

FACT SHEET: SB 829 (DeSaulnier)

THE OSHA APPEALS PROCESS

Strengthening Worker Voice and Assuring that the Appeals Board Process is Fair

The Problem

The Occupational Safety and Health Appeals Board [OSHAB] has, for several years, followed procedures and ruled in ways to undermine safety and health laws and regulations that are meant to protect the working men and women of California. Its procedures are also often unfair to employers.

To refocus the OSHAB on protecting worker health and safety and to assure a fair hearing for all, existing laws need to be clarified to ensure that the board complies with both the "spirit of the law" and the "letter of the law."

This bill amends the Labor Code to:

- **Assure that employers who appeal a SERIOUS citation and have NOT abated the hazard will have any appeal heard in an expedited fashion so that** employees are not exposed to the hazard for a lengthy period of time. Currently, when an employer appeals, it has no obligation to correct the unsafe condition and workers may be exposed for years pending appeal. This amendment will compliment Labor Code § 6325 which requires Cal/OSHA to prohibit entry to the immediate area where there is an imminent hazard. Since Cal/OSHA doesn't shut down jobs often, at least the appeal of a serious citation where the hazard is unabated will be expedited under this section.
- **Assure that family members and legal representatives of a deceased worker may participate as "parties" in OSHAB appeal** proceedings and have the full panoply of rights in that hearing. Families are currently denied the right to full participation on behalf of a loved one who has been killed in a workplace incident.
- **Assure that worker representatives, such as family members; unions; or community, worker or legal organizations, may assist a worker in filing a complaint and pursuing an appeal.** Organizations or individuals assisting an employee must still divulge the employee's name to Cal/OSHA when filing a complaint (the name by law must be confidential).

- **Assure that workers have the right to appeal** the characterization of a violation (for example to appeal when a citation is issued as a "general" citation when the facts support a "serious" citation) and the terms and conditions of abatement. SB 829 will allow workers to have input and participate in settlement negotiations. Right now an employee may only contest the amount of time that Cal/OSHA sets for the employer to fix the hazard, not the terms and conditions and not the characterization of the citation.

- **Assure that the OSHAB applies the regulations issued by the Department of Industrial Relations.** Currently the OSHAB takes the position that it is not bound by the rules and regulations adopted by the DIR.

- **Assure that the OSHAB upholds citations by Cal/OSHA for violations of the Labor Code related to OSH or to posting a workers' comp poster.** The OSHAB currently takes the position that Cal/OSHA can only issue a citation for a violation of a regulation and not for a violation of the Labor Code.

- **Assure that the OSHAB and its Administrative Law Judges [ALJs] permit amendments** that conform to proof, including adding or amending a citation or a defense so long as no prejudice will result. Right now the OSHAB often unreasonably denies requests to amend by both the Division and the employer.

- **Assure that the OSHAB ALJ conducts the appeal hearing so as to minimize its adversarial nature.** In particular, the ALJ should make sure the record is complete.

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