
UNFINISHED BUSINESS

Bill No: SB 1257
Author: Durazo (D), et al.
Amended: 8/24/20
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-0, 5/14/20
AYES: Hill, Jackson, Mitchell, Pan
NO VOTE RECORDED: Morrell

SENATE APPROPRIATIONS COMMITTEE: 5-2, 6/18/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 27-11, 6/25/20
AYES: 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
NOES: Bates, Borgeas, Chang, Dahle, Grove, Jones, Melendez, Moorlach,
Morrell, Nielsen, Wilk
NO VOTE RECORDED: Glazer, Hill

ASSEMBLY FLOOR: 58-12, 8/26/20 - See last page for vote

SUBJECT: Domestic service employees: employment safety standards

SOURCE: California Domestic Workers Coalition
California Employment Lawyers Association
Equal Rights Advocates
United Domestic Workers of America, AFSCME Local 3930

DIGEST: This bill, beginning on January 1, 2022, (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) requires the Chief of the Division of Occupational Safety and Health (Cal/OSHA) to convene an advisory committee to make findings and recommendations to the Occupational Safety and Health Standards Board (Standards Board) for industry-specific regulations related to household domestic service; (3) requires the Standards Board to adopt such regulations by January 1, 2022; and (4) authorizes Cal/OSHA to enforce occupational safety and health laws to protect domestic service employees at private residential dwellings.

Assembly Amendments make several changes to the bill, including: (1) add a delayed implementation date of January 1, 2022, for the expansion of Cal/OSHA to domestic workers; (2) exempt from this expansion household domestic service that is publicly funded, as specified; (3) require the convening of an advisory committee to make findings and recommendations to the Standards Board for domestic worker regulations; (4) require the Standards Board to adopt such regulations by January 1, 2022; (5) change from three to 14 the number of days that Cal/OSHA has to initiate contact with an employer after receipt of a complaint; (6) change from a court order to an inspection warrant, what Cal/OSHA can secure in order to inspect a residential dwelling; and (7) add privacy protection provisions for household investigations, as specified.

ANALYSIS:

Existing law:

- 1) Assures, under the California Occupational Safety and Health Act, 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 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) Establishes the Occupational Safety and Health Standards Board, within DIR, to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for workers. (Labor Code §140-147.6)
- 11) Regulates, under the Domestic Worker Bill of Rights, the hours of work of certain domestic work employees and provides an overtime compensation rate for those employees. Specifically, 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 beginning on January 1, 2022, thereby applying all of its requirements and obligations on domestic service employers.
- 2) Specifies that “employment” for OSHA purposes does not include household domestic service that is publicly funded, including publicly funded household domestic serviced provided to a recipient, client, or beneficiary with a share of cost in that service, except as specified.
- 3) Requires the Chief of Cal/OSHA, or a representative, to convene an advisory committee comprised of household domestic service employees and employers and in consultation with the Commission on Health and Safety and Workers’ Compensation, and within six months, requires them to make findings and recommendations to the Occupational Safety and Health Standards Board for industry-specific regulations related to household domestic service.
- 4) Requires the Occupational Safety and Health Standards Board to adopt industry-specific regulations related to household domestic service within a reasonable time but not later than January 1, 2022.

- 5) Specifies, for purposes of Cal/OSHA investigations of occupational safety and health, 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 14 calendar days after receipt of a complaint charging a serious violation.
- 6) Specifies that when telephone contact is successfully made, the chief of Cal/OSHA 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 Labor Code 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, the Division 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 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.
- 7) Provides that 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.

- c) For complaints alleging serious illness or injury or death in household domestic service, the chief of the division or their authorized representative may enter the premises with permission or with an inspection warrant issued pursuant to the provisions of Title 13 (commencing with Section 1822.50) of the Code of Civil Procedure, without first initiating telephone contact, as described in subdivision (f).
- d) Specifies that investigations of complaints in household domestic service employment shall be conducted in a manner 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 of the complaint.

Background

DLSE Domestic Work Industry Outreach and Education Program. As part of the 2019 Budget (SB 83, Committee on Budget and Fiscal Review, Chapter 24, Section 33), Section 1455 was added to the Labor Code requiring the Division of Labor Standards Enforcement to establish and maintain an outreach and education program, in consultation with community based organizations. 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. (NOTE: Please see Senate Labor, Public Employment and Retirement Committee analysis for more background information.)

Comments

Need for this bill? According to the author, “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.

“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.”

Related/Prior Legislation

AB 2658 (Burke, 2020) makes 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 defines “employee” for this purpose to include a person receiving employment for household domestic service. AB 2658 is pending on the Senate Floor.

(NOTE: Please see Senate Labor, Public Employment and Retirement Committee analysis for more information.)

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee, the fiscal impact of this bill is annual costs, likely in the millions of dollars, for Cal/OSHA. Under this bill, any one of California’s 13 million households that hires a domestic worker would now be subject to Cal/OSHA’s enforcement authority. This will likely generate significant new workload related to investigations, enforcement and litigation. However, given the uncertainty around this bill’s impact, specific costs are unknown.

SUPPORT: (Verified 8/26/20)

California Domestic Workers Coalition (co-source)
California Employment Lawyers Association (co-source)
Equal Rights Advocates (co-source)
United Domestic Workers of America, AFSCME Local 3930 (co-source)
Alliance of Californians for Community Empowerment Action
American Association of University Women - California
Asian Americans Advancing Justice – California
Asian Pacific Environmental Network
Bay Area Resource Generation
Bet Tzedek Legal Services
California Alliance for Retired Americans
California Employment Lawyers Association
California Healthy Nail Salon Collaborative
California Immigrant Policy Center
California Labor Federation, AFL-CIO

California Latinas for Reproductive Justice
California League of Conservation Voters
California Pan-Ethnic Health Network
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
Chinatown Community for Equitable Development
Chinese Progressive Association of San Francisco
Clean Carwash Campaign
Clean Water Action
Closing the Women's Wealth Gap
Coalition for Humane Immigrant Rights
Community Legal Services in East Palo Alto
Consumer Attorneys of California
Courage California
Diversity in Health Training Institute
Dolores Street Community Services
Drug Policy Alliance
El Centro Cultural De Mexico, Santa Ana
El/La Para TransLatinas
Ella Baker Center for Human Rights
Filipino Advocates for Justice
Filipino American Chamber of Commerce Business Network, San Diego
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
Koreatown Immigrant Workers Alliance
Latino Coalition for a Healthy California
Laurelton Research
Legal Aid at Work

Los Angeles Alliance for a New Economy
Los Angeles Worker Center Network
Media Alliance
Mujeres Unidas Y Activas
National Council of Jewish Women California
National Council of Jewish Women Los Angeles
National Day Laborer Organizing Network
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 Association of Workers and Immigrants Santa Clara
Pilipino Workers Center of Southern California
Poder
Pomona Economic Opportunity Center
Public Counsel
Raizes Collective
Restaurant Opportunities Center of Los Angeles
San Francisco Senior and Disability Action
Santa Clara County Wage Theft Coalition
Search to Involve Pilipino Americans
SEIU California
Southern California Coalition for Occupational Safety & Health
Stronger California Advocates Network
Teamsters Local 665
The Botanical Bus: Bilingual Mobile Herb Clinic
The Institute for Families and Nannies
The Women's Foundation of California
Voices for Progress
Western Center on Law & Poverty
Work Equity Action Fund
Working Partnerships USA
Worksafe
Young Workers United
Youth Leadership Institute

OPPOSITION: (Verified 8/26/20)

None received

ARGUMENTS IN SUPPORT: According to proponents, “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. 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.”

ASSEMBLY FLOOR: 58-12, 8/26/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooley, Cooper, Daly, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O’Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Waldron, Weber, Wood, Rendon

NOES: Bigelow, Brough, Choi, Cunningham, Megan Dahle, Fong, Gallagher, Kiley, Lackey, Mathis, Obernolte, Patterson

NO VOTE RECORDED: Chen, Diep, Eggman, Flora, Frazier, Gray, Mayes, Voepel, Wicks

Prepared by: Alma Perez-Schwab / L., P.E. & R. / (916) 651-1556
8/28/20 20:04:12

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