

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1202 (Newman)
Version: April 9, 2024
Hearing Date: April 23, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Labor and Workforce Development Agency: reports: assaults

DIGEST

This bill, as agreed to be amended in the Senate Labor, Public Employment and Retirement Committee, requires the California Department of Human Resources (CalHR) to make a quarterly report regarding assaults against state employees to the Legislature.

EXECUTIVE SUMMARY

This bill was previously heard in the Senate Labor, Public Employment and Retirement Committee where the author committed to make certain amendments that, due to timing, will be taken in this Committee. This analysis will be based on the bill with those amendments. A mock-up of those amendments can be found at the end of this analysis. This bill requires CalHR to make quarterly reports regarding assaults against state employees to the Legislature. In order to protect the privacy of individual employees, the bill requires information to be reported in a manner that appropriately protects the confidentiality of employees. The bill is author sponsored and supported by AFSCME Local 2620. No timely opposition was received by the Committee. The bill passed the Senate Labor, Public Employment and Retirement Committee on a vote of 4 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires every employer to establish, implement, and maintain, an effective workplace violence prevention plan (WVPP) that is written, available and easily accessible at all times, as specified. (Lab. Code § 6401.9.)

- 2) Requires employers to record information in a violent incident log for every workplace violence incident, and specifies that information recorded in the log include, among other things, a detailed description of the incident, a classification of who committed the violence, the working conditions at the time, the type of incident, and the consequences, including actions taken to protect employees, as specified. (*Id.* at subd. (d))
- 3) Provides that all records of violent incident logs and violent incident investigations be maintained for a minimum of five years and be made available to Cal/OSHA, employees, and their representatives, as specified. (*Id.* at subd. (f).)
- 4) Requires every employer to file a complete report with Cal/OSHA of every occupational injury or occupational illness to each employee that results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid.
 - (a) A report must be filed within five days after the employer obtains knowledge of the injury or illness.
 - (b) 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. (Labor Code §6409.1.)

This bill, as agreed to be amended in the Senate Labor, Public Employment and Retirement Committee:

- 1) Requires CalHR to make a quarterly report regarding assaults against employees to the Legislature and the chairs of the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget with respect to assaults that occurred during the preceding calendar year on or before January 30, 2026.
 - a) Defines “assault” as a physically aggressive act to staff, including hitting, pushing, kicking, or other acts directed against a staff person that could cause potential or actual injury.
 - b) Defines “employee” as employees subject to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1) of the Government Code, supervisory employees as defined in subdivision (g) of Section 3513 of the Government Code, managerial employees as defined in subdivision (e) of Section 3513 of the Government Code, confidential employees as defined in subdivision (f) of Section 3513 of the Government Code, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the office of the Inspector General, employees of the Public Employment Relations Board, conciliators employed by the California State Mediation and Conciliation Service, employees of the Department of Human Resources, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than audit staff, intermittent athletic inspectors who are employees of the State Athletic

Commission, professional employees in the Personnel/Payroll Services Division of the Controller's office, and all employees of the executive branch of government who are not elected to office.

- 2) Requires the report to include all of the following information:
 - a) the date of the assault;
 - b) the job classification of any affected represented employee;
 - c) the employee's state bargaining unit designation; and
 - d) the name of the location at which the incident occurred.

- 3) Requires information reported to be reported in a manner that appropriately protects the confidentiality of employees.

- 4) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
 - 1) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
 - 2) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)

- 5) Governs the disclosure of information collected and maintained by public agencies pursuant to the CPRA. (Gov. Code §§ 7920.000 et seq.)
 - 3) States that the Legislature, mindful of the individual right to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 7921.000.)
 - 4) Defines "public records" as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 7920.530.)
 - 5) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 7922.530.)

COMMENTS

1. Stated need for the bill

The author writes:

According to the Department of Justice, public employees experience workplace violence incidents at a rate that is three times higher than that of private employees. SB 1202 intends to ensure greater oversight of these incidents by requiring CalHR to report such incidents annually to the Legislature. The impetus for this bill was a horrific incident which occurred at a California Department of Corrections and Rehabilitation facility, where an employee was assaulted and their union representatives were unable to access any statistical data about these incidents to help inform their advocacy. SB 553 (Cortese, Ch. 289, Stats. 2023), which passed last year will help remedy this issue by mandating workplace violence prevention plans and the keeping of records of these incidents so that union representatives may utilize this data. This bill seeks to further advance the intent of SB 553 by requiring an annual report of workplace assaults on public sector employees to the Legislature. As we expect these public employees to carry out the work of the state, it should be the responsibility of the state and the Legislature to ensure proper and thorough reporting of these incidents if and when they occur.

2. Limiting disclosure of information contained in public records

This bill requires, on or before January 30, 2026, that CalHR make quarterly reports regarding assaults against state employees to the Legislature and the chairs of the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget for assaults that occurred during the preceding calendar year. Assault, for purposes of this bill, means a physically aggressive act to staff, including hitting, pushing, kicking, or other acts directed against a staff person that could cause potential or actual injury. The reports are required to contain: the date of the assault, job classification of any affected represented employee, the employee's state bargaining unit designation, and the name of the location at which the incident occurred. In order to protect the privacy of individual employees, the bill requires information to be reported in a manner that appropriately protects the confidentiality of employees.

California generally recognizes that public access to information concerning the conduct of the people's business is a fundamental and necessary right.¹ At the same time, the state recognizes that this right must be balanced against the right to privacy.² The general right of access to public records may, therefore, be limited where records include personal information. In recognition of this, the bill states that in order to

¹ Cal. Const., art. I, § 3; Gov. Code, § 7921.000.

² Cal. Const., art. I, § 1.

protect the privacy of persons involved in violent incidents, it is necessary to limit access to the personal information of employees involved in these incidents. In light of the personal nature of a person's date of birth and the fact that other personally identifying information is already protected from disclosure, the bill's findings appear consistent with the state's right to privacy and limits on disclosure of public records.

SUPPORT

AFSCME Local 2620

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 553 (Cortese, Ch. 289, Stats. 2023) required employers to establish, implement and maintain an effective workplace violence prevention plan that includes, among other elements, requirements to maintain incident logs, provide specified trainings, and conduct periodic reviews of the plan.

SB 363 (Pan, 2019) would have required the Department of State Hospitals, the Department of Developmental Services, and the Department of Corrections and Rehabilitation to report monthly the total number of assaults against employees to the bargaining unit of the affected employees. This bill was vetoed by Governor Newsom, stating the bill's "goal of ensuring safety for employees is an important one. However, mandating these reporting requirements in state law is unnecessary, as the departments can undertake this reporting administratively."

PRIOR VOTES

Senate Labor, Public Employment and Retirement Committee (4 Ayes, 0 Noes)

**MOCK-UP OF AMENDMENTS AGREED TO IN THE SENATE LABOR, PUBLIC
EMPLOYMENT AND RETIREMENT COMMITTEE THAT WILL BE TAKEN IN
THIS COMMITTEE:³**

SECTION 1. ~~Section 6401.10 is added to the Labor Code, immediately following Section 6401.9, to read:~~

~~6401.10.~~

~~SECTION 1. Section 19816.15 is added to the Government Code, immediately following Section 19816.14, to read:~~

~~19816.15 (a) For purposes of this section, “assault” the following terms have the following meanings:~~

~~(1) “Assault” means a physically aggressive act to staff, including hitting, pushing, kicking, or other acts directed against a staff person that could cause potential or actual injury.~~

~~(2) “Employee” has the same meaning as subdivision (d) of Section 19815.~~

~~(b) (1) The Labor and Workforce Development Agency Department of Human Resources shall make a quarterly report, pursuant to subdivision (c), regarding assaults against employees to both of the following:~~

~~(A) The Labor Commissioner and any bargaining unit within the agency within 30 calendar days of the last day of the quarter with respect to assaults that occurred during that quarter.~~

~~(B) On employees on or before January 30, 2026, and annually thereafter, to the Legislature and the chairs of the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget with respect to assaults that occurred during the preceding calendar year.~~

~~(2) A report submitted to the Legislature pursuant to this subdivision shall be submitted pursuant to Section 9795 of the Government Code. 9795.~~

~~(c) (1) A report made pursuant to this section shall include all of the following information with respect to any assault that occurred during the previous reporting period:~~

~~(A) The date of the assault.~~

~~(B) The job classification of any affected represented employee.~~

~~(C) The employee’s state bargaining unit designation.~~

~~(D) The name of the location at which the incident occurred.~~

~~(2) Information reported pursuant to this subdivision shall be reported in a manner that appropriately protects the confidentiality of employees.~~

³ The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.