be made. The bill would authorize the assertion of impossibility of performance, as specified, as an affirmative defense by an employer in any complaint alleging a violation of these *new* provisions.

Because a violation of these provisions would be a crime under certain circumstances, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 6319.3 of the Labor Code is amended to
2 read:

3 6319.3. (a) Except as provided in subdivision (b) of this section
4 and subdivision (k) of Section 6401.7, no civil penalty shall be
5 assessed against any new employer in the state for a violation of
6 any standard developed pursuant to subdivision (a) of Section
7 6401.7 for a period of one year after the date the new employer
8 establishes a business in the state.

9 (b) Subdivision (a) shall only apply to an employer who has
10 made a good faith effort to comply with any standard developed
11 pursuant to subdivision (a) of Section 6401.7, but shall not apply
12 if the employer is found to have committed a serious, willful, or
13 repeated violation of that standard, or fails to abate the violation
14 and is assessed a penalty pursuant to Section 6430.

15 SEC. 2. Section 6401.7 of the Labor Code is amended to read:

16 6401.7. (a) Every employer shall establish, implement, and
17 maintain an effective injury prevention program. The program

1 shall be written, except as provided in subdivision (f), and shall
2 include, but not be limited to, the following elements:

3 (1) Identification of the person or persons responsible for
4 implementing the program.

5 (2) The employer's system for identifying and evaluating
6 workplace hazards, including scheduled periodic inspections to
7 identify unsafe conditions and work practices.

8 (3) The employer's methods and procedures for correcting
9 unsafe or unhealthy conditions and work practices in a timely
10 manner.

11 (4) An occupational health and safety training program designed
12 to instruct employees in general safe and healthy work practices
13 and to provide specific instruction with respect to hazards specific
14 to each employee's job assignment.

15 (5) The employer's system for communicating with employees
16 on occupational health and safety matters, including provisions
17 designed to encourage employees to inform the employer of
18 hazards at the worksite without fear of reprisal.

19 (6) The employer's system for ensuring that employees comply
20 with safe and healthy work practices, which may include
21 disciplinary action.

22 (b) The employer shall correct unsafe and unhealthy conditions
23 and work practices in a timely manner based on the severity of the
24 hazard.

25 (c) The employer shall train all employees when the training
26 program is first established, all new employees, and all employees
27 given a new job assignment, and shall train employees whenever
28 new substances, processes, procedures, or equipment are introduced
29 to the workplace and represent a new hazard, and whenever the
30 employer receives notification of a new or previously unrecognized
31 hazard. An employer in the construction industry who is required
32 to be licensed under Chapter 9 (commencing with Section 7000)
33 of Division 3 of the Business and Professions Code may use
34 employee training provided to the employer's employees under a
35 construction industry occupational safety and health training
36 program approved by the division to comply with the requirements
37 of subdivision (a) relating to employee training, and shall only be
38 required to provide training on hazards specific to an employee's
39 job duties.

1 (d) The employer shall keep appropriate records of steps taken
2 to implement and maintain the program. An employer in the
3 construction industry who is required to be licensed under Chapter
4 9 (commencing with Section 7000) of Division 3 of the Business
5 and Professions Code may use records relating to employee training
6 provided to the employer in connection with an occupational safety
7 and health training program approved by the division to comply
8 with this subdivision, and shall only be required to keep records
9 of those steps taken to implement and maintain the program with
10 respect to hazards specific to an employee's job duties.

11 (e) (1) As used in this subdivision:

12 (A) The term "authorized representative" means an attorney,
13 health and safety professional, nonprofit organization advocate,
14 or immediate family member, who has been asked for assistance
15 by a current employee, and who has been authorized in writing by
16 a current employee to request and receive a copy of the written
17 injury prevention program described in subdivision (a).

18 (B) A recognized or certified collective bargaining agent shall
19 be treated automatically as an authorized representative of current
20 employees for the purpose of access to the complete written injury
21 prevention program described in subdivision (a).

22 (C) The term "copy" means either a complete paper or a
23 complete electronic copy.

24 (D) The term "complete" means an entire up-to-date copy,
25 including all required attachments, of the written injury prevention
26 program described in subdivision (a).

27 (2) An employer who receives a written request for a paper
28 copy, or an electronic copy, of the written injury prevention
29 program described in subdivision (a) from a current employee, or
30 his or her authorized representative, shall comply with the request
31 as soon as practicable, but no later than 10 business days from the
32 date a request pursuant to this subdivision is received by the
33 employer. The paper copy, or the electronic copy, of the written
34 injury prevention program referred to in subdivision (a), shall be
35 provided, free of charge, to the current employee or his or her
36 authorized representative.

37 (3) The employer may take reasonable steps to verify the identity
38 of a current employee or his or her authorized representative, and
39 may designate the person to whom a request under this ~~section~~
40 *subdivision* is to be made. Impossibility of ~~performance~~

1 *performance*, not caused by or resulting from a violation of law,
2 may be asserted as an affirmative defense by an employer in any
3 complaint alleging a violation of ~~this section~~ *subdivision*.

4 (4) Nothing in this subdivision shall be construed to limit access
5 to an employer's illness and injury prevention program by any
6 individual that is otherwise authorized under law or a collective
7 bargaining agreement.

8 (f) (1) The standards board shall adopt a standard setting forth
9 the employer's duties under this section, on or before January 1,
10 1991, consistent with the requirements specified in subdivisions
11 (a), (b), (c), (d), and (e). The standards board, in adopting the
12 standard, shall include substantial compliance criteria for use in
13 evaluating an employer's injury prevention program. The board
14 may adopt less stringent criteria for employers with few employees
15 and for employers in industries with insignificant occupational
16 safety or health hazards.

17 (2) Notwithstanding subdivision (a), for employers with fewer
18 than 20 employees who are in industries that are not on a
19 designated list of high hazard industries and who have a workers'
20 compensation experience modification rate of 1.1 or less, and for
21 any employers with fewer than 20 employees who are in industries
22 that are on a designated list of low hazard industries, the board
23 shall adopt a standard setting forth the employer's duties under
24 this section consistent with the requirements specified in
25 subdivisions (a), (b), and (c), except that the standard shall only
26 require written documentation to the extent of documenting the
27 person or persons responsible for implementing the program
28 pursuant to paragraph (1) of subdivision (a), keeping a record of
29 periodic inspections pursuant to paragraph (2) of subdivision (a),
30 and keeping a record of employee training pursuant to paragraph
31 (4) of subdivision (a). To any extent beyond the specifications of
32 this subdivision, the standard shall not require the employer to
33 keep the records specified in subdivision (d).

34 (3) (A) The division shall establish a list of high hazard
35 industries using the methods prescribed in Section 6314.1 for
36 identifying and targeting employers in high hazard industries. For
37 purposes of this subdivision, the "designated list of high hazard
38 industries" shall be the list established pursuant to this paragraph.

1 (B) For the purpose of implementing this subdivision, the
2 Department of Industrial Relations shall periodically review, and
3 as necessary revise, the list.

4 (4) For the purpose of implementing this subdivision, the
5 Department of Industrial Relations shall also establish a list of low
6 hazard industries, and shall periodically review, and as necessary
7 revise, that list.

8 (g) The standard adopted pursuant to subdivision (f) shall
9 specifically permit employer and employee occupational safety
10 and health committees to be included in the employer's injury
11 prevention program. The board shall establish criteria for use in
12 evaluating employer and employee occupational safety and health
13 committees. The criteria shall include minimum duties, including
14 the following:

15 (1) Review of the employer's periodic, scheduled worksite
16 inspections; investigation of causes of incidents resulting in injury,
17 illness, or exposure to hazardous substances; and investigation of
18 any alleged hazardous condition brought to the attention of any
19 committee member. When determined necessary by the committee,
20 the committee may conduct its own inspections and investigations.

21 (2) (A) Upon request from the division, verification of
22 abatement action taken by the employer as specified in division
23 citations.

24 (B) If an employer's occupational safety and health committee
25 meets the criteria established by the board, it shall be presumed to
26 be in substantial compliance with paragraph (5) of subdivision (a).

27 (h) The division shall adopt regulations specifying the
28 procedures for selecting employee representatives for
29 employer-employee occupational health and safety committees
30 when these procedures are not specified in an applicable collective
31 bargaining agreement. No employee or employee organization
32 shall be held liable for any act or omission in connection with a
33 health and safety committee.

34 (i) The employer's injury prevention program, as required by
35 this section, shall cover all of the employer's employees and all
36 other workers who the employer controls or directs and directly
37 supervises on the job to the extent these workers are exposed to
38 worksite and job assignment specific hazards. Nothing in this
39 subdivision shall affect the obligations of a contractor or other

1 employer that controls or directs and directly supervises its own
2 employees on the job.

3 (j) When a contractor supplies its employee to a state agency
4 employer on a temporary basis, the state agency employer may
5 assess a fee upon the contractor to reimburse the state agency for
6 the additional costs, if any, of including the contract employee
7 within the state agency's injury prevention program.

8 (k) (1) The division shall prepare a Model Injury and Illness
9 Prevention Program for Non-High-Hazard Employment, and shall
10 make copies of the model program prepared pursuant to this
11 subdivision available to employers, upon request, for posting in
12 the workplace. An employer who adopts and implements the model
13 program prepared by the division pursuant to this paragraph in
14 good faith shall not be assessed a civil penalty for the first citation
15 for a violation of this section issued after the employer's adoption
16 and implementation of the model program.

17 (2) For purposes of this subdivision, the division shall establish
18 a list of non-high-hazard industries in California. These industries,
19 identified by their Standard Industrial Classification Codes, as
20 published by the United States Office of Management and Budget
21 in the Manual of Standard Industrial Classification Codes, 1987
22 Edition, are apparel and accessory stores (Code 56), eating and
23 drinking places (Code 58), miscellaneous retail (Code 59), finance,
24 insurance, and real estate (Codes 60–67), personal services (Code
25 72), business services (Code 73), motion pictures (Code 78) except
26 motion picture production and allied services (Code 781), legal
27 services (Code 81), educational services (Code 82), social services
28 (Code 83), museums, art galleries, and botanical and zoological
29 gardens (Code 84), membership organizations (Code 86),
30 engineering, accounting, research, management, and related
31 services (Code 87), private households (Code 88), and
32 miscellaneous services (Code 89). To further identify industries
33 that may be included on the list, the division shall also consider
34 data from a rating organization, as defined in Section 11750.1 of
35 the Insurance Code, and all other appropriate information. The list
36 shall be established by June 30, 1994, and shall be reviewed, and
37 as necessary revised, biennially.

38 (3) The division shall prepare a Model Injury and Illness
39 Prevention Program for Employers in Industries with Intermittent
40 Employment, and shall determine which industries have historically

1 utilized seasonal or intermittent employees. An employer in an
 2 industry determined by the division to have historically utilized
 3 seasonal or intermittent employees shall be deemed to have
 4 complied with the requirements of subdivision (a) with respect to
 5 a written injury prevention program if the employer adopts the
 6 model program prepared by the division pursuant to this paragraph
 7 and complies with any instructions relating thereto.

8 (l) With respect to any county, city, city and county, or district,
 9 or any public or quasi-public corporation or public agency therein,
 10 including any public entity, other than a state agency, that is a
 11 member of, or created by, a joint powers agreement, subdivision
 12 (d) shall not apply.

13 (m) Every workers' compensation insurer shall conduct a
 14 review, including a written report as specified below, of the injury
 15 and illness prevention program (IIPP) of each of its insureds with
 16 an experience modification of 2.0 or greater within six months of
 17 the commencement of the initial insurance policy term. The review
 18 shall determine whether the insured has implemented all of the
 19 required components of the IIPP, and evaluate their effectiveness.
 20 The training component of the IIPP shall be evaluated to determine
 21 whether training is provided to line employees, supervisors, and
 22 upper level management, and effectively imparts the information
 23 and skills each of these groups needs to ensure that all of the
 24 insured's specific health and safety issues are fully addressed by
 25 the insured. The reviewer shall prepare a detailed written report
 26 specifying the findings of the review and all recommended changes
 27 deemed necessary to make the IIPP effective. The reviewer shall
 28 be or work under the direction of a licensed California professional
 29 engineer, certified safety professional, or a certified industrial
 30 hygienist.

31 SEC. 3. No reimbursement is required by this act pursuant to
 32 Section 6 of Article XIII B of the California Constitution because
 33 the only costs that may be incurred by a local agency or school
 34 district will be incurred because this act creates a new crime or
 35 infraction, eliminates a crime or infraction, or changes the penalty
 36 for a crime or infraction, within the meaning of Section 17556 of
 37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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