

**ASSEMBLY BILL**

**No. 1277**

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**Introduced by Assembly Member Skinner**

February 22, 2013

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An act to amend Section 62.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1277, as introduced, Skinner. Department of Industrial Relations.

Existing law creates various funds within the State Treasury that are administered by the Department of Industrial Relations, including, among others, the Labor Enforcement and Compliance Fund and the Occupational Safety and Health Fund.

Under existing law, moneys in the Labor Enforcement and Compliance Fund are required to be expended by the department, upon appropriation by the Legislature, for the support of specified activities performed by the department's Division of Labor Standards Enforcement. Existing law imposes certain surcharges upon employers, as defined, which are deposited into these and other designated funds.

Under existing law the Labor Enforcement and Compliance Fund and related surcharges, as well as a limitation on the surcharge generating revenues for the Occupational Safety and Health Fund, become inoperative on July 1, 2013.

This bill would extend the dates upon which the provisions described above become inoperative, to July 1, 2017.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 62.5 of the Labor Code, as amended by  
2 Section 4 of Chapter 363 of the Statutes of 2012, is amended to  
3 read:

4 62.5. (a) (1) The Workers' Compensation Administration  
5 Revolving Fund is hereby created as a special account in the State  
6 Treasury. Money in the fund may be expended by the department,  
7 upon appropriation by the Legislature, for all of the following  
8 purposes, and may not be used or borrowed for any other purpose:

9 (A) For the administration of the workers' compensation  
10 program set forth in this division and Division 4 (commencing  
11 with Section 3200), other than the activities financed pursuant to  
12 paragraph (2) of subdivision (a) of Section 3702.5.

13 (B) For the Return-to-Work Program set forth in Section 139.48.

14 (C) For the enforcement of the insurance coverage program  
15 established and maintained by the Labor Commissioner pursuant  
16 to Section 90.3.

17 (2) The fund shall consist of surcharges made pursuant to  
18 paragraph (1) of subdivision (f).

19 (b) (1) The Uninsured Employers Benefits Trust Fund is hereby  
20 created as a special trust fund account in the State Treasury, of  
21 which the director is trustee, and its sources of funds are as  
22 provided in paragraph (1) of subdivision (f). Notwithstanding  
23 Section 13340 of the Government Code, the fund is continuously  
24 appropriated for the payment of nonadministrative expenses of the  
25 workers' compensation program for workers injured while  
26 employed by uninsured employers in accordance with Article 2  
27 (commencing with Section 3710) of Chapter 4 of Part 1 of Division  
28 4, and shall not be used for any other purpose. All moneys collected  
29 shall be retained in the trust fund until paid as benefits to workers  
30 injured while employed by uninsured employers.  
31 Nonadministrative expenses include audits and reports of services  
32 prepared pursuant to subdivision (b) of Section 3716.1. The  
33 surcharge amount for this fund shall be stated separately.

34 (2) Notwithstanding any other ~~provision~~ provision of law, all references  
35 to the Uninsured Employers Fund shall mean the Uninsured  
36 Employers Benefits Trust Fund.

37 (3) Notwithstanding paragraph (1), in the event that budgetary  
38 restrictions or impasse prevent the timely payment of administrative

1 expenses from the Workers' Compensation Administration  
2 Revolving Fund, those expenses shall be advanced from the  
3 Uninsured Employers Benefits Trust Fund. Expense advances  
4 made pursuant to this paragraph shall be reimbursed in full to the  
5 Uninsured Employers Benefits Trust Fund upon enactment of the  
6 annual Budget Act.

7 (4) Any moneys from penalties collected pursuant to Section  
8 3722 as a result of the insurance coverage program established  
9 under Section 90.3 shall be deposited in the State Treasury to the  
10 credit of the Workers' Compensation Administration Revolving  
11 Fund created under this section, to cover expenses incurred by the  
12 director under the insurance coverage program. The amount of  
13 any penalties in excess of payment of administrative expenses  
14 incurred by the director for the insurance coverage program  
15 established under Section 90.3 shall be deposited in the State  
16 Treasury to the credit of the Uninsured Employers Benefits Trust  
17 Fund for nonadministrative expenses, as prescribed in paragraph  
18 (1), and notwithstanding paragraph (1), shall only be available  
19 upon appropriation by the Legislature.

20 (c) (1) The Subsequent Injuries Benefits Trust Fund is hereby  
21 created as a special trust fund account in the State Treasury, of  
22 which the director is trustee, and its sources of funds are as  
23 provided in paragraph (1) of subdivision (f). Notwithstanding  
24 Section 13340 of the Government Code, the fund is continuously  
25 appropriated for the nonadministrative expenses of the workers'  
26 compensation program for workers who have suffered serious  
27 injury and who are suffering from previous and serious permanent  
28 disabilities or physical impairments, in accordance with Article 5  
29 (commencing with Section 4751) of Chapter 2 of Part 2 of Division  
30 4, and Section 4 of Article XIV of the California Constitution, and  
31 shall not be used for any other purpose. All moneys collected shall  
32 be retained in the trust fund until paid as benefits to workers who  
33 have suffered serious injury and who are suffering from previous  
34 and serious permanent disabilities or physical impairments.  
35 Nonadministrative expenses include audits and reports of services  
36 pursuant to subdivision (c) of Section 4755. The surcharge amount  
37 for this fund shall be stated separately.

38 (2) Notwithstanding any other law, all references to the  
39 Subsequent Injuries Fund shall mean the Subsequent Injuries  
40 Benefits Trust Fund.

1 (3) Notwithstanding paragraph (1), in the event that budgetary  
2 restrictions or impasse prevent the timely payment of administrative  
3 expenses from the Workers' Compensation Administration  
4 Revolving Fund, those expenses shall be advanced from the  
5 Subsequent Injuries Benefits Trust Fund. Expense advances made  
6 pursuant to this paragraph shall be reimbursed in full to the  
7 Subsequent Injuries Benefits Trust Fund upon enactment of the  
8 annual Budget Act.

9 (d) The Occupational Safety and Health Fund is hereby created  
10 as a special account in the State Treasury. Moneys in the account  
11 may be expended by the department, upon appropriation by the  
12 Legislature, for support of the Division of Occupational Safety  
13 and Health, the Occupational Safety and Health Standards Board,  
14 and the Occupational Safety and Health Appeals Board, and the  
15 activities these entities perform as set forth in this division, and  
16 Division 5 (commencing with Section 6300).

17 (e) The Labor Enforcement and Compliance Fund is hereby  
18 created as a special account in the State Treasury. Moneys in the  
19 fund may be expended by the department, upon appropriation by  
20 the Legislature, for the support of the activities that the Division  
21 of Labor Standards Enforcement performs pursuant to this division  
22 and Division 2 (commencing with Section 200), Division 3  
23 (commencing with Section 2700), and Division 4 (commencing  
24 with Section 3200). The fund shall consist of surcharges imposed  
25 pursuant to paragraph (3) of subdivision (f).

26 (f) (1) Separate surcharges shall be levied by the director upon  
27 all employers, as defined in Section 3300, for purposes of deposit  
28 in the Workers' Compensation Administration Revolving Fund,  
29 the Uninsured Employers Benefits Trust Fund, the Subsequent  
30 Injuries Benefits Trust Fund, and the Occupational Safety and  
31 Health Fund. The total amount of the surcharges shall be allocated  
32 between self-insured employers and insured employers in  
33 proportion to payroll respectively paid in the most recent year for  
34 which payroll information is available. The director shall adopt  
35 reasonable regulations governing the manner of collection of the  
36 surcharges. The regulations shall require the surcharges to be paid  
37 by self-insurers to be expressed as a percentage of indemnity paid  
38 during the most recent year for which information is available,  
39 and the surcharges to be paid by insured employers to be expressed  
40 as a percentage of premium. In no event shall the surcharges paid

1 by insured employers be considered a premium for computation  
2 of a gross premium tax or agents' commission. In no event shall  
3 the total amount of the surcharges paid by insured and self-insured  
4 employers exceed the amounts reasonably necessary to carry out  
5 the purposes of this section.

6 (2) The surcharge levied by the director for the Occupational  
7 Safety and Health Fund, pursuant to paragraph (1), shall not  
8 generate revenues in excess of fifty-two million dollars  
9 (\$52,000,000) on and after the 2009–10 fiscal year, adjusted for  
10 each fiscal year as appropriate to reconcile any ~~over/under~~  
11 ~~assessments~~ *overassessments or underassessments* from previous  
12 fiscal years pursuant to Sections 15606 and 15609 of Title 8 of the  
13 California Code of Regulations, and may increase by not more  
14 than the state-local government deflator each year thereafter  
15 through July 1, 2013, and, as appropriate, to reconcile any  
16 over/under assessments from previous fiscal years. For the 2013–14  
17 fiscal year, the surcharge level shall return to the level in place on  
18 June 30, 2009, adjusted for inflation based on the state-local  
19 government deflator.

20 (3) A separate surcharge shall be levied by the director upon all  
21 employers, as defined in Section 3300, for purposes of deposit in  
22 the Labor Enforcement and Compliance Fund. The total amount  
23 of the surcharges shall be allocated between employers in  
24 proportion to payroll respectively paid in the most recent year for  
25 which payroll information is available. The director shall adopt  
26 reasonable regulations governing the manner of collection of the  
27 surcharges. In no event shall the total amount of the surcharges  
28 paid by employers exceed the amounts reasonably necessary to  
29 carry out the purposes of this section.

30 (4) The surcharge levied by the director for the Labor  
31 Enforcement and Compliance Fund shall not exceed thirty-seven  
32 million dollars (\$37,000,000) in the 2009–10 fiscal year, adjusted  
33 as appropriate to reconcile any over/under assessments from  
34 previous fiscal years, and shall not be adjusted each year thereafter  
35 by more than the state-local government deflator, and, as  
36 appropriate, to reconcile any ~~over/under~~ ~~assessments~~  
37 *overassessments or under assessments* from previous fiscal years  
38 pursuant to Sections 15606 and 15609 of Title 8 of the California  
39 Code of Regulations.

1 (5) The regulations adopted pursuant to paragraph (1) to (4),  
2 inclusive, shall be exempt from the rulemaking provisions of the  
3 Administrative Procedure Act (Chapter 3.5 (commencing with  
4 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
5 Code).

6 (g) On and after July 1, ~~2013~~ 2017, subdivision (e) and  
7 paragraphs (2) to (4), inclusive, of subdivision (f) are inoperative,  
8 unless a later enacted statute, that is enacted before July 1, ~~2013~~  
9 2017, deletes or extends that date.

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