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AB-359 Grocery workers. (2015-2016)

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Assembly Bill No. 359

CHAPTER 212

An act to add Part 9.5 (commencing with Section 2500) to Division 2 of the Labor Code, relating to grocery workers.

[Approved by Governor August 17, 2015. Filed with Secretary of State August 17, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 359, Gonzalez. Grocery workers.

Existing law regulates various aspects of the workplace and employee safety and health.

This bill, upon a change in control of a grocery establishment, would require an incumbent grocery employer to prepare a list of specified eligible grocery workers for a successor grocery employer, and would require the successor grocery employer to hire from this list during a 90-day transition period. The bill would require the successor grocery employer to retain eligible grocery workers for a 90-day period, prohibit the successor grocery employer from discharging those workers without cause during that period, and, upon the close of that period, require the successor grocery employer to consider offering continued employment to those workers. The bill would exempt a grocery establishment located in a food desert from the bill's requirements, as provided. The bill would provide that a collective bargaining agreement may supersede these requirements and that these provisions do not preempt any local ordinances that provide equal or greater protection to eligible grocery workers.

This bill would provide that its provisions are severable.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 9.5 (commencing with Section 2500) is added to Division 2 of the Labor Code, to read:

PART 9.5. Grocery Workers

2500. (a) Supermarkets and other grocery retailers are the primary points of distribution for food and other daily necessities for the residents of California and are therefore essential to the vitality of every California community.

(b) The state has a compelling interest in ensuring the welfare of the residents of its communities through the maintenance of health and safety standards in grocery establishments.

(c) Experienced grocery retail workers with knowledge of proper sanitation procedures, health regulations and laws, and an experience-based understanding of the clientele and communities in which the retailer is located are essential in furthering this interest and the state's investments in health and safety.

(d) A transitional retention period for grocery retail workers upon change of ownership, control, or operation of grocery stores ensures stability throughout the state for these vital workers, which, in turn, results in preservation of health and safety standards.

2502. For purposes of this part, the following definitions shall apply:

(a) "Change in control" means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets or a controlling interest, including by consolidation, merger, or reorganization, of the incumbent grocery employer or any person who controls the incumbent grocery employer or any grocery establishment under the operation or control of either the incumbent grocery employer or any person who controls the incumbent grocery employer.

(b) "Eligible grocery worker" means any individual whose primary place of employment is at the grocery establishment subject to a change in control, and who has worked for the incumbent grocery employer for at least six months prior to the execution of the transfer document. "Eligible grocery worker" does not include a managerial, supervisory, or confidential employee.

(c) "Employment commencement date" means the date on which an eligible grocery worker retained by the successor grocery employer pursuant to this part commences work for the successor grocery employer in exchange for benefits and compensation under the terms and conditions established by the successor grocery employer and as required by law.

(d) "Grocery establishment" means a retail store in this state that is over 15,000 square feet in size and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of food sales.

(e) "Incumbent grocery employer" means the person that owns, controls, or operates the grocery establishment at the time of the change in control.

(f) "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

(g) "Successor grocery employer" means the person that owns, controls, or operates the grocery establishment after the change in control.

(h) "Transfer document" means the purchase agreement or other document effecting the change in control.

2504. (a) The incumbent grocery employer shall, within 15 days after the execution of the transfer document, provide to the successor grocery employer the name, address, date of hire, and employment occupation classification of each eligible grocery worker.

(b) The successor grocery employer shall maintain a preferential hiring list of eligible grocery workers identified by the incumbent grocery employer pursuant to subdivision (a) and shall hire from that list for a period beginning upon the execution of the transfer document and continuing for 90 days after the grocery establishment is fully operational and open to the public under the successor grocery employer.

(c) If the successor grocery employer extends an offer of employment to an eligible grocery worker pursuant to this part, the successor grocery employer shall retain written verification of that offer for at least three years after the date of the offer. The verification shall include the name, address, date of hire, and employment occupation classification of each eligible grocery worker.

2506. (a) A successor grocery employer shall retain each eligible grocery worker hired pursuant to this part for at least 90 days after the eligible grocery worker's employment commencement date. During this 90-day transition employment period, eligible grocery workers shall be employed under the terms and conditions established by the successor grocery employer and pursuant to the terms of a relevant collective bargaining agreement, if any.

(b) If, within the period established in subdivision (b) of Section 2504, the successor grocery employer determines that it requires fewer eligible grocery workers than were required by the incumbent grocery employer, the successor grocery employer shall retain eligible grocery workers by seniority within each job classification to the extent that comparable job classifications exist or pursuant to the terms of a relevant collective bargaining agreement, if any. Nonclassified eligible grocery workers shall be retained by seniority and according to experience or pursuant to the terms of a relevant collective bargaining agreement, if any.

(c) During the 90-day transition employment period, the successor grocery employer shall not discharge without cause an eligible grocery worker retained pursuant to this part.

(d) At the end of the 90-day transition employment period, the successor grocery employer shall make a written performance evaluation for each eligible grocery worker retained pursuant to this part. If the eligible grocery worker's performance during the 90-day transition employment period is satisfactory, the successor grocery employer shall consider offering the eligible grocery worker continued employment under the terms and conditions established by the successor grocery employer and as required by law. The successor grocery employer shall retain a record of the written performance evaluation for at least three years.

2508. (a) The incumbent grocery employer shall post public notice of the change in control at the location of the affected grocery establishment within five business days following the execution of the transfer document. Notice shall remain posted during any closure of the grocery establishment and until the grocery establishment is fully operational and open to the public under the successor grocery employer.

(b) Notice shall include, but not be limited to, the name of the incumbent grocery employer and its contact information, the name of the successor grocery employer and its contact information, and the effective date of the change in control.

(c) Notice shall be posted in a conspicuous place at the grocery establishment in a manner to be readily viewed by eligible grocery workers and other employees, customers, and members of the public.

2512. Parties subject to this part may, by collective bargaining agreement, provide that the agreement supersedes the requirements of this part.

2516. This part shall not apply to grocery establishments that will be located in geographic areas designated by the United States Department of Agriculture as a food desert, based on the original food desert measure contained in the Food Access Research Atlas, provided that both of the following apply:

(a) More than six years have elapsed since the most recent grocery establishment was located in the area designated as a food desert.

(b) The grocery establishment stocks and during normal business hours sells fresh fruit and vegetables in amounts and of a quality that is comparable to what the establishment sells in its three geographically closest stores, which are located outside of the food desert.

2518. This part shall not be construed to limit an eligible grocery worker's right to bring legal action for wrongful termination.

2520. This part does not preempt any city, county, or city and county ordinances that provide equal or greater protection to eligible grocery workers.

2522. The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.