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AB-2537 Personal protective equipment: health care employees. (2019-2020)

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Assembly Bill No. 2537

CHAPTER 313

An act to add Section 6403.3 to the Labor Code, relating to workplace safety.

[Approved by Governor September 29, 2020. Filed with Secretary of State September 29, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2537, Rodriguez. Personal protective equipment: health care employees.

Existing law requires an employer to furnish employment and a place of employment that is safe and healthful for the employees and to establish, implement, and maintain an effective injury prevention program, as prescribed. Regulations enacted by the Department of Industrial Relations regulate the nature and use personal protective equipment and regulate practices in health care facilities connected with aerosol transmissible diseases.

This bill would require public and private employers of workers in a general acute care hospital, as defined, to supply those employees who provide direct patient care or provide services that directly support personal care with the personal protective equipment necessary to comply with the regulations described above, as specified. The bill would also require an employer to ensure that the employees use the personal protective equipment supplied to them. The bill would further require that an employer in this context, beginning April 1, 2021, maintain a supply of specified equipment in an amount equal to 3 months of normal consumption. The bill would require an employer to provide an inventory of its stockpile and a copy of its written procedures, as specified, to the Division of Occupational Safety and Health upon request. The bill would authorize the assessment of a civil penalty of up to \$25,000 for each violation to maintain the required stockpile, except in certain circumstances. The bill would make a statement of legislative findings. The bill would require an employer who is obligated to maintain an equipment stockpile and who controls a facility or setting in which another employer provides health care services to maintain the required equipment for the other employer.

The bill would require a general acute care hospital, on or before January 15, 2021, to be prepared to report to the Department of Industrial Relations, under penalty of perjury, its highest 7-day consecutive daily average consumption of personal protective equipment during the 2019 calendar year and would exempt general acute care hospitals under the jurisdiction of the State Department of State Hospitals from this requirement, as specified. The bill would require an employer to establish and implement effective written procedures for periodically determining the quantity and types of equipment used in its normal consumption. The bill would also authorize the division to enforce these provisions through the issuance of citations, as specified. By expanding the crime of perjury, the bill would impose a state-mandated local program.

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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) As of August 23, 2020, local health departments in California have reported 30,215 confirmed positive COVID-19 cases in nurses and health care workers and 145 deaths statewide. This data is collected daily and the number of infected nurses and health care workers continues to climb exponentially. While these figures include on-the-job exposures, they do not include the significant number of asymptomatic nurses and health care workers who are currently working every day who lack personal protective equipment and who also lack the priority testing that should be conducted for health care workers, given they are essential employees.

(b) Frontline nurses and health care workers treating patients with COVID-19 are likely exposed to the highest risk of infection because of their close, frequent contact with patients and working longer hours than usual. By the nature of their profession, health care workers in California are in daily danger of being directly exposed to all infectious diseases and novel pathogens, including COVID-19.

(c) The California Occupational Safety and Health Act of 1973 stipulates that every employer has a legal obligation to provide and maintain a safe and healthful workplace for employees.

(d) The United States Department of Labor and the United States Department of Health and Human Services have encouraged employers to stockpile face masks and respirators in advance of a pandemic. It is clear now that manufacturing capacity at the time of a pandemic outbreak does not meet expected demand.

(e) Although over 102 million N95 respirators have been distributed in the State of California since March 2020, nurses and other health care workers have not seen the impact of this distribution in their units. In many cases, employers have locked up or rationed N95 respirators, leaving nurses and other health care workers unprotected. In some cases, nurses have been disciplined for bringing their own personal protective equipment or demanding that appropriate personal protective equipment be provided when treating COVID-19 positive patients. Nurses and health care workers who need protection should have access to these respirators. Nurses and health care workers deserve protection while doing their jobs and if they are not protected, the COVID-19 virus will spread even faster and impact our health care system's ability to respond.

SEC. 2. Section 6403.3 is added to the Labor Code, to read:

6403.3. (a) For purposes of this section:

(1) "Employer" means a person or organization that employs workers in the public or private sector to provide direct patient care in a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(2) "Personal protective equipment" means the equipment and devices necessary to comply with Sections 3380 and 5199 of Title 8 of the California Code of Regulations, provided that those requirements are at least as protective as those sections read on May 4, 2020.

(b) An employer shall supply personal protective equipment to employees who provide direct patient care or provide services that directly support patient care in a general acute care hospital. An employer shall ensure that employees use the personal protective equipment supplied to them.

(c) (1) Beginning April 1, 2021, an employer shall maintain a stockpile of the following equipment in the amount equal to three months of normal consumption:

(A) N95 filtering facepiece respirators.

(B) Powered air-purifying respirators with high efficiency particulate air filters.

(C) Elastomeric air-purifying respirators and appropriate particulate filters or cartridges.

(D) Surgical masks.

(E) Isolation gowns.

(F) Eye protection.

(G) Shoe coverings.

(2) Single use equipment in the stockpile shall be unexpired, new, and not previously worn or used. An employer shall provide an inventory of its stockpile and a copy of its written procedures required pursuant to subdivision (f) to the Division of Occupational Safety and Health upon request. An employer who violates the requirement to maintain a supply of equipment prescribed by this subdivision shall be assessed a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation, unless the department determines that the employer could not meet the requirement due to issues beyond their control, such as the employer can demonstrate that equipment needed to meet the requirements of this section has been ordered from their manufacturer or distributor and not fulfilled, or has been damaged or stolen. The exemption from a civil penalty shall apply only to the type of equipment listed in paragraph (1) that is affected by issues beyond the employer's control. An employer shall still maintain the equipment that is not affected by issues beyond the employer's control.

(d) If an employer provides health care services in a facility or other setting controlled by another employer who is obligated to maintain a stockpile pursuant to subdivision (c), the employer who controls the facility or other setting shall maintain the required equipment for the employer providing health care services in that facility or setting.

(e) On or before January 15, 2021, an employer licensed under subdivision (a) of Section 1250 of the Health and Safety Code shall be prepared to report to the department, under penalty of perjury, its highest seven-day consecutive daily average consumption of personal protective equipment during the 2019 calendar year, upon request by the department. General acute care hospitals under the jurisdiction of the State Department of State Hospitals are exempt from this requirement. State hospitals shall make their highest seven-day consecutive daily average consumption of personal protective equipment during the 2019 calendar year available upon request to the Division of Occupational Safety and Health.

(f) An employer shall establish and implement effective written procedures for periodically determining the quantity and types of equipment used in its normal consumption.

(g) The division may enforce an alleged violation of this section through the issuance of a citation, pursuant to Section 6317.

(h) Subdivision (b) is declaratory of existing law.

SEC. 3. 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.