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AB-2738 Labor Code: alternative enforcement: occupational safety. (2023-2024)

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Date Published: 09/30/2024 09:00 PM

Assembly Bill No. 2738

CHAPTER 969

An act to amend Sections 181, 9251, and 9252 of, and to add Section 9252.1 to, the Labor Code, relating to employment.

[Approved by Governor September 29, 2024. Filed with Secretary of State September 29, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2738, Luz Rivas. Labor Code: alternative enforcement: occupational safety.

Existing law establishes the Department of Industrial Relations in the Labor and Workforce Development Agency, administered by the Director of Industrial Relations, and vests it with various powers and duties to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment.

Existing law, until January 1, 2029, authorizes a public prosecutor, as defined, to prosecute an action through alternative enforcement procedures, for a violation of specified provisions of the Labor Code or to enforce those provisions independently. Existing law requires moneys recovered by public prosecutors under that code to be applied first to payments, such as wages, damages, and other penalties, due to affected workers. Existing law further requires all civil penalties recovered by a public prosecutor pursuant to those provisions to be paid to the General Fund of the state, unless otherwise specified. Existing law authorizes the court to award a prevailing plaintiff reasonable attorney's fees and costs in an action under those provisions, as specified.

This bill would instead specify that all remedies available for violations of the Labor Code may be recovered in an action by a public prosecutor under those alternative enforcement procedures. The bill would require any remedies recovered to go first to workers to cover any unpaid wages, damages, or penalties owed to those workers, and any remaining civil penalties to go the General Fund of the state. The bill would further provide that a public prosecutor may enforce any other provision of the Labor Code as specifically authorized. The bill would instead require the court to award a prevailing plaintiff reasonable attorney's fees and costs in an action under those provisions, as specified.

Existing law establishes the Division of Occupational Safety and Health in the Department of Industrial Relations, and charges the division with the enforcement of various laws affecting safe working conditions, including the California Occupational Safety and Health Act of 1973. Existing law requires a contracting entity, as defined, to require an entertainment events vendor to certify for its employees and employees of its subcontractors that those individuals have complied with specified training, certification, and workforce requirements, including that employees involved in the setting up, operation, or tearing down of a live event at its public events venue, as defined, have completed prescribed trainings of the United States Department of Labor's Occupational Safety and Health Administration. Existing law requires the division to enforce those provisions by issuing a citation and a notice of civil penalty against an entertainment events vendor, as specified, and to deposit those funds in the Occupational Safety and Health Fund.

This bill would require a contract that is subject to the above provisions to provide in writing that the entertainment events vendor will furnish, upon hiring for the live event pursuant to the contract, the contracting entity with specified information about the employees of those vendors and subcontractors and the trainings those employees have completed. The bill would subject the contract to a provision of the California Public Records Act that makes any executed contract for the purchase of goods or services by a state or local agency, including the price and terms of payment, a public record subject to disclosure under that act, as prescribed. The bill would authorize the contracting entity to use or disclose to third parties the specified information for the purpose of carrying out the contracting entity's duties under the contract but prohibit the use or disclosure of the information for unrelated purposes. The bill would expand the categories of entities subject to penalties for a violation of these provisions to also include a public events venue or contracting entity. Additionally, the bill would allow these provisions to be enforced by a public prosecutor pursuant to the alternative enforcement procedures noted above, subject to certain additional conditions. To the extent the bill would impose new requirements on local agencies with respect to the treatment of these contracts as public records, the bill would create a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

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 181 of the Labor Code is amended to read:

181. (a) In addition to any other remedies available, a public prosecutor may prosecute an action, either civil or criminal, for a violation of Division 2 (commencing with Section 200), but excluding Part 3.5 (commencing with Section 1140) and Part 13 (commencing with Section 2698), or Division 3 (commencing with Section 2700), but excluding Chapter 4 (commencing with Section 3070), or to enforce those provisions of this code independently, or to enforce any other provisions of this code as specifically authorized. All remedies available for violations of this code, including, but not limited to, wages, liquidated damages, and other civil penalties, may be recovered in an action by a public prosecutor under this chapter. Remedies recovered shall go first to workers to cover any unpaid wages, damages, or penalties owed to those workers, and any remaining civil penalties shall go to the General Fund of the state in an action under this chapter. An action of a public prosecutor under this chapter shall be limited to redressing violations occurring within the public prosecutor's geographic jurisdiction, unless the public prosecutor has statewide authority or has enforcement authority pursuant to Section 17204 of the Business and Professions Code. Nothing in this section shall divest the division of its authority to enforce this code and all labor laws of the state for the purposes of Section 95. Nothing in this chapter shall be read to limit or restrict a public prosecutor's existing authority pursuant to Section 17204 of the Business and Professions Code.

(b) In addition to any other remedies available, a public prosecutor may seek injunctive relief to prevent continued violations of Division 2 (commencing with Section 200), but excluding Part 3.5 (commencing with Section 1140) and Part 13 (commencing with Section 2698), or Division 3 (commencing with Section 2700), but excluding Chapter 4 (commencing with Section 3070).

(c) The court shall award a prevailing plaintiff in that action its reasonable attorney's fees and costs, including expert witness fees and costs.

(d) (1) A public prosecutor shall provide a 14-day notice to the Division of Labor Standards Enforcement prior to prosecuting an action under this section. A public prosecutor's failure to provide this notice shall not constitute a defense to the action.

(2) The Division of Labor Standards Enforcement shall have the right to intervene in any court proceedings brought pursuant to this section by a public prosecutor unless the public prosecutor has statewide authority or has enforcement authority pursuant to Section 17204 of the Business and Professions Code, in which case intervention in a proceeding brought pursuant to this section shall be permissive.

(e) This section shall remain in effect only until January 1, 2029, and as of that date is repealed. This subdivision shall not apply to any action initiated in court by a public prosecutor prior to January 1, 2029.

SEC. 2. Section 9251 of the Labor Code is amended to read:

9251. (a) A contracting entity shall require an entertainment events vendor to certify for its employees, and any subcontractors' employees, as part of the contract for production of any live event at its public events venue, both of the following:

(1) An employee of an entertainment events vendor involved in the setting up, operation, or tearing down of a live event at the venue has completed the Cal/OSHA-10, the OSHA-10/General Entertainment Safety training, or the OSHA-10 as applicable to their occupation.

(2) One of the following applies:

(A) Heads of departments and leads have completed the Cal/OSHA-30, the OSHA-30/General Entertainment Safety training, or the OSHA-30, and are certified through the Entertainment Technician Certification Program relevant to the task or tasks they are supervising or performing, or another certification program, as specified by the division.

(B) The entertainment events vendor certifies that its employees and any subcontractors' employees meet the conditions for a skilled and trained workforce.

(b) An entertainment events vendor shall certify in writing, and as part of the contract, that they have verified the training completion and certification requirements of all employees, and any subcontractor's employees, who will work on the setting up, operation, or tearing down of the event.

(c) (1) The contract shall provide in writing that the entertainment events vendor shall furnish, upon hiring for the live event pursuant to the contract, the contracting entity with both of the following:

(A) The names of the employees of the entertainment events vendor and the names of employees of any subcontractors.

(B) What training or certification the employee has completed and the date of certification, as specified by this section.

(2) The contract is subject to Section 7928.801 of the Government Code.

(3) The contracting entity may use or disclose to third parties the information provided pursuant to paragraph (1) for the purpose of carrying out the contracting entity's duties under the contract, including, but not limited to, verifying an employee's training and certification, but shall not use or disclose the information for purposes unrelated to the contracting entity's duties under the contract.

(d) The requirements of this section shall not apply to a direct employee of the public events venue.

SEC. 3. Section 9252 of the Labor Code is amended to read:

9252. (a) The division shall enforce this part by the issuance of a citation alleging a violation of this part and a notice of civil penalty in a manner consistent with Section 6317. Any person who receives a citation and penalty may appeal the citation and penalty to the appeals board in a manner consistent with Section 6319.

(b) Penalties shall only be assessed against an entertainment events vendor, a public events venue, or a contracting entity, as these terms are defined in Section 9250, and shall not be assessed against an employee of an entertainment events vendor or an employee of a subcontractor for not completing the training or certification required by Section 9251.

(c) The issuance of a citation under this section is in addition to any other penalties authorized under Title 8 of the California Code of Regulations.

(d) The division shall deposit the funds assessed pursuant to this section in the Occupational Safety and Health Fund established pursuant to Section 62.5.

SEC. 4. Section 9252.1 is added to the Labor Code, to read:

9252.1. This part may also alternatively be enforced by a public prosecutor pursuant to Chapter 8 (commencing with Section 180) of Division 1. If this part is enforced by a public prosecutor, then the public prosecutor may seek injunctive relief to prevent continued violations of Section 9251 and a maximum penalty of five hundred dollars (\$500) per violation shall apply in lieu of Section 9252 or any other division enforcement requirements or appeals process.

SEC. 5. The Legislature finds and declares that Section 2 of this act, which amends Section 9251 of the Labor Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public

officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

It is in the public interest, and it furthers the purposes of paragraph (7) of subdivision (b) of Section (3) of Article I of the California Constitution, to ensure that information concerning the executed contracts by state and local agencies is available to the public.

SEC. 6. 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 under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.