
THIRD READING

Bill No: AB 2321
Author: Ortega (D), et al.
Amended: 8/27/26 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 investigation, review and referral procedures for the Division of Occupational Safety and Health (Cal/OSHA) and its Bureau of Investigations (BOI) to follow when responding to workplace injuries or fatalities; 2) revises procedures for case referral to prosecuting authorities; and 3) imposes misdemeanor penalties for interfering with a Cal/OSHA investigation.

Senate Floor Amendments of 8/27/26 clarify a provision of the bill requiring justification for why a prosecuting authority declines to prosecute a case referred to them by the Bureau of Investigations.

Senate Floor Amendments of 8/21/26, among other things, 1) impose the penalty of a misdemeanor for willful interference with a Cal/OSHA investigation; 2) strike the immediate response required for investigations by the BOI to instead require them to “promptly” investigate; 3) require the BOI to investigate any accident where there is serious exposure, as specified; 4) require the BOI to report to the

Legislature cases involving fatalities for which a prosecuting authority declined to prosecute, as specified; 5) strike the five-year pilot program which would have transferred 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) Makes any person who willfully resists, prevents, impedes, or interferes with the chief of Cal/OSHA or their authorized representative in the performance of their duties, as specified, or who in any manner willfully violates an order of the court relating to those duties is guilty of a misdemeanor, punishable by imprisonment in a county jail, not exceeding six months, or by a fine not exceeding five thousand dollars (\$5,000) or both.
- 2) Requires the BOI to promptly 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.

- 3) Adds “serious exposure” to various provisions of law for which an employer can be held liable for willfully violations of occupational safety or health standards or orders.
- 4) Requires the BOI to investigate any accident in which there is a serious injury or illness or a *serious exposure* for which the division issues a citation of a willful violation.
- 5) Requires Cal/OSHA to immediately notify the appropriate prosecuting authority upon learning of an accident in which there is a serious injury or illness or serious exposure to five or more employees, death, or request for prosecution by a division representative, and requires Cal/OSHA and the BOI to cooperate with the prosecuting authority in the investigation.
- 6) Requires a state, county, or local fire or police agency, whenever they are called to an accident involving a serious injury, illness, or serious exposure, 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.
- 7) Requires Cal/OSHA to immediately notify the BOI and the district attorney’s office or other appropriate prosecuting authority of the accident, whether Cal/OSHA received notification by the responding agency, the employer, or by other means.
- 8) 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.
- 9) Requires the BOI to establish written policies and procedures for reviewing cases and deciding whether to investigate or refer them for prosecution. Requires the policies and procedures to include a requirement that the bureau documents its rationale for not investigating or referring a case.
- 10) Requires Cal/OSHA to establish a routine or automated process for transmitting information to the BOI about cases with serious injuries or illnesses or serious exposures so that the BOI can review them.
- 11) 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.

- a) If a case involving a fatality is referred by the BOI to the appropriate prosecuting authority but the authority declines to prosecute because the bureau's referral report fails to include sufficient evidence of a criminal violation, then the BOI is required to report that decision and the reason therefor to the Legislature. Requires the specifics contained in that report to be kept confidential and not publicly available.

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. 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.

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>

- 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.

Need for this bill? According to the author: “AB 2321 would 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.

*Staff notes that recent amendments removing the Alameda and Santa Clara DA pilot program from the bill may impact the fiscal effect of the bill.

SUPPORT: (Verified 8/27/26)

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 8/27/26)

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:

“Recent amendments create a new problem for California employees and employers with AB 2321! August 21, 2026 amendments will make all sorts of new workplace injuries lead to criminal charges for employees or employers! This issue

was not part of the bill at any point this year! Under current law, if a willful violation of a safety standard by an employee or employer causes death or prolonged impairment, then that employee or employer is guilty of a crime.

AB 2321 would broaden this criminal liability so that it occurs whenever any “serious injury” occurs – which can be as minor as a cut to a finger! This will put far more employees and employers at risk of criminal charges for what has been (and should be) a workplace safety issue with no clear justification! While we are sympathetic to AB 2321’s focus on Cal/OSHA’s failures in enforcement – we must oppose this expansion of criminal liability for employers and employees.”

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

Prepared by: Alma Perez-Schwab / L., P.E. & R. / (916) 651-1556
8/28/26 11:28:51

**** END ****