6300. 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.

6301. The definitions set forth in this chapter shall govern the construction and interpretation of this part.

6302. As used in this division:
   (a) "Director" means the Director of Industrial Relations.
   (b) "Department" means the Department of Industrial Relations.
   (c) "Insurer" includes the State Compensation Insurance Fund and any private company, corporation, mutual association, and reciprocal or interinsurance exchange, authorized under the laws of this state to insure employers against liability for compensation under this part and under Division 4 (commencing with Section 3201), and any employer to whom a certificate of consent to self-insure has been issued.
   (d) "Division" means the Division of Occupational Safety and Health.
   (e) "Standards board" means the Occupational Safety and Health Standards Board, within the department.
   (f) "Appeals board" means the Occupational Safety and Health Appeals Board, within the department.
   (g) "Aquaculture" means a form of agriculture as defined in Section 17 of the Fish and Game Code.
   (h) "Serious injury or illness" means any injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by the commission of a Penal Code violation, except the violation of Section 385 of the Penal Code, or an accident on a public street or highway.
   (i) "Serious exposure" means any exposure of an employee to a hazardous substance when the exposure occurs as a result of an incident, accident, emergency, or exposure over time and is in a degree or amount sufficient to create a substantial probability that death or serious physical harm in the future could result from the exposure.
6303. (a) "Place of employment" means any place, and the premises appurtenant thereto, where employment is carried on, except a place where the health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than the division.

(b) "Employment" includes the carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire, except household domestic service.

(c) "Employment," for purposes of this division only, also includes volunteer firefighting when covered by Division 4 (commencing with Section 3200) pursuant to Section 3361.

(d) Subdivision (c) shall become operative on January 1, 2004.

6303.5. Nothing in this division shall be construed to limit the jurisdiction of the state over any employment or place of employment by reason of the exercise of occupational safety and health jurisdiction by any federal agency if federal jurisdiction is being exercised under a federal law which expressly authorizes concurrent state jurisdiction over occupational safety or health issues.

6304. "Employer" shall have the same meaning as in Section 3300.

6304.1. (a) "Employee" means every person who is required or directed by any employer to engage in any employment or to go to work or be at any time in any place of employment.

(b) "Employee" also includes volunteer firefighters covered by Division 4 (commencing with Section 3200) pursuant to Section 3361.

(c) Subdivision (b) shall become operative on January 1, 2004.

(d) This act does not affect claims that arose pursuant to Division 5 of this code between January 1, 2002, and the effective date of this act.

6304.2. Notwithstanding Section 6413, and except as provided in Sections 6304.3 and 6304.4, any state prisoner engaged in correctional industry, as defined by the Department of Corrections, shall be deemed to be an "employee," and the Department of Corrections shall be deemed to be an "employer," with regard to such prisoners for the purposes of this part.

6304.3. (a) A Correctional Industry Safety Committee shall be established in accordance with Department of Corrections administrative procedures at each facility maintaining a correctional industry, as defined by the Department of Corrections. The Division of Occupational Safety and Health shall promulgate, and the Department of Corrections shall implement, regulations concerning the duties and functions which shall govern the operation of each such
committee.

(b) All complaints alleging unsafe or unhealthy working conditions in a correctional industry shall initially be directed to the Correctional Industry Safety Committee of the facility prison. The committee shall attempt to resolve all complaints.

If a complaint is not resolved by the committee within 15 calendar days, the complaint shall be referred by the committee to the division where it shall be reviewed. When the division receives a complaint which, in its determination, constitutes a bona fide allegation of a safety or health violation, the division shall summarily investigate the same as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, as defined in Section 6309, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation.

(c) Except as provided in subdivision (b) and in Section 6313, the inspection or investigation of a facility maintaining a correctional industry, as defined by the Department of Corrections, shall be discretionary with the division.

(d) Notwithstanding Section 6321, the division may give advance notice of an inspection or investigation and may postpone the same if such action is necessary for the maintenance of security at the facility where the inspection or investigation is to be held, or for insuring the safety and health of the division's representative who will be conducting such inspection or investigation.

6304.4. A prisoner engaged in correctional industry, as defined by the Department of Corrections, shall not be considered an employee for purposes of the provisions relating to appeal proceedings set forth in Chapter 7 (commencing with Section 6600).

6304.5. It is the intent of the Legislature that the provisions of this division, and the occupational safety and health standards and orders promulgated under this code, are applicable to proceedings against employers for the exclusive purpose of maintaining and enforcing employee safety.

Neither the issuance of, or failure to issue, a citation by the division shall have any application to, nor be considered in, nor be admissible into, evidence in any personal injury or wrongful death action, except as between an employee and his or her own employer. Sections 452 and 669 of the Evidence Code shall apply to this division and to occupational safety and health standards adopted under this division in the same manner as any other statute, ordinance, or regulation. The testimony of employees of the division shall not be admissible as expert opinion or with respect to the application of occupational safety and health standards. It is the intent of the Legislature that the amendments to this section enacted in the 1999-2000 Regular Session shall not abrogate the holding in Brock v. State of California (1978) 81 Cal.App.3d 752.

6305. (a) "Occupational safety and health standards and orders" means standards and orders adopted by the standards board pursuant to
Chapter 6 (commencing with Section 140) of Division 1 and general orders heretofore adopted by the Industrial Safety Board or the Industrial Accident Commission.

(b) "Special order" means any order written by the chief or the chief's authorized representative to correct an unsafe condition, device, or place of employment which poses a threat to the health or safety of an employee and which cannot be made safe under existing standards or orders of the standards board. These orders shall have the same effect as any other standard or order of the standards board, but shall apply only to the employment or place of employment described in the written order of the chief's authorized representative.

6306. (a) "Safe," "safety," and "health" as applied to an employment or a place of employment mean such freedom from danger to the life, safety, or health of employees as the nature of the employment reasonably permits.

(b) "Safety device" and "safeguard" shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger, including the danger of exposure to potentially injurious levels of ionizing radiation or potentially injurious quantities of radioactive materials.

6307. The division has the power, jurisdiction, and supervision over every employment and place of employment in this state, which is necessary adequately to enforce and administer all laws and lawful standards and orders, or special orders requiring such employment and place of employment to be safe, and requiring the protection of the life, safety, and health of every employee in such employment or place of employment.

6307.1. The State Department of Health Services shall assist the division in the enforcement of Section 25910 of the Health and Safety Code in the manner prescribed by a written agreement between the State Department of Health Services and the Department of Industrial Relations, pursuant to Section 144.

6308. The division, in enforcing occupational safety and health standards and orders and special orders may do any of the following:

(a) Declare and prescribe what safety devices, safeguards, or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law or lawful order.

(b) Enforce Section 25910 of the Health and Safety Code and standards and orders adopted by the standards board pursuant to Chapter 6 (commencing with Section 140) of Division 1 of the Labor Code, for the installation, use, maintenance, and operation of reasonable uniform safety devices, safeguards, and other means or methods of protection, which are necessary to carry out all laws and lawful standards or special orders relative to the protection of the life and safety of employees in employments and places of employment.
(c) Require the performance of any other act which the protection of the life and safety of the employees in employments and places of employment reasonably demands.

An employer may request a hearing on a special order or action ordered pursuant to this section, at which the employer, owner, or any other person may appear. The appeals board shall conduct the hearing at the earliest possible time.

All orders, rules, regulations, findings, and decisions of the division made or entered under this part, except special orders and action orders, may be reviewed by the Supreme Court and the courts of appeal as may be provided by law.

6308.5. Hearings conducted by the division pursuant to this part shall give any affected employer or other affected person the opportunity to submit facts or arguments, but may be conducted informally, either orally or in writing.

6309. If the division learns or has reason to believe that an employment or place of employment is not safe or is injurious to the welfare of an employee, it may, on its own motion, or upon complaint, summarily investigate the same with or without notice or hearings. However, if the division receives a complaint from an employee, an employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, or government agency representative, or an employer of an employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, it shall, with or without notice or hearing, summarily investigate the complaint as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation. The division shall attempt to determine the period of time in the future that the complainant believes the unsafe condition may continue to exist, and shall allocate inspection resources so as to respond first to those situations in which time is of the essence. For purposes of this section, a complaint is deemed to allege a serious violation if the division determines that the complaint charges that there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in a place of employment. When a complaint charging a serious violation is received from a state or local prosecutor, or a local law enforcement agency, the division shall summarily investigate the employment or place of employment within 24 hours of receipt of the complaint. All other complaints are deemed to allege nonserious violations. The division may enter and serve any necessary order relative thereto. The division is not required to respond to a complaint within this period where, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer or is without any reasonable basis.

The division shall keep complete and accurate records of all complaints, whether verbal or written, and shall inform the complainant, whenever his or her identity is known, of any action taken by the division in regard to the subject matter of the complaint, and the reasons for the action, within 14 calendar days of
taking any action. The records of the division shall include the
dates on which any action was taken on the complaint, or the reasons
for not taking any action on the complaint. The division shall,
pursuant to authorized regulations, conduct an informal review of any
refusal by a representative of the division to issue a citation with
respect to an alleged violation. The division shall furnish the
employee or the representative of employees requesting the review a
written statement of the reasons for the division's final disposition
of the case.

The name of a person who submits to the division a complaint
regarding the unsafe condition of an employment or place of
employment shall be kept confidential by the division, unless that
person requests otherwise.

The division shall annually compile and release on its Web site
data pertaining to complaints received and citations issued.

The requirements of this section do not relieve the division of
its requirement to inspect and assure that all places of employment
are safe and healthful for employees. The division shall maintain the
capability to receive and act upon complaints at all times.

6310. (a) No person shall discharge or in any manner discriminate
against any employee because the employee has done any of the
following:

(1) Made any oral or written complaint to the division, other
governmental agencies having statutory responsibility for or
assisting the division with reference to employee safety or health,
his or her employer, or his or her representative.

(2) Instituted or caused to be instituted any proceeding under or
relating to his or her rights or has testified or is about to testify
in the proceeding or because of the exercise by the employee on
behalf of himself, herself, or others of any rights afforded him or
her.

(3) Participated in an occupational health and safety committee
established pursuant to Section 6401.7.

(b) Any employee who is discharged, threatened with discharge,
demoted, suspended, or in any other manner discriminated against in
the terms and conditions of employment by his or her employer because
the employee has made a bona fide oral or written complaint to the
division, other governmental agencies having statutory responsibility
for or assisting the division with reference to employee safety or
health, his or her employer, or his or her representative, of unsafe
working conditions, or work practices, in his or her employment or
place of employment, or has participated in an employer-employee
occupational health and safety committee, shall be entitled to
reinstatement and reimbursement for lost wages and work benefits
caused by the acts of the employer. Any employer who willfully
refuses to rehire, promote, or otherwise restore an employee or
former employee who has been determined to be eligible for rehiring
or promotion by a grievance procedure, arbitration, or hearing
authorized by law, is guilty of a misdemeanor.

6311. No employee shall be laid off or discharged for refusing to
perform work in the performance of which this code, including Section
6400, any occupational safety or health standard or any safety order
of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because he or she refused to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or his or her fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge.

6312. Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of Section 6310 or 6311 may file a complaint with the Labor Commissioner pursuant to Section 98.7.

6313. (a) The division shall investigate the causes of any employment accident that is fatal to one or more employees or that results in a serious injury or illness, or a serious exposure, unless it determines that an investigation is unnecessary. If the division determines that an investigation of an accident is unnecessary, it shall summarize the facts indicating that the accident need not be investigated and the means by which the facts were determined. The division shall establish guidelines for determining the circumstances under which an investigation of these accidents and exposures is unnecessary.

(b) The division may investigate the causes of any other industrial accident or occupational illness which occurs within the state in any employment or place of employment, or which directly or indirectly arises from or is connected with the maintenance or operation of the employment or place of employment, and shall issue any orders necessary to eliminate the causes and to prevent reoccurrence. The orders may not be admitted as evidence in any action for damages, or any proceeding to recover compensation, based on or arising out of injury or death caused by the accident or illness.

6313.5. The division shall transmit to the Registrar of Contractors copies of any reports made in any investigation conducted pursuant to subdivision (a) of Section 6313, and may, upon its own motion or at the request of the Registrar of Contractors, transmit copies of any other reports made in any investigation conducted pursuant to subdivision (b) of Section 6313 involving a contractor licensed pursuant to the Contractors License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code).

6314. (a) To make an investigation or inspection, the chief of the division and all qualified divisional inspectors and investigators authorized by him or her shall, upon presenting appropriate credentials to the employer, have free access to any place of employment to investigate and inspect during regular working hours,
and at other reasonable times when necessary for the protection of safety and health, and within reasonable limits and in a reasonable manner. The chief or his or her authorized representative may, during the course of any investigation or inspection, obtain any statistics, information, or any physical materials in the possession of the employer that are directly related to the purpose of the investigation or inspection, conduct any tests necessary to the investigation or inspection, and take photographs. Photographs taken by the division during the course of any investigation or inspection shall be considered to be confidential information pursuant to the provisions of Section 6322, and shall not be deemed to be public records for purposes of the California Public Records Act.

(b) If permission to investigate or inspect the place of employment is refused, or the facts or circumstances reasonably justify the failure to seek permission, the chief or his or her authorized representative may obtain an inspection warrant pursuant to the provisions of Title 13 (commencing with Section 1822.50) of the Code of Civil Procedure. Cause for the issuance of a warrant shall be deemed to exist if there has been an industrial accident, injury, or illness reported, if any complaint that violations of occupational safety and health standards exist at the place of employment has been received by the division, or if the place of employment to be inspected has been chosen on the basis of specific neutral criteria contained in a general administrative plan for the enforcement of this division.

(c) The chief and his or her authorized representatives may issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, and physical materials, administer oaths, examine witnesses under oath, take verification or proof of written materials, and take depositions and affidavits for the purpose of carrying out the duties of the division.

(d) In the course of any investigation or inspection of an employer or place of employment by an authorized representative of the division, a representative of the employer and a representative authorized by his or her employees shall have an opportunity to accompany him or her on the tour of inspection. Any employee or employer, or their authorized representatives, shall have the right to discuss safety and health violations or safety and health problems with the inspector privately during the course of an investigation or inspection. Where there is no authorized employee representative, the chief or his or her authorized representatives shall consult with a reasonable number of employees concerning matters of health and safety of the place of employment.

(e) During any investigation of an industrial accident or occupational illness conducted by the division pursuant to the provisions of Section 6313, the chief or his or her authorized representative may issue an order to preserve physical materials or the accident site as they were at the time the accident or illness occurred if, in the opinion of the division, it is necessary to do so in order to determine the cause or causes of the accident or illness, and the evidence is in potential danger of being removed, altered, or tampered with. Under these circumstances, the division shall issue that order in a manner that will avoid, to the extent possible, any interference with normal business operations.

A conspicuous notice that an order has been issued shall be prepared by the division and shall be posted by the employer in the area or on the article to be preserved. The order shall be limited to the immediate area and the machines, devices, apparatus, or equipment directly associated with the accident or illness.
Any person who knowingly violates an order issued by the division pursuant to this subdivision shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000).

6314.1. (a) The division shall establish a program for targeting employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses. The employers shall be identified from any or all of the following data sources: the California Work Injury and Illness program, the Occupational Injuries and Illness Survey, the federal hazardous employers' list, experience modification and other relevant data maintained and furnished by all rating organizations as defined in Section 11750.1 of the Insurance Code, histories of violations of Occupational Safety and Health Act standards, and any other source deemed to be appropriate that identifies injury and illness rates.

(b) The division shall establish procedures for ensuring that the highest hazardous employers in the most hazardous industries are inspected on a priority basis. The division may send a letter to the high hazard employers who are identified pursuant to this section informing them of their status and directing them to submit a plan, including the establishment of joint labor-management health and safety committees, within a time determined by the division for reducing their occupational injury and illness rates. Employers who submit plans that meet the requirements of the division may be placed on a secondary inspection schedule. Employers on that schedule shall be inspected on a random basis as determined by the division. Employers who do not submit plans meeting the requirements of the division within the time specified by the division shall be placed on the primary inspection list. Every employer on the primary inspection list shall be subject to an inspection. The division shall employ sufficient personnel to meet minimum federal targeted inspection standards.

(c) The division shall establish and maintain regional plans for allocating the division's resources for the targeted inspection program in addition to the inspections required or authorized in Sections 6309, 6313, and 6320. Each regional plan shall focus on industries selected from the targeted inspection program as well as any other scheduled inspections that the division determines to be appropriate to the region, including the cleanup of hazardous waste sites. All targeted inspections shall be conducted on a priority basis, targeting the worst employers first.

(d) In order to maximize the impact of the regional plans, the division shall coordinate its education, training, and consulting services with the priorities established in the regional plans.

6314.5. (a) Every inspection conducted by the division shall include an evaluation of the employer's injury prevention program established pursuant to Section 6401.7. The division shall evaluate injury prevention programs using the criteria for substantial compliance determined by the standards board. The evaluation shall include interviews with a sample of employees and the members of any employer-employee occupational safety and health committee. In any inspection which includes work for which a permit is required pursuant to Section 6500 and for which a permit has been issued
pursuant to Section 6502, the evaluation of the employer's injury prevention program shall be limited to the implementation of the plan approved by the division in the issuance of the permit. Before any inspection is concluded, the division shall notify the employer of the services available from the department to assist the employer to establish, maintain, improve, and evaluate the employer's injury prevention program.

(b) Inspections also shall include an evaluation of the following:
   (1) The condition or conditions alleged in the complaint if the inspection is conducted pursuant to Section 6309.
   (2) The condition or conditions involved in the accident if the inspection is conducted pursuant to Section 6313.
   (3) The condition or conditions involving work for which a permit is required pursuant to Section 6500, for which notification of asbestos related work is required pursuant to Section 6501.5, or for which a report of use of a carcinogen is required pursuant to Section 9030.
   (4) The condition or conditions related to significant safety or health hazards in the industries identified in the regional plans developed pursuant to Section 6314.1.
   (5) The condition or conditions involved in abatement of previous violations, special orders, or action orders if the inspection is conducted pursuant to Section 6320.

(c) The scope of any inspection may be expanded beyond the evaluations specified in subdivisions (a) and (b) whenever, in the opinion of the division, a more complete inspection is warranted.

6315. (a) There is within the division a Bureau of Investigations. The bureau is responsible for directing accident investigations involving violations of standards, orders, special orders, or Section 25910 of the Health and Safety Code, in which there is a serious injury to five or more employees, death, or request for prosecution by a division representative. The bureau shall review inspection reports involving a serious violation where there have been serious injuries to one to four employees or a serious exposure, and may investigate those cases in which the bureau finds criminal violations may have occurred. The bureau is responsible for preparing cases for the purpose of prosecution, including evidence and findings.

(b) The division shall provide the bureau with all of the following:
   (1) All initial accident reports.
   (2) The division's inspection report for any inspection involving a serious violation where there is a fatality, and the reports necessary for the bureau's review required pursuant to subdivision (a).
   (3) Any other documents in the possession of the division requested by the bureau for its review or investigation of any case or which the division determines will be helpful to the bureau in its investigation of the case.

(c) The supervisor of the bureau is the administrative chief of the bureau, and shall be an attorney.

(d) The bureau shall be staffed by as many attorneys and investigators as are necessary to carry out the purposes of this chapter. To the extent possible, the attorneys and investigators shall be experienced in criminal law.

(e) The supervisor of the bureau and bureau representatives designated by the supervisor have a right of access to all places of
employment necessary to the investigation, may collect any evidence or samples they deem necessary to an investigation, and have all of the powers enumerated in Section 6314.

(f) The supervisor of the bureau and bureau representatives designated by the supervisor may serve all processes and notices throughout the state.

(g) In any case where the bureau is required to conduct an investigation, and in which there is a serious injury or death, the results of the investigation shall be referred in a timely manner by the bureau to the appropriate prosecuting authority having jurisdiction for appropriate action, unless the bureau determines that there is legally insufficient evidence of a violation of the law. If the bureau determines that there is legally insufficient evidence of a violation of the law, the bureau shall notify the appropriate prosecuting authority, if the prosecuting authority requests notice.

(h) The bureau may communicate with the appropriate prosecuting authority at any time the bureau deems appropriate.

(i) Upon the request of a county district attorney, the department may 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 bureau. The protocol shall provide for the voluntary acceptance of referrals after a review of the case by the prosecuting authority. In cases accepted for investigation by the prosecuting authority, the protocol shall provide for cooperation between the prosecuting authority, the division, and the bureau. Where a referral is declined by the prosecuting authority, the bureau shall comply with subdivisions (a) to (h), inclusive.

6315.3. The bureau shall, not later than February 15, annually submit to the division for submission to the director a report on the activities of the bureau, including, but not limited to, the following:

(a) Totals of each type of report provided the bureau under each category in subdivision (b) of Section 6315.

(b) Totals of each type of case reflecting the number of investigations and court cases in progress at the start of the calendar year being reported, investigations completed in the calendar year, cases referred to appropriate prosecuting authorities in the calendar year, and investigations and court cases in progress at the end of the calendar year. The types of cases shall include the following:

1) Those that the bureau is required to investigate, divided into fatalities, serious injuries to five or more employees, and requests for prosecution from a division representative.

2) Those that were initiated by the bureau following the review required in subdivision (a) of Section 6315, divided into serious injuries to fewer than five employees and serious exposures.

(c) A summary of the dispositions in the calendar year of cases referred by the bureau to appropriate prosecuting authorities. The summary shall be divided into the types of cases, as described in subdivision (b), and shall show at least the violation, the statute for which the case was referred for prosecution, and the dates of referral to the bureau for investigation, referral from the bureau for prosecution, and the final court action if the case was prosecuted.
(d) A summary of investigations completed in the calendar year that did not result in a referral for prosecution, divided into the types of cases as described in subdivision (b), showing the violation and the reasons for nonreferral.

(e) A summary of the use of the bureau's resources in accomplishing the bureau's mission.

6315.5. All occupational safety and health standards and orders, rules, regulations, findings, and decisions of the division made and entered pursuant to this part are admissible as evidence in any prosecution for the violation of any provision of this part, and shall, in every such prosecution, be presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirement of safety unless, prior to the institution of the prosecution for such violation, proceedings for a hearing on a special order are instituted, or a petition is filed under Section 11426 of the Government Code.

6316. Except as limited by Chapter 6 (commencing with Section 140) of Division 1, nothing in this part shall deprive the governing body of any county, city, or public corporation, board, or department, of any power or jurisdiction over or relative to any place of employment.

6317. If, upon inspection or investigation, the division believes that an employer has violated Section 25910 of the Health and Safety Code or any standard, rule, order, or regulation established pursuant to Chapter 6 (commencing with Section 140) of Division 1 of the Labor Code, or any standard, rule, order, or regulation established pursuant to this part, it shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the code, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the alleged violation. The period specified for abatement shall not commence running until the date the citation or notice is received by certified mail and the certified mail receipt is signed, or if not signed, the date the return is made to the post office. If the division officially and directly delivers the citation or notice to the employer, the period specified for abatement shall commence running on the date of the delivery.

A "notice" in lieu of citation may be issued with respect to violations found in an inspection or investigation which meet either of the following requirements:

(1) The violations do not have a direct relationship upon the health or safety of an employee.

(2) The violations do not have an immediate relationship to the health or safety of an employee, and are of a general or regulatory nature. A notice in lieu of a citation may be issued only if the employer agrees to correct the violations within a reasonable time, as specified by the division, and agrees not to appeal the finding of the division that the violations exist. A notice issued pursuant to this paragraph shall have the same effect as a citation for purposes of establishing repeat violations or a failure to abate. Every notice
shall clearly state the abatement period specified by the division, that the notice may not be appealed, and that the notice has the same effect as a citation for purposes of establishing a repeated violation or a failure to abate. The employer shall indicate agreement to the provisions and conditions of the notice by his or her signature on the notice.

Under no circumstances shall a notice be issued in lieu of a citation if the violations are serious, repeated, willful, or arise from a failure to abate.

The director shall prescribe guidelines for the issuance of these notices.

The division may impose a civil penalty against an employer as specified in Chapter 4 (commencing with Section 6423) of this part. A notice in lieu of a citation may not be issued if the number of first instance violations found in the inspection (other than serious, willful, or repeated violations) is 10 or more violations.

No citation or notice shall be issued by the division for a given violation or violations after six months have elapsed since occurrence of the violation.

The director shall prescribe procedures for the issuance of a citation or notice.

The division shall prepare and maintain records capable of supplying an inspector with previous citations and notices issued to an employer.

6317.5. (a) If, upon inspection or investigation, the division finds that an employer has falsified any materials posted in the workplace or distributed to employees related to the California Occupational Safety and Health Act, the division shall issue a citation to the employer.

(b) Each citation issued pursuant to this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the director.

(c) Any employer served with a citation pursuant to subdivision (a) may appeal to the appeals board pursuant to the provisions of Chapter 7 (commencing with Section 6600). The appeal shall be subject to the timeframes and procedures set forth in that chapter.

(d) The provisions of this section are in addition to, and not in lieu of, all other criminal penalties and civil remedies that may be applicable to any act leading to issuance of a citation pursuant to this section.

6317.7. If, upon inspection or investigation, the division finds no violations pursuant to this chapter, the division with reasonable promptness shall issue a written notice to the employer specifying the areas inspected and stating that no violations were found.

The director shall prescribe procedures for the issuance of this notice.

6318. (a) Each citation issued under Section 6317, and each special order or action ordered pursuant to Section 6308, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the director, at or near each place a violation referred to in the citation or order occurred. All postings shall be maintained for three working days, or until the unsafe condition is
abated, whichever is longer. Following each investigation of an industrial accident or occupational illness, if no violations are found, the employer shall post a notice prepared by the division so indicating for three working days.

(b) When the division verifies abatement of a serious violation or an order at the time of inspection or upon reinspection, the employer shall post a notice prepared by the division so indicating for three working days. In all other cases of abatement of serious violations, the employer shall post the signed statement confirming abatement prepared pursuant to Section 6320.

6319. (a) If, after an inspection or investigation, the division issues a citation pursuant to Section 6317 or an order pursuant to Section 6308, it shall, within a reasonable time after the termination of the inspection or investigation, notify the employer by certified mail of the citation or order, and that the employer has 15 working days from receipt of the notice within which to notify the appeals board that he or she wishes to contest the citation or order for any reason set forth in Section 6600 or 6600.5.

(b) Any employer served by certified mail with a notice of civil penalty may appeal to the appeals board within 15 working days from receipt of that notice for any reason set forth in Section 6600. If the citation is issued for a violation involving the condition or operation of any machine, device, apparatus, or equipment, and a person other than the employer is obligated to the employer to repair the machine, device, apparatus, or equipment and to pay any penalties assessed against the employer, the other person may appeal to the appeals board within 15 working days of the receipt of the citation by the employer for any reasons set forth in Section 6600.

(c) The director shall promulgate regulations covering the assessment of civil penalties under this chapter which give due consideration to the appropriateness of the penalty with respect to the following factors:

1. The size of the business of the employer being charged.
2. The gravity of the violation.
3. The good faith of the employer, including timely abatement.
4. The history of previous violations.

(d) Notwithstanding subdivision (c), if serious injury, illness, exposure, or death is caused by any serious, willful, or repeated violation, or by any failure to correct a serious violation within the time permitted for its correction, the penalty shall not be reduced for any reason other than the size of the business of the employer being charged. Whenever the division issues a citation for a violation covered by this subdivision, it shall notify the employer of its determination that serious injury, illness, exposure or death was caused by the violation and shall, upon request, provide the employer with a copy of the inspection report.

(e) The employer shall not be liable for a civil penalty under this part for any citation issued by a division representative providing consulting services pursuant to Sections 6354 and 6355.

(f) Whenever a citation of a self-insured employer for a willful, or repeat serious violation of the standard adopted pursuant to Section 6401.7 becomes final, the division shall notify the director so that a hearing may be held to determine whether good cause exists to revoke the employer's certificate of consent to self-insure as provided in Section 3702.

(g) Based upon the evidence, the division may propose appropriate
modifications concerning the characterization of violations and corresponding modifications to civil penalties as a result thereof.

6319.3. (a) Except as provided in subdivision (b) of this section and subdivision (j) of Section 6401.7, no civil penalty shall be assessed against any new employer in the state for a violation of any standard developed pursuant to subdivision (a) of Section 6401.7 for a period of one year after the date the new employer establishes a business in the state.

(b) Subdivision (a) shall only apply to an employer who has made a good faith effort to comply with any standard developed pursuant to subdivision (a) of Section 6401.7, but shall not apply if the employer is found to have committed a serious, willful, or repeated violation of that standard, or fails to abate the violation and is assessed a penalty pursuant to Section 6430.

6319.5. Upon a showing by an employer of a good-faith effort to comply with the abatement requirement of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the division, after an opportunity for a hearing, shall issue an order affirming or modifying the abatement requirements in such citation.

6320. (a) If, after inspection or investigation, the division issues a special order, order to take special action, or a citation for a serious violation, and if at the time of inspection the order is not complied with or the violation is not abated, the division shall conduct a reinspection in the following cases:

1. All inspections or investigations involving a serious violation of a standard adopted pursuant to Section 6401.7, a special order or order to take special action, serious violations of those orders, and serious violations characterized as repeat or willful or with abatement periods of less than six days. These reinspections shall be conducted at the end of the period fixed for compliance with the order or abatement of the violation or within 30 days thereafter.

2. At least 20 percent of the inspections or investigations involving a serious violation not otherwise scheduled for reinspection. These inspections shall be randomly selected and shall be conducted at the end of the period fixed for abatement of the violation or within a reasonable time thereafter.

(b) Whenever a serious violation is not abated at the time of the initial or subsequent inspection, the division shall require the employer to submit a signed statement under penalty of perjury that he or she has complied with the abatement terms within the period fixed for abatement of the violation. If the statement is not received by the division within 10 working days after the end of the period fixed for abatement, the division shall revoke any adjustments to the civil penalty based on abatement of the violation. The division shall include on the initial notice of civil penalty a clear warning of reinspection and automatic revocation of any civil penalty adjustments based on abatement for failure to submit the required statement in the time allotted, and of an additional,
potentially substantial monetary penalty for failure to abate the violation. If the division fails to receive evidence of abatement or the statement within 10 working days after the end of the abatement period, the division shall notify the employer that the additional civil penalty for failure to abate, as provided in Section 6430, will be assessed retroactive to the end of the abatement period unless the employer can provide sufficient evidence that the violation was abated prior to that date. The division shall conduct a reinspection of serious violations within 45 days following the end of the abatement period whenever it still has no evidence of abatement.

6321. No person or employer shall be given advance warning of an inspection or investigation by any authorized representative of the division unless authorized under provisions of this part.

   Only the chief or, in the case of his absence, his authorized representatives shall have the authority to permit advance notice of an inspection or investigation. The director shall, as soon as practicable, set down limitations under which an employer may be granted advance notice by the chief. In no case, except an imminent danger to the health or safety of an employee or employees, is advance notice to be authorized when the investigation or inspection is to be made as a result of an employee complaint.

   Any person who gives advance notice of any inspection to be conducted, without authority from the chief or his designees, is guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than six months, or by both.

6322. All information reported to or otherwise obtained by the chief or his representatives in connection with any inspection or proceeding of the division which contains or which might reveal a trade secret referred to in Section 1905 of Title 18 of the United States Code, or other information that is confidential pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, shall be considered confidential, except that such information may be disclosed to other officers or employees of the division concerned with carrying out the purposes of the division or when relevant in any proceeding of the division. The appeals board, standards board, the courts, or the director shall in any such proceeding issue such orders as may be appropriate to protect the confidentiality of trade secrets. Violation of this section is a misdemeanor.

6323. If the condition of any employment or place of employment or the operation of any machine, device, apparatus, or equipment constitutes a serious menace to the lives or safety of persons about it, the division may apply to the superior court of the county in which such place of employment, machine, device, apparatus, or equipment is situated, for an injunction restraining the use or operation thereof until such condition is corrected.
6324. The application to the superior court accompanied by affidavit showing that such place of employment, machine, device, apparatus, or equipment is being operated in violation of a safety order or standard, or in violation of Section 25910 of the Health and Safety Code, and that such use or operation constitutes a menace to the life or safety of any person employed thereabout and accompanied by a copy of the order or standard applicable thereto is a sufficient prima facie showing to warrant, in the discretion of the court, the immediate granting of a temporary restraining order. No bond shall be required from the division as a prerequisite to the granting of any restraining order.

6325. When, in the opinion of the division, a place of employment, machine, device, apparatus, or equipment or any part thereof is in a dangerous condition, is not properly guarded or is dangerously placed so as to constitute an imminent hazard to employees, entry therein, or the use thereof, as the case may be, shall be prohibited by the division, and a conspicuous notice to that effect shall be attached thereto. Such prohibition of use shall be limited to the immediate area in which the imminent hazard exists, and the division shall not prohibit any entry in or use of a place of employment, machine, device, apparatus, or equipment, or any part thereof, which is outside such area of imminent hazard. Such notice shall not be removed except by an authorized representative of the division, nor until the place of employment, machine, device, apparatus, or equipment is made safe and the required safeguards or safety appliances or devices are provided. This section shall not prevent the entry or use with the division's knowledge and permission for the sole purpose of eliminating the dangerous conditions.

6325.5. If the division has reasonable cause to believe that any workplace contains friable asbestos, and if there appears to be inadequate protection for employees at that workplace to the hazards from airborne asbestos fibers, the division may issue an order prohibiting use.

6326. Every person who, after such notice is attached as provided in Section 6325, enters any such place of employment, or uses or operates any such place of employment, machine, device, apparatus, or equipment before it is made safe and the required safeguards or safety appliances or devices are provided, or who defaces, destroys or removes any such notice without the authority of the division, is guilty of a misdemeanor punishable by a fine of up to one thousand dollars ($1,000), or up to one year in the county jail, or both.

6327. Once an authorized representative of the division has prohibited entry in or use of a place of employment, machine, device, apparatus, or equipment, as specified in Section 6325, the employer may contest the order and shall be granted, upon request, a hearing by the division to review the validity of the representative's order. The hearing shall be held within 24 hours following the employer's request.
6327.5. If the division arbitrarily or capriciously fails to take action to prevent or prohibit any conditions or practices in any employment or place of employment which are such that danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through other available means, any employee who may be injured by reason of such failure, or the representatives of such employees, may bring an action against the chief of the division in any appropriate court for a writ of mandate to compel the division to prevent or prohibit the condition. Nothing contained in this section shall be deemed to prevent the bringing of a writ of mandate against any appropriate person or entity as may be provided by law.

6328. The division shall prepare a notice containing pertinent information regarding safety rules and regulations. The notice shall contain the address and telephone number of the nearest division office; a clear explanation of an employee's right to report any unsafe working conditions; the right to request a safety inspection by the division for unsafe conditions; the right to refuse to work under conditions which endanger his life or health; the right to receive information under the Hazardous Substances Information and Training Act (Ch. 2.5 (commencing with Section 6360)); posting and notice requirements of employers and the division; and any other information the division deems necessary. It shall be supplied to employers as soon as practical. The division shall promulgate regulations on the content and the required location and number of notices which must be posted by employers. Sufficient posters in both English and Spanish shall be printed to supply employers in this state.

6329. All money collected for violation of standards, orders, or special orders of, or for fees paid pursuant to this division shall be paid into the state treasury to the credit of the General Fund. The Department of Industrial Relations shall account to the Department of Finance and the State Controller for all moneys so received and furnish proper vouchers therefor.

6330. The director shall prepare and submit to the Legislature, not later than March 1, an annual report on the division activities. The report shall include, but need not be limited to, the following information for the previous calendar year:
(a) The amount of funds allocated and spent in enforcement, education and research, and administration by the division.
(b) Total inspections made, and citations issued by the division.
(c) The number of civil penalties assessed, total amount of fines collected and the number of appeals heard.
(d) The number of contractors referred to the Contractor's State License Board for hearing, pursuant to Section 7109.5 of the Business and Professions Code, and the total number of these cases resulting in suspension or revocation of a license.
(e) The report from the division prepared by the Bureau of Investigations for submission to the director pursuant to Section 6315.3.

(f) Recommendations for legislation which improves the ability of the division to provide safety in places of employment.

The report shall be made to the Speaker of the Assembly and the Chairman of the Rules Committee of the Senate, for assignment to the appropriate committee or committees for evaluation.

6331. The division shall enter into a contract for the development and execution of tests to define safety standards for the use of positive pressure, closed circuit, breathing apparatus in interior structural fires. The testing shall define numerically what constitutes positive pressure in breathing apparatus. The testing shall also address the issues of the heat of the oxygen coming into the mask, the condensation inside the mask, the possibility of, and effect of, moisture condensation in the lungs of the wearer of the mask, and the risks associated with a dislodgement of the mask in an interior structural fire situation. The development of these tests shall utilize the resources of recognized specialists in fire research to design, conduct, and execute the tests and develop the standards. The standards board shall adopt or revise safety standards based on the results of these tests.

The test parameters, the location where the testing will take place, and the level of expertise required shall be determined by the Cal-OSHA Self Contained Breathing Apparatus Advisory Committee.

6332. (a) For purposes of this section, the following terms have the following meanings:

(1) "Community health care worker" means an individual who provides health care or health care-related services to clients in home settings.

(2) "Employer" means a person or entity that employs a community health care worker. "Employer" does not include an individual who is a recipient of home-based services and who is responsible for hiring his or her own community health care worker.

(3) "Violence" means a physical assault or a threat of a physical assault.

(b) Every employer shall keep a record of any violence committed against a community health care worker and shall file a copy of that record with the Division of Labor Statistics and Research in the form and detail and within the time limits prescribed by the Division of Labor Statistics and Research.