

THIRD READING

Bill No: AB 2321
Author: Ortega (D), et al.
Amended: 8/13/26 in Senate
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 6/24/26
AYES: Smallwood-Cuevas, Cortese, Durazo, Laird
NOES: Strickland

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/13/26
AYES: Cervantes, Cabaldon, Grayson, Richardson, Wahab
NOES: Seyarto, Dahle

ASSEMBLY FLOOR: 55-17, 5/26/26 - See last page for vote

SUBJECT: Occupational safety and health: investigations

SOURCE: Author

DIGEST: This bill 1) strengthens workplace safety protections by revising case review and referral procedures for the Division of Occupational Safety and Health (Cal/OSHA) and its Bureau of Investigations (BOI) to follow when investigating workplace injuries or fatalities; and 2) creates, upon Legislative appropriation, a five-year pilot program transferring investigative responsibilities from the BOI to the district attorneys in Alameda and Santa Clara counties for workplace health and safety violations that result in death in those counties.

ANALYSIS:

Existing law:

- 1) Under the California Occupational Safety and Health Act, assures safe and healthful working conditions for all California workers 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. (Labor Code §6300)

- 2) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6300 et seq.)
- 3) Requires every employer to file a complete report with Cal/OSHA of every occupational injury or occupational illness to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid. A report must be filed within five days after the employer obtains knowledge of the injury or illness. In addition to this report, in every case involving a serious injury or illness, or death, the employer is required to make an immediate report to Cal/OSHA by telephone or email. (Labor Code §6409.1)
- 4) Establishes the Bureau of Investigations (BOI) within Cal/OSHA and makes it responsible for directing accident investigations involving violations of laws, standards, and orders in which there is a serious injury to five or more employees, death, or request for prosecution by a division representative; reviewing inspection reports involving a serious violation if there have been serious injuries to one to four employees or a serious exposure; and may investigate cases where the BOI may find criminal violations have occurred; and preparing cases for the purpose of prosecution, as specified. (Labor Code §6315)
- 5) Requires Cal/OSHA to provide the BOI with all initial accident reports, the Cal/OSHA's inspection report for any inspection involving a serious violation if there is a fatality, as specified, and any other documents in Cal/OSHA's possession that are helpful to the investigation. (Labor Code § 6315)
- 6) Requires the BOI to refer the results of investigations it is required to conduct, in which there is a serious injury or death, to the appropriate prosecuting authority having jurisdiction for appropriate action unless it determines that there is legally insufficient evidence of a violation of the law. (Labor Code §6315(g))
- 7) Authorizes DIR, upon the request of a county district attorney, to develop a protocol for the referral of cases that may involve criminal conduct to the appropriate prosecuting authority in lieu of or in cooperation with an investigation by the BOI, as specified. (Labor Code §6315(i))

- 8) Requires the BOI to submit an annual report to Cal/OSHA, for submission to the director of DIR, on its activities including, among other things, a summary of investigations completed, as specified. (Labor Code §6315.3)
- 9) Establishes the Occupational Safety and Health Fund as a special account within the State Treasury and authorizes moneys in the account to be expended by the DIR, in support of Cal/OSHA, the Occupational Safety and Health Standards Board, and the Occupational Safety and Health Appeals Board, and the activities these entities perform. (Labor Code §62.5(d))

This bill:

- 1) Requires the BOI to immediately, rather than in a timely manner after Cal/OSHA sends inspection reports, review inspection reports involving a serious violation and refer the results of an investigation to the appropriate prosecuting authority having jurisdiction for appropriate action, unless the BOI determines that there is legally insufficient evidence of a violation of the law.
 - a) Requires the BOI, if it determines there is legally insufficient evidence of a violation of the law, to immediately notify the appropriate prosecuting authority without first being requested to do so by the prosecuting authority.
- 2) Requires the BOI to immediately notify the appropriate prosecuting authority upon learning of an incident in which there is a serious injury to five or more employees, death, or request for prosecution by a division representative, and requires the BOI to cooperate with the prosecuting authority and Cal/OSHA on the investigation.
- 3) Requires a state, county, or local fire or police agency, whenever they are called to an incident involving a serious injury, illness, or death of an employee, to immediately, in addition to notifying Cal/OSHA, notify the district attorney's office in the county where the incident occurred. Additionally, requires Cal/OSHA to notify the BOI and the district attorney's office or other appropriate prosecuting authority of the incident, whether Cal/OSHA received notification by the responding agency, the employer, or by other means.
- 4) Authorizes Cal/OSHA to disclose information obtained in connection with any inspection or proceeding to law enforcement officers or prosecutors in any law enforcement investigation or prosecution.
- 5) Requires the BOI to establish written policies and procedures for the process of reviewing cases and deciding whether to investigate or refer them for

prosecution, including, but not limited to, a requirement that the BOI documents a rationale for why it has decided not to investigate or refer cases.

- 6) Requires Cal/OSHA to establish a routine or automated process for transmitting information to the BOI about incident cases with nonfatal injuries so that the BOI can review them.
- 7) Requires the BOI's annual report to Cal/OSHA to additionally be submitted to the Legislature and include the total number of completed investigations referred to prosecuting authorities, the total number of BOI vacancies, each job classification in the prior fiscal year, and any additional positions needed to carry out its duties.
- 8) Creates a five-year pilot program in Alameda and Santa Clara counties that, upon appropriation for the pilot by the Legislature, *and for any incident involving a workplace safety violations that result in a death*, requires the Alameda County or Santa Clara County district attorney (DA), based on where the incident occurs, to investigate and prepare cases for the purpose of prosecution (rather than Cal/OSHA and the BOI investigating).
- 9) Requires Cal/OSHA to immediately notify the Alameda County DA or Santa Clara County DA of the incident and immediately provide them with all of the following:
 - a) All initial incident reports.
 - b) Any report for an inspection involving a serious violation where there is a death.
 - c) Any other Cal/OSHA report necessary for the Alameda County or the Santa Clara County DA's investigation.
 - d) Any other document in the possession of Cal/OSHA that is requested by the Alameda County or Santa Clara County DA for its review or investigation or that the division determines will be helpful to the DA in its investigation of the case.
- 10) Requires the Alameda County DA or the Santa Clara County DA, based on the county in which the incident occurs, to report to the incident scene within a reasonable time. Authorizes the BOI to report to the incident scene but, in any case fitting the criteria of the pilot, the Alameda County DA or the Santa Clara County DA shall be responsible for directing the incident investigation.
- 11) Authorizes moneys in the Occupational Safety and Health Fund or in the Labor and Workforce Development Fund to be expended by the Alameda County DA

and the Santa Clara County DA, upon appropriation by the Legislature, for the support of the activities these entities perform related to investigating and prosecuting these violations.

- 12) Requires the Alameda and Santa Clara County DA's to, by January 1, 2031, separately submit to the Legislature a report that includes, at a minimum, a summary of each of the investigations conducted as well as information about case outcomes, including whether those cases were ultimately prosecuted.
- 13) Provides that the pilot program provisions shall become operative upon appropriation by the Legislature and remain in effect only until January 1, 2032, and, as of that date, are inoperative.
- 14) Finds and declares that a special statute is necessary because of the unique circumstances facing the counties of Alameda and Santa Clara.

Background

As part of their enforcement responsibilities, Cal/OSHA investigates complaints of workplace hazards filed by employees, employee representatives, and others, as well as investigating reports of serious injury or illness violations or deaths. After receiving a complaint or learning of a worker fatality, injury or illness, Cal/OSHA personnel must decide whether to conduct an on-site inspection of a workplace and potentially issue citations and fines according to the results of the inspection.

In July 2025, the California State Auditor released an audit report on Cal/OSHA finding, among other things, that process deficiencies and staffing shortages have limit its ability to protect workers.¹ Among the audits key findings were that Cal/OSHA did not inspect some complaints and accidents, despite evidence that an inspection may have better protected workers. When it does conduct on-site inspections, the audit found that Cal/OSHA's process has critical weaknesses.

With regards to the BOI, the Cal/OSHA audit found that it lacked the policies and staffing necessary to ensure that it consistently refers cases for potential criminal prosecution. The auditor further reported that, due to understaffing, the BOI is essentially only investigating fatalities, leaving other cases of serious workplace injuries and safety issues unaddressed. According to the State Auditor, understaffing has been a key limitation on Cal/OSHA and the BOI's work.

¹ *The Division of Occupational Safety and Health: Process Deficiencies and Staffing Shortages Limit Its Ability to Protect Workers*. California State Auditor. <https://www.auditor.ca.gov/wp-content/uploads/2025/07/2024-115-Report.pdf>

The State Auditor included various recommendations for improving Cal/OSHA, but specific to the BOI, the auditor recommended the following to ensure that the bureau refers cases for potential criminal prosecution when warranted:

- Establish written policies or procedures for how the bureau reviews cases, decides whether to investigate them, and decides whether to refer them for prosecution. This should include requiring the bureau to document a rationale for why it has decided not to investigate or not to refer each case.
- Establish a routine or automated process for the bureau to receive information about accident cases with non-fatal injuries so that it can review them in accordance with requirements in state law.

This bill implements some of the recommendations identified by the State Auditor with regards to the policies and procedures that Cal/OSHA and the BOI must follow when deciding to investigate or refer cases for prosecution. To address the issues of understaffing leading to a lack of investigations and enforcement activities by Cal/OSHA and the BOI, the bill proposes, through a five-year pilot program, that the Alameda and Santa Clara County DA's investigate workplace health and safety violations that result in a death in those counties instead of Cal/OSHA and the BOI.

Need for this bill? According to the author: "This measure is intended to help the BOI by exploring a pilot program to alleviate some of its workload. Having public prosecutors in Alameda and Santa Clara counties investigate cases involving a fatality will ensure that the most egregious workplace tragedies in these counties get the attention they deserve and that employers are held accountable. It also frees up BOI staff to focus on the thousands of cases that are currently going uninvestigated – helping to catch safety issues earlier and prevent more serious workplace injuries. AB 2321 would also implement some of the auditor's recommendations related to internal process improvements within Cal/OSHA and its BOI."

[NOTE: Please see the Senate Labor, Public Employment and Retirement Committee analysis on this bill for more background information and information on more prior and related legislation.]

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- The Department of Industrial Relations (DIR) would incur one-time implementation costs of an unknown amount for Cal/OSHA and BOI to develop required case review, referral, and case transmittal procedures, and likely minor ongoing costs for the BOI to report additional staffing vacancy information (Occupational Safety and Health Fund).
- By imposing specified new duties on the District Attorneys of Santa Clara and Alameda Counties, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs. The magnitude is unknown, but could exceed \$50,000 per year (General Fund).
- This bill may result potentially significant cost pressures to the courts; the magnitude is unknown (Trial Court Trust Fund (TCTF)). The specific number of new actions that could be filed under the bill also is unknown; however, it generally costs about \$10,500 per day to operate a courtroom. Courts are not funded on the basis of workload, and increased pressure on TCTF may create a need for increased funding for courts from the General Fund. The enacted 2026-27 budget includes \$70 million in ongoing support from the General Fund to continue to backfill TCTF for revenue declines.

SUPPORT: (Verified 8/13/26)

Alameda Labor Council

California Federation of Labor Unions, AFL-CIO

California State Association of Electrical Workers

California State Pipe Trades Council

National Union of Healthcare Workers

Teamsters California

United Farm Workers

United Food and Commercial Workers, Western States Council

United Steelworkers District 12

Western States Council Sheet Metal, Air, Rail and Transportation

OPPOSITION: (Verified 8/13/26)

California Chamber of Commerce

ARGUMENTS IN SUPPORT: According to the California Federation of Labor Unions:

“This [measure] ensures that the most egregious workplace tragedies get the attention they deserve and that employers are held accountable. It also frees up BOI staff to focus on the thousands of cases that are currently going uninvestigated – helping to catch safety issues earlier and prevent more serious workplace injuries.

AB 2321 also makes important process reforms within the BOI. The Bureau currently lacks written policies and procedures for reviewing cases and deciding whether to investigate or refer them for prosecution. Indeed, in many of the cases it reviewed, the auditor found that BOI investigators did not adequately document their rationale for referring a case or not. Furthermore, the BOI does not routinely receive information from Cal/OSHA inspectors about cases it is required to review. AB 2321 will require the BOI and Cal/OSHA to implement processes to ensure that investigators are receiving such cases, as well as to have clear instructions for performing their jobs.”

ARGUMENTS IN OPPOSITION: The California Chamber of Commerce is opposed to the measure arguing that it will waste state resources by compelling prosecutors (who are not workplace safety experts) to handle workplace safety cases where no crime has been committed. Among other things, they write:

“Under present law, if a workplace injury occurs and it appears the conduct rises to the level of criminality, Cal/OSHA can already refer cases of workplace violations to prosecutors, and such prosecutors can already prosecute an employer under present law. In fact, Cal/OSHA has worked in recent years to staff up all of its enforcement staff, including adding staff to the unit tasked with referring criminal cases to prosecutors (the Bureau of Investigations unit)...

We do not believe that the mandatory involvement of prosecutors will improve accident analysis and believe it will increase costs and workload for all parties involved.

First and foremost: prosecutors are not workplace safety experts, so forcing them into the driver’s seat for investigations of all total disability or fatality cases will not improve the quality of that investigation or case preparation. These cases are best handled by the Division’s inspectors – who are more knowledgeable about workplace safety law – and employers’ representatives – who are also knowledgeable about workplace safety.”

ASSEMBLY FLOOR: 55-17, 5/26/26

AYES: Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Nguyen, Ortega, Pacheco, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Rogers, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas

NOES: Alanis, Ávila Farías, Castillo, Chen, Davies, DeMaio, Dixon, Ellis, Jeff Gonzalez, Hadwick, Hoover, Johnson, Macedo, Patterson, Sanchez, Tangipa, Wallis

NO VOTE RECORDED: Flora, Gallagher, Lackey, Muratsuchi, Celeste Rodriguez, Michelle Rodriguez, Blanca Rubio, Ta

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