

CALIFORNIA RAISES THE STAKES FOR WORKPLACE SAFETY COMPLIANCE WITH NEW PENALTIES

Insights
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Governor Newsom just signed into law a bill that could have significant ramifications for California employers by extending Cal/OSHA's scope of enforcement and creating additional penalties for employers. In particular, SB 606 makes significant changes to Cal/OSHA by creating two new categories of violations – “Enterprise-wide Violations” and “Egregious Violations” – subject to the same penalty as willful or repeated violations. The bill was signed on September 27, 2021 but will not take effect until January 1, 2022, buying some time for you to get your organization prepared for the changes ahead. What do employers need to know about this new law?

Enterprise-wide Violations

SB 606 will have a large impact on employers with multiple worksites. This new law creates a presumption that an employer has committed an “enterprise-wide” violation, or a violation at multiple worksites, if Cal/OSHA finds that either:

- the employer has a written policy or procedure that violates section 25910 of the Health and Safety Code, any standard, rule, order or regulation; or
- Cal/OSHA has evidence of a pattern or practice of the same violation or multiple violations committed by that employer involving more than one of the employer's worksites.

There is no requirement that Cal/OSHA investigate other sites or observe violations in order to issue citations. This

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means that employers can be cited for worksites that have not been inspected, based entirely on a written policy at one of the employer's worksites.

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Egregious Violations

Cal/OSHA has also introduced "egregious violations" that can lead to exponential penalties for employers. According to the new law, each employee who would be exposed to the violation would be considered a separate violation for fines and penalties.

Cal/OSHA can find that an employer has committed an "egregious violation" for any of the following:

- The employer, intentionally, through conscious, voluntary action or inaction, made no reasonable effort to eliminate the known violation;
- The violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses;
- 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 their health and safety responsibilities;
- The employer's conduct, taken as a whole, amounts to clear bad faith in the performance of their duty to provide a safe work environment; or
- The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place.

Subpoena Power

Additionally, SB 606 provides Cal/OSHA with new subpoena power. The new law provides the agency with the authority to "issue a subpoena if the employer or related entity fails to promptly provide the requested information." This would allow Cal/OSHA to enforce a subpoena if the employer did not provide requested information within a reasonable amount of time. The law does not define what a "reasonable amount" of time may be.

Next Steps for Employers

Employers with multiple worksites should ensure that their written policies and procedures are up to date. You should review all policies and practices to ensure compliance with all Cal/OSHA standards including an Injury and Illness Prevention Program (IIPP).

As employers know, no policy is effective without full involvement from employees, supervisors, and management, proper and prompt identification of the issues the policy applies to, and adequate training. This is especially important in light of the new law. Do not hesitate to reach out to your Fisher Phillips attorney with compliance questions or how to develop an effective plan.

We will monitor developments related to this new law and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions on how to comply with SB 606, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in any one of [our six California offices](#).