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AB-1766 Division of Occupational Safety and Health: regulations. (2023-2024)

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Assembly Bill No. 1766

CHAPTER 133

An act to amend Section 3351 of, and to add Section 7358 to, the Labor Code, and to amend Sections 10200, 10204, and 10205 of the Unemployment Insurance Code, relating to employment.

[Approved by Governor July 27, 2023. Filed with Secretary of State July 27, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1766, Committee on Labor and Employment. Division of Occupational Safety and Health: regulations.

(1) Existing law grants the Division of Occupational Safety and Health, which is within the Department of Industrial Relations, jurisdiction over all employment and places of employment, with the power necessary to enforce and administer all occupational health and safety laws and standards, including standards for the operation of passenger tramways. Under existing law, the Occupational Safety and Health Standards Board, an independent entity within the department, has the exclusive authority to adopt occupational safety and health standards within the state.

This bill would require the division to formulate and propose rules and regulations for adoption by the Occupational Safety and Health Standards Board for the safe design, manufacture, installation, repair, maintenance, use, operation, and inspection of all passenger tramways as necessary to protect the public. The bill would require the division to adopt all other rules and regulations necessary for the administration and enforcement of these provisions on passenger tramways.

(2) Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law defines "employee" for those purposes.

This bill would correct an obsolete cross-reference within the provision that defines "employee."

(3) Existing federal law, the Workforce Innovation and Opportunity Act of 2014, repeals and supersedes the federal Workforce Investment Act of 1998 and provides for the establishment of a state workforce development board to develop strategies to support the use of career pathways for the purpose of providing individuals with workforce investment activities, education, and support services necessary for them to enter the workforce or retain employment. Existing law contains various programs for job training and employment investment.

Conforming to the federal act, existing state law, the California Workforce Innovation and Opportunity Act, renames the California Workforce Investment Board the California Workforce Development Board and renames local workforce investment boards as local workforce development boards. Existing law establishes the Employment Training Panel within the Employment Development Department and prescribes the functions and duties of the panel with respect to certain employment training programs. Existing law relating to the panel references the superseded federal act and refers to the state and local boards by

their former names. Existing law declares the intent of the Legislature that programs developed pursuant to these provisions not replace, parallel, supplant, compete with, or duplicate in any way already existing approved apprenticeship programs.

This bill would delete the above-described intent provision. The bill would update statutory references in provisions relating to the panel to refer to the federal Workforce Innovation and Opportunity Act of 2014, the California Workforce Development Board, and local workforce development boards.

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

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

SECTION 1. Section 3351 of the Labor Code is amended to read:

3351. “Employee” means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Persons who are not citizens or nationals of the United States and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. An officer or member of a board of directors may elect to be excluded from coverage in accordance with paragraph (16), (18), or (19) of subdivision (a) of Section 3352.

(d) Except as provided in paragraph (8) of subdivision (a) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.

(f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company. A general partner of a partnership or a managing member of a limited liability company may elect to be excluded from coverage in accordance with paragraph (17) of subdivision (a) of Section 3352.

(g) A person who holds the power to revoke a trust, with respect to shares of a private corporation held in trust or general partnership or limited liability company interests held in trust. To the extent that this person is deemed to be an employee described in subdivision (c) or (f), as applicable, the person may also elect to be excluded from coverage as described in subdivision (c) or (f), as applicable, if that person otherwise meets the criteria for exclusion, as described in Section 3352.

(h) A person committed to a state hospital facility under the State Department of State Hospitals, as defined in Section 4100 of the Welfare and Institutions Code, while engaged in and assigned work in a vocation rehabilitation program, including a sheltered workshop.

(i) Beginning on July 1, 2020, any individual who is an employee pursuant to Section 2775. This subdivision shall not apply retroactively.

SEC. 2. Section 7358 is added to the Labor Code, to read:

7358. (a) The division shall formulate and propose rules and regulations for adoption by the Occupational Safety and Health Standards Board for the safe design, manufacture, installation, repair, maintenance, use, operation, and inspection of all passenger tramways as the division finds necessary for the protection of the general public using passenger tramways.

(b) The division shall adopt all other rules and regulations necessary for the administration and enforcement of this chapter.

(c) Nothing in this section shall affect the validity of existing regulations applicable to passenger tramways or shall limit the authority of the division or the Occupational Safety and Health Standards Board to prescribe or enforce general or special safety orders.

SEC. 3. Section 10200 of the Unemployment Insurance Code is amended to read:

10200. The Legislature finds and declares the following:

(a) California's economy is being challenged by competition from other states and overseas. In order to meet this challenge, California's employers, workers, labor organizations, and government need to invest in a skilled and productive workforce, and in developing the skills of frontline workers. For purposes of this section, "frontline worker" means a worker who directly produces or delivers goods or services.

The purpose of this chapter is to establish a strategically designed employment training program to promote a healthy labor market in a growing, competitive economy that shall fund only projects that meet the following criteria:

(1) Foster creation of high-wage, high-skilled jobs, or foster retention of high-wage, high-skilled jobs in manufacturing and other industries that are threatened by out-of-state and global competition, including, but not limited to, those industries in which targeted training resources for California's small and medium-sized business suppliers will increase the state's competitiveness to secure federal, private sector, and other nonstate funds. In addition, provide for retraining contracts in companies that make a monetary or in-kind contribution to the funded training enhancements.

(2) Encourage industry-based investment in human resources development that promotes the competitiveness of California industry through productivity and product quality enhancements.

(3) Result in secure jobs for those who successfully complete training. All training shall be customized to the specific requirements of one or more employers or a discrete industry and shall include general skills, including soft skills, that trainees can use in the future.

(4) Supplement, rather than displace, funds available through existing programs conducted by employers and government-funded training programs, such as the federal Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. Sec. 3101 et seq.), the Carl D. Perkins Vocational Education Act (Public Law 98-524), CalWORKs (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the former Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), and the McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.), the California Community Colleges Economic Development Program, or apportionment funds allocated to the community colleges, regional occupational centers and programs, or other local educational agencies.

(b) The Employment Training Panel, in funding projects that meet the requirements of subdivision (a), shall give funding priority to those projects that best meet the following goals:

(1) Result in the growth of the California economy by stimulating exports from the state and the production of goods and services that would otherwise be imported from outside the state.

(2) Train new employees of firms locating or expanding in the state that provide high-skilled, high-wage jobs and are committed to an ongoing investment in the training of frontline workers.

(3) Develop workers with skills that prepare them for the challenges of a high-performance workplace of the future.

(4) Train workers who have been displaced, have received notification of impending layoff, or are subject to displacement, because of a plant closure, workforce reduction, changes in technology, or significantly increasing levels of international and out-of-state competition.

(5) Are jointly developed by business management and worker representatives.

(6) Develop career ladders for workers.

(7) Promote the retention and expansion of the state's manufacturing workforce.

(c) The program established through this chapter is to be coordinated with all existing employment training programs and economic development programs, including, but not limited to, programs such as the federal Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. Sec. 3101 et seq.), the California Community Colleges, the regional occupational programs, vocational education programs, joint labor-management training programs, and related programs under the Employment Development Department and the Governor's Office of Business and Economic Development, and the Business, Consumer Services, and Housing Agency.

SEC. 4. Section 10204 of the Unemployment Insurance Code is amended to read:

10204. The panel shall coordinate its programs with local and state workforce development boards and other partners of the federal Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. Sec. 3101 et seq.). This coordination shall include, but not be limited to, the adoption of a plan, including regular sharing of data, for the coordination of training authorized pursuant to this chapter with programs administered under Division 8 (commencing with Section 15000).

SEC. 5. Section 10205 of the Unemployment Insurance Code is amended to read:

10205. The panel shall do all of the following:

(a) Establish a three-year plan that shall be updated annually, based on the demand of employers for trained workers, changes in the state's economy and labor markets, and continuous reviews of the effectiveness of panel training contracts. The updated plan shall be submitted to the Governor and the Legislature not later than January 1 of each year. In carrying out this section, the panel shall review information in the following areas:

- (1) Labor market information, including the state-local labor market information program in the Employment Development Department and other relevant regional or statewide initiatives and collaboratives.
- (2) Evaluations of the effectiveness of training as measured by increased security of employment for workers and benefits to the California economy.
- (3) The demand for training by industry, type of training, and size of employer.
- (4) Changes in skills necessary to perform jobs, including changes in basic literacy skills.
- (5) Changes in the demographics of the labor force and the population entering the labor market.
- (6) Proposed expenditures by other agencies of the federal Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. Sec. 3101 et seq.) funds and other state and federal training and vocational education funds on eligible participants.

(b) Maintain a system to continuously monitor economic and other data required under this plan. If this data changes significantly during the life of the plan, the plan shall be amended by the panel. Each plan shall include all of the following:

- (1) The panel's objectives with respect to the criteria and priorities specified in Section 10200 and the distribution of funds between new-hire training and retraining.
- (2) The identification of specific industries, production and quality control techniques, and regions of the state where employment training funds would most benefit the state's economy and plans to encourage training in these areas, including specific standards and a system for expedited review of proposals that meet the standards.
- (3) A system for expedited review of proposals that are substantially similar with respect to employer needs, training curriculum, duration of training, and costs of training, in order to encourage the development of proposals that meet the needs identified in paragraph (2).
- (4) The panel's goals, operational objectives, and strategies to meet the needs of small businesses, including, but not limited to, those small businesses with 100 or fewer employees. These strategies proposed by the panel may include, but not be limited to, pilot demonstration projects designed to identify potential barriers that small businesses may experience in accessing panel programs and workforce training resources, including barriers that may exist within small businesses.
- (5) The research objectives of the panel that contribute to the effectiveness of this chapter in benefiting the economy of the state as a whole.
- (6) A priority list of skills or occupations that are in such short supply that employers are choosing to not locate or expand their businesses in the state or are importing labor in response to these skills shortages.
- (7) A review of the panel's efforts to coordinate with the California Workforce Development Board and local boards to achieve an effective and coordinated approach in the delivery of the state's workforce resources.

(A) The panel will consider specific strategies to achieve this goal that include the development of initiatives to engage local workforce development boards in enhancing the utilization of panel training resources by companies in priority sectors, special populations, and in geographically underserved areas of the state.

(B) Various approaches to foster greater program integration between workforce development boards and the panel will also be considered, which may include marketing agreements, expanded technical assistance, modification of program regulations and policy, and expanded use of multiple employer contracts.

(c) Solicit proposals and write contracts on the basis of proposals made directly to it. Contracts for the purpose of providing employment training may be written with any of the following:

- (1) An employer or group of employers.
- (2) A training agency.

(3) A local workforce development board with the approval of the appropriate local elected officials in the local workforce development area.

(4) A grant recipient or administrative entity selected pursuant to the federal Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. Sec. 3101 et seq.), with the approval of the local workforce development board and the appropriate local elected officials.

These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. Contracts for training may be written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training.

(d) Fund training projects that best meet the priorities identified annually. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants.

(e) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, evidence of labor market demand, the number of jobs available, the skill requirements for the identified jobs, the projected cost per person trained, hired, and retained in employment, the wages paid successful trainees upon placement, and the curriculum for the training. No proposal shall be considered or approved that proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.

(f) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.

(g) Provide for evaluation of projects funded by this chapter. The evaluations shall assess the effectiveness of training previously funded by the panel to improve job security and stability for workers, and benefit participating employers and the state's economy, and shall compare the wages of trainees in the 12-month period prior to training as well as the 12-month period subsequent to completion of training, as reflected in the department's unemployment insurance tax records. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.

(h) Report annually to the Legislature, by November 30, on projects operating during the previous state fiscal year. These annual reports shall provide separate summaries of all of the following:

(1) Projects completed during the year, including their individual and aggregate performance and cost.

(2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract and for this category as a whole, and identifying any projects in which funds are expected to be disencumbered.

(3) Projects terminated prior to completion and the reasons for the termination.

(4) A description of the amount, type, and effectiveness of literacy training funded by the panel.

(5) Results of complete project evaluations.

(6) A description of pilot projects, and the strategies that were identified through these projects, to increase access by small businesses to panel training contracts.

(7) A listing of training projects that were funded in high unemployment areas and a detailed description of the policies and procedures that were used to designate geographic regions and municipalities as high unemployment areas.

In addition, based upon its experience in administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on economic development, labor-management relations, employment security, and other related issues.

(i) Conduct ongoing reviews of panel policies with the goal of developing an improved process for developing, funding, and implementing panel contracts as described in this chapter.

(j) Expedite the processing of contracts for firms considering locating or expanding businesses in the state, in accordance with the priorities for employment training programs set forth in subdivision (b) of Section 10200.

(k) Coordinate and consult regularly with business groups and labor organizations, the California Workforce Development Board, the State Department of Education, the office of the Chancellor of the California Community Colleges, and the Employment Development Department.

(l) Adopt by regulation procedures for the conduct of panel business, including the scheduling and conduct of meetings, the review of proposals, the disclosure of contacts between panel members and parties at interest concerning particular proposals, contracts or cases before the panel or its staff, the awarding of contracts, the administration of contracts, and the payment of amounts due to contractors. All decisions by the panel shall be made by resolution of the panel and any adverse decision shall include a statement of the reason for the decision.

(m) Adopt regulations and procedures providing reasonable confidentiality for the proprietary information of employers seeking training funds from the panel if the public disclosure of that information would result in an unfair competitive disadvantage to the employer supplying the information. The panel shall not withhold information from the public regarding its operations, procedures, and decisions that would otherwise be subject to disclosure under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(n) Review and comment on the budget and performance of any program, project, or activity funded by the panel utilizing funds collected pursuant to Section 976.6.