
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Jerry Hill, Chair

2019 - 2020 Regular

Bill No:	AB 3175	Hearing Date:	August 11, 2020
Author:	Levine		
Version:	July 8, 2020		
Urgency:	Yes	Fiscal:	Yes
Consultant:	Jake Ferrera		

SUBJECT: Entertainment industry: age-eligible minors: training.

KEY ISSUE

Should the Legislature allow an age-eligible minor employed in the entertainment industry to be in compliance with sexual harassment prevention training (SHPT) requirements if their parent or guardian attends the training and conveys the information to their age-eligible minor actor?

ANALYSIS

Existing law:

- 1) Defines "Entertainment Industry", to mean any organization, or individual, using the services of any minor in: Motion pictures of any type (e.g. film, videotape, etc.), using any format (theatrical film, commercial, documentary, television program, etc.) by any medium (e.g. theater, television, videocassette, etc.); photography; recording; modeling; theatrical productions; publicity; rodeos; circuses; musical performances; and any other performances where minors perform to entertain the public.
(California Code of Regulations Title 8 §11751)
- 2) Requires the written consent of the Labor Commissioner in the form of a work permit to employ a minor under the age of 17 in the entertainment industry. Specifies activities that are subject to this requirement, including any play, radio or television broadcast, performance, concert, phonograph recordings, photographs, advertisements or any other commercial or noncommercial performance for entertainment. (Labor Code §1308.5)
- 3) Orders that any person, agent, manager, superintendent or other officer employing a minor without the written consent of the Labor Commissioner is guilty of a misdemeanor. This also applies to parents or legal guardians who employ or allow a minor to be employed without a permit. Failure of such an employer to produce written consent from the Labor Commissioner is considered prima facie evidence of illegal employment.
(Labor Code §1308.5)
- 4) Requires that an entertainment permit issued by the Labor Commissioner expire after 10 days, unless a copy of a trustee's statement attesting to the establishment of Coogan Trust Account for the benefit of the age-eligible minor applicant. If such a statement is attached, the work permit is valid for 6 months. (Labor Code §1308.9)
- 5) Requires that both a minor between 14 and 17 years of age applying for an entertainment work permit and their parent or legal guardian undergo training in sexual harassment

prevention, retaliation and reporting resources. This training must be administered by a third-party vendor, include specified components from the Department of Fair Employment and Housing (DFEH) Form 185 and be in a language understood by both the age-eligible minor applicant and their parent or guardian. (Labor Code §1700.52)

- 6) Requires a licensee to request and retain a copy of an age-eligible minor's entertainment work permit prior to representing them or sending them to an audition, meeting or interview for engagement of the minor's services. (Labor Code §1700.52)
- 7) Defines "Advance-fee talent representation service" to mean a person who provides or offers to provide an artist with one or more of the following services for an up-front fee:
 - a) Procuring or attempting to procure an employment opportunity as an artist.
 - b) Procuring or attempting to procure an audition for an artist.
 - c) Managing or directing the development of an artist's career.
 - d) Procuring or attempting to procure a talent agent or talent manager, including an associate, representative, or designee of a talent agent or talent manager.(Labor Code §1702.1)
- 8) Further defines "Advance-fee talent representation service" to also mean a person who charges or receives a fee from, or on behalf of, an artist for any product or service required for the artist to obtain, from or through the person, any of the services described above. (Labor Code §1702.1)
- 9) Prohibits any person from owning, operating, or acting in the capacity of an advance-fee talent representation service or advertise, solicit for, or knowingly refer a person to, an advance-fee talent representation service. (Labor Code §1702.1)

This bill:

- 1) Allows a parent or guardian of an age-eligible minor to be in compliance with sexual harassment prevention training (SHPT) by attending the training themselves, removing the requirement that the age-eligible minor take the training themselves.
- 2) Requires a parent or guardian that attended a SHPT to convey the information from that training to their age-eligible minor to be in compliance with the training requirements under current law. This requirement may be met by providing the minor with a copy of the Department of Fair Employment and Housing (DFEH) Form 185 and discussing its contents.
- 3) Requires a parent or guardian that attended a SHPT and conveyed the information to their age-eligible minor to certify to the Labor Commissioner that the training has been completed and the information contained was shared and discussed with the minor.
- 4) Requires that the training for age-eligible minors and their parents or guardians be in language understood by the participant, **whenever reasonably possible**.

COMMENTS**1. Need for this bill?****A) Background**

In response to the revelations of the MeToo movement, sweeping legislation was enacted to combat the prevalence of sexual harassment in Hollywood and across all industries. One of the bills that became law was AB 2338 (Levine) which created specific sexual harassment prevention training requirements for minor actors between the ages of 14 and 17 (age-eligible minors). This law required, among other things, that age-eligible minors **and** their parents or legal guardians attend or otherwise participate in sexual harassment prevention training (SHPT) before they could obtain a work permit to work in the entertainment industry. Given the concentration of MeToo allegations in the entertainment industry, including the now-infamous trial of Harvey Weinstein, this measure seemed to be a prudent step to protect a vulnerable population.

However, soon after the adoption of new SHPT requirements, confusion surrounding existing regulation emerged. Some wondered whether employers would have to comply with SHPT standards for both AB 2338 (Levine) and wider employer requirements that had recently been passed under SB 1343 (Mitchell). Others wondered if their particular employment scheme designated them as having more than 5 employees, triggering requirements that they train their employees. One of the most pressing concerns was the SHPT requirements and their interaction with a 2010 law, the Krekorian Talent Scam Prevention Act. Under this law, it is illegal for a person to agree to find work for an artist or offer them “training” in exchange for an up-front fee. This was intended to curb predatory practices within the entertainment industry, but potentially would make it illegal for entities to offer the sexual harassment prevention training for a fee.

With all of this in mind, the discussion turns to a new attempt at clarification, AB 3175 (Levine). This bill removes the requirement that an age-eligible minor directly participate in the SHPT, instead allowing the minor’s parent or legal guardian to complete the training and then certify to the Labor Commissioner that they have conveyed and discussed the information from the training with the age-eligible minor. AB 3175 (Levine) further adjusts the requirement that SHPT be in a language understood by the age-eligible minor and their parent or legal guardian and instead simply requires that the translation be available whenever “reasonably possible”. This is intended to allow the training entities not to offer the service to the artist directly and therefore not be captured under the Krekorian Act.

The concerns raised about the duplicative nature of SHPT requirements should be further examined. It is possible that some review of the feasibility of SHPT for different employment models unique to the entertainment industry is warranted. However, this measure seemingly removes some safeguards for a vulnerable group of workers. The author could consider waiting until more data is available that pertains to the effect of AB 2338 (Levine) on the entertainment industry, to see if drastic changes are indeed necessary.

B) Pending Legislation

There is some concern about the interaction of AB 3175 and another piece of legislation, AB 3369 (Levine), which affects the framework of regulation surrounding SHPT requirements

for minors in the entertainment industry. AB 3369 seeks to clarify current SHPT requirements by allowing minor actors age 14-17 comply with SHPT requirements for all employers if they are in compliance with Labor Code 1308.5, the code section amended by AB 3175. There is some concern that changing from one requirement standard to another while simultaneously potentially weakening those requirements could lead to unfortunate unintended consequences.

2. Proponent Arguments

According to Author:

“AB 3175 would require the parent or a legal guardian of a minor between the ages of 14-17 to complete training on sexual harassment prevention, retaliation, and reporting resources. It would also require the parent or legal guardian to convey that information to the minor and certify to the Labor Commissioner that training has been completed and information conveyed to the minor. This program will help create a safer workplace environment where potential victims can be aware of their rights and resources. Additionally, it will inform those tasked with safeguarding minors in the modeling industry with the tools to identify sexual harassment. Similar preventative measures have been enacted by California in other industries.”

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 2338 (Levine, 2018) Chapter 967: requires, prior to the issuance of a permit to employ a minor in the entertainment industry, that an age-eligible minor and the minor’s parent or legal guardian receive and complete training in sexual harassment prevention, retaliation, and reporting resources.

SB 1343 (Mitchell, 2018) Chapter 956: Requires an employer who employs 5 or more employees to provide at least 2 hours of sexual harassment training to all supervisory employees within 6 months of the assumption of a supervisory position and at least 1 hour of sexual harassment training to all nonsupervisory employees within 6 months of hire and once every 2 years thereafter.

SB 778 (Committee on Labor, Public Employment and Retirement, 2019) Chapter 215: extended the deadline for compliance concerning employer provided sexual harassment training for employees.

AB 1319 (Krekorian, 2009) Chapter 286: established the Krekorian Talent Scam Prevention Act, banned the practice of advance fee talent representation services and created definitions and regulatory structures around talent training, counseling and listing services.

SUPPORT

None on file.

OPPOSITION

None on file.

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