
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Jerry Hill, Chair

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Bill No: SB 1257 **Hearing Date:** May 14, 2020
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Urgency: No **Fiscal:** Yes
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SUBJECT: Domestic service employees: employment safety standards.

KEY ISSUES

Should the Legislature remove the “household domestic service” exemption from the Occupational Safety and Health Act definition of employment, thereby applying all of its requirements and obligations on domestic service employers?

Should the Division of Occupational Safety and Health be authorized to enforce occupational safety and health laws to protect domestic service employees at private residential dwellings?

ANALYSIS

Existing law:

- 1) Under the California Occupational Safety and Health Act, assures safe and healthful working conditions for all California workers 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. (Labor Code §6300)
- 2) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6300 et seq.)
- 3) Requires employers to establish, implement and maintain an effective Injury and Illness Prevention Program (IIPP) that is written, except as specified, and shall include, among other things, the following elements (Labor Code §6401.7):
 - a. A system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.
 - b. The employer’s methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.
 - c. An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee’s job assignment.
 - d. The employer’s system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

- 4) Requires every employer to file a complete report with Cal/OSHA of every occupational injury or occupational illness to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid. A report must be filed within five days after the employer obtains knowledge of the injury or illness. In addition to this report, in every case involving a serious injury or illness, or death, the employer is required to make an immediate report to Cal/OSHA by telephone or email. (Labor Code §6409.1)
- 5) Requires Cal/OSHA, 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 employment or place of employment, with or without notice or hearings. Certain timeframes exist if a complaint is deemed to allege a serious violation. (Labor Code §6309)
- 6) Requires Cal/OSHA to annually compile data pertaining to complaints received and citations issued and post it on its website. [Labor Code §6309(d)]
- 7) Defines, for purposes of OSHA, “employment” to include 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.** (Labor Code §6303)
- 8) Defines “domestic work” as services related to the care of persons in private households or maintenance of private households or their premises. Domestic work occupations include childcare providers, caregivers of people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids and other household occupations. (Labor Code §1451)
- 9) Establishes within DIR, the Division of Fair Labor Standards Enforcement (DLSE) lead by the Labor Commissioner, tasked with administering and enforcing labor code provisions concerning wages, hours and working conditions. (Labor Code §56)
- 10) Under the Domestic Worker Bill of Rights, regulates the hours of work of certain domestic work employees and provides an overtime compensation rate for those employees. Specifically, the law provides that a domestic work employee who is a personal attendant shall not be employed more than nine hours in any workday or more than 45 hours in any workweek unless the employee receives one and one-half times the employee's regular rate of pay for all hours worked over nine in a day and 45 in a workweek. (Labor Code §1450-1454)

This bill:

- 1) Removes the “household domestic service” exemption from the Occupational Safety and Health Act definition of employment, thereby applying all of its requirements and obligations on domestic service employers.
- 2) For purposes of Cal/OSHA investigations of occupational safety and health, specifies that in the case where the place of employment is a residential dwelling and the employee is a

domestic service employee, the chief of the division or their authorized representative shall initiate telephone contact with the employer 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.

- 3) Specifies that when telephone contact is successfully made, the chief of the division or their authorized representative shall do all of the following:
 - a. Notify the employer of the existence of any alleged unsafe or unhealthful conditions.
 - b. Describe the alleged hazard and any specific regulatory standard alleged to have been violated.
 - c. Inform the employer that they are required, pursuant to Section 6401.7, to investigate and abate any hazard discovered during the investigation.
 - d. Inform the employer by letter sent by facsimile or email, or by certified mail if the employer cannot receive facsimile or email, of each alleged hazard and each specific standard alleged to have been violated.
 - e. Inform the employer that if the division determines that the employer's response is unsatisfactory for any reason, the division shall seek permission from the employer to enter the residential dwelling to investigate the matter, and, if permission is denied, may secure a court order to conduct an onsite inspection of the residential dwelling.
 - f. Provide the complainant with copies of the regulation alleged to have been violated, the division's letter to the employer, and all subsequent correspondence concerning the investigation of any alleged hazards.
- 4) A domestic worker employer subject to investigation shall do both of the following:
 - a. Provide to the division, within 14 days of the employer's receipt of the division's letter, a letter describing the results of the employer's investigation of the alleged hazard and a description of all actions taken, in the process of being taken, or planned to be taken, by the employer to abate the alleged hazard, including any applicable measurements or monitoring results, invoices for equipment purchased, and photographs or video that document correction of the alleged hazard.
 - b. Provide a copy of the division's letter to the employee, and all subsequent correspondence from and to the employer, to the affected employee, or prominently post the letter and correspondence in the method prescribed by subdivision (a) of Section 6318.

COMMENTS

1. Background:

In California, every employer has a legal obligation to provide and maintain a safe and healthful workplace for their employees. As noted under existing law, employers must have a written Injury and Illness Prevention Program that must be developed and implemented effectively by employers. Additionally, Cal/OSHA has a duty and authority to investigate a workplace for safety and welfare of employees, on its own motion or upon complaints. Additionally, Cal/OSHA is required to annually compile data pertaining to complaints received and citations issued and post it on its website. These and other labor requirements have excluded, for the most part, domestic work employees because of the nature of the employment. Enforcing all these requirements on a domestic worker employer, a private household, presents challenges. While a very just and righteous effort, below are some questions to consider as discussions on removing the exemption continue:

How do we ensure that these domestic work employers know the laws that the state will expect them to follow if we don't know who is a domestic worker employer - since there is no requirement that they register with any government entity?

If the employer, after learning of the laws realizes that they can't or don't want to employ a domestic worker anymore (maybe simply because their household isn't set up to be safe for a worker per the Occupational Safety and Health Act), are we then setting them up for a retaliation complaint and lawsuit?

How would an employer prove that a hazard does not exist?

How do you protect against unscrupulous complaints and lawsuits?

If we are bringing domestic worker employers into the laws around occupational safety and health, does this also open the door to other laws that should be enforced in this industry - like laws around hiring of individuals, payment of payroll taxes, and securing workers' compensation insurance?

2. DLSE Domestic Work Industry Outreach and Education Program:

As part of the 2019 budget (SB 83, Chapter 24, Section 33), Section §1455 was added to the Labor Code requiring the Division of Labor Standards Enforcement, upon appropriation of funds for these purposes, to establish and maintain an outreach and education program, in consultation with community based organizations (CBOs). The purpose of the program is to promote awareness of, and compliance with, labor protections that affect the domestic work industry and to promote fair and dignified labor standards in this industry and other low-wage industries. The division and CBOs shall meet biannually, or more frequently at the discretion of the division, to coordinate efforts around outreach, education, and enforcement, including sharing information, in accordance with applicable privacy and confidentiality laws, that will shape and inform the overall enforcement strategy of the division regarding low-wage industries, including the domestic work industry.

3. Need for this bill?

According to the author, “There are over 300,000 domestic workers who work as housekeepers, nannies, and caregivers in private homes in California. Currently, two million households in California rely on domestic workers to care for their homes and loved ones, and that number is expected to grow by 52% by 2022. Domestic workers are majority immigrant women who typically work in isolation in private homes for very low wages. Many are the primary breadwinners for their families.

In the private home workplace, occupational risks and hazards for domestic workers include physical and ergonomic demands and exposure to infectious diseases and household cleaning chemicals. Domestic workers are also at risk of suffering from psychological stress, and are especially vulnerable to workplace violations. They are at risk of physical, emotional and sexual abuse by employers or clients, and those risks are heightened because they work alone, in informal workplace environments, without psychological support or physical assistance.

Domestic workers' health and safety have been put at severe risk during the recent disasters that have struck California. Currently, domestic workers act as frontline workers during the COVID-19 global pandemic. They provide care to California's most vulnerable to illness, like seniors and people with compromised immune systems, yet they remain vulnerable and without protections. During the wildfires that devastated California, domestic workers and other household workers, such as day laborers, were asked to stay behind to fight fires, guard homes or pets, work in smoky conditions, and clean up toxic ash. Workers were further put at risk when employers failed to tell them that the homes they work in are under mandatory evacuation.

The current COVID-19 health pandemic and recent California wildfires have magnified the vulnerability and dangers that domestic workers and day laborers face on a daily basis because they are excluded from California's Occupational Health and Safety protections. The growing frequency and intensity of wildfires and other natural disasters requires that legislators take immediate legislative action to protect the health and safety of these workers.

Unfortunately, Cal/OSHA requirements for employers to provide a safe working environment do not apply to “household domestic service.” As the Cal/OSHA staff acknowledged to the LA Times, “There's no labor code preventing a domestic employer from ordering a domestic worker to remain in a mandatory evacuation zone....Additionally, if a domestic worker refuses to work in hazardous conditions, there's no legal protection from retaliation, including firing.”

This bill would eliminate the “household domestic service” exclusion in Labor Code §6303 (Cal/OSHA). The author argues that this bill removes a historical exclusion that has no justification in today's economy.

4. Proponent Arguments:

According to the California Employment Lawyers Association, one of the sponsors of the measure, “Despite the fact that domestic workers are often put in hazardous and unsafe

working conditions in order to care for people's homes and loved ones, they are unjustly and unjustifiably excluded from California's Occupational Health and Safety protections.

The current COVID-19 health pandemic as well as the increasingly frequent and devastating California wildfires have magnified the vulnerability and dangers that domestic workers and day laborers face on a daily basis. These workers act as frontline and essential workers during public crises and disasters. They provide care to California's most vulnerable to illness, like seniors and people with compromised immune systems, yet they remain vulnerable and without protections. Domestic workers are especially vulnerable because they work long hours for low wages, without access to healthcare and paid sick days. Many are seniors themselves and have their own health challenges.

During the recent wildfires, domestic workers and day laborers were asked to stay behind to help fight fires, guard homes or pets, and clean up toxic ashes. Workers were also put at risk when their employers failed to tell them not to come in to work when the homes they work in were under mandatory evacuation orders. Currently, there is no recourse for these workers who put themselves in harm's way or otherwise risk losing their job if they raise concerns about health and safety hazards. And appallingly, there is no legal obligation on the employer's part to even take the worker's health and safety into account. This is plainly wrong. These crises and disasters have not only highlighted the vulnerability and dangers that domestic workers and day laborers face in the work that they do, but they have also highlighted our state's indefensible failure to provide these workers with the basic health and safety protections that they need and deserve."

5. Opponent Arguments:

None received.

6. Prior and Related Legislation:

AB 2658 (Burke, 2020): This bill would make it a crime for a person, after receiving notice to evacuate or leave, to willfully and knowingly direct an employee to remain in, or enter, an area closed under prescribed provisions of law due to a menace to the public health or safety. The bill would define "employee" for this purpose to include a person receiving employment for household domestic service. This bill is pending in the Assembly Committee on Labor and Employment.

SB 1015 (Leyva, Chapter 315, Statutes of 2016): This bill deleted the January 1, 2017 repeal date on the provisions under the Domestic Worker Bill of Rights which requires the payment overtime compensation for domestic workers after 9 hours in one day or after 45 hours a week, thereby making the requirement permanent.

AB 241 (Ammiano, Chapter 374, Statutes of 2013): This bill enacted the "Domestic Worker Bill of Rights" to provide protections and regulate the wages, hours, and working conditions of domestic work employees. Specifically providing overtime compensation to domestic work employees who are personal attendants after nine hours worked in a day and after 45 hours worked in a workweek. These provisions included a January 1, 2017 sunset date.

AB 889 (Ammiano, 2012, Vetoed): This bill would have required, no later than January 1, 2014, the Department of Industrial Relations (DIR) to adopt regulations governing the working conditions of domestic work employees, as defined.

SUPPORT

California Domestic Workers Coalition (Co-Sponsor)
California Employment Lawyers Association (Co-Sponsor)
Equal Rights Advocates (Co-Sponsor)
Alliance of Californians for Community Empowerment (ACCE) Action
American Association of University Women - California
Asian Americans Advancing Justice - California
Bet Tzedek Legal Services
California Healthy Nail Salon Collaborative
California Immigrant Policy Center
California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation
California Women's Law Center
Centro Laboral De Graton
Change Californians for A Healthy and Green Economy
Chinese Progressive Association of San Francisco
Clean Carwash Campaign
Clean Water Action
Coalition for Humane Immigrant Rights (CHIRLA)
Consumer Attorneys of California
Diversity in Health Training Institute
Drug Policy Alliance
El Centro Cultural De Mexico, Santa Ana
Filipino Advocates for Justice
Filipino Community Center
Filipino Migrants Center
Gabriela Oakland
Garment Worker Center
Hand in Hand: the Domestic Employers Network
Instituto De Educacion Popular Del Sur De California (IDEPSCA)
Koreatown Immigrant Workers Alliance (KIWA)
Legal Aid At Work
Los Angeles Worker Center Network
Mujeres Unidas Y Activas
National Council of Jewish Women (NCJW) CA
National Domestic Workers Alliance
National Employment Law Project
North Bay Jobs with Justice
North Bay Labor Council
OneJustice
People's Association of Workers and Immigrants East Bay
Pilipino Association of Workers and Immigrants Santa Clara
Poder
Pomona Economic Opportunity Center

Public Counsel
Restaurant Opportunities Center of Los Angeles
Santa Clara County Wage Theft Coalition
SEIU California
Stronger California Advocates Network
Teamsters Local 665
The Women's Foundation of California
United Domestic Workers of America / Apscme, Afl-cio
Voices for Progress
Work Equity Action Fund
Worksafe
Youth Leadership Institute

OPPOSITION

None received

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