

Date of Hearing: July 29, 2020

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kara, Chair

SB 1257 (Durazo) – As Amended July 27, 2020

SENATE VOTE: 27-11

SUBJECT: Employment safety standards: household domestic services and in-home child care services

SUMMARY: Removes the household domestic service exemption from California's Occupational Safety and Health Act to cover most domestic workers except that domestic workers funded by the In-Home Supportive Services (IHSS) program, regional centers, and child care programs, as specified, are covered beginning July 1, 2022, subsequent to the convening of an advisory committee and the completion of a regulatory process. Specifically, **this bill:**

- 1) Removes the "household domestic service" exemption from California's Occupational Safety and Health Act's definition of employment, thereby extending the Act's health and safety protections to most domestic workers. Implementation of this provision is delayed to July 1, 2022, for workers who do the following:
 - a) Provide household domestic services funded by the IHSS Program.
 - b) Provide household domestic services funded by a Regional Center, as specified.
 - c) Perform in-home child care that is not part of a child day care facility as defined in Health and Safety Code Section 1596.750 and is funded pursuant to the Child Care and Development Services Act or the California Work Opportunity and Responsibility to Kids Act.
- 2) Requires the chief of the Division of Occupational Safety and Health (Cal/OSHA) or their representative to convene an advisory committee, in consultation with the California Health and Human Services Agency, with relevant stakeholders, and within six months, to make findings and recommendations to the Occupational Safety and Health Standards Board (standards board) regarding regulations applicable to the workers listed in (a) through (c) above.
- 3) Requires that the standards board adopt regulations within a reasonable amount of time but no later than July 1, 2022.
- 4) Requires the chief or their representative to additionally convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations. The advisory committee shall include an equal number of representatives of household domestic service employees and employers, including individuals with disabilities.
- 5) Provides that in the case where the place of employment is a residential dwelling and the employee is a domestic service employee, the Chief or their authorized representative shall initiate telephone contact with the employer as soon as possible, but not later than 14 calendar days after receipt of a complaint charging a health and safety violation.

- 6) Requires that when telephone contact is made, the chief or their authorized representative shall take the following steps:
 - 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 to investigate and abate any hazard discovered during the investigation.
 - d) Inform the employer by letter, as specified, of each alleged hazard and each specific standard alleged to have been violated.
 - e) Inform the employer that if Cal/OSHA determines that their response is unsatisfactory for any reason, Cal/OSHA shall seek permission from the employer to enter the residential dwelling to investigate the matter, and, if permission is denied, may secure an inspection warrant to conduct an onsite inspection.
 - f) Provide the complainant worker with copies of the regulation alleged to have been violated, Cal/OSHA's letter to the employer, and all subsequent correspondence concerning the investigation.
- 7) States that an employer subject to investigation shall take the following steps:
 - a) Provide to Cal/OSHA, within 14 days of the employer's receipt of Cal/OSHA'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, as specified.
 - b) Provide a copy of the division's letter to the employee, and all subsequent correspondence from and to the employer, or prominently post the letter and correspondence in the method prescribed by subdivision (a) of Labor Code Section 6318.
- 8) Provides that for a complaint alleging a serious illness, injury or death, the chief or their authorized representative may conduct an inspection without first initiating telephone contact with the employer.

EXISTING LAW:

- 1) Creates the California Occupational Safety and Health Act to assure the 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 education, training, and enforcement in the field of occupational safety and health.
- 2) Establishes Cal/OSHA within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards.

- 3) Authorizes the chief of Cal/OSHA to oversee the enforcement of health and safety standards.
- 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.
- 5) Provides that if Cal/OSHA 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.
- 6) 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.
- 7) 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.
- 8) Regulates the hours of work of certain domestic work employees and provides an overtime compensation rate for those employees as part of the Domestic Worker Bill of Rights.

FISCAL EFFECT: According to the Senate Appropriations Committee, DIR indicates that it would incur annual costs in the millions of dollars to implement the provisions of the bill (Labor Enforcement and Compliance Fund).

COMMENTS: In the United States, domestic workers, largely women and persons of color, have been historically excluded from the most basic labor protections. Some of our key federal labor laws--the National Labor Relations Act, the Fair Labor Standards Act, and OSHA-- have at some point, if not currently, excluded these workers. This exclusion has served to further the false narrative that domestic work is voluntary/unpaid and “non-productive.” In addition, the law’s failure to recognize domestic work as real work has left these workers particularly vulnerable to workplace injuries and illness, with little recourse. A June 2020 report from the UCLA Labor and Occupational Safety and Health Program found that 85% of domestic workers surveyed experience musculoskeletal injuries that are associated with chronic pain.¹ Many respondents reported continuing to work through their injuries for fear of job or financial loss.²

¹ UCLA Labor and Occupational Safety and Health Program, “Hidden Work, Hidden Pain: Injury Experience of Domestic Workers in California,” June 2020.

² *Id.*

Such injuries could be prevented by appropriate health and safety guidance and subsequent enforcement.

According to the author, “Domestic workers' health and safety has 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 require that legislators take immediate legislative action to protect the health and safety of these workers.”

Arguments in Support

Equal Rights Advocates, a cosponsor of the bill, states “There are over 300,000 domestic workers who work as housekeepers, nannies, and caregivers for seniors and people with disabilities. Domestic workers are primarily immigrant women who are the primary breadwinners of their families. They typically work on their own in private homes for low-wages. In California, there are two million households that rely on domestic workers to care for their homes and loved ones. That number is expected to increase by more than 50% by 2022.

While domestic work is essential to the California economy and to the ability of elderly and disabled Californians to live independently, domestic workers have been categorically excluded from basic labor and occupational health and safety protections. This exclusion is based historically on the exclusion of black workers from basic labor laws in this country.”

Arguments in Opposition

None on file.

Committee Comments

This bill provides for the convening of two different advisories committees. One is tasked with evaluating whether industry-specific health and safety regulations are needed and the other with making recommendations to the standards board to adopt regulations concerning domestic workers paid by specific programs. While each committee may involve different stakeholders, it may make more logistical sense and produce greater consistency if the committees are combined or the committee with a narrower focus is made into a subcommittee rather than function as a standalone.

Committee staff also point out that this bill may raise privacy concerns for homeowner or renter-employers of domestic service workers. Section 6314 (f)(2)(E) grants Cal/OSHA the authority to seek permission to enter a residential dwelling to investigate the “matter” (the alleged health and

safety violation) or if permission is denied, to obtain an inspection warrant. It's possible that during an inspection, the investigator could find evidence of other legal violations. In the future, the author may wish to add language to clarify and/or limit how Cal/OSHA will treat findings of other legal violations that are outside its jurisdiction.

Finally, under Section 6314 (f)(3)(A), a domestic service employer must submit a letter to Cal/OSHA explaining mitigation measures taken, or planned to be taken, to mitigate a hazard. Committee staff is concerned that some recipients of domestic services, particularly the elderly or severely ill, will not have the practical know-how to engage in this process, nor the resources to effectively mitigate. In the future, the author may wish to consider additional language outlining how a domestic service employer can request assistance from Cal/OSHA to fulfill this obligation.

Related and Prior Legislation

AB 2658 (Burke) of 2020 provides that a domestic work employee is an employee for the purpose of protection from layoff or discharge in refusing to perform work in violation of safety standards, where the violation would create a real and apparent hazard to the employee or fellow employees, and has a cause of action for wages if they suffer job loss.

SB 1015 (Leyva) Chapter 315, Statutes of 2016, deleted the January 1, 2017 repeal date for the provisions under the Domestic Worker Bill of Rights, thereby making the requirement permanent.

AB 241 (Ammiano) Chapter 374, Statutes of 2013, enacted the "Domestic Worker Bill of Rights" to provide overtime compensation to domestic work employees who are personal attendants, but included a 1/1/17 sunset date.

AB 889 (Ammiano) of 2012 would have required, no later than January 1, 2014, the DIR to adopt regulations governing the working conditions of domestic work employees, as defined. The bill was vetoed by the Governor Brown.

REGISTERED SUPPORT / OPPOSITION:

Support

A Stronger California
Alliance of Californians for Community Empowerment
American Association of University Women - California
Asian Americans Advancing Justice - California
Asian Pacific Environmental Network
Bet Tzedek
Botanical Bus
California Alliance for Retired Americans
California Employment Lawyers Association
California Healthy Nail Salon Collaborative
California Immigrant Policy Center
California Labor Federation
California Rural Legal Assistance Foundation
California Women's Law Center

Centro Laboral De Graton
Centro Legal De LA Raza
Change Californians for A Healthy and Green Economy
Child Care Law Center
Chinese Progressive Association
Clean Carwash Campaign
Clean Water Action
Closing the Women's Wealth Gap
Community Legal Services in East Palo Alto
Courage California
Dolores Street Community Services
Drug Policy Alliance
El Centro Cultural De Mexico, Santa Ana
El/la Para Translatinas
Ella Baker Center for Human Rights
Equal Rights Advocates
Filipino Advocates for Justice
Filipino American Chamber of Commerce
Filipino American Service Group, INC.
Filipino Community Center
Filipino Migrants Center
Freefrom
Gabriela Oakland
Gabriela South Bay
Garment Worker Center
Hand in Hand: the Domestic Employers Network
Humanidad Therapy and Education Services
Instituto De Educacion Popular Del Sur De California (IDEPSCA)
Laane
Laurelton Research
Legal Aid At Work
Los Angeles Worker Center Network
Media Alliance
Mujeres Unidas Y Activas
National Council of Jewish Women (NCJW) CA
National Council of Jewish Women Los Angeles
National Day Laborer Organizing Network (NDLON)
National Domestic Workers Alliance
National Employment Law Project
National Women's Political Caucus of California
North Bay Jobs With Justice
North Bay Labor Council
Onejustice
People's Association of Workers and Immigrants East Bay
Pilipino Associaiton for Workers and Immigrants - South Bay
Pilipino Workers Center
Pomona Economic Opportunity Center
Public Counsel
Raices Collective

Resource Generation
San Francisco Senior and Disability Action
Santa Clara Wage Theft Coalition
Search to Involve Pilipino Americans
Senior and Disability Action
Southern California Coalition for Occupational Health and Safety
Stronger California Advocates Network
Teamsters Local 665
The Institute for Families and Nannies
The Women's Foundation of California
Udwa/afscme Local 3930
Voices for Progress
Western Center on Law & Poverty, INC.
Work Equity Action Fund
Worksafe
Young Workers United
Youth Leadership Institute

Opposition

None on file.

Analysis Prepared by: Megan Lane / L. & E. /