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SB-1257 Employment safety standards: household domestic services. (2019-2020)

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CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

SENATE BILL

NO. 1257

Introduced by Senator Durazo
(Principal coauthor: Assembly Member Bonta)
(Coauthors: Assembly Members Carrillo, Gipson, Gonzalez, Jones-Sawyer, and Kalra)

February 21, 2020

An act to amend Sections 6303 and 6314 of, and to add Section 6305.1 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1257, Durazo. Employment safety standards: household domestic services.

Existing law, the California Occupational Safety and Health Act of 1973, requires employers to comply with certain standards ensuring healthy and safe working conditions, as specified. Existing law charges the Division of Occupational Safety and Health within the Department of Industrial Relations with enforcement of the act, subject to oversight by the Chief of the Division of Occupational Safety (chief). Existing law makes a violation of the act a crime.

Existing law defines “employment,” for purposes of the act, 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.

This bill would delete the above-described exception for household domestic service, thereby making it subject to the act. The bill would provide, however, that “employment” does not include household domestic service that is publicly funded, as specified,

unless it is subject to certain regulatory provisions. The bill would make coverage for household domestic service operative on January 1, 2022, as specified. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The bill would require the chief or a representative of the chief to convene an advisory committee and, within 6 months of convening, in consultation with the Commission on Health and Safety and Workers' Compensation, make findings and recommendations to the Occupational Safety and Health Standards Board for industry-specific regulations related to household domestic service. The bill would require the board to adopt industry-specific regulations pursuant to these provisions within a reasonable time and no later than January 1, 2022.

Existing law authorizes the chief and all qualified and authorized division inspectors and investigators to have free access to any place of employment to make an investigation or inspection during regular working hours, and at other reasonable times when necessary, for the protection of safety and health.

This bill would require the chief or their representative, when the workplace is a residential dwelling, to initiate telephone contact with the employer in response to an alleged violation received from a domestic service employee within a specified timeframe. The bill would require the chief or their representative to provide specified notice to the employer about the alleged violation and to investigate the violation in accordance with certain procedures. The bill would require the employer to provide specified information to the division regarding mitigation efforts to correct the violation and to provide copies of all correspondence received from the division to the domestic service employee or to post the correspondence, as specified. The bill would authorize the chief or their authorized representative, for complaints alleging serious illness or injury or death in household domestic service, to enter the premises with permission or with an inspection warrant without first initiating telephone contact, as specified. The bill would require investigations of complaints in household domestic service employment to be conducted in a manner that avoids any unwarranted invasion of personal privacy and to 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.

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. Section 6303 of the Labor Code is amended to read:

6303. (a) "Place of employment" means any place, and the premises appurtenant thereto, where employment is carried on, except a place where the health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than the division.

(b) (1) "Employment," except as provided in paragraph (2), includes 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.

(2) "Employment" does not include household domestic service that is publicly funded, including publicly funded household domestic service provided to a recipient, client, or beneficiary with a share of cost in that service, unless subject to Section 3342 or 5199 of Title 8 of the California Code of Regulations.

(c) "Employment," for purposes of this division only, also includes volunteer firefighting when covered by Division 4 (commencing with Section 3200) pursuant to Section 3361.

(d) Subdivision (c) shall become operative on January 1, 2004.

(e) Coverage for household domestic service not excluded in paragraph (2) of subdivision (b) shall become operative on January 1, 2022.

SEC. 2. Section 6305.1 is added to the Labor Code, to read:

6305.1. (a) The Chief of the Division of Occupational Safety and Health, or a representative of the chief, shall convene an advisory committee. The advisory committee shall include an equal number of representatives of household domestic service employees and employers who represent diverse stakeholders. Within six months of convening, the advisory committee, in consultation with the Commission on Health and Safety and Workers' Compensation, shall make findings and recommendations to the Occupational Safety and Health Standards Board for industry-specific regulations related to household domestic service.

(b) The board shall adopt industry-specific regulations related to household domestic service within a reasonable time pursuant to this section and no later than January 1, 2022.

SEC. 3. Section 6314 of the Labor Code is amended to read:

6314. (a) To make an investigation or inspection, the chief of the division and all qualified divisional inspectors and investigators authorized by the chief shall, upon presenting appropriate credentials to the employer, have free access to any place of employment to investigate and inspect during regular working hours, and at other reasonable times when necessary for the protection of safety and health, and within reasonable limits and in a reasonable manner. The chief or their authorized representative may, during the course of any investigation or inspection, obtain any statistics, information, or any physical materials in the possession of the employer that are directly related to the purpose of the investigation or inspection, conduct any tests necessary to the investigation or inspection, and take photographs. Photographs taken by the division during the course of any investigation or inspection shall be considered to be confidential information pursuant to the provisions of Section 6322, and shall not be deemed to be public records for purposes of the California Public Records Act.

(b) If permission to investigate or inspect the place of employment is refused, or the facts or circumstances reasonably justify the failure to seek permission, the chief or their authorized representative may obtain an inspection warrant pursuant to the provisions of Title 13 (commencing with Section 1822.50) of the Code of Civil Procedure. Cause for the issuance of a warrant shall be deemed to exist if there has been an industrial accident, injury, or illness reported, if any complaint that violations of occupational safety and health standards exist at the place of employment has been received by the division, or if the place of employment to be inspected has been chosen on the basis of specific neutral criteria contained in a general administrative plan for the enforcement of this division.

(c) The chief and their authorized representatives may issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, and physical materials, administer oaths, examine witnesses under oath, take verification or proof of written materials, and take depositions and affidavits for the purpose of carrying out the duties of the division.

(d) In the course of any investigation or inspection of an employer or place of employment by an authorized representative of the division, a representative of the employer and a representative authorized by their employees shall have an opportunity to accompany them on the tour of inspection. Any employee or employer, or their authorized representatives, shall have the right to discuss safety and health violations or safety and health problems with the inspector privately during the course of an investigation or inspection. Where there is no authorized employee representative, the chief or their authorized representatives shall consult with a reasonable number of employees concerning matters of health and safety of the place of employment.

(e) During any investigation of an industrial accident or occupational illness conducted by the division pursuant to the provisions of Section 6313, the chief or their authorized representative may issue an order to preserve physical materials or the accident site as they were at the time the accident or illness occurred if, in the opinion of the division, it is necessary to do so in order to determine the cause or causes of the accident or illness, and the evidence is in potential danger of being removed, altered, or tampered with. Under these circumstances, the division shall issue that order in a manner that will avoid, to the extent possible, any interference with normal business operations.

A conspicuous notice that an order has been issued shall be prepared by the division and shall be posted by the employer in the area or on the article to be preserved. The order shall be limited to the immediate area and the machines, devices, apparatus, or equipment directly associated with the accident or illness.

Any person who knowingly violates an order issued by the division pursuant to this subdivision shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000).

(f) (1) 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 violation.

(2) When telephone contact is successfully made, the chief of the division 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 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 for any reason, 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.

(3) An 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.

(g) 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).

(h) Notwithstanding any other provision of this chapter to the contrary, 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.

SEC. 4. 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.