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**AB-647 Grocery workers.** (2023-2024)

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**Assembly Bill No. 647**

**CHAPTER 452**

An act to amend Sections 2502, 2504, and 2512 of, and to add Sections 2509, 2510, and 2517 to, the Labor Code, relating to private employment.

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

**LEGISLATIVE COUNSEL'S DIGEST**

AB 647, Holden. Grocery workers.

Existing law, upon change in control of a grocery establishment, requires an incumbent grocery employer, within 15 days after the execution of the transfer document, to provide to the successor grocery employer a list of eligible grocery workers, as specified, and requires the successor grocery employer to maintain a preferential hiring list of eligible grocery workers, to hire from that list for 90 days after the grocery establishment is fully operational and open to the public under the successor grocery employer, and to retain each eligible grocery worker hired for at least 90 days after their commencement date, except as specified. Existing law defines "grocery establishment" for purposes of these provisions as a retail store that is over 15,000 square feet that meets specified requirements, and excludes from the definition a retail store that has ceased operations for 6 months or more.

This bill would instead exclude a retail store that has ceased operations for 12 months or more, and would include distribution centers that meet specified requirements within the definition of "grocery establishment," regardless of square footage. The bill would require an incumbent grocery employer to also provide the list of eligible grocery workers to any collective bargaining representatives, and would revise the employee information an incumbent grocery employer is required to provide to the successor grocery employer. The bill would authorize a successor grocery employer to obtain the list of eligible grocery workers from a collective bargaining representative if the incumbent grocery employer does not provide the information within 15 days. The bill would prohibit an employer from taking adverse action against an employee for seeking to enforce their rights. The bill would authorize an employee or employee representative to bring an action in the superior court and would specify remedies in that regard, including front pay or back pay and punitive damages, and would authorize the court to award reasonable attorney's fees and costs to the employee or employee representative who prevails in an enforcement action. The bill would authorize the Labor Commissioner to enforce the provisions and would establish remedies in that regard. The bill would make an employer, agent of any employer, or other person who violates or causes to be violated the provisions, subject to civil penalties and liquidated damages, and would require the liquidated damages to be deposited into the Labor and Workforce Development Fund and paid to the employee as compensatory damages.

Existing law specifies that parties may, by collective bargaining agreement, provide that the agreement supersedes the provisions described above providing for employment protections for grocery workers.

This bill would require the agreement to explicitly set forth the requirements that are superseded.

This bill would also exempt certain incumbent grocery employers and successor grocery employers, based upon their total nationwide employment, from all of the above-described requirements.

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

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

### **SECTION 1.** Section 2502 of the Labor Code is amended to read:

#### **2502.** For purposes of this part, the following definitions shall apply:

(a) "Change in control" means any sale, purchase, assignment, acquisition, transfer, contribution, or other disposition of all or substantially all of the assets, cash on hand, or a controlling interest, including by consolidation, merger, or reorganization, of or by the incumbent grocery employer or any person who controls the incumbent grocery employer or any grocery establishment under the operation or control of either the incumbent grocery employer or any person who controls the incumbent grocery employer.

(b) "Eligible grocery worker" means any individual whose primary place of employment is at the grocery establishment subject to a change in control, and who has worked for the incumbent grocery employer for at least six months prior to the execution of the transfer document. "Eligible grocery worker" does not include a managerial, supervisory, or confidential employee.

(c) "Employment commencement date" means the date on which an eligible grocery worker retained by the successor grocery employer pursuant to this part commences work for the successor grocery employer in exchange for benefits and compensation under the terms and conditions established by the successor grocery employer and as required by law.

(d) "Grocery establishment" means a retail store in this state that is over 15,000 square feet in size and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of food sales. A distribution center owned and operated by a grocery establishment and used primarily to distribute goods to or from its owned stores shall be considered a grocery establishment, regardless of its square footage. A grocery establishment does not include a retail store that has ceased operations for 12 months or more.

(e) "Incumbent grocery employer" means the person that owns, controls, or operates the grocery establishment at the time of the change in control.

(f) "Job classification" means a system for categorizing certain duties into certain jobs.

(g) "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

(h) "Successor grocery employer" means the person that owns, controls, or operates the grocery establishment after the change in control. A successor grocery employer may be the same entity as an incumbent employer when a change in control occurs but the covered employer remains the same.

(i) "Transfer document" means the purchase agreement or other document effecting the change in control.

### **SEC. 2.** Section 2504 of the Labor Code is amended to read:

**2504.** (a) (1) The incumbent grocery employer shall, within 15 days after the execution of the transfer document, provide to the successor grocery employer and any collective bargaining representative the name, address, date of hire, employment occupation classification, and, if known, the cellular telephone number and email address of each eligible grocery worker.

(2) If the incumbent grocery employer does not provide the information specified in paragraph (1) within 15 days, the successor grocery employer may obtain the information from a collective bargaining representative.

(b) The successor grocery employer shall maintain a preferential hiring list of eligible grocery workers identified by the incumbent grocery employer or collective bargaining representative pursuant to subdivision (a) and shall hire from that list for a period beginning upon the execution of the transfer document and continuing for 90 days after the grocery establishment is fully operational and open to the public under the successor grocery employer.

(c) If the successor grocery employer extends an offer of employment to an eligible grocery worker pursuant to this part, the successor grocery employer shall retain written verification of that offer for at least three years after the date of the offer. The

verification shall include the name, address, date of hire, and employment occupation classification of each eligible grocery worker.

**SEC. 3.** Section 2509 is added to the Labor Code, to read:

**2509.** An employer shall not refuse to employ, terminate, reduce the compensation of, or otherwise take adverse action against any employee for seeking to enforce their rights under this part, including participating in proceedings, opposing any practice prescribed by this part, or otherwise asserting rights under this part. This section applies to an employee who mistakenly, but in good faith, alleges noncompliance with this part.

**SEC. 4.** Section 2510 is added to the Labor Code, to read:

**2510.** (a) An aggrieved employee or an employee representative, such as a collective bargaining representative or nonprofit corporation, may bring an action in the superior court of the State of California for violations of this part and may be awarded the following:

- (1) Hiring and reinstatement rights pursuant to this part. For violations of the retention provision, the 90-day transition employment period shall not commence until the eligible grocery worker's employment commencement date with the successor grocery employer.
- (2) Front pay or back pay for each day during which the violation continues.
- (3) The value of the benefits the employee would have received under any benefit plans.
- (4) Punitive damages pursuant to Section 3294 of the Civil Code.
- (5) The court may award reasonable attorney's fees and costs to any employee or employee representative who prevails in an enforcement action.

(b) Before an employee or an employee representative brings an action in the superior court of the State of California for a violation of this part, both of the following requirements shall be met:

- (1) The employee has provided written notice to the employer of the provisions of this part alleged to have been violated and the facts to support the alleged violation.
- (2) The employer has not cured the alleged violation within 33 days from receipt of the written notice.

(c) The Labor Commissioner may enforce this section, including investigating an alleged violation and ordering appropriate temporary relief to mitigate the violation pending the completion of an investigation or hearing, through the procedures set forth in Section 98.3, 98.7, 98.74, or 1197.1, including by issuing a citation against an employer who violates this section or by filing a civil action.

(d) The Labor Commissioner may recover the following remedies on behalf of an aggrieved employee:

- (1) Hiring and reinstatement rights pursuant to this chapter. For violations of the retention provision, the 90-day transition employment period shall not commence until the eligible grocery worker's employment commencement date with the successor grocery employer.
- (2) Front pay or back pay for each day during which the violation continues.
- (3) The value of the benefits the employee would have received under any benefit plans.

(e) An employer, agent of an employer, or other person who violates this part or causes a violation of this part may be subject to a civil penalty of one hundred dollars (\$100) for each employee whose rights under these provisions are violated. An additional amount payable as liquidated damages in the amount of one hundred dollars (\$100) per employee, for each day the rights of an employee under this part are violated and continuing until the violation is cured, not to exceed one thousand dollars (\$1,000) per employee, which may be recovered by the Labor Commissioner, deposited into the Labor and Workforce Development Fund, and paid to the employee as compensatory damages.

(f) Citation procedures for issuing, contesting, and enforcing judgments for citations and civil penalties issued by the Labor Commissioner shall be the same as those set out in Section 98.74 or 1197.1, as appropriate.

(g) In an action brought by the Labor Commissioner for enforcement of this section, the court may issue preliminary and permanent injunctive relief to vindicate the rights of employees. In a civil action, the Labor Commissioner may also recover all remedies set forth in subdivision (d).

(h) In an administrative or civil action brought under this section, the Labor Commissioner or court shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code.

(i) The remedies, penalties, and procedures provided under this section are cumulative.

(j) The Labor Commissioner may promulgate and enforce rules and regulations and issue determinations and interpretations consistent with and necessary for the implementation of this section.

**SEC. 5.** Section 2512 of the Labor Code is amended to read:

**2512.** Parties subject to this part may, by collective bargaining agreement, provide that the agreement supersedes the requirements of this part, in whole or in part, but only if the agreement explicitly sets forth in clear and unambiguous terms the requirements of this part that are superseded.

**SEC. 6.** Section 2517 is added to the Labor Code, to read:

**2517.** (a) This part shall not apply to an incumbent grocery employer and the successor grocery employer executing the transfer document with that incumbent grocery employer, if the sum of both of the following is less than 300:

(1) The number of grocery workers employed, immediately prior to the change in control, by the incumbent grocery employer across that employer's grocery establishments nationwide.

(2) The number of grocery workers employed, immediately prior to the change in control, by the successor grocery employer across that employer's grocery establishments nationwide.

(b) Notwithstanding any law, and for purposes of this section only, the following definitions apply:

(1) "Grocery establishment" as used in this section has the same meaning as defined in Section 2502, but shall also include grocery establishments in other states in the United States.

(2) "Grocery worker" as used in this section means any individual whose primary place of employment is at a grocery establishment that is owned, controlled, or operated by the incumbent or successor grocery employer, as applicable.