

National Lawyers Guild

Labor & Employment Committee

April 18, 2013

Assembly Member Nancy Skinner
State Capitol Room 3160
Sacramento, CA 95814

via fax (916) 319-2115 and email alison.merrilees@asm.ca.gov

Re: Assembly Bill 1277 (Skinner) - SUPPORT

Dear Assembly Member Skinner:

On behalf of the National Lawyers Guild Labor & Employment Committee [L&EC], this letter is in strong support of Assembly Bill 1277. The bill will strengthen our California Occupational Safety and Health program which is mandated to protect the working men and women of California by assuring that workers, their families and their representatives will have the right to meaningfully participate in the program.

Since 1937 the National Lawyers Guild has provided legal support to movements for social change, principally on a volunteer basis. The Labor & Employment Committee focuses on struggles for economic and social justice. In the 1930s the Guild focused on workers' rights supporting New Deal legislation to assist working people and the unemployed; in the 1950s the Guild defended labor leaders and others attacked for their progressive political views. Then and now, the Guild L&EC actively supports progressive labor and employment law struggles. The L&EC is comprised of close to a thousand labor and employment attorneys across the country.

The L&EC is committed to protecting workers and improving the legal conditions that will ensure safety in the workplace. This bill will address the fact that current practices and procedures do not assure that those impacted by unsafe and unhealthy workplaces have a true voice in the process. AB 1277 will, among other things, do the following:

→ Assure that family members and legal representatives of a deceased worker shall be deemed "parties" in proceedings of the Occupational Safety and Health Appeals Board (OSHAB), upon request, and be able to participate fully. Families are currently denied the right to full participation on behalf of a loved one who has been killed in a workplace incident if the deceased did not pre-designate a representative. Workers shouldn't be required to anticipate dying at work in order to allow their families or other representatives to participate in the OSH appeal and provide necessary assistance to the Division of Occupational Safety & Health when it prosecutes those appeals.

→ Require employers to notify employees and their representatives when they seek a variance from an OSHA standard or order. Employers need to post at the worksite and effectively notify each of the unions that represents workers in the workplace that is the subject of a variance.

→ 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. Currently, organizations or individuals assisting a worker must by existing POLICY divulge the employee's name to Cal/OSHA when filing a complaint in order for the **complaint of a serious hazard** to be addressed quickly (within 3 days). Although the law requires the complainant's name be kept confidential, some workers genuinely fear retaliation and seek assistance from a worker organization in order to file a complaint without being named. Their safety and health is equally important and when organizations take on the responsibility for filing such a complaint, they should be treated equally.

→ Require OSHAB to apply the regulations issued by the Department of Industrial Relations instead of taking the position that those rules and regulations are inapplicable to their deliberations.

→ Clarify that Cal/OSHA inspectors may cite violations of statute (the California State Labor Code) and laws requiring the posting of a workers' compensation poster, in addition to citing violations of Cal/OSHA regulations. When the Legislature passes a law concerning health and safety, it needs to be enforced and the Division of Occupational Safety & Health inspectors should be permitted to cite that statute even if no regulation concerning that matter has been issued.

By ensuring that both the "spirit of the law" and the "letter of the law" are followed, AB 1277 will protect worker health and safety by providing meaningful participation for workers and assuring fair hearings for appeals of citations and for employer requests for variances. In the over 30 years that I have been working in the field of occupational safety and health, both as a former head of the Division's Bureau of Investigation, then as a union attorney, and finally as a worker advocate assisting a non-profit which provides pro-bono assistance to legal services programs throughout California, I learned that the best way to assure worker health and safety is to assure worker participation. When I headed the Bureau for about two years, I read reports for every fatality that Cal/OSHA investigated. The conclusion I drew was that in over 95% of those cases, someone knew ahead of time that something was wrong. Either they spoke up and were ignored, or they didn't speak up because they feared retaliation. If workers have both the right and duty to speak up and are protected from retaliation, we will save lives.

Thank you for authoring this important bill.

Sincerely,



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