



## Legal Alert: California Provides a New "Lift" to Health Care Workers That Must be Shouldered by Their Employers

10/25/2011

**Executive Summary:** On October 7, 2011, Governor Brown signed new legislation (AB 1136) requiring general acute care hospitals to maintain a safe patient handling policy and prohibiting the discipline of any health care worker who out of concern for safety refuses to lift, reposition or transfer a patient.

The "Hospital Patient and Health Care Worker Injury Protection Act" amends the California Occupational Safety and Health Act of 1973 ("Cal-OSHA"), and, effective January 1, 2012, will be added as Section 6403.5 of the California Labor Code.

### **Labor Code Section 6403.5**

The new lifting law requires hospital employers to adopt an injury prevention plan for the purpose of protecting health care workers from back and musculoskeletal injuries. The plan also must address patient safety with a comprehensive "patient handling policy." The objective of the plan is to replace the manual lifting and transferring of patients with powered patient transfer devices, lifting devices, or lift teams, as appropriate for the specific patient and consistent with the employer's safety policies and the professional judgment and clinical assessment of the registered nurse.

This new law also requires hospital employers to provide lift teams or other support staff trained in safe lifting techniques. A "lift team" is comprised of hospital employees who are specifically trained to handle patient lifts, repositionings, and transfers using patient transfer, repositioning, or lifting devices as appropriate for the specific patient. Hospitals are *not* required to hire new staff to comprise the lift team so long as direct patient care assignments are not compromised.

In addition, Section 6403.5 requires hospitals to provide to health care workers (i.e., lift team members or other staff responsible for assisting in lifting patients) training that includes the following: (1) the appropriate use of lifting devices and equipment; (2) the five areas of body exposure: vertical, lateral, bariatric, repositioning, and ambulation; and (3) the use of lifting devices to handle patients safely. Further, the hospital coordinator of care must be a registered nurse who is responsible for the observation and direction of patient lifts and mobilization, and who will participate in patient handling as needed.

Furthermore, Section 6403.5 prohibits a hospital from disciplining a health care worker who refuses to lift, reposition, or transfer a patient due to the worker's concerns about his/her safety, the safety of the patient, or the lack of trained lift team personnel or lift equipment.

***Employers' Bottom Line:***

As an amendment to Cal-OSHA, AB 1136 imposes new responsibilities on employers of health care workers. These new responsibilities not only include rules targeted to protect the work environment, but also restrict the employer's ability to discipline its staff. Employers should understand their new responsibilities, and not delay in preparing and adopting the required prevention plan and safe-patient handling policy. Willful or repeated violations of Cal-OSHA are crimes, and may result in significant civil penalties under California Labor Code Section 6429.

For more information regarding the new law or other labor or employment law issues, please contact the author of this Alert Jolina A. Abrena, an attorney in our Los Angeles office at [jabrena@fordharrison.com](mailto:jabrena@fordharrison.com), or the Ford & Harrison attorney with whom you usually work.