

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 321 (Durazo)
Version: February 5, 2021
Hearing Date: April 13, 2021
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Employment safety standards: household domestic services

DIGEST

This bill brings domestic workers under the protection of California's workplace health and safety laws. At the same time, the bill creates a unique enforcement mechanism for employers of domestic workers in order to respond to residential privacy concerns. Finally, the bill establishes an advisory committee to assist in the formulation of workplace health and safety standards appropriate to domestic work.

EXECUTIVE SUMMARY

Like almost all other workers in California, domestic workers encounter hazards on the job: exposure to toxic chemicals, lifting heavy objects and people, and operating dangerous tools and equipment, among others. Unlike almost all other workers in California, however, domestic workers are not covered by the Occupational Safety and Health Act. As a result, nobody sets safety standards for employers of domestic workers and there is no dedicated government agency that domestic workers can turn to for help when they are forced to work under dangerous conditions. To address the problem, this bill would apply the Occupational Safety and Health Act to employers of domestic workers. Because residential worksites present unique privacy concerns, the bill also sets forth an alternative enforcement structure that limits physical intrusions on private residences to narrow circumstances involving serious injuries and illnesses, while addressing less urgent violations through telephone and written communications alone. Finally, the bill establishes an advisory body, to be composed equally of domestic workers and their employers, and tasks this body with making findings and recommendations to inform the creation of new health and safety standards in the context of domestic work.

The bill is sponsored by the California Domestic Workers Coalition. Support comes from advocates for workers' rights, women's rights, and civil rights. There is no opposition on file. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4-1.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides, pursuant to the California Occupational Safety and Health Act, for safe and healthful working conditions for all California workers by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health. (Lab. Code § 6300 *et seq.*)
- 2) Establishes the Occupational Safety and Health Standards Board, within DIR, to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for workers. (Lab. Code §§ 140 - 147.6.)
- 3) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce safety and health standards.
- 4) Requires employers to establish, implement and maintain an effective Injury and Illness Prevention Program that is written, except as specified, and that must include, among other things, the following elements:
 - a) a system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and practices;
 - b) the employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner;
 - c) an occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each job assignment; and
 - d) the employer's system for communicating with employees about occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. (Lab. Code § 6401.7.)
- 5) Requires every employer to file a complete report with Cal/OSHA of every occupational injury or occupational illness to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid. A report must be filed within five days after the employer obtains knowledge of the injury or illness. In addition to this report, in every case involving a serious injury or illness, or death, the employer is required to make an immediate report to Cal/OSHA by telephone or email. (Lab. Code § 6409.1.)
- 6) Provides that if Cal/OSHA learns or has reason to believe that a job or place of employment is not safe or is injurious to the welfare of an employee, it may, on its

own motion, or upon complaint, summarily investigate the job or place of employment, with or without notice or hearings. Establishes specific timeframes for investigation of complaints alleging serious violations. (Lab. Code § 6309.)

- 7) Defines “employment,” for purposes of the Occupational Health and Safety Act, to include the carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire, except household domestic service. (Lab. Code § 6303(b).)
- 8) Defines “domestic work” as services related to the care of persons in private households or maintenance of private households or their premises. Domestic work occupations include childcare providers, caregivers of people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids and other household occupations. (Lab. Code § 1451.)

This bill:

- 1) Removes the “household domestic service” exemption from the Occupational Safety and Health Act definition of employment beginning on January 1, 2023, thereby applying all of the Act’s requirements and obligations on domestic service employers.
- 2) Specifies that “employment” for OSHA purposes does not include household domestic service that is publicly funded, including publicly funded household domestic services provided to a recipient, client, or beneficiary with a share of cost in that service, except as specified.
- 3) Requires the Chief of Cal/OSHA or a representative to convene an advisory committee comprised of household domestic service employees and employers, and requires the committee, in consultation with the Commission on Health and Safety and Workers’ Compensation, to make findings and recommendations to the Occupational Safety and Health Standards Board for industry-specific regulations related to household domestic service within six months.
- 4) Requires the Occupational Safety and Health Standards Board to adopt industry-specific regulations related to household domestic service within a reasonable time but not later than January 1, 2023.
- 5) Specifies, for purposes of Cal/OSHA investigations of occupational safety and health, that in the case where the place of employment is a residential dwelling and the employee is a domestic service employee, the chief of the division or their authorized representative shall initiate telephone contact with the employer as soon as possible, but not later than 14 calendar days after receipt of a complaint charging

a violation.

- 6) Specifies that when telephone contact is successfully made, the chief of Cal/OSHA or their authorized representative shall do all of the following:
 - a) notify the employer of the existence of any alleged unsafe or unhealthful conditions;
 - b) describe the alleged hazard and any specific regulatory standard alleged to have been violated;
 - c) inform the employer that they are required to investigate and abate any hazard discovered during the investigation;
 - d) inform the employer by letter sent by facsimile or email, or by certified mail if the employer cannot receive facsimile or email, of each alleged hazard and each specific standard alleged to have been violated;
 - e) inform the employer that if Cal/OSHA determines that the employer's response is unsatisfactory, Cal/OSHA shall seek permission from the employer to enter the residential dwelling to investigate the matter, and, if permission is denied, may secure an inspection warrant to conduct an onsite inspection of the residential dwelling;
 - f) provide the complainant with copies of the regulation alleged to have been violated, Cal/OSHA's letter to the employer, and all subsequent correspondence concerning the investigation of any alleged hazards.
- 7) Provides that a domestic worker employer subject to investigation shall do both of the following:
 - a) provide Cal/OSHA, within 14 days of the employer's receipt of the Cal/OSHA's letter, a response describing the results of the employer's investigation of the alleged hazard and a description of all actions taken, in the process of being taken, or planned to be taken, by the employer to abate the alleged hazard, including any applicable measurements or monitoring results, invoices for equipment purchased, and photographs or video that document correction of the alleged hazard;
 - b) provide a copy of Cal/OSHA's letter to the employee, and all subsequent correspondence from and to the employer, to the affected employee, or prominently post the letter and correspondence in the method prescribed by subdivision (a) of Section 6318.
- 8) Authorizes the chief of the division or their authorized representative to enter the premises with permission or with an inspection warrant without first initiating telephone contact in response to complaints alleging serious illness or injury or death in household domestic service.
- 9) Specifies that investigations of workplace safety complaints in the context of household domestic service employment shall be conducted in a manner to avoid any unwarranted invasion of personal privacy and shall not include any personal,

financial, or medical information about the people residing in the residential dwelling unless pertinent to the investigation of the complaint.

COMMENTS

1. Evidence of the problem the bill is intended to address

Domestic work takes many different forms: childcare, senior care, cooking, cleaning, yardwork, maintenance, and tutoring are only the most common examples. (Lab. Code § 1451.) As the term suggests, domestic work essentially refers to any work undertaken in the residence of the employer.

Domestic work can be strenuous and precarious. Domestic workers are at significant risk of injury or illness as a result. For example, a June 2020 report by the UCLA Labor and Occupational Safety and Health Program, the National Domestic Workers Alliance, and the sponsors of this bill found that 85 percent of domestic workers surveyed experience musculoskeletal injuries that are associated with chronic pain.¹ Many respondents reported continuing to work through their injuries for fear of job or financial loss.² To make matters worse, these risks are not shared equally. Since immigrant women of color account for the vast majority of domestic workers in California, that demographic suffers a disproportionate percentage of the harm stemming from the dangers of domestic work.

Ordinarily, the task of trying to prevent these sorts of workplace injury and illness would fall to Cal/OSHA, which has been the state agency responsible for ensuring workplace safety since 1973. Cal/OSHA carries out this mission by monitoring California worksites, responding to worker complaints, and investigating workplace accidents. When Cal/OSHA discovers violations of the state's workplace health and safety standards, it can take enforcement action, including issuing citations, assessing penalties, requesting abatement, or even seeking a court order halting work until the problem is fixed.

Because of an exception carved out of the definition of "place of employment" in California's laws governing occupational health and safety, however, domestic workers have always fallen outside of Cal/OSHA's purview. (Lab. Code § 6303(b).) As a result, domestic workers lack the workplace health and safety protections that nearly all other California employees enjoy.

¹ *Hidden Work, Hidden Pain: Injury Experiences of Domestic Workers in California* (Jul. 2020) UCLA Labor Occupational Safety and Health Program, the National Domestic Workers Alliance, and the California Domestic Workers <https://losh.ucla.edu/wp-content/uploads/sites/37/2020/06/Hidden-Work-Hidden-Pain.-Domestic-Workers-Report.-UCLA-LOSH-June-2020-1.pdf> (as of Apr. 3, 2021) at p. 1.

² *Id.* at p. 2.

This bill would eliminate that carve out, thus bringing domestic workers under the protection of California's workplace health and safety standards. Because residential worksites present unique privacy concerns, the bill also sets forth an alternative enforcement structure that limits physical intrusions on residences to narrow circumstances involving serious injuries and illnesses, while addressing less urgent violations through telephone and written communications alone. Finally, the bill establishes an advisory body, to be composed equally of domestic workers and employers of domestic workers, and tasks this body with making findings and recommendations to inform the creation of new health and safety standards in the context of domestic work.

2. Governor's veto of a nearly identical measure

This is the second time that the Legislature has considered this proposal. SB 1257 (Durazo, 2020) was virtually identical to this bill. SB 1257 passed both houses of the Legislature by wide margins. Governor Newsom then vetoed the bill. In his message vetoing SB 1257, Governor Newsom wrote that:

I strongly share the belief of the bill's author and proponents that, like all other California workers, domestic service employees deserve protections to ensure that their workplaces are safe and healthy. [...] However, new laws in this area must recognize that the places where people live cannot be treated in the exact same manner as a traditional workplace or worksite from a regulatory perspective. SB 1257 would extend many employer obligations to private homeowners and renters, including the duty to create an injury prevention plan and requirement to conduct outdoor heat trainings. Many individuals to whom this law would apply to lack the expertise to comply with these regulations. The bill would also put into statute a potentially onerous and protracted 'investigation by letter' procedure between Cal-OSHA and private tenants and homeowners. In short, a blanket extension of all employer obligations to private homeowners and renters is unworkable and raises significant policy concerns.

3. Residential privacy concerns?

The right to privacy enshrined in the California Constitution is probably at its most sacrosanct in relation to people's homes. While the act of inviting another individual to perform work in the home would undoubtedly diminish the homeowner's reasonable expectation of privacy, presumably that expectation is not extinguished altogether.

Anticipating this concern, this bill is written in a way that appears to balance privacy considerations with workplace safety concerns. Ordinarily, when Cal/OSHA has

jurisdiction over a worksite for the purpose of enforcing health and safety standards, Cal/OSHA has the power to conduct on-site inspections with little more than brief advance notice. (Lab. Code § 6309.) This bill takes a very different tack when domestic work is involved. It establishes a procedure under which Cal/OSHA would first phone the homeowner about the issue.

Although Governor Newsom's veto of SB 1257 described this process as "potentially onerous and protracted," it appears that all that would be involved is a phone call and an exchange of letters. Upon receiving a complaint regarding workplace safety hazards involving domestic service employment, Cal/OSHA would call the homeowner to explain the allegation and the corrections that Cal/OSHA would like to see made. Cal/OSHA would follow this phone call with a letter to the homeowner reiterating the violations alleged and corrections requested. Within 14 days after receiving the letter, the homeowner would need to respond to Cal/OSHA with a letter in response, describing what corrective actions the homeowner has taken or will take to remedy any violations, accompanied by things like measurements, photographs, videos, or receipts for the purchase of protective equipment.

The bill goes on to specify that Cal/OSHA must conduct any investigation of workplace safety complaints in the context of household domestic service employment "in a manner to avoid any unwarranted invasion of personal privacy." Specifically, Cal/OSHA is precluded from including personal, financial, or medical information about the people living at the residence in its investigation unless that information is pertinent to the complaint.

The only scenarios in which Cal/OSHA would make a physical inspection of the home is if the homeowner's response to Cal/OSHA's call and letter is unsatisfactory or if the complaint in question involves a serious illness, a serious injury, or a fatality. Even then, Cal/OSHA would only be able to enter someone's home with permission or pursuant to an inspection warrant, for which the approval of a judge would be required. (Code Civ. Proc. 1822.50.)

Taken as a whole, this procedure appears to offer significant protection for homeowner privacy while still enabling Cal/OSHA a pathway for addressing hazardous conditions in home work settings.

It is also worth noting, as pointed out in the Senate Labor, Public Employment, and Retirement Committee, that Cal/OSHA enforcement in and around private homes is not unprecedented in the case of employees who are not domestic workers. As that Committee observed in its analysis of this bill for its March 22, 2021 hearing:

The requirement of employers to provide a healthy and safe work environment *does* extend to private homes in the case of non-domestic workers under California Labor Code sections 6303(a)

and 6307. Cal-OSHA laws cover workers who are engaged in telework or otherwise working at home, and as such, employers are still required to provide a safe and healthy workplace for these workers. Federal occupational safety and health laws similarly reach into private residencies and federal OSHA has, in some instances, conducted workplace inspections of private residencies, specifically where workers have engaged in manufacturing and piece rate assembly of goods. (Citing Federal OSHA Directive CPL 2-0.125. Emphasis in original.)

4. Bureaucratic challenges for employers who are aged, who have severe disabilities or who have significant chronic illnesses?

Governor Newsom's veto of SB 1257 also raised concerns about the requirements imposed on employers of domestic workers and, in particular, whether people who lack the requisite expertise might have trouble complying. The question is especially relevant given that many individuals who are elderly and some individuals with severe disabilities hire domestic workers to assist with household tasks that they are unable to perform. While such people may, in many instances be perfectly capable of managing the things that this bill would require of them, in some instances it could represent a challenge.

For instance, under the workplace health and safety laws imposed on employers of domestic workers pursuant to this bill, employers are required to put together a written Injury and Illness Prevention Program (IIPP). The program is supposed to include: a system for identifying and evaluating workplace hazards, including periodic inspections to identify unsafe conditions and practices; methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner; an occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each job assignment; and a system for communicating with employees about occupational health and safety matters, designed in such a way as to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. (Lab. Code § 6401.7.) Creation of an IIPP can serve as an important, proactive exercise to identify hazards and abate them before they become a problem. Moreover, Cal/OSHA has very helpfully put a template for making an IIPP on its website, complete with model language.³ Nonetheless, it is not certain that elderly or severely disabled homeowners who employ domestic help will be able to navigate these requirements easily.

In response to this concern, the author and sponsors point out that the vast majority of people whose age, disability, or other conditions might make it difficult for them to comply with requirements like the IIPP are participants in the In Home Support

³ See, <https://www.dir.ca.gov/dosh/puborder.asp#IIPP>.

Services program (IHSS), which is exempt from this bill. Additionally, among those who are not part of the IHSS program, employers who are aged or severely disabled employers usually have another person – often a relative – who helped to set up the domestic employment arrangement in the first place. That same individual may very well be able to assist with managing things like formulation of the IIPP and otherwise ensuring that health and safety standards are being met.

5. Exemptions for publicly-funded domestic service work

The bill exempts domestic service work that is publicly funded. The most obvious example of domestic service work that falls within this exemption is the In Home Support Services (IHSS) program. Many IHSS recipients are have particularly significant challenges caring for themselves, which is why they are enrolled in the program. Requiring such employers to monitor and comply with workplace health and safety rules might be especially onerous. Another type of domestic work that is sometimes publicly funded is family-based child care. Frequently, however, family child care providers have a blended set of clientele: some of the child care they offer is publicly funded and some is paid for publicly. To complicate the matter, the mix of children may change over time, so that a family child care provider might be entirely publicly funded one week, and then pick up privately funded clients the next. As a result, under the language in the bill in print, family child care providers might be covered by this bill one week and then exempt from it the next. To address this issue, the offer proposes to offer an amendment in Committee that will exempt family child care providers from the bill entirely.

6. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- exempt family child care services from the bill; and
- add coauthors.

A mock-up of the amendments in context is attached to this analysis.

7. Arguments in support of the bill

According to the author:

In the United States, domestic workers, largely women and people of color, have been historically excluded from the most basic labor protections. [...] [T]he law's failure to recognize domestic work as real work has left domestic service workers particularly vulnerable to workplace injuries and illness, with little recourse. [...]

Domestic workers' health and safety have been put at severe risk during the recent disasters that have struck California. Currently, domestic workers act as frontline workers during the COVID-19 global pandemic. They provide care to California's most vulnerable to illness, like seniors and people with compromised immune systems, yet they remain vulnerable and without protections. During the wildfires that devastated California, domestic workers and other household workers, such as day laborers, were asked to stay behind to fight fires, guard homes or pets, work in smoky conditions, and clean up toxic ash. Workers were further put at risk when employers failed to tell them that the homes they work in are under mandatory evacuation.

As sponsor of the bill, the California Domestic Workers Coalition writes:

In California, there are over 300,000 domestic workers who work as housekeepers, nannies, and caregivers for seniors and people with disabilities. There are two million households that rely on domestic workers to care for their homes and love ones. [...] Domestic workers act as frontline and essential workers during the current worldwide health pandemic. They provide care to California's most vulnerable to illness, like seniors and people with compromised immune systems., yet they remain vulnerable and without protections. [...] In the private home workplace, occupational risks and hazards for domestic workers include physical and ergonomic demands and exposure to infectious diseases and household cleaning chemicals. [...] Domestic workers are also at risk of suffering from psychological stress, and are especially vulnerable to workplace violations. They are at risk of physical, emotional and sexual abuse by employers or clients, and those risks are heightened because they work alone, in informal workplace environments [...].

In support, Hand in Hand, the Domestic Employer Network writes:

We believe that most domestic employers want to do the right thing by their employees but rarely have access to information or guidance about what that looks like. By passing SB 321 and bringing domestic workers under the protection of Cal-OSHA, domestic employers will be given guidance on how to protect their employees, which will also help them protect themselves and their families.

SUPPORT

California Domestic Workers Coalition (sponsor)

9 to 5

Af3irm

Alliance of Californians for Community Empowerment

American Association of University Women – California Chapter

Asian Pacific Environmental Network

Bay Rising

The Botanical Bus: Bilingual Mobile Herb Clinic

California Asset Building Coalition

California Employment Lawyers Association

California Child Care Resource and Referral Network

California Immigrant Policy Center

California Latinas for Reproductive Justice

California League of United Latin American Citizens

California Partnership

California Rural Legal Assistance Foundation

California Rural Legal Assistance Foundation

California Women’s Law Center

California Work & Family CoalitionCenter for Empowering Refugees and Immigrants

Caminante Cultural Foundation

Career Ladders Project

The Center for Popular Democracy

Centro Laboral de Graton

Change Californians for a Healthy and Green Economy

Child Care Law Center

Chinese Progressive Association

Coalition for Humane Immigrant Rights of Los Angeles

Community Housing Partnership

Consumer Attorneys of California

Courage California

Day Worker Center of Mountain View

El Centro Cultural de México, Santa Ana

Equal Rights Advocates

End Hunger!

Filipino Advocates for Justice

Filipino Community Center

Filipino Migrant Center

Gabriela South Bay

Gray Panthers of San Francisco

Hand in Hand: the Domestic Employers Network

Health Professionals for Equality and Community Empowerment

Housing Rights Committee of San Francisco

Humanidad Therapy and Education Services
Impact Sport Philanthropy
Instituto de Educación Popular del Sur de California
Jobs with Justice San Francisco
Koreatown Immigrant Workers Alliance
Ricardo Lara, California Insurance Commissioner
La Raza Centro Legal
Labor Occupational Health Program, UC Berkeley
Legal Aid at Work
Maíz San José
Mujeres Unidas y Activas
National Council of Jewish Women - California
National Domestic Workers Alliance
National Employment Law Project
North Bay Jobs with Justice
North Bay Organizing Project
Opportunity Institute
Parent Voices
People's Association of Workers and Immigrants East Bay
Physicians for Social Responsibility - Los Angeles
Pilipino Association of Workers and Immigrants Santa Clara
Pilipino Workers Center
Pomona Economic Opportunity Center
Raising California Together
The San Francisco Day Labor Program and Women's Collective, of Dolores Street
Community Services
San Francisco Immigrant Legal & Education Network
San Francisco Living Wage Coalition
San Francisco Senior and Disability Action
Showing Up for Racial Justice Bay Area
Southern California Coalition for Occupational Safety & Health
Women's Foundation of California
Together We Will - San Jose
UCLA North America Integration and Development Center
United Food and Commercial Workers, Western States Council
Voices for Progress
Western Center on Law & Poverty
Women's Foundation of California
Women's Voices for the Earth
Work Equity Action Fund
Worksafe

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1257 (Durazo, 2020) was identical to this bill. In his message vetoing SB 1257, Governor Newsom wrote that: “[...] [L]aws in this area must recognize that the places where people live cannot be treated in the exact same manner as a traditional workplace or worksite from a regulatory perspective. SB 1257 would extend many employer obligations to private homeowners and renters, including the duty to create an injury prevention plan and requirement to conduct outdoor heat trainings. Many individuals to whom this law would apply to lack the expertise to comply with these regulations. The bill would also put into statute a potentially onerous and protracted ‘investigation by letter’ procedure between Cal-OSHA and private tenants and homeowners. In short, a blanket extension of all employer obligations to private homeowners and renters is unworkable and raises significant policy concerns.”

AB 2658 (Burke, Ch. 288, Stats. 2020) made it a crime for a person, after receiving notice to evacuate or leave, to willfully and knowingly direct an employee to remain in, or enter, an area closed under prescribed provisions of law due to a menace to the public health or safety. The bill defined “employee” for this purpose to include a person receiving employment for household domestic service.

SB 1015 (Leyva, Ch. 315, Stats. 2016) indefinitely extended the Domestic Worker Bill of Rights provision requiring the payment of overtime compensation for domestic workers after 9 hours in one day or after 45 hours a week.

AB 241 (Ammiano, Ch. 374, Stats. 2013) enacted the “Domestic Worker Bill of Rights” to provide protections and regulate the wages, hours, and working conditions of domestic work employees.

AB 889 (Ammiano, 2012) would have required the Department of Industrial Relations (DIR) to adopt regulations governing the working conditions of domestic work employees, as defined, by no later than January 1, 2014. In his message vetoing AB 889, then Governor Brown wrote: “[t]he bill calls for [...] questions to be studied by the state Department of Industrial Relations and for the department to simultaneously issue new regulations to provide overtime, meal, rest break and sleep periods for domestic workers. In the face of consequences both unknown and unintended, I find it more prudent to do the studies before considering an untested legal regime for those that work in our homes.”

PRIOR VOTES:

Senate Labor, Public Employment, and Retirement Committee (Ayes 4, Noes 1)

Amended Mock-up for 2021-2022 SB-321 (Durazo (S))

Mock-up based on Version Number 99 - Introduced 2/5/21

SENATE BILL

No. 321

Introduced by Senator Durazo

(Principal coauthors: Assembly Members Gipson and Kalra)

(Coauthors: Senators Gonzalez, Leyva, and Newman)

February 5, 2021

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

SECTION 1. Section 6303 of the Labor Code is amended to read:

6303. (a) "Place of employment" means any place, and the premises appurtenant thereto, where employment is carried on, except a place where the health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than the division.

(b) (1) "Employment," except as provided in paragraph (2), includes the carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire.

(2) "Employment" does not include:

(A) Household domestic service that is publicly funded, including publicly funded household domestic service provided to a recipient, client, or beneficiary with a share of cost in that service, unless subject to Section 3342 or 5199 of Title 8 of the California Code of Regulations.

(B) Family day care homes as defined in subdivision (a) of Section 1596.78 of the Health and Safety Code and subdivisions (d) and (f) of Section 1596.792 of the Health and Safety Code.

(c) "Employment," for purposes of this division only, also includes volunteer firefighting when covered by Division 4 (commencing with Section 3200) pursuant to Section 3361.

(d) Subdivision (c) shall become operative on January 1, 2004.

(e) Coverage for household domestic service not excluded in paragraph (2) of subdivision (b) shall become operative on January 1, 2023.

SEC. 2. Section 6305.1 is added to the Labor Code, to read:

6305.1. (a) The Chief of the Division of Occupational Safety and Health, or a representative of the chief, shall convene an advisory committee. The advisory committee shall include an equal number of representatives of household domestic service employees and employers who represent diverse stakeholders. Within six months of convening, the advisory committee, in consultation with the Commission on Health and Safety and Workers' Compensation, shall make findings and recommendations to the Occupational Safety and Health Standards Board for industry-specific regulations related to household domestic service.

(b) The board shall adopt industry-specific regulations related to household domestic service within a reasonable time pursuant to this section and no later than January 1, 2023.

SEC. 3. Section 6314 of the Labor Code is amended to read:

6314. (a) To make an investigation or inspection, the chief of the division and all qualified divisional inspectors and investigators authorized by the chief shall, upon presenting appropriate credentials to the employer, have free access to any place of employment to investigate and inspect during regular working hours, and at other reasonable times when necessary for the protection of safety and health, and within reasonable limits and in a reasonable manner. The chief or their authorized representative may, during the course of any investigation or inspection, obtain any statistics, information, or any physical materials in the possession of the employer that are directly related to the purpose of the investigation or inspection, conduct any tests necessary to the investigation or inspection, and take photographs. Photographs taken by the division during the course of any investigation or inspection shall be considered to be confidential information pursuant to the provisions of Section 6322, and shall not be deemed to be public records for purposes of the California Public Records Act.

(b) If permission to investigate or inspect the place of employment is refused, or the facts or circumstances reasonably justify the failure to seek permission, the chief or their authorized representative may obtain an inspection warrant pursuant to the provisions of Title 13 (commencing with Section 1822.50) of the Code of Civil Procedure. Cause for the issuance of a warrant shall be deemed to exist if there has been an industrial accident, injury, or illness reported, if any complaint that violations of occupational safety and health standards exist at the place of employment has been received by the division, or if the place of employment to be inspected has been chosen on the basis of

specific neutral criteria contained in a general administrative plan for the enforcement of this division.

(c) The chief and their authorized representatives may issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, and physical materials, administer oaths, examine witnesses under oath, take verification or proof of written materials, and take depositions and affidavits for the purpose of carrying out the duties of the division.

(d) In the course of any investigation or inspection of an employer or place of employment by an authorized representative of the division, a representative of the employer and a representative authorized by their employees shall have an opportunity to accompany them on the tour of inspection. Any employee or employer, or their authorized representatives, shall have the right to discuss safety and health violations or safety and health problems with the inspector privately during the course of an investigation or inspection. Where there is no authorized employee representative, the chief or their authorized representatives shall consult with a reasonable number of employees concerning matters of health and safety of the place of employment.

(e) During any investigation of an industrial accident or occupational illness conducted by the division pursuant to the provisions of Section 6313, the chief or their authorized representative may issue an order to preserve physical materials or the accident site as they were at the time the accident or illness occurred if, in the opinion of the division, it is necessary to do so in order to determine the cause or causes of the accident or illness, and the evidence is in potential danger of being removed, altered, or tampered with. Under these circumstances, the division shall issue that order in a manner that will avoid, to the extent possible, any interference with normal business operations.

A conspicuous notice that an order has been issued shall be prepared by the division and shall be posted by the employer in the area or on the article to be preserved. The order shall be limited to the immediate area and the machines, devices, apparatus, or equipment directly associated with the accident or illness.

Any person who knowingly violates an order issued by the division pursuant to this subdivision shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000).

(f) (1) In the case where the place of employment is a residential dwelling and the employee is a domestic service employee, the chief of the division or their authorized representative shall initiate telephone contact with the employer as soon as possible, but not later than 14 calendar days after receipt of a complaint charging a violation.

(2) When telephone contact is successfully made, the chief of the division or their authorized representative shall do all of the following:

(A) Notify the employer of the existence of any alleged unsafe or unhealthful conditions.

(B) Describe the alleged hazard and any specific regulatory standard alleged to have been violated.

(C) Inform the employer that they are required, pursuant to Section 6401.7, to investigate and abate any hazard discovered during the investigation.

(D) Inform the employer by letter sent by facsimile or email, or by certified mail if the employer cannot receive facsimile or email, of each alleged hazard and each specific standard alleged to have been violated.

(E) Inform the employer that if the division determines that the employer's response is unsatisfactory for any reason, the division shall seek permission from the employer to enter the residential dwelling to investigate the matter, and, if permission is denied, may secure an inspection warrant to conduct an onsite inspection of the residential dwelling.

(F) Provide the complainant with copies of the regulation alleged to have been violated, the division's letter to the employer, and all subsequent correspondence concerning the investigation of any alleged hazards.

(3) An employer subject to investigation shall do both of the following:

(A) Provide to the division, within 14 days of the employer's receipt of the division's letter, a letter describing the results of the employer's investigation of the alleged hazard and a description of all actions taken, in the process of being taken, or planned to be taken, by the employer to abate the alleged hazard, including any applicable measurements or monitoring results, invoices for equipment purchased, and photographs or video that document correction of the alleged hazard.

(B) Provide a copy of the division's letter to the employee, and all subsequent correspondence from and to the employer, to the affected employee, or prominently post the letter and correspondence in the method prescribed by subdivision (a) of Section 6318.

(g) For complaints alleging serious illness or injury or death in household domestic service, the chief of the division or their authorized representative may enter the premises with permission or with an inspection warrant issued pursuant to the provisions of Title 13 (commencing with Section 1822.50) of the Code of Civil Procedure, without first initiating telephone contact, as described in subdivision (f).

(h) Notwithstanding any other provision of this chapter to the contrary, investigations of complaints in household domestic service employment shall be conducted in a manner to avoid any unwarranted invasion of personal privacy and shall not contain any personal, financial, or medical information of residents residing in the residential dwelling that is not pertinent to the investigation of the complaint.

SEC. 4. 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 will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.