



SB 606 (Gonzalez) – Workplace Safety Enforcement

SUMMARY

Senate Bill (SB) 606 will implement stronger enforcement measures for egregious and flagrant violations in order to keep workers safe as California continues to fight the spread of COVID-19. In addition, SB 606 protects workers from retaliation by establishing a rebuttable presumption of retaliation to ensure that workers feel safe to come forward and report unsafe working conditions.

EXISTING LAW

Current law requires the Division of Occupational Safety and Health (CalOSHA) to improve working conditions for California's workers and protect public health and safety through research, enforcement and regulation. CalOSHA has the authority to issue citations, special orders, and orders to take special action after an investigation of hazards in a workplace.

Under Federal Division of Occupational Safety and Health Administration (OSHA) policy, egregious employers can be subject to more punitive penalties for willful violations, if the employer intentionally or knowingly commits a violation with plain indifference to the law. These are the most severe citations the Federal OSHA can issue.

Existing law in California also prohibits an employer from retaliating against a worker for disclosing a positive COVID-19 test, diagnosis, or order to quarantine or isolate.

BACKGROUND/PROBLEM

For many Californians, the Governor's shelter-in-place order in mid-March 2020, and subsequent health orders, have resulted in a move to working from home in order to reduce the spread of COVID-19. However, for most essential workers, working from home is not an option.

More than 53% of low-wage workers are employed in frontline essential jobs compared to middle and high-wage workers at 39%. In these low-wage, frontline essential jobs, roughly 55% are Latino workers and 48% are Black workers, putting these two groups at greater risk for workplace exposure to COVID-19.¹

According to CalOSHA, COVID-19 "has killed hundreds of workers in California and sickened thousands, and workers will continue to become ill and die until the pandemic subsides. COVID-19 is an occupational health emergency causing more deaths in less time than any other workplace crisis in the nearly fifty-year existence of CalOSHA."²

A University of California San Francisco study found that food and agriculture workers saw a 39% increase in deaths during the pandemic, transportation and logistics workers a 28% increase, facilities workers a 27% increase, and manufacturing workers a 23% increase. The study also found that Latino workers had a 36% increase in deaths during the pandemic and Black workers had a 28% increase, as compared to a 6% increase for white workers.³ A report from the Centers for Disease Control and Prevention found that Latino and Black patients represented nearly two thirds of COVID-19 deaths among people younger than 65. In Los Angeles County, the most recent surge in COVID-19 cases caused deaths among

¹ UC Berkeley Labor Center. 2020. "Front-line Essential Jobs in California: A Profile of Job and Worker Characteristics." <https://laborcenter.berkeley.edu/front-line-essential-jobs-in-california-a-profile-of-job-and-worker-characteristics/>

² California Department of Industrial Relation Division of Occupational Safety and Health. 2020. "Evaluation of Petition 583 to Adopt an Emergency Regulation to Protect Workers from COVID-19, and a Permanent Regulation to Protect Workers from Infectious Diseases" <https://www.dir.ca.gov/oshsb/documents/petition-583-dosheval.pdf>

³ medRxiv. 2021. "Excess mortality associated with the COVID-19 pandemic among Californians 18–65 years of age, by occupational sector and occupation: March through October 2020" <https://www.medrxiv.org/content/10.1101/2021.01.21.21250266v1>

Latino residents to skyrocket more than 1,000% since the fall, triple the rate of white residents.⁴

While CalOSHA has attempted to respond to the unprecedented worker safety crisis, resources have been insufficient to effectively protect workers. The AFL-CIO estimates it would take OSHA 145 years to inspect every workplace once⁵ and the agency has approximately 1,850 inspectors responsible for the health and safety of 130 million workers, which translates to about one compliance officer for every 70,000 workers.

Existing law has caused gaps in enforcement that limit the agency's ability to hold large corporations accountable or to levy penalties equal to the underlying misconduct. Simply put, California needs more tools to address workplace spread, prevent additional outbreaks, and hold violators accountable in a timely manner.

SOLUTION

SB 606 is consistent with California's efforts to stop the spread of COVID-19 at the workplace and ensuring the safety of all workers. SB 606 will codify Federal OSHA's policy for egregious employers, giving CalOSHA the authority to impose minimum penalties per the number of exposed employees for willful violations where many workers have been knowingly harmed by an employer's failure to comply with health and safety laws. By setting higher penalties for violations associated with the safety of multiple employees, this bill will serve as an incentive for large corporations to comply with the law.

Additionally, SB 606 will provide CalOSHA with the authority to issue a suspension or temporary restraining order at all locations for large employers when their policies and procedures directly violate labor and health and safety standards. This authority will allow CalOSHA to maximize use of their limited resources when pursuing enforcement actions.

Finally, SB 606 establishes a rebuttable presumption for retaliation that will protect workers who come forward with a positive COVID-19 test, request a COVID-19 test or personal protective equipment, and report unsafe

⁴ Insider. 2021. "COVID-19 deaths of Latinos in LA County are up 1,000% since November, new report says" <https://www.insider.com/latino-covid-19-deaths-in-la-county-up-1000-since-november>

⁵ AFL-CIO. 2016. "OSHA Faced with Diminishing Resources in Their Efforts to Keep Working People Alive" <https://aflcio.org/2016/5/5/osha-faced-diminishing-resources-their-efforts-keep-working-people-alive>

working conditions. If workers are not confident they will be protected from retaliation, they will be less likely to come forward and report violations, further increasing the risk of exposure to COVID-19 at every worksite in California.

SUPPORT

UFCW Western States Council (Co-Sponsor)
California Labor Federation (Co-Sponsor)
Worksafe (Co-Sponsor)
Alliance of Californians for Community Empowerment
California Immigrant Policy Center
California Professional Firefighters
California Rural Legal Assistance Foundation
Central California Environmental Justice Network
Consumer Attorneys of California
La Raza Centro Legal
Legal Aid at Work
Lideres Campesinas
National Employment Law Project
National Lawyers Guild Labor & Employment Committee
National Union of Healthcare Workers (NUHW)
Pesticide Action Network North America (PANNA)
Roots of Change
SMART-Transportation Division
Transport Workers Union of America
Warehouse Worker Resource Center

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