

RESOLUTION 2-02-05

DIGEST

Structural Pest Control Act: Citations Regarding Personal Protective Equipment

Amends Business and Professions Code section 8616.9 to clarify circumstances under which employers may be cited when employees fail to wear protective equipment.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Business and Professions Code section 8616.9 to clarify circumstances under which employers may be cited when employees fail to wear protective equipment. This resolution should be disapproved because it substitutes one vague reference in the statute for another.

Clearly the intent of this statutory provision is to eliminate the Agricultural Commissioner's discretion not to cite an employer where the employer has a history of repeated violations of regulations requiring employees to wear personal protective equipment. In not clarifying which regulations it is referring to, the statute does appear to be carelessly drafted. However, the proposed resolution does not solve this problem. If the statute were to be amended as proposed to refer broadly to "relevant sections of this Code, the Food and Agricultural Code and the California Code of Regulations," employers would be given virtually no guidance regarding what specific conduct would expose them to citation under section 8616.9. Furthermore, by including reference to statutory codes rather than just regulations, the proposed amendment goes beyond that which was contemplated by the Legislature, as section 8616.9 as written clearly refers to the wearing by employees of personal protective equipment "required by regulation."

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of the California Bar Associations recommends that legislation be sponsored to amend the Business and Professions Code section 8616.9 to read as follows:

- 1 §8616.9
2 If an employee is found during an inspection or investigation not wearing personal protective
3 equipment required by regulation, the commissioner shall have the option to use discretion in citing
4 an employer only if evidence of all of the following is provided:
5 (a) The employer has a written training program, has provided training to the
6 employee, and has maintained a record of training as required by regulation.
7 (b) The employer provided personal protective equipment required by regulation, the
8 equipment was available at the site when the employee was handling the pesticide or pesticides, and
9 the equipment was properly maintained and in good working order.
10 (c) The employer is in compliance with regulations relating to the workplace and supervision
11 of employees.
12 (d) The employer has implemented and adheres to a written company policy of disciplinary
13 action for employees who violate company policy or state or local laws or regulations.
14 (e) The employer has no history of repeated violations of ~~this section~~ relevant sections of this Code,
15 the Food and Agricultural Code and the California Code of Regulations.

(Proposed new language underlined; language to be deleted stricken.)

PROPOSER: San Diego County Bar Association

STATEMENT OF REASONS

Existing Law: Confers upon County Agricultural Commissioners the discretion whether or not to charge employers for civil penalties when their employees fail to wear personal protective equipment when applying pesticides provided the employers meet all of several enumerated requirements including a written training program and a disciplinary action program among others.

This Resolution: Corrects a drafting error that includes a requirement that employers have no history of repeated violations of “this section” referring to 8616.9. Because there is no way possible for employers to violate section 8616.9 of the Business and Professions Code since it is a section granting discretion to California Agricultural Commissioners, this could not have been the intent of the drafters.

The Problem: The way the current provision is drafted, employers could never repeatedly violate section 8616.9 so this provision becomes a nullity unless interpreted broadly by the courts. Clearly, what was intended by this section was that employers could not repeatedly violate with impunity relevant sections of the Business and Professions Code, as well as the Food and Agricultural Code, which has extensive sections devoted to personal protective equipment of employees handling pesticides and the California Code of Regulations, which includes even more specific provisions concerning these matters. Thus, a history of repeated violations of those relevant Code sections by employers would preclude County Agricultural Commissioners from exercising any discretion in issuing civil penalties under section 8617 of the Business and Professions Code.

IMPACT STATEMENT

This amendment would make clear the interaction among the provisions of the Business and Professions Code as it relates to employees of Structural Pest Control Businesses and the Food and Agricultural Code sections relating to personal protective equipment intended to protect workers as well as those specific provisions of the California Code of Regulations relating to pesticide worker safety found in Title 3, Subchapter 3, Section 6700 et seq. (Pesticide Worker Safety).

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