
THIRD READING

Bill No: AB 857
Author: Kalra (D), et al.
Amended: 8/24/22 in Senate
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 6/7/21
AYES: Cortese, Durazo, Laird, Newman
NOES: Ochoa Bogh

SENATE JUDICIARY COMMITTEE: 8-2, 7/13/21
AYES: Umberg, Durazo, Gonzalez, Hertzberg, Laird, Skinner, Stern, Wieckowski
NOES: Borgeas, Jones
NO VOTE RECORDED: Caballero

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 43-21, 5/6/21 - See last page for vote

SUBJECT: Employers: Labor Commissioner: required disclosures

SOURCE: California Rural Legal Assistance Foundation

DIGEST: This bill (1) requires agricultural employers, on March 15, 2023, and thereafter, to provide farmworkers brought to California from abroad under the federal H-2A program with a notice summarizing their workplace rights under state law; (2) directs the Labor Commissioner to prepare the notice and make it available online for employer use; (3) specifies the topics to be included in the notice; and (4) grants the Labor Commissioner discretion to include other explanatory information deemed material and necessary.

Senate Floor Amendments of 8/24/22 delay the required distribution of the new notice to March 15, 2023, and thereafter; specify that the Labor Commissioner is responsible for preparing the notice and making it available to employers; clarify that the notice must be provided to workers when they begin work for a new employer after being transferred by an H-2A or other employer; strike the

requirement that the notice include substantially the same language directed in the bill and instead specifies that it must include information that the Labor Commissioner deems material and necessary with respect to the topic headings; and strikes provisions in the bill related to travel time compensation.

Senate Floor Amendments of 8/25/21 make changes to the travel time compensation provisions, which (1) clarify when travel time compensation begins; (2) define “regular rate of pay”; and (3) remove the statement that the travel time compensation provisions are “declaratory of existing law.”

ANALYSIS:

Existing law:

- 1) Empowers the Labor Commissioner’s office, within the Department of Industrial Relations, with ensuring a just day’s pay in every workplace in the State and promote economic justice through robust enforcement of labor laws. (Labor Code (LC) §79-107)
- 2) Establishes the federal H-2A Program for Temporary Agricultural Workers allowing U.S. employers or agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs. Among other things, existing federal law specifies that as a condition for approval of such a petition, the Secretary of Labor must certify that:
 - a) There are not sufficient workers who are able, willing, and qualified to perform the labor or services involved in the petition, and
 - b) The employment of the foreign agricultural worker will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. (Title 8 U.S. Code Section §1188)
- 3) Requires that employers, at the time of hire, provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing, among other things, the following information:
 - a) The rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any overtime rate.
 - b) Allowances, if any, including meal or lodging allowances.
 - c) The name and physical address of the employer’s main office or principal place of business, mailing address, if different, and the telephone number.
 - d) The name, address, and telephone number of the employer’s workers’ compensation insurance carrier. (LC §2810.5)

- 4) Specifies that an employer shall notify his or her employees in writing of any changes to the information set forth in the notice (per above) within seven calendar days, as specified, and requires the Labor Commissioner to prepare, and make available to employers, a template with the information specified above. (LC §2810.5)
- 5) Specifies that a tenant who is an agricultural employee residing in employee housing has all rights applicable to a person residing in employee housing, including, among others, the following: (a) the right to file a verified complaint with the Department of Fair Employment and Housing alleging a violation of housing discrimination, or to assert any other right, under the Fair Employment and Housing Act; and (b) any protections for tenants or lessees under the Civil Code or the Labor Code, except as otherwise provided in Section 17031.6. (Health and Safety Code §17008.5)

This bill:

- 1) Requires the workplace rights notice under LC Section 2810.5, which applies to employers in *all industries*, to also include notifying employees of federal or state emergency or disaster declarations applicable to the county or counties where the employee is employed that may affect their health and safety.
- 2) Enacts “The California Legal Rights Disclosure Act for H-2A Farmworkers” requiring, on March 15, 2023 and thereafter, employers of H-2A employees to provide, on the first day of work with the original petitioner or transferred employer, as specified, a written notice in Spanish (and English if requested) that includes information on employee rights pursuant to federal and state law.
- 3) Requires the Labor Commissioner to prepare the notice and include information on specified topic headings that cover various laws including, among others, the following and grants the Commissioner discretion in including information they deemed material and necessary with respect to these topic headings:
 - a) Mandatory Wage Rates for the Entire Contract Period.
 - b) Overtime Wage Rates.
 - c) Required Pay Periods.
 - d) Required Rest and Meal Periods.
 - e) An Employee’s Time Spent While Being Transported by an H-2A Employer From the Employee’s Housing to the Employer’s Worksite Must Be Compensated if the Employee is Required to Use Employer-Provided Transportation.
 - f) Rights of Employees Who Live in Employer Housing.

- g) An Employer Shall Not Retaliate Against an Employee for Complaining About Working Conditions or for Organizing Collectively.
 - h) Itemized Wage Statements for Hourly/Piece-Rate Employees.
 - i) H-2A Employees Must be Trained to Identify, Prevent, and Report Sexual Harassment to their Employer and to State and Federal Agencies.
 - j) Toilets and Handwashing Facilities Must Be Accessible, and Drinking Water Must Be Provided at All Worksites.
 - k) Employer Must Provide Shade and Other Protections from Hot Working Conditions.
 - l) Employer Must Provide Pesticide Exposure Protections.
 - m) Employer Must Provide Workplace Safety Training and Have Procedures for Identifying and Correcting Hazards.
 - n) Transportation of Nine or More Farm Workers in One Vehicle Must be Provided in Inspected, Certified, and Insured “Farm Labor Vehicles”.
 - o) No Employer Charges are Permitted for Necessary Tools or Equipment.
 - p) Workers’ Compensation Benefits, Including Disability Pay and Medical Care Must be Provided for Work-Related Injuries or Illnesses.
 - q) Employees Must be Trained and Provided Necessary Lighting, Special High-Visibility Clothing, and other Equipment to Ensure Safe Working Conditions for Outdoor Agricultural Work Between Dusk and Dawn (consistent with Cal/OSHA standards that went into effect July 1, 2020).
 - r) Weeding or Thinning With Short-Handled Hoes is Prohibited When the Hoe is Used in a Stooping, Kneeling, or Squatting Position. Hand Weeding or Thinning is Not Permitted Except in Very Limited Circumstances.
- 4) Requires the Labor Commissioner to prepare the notice for H-2A employer use, in Spanish and English, and make it available to employers including by posting it online beginning March 1, 2023. This information shall be combined with the notice template required under current law (LC 2810.5).
- 5) Requires employers to also notify H-2A employees of any federal or state emergency or disaster declaration and recommendations applicable to the county/counties where they are employed that may affect their health and safety, as specified. Prohibits an H-2A employer from retaliating against an H-2A employee for raising questions about the declarations’ requirements or recommendations.
- 6) Requires the Labor Commissioner to revise the template, as necessary, to:
- a) Provide, update, or expand useful agency contact information.

- b) Correct inconsistencies with current laws or regulations, including, adding, deleting, or changing information because of new developments in case law pertinent to any provision referenced in the template.
 - c) Add any other information relating to any or all of the topic headings in the template, or revise the headings, if Labor Commissioner deems the additions or revisions material and necessary.
 - d) Add or delete information because of the enactment or repealing of laws or regulations.
- 7) Makes several findings and declarations pertaining to H-2A workers and their potential limited knowledge of legal rights and remedies under California law and that neither federal nor state law requires employers to notify them of the existence of either federal or state emergency or disaster declarations.

Background

The federal H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs. H-2A employers must provide housing at no cost to H-2A workers and to workers in corresponding employment who are not reasonably able to return to their residence within the same day. Employer-provided or secured housing must meet all applicable safety standards. Regarding transportation, employers are required to provide daily transportation between the workers' living quarters and the employer's worksite at no cost to covered workers living in employer-provided housing. Employer-provided transportation must meet all applicable safety standards, be properly insured, and be operated by licensed drivers.

(NOTE: Please see policy committee analysis for more background information on compensation for travel time to and from work.)

Comments

Need for this bill? According to the author, "These H-2A workers are recruited from Mexico and brought to California to work in the agricultural industry. Housing is provided by the employer but the workers have no vehicles or access to public transportation to help them get to the employer's worksites, so they generally must rely on transportation arranged by the employer. Many of these workers also are unaware of their basic state work place protections, such as overtime, meal and rest period breaks, and are some of the most historically exploited workers in the agricultural industry. According to EDD, in recent

correspondence to CRLAF, there were approximately 107 California employers in 2019 that imported more than 23,000 H-2A farm workers.”

Related/Prior Legislation

AB 364 (Rodriguez, 2021) extends licensing requirements to foreign labor contractors who recruit or solicit foreign agricultural workers.

SB 1102 (Monning, 2020), was similar to this bill, however, with the most recent amendments, this bill (AB 857) is a scaled back version that instead of being prescriptive on the exact language that needs to be included in the written notice, grants the Labor Commissioner discretion in describing worker rights. SB 1102 was vetoed by Governor Newsom.

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

SUPPORT: (Verified 8/26/22)

California Rural Legal Assistance Foundation (source)
California Alliance for Retired Americans
California Employment Lawyers Association
California Immigrant Policy Center
California Labor Federation
California Teamsters Public Affairs Council
Central Coast Alliance United for a Sustainable Economy
Centro de los Derechos del Migrante
Coalition to Abolish Slavery & Trafficking
Consumer Attorneys of California
Equal Rights Advocates
Farmworker Justice
United Farm Workers
United Food and Commercial Workers, Western States Council
Worksafe

OPPOSITION: (Verified 8/26/22)

Agricultural Council of California
California Association of Winegrape Growers
California Chamber of Commerce
California Citrus Mutual
California Farm Bureau Federation
California Food Producers
California Fresh Fruit Association

California Women for Agriculture
Family Winemakers of California
Ventura County Agricultural Association
Western Growers Association

ARGUMENTS IN SUPPORT: According to this bill’s sponsor, California Rural Legal Assistance Foundation, “The fundamental purpose of AB 857 is to provide these vulnerable farm workers with a timely, accurate notice of current laws that lets them readily determine whether their employer is complying with applicable California protections.” They note that, “The agreed upon subject headings for the H-2A workers’ rights notice, with the accompanying explanatory information drafted by the Labor Commissioner, will provide all H-2A farm workers with a short, comprehensive written summary of California’s key labor, housing, health and safety and other laws that exceed federal H-2A protections, and which are not otherwise disclosed to them in writing on their first day of work in Spanish.”

ARGUMENTS IN OPPOSITION: A coalition of agricultural employers write, “California’s ongoing increases to the minimum wage, overtime rules, nitrate/irrigated land program mandates, loss of crop protection tools, and regulatory restrictions on water supply threaten the survival of our family farms. The COVID-19 pandemic has further compounded the challenges that we face as an industry and has caused economic devastation for far too many. At a time when the industry is struggling most, AB 857 proposes unnecessary and costly changes in law.”

ASSEMBLY FLOOR: 43-21, 5/6/21

AYES: Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Holden, Jones-Sawyer, Kalra, Lee, Low, Maienschein, McCarty, Medina, Muratsuchi, Nazarian, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Chen, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Levine, Mathis, Nguyen, Patterson, Quirk, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Aguiar-Curry, Choi, Cooper, Daly, Frazier, Grayson, Irwin, Mayes, Mullin, O'Donnell, Petrie-Norris, Quirk-Silva, Blanca Rubio, Villapudua

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