National Lawyers Guild
Labor & Employment Committee

May 2, 2013

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

via fax (916) 319-2115

Re: AB 1165 (Skinner) SUPPORT

Dear Assembly Member Skinner,

On behalf of the National Lawyers Guild Labor & Employment Committee [L&EC], this letter is to express our strong support for Assembly Bill 1165, a bill to assure worker safety by requiring serious workplace safety hazards to be fixed in a timely fashion. AB 1165 requires a cited employer to abate the serious hazards identified by the citation during the pendency of an appeal.

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 Division of Occupational Safety and Health (DOSH) enforces workplace safety in California through a administrative system. With less than 160 compliance officers in the field, the lowest number in over 20 years, it conducts targeted inspections and responds to complaints and reports of incidents involving injury or death. At this time there is just one inspector for more than 100,000, one of the lowest ratios of any of the 25 states that have their own state OSHA program. When it issues a citation and orders abatement, it is critically important for the hazard to be fixed or for workers to not continue to be exposed to that hazard. With so few compliance officers to followup on these citations, their citations to protect California workers must be accorded a presumption of correctness.

When a violation of a standard (regulation) is discovered and worker(s) are exposed to unsafe or unhealthful conditions, DOSH issues a citation – a serious citation if there is a realistic possibility of **death or serious harm**. The Division may also issue a special order and an order to take special action when there is a serious hazard and no specific regulation to protect the exposed workers.

The appeal process begins with a hearing before an Administrative Law Judge (ALJ). The matter may then be appealed to the Occupational Safety and Health Appeals Board (OSHAB). Ultimately the parties may challenge the OSHAB decision in the courts. A final resolution in front of an ALJ can occur months or years after the citation is issued and a hazard identified. And a final resolution after all court proceedings are exhausted can take several years.

Workers will continue to be exposed to hazardous conditions if an employer appeals the citation, special order or special action and abatement is automatically stayed. Currently, when the employer appeals, hazard abatement is **automatically delayed** during the appeal. See 8 CCR 362. However, Labor Code 6625 does not require a stay for every appeal; rather the OSHAB "**may** stay, suspend, or postpone the order or decision during the pendency of the reconsideration." [Emphasis added.] Despite the Legislature's direction in Labor Code 6625, the OSHAB has continued to **automatically** permit workers to be exposed to serious hazards during the course of the appeal process.

AB 1165 properly reverses the presumption and declares that workers exposed to a serious hazard should be protected during the pendency of an appeal. AB 1165 requires an employer to abate violations cited as "serious," "willful," "repeated," "or as a "failure to abate a serious violation" when the employer appeals. Appropriate due process is provided by AB 1165; the employer may seek a stay (a review by the Department of Industrial Relations and a further review by the OSHAB). And AB 1165 establishes appropriate parameters to grant a stay of abatement: preliminary evidence must indicate that the workers are **NOT** exposed to a hazard which creates a substantial probably of death or serious physical harm.

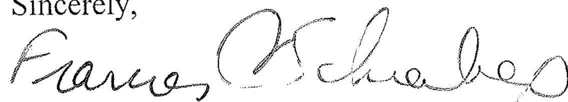
The California Supreme Court has ruled that our occupational safety and health legislation is "to be given a liberal interpretation for the purpose of achieving a safe working environment." ***Carmona v. Division of Industrial Safety*** (1975) 13 Cal. 3d 303. Labor Code 6300 states: "The California Occupational Safety and Health Act of 1973 is hereby enacted for the purpose of assuring safe and healthful working conditions for all California working men and women by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health."

Staying abatement so that workers continue to be exposed does not assure safe and healthful working conditions.

The state of Washington recently enacted a similar provision for their Division of Occupational Safety and Health and has identified situations where workers were injured on the job because an employer did not abate hazardous conditions during the appeals process. Similar situations have occurred here in California as well.

California has always had the most effective occupational safety and health program in the nation (about half the states have their own program and the other half are covered by Federal OSHA). AB 1165 is necessary to protect California workers and to assure that our program continues to be the best in the country. Thank you for authoring AB 1165.

Sincerely,



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