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## Cal/OSHA's Enforcement and Citation Powers Expand Under SB 606

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On September 27, 2021, Governor Newsom approved Senate Bill (SB) 606, which added and amended multiple sections of the Labor Code. SB 606 took effect January 1, 2022, and expanded the enforcement powers of California's Division of Occupational Safety and Health (Cal/OSHA), with costly implications for employers that do not heed the new changes.

In brief, Cal/OSHA's new authority under the Labor Code includes (a) penalties for employers cited for "egregious" violations; (b) a rebuttable presumption of enterprise-wide violations for employers with noncompliant written practices; (c) broader grounds to seek injunctions and restraining orders; and (d) subpoena powers to compel compliance with Cal/OSHA requests for information.

"Employers" subject to these new rules include the State and every State agency as well as each county, city, district, and all public and quasi-public corporations and public agencies, any person or public service corporations that have any natural person in service, or the legal representative of a deceased employer. The "places of employment" subject to these rules mean any place, and the premises belonging thereto, where employment is carried on, except places where another state or the federal government have jurisdiction over health and safety standards.

### **"Egregious" Violations**

SB 606 expands Cal/OSHA's power to issue citations to include a citation for "egregious" violations, defined as violations where one or more of the following occurred within the five years prior to citation:

- The employer intentionally, through conscious, voluntary action or inaction, made no reasonable effort to eliminate a known violation.
- The violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses. "Catastrophe" means the inpatient

hospitalization, regardless of duration, of three or more employees resulting from an injury, illness, or exposure caused by a workplace hazard or condition.

- The violations resulted in persistently high rates of worker injuries or illnesses.
- The employer has an extensive history of prior violations.
- The employer has intentionally disregarded its health and safety responsibilities.
- The employer's conduct, taken as a whole, amounts to clear bad faith in the performance of its workplace safety duties.
- The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that may be in place.

Under the new law, a determination of an egregious violation shall remain in effect for five years and every instance of an employee's exposure to an egregious violation will be considered a separate violation, which could result in a heavy assessment of fines.

## **Rebuttable Presumption of Enterprise-Wide Violations**

In addition, under SB 606, employers with multiple worksites are now subject to a rebuttable presumption that a violation is "enterprise-wide" if the employer (1) has a noncompliant written policy or procedure, or (2) Cal/OSHA has evidence of a pattern or practice of the same violation involving more than one of the employer's worksites. The statute does not define "enterprise-wide," but the statute may be reasonably read to mean that the violation would be a "business-wide" violation.

Labor Code section 6317 exempts only the following state agencies from findings of enterprise-wide violations: the Department of Corrections and Rehabilitation, the California Correctional Health Care Services, and the Department of State Hospitals.

If an employer is subject to the presumption and does not rebut it, Cal/OSHA may issue a citation requiring enterprise-wide abatement and an appeals board may issue an enterprise-wide abatement order. Enterprise-wide violations may result in civil penalties of up to \$124,709 for each violation and will be no less than \$8,908 for each willful violation.

Employers will not be cited for an enterprise-wide violation of an emergency regulation adopted or amended within the 30 days preceding the violation.

## **Injunction and Restraining Powers**

Under prior law, Cal/OSHA had authority to seek an injunction or temporary restraining order (TRO) only where a place of employment or a piece of equipment was operated in a manner that constituted, or was in a condition that constituted, a serious menace to lives or safety. Under SB 606, Cal/OSHA may now seek an injunction or TRO in any circumstance where it "has grounds to

issue a citation,” which amounts to a significant expansion as compared to the prior “serious menace to lives or safety” standard.

## Subpoena Powers

Lastly, section 6317.9 has now been added to the Labor Code, authorizing Cal/OSHA to issue subpoenas in investigations where the employer fails to “promptly” provide requested information. Cal/OSHA may enforce the subpoena if an employer fails to provide the requested information within a “reasonable” period of time. This new section does not define “prompt” or “reasonable,” so employers facing an investigation should plan to communicate early and clearly with Cal/OSHA about their timelines.

## Takeaways

In sum, under SB 606, Cal/OSHA has stronger enforcement powers and broader authority to issue hefty penalties to employers. Employers seeking to engage in best practices need to review and update written policies across worksites, promptly communicate with Cal/OSHA about pending investigations, and stay updated regarding (and maintain compliance with) health and safety regulations.

If you have any questions about SB 606 or workplace safety in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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