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**AB-636 Employers: agricultural employees: required disclosures.** (2023-2024)

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**Assembly Bill No. 636**

**CHAPTER 451**

An act to amend Section 2810.5 of the Labor Code, relating to employment.

[ Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 636, Kalra. Employers: agricultural employees: required disclosures.

Existing law requires an employer to provide an employee, at the time of hiring, a written notice including specified information in the language that the employer normally uses to communicate employment-related information to the employee. Existing law requires the Labor Commissioner to prepare a template that includes the information and to make the template available to employers in a manner as determined by the commissioner.

This bill would require an employer to include in the written notice information regarding the existence of a federal or state disaster declaration applicable to the county or counties in which the employee will be employed, as specified.

This bill would require an employer, beginning on March 15, 2024, to give an employee admitted pursuant to the federal H-2A agricultural visa, on the day that the H-2A employee begins work for the employer in the state or on the first day that the employee begins work for another H-2A employer, additional information in a separate and distinct section of the notice described above, in Spanish, and, if requested by the employee, in English, describing an agricultural employee's additional rights and protection under California law, as specified. The bill would provide employers who employ both H-2A and non-H-2A employees with the option to provide the notice to non-H-2A employees in English or Spanish, at the employee's request, or in the language that the employer normally uses to communicate employment-related information to non-H-2A employees. The bill would require the Labor Commissioner to create a template for the notice that complies with this requirement and to post the template on its internet website commencing March 1, 2024.

Existing law specifies that for purposes of these provisions, the term "employee" does not include, among other persons, an employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate wage.

This bill would, in addition, exclude an H-2A employee from the definition of "employee" if they are covered by an agreement that provides for wage rates of not less than the federal H-2A program wage required to be paid during the contract period.

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

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

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

(a) In 2011, California's "Wage Theft Prevention Act" was signed into law, requiring most employers in California to provide a notice of basic wage and hour information to all employees at the time of hire. In subsequent years, the act was amended to require employers to advise workers of their right to accrue and take sick leave without fear of retaliation and to file a complaint to remedy a violation of that right. The act was also amended to require employers of temporary workers to provide additional business location and contact information because this workforce is seen as uniquely vulnerable to workplace violations.

(b) This act continues the evolution of the notice requirements described above to protect vulnerable workers from a lack of key information about work conditions by placing new requirements on employers of farmworkers who are brought into California for work in agriculture under the federal H-2A agricultural worker visa program.

(c) The notice required by this act is intended to create a California H-2A farmworker legal rights and disclosure requirement that would allow each H-2A farmworker to readily comprehend their employer's obligations under important California law and regulations, equip workers with the knowledge needed to quickly ascertain whether those laws are being complied with in their workplaces, and provide workers with information about how to initiate complaints covering possible violations with state and federal agencies, their collective bargaining representatives, or nonprofit legal assistance organizations that represent farmworkers.

(d) The Legislature finds that the notice required by this act is necessary because more than 43,000 foreign agricultural temporary workers were admitted to California in the 2022 federal fiscal year under the federal H-2A visa program, a number that has grown dramatically in recent years. Many of these farmworkers have never worked in California, and are believed to speak and read little or no English. Fewer still are believed to be familiar with their basic legal rights and remedies under California law, and many are provided false or misleading information about California laws in the federal job order approved for their admissions.

(e) Although all employers of H-2A farmworkers are required to comply with federal, state, and local law, neither the United States Department of Labor nor the Employment Development Department, which both administer the program, require H-2A employers to accurately disclose in writing to H-2A farmworkers any information about fundamental California labor, housing, health and safety, and other laws that afford them greater protections than federal law. Neither the United States Department of Labor, nor the Employment Development Department, require H-2A employers to inform H-2A farmworkers of the existence of either federal or state emergency or disaster declarations that may affect their health and safety during their employment in California. Because of the recent COVID-19 pandemic, the Legislature finds that notice of these declarations is in workers' interests and in keeping with prior amendments to the important "Worker Right to Know" statute.

**SEC. 2.** Section 2810.5 of the Labor Code is amended to read:

**2810.5.** (a) (1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any "doing business as" names used by the employer.

(E) The physical address of the employer's main office or principal place of business, and a mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer's workers' compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(I) The existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed, and that was issued within 30 days before the employee's first day of employment, that may affect their health and safety during their employment.

(J) Any other information the Labor Commissioner deems material and necessary.

(2) The Labor Commissioner shall prepare templates for the required notices that comply with the requirements of paragraphs (1) and (4). The templates shall be made available to employers in a manner as determined by the Labor Commissioner, and as set forth in subdivision (d). Commencing March 1, 2024, the template developed pursuant to paragraph (4) shall be posted on the Labor Commissioner's internet website.

(3) If the employer is a temporary services employer, as defined in Section 201.3, the notice described in paragraph (1) shall also include the name, the physical address of the main office, the mailing address if different from the physical address of the main office, and the telephone number of the legal entity for whom the employee will perform work, and any other information the Labor Commissioner deems material and necessary. The requirements of this paragraph do not apply to a security services company that is licensed by the Department of Consumer Affairs and that solely provides security services.

(4) (A) If an employee is admitted under the federal H-2A agricultural visa program pursuant to Section 1188 of Title 8 of the United States Code, the notice described in paragraph (1) shall also include, in Spanish, a separate and distinct section containing nonduplicative information succinctly describing an agricultural employee's additional rights and protections under California law and regulations, including, but not limited to, information addressing the federal H-2A program wage rate required to be paid during the contract period; overtime wage rates; frequency of pay; pay for piece rate workers; 10-minute rest periods; 30-minute meal periods; transportation travel time compensation when required, including transportation from housing to work sites; employee housing rights; nonretaliation protections for complaints or organizing; contents of itemized wage statements; sexual harassment prohibitions; toilets; requirements regarding availability of potable water and handwashing facilities; requirements relating to hot weather working conditions and the availability of shade; pesticide exposure protections; workplace safety requirements, training and correction of hazards; transportation in defined farm labor vehicles; prohibitions against tool or equipment charges, prohibitions against deductions for meals not taken; training and necessary equipment and lighting for night work; prohibitions against use of short-handled hoes and limits on hand weeding; employee-paid health insurance; right to accrue and take sick leave; workers' compensation coverage, disability pay, and medical care for injuries; and the right to complain to state or federal agencies and to seek advice from collective bargaining representatives or legal assistance organizations.

(B) (i) Notwithstanding paragraph (1), an employer shall provide the notice required by subparagraph (A) in Spanish to the H-2A employee on the day that the H-2A employee begins work in the state or on the first day that the employee begins work for another H-2A employer. An H-2A employee may request that the employer also provide the notice in English.

(ii) An employer who employs both H-2A and non-H-2A employees at the same time may satisfy the requirements of paragraph (1) with respect to the employer's non-H-2A employees by opting to provide those employees with the notice required by subparagraph (A) or by providing the notice required by paragraph (1).

(b) An employer shall notify their employees in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies:

(1) All changes are reflected on a timely wage statement furnished in accordance with Section 226.

(2) Notice of all changes is provided in another writing required by law within seven days of the changes.

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

(1) An employee directly employed by the state or any political subdivision thereof, including any city, county, city and county, or special district.

(2) An employee who is exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission.

(3) An employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage. This subdivision applies to employees admitted to the federal H-2A program only if the collective bargaining agreement provides for wage rates of not less than the federal H-2A program wage required to be paid during the contract period.

(d) Commencing March 15, 2024, an employer of an employee admitted pursuant to the federal H-2A agricultural visa program shall comply with subdivision (a) by giving workers a copy of the template developed by the Labor Commissioner in accordance with paragraph (4) of subdivision (a).