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SB-646 Labor Code Private Attorneys General Act of 2004: janitorial employees. (2021-2022)

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Date Published: 09/28/2021 02:00 PM

Senate Bill No. 646

CHAPTER 337

An act to add and repeal Section 2699.8 of the Labor Code, relating to employment.

[Approved by Governor September 27, 2021. Filed with Secretary of State September 27, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 646, Hertzberg. Labor Code Private Attorneys General Act of 2004: janitorial employees.

Existing law, the Labor Code Private Attorneys General Act of 2004, authorizes an aggrieved employee to bring a civil action to recover specified civil penalties that would otherwise be assessed and collected by the Labor and Workforce Development Agency on behalf of the employee and other current or former employees for the violation of certain provisions affecting employees. The act requires the employee to follow prescribed procedures before bringing an action and establishes alternate procedures for specific categories of violations. The act requires, except as provided, that 75% of the civil penalties recovered by aggrieved employees be distributed to the Labor and Workforce Development Agency for enforcement of labor laws and for education of employers and employees about their rights and responsibilities, and 25% be distributed to the aggrieved employees.

Existing law requires a person or entity that employs one or more janitors or otherwise engages by contract, subcontract, or franchise agreement for the provision of janitorial services, as specified, to register with the Labor Commissioner as a property service employer annually and prohibits them from conducting business without a registration.

This bill would except from the Labor Code Private Attorneys General Act of 2004 a janitorial employee, as defined, represented by a labor organization that has represented janitors before January 1, 2021, and employed by a janitorial contractor who registered with the commissioner as a property service employer in calendar year 2020, with respect to work performed under a valid collective bargaining agreement in effect any time before July 1, 2028, that contains certain provisions, including, among others, a grievance and binding arbitration procedure to redress violations that authorizes the arbitrator to award otherwise available remedies. The bill would require a janitorial contractor who has entered into an agreement as prescribed to share, within 60 days of entering the agreement, specified information about the agreement with the Labor and Workforce Development Agency. The bill would specify that its provisions do not apply to existing cases filed before the effective date of the bill and does not prevent a janitorial employee from filing certain actions. The bill would authorize the exception until the collective bargaining agreement expires or until July 1, 2028, whichever is earlier, and would repeal the bill's provisions on July 1, 2028.

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

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

SECTION 1. Section 2699.8 is added to the Labor Code, to read:

2699.8. (a) This part shall not apply to a janitorial employee represented by a labor organization that has represented janitors before January 1, 2021, and employed by a janitorial contractor who registered as a property service employer pursuant to Section 1423 in calendar year 2020, with respect to work performed under a valid collective bargaining agreement in effect any time before July 1, 2028, that expressly provides for the wages, hours of work, and working conditions of employees, provides premium wage rates for all overtime hours worked, and does all of the following:

(1) Requires the employer to pay all nonprobationary workers working in certain worksites, defined in an applicable collective bargaining agreement, total hourly compensation, inclusive of wages, health insurance, pension, training, vacation, holiday, and fringe benefit funds, amounting to not less than 30 percent more than the state minimum wage rate.

(2) Prohibits all of the violations of this code that would be redressable pursuant to this part, provides for a grievance and binding arbitration procedure to redress those violations, and allows the labor organization to pursue a grievance on behalf of all affected employees.

(3) Expressly waives the requirements of this part in clear and unambiguous terms.

(4) Authorizes the arbitrator to award any and all remedies otherwise available under this code, provided that nothing in this section authorizes the award of penalties under this part that would be payable to the Labor and Workforce Development Agency.

(b) Except for a civil action under Section 2699, nothing in this section precludes an employee from pursuing any other civil action against an employer, including, but not limited to, an action for a violation of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), Title VII of the Civil Rights Act of 1964 (Public Law 88-352), or any other prohibition of discrimination or harassment.

(c) Any janitorial contractor who has entered into an agreement that meets the criteria in subdivision (a) above shall, within 60 days of entering the agreement, share with the Labor and Workforce Development Agency the following information:

(1) The name of the janitorial contractor.

(2) The name of the labor organization.

(3) The number of employees covered by the agreement.

(4) The duration of the agreement.

(d) The exception provided by this section shall expire on the date the collective bargaining agreement expires or on July 1, 2028, whichever is earlier.

(e) (1) Except as provided in paragraph (2), for purposes of this section, "janitorial employee" means an employee whose primary duties are to clean and keep in an orderly condition commercial working areas and washrooms, or the premises of an office, multiunit residential facility, industrial facility, health care facility, amusement park, convention center, stadium, racetrack, arena, or retail establishment. Duties of a janitorial employee involve one or more of the following:

(A) Disinfecting, vacuuming, sweeping, mopping, or scrubbing, and polishing floors.

(B) Removing trash and other refuse and sorting recyclable material therefrom.

(C) Dusting equipment, furniture, or fixtures.

(D) Polishing metal fixtures or trimmings.

(E) Providing supplies in minor maintenance services.

(F) Cleaning laboratories, showers, and restrooms.

(2) For purposes of this section, "janitorial employee" does not include any of the following:

(A) Workers who specialize in window washing.

(B) Housekeeping staff who make beds and change linens as a primary responsibility.

(C) Workers working at airport facilities or cabin cleaning.

(D) Workers at hotels, card clubs, restaurants, or other food service operations.

(E) Grocery store employees and drug-retail employees.

(f) This section shall not apply to existing cases filed before the effective date of this section.

(g) Nothing in this section shall prevent a janitorial employee from filing an action under Section 2699.3 if there is a finding by a court or administrative agency of competent jurisdiction that the labor organization has breached its duty of fair representation in relation to a claim under Section 2699.3.

(h) This section shall remain in effect only until July 1, 2028, and as of that date is repealed.