



Pacific Maritime Association

Accident Prevention Department

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SAFETY BULLETIN 99-11

December 23, 1999

1999 California Legislative Bills

INFORMATION

During the 1999 session of the California Legislature, three bills were passed into law that directly affect CAL-OSHA and the Maritime Industry. Although triggered by accidents in the petrochemical industry, and passed in the wake of several fatal refinery explosions and fires, the provisions of these bills apply equally to our maritime industry.

Senate Bill 160

Senate Bill 160 is the state's Budget Act. It was passed with \$2.9 million earmarked to conduct enforcement and consultation activities in California's High Hazard Industries. Using these funds, CAL-OSHA is in the process of setting up two permanent High Hazard enforcement offices (one in Northern California, and one in Southern California.) These units will specialize in programmed inspections in High Hazard Industries. Although primarily targeted at the petrochemical industry, these offices will inspect all High Hazard Industries.

Assembly Bill 1655

Assembly Bill 1655 removes the sunset provision from the California Labor Code pertaining to assessments for the CAL-OSHA Targeted Inspection and Consultation Fund (TCIF). The authority to levy and collect assessments from employers for TCIF was due to expire Jan 1, 2000, however this Bill allows the collection process to continue indefinitely. This provides a continuing source of funds for the High Hazard and Consultation Programs.

Assembly Bill 1127

AB 1127, authored by Assembly member Steinberg (D-Sacramento) and approved by the Governor on 6 October 1999, makes changes to twelve sections of the California Labor Code – nearly all to the California Occupational Safety and Health Act (Section 6300 et seq.) – which provides the statutory foundation for the activities of the Cal/OSHA Enforcement Unit.

These twelve statutory changes are as follows:

- (1) Section 98.7 is amended to extend the period for an employee to file a Cal/OSHA discrimination complaint with the Division of Labor Standards Enforcement from 30 days to 6 months;
- (2) Section 6304.5 is amended in two ways:
 - (a) to permit Title 8 occupational safety and health standards to be entered into evidence in civil suits; and
 - (b) to make inadmissible the testimony of Cal/OSHA compliance personnel about citation issuance, applicability of Title 8 standards, and their opinion (as opposed to factual information obtained as a percipient witness) in civil suits;
- (3) Section 6309 is amended in three ways:
 - (a) to specify statutorily that the term "employee's representative" includes "an attorney, health or safety professional, union representative; or representative of a governmental agency...",
 - (b) to require that the Division "attempt to determine the period of time in the future that a complainant believes that an unsafe condition may continue to exist and to allocate inspection resources so as to respond first to those situations in which time is of the essence;" and
 - (c) to conduct inspections based on a complaint of a serious violation from a state or local prosecutor within 24 hours of receipt of the Division's receipt of the complaint.
- (4) Section 6400 is amended to incorporate into statute the Division's multi-employer regulation, found in Title 8, California Code of Regulations, at Section 336.10; (See PMA Safety Bulletin 98-3 Multi Employer Worksites.)
- (5) Section 6423 is amended to *increase the monetary fine and prison time* that a court may impose for certain Title 8 violations, which are charged by a district attorney;
- (6) Section 6425 is amended to *increase the monetary fine and prison time* that a court may impose for willful violations causing an employee's death or permanent or prolonged impairment of the body, which are charged by a district attorney;
- (7) Section 6428 is amended to increase the statutory maximum civil penalty for a *serious violation from \$7,000 to \$25,000*;
- (8) Section 6429 is amended in two ways:
 - (a) to prohibit any employer who repeatedly violates a standard, order or special order, from receiving any adjustment of the civil penalty for good faith or history; and
 - (b) to increase the period of time for which the Division is required to maintain its inspection records from three to seven years;
- (9) Section 6430 is amended in two ways:
 - (a) to increase the civil penalty for a failure-to-abate violation from \$7,000 to \$15,000 per day; and
 - (b) to provide criminal punishment for any employer who falsely submits a signed statement of abatement of imprisonment of up to one year in jail or a fine not exceeding \$30,000 or both (up to \$300,000 for a corporation or limited liability company);
- (10) Section 6432 is amended to eliminate the requirement that the Division prove "employer knowledge" of the presence of a serious violation as a part of its case-in chief – rather, Section 6432 now provides that a serious violation does not exist if the employer can demonstrate that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation (i.e., converts the absence of actual or constructive knowledge into an affirmative employer defense);
- (11) Section 6434 is amended to delete the exemption for employers which are governmental entities from civil penalties (but provides for reimbursement procedures for public schools, colleges and universities under certain circumstances); and
- (12) Section 6719 is added to reaffirm the Legislature's concern over repetitive motion injuries and the Standards Board's continuing duty to adopt standards for ergonomics in the workplace designed to minimize the instances of injury from repetitive motion.

In order for Cal/OSHA to enforce some of the new civil penalty provisions of AB 1127 (Labor Code Sections 6428, 6429 and 6430), regulatory changes will have to be made to Title 8, California Code of Regulations (CCR), Sections 334 and 336. After AB 1127 goes into legal effect on 1 January 2000, the Division will conduct rulemaking to amend 8 CCR Sections 334 and 336. In addition, changes to various sections of the Division's Policy and Procedures Manual, Section C, will be made.

The Division of Occupational Safety and Health will also ask the Department to approve a request for a budgetary augmentation to meet what the Division expects to be an increase in the number of complaint inspections for which an on-site inspection is required – resulting from expansion of the scope of "employee representative" in Section 6309 – and an increase in the number of appeals of Cal/OSHA citations – from civil penalty increases in Sections 6423, 6425, 6428, 6429, 6430 and 6434.

ACTION

All Employers and Supervisors should be aware of the new provisions and penalties imposed by the passage of AB - 1127.

Employers should also be aware of the expanded funding and personnel allotted to the California High Hazard Inspection and Consultation Services Programs due to the passage of AB - 1655 and SB - 160.

All of these Bills will go into effect on January 1st, 2000.