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AB-1805 Occupational safety and health. (2019-2020)

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Assembly Bill No. 1805

CHAPTER 200

An act to amend Sections 6302 and 6309 of the Labor Code, relating to employment.

[Approved by Governor August 30, 2019. Filed with Secretary of State August 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1805, Committee on Labor and Employment. Occupational safety and health.

Existing law defines "serious injury or illness" and "serious exposure" for purposes of reporting serious occupational injury or illness to the Division of Occupational Safety and Health and for purposes of establishing the division's duty to investigate employment accidents and exposures.

This bill would recast the definition of "serious injury or illness" by removing the 24-hour minimum time requirement for qualifying hospitalizations, excluding those for medical observation or diagnostic testing, and explicitly including the loss of an eye as a qualifying injury. The bill would delete loss of a body member from the definition of serious injury and would, instead, include amputation. The bill would also eliminate the exclusion of injury or illness caused by certain violations of the Penal Code and would narrow the exclusion of injuries caused by accidents occurring on a public street or highway to include those injuries or illnesses occurring in a construction zone. The bill would recast the definition of "serious exposure" to include exposure of an employee to a hazardous substance in a degree or amount sufficient to create a realistic possibility that death or serious physical harm in the future could result from the actual hazard created by the exposure.

Existing law also establishes the standard for what constitutes a serious violation requiring a faster response from the division and further requires the division to keep confidential the name of a person submitting a complaint regarding unsafe or unhealthy working conditions. Existing law establishes that a serious violation exists when the division determines that there is a substantial possibility that death or serious injury could result from the condition alleged in the complaint.

This bill would instead establish that a serious violation exists when the division determines that there is a realistic possibility that death or serious injury could result from the actual hazard created by the condition alleged in the complaint.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6302 of the Labor Code is amended to read:

6302. As used in this division:

(a) "Director" means the Director of Industrial Relations.

(b) "Department" means the Department of Industrial Relations.

(c) "Insurer" includes the State Compensation Insurance Fund and any private company, corporation, mutual association, and reciprocal or interinsurance exchange, authorized under the laws of this state to insure employers against liability for compensation under this part and under Division 4 (commencing with Section 3201), and any employer to whom a certificate of consent to self-insure has been issued.

(d) "Division" means the Division of Occupational Safety and Health.

(e) "Standards board" means the Occupational Safety and Health Standards Board, within the department.

(f) "Appeals board" means the Occupational Safety and Health Appeals Board, within the department.

(g) "Aquaculture" means a form of agriculture as defined in Section 17 of the Fish and Game Code.

(h) "Serious injury or illness" means any injury or illness occurring in a place of employment or in connection with any employment that requires inpatient hospitalization, for other than medical observation or diagnostic testing, or in which an employee suffers an amputation, the loss of an eye, or any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by an accident on a public street or highway, unless the accident occurred in a construction zone.

(i) "Serious exposure" means any exposure of an employee to a hazardous substance when the exposure occurs as a result of an incident, accident, emergency, or exposure over time and is in a degree or amount sufficient to create a realistic possibility that death or serious physical harm in the future could result from the actual hazard created by the exposure.

SEC. 2. Section 6309 of the Labor Code is amended to read:

6309. (a) If the division learns or has reason to believe that an employment or place of employment is not safe or is injurious to the welfare of an employee, it may, on its own motion, or upon complaint, summarily investigate the employment or place of employment, with or without notice or hearings. However, if the division receives a complaint from an employee, an employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, or government agency representative, or an employer of an employee directly involved in an unsafe place of employment, that their employment or place of employment is not safe, it shall, with or without notice or hearing, summarily investigate the complaint as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation. The division shall attempt to determine the period of time in the future that the complainant believes the unsafe condition may continue to exist, and shall allocate inspection resources so as to respond first to those situations in which time is of the essence. For purposes of this section, a complaint is deemed to allege a serious violation if the division determines that the complaint charges that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use in a place of employment. When a complaint charging a serious violation is received from a state or local prosecutor, or a local law enforcement agency, the division shall summarily investigate the employment or place of employment within 24 hours of receipt of the complaint. All other complaints are deemed to allege nonserious violations. The division may enter and serve any necessary order relative thereto. The division is not required to respond to a complaint within this period where, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer or is without any reasonable basis.

(b) The division shall keep complete and accurate records of all complaints, whether verbal or written, and shall inform the complainant, whenever their identity is known, of any action taken by the division in regard to the subject matter of the complaint, and the reasons for the action, within 14 calendar days of taking any action. The records of the division shall include the dates on which any action was taken on the complaint, or the reasons for not taking any action on the complaint. The division shall, pursuant to authorized regulations, conduct an informal review of any refusal by a representative of the division to issue a citation with respect to an alleged violation. The division shall furnish the employee or the representative of employees requesting the review a written statement of the reasons for the division's final disposition of the case.

(c) The name of a person who submits to the division a complaint regarding the unsafe condition of an employment or place of employment shall be kept confidential by the division, unless that person requests otherwise.

(d) The division shall annually compile and release on its internet website data pertaining to complaints received and citations issued.

(e) The requirements of this section do not relieve the division of its requirement to inspect and assure that all places of employment are safe and healthful for employees. The division shall maintain the capability to receive and act upon complaints at all times. However, the division shall prioritize investigations of reports of accidents involving death or serious injury or illness and complaints that allege a serious violation over investigations of complaints that allege a nonserious violation.