

FACT SHEET: SB 829 (DeSaulnier)

THE OSHA APPEALS PROCESS

Strengthening Workers' Voices 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 have appealed a SERIOUS citation, and who have had a full hearing before an administrative law judge who ruled the citation was valid and that abatement was required, but have NOT abated the hazard will be required to fix the unsafe/unhealthy condition despite additional appeals the employer might take.** This will assure that employees are not exposed to the hazard for the extended period of time that further appeals might require. Currently, when an employer appeals, by OSHAB regulation it has no obligation to correct the unsafe condition and workers have been exposed for years pending resolution of the case. The OSHAB made some recent changes so that these cases are being heard on an expedited basis – and the time that workers are still exposed is now about 9 - 10 months. However, if the employer continues to appeal a serious citation after the initial full hearing in front of the Administrative Law Judge, the current law leaves the worker at risk. This amendment of the Labor Code will fill the gap that exists between Labor Code §6325 and the current law. Labor Code §6325 permits Cal/OSHA IMMEDIATELY (with an abbreviated administrative hearing within a short time) to prohibit entry to the immediate area where there is an imminent hazard. Unfortunately Cal/OSHA doesn't often shut down jobs, so this new amendment will at least address a continuing hazard that resulted in a serious citation when that hazard is unabated.

- **Assure that family members and legal representatives of a deceased worker may participate as "parties" in OSHAB appeal** proceedings and have all appropriate 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 truly confidential complaint.** Organizations or individuals assisting an employee must by existing POLICY divulge the employee's name to Cal/OSHA when filing a complaint (the name by law must be confidential) in order for the complaint of a serious hazard to be addressed quickly (within 3 days).

- **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 laws in the Labor Code related to occupational safety and health or to laws requiring the 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.

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