

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

SB 657 (Ochoa Bogh)
Version: April 12, 2021
Hearing Date: April 20, 2021
Fiscal: No
Urgency: No
TSG

SUBJECT

Employment: electronic documents

DIGEST

This bill authorizes employers to send required workplace notifications to their employees as attachments to email. The bill specifies that the option to send notifications by email does not replace the requirement to display mandatory postings and notices physically.

EXECUTIVE SUMMARY

California law requires employers to provide their employees with a number of notifications regarding employee rights in the workplace. In some instances, employers must post these notifications in a prominent location at the workplace (typically at the water cooler or in a break room). In other cases, employers must provide the notification directly to the employee. The COVID-19 pandemic has led to a large increase in the number of employees who are working from home. This trend is likely to continue even as the pandemic subsides. When an employee is working from home, employer compliance with notification requirements becomes more complex and some questions have arisen as to what exactly employers must do to meet their notification obligations. This bill would authorize employers to email required notices and postings to employees. It clarifies, however, that the option to use notification by email is supplemental and does not relieve employers of any requirement to display required postings and notices physically.

The bill is author-sponsored. Support is from human resources managers and business associations. Prior opposition from organized labor has been removed following recent amendments to the bill. The bill passed out of the Senate Labor, Public Employment, and Retirement Committee by a vote of 5-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires employers to provide each employee, at the time of hiring, with written notice, in the language the employer normally uses to communicate employment-related information to the employee, of all of the following:
 - a) the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable;
 - b) allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
 - c) the regular payday designated by the employer in accordance with the requirements of this code;
 - d) the name of the employer, including any “doing business as” names used by the employer;
 - e) the physical address of the employer’s main office or principal place of business, and a mailing address, if different;
 - f) the telephone number of the employer;
 - g) the name, address, and telephone number of the employer’s workers’ compensation insurance carrier;
 - h) that an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates; and
 - i) any other information the Labor Commissioner deems material and necessary. (Lab. Code § 2810.5(a)(1).)

- 2) Requires employers to provide a notice to each current employee, by posting in the language the employer normally uses to communicate employment-related information to the employee, of any inspections of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of the inspection. Requires that written notice shall also be given within 72 hours to the employee’s authorized representative, if any. (Lab. Code § 90.2.)

- 3) Requires employers to post a notice specifying the regular pay days and the time and place of payment. (Lab. Code § 207.)

- 4) Requires employers to post a notice containing pertinent information regarding safety rules and regulations including:
 - a) the address and telephone number of the nearest Cal-OSHA office;
 - b) a clear explanation of an employee’s right to report any unsafe working conditions;
 - c) the right to request a safety inspection by the division for unsafe conditions;

- d) the right to refuse to work under conditions which endanger life or health; and
 - e) the right to receive information under the Hazardous Substances Information and Training Act. (Lab. Code § 6328.)
- 5) Requires employers to post all of the following information in a conspicuous location frequented by employees where the notice may be easily read by employees during the hours of the workday:
- a) how to get emergency medical treatment, if needed;
 - b) the kinds of events, injuries, and illnesses covered by workers' compensation;
 - c) the injured employee's right to receive medical care;
 - d) the rights of the employee to select and change the treating physician under specified conditions;
 - e) the rights of the employee to receive temporary disability indemnity, permanent disability indemnity, supplemental job displacement, and death benefits, as appropriate;
 - f) to whom injuries should be reported;
 - g) the existence of time limits for the employer to be notified of an occupational injury;
 - h) the protections against retaliation for filing a claim;
 - i) the website address and contact information that employees may use to obtain further information about the workers' compensation claims process and an injured employee's rights and obligations, including the location and telephone number of the nearest information and assistance officer; and
 - j) that failure of an employer to provide the notice required by this section shall automatically permit the employee to be treated by the employee's personal physician with respect to an injury occurring during that failure;
 - k) the name of their current workers' compensation insurance carrier, or notice that the employer is self-insured; and
 - l) the person who is responsible for claims adjustment. (Lab. Code § 3550.)
- 6) Requires an employer to prominently display a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline. (Lab. Code § 1102.8.)
- 7) Requires farm labor contractors to prominently display at the site where the work is to be performed and on all vehicles used by the farm labor contractor or his or her employees or agents for the transportation of employees the rate of compensation the licensee is paying to his or her employees for their services, printed in both English and Spanish. (Lab. Code § 1695.)

This bill:

- 1) Authorizes employers to distribute required postings and notices by email with the document or documents attached.
- 2) Specifies that distribution of required postings and notices by email in no way alters employers' responsibilities to display required postings and notices physically.

COMMENTS

1. Background

California law currently requires employers to communicate certain information to their employees about the employees' rights in the workplace. In some instances, employers must provide this information to their employees directly. For example, upon hire employers are supposed to give their employees written information regarding how to contact the employer, what the rate of pay will be, and what the employer's workers' compensation coverage is, among other things. (Lab. Code 2810.5(a)(1).) In other instances, employers are simply required to post the information in a conspicuous location at the worksite so that employees may read it or refer back to it as the situation warrants. For instance, employers must post information about how workers can access workers' compensation coverage in the event that they are injured on the job. (Lab. Code § 3550.)

2. The issue that the bill is intended to address

The COVID-19 pandemic accelerated a pre-existing trend toward remote work, in which employees perform their labor at locations other than the employer's property. Often this means the employee is working from home. The prevalence of remote work may continue, even after the pandemic subsides.

Remote work complicates the role of posted notices as a mechanism for communicating information to employees. In traditional workplace settings, the presence of posters setting out workplace rights meant that employees could casually peruse the information while taking a break, say, or filling up at the office water cooler. Obviously, the same dynamic does not necessarily apply in the context of a home office.

To help facilitate the flow of information to employees working remotely, this bill would authorize employers to provide employees with required notices and postings as attachments to email sent to the worker. To ensure that this authorization supplements existing modes of communicating information to workers, rather than supplanting them, the bill goes on to clarify that distribution of the required notices by email does not relieve employers of the obligation to physically display required postings or notices.

3. Resolution of commitments coming out of the Senate Labor, Public Employment, and Retirement Committee

This bill was heard in the Senate Labor, Public Employment, and Retirement Committee on April 5, 2021. At that hearing, the author committed to taking amendments to the bill. However, the bill was passed out directly to this Committee by a motion that did not reference any amendments.

On April 9, 2021, the author presented amendments to this Committee. Both Committee staff from the Senate Labor, Public Employment, and Retirement Committee as well as representatives of the opposition stakeholders who negotiated the amendments with the author have indicated to staff for this Committee that the author's amendments of April 12, 2021 satisfy the commitments made in the Senate Labor, Public Employment, and Retirement Committee.

4. Clarification of the bill's impact on existing requirements to deliver notices

There are a number of different ways that employers have to communicate information to employees under existing law. As mentioned previously, sometimes the employers have to "post" the information. (*See, e.g.*, Lab. Code §§ 207, 1102.5, 1695, 3550, and 6378.) Sometimes employers have to "provide" the information. (*See, e.g.*, Lab. Code § 2810.5.)

The intent behind the bill, as described during debate on the bill in the Senate Labor Committee, is to offer employers an additional method of delivering information that the law requires employers to communicate to their employees. It is not the intent of the bill to alter any existing requirements about how that information must be delivered.

The language in the bill in print is clear about posting requirements. It says that if there is a requirement to post information, then it still must be physically posted, but the employer can also email it in addition.

The language in the bill in print is not as clear about what happens in situations where the employer must "provide" information or a notice to an employee. Since the bill in print only clarifies that employers would still have to physically "post" required information when it must be posted by law, the implication by omission is that employers would not necessarily have to physically "provide," required information to employees so long as the information was emailed to them. Such an interpretation might alter, rather than supplement, the methods that employers may use to get required information to employees, depending on the underlying law. The problem is not isolated to situations involving the term "provide" either. The same issues arise in relation to any permutation on the term "provide." Where the underlying law requires an employer to "furnish," "make available," "deliver," "give," "serve," or anything similar, the bill in print raises the prospect that provision of the information by email would be sufficient to comply. That might be consistent with existing law in some instances, but where physical delivery of a hard copy is currently required, allowing email delivery would alter the law.

The author proposes to offer an amendment in Committee to ensure that the bill does not alter any existing requirements. All existing requirements regarding the method of delivery of required information from an employer to an employee would remain the same. If, under existing law, an employer is required to post certain information, the bill would authorize employers to provide that same information by email as well.

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

5. Arguments in support of the bill

According to the author:

COVID-19 has disrupted business practices and forced many industries to rework the way they operate in order to accommodate the orders from the state. However, there are certain notifications that employees must receive each year and there is no set way for employers to conduct that business now. SB 657 authorizes businesses who have employees that are working from home or telecommuting to receive specific employment-related documents electronically, in addition to the current posting at the job site.

In support of the bill, a coalition of 18 human resources management trade associations writes:

[...] [A] recurring issue in the telecommuting context is how to comply with the myriad number of laws that require notices and posters be posted in a conspicuous place in the workplace. While these laws are understandable in the traditional “physical” and communal workplace involving a human resources office or a common meeting room, their application is decidedly less clear in the telecommuting context with employees simply working from their home. [...] SB 657 would clarify that such workplace notices and posters can be provided to telecommuting employees electronically [...]. [...] These changes are also limited to the telecommuting employee context and, thus, do not obviate the employer’s duty to post these notices at the physical worksite where applicable and/or obtain in-person acknowledgements from employees at the physical worksite. These clarifications will not prejudice any employees and will make it easier for employers to allow telecommuting, which employees increasingly want.

In further support of the bill, the California Chamber of Commerce writes:

These modest changes will remove legal uncertainty that currently acts as a barrier to more employers offering employees the

opportunity to telework where appropriate. Promoting policies that allow employees to continue to be employed and earning income while working from home is needed now more than ever.

6. Arguments in opposition to the bill

In opposition to the bill, the California Nurses Association/ National Nurses United writes:

SB 657 would allow any employee who works from home to receive all required notices and postings under this code electronically. This would mean postings could be maintained on an employer-controlled website, or only available via an employer-monitored and tracked app. The employer could not only easily manipulate the postings in violation of the law, but they could also track which employees were accessing the information, knowledge that could be used for retaliation if a posting violation claim is filed.

SUPPORT

Acclamation Insurance Management Services
Allied Managed Care
Bay Area Human Resources Executives Council
California Association for Health Services At Home
California Chamber of Commerce
California Food Producers
California Hotel & Lodging Association
California State Council of the Society of Human Resources Management
Carlsbad Chamber of Commerce
Central California Society of Human Resources Management
Central Coast Human Resources Association
Central Valley Human Resources Management Association
Chino Valley Chamber of Commerce
Coalition of Small and Disabled Veteran Businesses
Family Business Association of California
Flasher Barricade Association
Fremont Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Housing Contractors of California
Human Resources Association of Central California
Inland Empire Society for Human Resources Association Management
Kern County Society for Human Resource Management
Livable California

Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Federation of Independent Business
New Livable California DBA Livable California
North Orange County Chamber of Commerce
Northstate Society of Human Resources Managers
Oceanside Chamber of Commerce
Pleasanton Chamber of Commerce
Professionals in Human Resources Association
Rancho Cordova Chamber of Commerce
Roseville Area Chamber of Commerce
Sacramento Area Human Resources Association
San Diego Society of Human Resource Management
San Gabriel Valley Economic Partnership
San Joaquin Human Resource Association
Santa Barbara Human Resources Association
Santa Maria Valley Chamber of Commerce
Sierra Human Resources Association
Simi Valley Chamber of Commerce
Society of Human Resources Management s of Northern California
Society of Human Resources Management of Tulare/Kings County
Southern California Wine Country Society of Human Resources Management
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Western Electrical Contractors Association

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 513 (Bigelow, 2021) allows employees working at home or a remote location to receive all required notices and posting electronically as well as to utilize electronic signature or electronic acknowledgment for any employment-related documents that require acknowledgment of receipt. AB 513 is currently pending consideration before the Assembly Labor and Employment Committee.

Prior Legislation: AB 1492 (Boerner-Horvath, 2020) would have clarified the manner in which meal and rest periods and employee reimbursements are handled for telecommuting employees, and would also have allowed for electronic notification and the use of electronic signatures and acknowledgements in the same manner contained in SB 657. AB 1492 died in the Senate Labor, Public Employment, and Retirement Committee.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 5, Noes 0)

Amended Mock-up for 2021-2022 SB-657 (Ochoa Bogh (S))

**Mock-up based on Version Number 98 - Amended Senate 4/12/21
Submitted by: SJUD, Griffiths**

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

SECTION 1. Section 1207 is added to the Labor Code, to read:

1207. In any instance in which an employer is required to physically post information, an employer may also distribute that information to employees by~~An employer may distribute any required posting or notice by~~ email with the document or documents attached. Email distribution pursuant to this section shall not alter the employer's ~~existing obligation responsibilities under this code~~ to physically display ~~a~~the required ~~posting or notice~~.