

SENATE THIRD READING
SB 1257 (Durazo)
As Amended August 24, 2020
Majority vote

SUMMARY:

Beginning on January 1, 2022, removes the household domestic service exemption from California's Occupational Safety and Health Act to cover most domestic workers except those workers who are publicly funded unless they are subject to specified general industry safety orders. In addition, convenes an advisory committee to recommend for adoption regulations related to household domestic service by the Occupational Safety and Health Standards Board (OSHSB).

Major Provisions

- 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, operative on January 1, 2022. Excludes household domestic service that is publicly funded, including service provided to a recipient, client, or beneficiary with a share of cost in that service, unless subject to specified safety orders.
- 2) Requires the chief of the Division of Occupational Safety and Health (Cal/OSHA) or their representative to convene an advisory committee with an equal number of employee and employer representatives.
- 3) Provides that within six months of convening, the advisory committee in consultation with the Commission on Health and Safety and Workers' Compensation, shall make findings and recommendations to OSHSB for industry-specific regulations. Additionally requires that the OSHSB adopt regulations within a reasonable amount of time but no later than July 1, 2022.
- 4) 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.
- 5) 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.
- 6) 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 Labor Code Section 6318(a).
- 7) 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.
- 8) States that investigations of complaints in household domestic service employment shall be conducted so as to avoid any unwarranted invasion of personal privacy and shall not contain any personal, financial, or medical information of residents residing in the residential dwelling that is not pertinent to the investigation.

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

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

reported continuing to work through their injuries for fear of job or financial loss.² 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.

FISCAL COMMENTS:

According to the Assembly Appropriations Committee, annual special fund costs, likely in the millions of dollars, for Cal/OSHA and DLSE to implement and enforce the provisions of this bill.

² *Id.*

VOTES:

SENATE FLOOR: 27-11-2

YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Dodd, Durazo, Galgiani, Lena Gonzalez, Hertzberg, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Chang, Dahle, Grove, Jones, Melendez, Moorlach, Morrell, Nielsen, Wilk

ABS, ABST OR NV: Glazer, Hill

ASM LABOR AND EMPLOYMENT: 7-0-0

YES: Kalra, Flora, Carrillo, Diep, Gonzalez, Jones-Sawyer, Luz Rivas

ASM APPROPRIATIONS: 14-4-0

YES: Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Diep, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, Quirk, Robert Rivas

NO: Bigelow, Megan Dahle, Fong, Voepel

UPDATED:

VERSION: August 24, 2020

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