

Navigating Criminal Liability Under Calif. Worker Safety Law

By **Stacey Geis and Karen Tynan** (October 28, 2026, 5:46 PM EDT)

On Sept. 30, California Gov. Gavin Newsom signed A.B. 2321, which amends the California Labor Code in ways that collectively represent the most significant expansion of the California Division of Occupational Safety and Health's criminal enforcement authority in recent memory, with Cal/OSHA gaining new powers and subjecting Golden State employers to more and earlier criminal investigations.

The bill, effective Jan. 1, 2027, transforms the Bureau of Investigations' investigative obligations from discretionary to mandatory across a broad range of workplace incidents. Specifically, the bureau must now promptly investigate violations involving "a serious injury or illness or a serious exposure to five or more employees, death, or request for prosecution by a division representative."

Critically, for all inspections in which the division issues a willful citation following a serious injury, illness or exposure, the bureau must open a criminal investigation.

For cases with serious injuries, illnesses or serious exposures limited to one to four employees, the bureau retains its existing obligation to review inspection reports involving a serious violation, but the prior discretionary authority to investigate such cases is now replaced with a mandate that the bureau "shall promptly investigate those cases in which the bureau finds criminal violations may have occurred."

In addition, in any case where the bureau is required to investigate and there is a serious injury, illness, serious exposure or death, the results must now be promptly referred to the appropriate prosecuting authority, "unless the bureau determines that there is legally insufficient evidence of a criminal violation."

Under A.B. 2321, the division must also "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."

First responders are now also required to immediately notify not only the nearest Cal/OSHA division office, but also the district attorney's office in the county where the incident occurred following the report of a serious injury, illness or exposure, or death.

The division must also immediately notify both the bureau and the district attorney's office, or another



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appropriate prosecuting authority of the incident, regardless of whether notification came from the responding agency, the employer or other means. As a result, criminal and regulatory investigations will now run in parallel from the first moments following a serious workplace incident.

This is unprecedented when compared to other states and the federal Occupational Safety and Health Administration. Federal OSHA does not refer workplace accidents for felonies, only misdemeanors. And other states like Washington and Oregon rarely, if ever, refer workplace accidents to district attorneys for criminal prosecution.

In California, though, the Bureau of Investigation and Cal/OSHA are flexing their muscles to create dual liabilities with both administrative penalties and criminal liabilities.

The law also requires the bureau to "establish written policies and procedures for reviewing cases and deciding whether to investigate or refer them for prosecution," including documenting its rationale for declining to investigate or refer a case. Likewise, the bill states that the relevant divisions "shall establish a routine or automated process for transmitting information to the bureau about cases with serious injuries or illnesses or serious exposures so that the bureau can review them."

In addition to the annual reporting previously required under Labor Code Section 6315.3, the bureau must now also submit such reporting to the California Legislature, pursuant to Government Code Section 9795. This legislative oversight requires more detail and depth in the data and information that is tracked and submitted.

Moreover, the law states that if the bureau refers a fatality case to a prosecuting authority that then declines to prosecute because the referral report "fails to include sufficient evidence of a criminal violation of the law, the bureau shall report that decision and the reason therefor to the Legislature," with specifics kept confidential. All of this heightens transparency and increases Cal/OSHA accountability.

Confidential Information

Labor Code Section 6322 is amended to allow confidential information obtained by Cal/OSHA during any inspection or proceeding to be disclosed not only to division officers and employees, but also to law enforcement officers or prosecutors in any law enforcement investigation or prosecution. This includes information that contains, or might reveal, trade secrets or other Government Code confidential information.

This represents a fundamental change in the flow of sensitive business information gathered during regulatory inspections.

Criminal Penalties

Labor Code Section 6425, which covers criminal penalties for workplace-related injuries that violate occupational safety or health standards, retains existing criminal fines and prison terms, including increased mandatory and maximum fines and prison time for repeat offenders.

However, it was amended to extend those penalties to violations that caused not only death or permanent or prolonged impairment of an employee's body, but also to serious injury, illness or exposure.[1]

Paradigm Shift in Cal/OSHA Criminal Enforcement

A.B. 2321 presents a significant change in Cal/OSHA criminal enforcement, with a clear intent to strengthen and speed the process of the investigation and prosecution of worker injury, illness, exposure and death.

On Oct. 7, the San Francisco District Attorney's Office brought charges against D'Arcy & Harty Construction Inc. and its supervisory employees in the Superior Court of the State of California, County of San Francisco, for the death of a worker in *The People of the State of California v. Darcy*.^[2]

This case not only highlights the district attorney's authority and intent to pursue felony charges against companies and managers in workplace safety fatalities, but also underscores their intent to pursue dual charges, including willful violation of worker safety standards under the Labor Code, as well as involuntary manslaughter, which can be easier to prove.

Mandatory Investigations and Loss of Prosecutorial Discretion

The shift from discretionary to mandatory investigation for several types of violations eliminates a significant buffer that previously allowed the bureau to triage cases and decline to pursue criminal investigations.

As a result, companies that historically faced only regulatory, administrative or civil enforcement, if any, after a serious incident involving fewer than five employees must now anticipate that a parallel criminal investigation will follow as a matter of course.

Criminal and Regulatory Exposure at the Outset

The requirement that district attorneys be notified simultaneously by first responders and the division means that a criminal investigation will likely commence alongside the regulatory investigation that Cal/OSHA typically initiates. Put differently, serious worker injuries and deaths will now receive the same treatment as other serious injuries and deaths, where the matter is handled criminally until proven otherwise.

The immediate notification to district attorneys' offices also brings the local prosecutorial office's priorities, resources, expertise and legal theories directly to bear from Day 1.

Employers will need to make immediate decisions about scene preservation, witness communications and privilege protection at a moment when operational pressures are at their peak. Managing two parallel government investigations from the outset of an incident requires advance planning that many companies have not yet undertaken.

Confidential Inspection Information Available to Prosecutors

The amendment to Section 6322, permitting trade secrets and other confidential inspection information to be shared with law enforcement and prosecutors, disrupts the traditional expectation that information that is voluntarily disclosed to Cal/OSHA during an inspection remains confined to the regulatory sphere.

In light of the amendment, companies must reassess their approach to voluntary disclosure and cooperation with Cal/OSHA inspectors, understanding that such information may later be used in a criminal proceeding.

Bureau Accountability and Documentation

Demonstrating a push to strengthen criminal enforcement around worker safety, the bureau is now required to establish written policies and procedures for reviewing cases and deciding whether to investigate or refer them for prosecution, including documenting and explaining any decision not to do so.

While these provisions are directed at the bureau, they signal an intent to reduce the number of cases that are either being discreetly closed or that may have fallen through the cracks.

Next Steps for Employers

To manage the heightened enforcement risk that A.B. 2321 creates, California employers can consider taking the following steps.

Develop an incident response protocol that accounts for simultaneous criminal and regulatory investigations.

Because district attorneys will now be notified simultaneously with Cal/OSHA upon any serious workplace incident, employers should have a preestablished protocol for managing scene preservation and making coordinated decisions about communications with government investigators in the first hours after an incident.

Reassess voluntary disclosure practices during Cal/OSHA inspections.

Because confidential information may now be shared with law enforcement officers and prosecutors, companies should assess what information is provided voluntarily during inspections, and under what circumstances. They should also ensure that attorney-client privilege and other applicable protections are maintained.

Get to know local enforcement priorities.

Companies can familiarize themselves with each district attorney's office, its enforcement priorities and the protocol for cooperation by reviewing its website and searching the web for local press releases focused on corporate prosecutions.

Assess prior compliance history and model worst-case penalty exposure.

Given the increased scope of potential worker safety investigations, companies may wish to model possible incident scenarios and ensure that directors and officers liability insurance, commercial general liability insurance, and other applicable insurance coverages are reviewed, including indemnification obligations for individual employees.

Monitor the bureau's written policies and procedures.

Once the bureau establishes its required written policies for case review and referral decisions, employers should study those policies, as they will define the standards by which the bureau evaluates whether to investigate and refer cases — and it may also inform litigation strategy.

Conclusion

A.B. 2321 represents a fundamental shift in how California agencies will investigate and prosecute workplace safety violations.

By mandating bureau investigation across a wider range of incidents, eliminating the prior discretionary buffer for cases involving one to four employees, and requiring simultaneous district attorney notification at the first-responder and division level, the bill ensures that criminal scrutiny follows serious workplace incidents as a structural and policy matter, not as an exception.

The amendment to Section 6322 further erodes the separation between the regulatory and criminal tracks by removing the prior firewall between Cal/OSHA inspection information and law enforcement.

Given that California is often a leader on health and safety regulations, look out for other states adopting similar provisions.

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[1] Section 6425 generally provides that: (a) An employer or employee who willfully violates any occupational safety or health standard ... causing death ... serious injury or illness, or serious exposure, is punishable by up to one year in county jail, a fine up to \$100,000, or both; or 16 months, two, or three years in state prison, a fine up to \$250,000, or both. Corporate or LLC defendants face fines up to \$1,500,000. (b) A repeat violation within seven years of a conviction under § 6423(b)-(d) or § 6430(c) is punishable by 16 months, two, or three years in state prison, a fine up to \$250,000, or both. Corporate or LLC fines: \$500,000-\$2,500,000. (c) A second conviction under subdivision (a) within seven years is punishable by two, three, or four years per Penal Code § 1170(h), a fine up to \$250,000, or both. Corporate or LLC fines: \$1,000,000-\$3,500,000.

[2] *The People of the State of California v. John Finbarr Darcy, John William Tobin, Filiberto Poblano Perez, and Darcy & Harty Construction Inc.*, Case No.: 26024208, filed in San Francisco Superior Court on October 7, 2026; <https://www.kqed.org/news/12105065/san-francisco-prosecutors-charge-construction-employees-over-deadly-2023-trench-collapse>.