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AB-547 Janitorial workers: sexual violence and harassment prevention training. (2019-2020)

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Assembly Bill No. 547

CHAPTER 715

An act to amend Sections 1420, 1425, 1429, 1429.5, 1431, and 1432 of the Labor Code, relating to employment.

[Approved by Governor October 10, 2019. Filed with Secretary of State October 10, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 547, Gonzalez. Janitorial workers: sexual violence and harassment prevention training.

Existing law establishes the Division of Labor Standards Enforcement (division) within the Department of Industrial Relations. The division is headed by the Labor Commissioner and the department is headed by the Director of Industrial Relations. Existing law establishes certain protections for janitorial workers, including a requirement that the division establish a biennial in-person sexual violence and harassment prevention training requirement for certain employees and employers.

Existing law requires employers of at least one employee and one or more covered workers, as defined, who provide janitorial services, as specified, to register with the commissioner annually and prohibits them from conducting business without a registration. Existing law requires an application for registration to be in a form prescribed by the commissioner and subscribed and sworn to by the employer, as specified.

This bill would require the division to issue 2 types of registrations, one for registrants without employees and one for registrants with employees, and prohibit the division from approving a registration, as described above, if the employer does not include, among other things, in their written application the name of any subcontractor or franchise servicing contracts affiliated with branch locations and the name of any subcontractor on franchise servicing the contracts.

Existing law requires the director to convene an advisory committee to assist in development of training standards.

This bill would require the director to convene a training advisory committee to assist in compiling a list of qualified organizations and peer trainers that employers would be required to use to provide the biennial training described above. The bill would require the department to make the list of qualified training organizations available on its internet website. The bill would require those qualified training organizations to provide specified information to the division for inclusion on its internet website by January 1, 2021.

This bill would require the division to require employers subject to the training requirements to use the training content created by the Labor Occupational Health Program.

This bill would require employers to use a qualified organization from the list of qualified organizations developed and maintained by the director to provide the required training, and would require qualified organizations to provide peer trainers for employers to use in the training, as specified. The bill would require the employer to pay the qualified organization a specified amount per participant, unless an alternative payment has been agreed to pursuant to a collective bargaining agreement. The bill would require the qualified organization to ensure that the peer trainer is paid at least twice the state minimum wage per hour.

This bill would require an employer to document and certify compliance with the training to nonsupervisors and payment of the qualified organization, as specified, on a form prescribed by, and available to, the division. The bill would require an employer to submit a specified report of training completion to the director. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

The bill would require the training advisory committee to approve and recommend the qualified organizations to the director. The bill would authorize a qualified organization to work with a training partner, as defined, to provide the required training. The bill would prescribe certain minimum qualifications for qualified organizations and peer trainers. The bill would require the director to develop, as prescribed a list of qualified organizations and qualified peer trainers, as recommended by the training advisory committee.

Existing law provides for specified civil penalties for an employer subject to these provisions who fails to register with the department.

This bill would also subject an employer who makes a material misrepresentation on their application to these civil penalties.

The bill would make conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. This act shall be known, and may be cited, as the Janitor Survivor Empowerment Act.

SEC. 2. Section 1420 of the Labor Code, as amended by Section 26 of Chapter 24 of the Statutes of 2019, is amended to read:

1420. For purposes of this part:

(a) (1) "Covered worker" means a janitor, including any individual predominantly working, whether as an employee, independent contractor, or franchisee, as a janitor, as that term is defined in the Service Contract Act Directory of Occupations maintained by the United States Department of Labor.

(2) "Covered worker" does not include any individual whose work duties are predominantly final cleanup of debris, grounds, and buildings near the completion of a construction, alteration, demolition, installation, or repair work project, including, but not limited to, street cleaners.

(b) "Current and valid registration" means an active registration pursuant to this part that is not expired or revoked.

(c) "Department" means the Department of Industrial Relations.

(d) "Director" means the Director of Industrial Relations.

(e) (1) "Employer" means any person or entity that employs at least one covered worker or otherwise engages by contract, subcontract, or franchise agreement for the provision of janitorial services by one or more covered workers. The term "employer" includes the term "covered successor employer," but does not include an entity that is the recipient of the janitorial services.

(2) "Covered successor employer" means an employer who meets one or more of the following criteria:

(A) Uses substantially the same equipment, supervisors, and workforce to offer substantially the same services to substantially the same clients as a predecessor employer, unless the employer maintains the same workforce pursuant to Chapter 4.5 (commencing with Section 1060) of Part 3. In addition, an employer who has operated with a current and valid registration for at least the preceding three years shall not be considered a covered successor employer for using substantially the same equipment, supervisors, and workforce to substantially the same clients, if all of the following apply:

(i) The individuals in the workforce were not referred or supplied for employment by the predecessor employer to the successor employer.

(ii) The successor employer has not had any interest in, or connection with, the operation, ownership, management, or control of the business of the predecessor employer within the preceding three years.

(B) Shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor employer.

(C) Is an immediate family member of any owner, partner, officer, licensee, or director of the predecessor employer or of any person who had a financial interest in the predecessor employer. "Immediate family member" means a spouse, parent, sibling, son, daughter, uncle, aunt, niece, nephew, grandparent, grandson, granddaughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, or cousin.

(f) "Commissioner" means the Labor Commissioner of the Division of Labor Standards Enforcement of the department.

(g) "Supervisor" has the same meaning as in subdivision (t) of Section 12926 of the Government Code.

SEC. 3. Section 1425 of the Labor Code is amended to read:

1425. Proof of current and valid registration shall be by an official Division of Labor Standards Enforcement registration form. The Division of Labor Standards Enforcement shall issue two types of registrations, one for registrants with employees and one for registrants with no employees.

SEC. 4. Section 1429 of the Labor Code, as amended by Section 29 of Chapter 24 of the Statutes of 2019, is amended to read:

1429. The Division of Labor Standards Enforcement shall not approve the registration of any employer until all of the following conditions are satisfied:

(a) The employer has executed a written application, in a form prescribed by the commissioner and subscribed and sworn to by the employer, containing all of the following:

(1) The name of the business entity and, if applicable, its fictitious or "doing business as" name.

(2) The form of the business entity and, if a corporation, all of the following:

(A) The date of incorporation.

(B) The state in which incorporated.

(C) If a foreign corporation, the date the articles of incorporation were filed with the California Secretary of State.

(D) Whether the corporation is in good standing with the California Secretary of State.

(3) The federal employer identification number (FEIN) and the state employer identification number (SEIN) of the business.

(4) The address of the business and the telephone number and, if applicable, the addresses and telephone numbers of any branch locations, and the name of any subcontractor or franchise servicing the contracts.

(5) Whether the application is for a new or renewal registration and, if the application is for a renewal, the prior registration number.

(6) The names, residential addresses, telephone numbers, and social security or taxpayer identification numbers of the following persons:

(A) All corporate officers, if the business entity is a corporation.

(B) All persons exercising management responsibility in the applicant's office, regardless of form of business entity.

(C) All persons, except bona fide covered workers on regular salaries, who have a financial interest of 10 percent or more in the business, regardless of the form of business entity, and the actual percent owned by each of those persons.

(7) The policy number, effective date, expiration date, and name and address of the carrier of the applicant business' current workers' compensation coverage for all applicants who employ one or more employees and are required to secure workers' compensation insurance under Section 3700.

(8) (A) Whether the employer and any persons named in response to subparagraph (A), (B), or (C) of paragraph (6) presently:

(i) Owe any unpaid wages.

(ii) Have unpaid wage and hour final judgments outstanding or have not fully satisfied the terms of any administrative settlement pursuant to the Department of Fair Employment and Housing processes or a final judicial decree for any final judgment for a violation of the California Fair Employment and Housing Act.

(iii) Have any wage and hour liens or suits pending in court against them or pending California Fair Employment and Housing Act claims.

(iv) Owe any unpaid and outstanding payroll taxes, or personal, partnership, or corporate income taxes, Social Security taxes, or disability insurance.

(B) An applicant who answers affirmatively to any item described in subparagraph (A) shall provide, as part of the application, additional information on the unpaid amounts, including the name and address of the party owed, the amount owed, and any existing payment arrangements.

(9) (A) Whether the employer and any persons named in response to subparagraph (A), (B), or (C) of paragraph (6) have ever been cited or assessed any penalty for violating any provision of this code.

(B) An applicant who answers affirmatively to any item described in subparagraph (A) shall provide additional information, as part of the application, on the date, nature of citation, amount of penalties assessed for each citation, and the disposition of the citation, if any. The application shall describe any appeal filed. If the citation was not appealed, or if it was upheld on appeal, the applicant shall state whether the penalty assessment was paid.

(10) Effective January 1, 2020, all new applications for registration and renewal of registration shall demonstrate completion of the sexual violence and harassment prevention training requirements prescribed by the division and developed pursuant to Section 1429.5 by providing written attestation to the commissioner that the training has been provided as required. Effective January 1, 2022, the attestation shall include whether the training was provided by a peer trainer and an explanation as to why a peer trainer was not used if a peer trainer did not provide the required training.

(11) Such other information as the commissioner requires for the administration and enforcement of this part.

(b) The employer has paid a registration fee to the Division of Labor Standards Enforcement pursuant to Section 1427.

(c) Notwithstanding any other law, violation of this section shall not be a crime.

SEC. 5. Section 1429.5 of the Labor Code, as amended by Section 30 of Chapter 24 of the Statutes of 2019, is amended to read:

1429.5. (a) The Division of Labor Standards Enforcement shall establish by January 1, 2019, a biennial in-person sexual violence and harassment prevention training requirement to be provided by employers governed by this part for nonsupervisory covered workers and supervisors of nonsupervisory covered workers. The training content and qualifications for trainers for supervisory workers shall be consistent with the training requirements of Section 12950.1 of the Government Code and subsequent amendments to those requirements. The training content for nonsupervisors shall also be consistent with the requirements of Section 12950.1 of the Government Code and subsequent amendments to those requirements. The qualifications for trainers for nonsupervisors are set forth in this section. The training required under this section shall be in lieu of, and not in addition to, the requirements for training under Section 12950.1 of the Government Code, as long as the training pursuant to this section meets or exceeds the requirements for training under Section 12950.1 of the Government Code, apart from the aforementioned distinction regarding trainer qualification for nonsupervisory training.

(b) To assist in developing these standards, the director shall convene a training advisory committee to recommend requirements for a sexual harassment prevention training program. The training advisory committee shall be composed of representatives of the Division of Labor Standards Enforcement, the Division of Occupational Safety and Health, and the Department of Fair Employment and Housing, and shall also include representatives from a recognized or certified collective bargaining agent that represents janitorial workers, employers, labor-management groups in the janitorial industry, sexual assault victims advocacy groups, and other related subject matter experts. The director shall convene the training advisory committee by July 1, 2017. The training advisory committee shall consider the requirements of Section 12950.1 of the Government Code when developing the recommended standard. The Division of Labor Standards Enforcement shall propose the requirements for the sexual violence and harassment prevention training requirement by January 1, 2018.

(c) The director shall convene a training advisory committee to assist in compiling a list of qualified organizations that shall provide to employers the qualified peer trainers that employers shall use to provide the required training to nonsupervisors, as described below. The training advisory committee shall be composed of representatives from a recognized or certified collective bargaining agent that represents janitorial workers, representatives of janitorial workers, janitorial employers, and sexual assault victims advocates. By January 1, 2021, the department shall make available on its internet website the list of qualified organizations that employers shall use to locate a qualified peer trainer in a particular county to provide the required nonsupervisory training. The qualified organization shall provide to the Division of Labor Standards Enforcement the name, contact information, and service area of the qualified organization for inclusion on the website.

(d) The Division of Labor Standards Enforcement shall require employers covered by this part subject to the biennial training requirement to provide the training content developed by the Labor Occupational Health Program (LOHP) under the direction of the director, or as amended in the future by the director.

(e) Employers covered by this part subject to the biennial training requirement shall use a qualified organization from the list maintained by the director to provide the required training to nonsupervisors. Qualified organizations shall provide qualified peer trainers that employers covered by this part shall use to provide the required training to nonsupervisors. The employer shall pay the qualified organization sixty-five dollars (\$65) per participant, unless an alternative payment option has been agreed to under a collective bargaining agreement. A covered employer shall document compliance with the training requirement by completing and signing a form, to be developed by the Division of Labor Standards Enforcement, certifying that the training was conducted and that the qualified organization was paid in full, and the form shall be produced upon request of the Division of Labor Standards Enforcement. A covered employer shall also document compliance with the training requirement by ensuring that each participant sign in and sign out on a sign-in sheet, using printed writing and signature, at the commencement and completion of training, in addition to any regulatory documentation retention requirements adopted by the Division of Labor Standards Enforcement.

(f) The training advisory committee shall recommend the qualified organizations to the director. A qualified organization shall be a nonprofit corporation as described in subsection (c) of Section 501 of the Internal Revenue Code of the United States (26 U.S.C. 501(c)), that on its own or through its training partners complies with all of the following:

(1) Have and maintain at least 30 qualified peer trainers who are available to provide training to nonsupervisors covered workers as required under this part.

(2) Have access to local and regional sexual violence-related trauma services and resources for local referrals documented through letters of acknowledgment from service providers.

(3) Be committed to ongoing education and development as documented by a minimum of 10 hours of professional development each year for qualified organization staff and peer trainers in areas of research and strategies to prevent and respond to sexual assault and sexual harassment.

(4) Have seven years of demonstrated experience working with employers to provide training to employees both on and off the worksite in the janitorial industry, including seven years demonstrated experience working with immigrant low-wage workers.

(g) To be qualified as a peer trainer under this section, a person shall have the training, knowledge, and experience necessary to train nonsupervisory covered workers and shall, at the minimum, have all of the following qualifications:

(1) At least a cumulative 40 hours of sexual assault advocate training in the following areas:

(A) Survivor-centered and trauma-informed principles and techniques.

(B) The long-term effects of sexual trauma and the intersection of discrimination, oppression, and sexual violence.

(C) The availability of local, state, and national resources for survivors of sexual violence.

(D) Interactive teaching strategies that engage across multiple literacy levels.

(E) Conducting discrimination, retaliation, and sexual harassment prevention training.

(F) Responding to sexual harassment complaints or other discrimination complaints.

(G) Employer responsibility to conduct investigations of sexual harassment complaints.

(H) Advising covered workers regarding discrimination, retaliation, and sexual harassment prevention.

(2) Have two years of nonsupervisory work experience in the janitorial or property service industry.

(3) Be culturally competent and fluent in the language or languages that the relevant covered workers understand.

(h) The director shall maintain the list of qualified organizations. The list shall be updated by the director with assistance from the training advisory committee at least once every three years. The director may approve qualified organizations on an ongoing basis, if they meet the qualifications required by subdivision (f). The fee per participant may be adjusted by the Labor Commissioner as needed. The fee shall not exceed the cost to the commission of administering the list under this subdivision.

(i) The training advisory committee shall meet at least once every three years to review and update the list of qualified organizations and qualified peer trainers.

(j) A qualified organization may work with a training partner to provide the required training, provided that the qualified organization has entered into a written partnership agreement with the training partner. As used in this subdivision, "training partner" means a nonprofit, worker center, or labor organization with at least two years of demonstrated experience in addressing workplace sexual abuse, immigrants' rights advocacy, and worker rights advocacy.

(k) (1) If the internet website list of qualified organizations that provide peer trainers to employers required to provide training to nonsupervisors under this section indicates there is no qualified peer trainer available to provide training in a specific county, or if none of the qualified trainers are available to meet an employer's training needs, an employer may use a trainer as prescribed by the Department of Fair Employment and Housing with respect to sexual harassment training and education to provide training to covered workers working in that specific county.

(2) An employer governed by this part shall be deemed to be in compliance with the requirement to use a peer trainer to provide the required training if they contracted with a qualified organization that was listed on the department's internet website at the time of the training.

SEC. 6. Section 1431 of the Labor Code is amended to read:

1431. The commissioner shall maintain a public database of property service employers, on the internet website of the department, including the name, address, registration number, whether the registrant is a nonemployee registrant exempt from the requirement to secure workers' compensation coverage under Section 3700 of the Labor Code, and effective dates of registration.

SEC. 7. Section 1432 of the Labor Code is amended to read:

1432. (a) An employer who fails to register pursuant to Section 1423 is subject to a civil fine of one hundred dollars (\$100) for each calendar day that the employer is unregistered, not to exceed ten thousand dollars (\$10,000).

(b) Any person or entity that contracts with an employer who lacks a current and valid registration, as displayed on the online registration database at the time the contract is executed, extended, renewed, or modified, under this part on the date the person or entity enters into or renews a contract or subcontract for janitorial services with the employer is subject to a civil fine of not less than two thousand dollars (\$2,000) nor more than ten thousand dollars (\$10,000) in the case of a first violation, and a civil fine of not less than ten thousand dollars (\$10,000) nor more than twenty-five thousand dollars (\$25,000) for a subsequent violation.

(c) An employer who makes a material misrepresentation in connection with an initial or renewal application is subject to a civil fine of ten thousand dollars (\$10,000) per violation.

(d) Notwithstanding any other provision of law, the authority to enforce this section is vested exclusively with the commissioner. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the commissioner shall be the same as those set forth in Section 1197.1.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.