SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2288	**Hearing Date:**	June 19, 2024
Author:	Kalra		
Version:	May 9, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Labor Code enforcement: private civil actions

KEY ISSUE

This bill authorizes an award of injunctive relief in proceedings brought against an employer pursuant to the Private Attorneys General Act (PAGA) for violations of specified Labor Code provisions.

ANALYSIS

Existing law:

1) Establishes a comprehensive set of protections for employees, including a time-sure minimum wage, meal and rest periods, overtime, prevailing wages on public works projects, and a broad series of occupational health and safety protective orders. (Labor Code §§201, 226.7, 246, 511, 512, 1182.12, 1771, & 6300)

2) Establishes the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency (LWDA) 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. (Labor Code §50.5)

3) Establishes within the DIR, various entities including the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC), and empowers the LC with ensuring a just day's pay in every workplace through robust enforcement of labor laws. (Labor Code §79-107)

4) Authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage fixed by an order of the Industrial Welfare Commission or by statute, as specified. (Labor Code §98)

5) Further authorizes the Labor Commissioner to provide for a hearing to recover civil penalties due against any employer or other person acting on behalf of an employer and states that it is the intent of the Legislature that hearings held pursuant to these provisions be conducted in an informal setting preserving the rights of the parties. (Labor Code §98)

6) Authorizes the Labor Commissioner to prosecute all actions for the collections of wages, penalties, and demands of persons who in the judgment of the Labor Commissioner are

financially unable to employ counsel and the Labor Commissioner believes have claims which are valid and enforceable. (Labor Code §98.3)

7) Establishes the Private Attorneys General Act (PAGA) of 2004, which permits aggrieved employees to pursue civil actions to recover civil penalties on behalf of themselves, other employees, and the State of California for specified Labor Code violations. (Labor Code §2698-2699.8)

8) PAGA specifies that, notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA) or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the Labor Code, ***may, as an alternative***, be recovered through a civil action pursuant to specified procedures. (Labor Code §2699(a))

9) Defines the following for purposes of PAGA:

   a. "Person" means any person, association, organization, partnership, business trust, limited liability company, or corporation;
   b. "Aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed;
   c. "Cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole. Specifies certain violations can only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written notice sent pursuant to the specified section. (Labor Code §2699 (b) – (d))

10) Establishes that, for purposes of PAGA, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions. (Labor Code §2699 (e)(1))

11) Grants a court, in an action by an aggrieved employee seeking recovery of a civil penalty, as specified, the discretion to award a lesser amount than the maximum civil penalty amount specified if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. Any employee who prevails in any action is entitled to an award of reasonable attorney's fees and costs, including any filing fee paid, as specified. (Labor Code §2699 (e) and (g))

12) Establishes the following civil penalties for all provisions of the Labor Code except those for which a civil penalty is specifically provided:

   a. If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is $500;
   b. If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation;

c. If the alleged violation is a failure to act by the Labor and Workplace Development agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty. (Labor Code §2699 (f))

13) Prohibits any action from being brought under PAGA for any violation of a posting, notice, agency reporting, or filing requirement of the Labor Code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting. (Labor Code §2699 (g)(2))

14) Provides notice requirements a plaintiff must complete prior to initiating a PAGA claim for specified violations of the Labor Code, including giving written notice by online filing to the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions alleged to have been violated, including the facts and theories to support the alleged violation. (Labor Code §2699.3 (a) and (b))

15) Prohibits an action from being brought under PAGA by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in law, as specified, under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates proceedings. (Labor Code §2699 (h))

16) Requires civil penalties recovered by aggrieved employees to be distributed as follows, except as specified: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees. (Labor Code §2699 (i))

This bill:

1) Expands remedies available under PAGA by authorizing the award of injunctive relief as follows:

   a. Authorizes the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees discretion to award injunctive relief, in addition to existing civil penalties, for specified Labor Code violations.

   b. Authorizes a court, whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to award injunctive relief, to exercise the same discretion, subject to the same limitations and conditions, to award injunctive relief.

COMMENTS

1. Background:

Wage theft is a problem that has plagued California and the country for a long time. According to the Economic Policy Institute, workers in California are cheated out of an

estimated $2 billion in stolen wages every year.[1] A worker experiencing wage theft can file a wage claim with DIR's Division of Labor Standards Enforcement, led by the Labor Commissioner and referred to as the Labor Commissioner's Office. As noted above, the DLSE is tasked with ensuring a just day's pay in every workplace through robust enforcement of labor laws. The LC is authorized to investigate employee complaints and to provide for a hearing in any action to recover wages, and penalties owed.

Private Attorneys General Act of 2004:

Enacted in 2004 in response to a growing underground economy and the State's lack of staffing resources to adequately enforce Labor Code violations, PAGA authorizes an aggrieved employee to recover civil penalties normally assessed and collected by the Labor and Workforce Development Agency (LWDA) through a private right of action. PAGA authorizes individual workers to step into the role of the State's labor enforcement entity and bring a lawsuit against their employer on behalf of themselves, other employees, and the State of California for violations of the Labor Code.

Under PAGA, an aggrieved employee must file a notice with the LWDA detailing Labor Code violations and, depending on the violations alleged, the LWDA and/or responsible division within DIR must act within set time limits. Failure to do so permits the employee to proceed with a PAGA lawsuit. Lawsuits under PAGA proceed only after the State declines to investigate or if the investigation does not lead to a citation. PAGA provisions limit an aggrieved employee's recovery of remedies to a civil penalty; they are not authorized to collect damages or back pay, nor are they entitled to seek injunctive relief. Civil penalties recovered through a PAGA action are split between the employees and the State, with the LWDA receiving 75 percent of the amount and the employee bringing the action receiving 25 percent as well as attorney's fees and costs.

Civil penalties recovered and directed to the LWDA must be used for enforcement of labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under the Labor Code. According to the Legislative Analyst's Office (LAO), the state receives around 5,000 PAGA notices annually.[2]

CA State Auditor Report on the California Labor Commissioner's Office:

The impetus behind the enactment of PAGA in 2003 was the lack of sufficient staff at the Labor Commissioner's office necessary to adequately enforce labor laws and adjudicate claims of violations. Unfortunately, this problem continues, as evidenced by a recent California State Auditor report on the LC's office. According to a California State Auditor report, *Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers,"* released in May 2024, a review of several years' worth of claims revealed that the LC office is not providing timely adjudication of wage claims for workers primarily because of insufficient staffing to process those claims. According to the audit, the LC's office had

[1] Economic Policy Institute, "Employers steal billions from workers' paychecks each year." May 10, 2017. https://www.courts.ca.gov/opinions/links/S241812-LINK1.PDF#page=11

[2] https://oag.ca.gov/system/files/initiatives/pdfs/fiscal-impact-estimate-report%2821-0027A1%29.pdf

47,000 backlogged claims at the end of fiscal year 2022-23.[3] The audit additionally, reported that:

- Although state law requires the LC's office to issue a decision on a wage claim within a maximum of 135 days after it is filed, as of the end of fiscal year 2022-23, the agency had taken a median of 854 days to issue decisions – more than six times longer than the law allows.
- As of November 1, 2023, more than 2,800 claims had been open for five years or more; these claims equated to more than $63.9 million in unpaid wages.
- Between January 2018 and November 2023, about 28 percent of employers did not make LC's office ordered payments. The LCO consequently obtained judgments against those employers. In roughly 24 percent of judgments during that time, or about 5,000 cases, the workers referred their judgments to the Enforcement Unit. The unit successfully collected the entire judgment amount in only 12 percent of those judgments, or in about 600 cases.[4]

In response to this problem, the Legislature enacted AB 594 (Maienschein, Chapter 659, Statutes of 2023) clarifying and expanding, until January 1, 2029, a public prosecutors' authority to enforce the violation of specified labor laws through civil or criminal actions without specific authorization from the DLSE (Labor Commissioner's office). Filing a claim with the DLSE, public prosecutor enforcement, and PAGA lawsuits are a worker's only avenue to pursue the recovery of owed wages.

PAGA Initiative on the November 2024 Ballot:

While PAGA has given thousands of workers additional recourse to pursue actions against their employers for violations of law, lawsuits remain a costly and time-intensive process. A coalition of employer associations (including, among others, the California Chamber of Commerce, the California New Car Dealers Association and the California Manufacturers and Technology Association), formed as the Californians for Fair Pay and Accountability, have qualified an initiative, the "*Fair Pay and Employer Accountability Act of 2022*," Initiative # 21-0027, to essentially repeal PAGA. According to the Secretary of State, the Initiative proposes the following:

- Repeals 2004 law allowing employees to file lawsuits on behalf of themselves and other employees against employers to recover monetary penalties for certain state labor-law violations.
- Requires that the Labor Commissioner retain authority to enforce labor laws and impose penalties.
- Eliminates Labor Commissioner's authority to contract with private organizations or attorneys to assist with enforcement.
- Requires the Legislature to provide funding of unspecified amount for Labor Commissioner enforcement.

[3] CA State Auditor, *The California Labor Commissioner, Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers,* May 29, 2024. Report Number 2023-104. https://www.auditor.ca.gov/reports/the-california-labor-commissioners-office/

[4] Ibid.

- Requires the Labor Commissioner to provide pre-enforcement advice; allows employers to correct identified labor-law violations without penalties.
- Authorizes increased penalties for willful violations.

According to the summarized estimate by the LAO and Director of Finance of the Initiative's fiscal impact on state and local governments, the Initiative would likely increase state labor enforcement costs to more than $100 million per year, while also reducing state penalty revenue used for labor law enforcement by tens of millions of dollars annually.[5]

This bill (AB 2288):

This bill would authorize the LWDA and a court to issue injunctive relief in a claim brought under PAGA. Injunctive relief, or an order directing one or more parties to comply with a certain directive, would allow the LWDA or a court to order an employer to commence or cease a certain behavior or behaviors relating to the litigation. Injunctive relief provides courts a potentially more effective avenue for preventing employers' future labor violations, further benefitting the impacted workers.

2. Need for this bill?

According to the author:

"Since its enactment, PAGA has served as a critical enforcement tool, reflecting the reality that the State's labor enforcement agencies often lack the resources to investigate and take action against every violation. A February 2024 report by the UCLA Labor Center highlighted the rampant levels of wage theft California workers face. Every year, nearly 600,000 workers in California experience a wage violation, totaling almost $2 billion in losses annually. However, only $40 million, or 2% of those lost wages, are recovered by the Labor Commissioner's wage claim process.

In addition to limited public enforcement resources, the increased use of arbitration clauses has prevented aggrieved workers from filing individual or class action lawsuits against their employer, instead requiring them to go through arbitration, which has historically favored employers. Courts have also ruled that workers cannot even pursue individual wage adjudication claims through the Labor Commissioner if they have signed a forced arbitration clause. Researchers estimate that as high as 80% of private-sector, non-union workers are subject to these clauses, frequently leaving PAGA as their only option for recourse.

Under PAGA, if an employer is ruled to have violated state law, the judge will require them to pay significant fines and come into compliance. However, while an aggrieved employee may win their case and the employer is fined, the existing law does not ensure that the worker will not have to face the same violation they sued over moving forward.

Given the existing constraints on workers imposed by forced arbitration and the State's limited enforcement resources, remedies like injunctive relief need to be available to improve PAGA's effectiveness. An injunction is an order requiring an individual to refrain from a particular act, which may be granted and enforced by the court. In the context of PAGA, injunctive relief would enable courts to order employers to make meaningful changes in the

[5] https://www.sos.ca.gov/elections/ballot-measures/initiative-and-referendum-status/eligible-statewide-initiative-measures

workplace. For example, if an employer fails to provide workers with paid sick days, the court could order injunctive relief requiring the employer to establish a lawful paid sick day policy."

3. Proponent Arguments:

According to the sponsors of the measure, the California Labor Federation, the California Employment Lawyers Association, the California Rural Legal Assistance Foundation, and the Consumer Attorneys of California:

"Contrary to what PAGA critics have claimed, PAGA suits are filed to address major labor code violations, including wage theft and other serious unlawful conduct. It is important to note that what are often characterized as 'trivial violations,' like employers inadvertently getting the name or dates wrong on a paystub, are in fact curable under PAGA. The employer has 33 days to cure the violation before any civil action may commence.

The reality is 'more than nine out of ten (91%) PAGA claims allege wage theft, including overtime violations (79% of cases) and failure to pay for all hours worked (76% of cases). A smaller but still significant share involves violations of earned sick leave rights (18%), fraudulent misclassification of employees as independent contractors (11%) and retaliation (13%).'

Currently under PAGA, workers may only recover monetary penalties on behalf of themselves and their co-workers whose rights have been violated. PAGA's unique process, which deputizes aggrieved workers to bring an enforcement action on behalf of the state, is what allows workers to access the public justice system rather than being forced to individually take their claim to arbitration. However, it is precisely because PAGA is considered a public enforcement action that remedies are restricted for those workers covered by the PAGA lawsuit. For example, workers may recover only a portion (25%) of the civil penalties that are collected from lawbreaking employers4, the rest of the penalties go to the state (75%). In addition, workers may not recover '*victim specific* relief' (e.g., unpaid wages) under PAGA when the workers are bound by a forced arbitration agreement, because the Federal Arbitration Act (FAA) mandates that any recovery for an individual (as opposed to recovery for the state) must go through private arbitration.

Given the constraints of forced arbitration on workers' ability to obtain redress for labor code violations, providing additional remedies under PAGA that would not run afoul of the FAA is imperative. Indeed, allowing workers to obtain injunctive relief under PAGA will ensure that PAGA can be used not just to punish employers that have engage in unlawful conduct, but to ensure that they comply with the law or take proactive steps to remedy their unlawful conduct moving forward."

They conclude by stating that, "Given this background of California's labor compliance crisis and the rise of forced arbitration, workers need more tools to enforce their workplace rights. PAGA now stands as one of the last remaining tools for workers to take collective action to remedy violations of their rights under the Labor Code. If we want to ensure lawbreaking employers change their unlawful practices, workers must be able to obtain injunctive relief through this vital tool."

4. Opponent Arguments:

A large coalition of employers, including the California Chamber of Commerce, are opposed to the measure and write:

"PAGA is broken. We support meaningful reforms to PAGA to ensure workers get their claims resolved faster, to provide workers more money from labor claims, to punish true bad actors, and to stop the significant frivolous claims that are plaguing small businesses and all employers. Unfortunately, AB 2288 would take us in the wrong direction and make a bad problem worse. Much worse.

A law intended to bolster labor law enforcement has been grossly manipulated by trial attorneys as a money-making scheme. These pseudo class actions have no procedural guardrails and steep penalties. Lawyers are incentivized to plead as many claims as possible, regardless of their merit, to get a big settlement check. They know that employers cannot afford to litigate these monstrous lawsuits, so they will be forced to settle. Indeed, there has been $10 billion in PAGA settlements since 2013 *that we are aware of.* That figure does *not* include settlements paid out in response to demand letters that are not reported to the LWDA. A recent court decision also confirmed that these attorneys have nothing to lose – if they lose at trial, California pays the bill.

Most troubling is that the settlement money is not going to workers. Instead, it is going into the attorneys' pockets. As the LWDA itself has said:

> 'Seventy-five percent of the 1,546 settlement agreements reviewed by the PAGA Unit in fiscal years 2016/17 and 2017/18 received a grade of fail or marginal pass, *reflecting the failure of many private plaintiffs' attorneys to fully protect the interests of the aggrieved employees and the state.'* (emphasis added).

Attorneys walk away with hundreds of thousands or millions of dollars while the employees each receive very little. Data from the LWDA shows that the average employee is worse off when their claim is handled through a PAGA lawsuit than if it were handled through the LWDA. The average employee award received in a PAGA lawsuit is three times less than the average award received in cases decided by the LWDA. The LWDA also resolves cases more quickly.

The abuse of PAGA is no secret. The LWDA has told the Legislature in its BCPs that the 'substantial majority' of PAGA settlements 'fell short' of protecting the state and workers. The Legislature has carved out two industries at the request of labor unions. Those unions sought carve outs because PAGA puts "enormous pressure on employers to settle claims regardless of the validity of those claims." (emphasis added).

AB 2288 invites more PAGA litigation by authorizing a court to award injunctive relief in addition to penalties. This bill is moving in the wrong direction. Now is the time to fix PAGA, not expand it. Our smallest businesses, nonprofits, and public entities depend on it."

5. Double Referral:

This bill has been double referred and if approved by our committee today, will be sent to Senate Judiciary Committee for a hearing.

6. Prior Legislation:

SB 330 (Niello, 2023) would have made several changes to PAGA, including 1) requiring an aggrieved employee when pursuing a claim, to include in their written notice to the LWDA and to the employer providing the alleged Labor Code violations to additionally include a statement setting forth the relevant facts, legal contentions, and authorities supporting each alleged violation; 2) requiring the plaintiff to include an estimate of the number of current and former employees against whom the alleged violations were committed and on whose behalf relief is being sought; and 3) would have required this notice to be verified, under penalty of perjury, when an aggrieved employee or representative is seeking relief on behalf of 10 or more employees. *SB 330 failed passage in this Committee.*

SUPPORT

California Employment Lawyers Association (Co-Sponsor)
California Labor Federation (Co-Sponsor)
California Rural Legal Assistance Foundation (Co-Sponsor)
Consumer Attorneys of California (Co-Sponsor)
Actors' Equity Association
AFSCME California
Alameda Labor Council
California Alliance for Retired Americans
California Applicants' Attorneys Association
California Coalition for Worker Power
California Conference Board of The Amalgamated Transit Union
California Conference of Machinists
California Federation of Teachers
California Nurses Association
California School Employees Association
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Chinese Progressive Association
Community Legal Services in East Palo Alto
Contra Costa Labor Council
Engineers & Scientists of California, IFPTE, Local 20
Equal Rights Advocates
Fresno, Madera, Tulare & Kings Labor Council, AFL-CIO
IBEW Local 1245
Inland Empire Labor Council
KIWA Workers for Justice
Legal Aid At Work
Los Angeles County Labor Federation
Monterey Bay Central Labor Council
National Union of Healthcare Workers
North Valley Labor Federation
Orange County Labor Federation
Pilipino Workers Center of Southern California
Sacramento Central Labor Council

San Diego and Imperial Counties Labor Council
San Francisco Labor Council
San Mateo County Central Labor Council
Santa Clara County Wage Theft Coalition
SEIU California
SMART - Transportation Division, CA State Legislative Board
South Bay Labor Council
State Building & Construction Trades Council of California
Transport Workers Union of America
UFCW - Western States Council
Unite Here Local 11
UNITE-HERE!
United Auto Workers, Local 2865
United Food and Commercial Workers, Western States Council
United Steelworkers, District 12
United Workers Union of America
Utility Workers Union of America
Warehouse Worker Resource Center
Western States Council of Sheet Metal, Air, Rail, & Transportation
Worksafe

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
American Council of Engineering Companies of California
American Petroleum and Convenience Store Association
American Property Casualty Insurance Association
Association of California Goodwills
Building Owners and Managers Association
CalBroadband
Calforests
California Alliance of Family Owned Businesses
California Apartment Association
California Assisted Living Association
California Association for Health Services At Home
California Association of Health Facilities
California Association of Local Conservation Corps
California Attractions and Parks Association
California Builders Alliance
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Credit Union League
California Disability Services Association
California Farm Bureau
California Farm Labor Contractor Association
California Financial Service Providers

California Financial Services Association
California Grocers Association
California Hospital Association
California Hotel & Lodging Association
California Landscape Contractors Association
California League of Food Producers
California Manufacturers and Technology Association
California New Car Dealers Association
California Restaurant Association
California Retailers Association
California Travel Association
Carlsbad Chamber of Commerce
CAWA - Representing the Automotive Parts Industry
Center for Employment Opportunities, INC.
Chino Valley Chamber of Commerce
Chrysalis Center
Civicorps
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Cupertino Chamber of Commerce
Downtown Women's Center
Family Business Association of California
Family Winemakers of California
Flasher Barricade Association
Gateway Chambers Alliance
Goodwill Industries Sacramento Valley
Goodwill Orange County
Goodwill Redwood Empire
Goodwill San Diego
Goodwill San Francisco Bay
Goodwill Southern California
Goodwill Southern Los Angeles County
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater Stockton Chamber of Commerce
Homeboy Industries
Housing Contractors of California
International Franchise Association
Juma Ventures
La Cañada Flintridge Chamber of Commerce
LeadingAge California
Livermore Valley Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles Conservation Corps
Los Angeles County Business Federation (BIZ-FED)
NAIOP California
National Association of Theatre Owners of California
National Federation of Independent Business
Newport Beach Chamber of Commerce
Norwalk Chamber of Commerce

Oceanside Chamber of Commerce
Orange County Business Council
Pacific Association of Building Service Contractors
Paso Robles Templeton Chamber of Commerce
Public Risk Innovation, Solutions, and Management (PRISM)
Rancho Cordova Area Chamber of Commerce
REDF
Sacramento Metropolitan Chamber of Commerce
Sacramento Regional Builders Exchange
San Diego Regional Chamber of Commerce
San Juan Capistrano Chamber of Commerce
Simi Valley Chamber of Commerce
The Arc of California
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce
Vacaville Chamber of Commerce
Valley Industry and Commerce Association (VICA)
Vested Solutions
West Ventura County Business Alliance
Western Car Wash Association
Western Electrical Contractors Association
Western Growers Association
Yorba Linda Chamber of Commerce

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2602	**Hearing Date:**	June 19, 2024
Author:	Kalra		
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Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Contracts against public policy: personal or professional services: digital replicas

KEY ISSUE

This bill addresses the unauthorized use of digital replicas by providing that a provision in an agreement between an individual and any other person for the performance of personal or professional services is unenforceable only as it relates to a new performance, fixed on or after January 1, 2025, by a digital replica of the individual if the provision meets all of the specified conditions.

ANALYSIS

Existing law:

1) Provides that a promise between any employee and employer related to joining or not joining a union is contrary to public policy and unenforceable. (Labor Code §921)

2) Provides that any employer who coerces or compels any person to enter into an agreement, written or verbal, not to join a union as a condition of securing employment or continuing employment, is guilty of a misdemeanor. (Labor Code §922)

3) Prohibits employers from requiring employees who primarily reside and work in California to agree to adjudicate claims outside of California or forgo the substantive protections of California laws, unless the employee was represented by legal counsel in contracting away such rights. (Labor Code §925)

4) Provides a cause of action for individuals whose likeness is used for unauthorized commercial purposes. (Civil Code §3344.)

This bill:

1) Provides that a provision in an agreement between an individual and any other person for the performance of personal or professional services *is unenforceable* only as it relates to a new performance, fixed on or after January 1, 2025, by a digital replica of the individual if the provision *meets all of the following conditions*:

    a. The provision allows for the creation and use of a digital replica of the individual's voice or likeness in place of the work the individual would otherwise have performed in person.

    b. The provision does not include a reasonably specific description of the intended uses of the digital replica, except as provided below in i.

i. Failure to include a reasonably specific description of the intended uses of a digital replica does not render the provision unenforceable if the uses are consistent with the terms of the contract for the performance of personal or professional services and the fundamental character of the photography or soundtrack as recorded or performed.

c. The individual was not represented in any of the following manners:
   i. By legal counsel who negotiated on behalf of the individual licensing the individual's digital replica rights, and the commercial terms are stated clearly and conspicuously in a contract or other writing signed or initialed by the individual.
   ii. By a labor union representing workers who do the proposed work, and the terms of their collective bargaining agreement expressly address uses of digital replicas.

2) Provides that this section only affects provisions of a contract that fall under 1) above.

3) Provides that this section does not impact, abrogate, or otherwise affect any exclusivity grants contained in, or related to, a provision that falls under 1) above.

4) Defines, for purposes of this section, "digital replica" as a digital simulation of the voice or likeness of an individual that so closely resembles the individual's voice or likeness that a layperson would not be able to readily distinguish the digital simulation from the individual's authentic voice or likeness.

COMMENTS

1. 2023 WGA and SAG-AFTRA Strikes:

Last summer, Hollywood came to a standstill after both the WGA and SAG-AFTRA called for strikes. All work in the entertainment industry effectively ground to a halt, with the WGA's strike beginning on May 2nd and lasting 148 days and SAG-AFTRA's beginning on July 14th and lasting 118 days. Combined, the two strikes cost the California economy around $6 billion dollars. As negotiations with the Alliance of Motion Picture and Television Producers (AMPTP) dragged on, the union members on strike and employees working in tangentially related industries suffered immensely. Although the specifics of each union's demands differed, both were in pursuit of broader protections for their members over contract minimums and the restriction of generative AI used for content creation. The dual strikes previewed future AI labor disputes that are sure to arise in the next decade.

WGA AI Contract Provisions

Among other wins, the WGA negotiated an array of regulations for the use of AI on covered projects. The collective bargaining agreement (CBA), ratified on October 9, contains the following:

- AI cannot be used to write or rewrite any scripts or treatments
- Studios are required to disclose if any material given to writers is AI-generated
- The WGA reserves the right to assert that exploitation of writers' material to train AI is prohibited by the CBA or other law

- A writer can choose to use AI when performing writing services if the company consents and the writer follows any applicable company policies. But the company can't require the writer to use AI software[1]

Beyond ensuring that AI cannot replace writers outright, the CBA also curbs the more likely scenario that writers will be required to adapt or edit something written by AI for less pay than producing an original work.

SAG-AFTRA AI Contract Provisions

The CBA negotiated by SAG-AFTRA and ratified on December 6th, gives performers substantial control over the creation and specific uses of their digital replicas. The following provisions are contained in the CBA:

- Defines an "employment based digital replica" as one created in connection with the performer's employment on a motion picture (i.e. a movie, a TV or streaming show, etc.)
- Defines an "independently created digital replica" as one created without the performer's participation and used in a motion picture in which they did not work
- Requires performers to offer informed consent for use of all types of digital replicas
- Specifies informed consent must be clear and conspicuous and the performer must be able to sign or initial the contract. Specifies informed consent can only be obtained for specific projects
- Requires the following compensation for use of an employment based digital replica:
    - When used in the same motion picture the performer is employed on, compensation is based on how much the performer would have made had they worked in person
    - Entitles performers to residuals if their replica remain in a motion picture and if they would have received the residuals had they done the work in person.
- Requires compensation for the use of an independently created digital replica to be bargained for, but does not set a minimum compensation[2]

The AI-related provisions focus on consent and compensation. Actors now have the benefit of a contractual floor to protect them from AI, as well as the option to negotiate stronger protections individually. Had AI not been a sticking point for SAG-AFTRA in contract negotiations, it is likely that lower-profile performers would not have the leverage to refuse studio demands.

2. Generative Artificial Intelligence (AI)

As companies make AI available for widespread use it is clear that the way we work, study, and live is bound to change. Generative AI allows anyone to create new, original illustrations and text by providing a few instructions to a program. Although AI is still rudimentary and its outputs are not always accurate or appropriate, industries have started to adopt the tool. The exact threat AI poses to workers is still unclear, but there is significant concern that

[1] "Artificial Intelligence: 2023 MBA," Writers Guild of America West, May 9, 2024, https://www.wga.org/contracts/know-your-rights/artificial-intelligence
[2] "2023 TV/Theatrical Contracts," SAG-AFTRA, https://www.sagaftra.org/contracts-industry-resources/contracts/2023-tvtheatrical-contracts

many will lose their jobs without the ability to re-skill fast enough. At the same time, other workers whose tasks overlap with the current capabilities of AI are embracing the technology to do away with menial and tedious work.

The AI industry is almost entirely unregulated, which makes the protections that the WGA and SAG-AFTRA negotiated especially significant. The two contracts have the potential to be precedent setting for industries across the world. Until the federal government or state governments take action, it is up to workers to negotiate the terms surrounding AI's use in the workplace.

3. Comments:

This bill would provide that a provision in an agreement for the performance of personal or professional services is *unenforceable*, only as it relates to a new performance, fixed on or after January 1, 2025, by a digital replica if the provision contains all of the specified conditions (see "This Bill" section). The conditions in the bill are similar to the conditions SAG-AFTRA negotiated in their CBA. For example, under this bill a provision in an agreement is unenforceable if, among other conditions, the provision fails to include a reasonably specific description of the intended use of the digital replica. SAG-AFTRA requires a reasonably specific description of the intended use of employment based digital replicas.

4. Need for this bill?

According to the author:

"Existing law prohibits using an individual's name, likeness, or other recognizable traits of their persona for commercial use without that individual's consent. California is one of several states that have enshrined this right of publicity to ensure individuals have the autonomy to control the use of their persona in the interest of their livelihood and intellectual property.

However, amidst the rise of the digital age and artificial intelligence (AI), performers across the industry have inadvertently been signing away the rights to their digital selves through clauses buried in contracts that can look like standard copyright or advertising language. Under these agreements, individuals unknowingly authorize studios to use their voice and likeness (both actual and digitally-generated) in all media, by all current and future technologies, in perpetuity, and with no additional compensation. Non-union performers, who may not have an agent negotiating on their behalf, are especially at risk of this exploitative practice."

5. Proponent Arguments:

According to the co-sponsors of the measure, SAG-AFTRA:

"AB 2602 would require informed consent before anyone may create and use a digital replica of an individual's voice or likeness in place of work the individual would otherwise have performed in person.

SAG-AFTRA has been tracking and studying technologies that allow the digital recreation of performers for many years. These technologies pose direct threats to performers' livelihoods if they are not adequately regulated.

With the recent explosion in development of this technology, it is very clear that the time is now for policy makers to act. There are too many performer contracts that were entered into years before anyone developed or even imagined this technology, but nonetheless grant overly broad, wholesale transfers of voice and likeness rights."

6. Opponent Arguments:

The Motion Picture Association is opposed to the measure, arguing:

"At the outset, MPA acknowledges and understands the concern around the use of digital replicas and ensuring that performers have the opportunity to consent to such uses. However, the bill goes well beyond protecting performers' ability to control use of their image, likeness, and voice and will pose many obstacles for motion picture, television, and streaming productions."

In regards to requiring legal representation:

"AB 2602 contrasts with California's policy of NOT requiring legal representation for many transactions.

In California, a person can engage in important life-altering transactions, such as buying or selling a home, writing a valid will, or adopting a child, all without legal representation. AB 2602, however, imposes hurdles to licensing a digital replica beyond those for those other important legal events.

Moreover, in the motion picture, television and streaming business, individuals entering into an agreement for the performance of personal or professional services may be represented by a talent agent or manager, rather than a lawyer."

7. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and Retirement Committee and the Senate Judiciary Committee.

8. Prior Legislation:

AB 1836 (Bauer-Kahan, 2024) grants a specific cause of action to beneficiaries of deceased "personalities"—individuals whose likeness has commercial value at the time of their death— for unauthorized use of a digital replica of the celebrity in audiovisual works or sound recordings. *The bill is pending in the Senate Judiciary Committee*.

AB 3050 (Low, 2024) would provide that an AI-generating entity or individual that creates a deepfake using a person's name, voice, signature, photograph, or likeness, in any manner, without permission from the person being depicted in the deepfake, is liable for the actual damages suffered by the person or persons as a result of the unauthorized use. *The bill is pending in the Assembly Privacy and Consumer Protection Committee.*

SB 970 (Ashby, 2024) would provide that, for purposes of Civil Code Section 3344, a synthetic voice or likeness that a reasonable person would believe to be a genuine voice or likeness, is deemed to be the voice or likeness of the person depicted. *The bill was held in Senate Appropriations Committee under submission.*

AB 459 (Kalra, 2023) was gut-and-amended at the end of last session to be substantially similar to this bill. *The bill is pending in Senate Rules*.

AB 437 (Kalra, 2022) would have prohibited, except under prescribed circumstances and for contracts entered into on or after January 1, 2023, a contract for the personal or professional services of an employee working as an actor in the production of a scripted episodic series, as specified, from prohibiting that employee from working for multiple employers. *This bill died on the Senate inactive file.*

SUPPORT

California Labor Federation (Co-sponsor)
SAG-AFTRA (Co-sponsor)
Artists Rights Alliance (ARA)
Black Music Action Coalition
California Democratic Party
Concept Art Association
Los Angeles County Democratic Party
Music Artists Coalition (MAC)
Oakland Privacy
Orange County Employees Association
Recording Academy
Recording Industry Association of America
Songwriters of North America

OPPOSITION

California Chamber of Commerce
Motion Picture Association

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2374	**Hearing Date:**	June 19, 2024
Author:	Haney		
Version:	May 20, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Displaced janitors

KEY ISSUE

This bill revises and expands the Displaced Janitor Opportunity Act to (1) apply to contractors employing one or more janitors; (2) increase the employee retention period from 60 to 90 days; (3) provide that the successor contractor shall maintain the same work schedules and pay the same wages and benefits as were provided by the prior contractor; and (4) enhances the Act's existing enforcement mechanisms.

ANALYSIS

Existing law:

1) Under the Displaced Janitor Opportunity Act (Act), requires contractors and subcontractors, as defined, that are awarded contracts for janitorial or building maintenance services to retain, for a period of 60 days, certain employees who were employed at that site by the previous contractor or subcontractor. (Labor Code §1060-1065).

2) Defines "contractor" to mean any person that employs 25 or more individuals and that enters into a service contract with the awarding authority. (Labor Code §1060(b))

3) Defines "employee" to mean any person employed as a service employee of a contractor or subcontractor who works at least 15 hours per week and whose primary place of employment is in the state under a contract to provide janitorial or building maintenance services. "Employee" does not include a person who is a managerial, supervisory, or confidential employee, including those employees who would be so defined under the federal Fair Labor Standards Act. (Labor Code §1060(c))

4) Requires, if an awarding authority notifies a contractor that the service contract between the awarding authority and the contractor has been terminated or will be terminated, the awarding authority to indicate in that notification whether a successor service contract has been or will be awarded in its place and, if so, to identify the name and address of the successor contractor. (Labor Code §1061(a)).

5) Requires a successor contractor or successor subcontractor to retain, for a 60-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding four months or longer unless there is reasonable and substantiated cause not to hire a particular employee based on that employee's performance or conduct while working under the terminated contract, as specified. (Labor Code §1061(b))

6) Requires the successor contractor or successor subcontractor, during the transition employment period, to make a written offer of employment to each employee in the employee's primary language or another language in which the employee is literate. That offer shall state the time within which the employee must accept that offer, but in no case may that time be less than 10 days. (Labor Code §1061(b))

7) Specifies that the successor contractor or successor subcontractor is not required to pay the same wages or offer the same benefits as were provided by the prior contractor or prior subcontractor. (Labor Code §1061(b))

8) An employee, who was not offered employment or who has been discharged in violation of the Act by a successor contractor or successor subcontractor, or an agent of the employee *may bring an action* against a successor contractor or successor subcontractor in any superior court of the state having jurisdiction over the successor contractor or successor subcontractor. Upon finding a violation of this Act, the court shall award backpay, including the value of benefits, for each day during which the violation has occurred and continues to occur. Labor Code §1062(a).

9) Establishes the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency (LWDA) 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. (Labor Code §50.5)

10) Establishes within the DIR, various entities including the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC), and empowers the LC with ensuring a just day's pay in every workplace through robust enforcement of labor laws. (Labor Code §79-107)

This bill:

Expands the Displaced Janitors Opportunity Act in a number of ways:

1) Removes the size threshold (25 +) under the definition of contractor to now apply the provisions of the act to a contractor employing any number of janitorial employees.

2) Expands the definition of employee by removing the requirement that an employee must work at least 15 hours a week and adding that the employee may be employed by an in-house janitorial service.

3) Defines "union" to mean any union that represents janitors or maintenance workers.

4) Adds to existing law that a contract for in-house janitorial services is also covered by the Act.

5) Changes an awarding authority's contract termination notification requirements to:

    a. Require the awarding authority to notify the contractor *and the union*, if the employees are represented by one, in writing within five days of making the decision to terminate a service contract.
    b. Requires the awarding authority to post a notice in a conspicuous location frequented by employees at the worksite within five days of making that decision to terminate.

c. Require that both notices specify the date the service contract shall terminate, the date the successor contractor starts, and the identity and contact information for the successor contractor.

2) Expands the information the terminated contractor must provide to the successor contractor to include the phone number, in addition to name and job classification already required, of each employee currently employed by the terminated contract. Also requires the information to be provided to the representing union.

3) Requires the terminated contractor, if it has not learned the identity of the successor contractor, to provide the name, phone number, date of hire, and job classification of each employee currently employed at the site or sites covered by the terminating service contract to the awarding authority, and requires the awarding authority to provide that information to the successor contractor and, if the janitors are represented by a union, to that union, as soon as that successor contractor has been selected.

4) Increases from 60 to 90 days the transition employment period by which a successor contractor or successor subcontractor shall retain employees who have been employed by the terminated contractor or its subcontractors, as specified.

5) Requires the written offer of employment to each employee made by the successor contractor or successor subcontractor to be contemporaneously shared with the union, if applicable, and requires the successor contractor or successor subcontractor to *maintain the same number of hours and pay the same wages and benefits as were provided by the prior contractor or prior subcontractor.*

6) Requires the preferential hiring list of eligible covered employees not retained by the successor contractor or successor subcontractor to be by seniority within job classifications.

7) Authorizes the Labor Commissioner (LC) to enforce the Act, including investigating an alleged violation and ordering appropriate temporary relief to mitigate the violation pending the completion of an investigation or hearing, per existing labor laws, including by issuing a citation against an employer who violates this section or by filing a civil action.

8) Authorizes the LC to recover any of the following remedies on behalf of an aggrieved employee:

   a. Hiring and reinstatement rights pursuant to the Act.
   b. Front pay or back pay for each day during which the violation continues.
   c. The value of the benefits the employee would have received under any benefit plans.

9) Provides that a person who violates this Act may be subject to a civil penalty of five hundred dollars ($500) for each employee whose rights are violated and an additional amount payable as liquidated damages in the amount of five hundred dollars ($500) per employee, for each day the rights of an employee under this chapter are violated and continuing until the violation is cured, not to exceed ten thousand dollars ($10,000) per employee.

   a. Authorizes liquidated damages to be recovered by the LC, deposited into the Labor and Workforce Development Fund, and paid to the employee as compensatory damages.

10) Authorizes, in a civil action, the LC to also recover reasonable attorney's fees and costs. In an administrative or civil action, requires the LC or court to award interest on all amounts due and unpaid at the rate of interest specified in the janitorial contract or at a rate of 10 percent if not specified, pursuant to subdivision (b) of Section 3289 of the Civil Code.

11) Authorizes janitors to bring an action against in-house janitorial services providers for violations of the Act (in addition to their existing authority to bring an action against a successor contractor or subcontractor), as well as the awarding authority for a violation of the awarding authority's obligations under the Act.

12) Authorizes the court, upon finding that a party's violation was willful, to award treble damages.

13) Provides that the remedies, penalties, and procedures provided above are cumulative.

14) Authorizes the LC to promulgate and enforce rules and regulations and issue determinations and interpretations consistent with and necessary for the implementation of this section.

COMMENTS

1. Background:

Janitorial workers serve an essential function to the operations of many businesses, both private and public. Unfortunately, janitors face many challenges on the job including low wages, misclassification, exposure to high rates of occupational injuries and illnesses, and threats of sexual harassment on the job. The private sector janitorial industry is composed primarily of immigrant workers of color. According to the American Community Survey (ACS), in 2019, there were approximately 278,000 janitors in California.[1] According to a study by the UCLA Labor Center and the Maintenance Cooperation Trust Fund (MCTF), *Profile of Janitorial Workers in California*, about 83 percent of private sector janitors are Latinx, Asian American/Pacific Islander, or Black. Women make up over one-third (35 percent) of the private sector janitorial workforce. The proportion of women is much larger among subcontracted janitors, at 48 percent.[2] Additionally, 37 percent of these private sector janitors work for subcontractors and 62 percent are low-wage earners.[3]

The UCLA report further finds that almost two-thirds (62 percent) of private sector janitors are low-wage workers. The median wage for private sector janitors in 2022 was $13.51 per hour, lagging far behind the median hourly wage for all private sector workers in California at $19.32. Additionally, the report finds that 37 percent of private sector janitors work for subcontractors, which can create some challenges for workers seeking to enforce their employment rights and increase instability as contracts are terminated or transferred. According to the report:

> "Subcontracting distances the property managers, owners, and tenants with the power to set prices for janitorial services from the janitorial company that is the actual employer of

[1] UCLA Labor Center and The Maintenance Cooperation Trust Fund, 2022, Profile of Janitorial Workers in California, https://labor.ucla.edu/publications/profile-of-janitorial-workers-in-california/
[2] Ibid.
[3] Ibid.

> record. This means that the building owners, managers, and tenants who have the power to set labor conditions in the industry have traditionally not been the entities held liable for labor violations that occur. Instead, it is the smaller janitorial companies, who are under intense competitive pressure and thus have limited ability to increase labor costs that they are held liable for. In fact, many janitorial firms will purposefully set up subcontracting relationships in a way that shields them from any legal liability resulting from the sub-standard employment conditions that they help create.[4]"

Displaced Janitors Opportunity Act:

The problems noted above have been a reality for decades leading to the enactment of the Displaced Janitors Opportunity Act in 2002 by SB 20 (Alarcon, Chapter 795, Statutes of 2001). The Act was intended to provide a degree of stability in the janitorial services sector by imposing certain notice requirements on awarding authorities with contracts for janitorial services, specifically requiring them to share information with successor contractors about the employees of the terminated contractor(s). Most notably, the law requires a successor contractor or subcontractor to retain, for a 60-day transition employment period, the employees of the previous contractor or subcontractor and at the end of that period, offer employment to any employee who provided satisfactory employment. However, after the 60 days, any retained worker's employment becomes at-will and they may be terminated without cause. The Act also establishes a private right of action for employees against a successor contractor or successor contractor whose rights under the statute were violated. The employee is authorized to recover backpay for each day of the violation, injunctive relief, and reasonable attorney's fees and costs.

This bill seeks to expand the Displaced Janitors Opportunity Act by extending retention periods for workers under terminated contracts from 60 to 90 days, expanding notice requirements imposed on awarding authorities, including in-house janitors under the Act, and building out the Act's existing enforcement mechanisms.

2. Need for this bill?

According to the author:

"The Displaced Janitors Opportunity Act was crucial legislation that has helped our janitors during mass layoffs events. However, there are loopholes that companies can exploit when a layoff occurs, including how they help with a transition between the two staffing agencies. Additionally, under the current law, staffing agencies with less than 25 janitors are exempt from these protections.

While the Displaced Janitors Opportunity Act requires laid off janitors to be provided transitional employment for 60 days, a third of Californians don't have enough savings to cover basic necessities in the event of an unexpected job loss. Two months' pay is often not enough for an individual to cover their rent, utilities, food and other necessities while looking for a job."

The author notes that this bill will "update the California Displaced Janitors Opportunity Act and ensure our janitors are not being exploited by large companies."

[4] Ibid.

3. Proponent Arguments:

The sponsors of the measure, SEIU Local 87, writes:

"The recent mass layoffs across the tech industry also exposed some of the shortcomings in the Act. For example, on December 5, 2022, X, formerly known as Twitter, ended its twelve year contract with a janitorial agency. This decision left janitors without a job overnight right before the holidays. X was able to exploit the loopholes in the current law to not provide the adequate transitional employment period to the laid off janitors.

This prompted San Francisco to enhance the Act locally by requiring that the newly hired janitorial staffing agency hold on to the laid off janitors for 90 days. San Francisco also requires that the company helps with the transition by connecting the old staffing agency with the new staffing agency within three days of deciding to terminate their contract. Additionally, it is currently the responsibility of the company deciding to end its contract with a janitorial staffing agency to provide the information for the newly hired staffing agency to the terminated staffing agency. However, there is no timeline requirement on the companies, which often results in this information never getting transferred over.

To update the California Displaced Janitors Opportunity Act and ensure our janitors are not being exploited by large companies, AB 2374 will: Require a newly hired janitorial staffing agency to retain laid off janitors for 90 days, instead of 60 days; close loopholes in the Act by removing the exemption for janitorial staffing agencies with less than 25 employees; and require companies to relay information about their newly hired janitorial staffing agency to the terminated agency within 5 days."

4. Opponent Arguments:

A coalition of employer organizations, including the California Chamber of Commerce, are opposed to the measure and argue that:

"Presently, the Displaced Janitor Opportunity Act places certain responsibilities on a contractor and 'successor' contractor when a client company transitions to a new contractor for janitorial services. The successor contractor is required to extend employment offers to workers who were employed by the prior contractor and follow a technical process as laid out in the statute. AB 2374 imposes new obligations on the awarding authority, which is the contractor's client. One of the new obligations is that the client company must notify any union representing the contractor's employees of its decision to end an existing contract and other information. It can be sued in civil court if it fails to do so, even if the client does not regularly have any contact with that union.

We believe that this notice obligation should fall on the contractor, which is the janitorial employees' employer and the entity that bargains directly with the union. A client should not be subject to litigation for failing to notify an entity with which it has no relationship."

5. Double Referral:

This bill has been double referred and if approved by our committee today, will be sent to Senate Judiciary Committee for a hearing.

6. Staff Comment:

This bill proposes amendments to section 1062 of the Labor Code, including the following:

> ~~(a)~~ *(b)* ~~An~~ *Janitors who have not been offered employment or who have been discharged, or an* employee, who was not offered employment or who has been discharged in violation of this chapter by a successor contractor or successor subcontractor, or an agent of the employee may bring an action against a successor ~~contractor or successor subcontractor~~ *contractor, successor subcontractor, or in-house provider.*

Janitors are the employees under the Act; therefore, this section of the bill is repetitive and could create confusion. The author may wish to amend the bill to correct this drafting error.

7. Prior/Related Legislation:

AB 2364 (Haney, 2024): would (1) require the Division of Labor Standards Enforcement (DLSE) to establish an advisory committee to approve a comprehensive set of recommended regulations establishing janitorial standards that protect the health and safety of workers; (2) makes changes to the registration requirements for certain janitorial employers; and (3) increases the amount per participant that janitorial employers must pay to qualified organizations providing required sexual violence and harassment prevention training sessions. *AB 2364 was previously heard and passed by this Committee and is now pending in Senate Appropriations Committee.*

AB 350 (Solorio, 2011) would have extended the 60 days of transitional employment to 90 days and extended the Displaced Janitors Act to also cover security, landscapers, window cleaning and food cafeteria services. *AB 350 failed passage on the Senate floor.*

SB 1521 (Alarcon, 2004, Vetoed) would, among other things, have extended the 60 days of transitional employment to 90 days. *AB 1521 was vetoed by Governor Schwarzenegger.*

SB 20 (Alarcon, Chapter 795, Statutes of 2001) enacted the Displaced Janitors Opportunity Act, as described above.

SUPPORT

SEIU Local 87 (Sponsor)
California Labor Federation
California School Employees Association

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
Brea Chamber of Commerce
Building Owners and Managers Association of California
California Association of Health Facilities

California Association of Winegrape Growers
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Hospital Association
California League of Food Producers
California Restaurant Association
California Retailers Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Civil Justice Association of California
Coalition of Small and Disabled Veteran Businesses
Corona Chamber of Commerce
Cupertino Chamber of Commerce
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Fairfield-Suisun Chamber of Commerce
Flasher Barricade Association
Folsom Chamber of Commerce
Fontana Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Institute of Real Estate Management (IREM)
La Cañada Flintridge Chamber of Commerce
La Verne Chamber of Commerce
Lincoln Area Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
NAIOP California
National Federation of Independent Business
Oceanside Chamber of Commerce
Pacific Association of Building Service Contractors
Paso Robles Templeton Chamber of Commerce
Rancho Cordova Chamber of Commerce
Rocklin Chamber of Commerce
Roseville Area Chamber of Commerce
Sacramento Metropolitan Chamber of Commerce
San Manuel Band of Mission Indians
Santa Maria Valley Chamber of Commerce
Shingle Springs/Cameron Park Chamber of Commerce
Simi Valley Chamber of Commerce
Tri County Chamber of Commerce
Tulare Chamber of Commerce
West Hollywood Chamber of Commerce
West Ventura County Business Alliance
Yorba Linda Chamber of Commerce
Yuba-Sutter Chamber of Commerce

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2448	**Hearing Date:**	June 19, 2024
Author:	Jackson		
Version:	May 16, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Electric Vehicle Economic Opportunity Zone: County of Riverside

KEY ISSUE

This bill directs the Labor Workforce and Development Agency (LWDA) to administer, upon appropriation, an Electric Vehicle Economic Opportunity Zone (EVEOZ) for the County of Riverside, in order to make electric vehicle manufacturing jobs and education more accessible, as specified.

ANALYSIS

Existing law:

1) Establishes the Labor Workforce and Development Agency (LWDA) under the supervision of an executive officer known as the Secretary. (Government Code §15551)

2) Tasks the LWDA with serving California workers and businesses by improving access to employment and training programs; enforcing California labor laws to protect workers and create an even playing field for employers; and administering benefits that include workers' compensation, unemployment insurance, disability insurance, and paid family leave. (Government Code §15550 et seq.)

3) Establishes, within the LWDA, the position of Deputy Secretary for Climate to assist in the oversight of California's workforce transition to a sustainable and equitable carbon neutral economy. (Government Code §15563.2)

4) Establishes the California Workforce Development Board (CWDB), under the LWDA, as the body responsible for assisting the Governor in the development, oversight, and continuous improvement of California's workforce system, including its alignment to the needs of the economy and the workforce. (Unemployment Insurance Code §14010 et seq.)

5) Provides that members of the CWDB are appointed by the Governor and are representative of the areas of business, labor, public education, higher education, economic development, youth activities, employment and training, as well as the Legislature (Unemployment Insurance Code §14011 §14012)

6) Authorizes the California Air Resources Board (CARB) to protect public health from the harmful effects of air pollution and lead state efforts to address global climate change (Health and Safety Code §38510 & §38600 et seq.)

This bill:

1) Establishes, upon appropriation by the Legislature, an Electric Vehicle Economic Opportunity Zone (EVEOZ) for the County of Riverside that is administered by the LWDA for the purpose of creating programs to make electric vehicle manufacturing jobs and education more accessible to lower income communities.

2) Requires the County of Riverside to assist in determining the geographical boundaries of the EVEOZ.

3) Authorizes the LWDA to partner with educational institutions to develop EVEOZ education and training programs that may include, but are not limited to, any of the following:

    a. A fully accredited associate or bachelor's collegiate electric vehicle manufacturing and engineering program.
    b. Workforce development related to electric vehicle and electric vehicle battery manufacturing.
    c. Career pathway, education, training, and support programs for electric vehicle service technician development.
    d. Career pathway, education, training, and support programs for electric vehicle charging station installation and service.
    e. Electric vehicle apprenticeship programs.

4) Authorizes the LWDA to partner with electric vehicle manufacturing businesses and local and national financial intuitions to develop EVEOZ investment programs that may include, but are not limited to, any of the following:

    a. Incentives, including providing business loans, tax credits, and grants, to build, modify, or upgrade electric vehicle manufacturing facilities within the geographical boundaries of the EVEOZ.
    b. Hiring programs and corporate subsidies for companies to onboard, train, and retain workers who reside within the geographical boundaries of the EVEOZ.

5) Requires any EVEOZ program to prioritize the recruitment and enrollment of workers or students of underprivileged economic status, as determined by the LWDA, that reside within the geographical boundaries of the EVEOZ.

6) Declares that establishing an EVEOZ in the County of Riverside would empower the people with economic and engineering skills, help make the transition to zero-emission vehicles more seamless, and would serve as a model for the establishment of future EVEOZs across the state.

COMMENTS

1. Race to Zero Emission Vehicles:

On September 23, 2020, Governor Newsom issued Executive Order (EO) No. N-79-20, setting new statewide goals for phasing out gasoline-powered vehicles. Under the EO, 100 percent of in-state sales of new passenger cars and trucks will be zero-emission by 2035 and 100 percent of medium-and heavy-duty vehicles in the State will be zero-emission by 2045,

where feasible. CARB, the Energy Commission, the Public Utilities Commission, and other agencies have been directed to accelerate deployment of affordable fueling and charging options for zero-emission vehicles in ways that serve all communities, particularly low-income and disadvantaged ones. In August of 2022, CARB adopted standards intended to further the EO and set interim targets. In the lead up to the 2035 deadline, 35 percent of new passenger vehicles sold by 2026 will be zero-emission and 68 percent will be by 2030. Transportation is the State's top source of planet-warming greenhouse gas emissions. These mandates are an enormous step towards reducing dependence on fossil fuels and meeting our climate goals.

The transition to zero emissions will not be easy. For many people the price of an electric vehicle is prohibitive. State subsidies meant to assist with the purchase are inconsistent and underfunded. An article from CalMatters identified a "strikingly homogenous" portrait of who owns electric vehicles in California. Communities with mostly white and Asian, college-educated and high-income residents have the state's highest contributions of zero-emission cars and most are concentrated in Silicon Valley or affluent coastal areas of Los Angeles and Orange counties[1]. In the 20 California zip codes where Latinos make up more than 95% of the population, including parts of Kings, Tulare, Fresno, Riverside, and Imperial counties, less than 1 percent of cars are electric[2].

California's workforce will need to transform to meet the state's ambitious climate goals. CARB estimates that 64,700 jobs will be lost because of the zero emission mandate. However, CARB also estimates 24,900 jobs will be gained in other sectors. In addition to retraining/upskilling workers employed in the fuels, vehicles, and transportation supply chains, the state needs to construct a massive charging infrastructure.

2. Riverside County:

In the past decade, the County of Riverside experienced a boom in warehouse growth. Trucks bring goods in from the Los Angeles and Long Beach ports to be shipped across the county. This movement of goods ties up roads, causing significant pollution. Warehouse workers also contribute to this pollution, as many do not earn enough money to live close to their jobs. The health consequences of this boom are clear; the region has unusually high incidences of asthma and cancer[3]. The Inland Empire, which is comprised of Riverside and San Bernardino Counties, is a major economic hub with a rapidly growing population. Despite this, its workers earn less than statewide averages, and there are fewer college graduates than in most metro areas. Local leaders are looking to reduce pollution and diversify the workforce. This unique combination of factors creates an opportunity for the County of Riverside to reap significant benefits as the state transitions to zero-emission vehicles.

3. Committee Comments:

This bill would direct the LWDA, upon appropriation, to administer an EVEOZ and authorize the LWDA to partner with educational institutions and manufacturing businesses to make the electric vehicle industry more accessible. Aside from requiring any EVEOZ

[1] Nadia Lopes, Erica Yee, "Who buys electric cars in California-and who doesn't?," CalMatters, March 22, 2023, Who buys electric cars in California? - CalMatters
[2] Ibid.
[3] Jim Newton, "Pushback to Inland Empire Warehouse Boom Spans California's Economic, Racial Divides," CalMatters, February 23, 2023, https://calmatters.org/commentary/2023/02/inland-empire-warehouse-class-divide/

program to prioritize the recruitment and enrollment of workers or students of underprivileged economic status, this bill does not place any specific requirements on the LWDA or on the programs. The committee recommends that the author look at existing high road training partnerships (HRTPs), administered under the CWDB, for inspiration. The Inland Empire has several ongoing HRTPs related to upskilling workers for the green economy and the health care sector. Additionally, California can expect to receive a guaranteed $41.9 billion from the federal Infrastructure Investment and Jobs Act (IIJA) out of a total $1.2 trillion investment[4]. More than $800 million in IIJA funding is dedicated to investments in green economy workforce development. The author may also look for inspiration here as well.

4. Suggested Amendments:

Currently, the bill requires the County of Riverside to assist in determining the geographical boundaries of the EVEOZ. The following amendments, suggested by the Senate Local Government Committee, would instead require the LWDA to collaborate with the County to determine the boundaries.

15564…

(2) The *agency shall collaborate with the* County of Riverside ~~shall assist~~ in determining the geographical boundaries of the EVEOZ.

5. Need for this bill?

According to the author:

"AB 2448 creates an Electric Vehicle Economic Opportunity Zone (EVEOZ) in Riverside County, to be managed by the California Competes Tax Credit Committee. This bill seeks to build out Riverside County's ability to build relationships with education and industry to build economic zones of opportunity, benefiting local businesses, local career/job growth, and the climate goals of California."

6. Proponent Arguments

The Southwest California Legislative Council (SWCLC) is in support of the measure, stating:

"AB 2448's vision aligns perfectly with the SWCLC's commitment to fostering economic development, environmental sustainability, and educational advancement in Southwest California. By focusing on electric vehicle manufacturing, this bill not only positions Riverside County as a leader in the green economy, but also addresses critical workforce development needs, ensuring that our communities are equipped with the skills necessary for the jobs of the future.

Furthermore, AB 2448 acknowledges the unique potential of our region to contribute to California's goals while promoting economic inclusivity. The SWCLC is particularly

[4] "IIJA By The Numbers: federal funds improving transportation in California," Rebuilding California, February 2, 2024, https://rebuildingca.ca.gov/iija-by-the-numbers/#:~:text=IIJA%20includes%20funding%20for%20multiple

supportive of the bill's provisions for local involvement in determining the geographical boundaries of the EVEOZ, ensuring that the initiative is tailored to the specific needs and opportunities of our communities."

7. Opponent Arguments:

None received.

8. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and the Senate Local Government Committee.

9. Prior Legislation:

AB 2204 (Boerner, Chapter 348, Statutes of 2022) established, upon appropriation, the position of Deputy Secretary for Climate within the LWDA, as specified.

SUPPORT

Karma Automotive, LLC
Southwest California Legislative Council

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2538	**Hearing Date:**	June 19, 2024
Author:	Grayson		
Version:	March 21, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Cesar Diaz		

SUBJECT: Department of Forestry and Fire Protection: seasonal firefighters

KEY ISSUE

This bill requires the California Department of Human Resources (CalHR), the State Personnel Board (SPB) and any other relevant state agency to take various actions to ensure the California Department of Forestry and Fire Protection (CAL FIRE) may employ seasonal firefighters for more than 9 months in a consecutive 12-month period to address emergency fire conditions and personnel shortages.

ANALYSIS

Existing law:

1) Authorizes temporary appointments to positions where there is no employment list, but prohibits a person from serving in one or more positions under temporary appointment longer than 9 months in 12 consecutive months. (Section 5, Art. VII, Cal. Const)

2) Establishes that it is the policy of the state that the normal workweek of permanent employees in fire suppression classes of CAL FIRE not exceed 84 hours per week, and authorizes compensation in cash or compensating time off, in accordance with department regulations, for work in excess of the designated workweek. (Government Code §19846 (a))

3) Establishes that if the provisions of existing law with regard to the workweek hours, as mentioned above, are in conflict with the provisions of a memorandum of understanding (MOU), the terms of the MOU must be controlling, as provided. (Government Code §19846 (b))

4) Requires all state agencies in which there are employees who are not subject to the state civil service to submit all information necessary for determination of the workweek of each employee to the CalHR. In addition, if these provisions are in conflict with a MOU, the terms of the MOU must be controlling, as provided. (Government Code §19847)

5) Establishes, pursuant to Section 3 of Article VII of the California Constitution, the SPB which must enforce civil service statutes, and by majority vote of all its members, prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions. In addition, the Executive Officer of the SPB is required to administer civil service statutes under the rules of the SPB.

6) Requires the SPB to prescribe rules consistent with a merit based civil service system to govern appointments classifications, examinations, probationary periods, disciplinary actions, and other matters related to the SPB's authority under Article VII of the California Constitution. (Government Code §18502)

7) Requires the SPB to establish minimum qualifications for determining the fitness and qualifications of employees for each class of position, and authorizes the CalHR to require applicants for examination or appointment to provide documentation as it deems necessary to establish the applicants' qualifications. (Government Code §18931)

8) Requires the CalHR to adopt rules governing hours of work, among other things, and each appointing power to administer and enforce such rules. (Government Code §19849)

9) Authorizes the CalHR to provide by rule for compensation to employees who are required to report back to work after completion of the normal workday, workweek, or when off duty, among other provisions. (Government Code §19849.1)

10) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA) but leaves to the states the regulation of collective bargaining in their respective public sectors. (29 United State Code § 151 et seq.)

    While the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees generally have no collective bargaining rights absent specific statutory authority establishing those rights.

11) Provides several statutory frameworks under California law to provide public employees collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. These include the Ralph C. Dills Act, commonly referred to as the "Dills Act," which provides collective bargaining for state employees of the executive branch and establishes a process for determining wages, hours, and terms and conditions of employment for represented employees. (Government Code §3512 et seq)

12) Establishes, pursuant to the Dills Act, that the scope of representation is limited to wages, hours, and other terms and conditions of employment, except consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.[1] (Government Code §3516)

13) Requires, pursuant to the Dills Act, the Governor or its representatives to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. (Government Code §3517)

14) Establishes the PERB, a quasi-judicial administrative agency charged with administering various statutory frameworks governing employer-employee relations, resolving disputes,

[1] Section 3516 of the Gov. Code.

and enforcing the statutory duties and rights of public agency employers and employee organizations, but provides the City, and County, of Los Angeles a local alternative to PERB oversight. Administration of the Dills Act is among these statutes. (Government Code §3541 et seq & §3509)

This bill:

1) Requires CalHR, the SPB and any other relevant state agency to take necessary actions to ensure CAL FIRE may employ seasonal firefighters for more than 9 months in a consecutive 12-month period during fire emergency conditions and personnel shortages.

2) Requires, in any consecutive 12 month period, the Director of CAL FIRE to determine if current staffing levels are insufficient to respond to state needs related to fire protection, emergency response, and stewardship of the state's natural resources, thereby requiring the employment of seasonal firefighters for a period longer than 9 months.

3) Requires CAL FIRE to employ seasonal firefighters through an employment list and to work with CalHR to implement the necessary changes pursuant to this section beginning January 1, 2025.

COMMENTS

1. Need for this bill?

According to the author:

"The increasing ferocity of wildfires has required a longer commitment by firefighters to combat these disasters. The threat of profound loss of property and lives goes beyond the 9-month tenure of firefighters. The problem is exacerbated by the loss of CCC hand crews."

The author states that in 2023 "CAL FIRE crews fought 7,127 wildfires that burned over 300,000 acres across the state. The mental health of CAL FIRE firefighters is placed at risk by the extremely long hours working under extreme duress, sometimes for a month on duty without a day off." The author also argues that "conservancy studies have shown the health risks that come with working long hours at 'point zero' of these fires that can sometimes burn for weeks on end. Prolonged exposure to the types of harmful air particulates created by these fires causes immediate and long-term physical and mental health risks."

2. Proponent Arguments

According to the California Professional Firefighters:

"Permanent intermittent employees, also known as seasonal firefighters, are critical to the mission of wildland fire suppression during wildfire season, providing support to the full-time firefighters on wildland, rural, and structural firefighting operations. However, these employees are limited to working 9 consecutive months of each 12-month period, restricting their usage even when they may be needed during emergency fire conditions."

"Wildfire season is no longer limited to a set time of year and has instead become a year-round phenomenon that requires constant monitoring and vigilance to ensure that small fires do not explode into significant emergency situations. By allowing CAL FIRE to bring on these employees for longer than 9 months, the department will be granted the flexibility that they need to ensure that the mission of protecting California and its communities is carried out no matter the time of year."

3. Opponent Arguments:

None received.

4. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and the Senate Committee on Natural Resources and Water.

5. Prior Legislation:

AB (Flora, 2023) proposed to require the CAL FIRE to implement a 56-hour maximum workweek for employees in state Bargaining Unit (BU) 8 and to make such changes on or before December 1, 2026, and includes legislatives findings and declarations for these purposes. *This bill was pulled from the hearing by the author and died without further action.*

SUPPORT

Cal Fire Local 2881 (Sponsor)
California Forestry Association
California Professional Firefighters

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2696	**Hearing Date:**	June 19, 2024
Author:	Rendon		
Version:	June 10, 2024		
Urgency:	No	**Fiscal:**	No
Consultant:	Emma Bruce		

SUBJECT: Labor-related liabilities: direct contractor and subcontractor

KEY ISSUE

This bill authorizes a joint labor-management committee (JLMC) to bring an action in court against a direct contractor for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed to a wage claimant by the direct contractor for the performance of private work.

ANALYSIS

Existing federal law:

1) Permits, pursuant to the Labor Management Cooperation Act of 1978, the establishment of plant, area, and industrywide labor management committees, which have been organized jointly by employers and labor organizations representing employees in that plant, area, or industry, as specified. (29 U.S.C. §175a)

2) Establishes labor management committees for the purpose of improving labor management relationships, job security, organizational effectiveness, enhancing economic development, or involving workers in decisions affecting their jobs. (29 U.S.C. §175a)

Existing state law:

1) Establishes within the Department of Industrial Relations (DIR) the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC), and empowers the LC to ensure a just day's pay in every work place and to promote justice through robust enforcement of labor laws. (Labor Code §79-107)

2) Requires, for contracts entered into on or after January 1, 2022, a direct contractor making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other private work, to assume, and be liable for, any debt owed to a wage claimant or third party on the wage claimant's behalf, incurred by a subcontractor at any tier acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the contract between the direct contract and the owner. (Labor Code §218(a)(1))

3) Extends the direct contractor's liability to any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor covered by the contract, unless specified requirements are met. (Labor Code §218.8(a)(2))

4) Provides that if a worker employed by a subcontractor on a private construction project is not paid the wage, fringe or other benefit payment or contribution owed by the subcontractor, the direct contractor of the project is not liable for any associated penalties or liquidated damages unless the direct contractor had knowledge of the subcontractor's failure to pay the specified wage, fringe or other benefit payment or contribution, or the direct contractor fails to comply with all of the following requirements:

   a. The contractor must monitor the payment by the subcontractor of wage, fringe or other benefit payment or contribution to the employees or the labor trust fund, by periodic review of the subcontractor's payroll records, as specified.
   b. Upon becoming aware of the failure of the subcontractor to pay wages, the contractor must diligently take corrective action to halt or rectify the failure.
   c. Prior to making final payment to the subcontractor, the contractor must obtain an affidavit from the subcontractor affirming that all workers have been properly paid. (Labor Code §218.8(a)(3))

5) Permits the LC to enforce against a direct contractor the liability for unpaid wages, liquidated damages, interest, and penalties created by the performance of labor on a private work described in 2) above. (Labor Code §218.8(b)(a))

6) Authorizes a JLMC, as specified, to bring an action in any court of competent jurisdiction against a direct contractor or subcontractor at any tier to enforce liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor on a private work described in 2) above. (Labor Code §818.8(b)(3))

7) Authorizes a court to award a prevailing plaintiff its reasonable attorney's fees and costs, including expert witness fees, for claims brought by a JLMC, as specified. (Labor Code §818.8(b)(3))

This bill:

1) Authorizes a JLMC, as specified, to bring an action in any court of competent jurisdiction against a direct contractor to enforce liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the direct contractor on account of the performance of the labor on a private work.

2) Authorizes a court to award a prevailing plaintiff its reasonable attorney's fees and costs, including expert witness fees, for claims brought pursuant to this bill's provisions.

COMMENTS

1. Background:

Joint Labor-Management Committees

JLMCs, established pursuant to the federal Labor Management Cooperation Act of 1978, aim to improve communications and working relationships between labor and management,

provide workers and employers with opportunities to explore joint approaches to problems, and develop ways to increase productivity and promote economic development. In California, JLMCs play a vital role in ensuring compliance with public and private works statutes.

In 2017, the Legislature passed AB 1701 (Thurmond) requiring direct contractors to assume and be liable for any wages, fringe benefits, or contributions owed to a subcontractor's employees for the performance of private work. Before the bill passed, direct contractors were able to look away from some of the disreputable labor practices of their subcontractors without risking financial penalties. To help enforce this newly established joint liability, JLMCs were authorized to bring a claim against either the direct contractor or subcontractor to collect on the subcontractor's unpaid wages.

However, in 2021, the Legislature sought to create serious economic consequences for direct contractors who did not properly pay their workers. Thus, the Legislature passed SB 727, which currently extends the liability established under AB 1701 to include the penalties and liquidated damages associated with wages, fringe benefits, and contributions that go unpaid by subcontractors. SB 727 also established a mechanism for direct contractors to avoid liability if they meet specified requirements. Again, JLMCs may bring a claim to collect on this joint liability.

In response to AB 1701 and SB 727, direct contractors began directly hiring workers rather than using subcontractors. In these instances, JLMCs lose their enforcement capabilities. This bill, AB 2696, would authorize JLMCs to bring a claim to collect unpaid wages, fringe benefits, or contributions owed to a direct contractor's *own* employee, thus closing this gap in enforcement.

2. Wage Theft:

Wage theft is a persistent issue across California industries. Every year, tens of thousands of workers lose millions of dollars in stolen wages. Despite having some of the strongest labor protections in the nation, California struggles with enforcement. Wage theft is particularly prevalent in the construction industry. In 2021, the Wage Claim Adjudication Unit of the Labor Commissioner's Office (LCO) found that construction, along with full-service restaurants and retail stores were the industries with the highest number of wage claims. These industries had approximately 4,200 wage claims, which represented nearly a quarter of all claims statewide[1]. A 2024 audit of the LCO, found that due to an inefficient wage claim process, the LCO often takes two years or longer to resolve the claims it receives. Additionally, severe understaffing contributes to a rapidly growing backlog of cases.

By allowing JLMCs to pursue a claim to collect unpaid wages owed by a direct contractor to their own employee for the performance of private work, this bill would provide another avenue to cut down on wage theft in the construction industry.

3. Need for this bill?

According to the author:

[1]Wage Claims Adjudication Unit, Annual Report Pursuant to Labor Code Section 96.1, Calendar Year 2021, p.6.

"Current law allows for federally certified joint Labor-Management Committees to have direct enforcement authority for subcontractor wage violations that are subject to 'joint' general contractor-subcontractor liability. Despite this, LMCs lose that enforcement capability when a general contractor uses their own workforce, or 'self-performs', construction work instead of subcontracting it out. This is a loophole that allows general contractors to avoid liability for violating labor law under these circumstances.

AB 2696 closes a loophole in existing law by extending Labor-Management Committees' enforcement authority to include direct enforcement on a self-performing general contractor. Existing joint liability for subcontractor wage violations remains intact."

4. Proponent Arguments:

The sponsors of the measure, the California Conference of Carpenters, state:

"AB 1701 and SB 727 established joint liability for General Contractors for wages violations committed by their subcontractors. That joint liability covers 'any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor.' Passage of these statutes clearly recognized the need for greater wage theft enforcement. Consequently, the bills also provided direct enforcement authority for federally certified joint Labor-Management Committees (LMC's).

Unfortunately, unscrupulous General Contractors have found a way to avoid this enhanced LMC enforcement. They are increasingly self-performing work through the direct hire of workers to do a portion of the construction project that previously could or would have been subcontracted out. Since there is no subcontractor to share 'joint liability,' our LMC's lose their authority to enforce violations directly on self-performing General Contractors.

AB 2696 will simply allow federally certified Labor-Management Committees to apply their enforcement authority directly to General Contractors who are violating already existing wage laws."

5. Opponent Arguments:

The Western Electrical Contractors Association is opposed to the measure, stating:

"Section 218.8, added to the Labor Code in 2021 by SB 727 (Leyva), has been instrumental in allowing LMCCs to file lawsuits against general contractors due to subcontractors' alleged failure to pay proper wages. SB 727's underlying rationale addressed the potential need for more knowledge among subcontractor employees about the general contractor or owner and how to file a wage claim. LMCCs have used this provision to file numerous lawsuits against contractors over the past two years.

WECA believes the proposed expansion of Section 218.8, as contained in AB 2696, is redundant from an enforcement perspective. Employees of contractors are well-informed about their direct employer and have multiple avenues to address wage issues. AB 2696 only encourages unnecessary lawsuits that lack a legitimate enforcement purpose."

6. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and Retirement Committee and the Senate Judiciary Committee.

7. Prior Legislation:

AB 2182 (Haney, 2024) would, among other things, provide representatives of a JLMC reasonable access to active public works job sites to monitor compliance with prevailing wage and apprenticeship requirements. *This bill is pending in the Senate Judiciary Committee.*

SB 727 (Leyva, Chapter 338, Statutes of 2021) extended direct contractor liability to penalties, liquidated damages, and interest owed to a subcontractor's employees for the performance of a private work and established specified safe harbor provisions.

AB 1701 (Thurmond, Chapter 804, Statutes of 2017) established direct contractor liability for the wages, fringe benefits, or contributions of all workers on a private construction project, in the event that the subcontractor directly employing the workers fails to pay them.

AB 1897 (Hernández, Ch. 728, Stats. 2014) required a client employer, defined as "a business entity that obtains or is provided workers to perform labor within the usual course of business from a labor contractor" to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for the payment of wages and the failure to obtain valid workers' compensation coverage.

SUPPORT

California Conference of Carpenters (Sponsors)
Western States Regional Council of Carpenters

OPPOSITION

Housing Contractors of California
Western Electrical Contractors Association

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	AB 2873	**Hearing Date:**	June 19, 2024
Author:	Garcia		
Version:	May 20, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Breaking Barriers to Employment Initiative: grants

KEY ISSUE

This bill makes various changes to the application and reporting requirements for the Breaking Barriers to Employment Initiative (BBEI) under the California Workforce Development Board (CWDB), including: 1) providing an exception to the requirement that applicants partner with a lead workforce development board or experienced community based organization (CBO), 2) reserving at most 15 percent of all BBEI funds for applicants that avail themselves of this exception, and 3) deleting specified CWDB reporting requirements.

ANALYSIS

Existing federal law:

1) Enacts the Workforce Innovation and Opportunity Act (WIOA) of 2014 in order to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with skilled workers. WIOA coordinates employment and training services for adults, dislocated workers, and youth through grants to states that are implemented at the state and local level. (29 U.S.C. §3101)

2) Requires federally funded workforce programs operating under the auspices of WIOA to measure workforce program outcomes using a variety of metrics, including those pertaining to the wages and employment of program participants who have exited these programs. This is typically done using Unemployment Insurance (UI) quarterly base wage data already secured through the UI tax collection process. (29 U.S.C. §3141)

Existing state law:

1) Establishes the California Workforce Development Board (CWDB), under the Labor Workforce and Development Agency, as the body responsible for assisting the Governor in the development, oversight, and continuous improvement of California's workforce system, including its alignment to the needs of the economy and the workforce. (Unemployment Insurance Code §14010 et seq.)

2) Enacts the California Workforce Innovation and Opportunity Act to make programs and services available to individuals with employment barriers. (Unemployment Insurance Code §14000 et seq.)

3) Establishes the Breaking Barriers to Employment Grant Initiative (BBEI), administered by the CWDB, which provides individuals with barriers to employment services to help enter, participate in, and complete broader workforce preparation, training, and education programs aligned with regional labor market needs. Program graduates should have the skills and competencies necessary to enter the labor market and earn wages that lead to self-sufficiency and economic security. (Unemployment Insurance Code §14030 et seq.)

4) Specifies that the BBEI will accomplish its goals by providing supplemental funding and services at the local and regional level through collaborative partnerships between community based organizations (CBOs) and local workforce development boards. (Unemployment Insurance Code §14031)

5) Defines "individual with employment barriers" as an individual with any characteristic that substantially limits their ability to obtain employment, as specified, including low-income individuals, ex-offenders, foster youth, and single parents, among others. (Unemployment Insurance Code §14005(j)).

6) Provides that activities eligible to receive BBEI funds include, but are not limited to, all of the following:

    a. English language improvement training
    b. High school diploma and GED acquisition
    c. Skills and vocational training that aligns with regional labor market needs
    d. Industry certifications
    e. Mental health services (Unemployment Insurance Code §14035)

7) Requires the CWDB to provide outreach to prospective BBEI applicants. (Unemployment Insurance Code §14032(C))

8) Requires an application for a BBEI grant submitted to the CWDB to include, but not be limited to, all of the following:

    a. Designation of a lead workforce development board or CBO with experience in providing services, as specified.
    b. The designation of one or more targeted populations that will be served by the grant.
    c. The designation of a service area, as specified.
    d. An explanation of the specific purpose and goals of the grant award, the roles and responsibilities of the lead applicant and partner entities, and a discussion of how funds will be used and success will be measured, the number of individuals who will be served, and the services provided to these individuals. (Unemployment Insurance Code §14032(f))

9) Requires BBEI grants to be awarded on a competitive basis and directs the CWDB to develop criteria for selecting proposals. (Unemployment Insurance Code §14032(d))

10) Requires the CWDB to evaluate grant performance based on specified criteria, including the ability of individuals to succeed once they transition into the broader workforce and education system and labor market. Requires that this be measured by tracking these individuals utilizing existing performance monitoring systems and metrics governing relevant programs and outcomes, as specified. (Unemployment Insurance Code §14033(b))

11) Requires grant applicants to provide necessary information to the CWDB to facilitate grant performance evaluation, and requires the CWDB to issue an interim and final report on the program that contains specified information, including policy recommendations to provide guidance to the Legislature and Governor in scaling a permanent program. (Unemployment Insurance Code §14033 (c) and (e))

12) Authorizes the board to develop necessary policies to ensure that grants awarded under the BBEI are consistent with the initiative's intent. (Unemployment Insurance Code §14036)

This bill:

1) Provides an exception to the requirement that BBEI grant applicants partner with a lead workforce development board or CBO with experience in providing services as specified, if the applicant demonstrates that securing a partner entity was not possible before the application deadline closed.

2) Requires applicants who avail themselves of the exemption above to satisfy the remaining criteria for the selection of BBEI grant recipients.

3) Provides that no more than 15 percent of the BBEI's funding shall be awarded to applicants who receive an exemption under the requirement in 1) above.

4) Removes the requirement that a grant proposal that proposes to serve clients across one or more workforce development areas shall include a commitment to notify each workforce development board in the proposed service area.

5) Changes the grant application evaluation criterion that requires applicants to demonstrate the ability of individuals to succeed in both the broader workforce and education system and labor market once they transition into the broader system. This bill *authorizes, rather than requires*, this to be measured by tracking BBEI participants using existing performance monitoring systems and metrics governing relevant programs and outcomes once the individuals transition into the broader system.

6) Removes the requirement that the CWDB issue an interim report no later than six months following the midpoint of a program funded by the BBEI.

7) Removes the requirement that the CWDB's final report on a program include policy recommendations to provide guidance to the Legislature and Governor, and instead requires the final report to include demographic data and data on languages spoken by populations served by the grant.

8) Authorizes the board to provide technical assistance to grant recipients to carry out the BBEI, and allows the board to provide such technical assistance through a competitive contract with a nonprofit organization.

COMMENTS

1. Background:

Breaking Barriers to Employment Initiative (BBEI):

In October 2017, the Legislature approved AB 1111 (Garcia, 2017), which established the BBEI. The purpose of the initiative is to create a grant program that provides individuals with barriers to employment the services they need to enter, participate in, and complete broader workforce preparation, training, and education programs aligned with regional labor market needs. Since its passage, the Legislature has appropriated additional funding for the program, including $15 million in 2018, $30 million in 2021, and $5 million in 2023.

The BBEI supplements existing workforce and education programs by providing services to ensure the success of individuals either preparing to enter or already enrolled in workforce and education programs. Eligible services include English language training, entrepreneurial training, work experience, mentoring, remedial education skills, mental health services, industry certifications, and more. The BBEI primarily serves populations often not eligible for other state and federal programs, for instance, undocumented Californians. These services are delivered through a collaborative partnership between mission-driven, community-based organizations with experience in providing services to the target population and local workforce development boards.

An Evaluation of AB 1111: BBEI Implementation and Early Outcomes Report (2022):

As part of the evaluation of AB 1111, the Corporation for a Skilled Workforce and Social Policy Research Associates completed a report on the bill's implementation for the CWDB[1]. The report analyzed some of the 26 BBEI grants awarded in December of 2019. The study team found that, overall, grantees accomplished many of their program goals, despite operating during the early days of the COVID-19 pandemic. For the most part, programs exceeded their enrollment goals and served the intended populations. Most participants (84 percent) received basic career services, such as job search assistance and labor market information. Furthermore, about fifty percent of participants were employed about six months after leaving the program and one-third showed measurable skill gains.

The report also identified several ways to improve the BBEI. Specifically, it highlighted the need to strengthen partnerships between CBOs and local workforce development boards, a key goal. The intention behind this is to increase participants' dual enrollment in BBEI programs and other workforce or education programs. Although applicants are required to identify a lead partner to receive a grant, many did not maintain consistent collaboration. The study team recommended that future rounds of funding define clearer expectations for collaboration between partners and require further communication. Additionally, the team recommended refining and increasing technical assistance efforts to ensure small CBOs, without a pre-existing relationship with a local workforce development board, can participate.

Committee Comments:

[1] Christian Geckeler, et al., "An Evaluation of AB 1111: BBEI Implementation and Early Outcomes," CSW and SPR, May 31, 2022, An Evaluation of AB 1111: The Breaking Barriers to Employment Initiative Implementation and Early Outcomes Report

This bill would provide an exception to the requirement that BBEI grant applicants partner with a lead workforce development board or experienced CBO, if the applicant demonstrates that securing a partner entity was not possible before the application deadline closed. It would also reserve, at most, 15 percent of the BBEI's funds for applicants that avail themselves of this exception. The committee understands the concern the author is trying to address and agrees it is important to include small CBOs. However, the committee raises the following questions: *Should we be awarding state money to CBOs that are unable to immediately secure a partnership?; Can we provide stronger technical assistance before we alter the partnership requirement?; Is this solution contrary to the recommendations provided in the 2022 report?*

It is important to balance efforts to encourage small CBO participation with efforts to ensure state funds are responsibly spent. This bill would also delete the recently added requirement that the CWDB complete an interim report for all grant projects and allow CBOs to develop their own programmatic evaluation outcomes, outside of existing federal ones. Although initial reports find the BBEI funds were well spent, we should remain diligent.

2. Need for this bill?

According to the author:

"AB 2873 seeks to address the challenges faced by community based organizations in accessing grant funding by setting aside 15% of future funds to community based organizations who meet all other grant requirements but were unable to secure a local board before the grant deadline. Proof needs to be submitted that attempts were made to partner with a local workforce development board in order to qualify for this funding. By allowing CBOs to submit their application without the partnership requirement ensures that organizations facing barriers in establishing partnerships still have access to funding. This change promotes equitable access to funding and encourages new partnerships to form. This bill also makes explicitly clear that programmatic outcomes need not only be developed through existing federal frameworks. This allows for broader outcomes to be considered and encourages partnerships to design workforce development programming that is more responsive to community needs. By allowing the California Workforce Development Board to holistically evaluate nonprofits who may provide technical assistance, they will be able to better address some challenges that previous grantees faced when attempting to connect with local workforce development boards."

3. Proponent Arguments:

According to the sponsors, the California Workforce Association:

"In CWA's conversations with Breaking Barriers coalition partners, it became clear that some smaller prospective grantees were unable to secure a local workforce board as a partner entity. This was largely due to grant timelines and the sheer demand of the program. The proposed change to Breaking Barriers through AB 2873 sets aside 15% of any future allocated funds to prospective grantees who were unable to secure a workforce board partner entity before the deadline but were able to meet all other requirements. Another concern the coalition raised involves what a CBO may consider in their programmatic outcomes. As the statute currently exists, prospective grantees must design their programmatic outcomes in a manner consistent with existing federal frameworks. A key component to Breaking Barriers

is that it seeks to target populations who may not be well covered by existing programs. As such, it is difficult for CBOs who are attempting to target these populations to be competitive for the program. The proposed changes in AB 2873 seek to allow prospective grantees to measure their programmatic outcomes in ways that may not line up with existing federal frameworks."

4. Opponent Arguments:

None received.

5. Prior Legislation:

AB 628 (Garcia, Chapter 323, Statutes of 2021), among other things, expanded the BBEI grant evaluation criteria and the list of eligible activities grants can fund, as well as required the CWDB to issue specified reports to the Legislature and the Governor on the BBEI.

SB 866 (Committee on Budget and Fiscal Review, Chapter 53, Statutes of 2018) exempted all criteria, guidelines, and polices developed by the CWDB for the administration of the BBEI from the rulemaking provisions of the Administrative Procedures Act.

AB 1111 (Garcia, Chapter 825, Statutes of 2017) established the BBEI for the purpose of assisting individuals who have multiple barriers to employment to receive the remedial education and work readiness skills that will help them to successfully participate in training, apprenticeship, or employment opportunities that will lead to self-sufficiency and economic stability.

SUPPORT

California Workforce Association (Sponsor)
Alliance for Boys and Men of Color
California Opportunity Youth Network
California Immigrant Policy Center
Goodwill of the San Francisco Bay
Southwest California Legislative Council

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2901	**Hearing Date:**	June 19, 2024
Author:	Aguiar-Curry		
Version:	May 16, 2024		
Urgency:	No	**Fiscal:**	No
Consultant:	Alma Perez-Schwab		

SUBJECT: School and community college employees: paid disability and parental leave

KEY ISSUE

This bill requires K-12 public schools and community college districts to provide up to 14 weeks of paid leave for employees experiencing pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions.

ANALYSIS

Existing federal law:

1) Establishes the Family Medical Leave Act (FMLA) to provide most employees the right to take up to 12 weeks of job-protected, unpaid time off work for the birth or adoption of a child, due to a serious health condition of the employee, for an exigency arising out of the fact that the employee's close relative is a military member on active duty, and for the employee to care for a close relative with a serious health condition. Applies these provisions to private employers that employ 50 or more employees during each of 20 or more calendar workweeks in the current or preceding year. (28 U.S.C. §2601 et seq., §2611)

Existing state law:

2) Establishes the California Family Rights Act (CFRA) and makes it an unlawful employment practice for an employer to refuse to grant a request from an eligible employee to take up to a total of 12 weeks off in any 12-month period for specified family care and medical leave. Defines "family care and medical leave" for this provision to mean taking leave to care for a new child; to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner who has a serious health condition; to take leave because of the employee's own serious health condition; or for a qualifying exigency related to the employee's close family's active duty as a member of the Armed Forces, as specified. Provides that these provisions only apply to employers with five or more employees, and to employees who have held their job for at least a year and worked at least 1,250 hours in the previous 12-month period. (Government Code §12945.2)

3) Under Pregnancy Disability Leave (PDL) provisions, makes it an unlawful employment practice, unless based upon a bona fide occupational qualification, for an employer to refuse to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work. The employee is entitled to utilize any accrued vacation leave during this period of time. Also under the FEHA, reasonable accommodation of a disability related to pregnancy can include an extended leave of absence. (Government Code §12945)

4) Provides, through the State Disability Insurance (SDI) program, short-term wage replacement benefits to eligible workers who are unable to work due to a non-work-related illness or injury and for a maximum of 52 weeks. SDI benefits can be used for an illness or injury, either physical or mental, which prevents an employee from performing their regular and customary work and includes elective surgery, pregnancy, childbirth, or other medical conditions. (Unemployment Insurance Code §2601-3308)

5) Provides, through the Paid Family Leave (PFL) program, a component of SDI, eligible employees up to eight weeks of wage replacement benefits within a 12-month period to workers who need to take time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner; to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption; or to participate in a qualifying event because of a family member's military deployment. (Unemployment Insurance Code §3301)

6) Requires that school districts provide for a leave of absence from duty for a *certificated employee* of the school district who is required to be absent from duties because of pregnancy, miscarriage, childbirth, and recovery therefrom. Requires that the length of the leave of absence be determined by the employee and the employee's physician. (Education Code §44965)

7) Requires that school districts provide for a leave of absence from duty for a classified employee of the school district who is required to be absent from duties because of pregnancy, childbirth, and convalescence therefrom. Requires that the length of the leave of absence be determined by the employee and the employee's physician. (Education Code §45193)

8) Specifies that during each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of illness or accident for an additional period of five school months, *the amount deducted from the salary due to him or her for any of the additional five months in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed.* Specifies the following:

    a. Requires the sick leave, including accumulated sick leave, and the five-month period to run consecutively; and
    b. Limits the benefit to one five-month period per illness or accident. However, if a school year terminates before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year.
    (Education Code §44977)

9) Requires that certificated and classified employees participating in the differential pay program receive no less than 50 percent of their regular salary during the period of such absence. (Education Code §44983)

This bill:

Certificated or Classified School District Employees:

1) Requires a public school employer to provide for a leave of absence for a certificated or classified employee who is required to be absent from duty because the employee is experiencing or has experienced pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions.

2) Requires that the length of the leave of absence, including the date on which the leave commences and the date on which the employee shall resume duties, be determined by the employee and the employee's physician.

3) Requires the leave of absence to be with full pay, subject to a maximum of 14 weeks.

4) Prohibits a leave of absence taken from being deducted from any other leaves of absence available to the employee pursuant to state or federal regulations or laws.

5) Authorizes the paid leave to begin before and continue after childbirth if the employee is actually disabled by pregnancy, childbirth, termination of pregnancy, or related medical conditions.

6) Specifies that for part-time certificated or classified employees, the amount of paid leave per week, subject to a maximum of 14 weeks, shall be calculated in accordance with the following:

    a. If the part-time employee works a fixed number of hours per week, the employee shall receive weekly pay for the total number of hours the employee is normally scheduled to work for the public school employer.
    b. If the part-time employee does not work a fixed number of hours per week, the employee shall receive weekly pay in the amount of seven times the average number of hours the employee worked each day for the public school employer in the six months preceding the date that the employee began their paid leave.
        i. If the part-time employee has been employed for less than six months, the employee shall receive weekly pay in the amount of seven times the average number of hours the employee worked each day in the entire period preceding the date that the employee began their paid leave.

Academic or Classified Community College District Employees:

7) Requires a community college district to provide for a leave of absence from duty for an academic or classified employee of the community college district who is required to be absent from duty because the employee is experiencing or has experienced pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions.

8) Requires the length of the leave of absence, including the date on which the leave commences and the date on which the employee resumes duties, to be determined by the employee and the employee's physician.

9) Requires the leave of absence to be with full pay, subject to a maximum of 14 weeks.

10) Prohibits a leave of absence from being deducted from any other leaves of absence available to the employee pursuant to state or federal regulations or laws.

11) Authorizes the paid leave to begin before and continue after childbirth if the employee is actually disabled by pregnancy, childbirth, termination of pregnancy, or related medical conditions.

12) Specifies that for part-time academic or classified employees, the amount of paid leave per week, subject to a maximum of 14 weeks, shall be calculated in accordance with the following:

    a. If the part-time employee works a fixed number of hours per week, the employee shall receive weekly pay for the total number of hours the employee is normally scheduled to work for the public school employer.
    b. If the part-time employee does not work a fixed number of hours per week, the employee shall receive weekly pay in the amount of seven times the average number of hours the employee worked each day for the public school employer in the six months preceding the date that the employee began their paid leave.
        i. If the part-time employee has been employed for less than six months, the employee shall receive weekly pay in the amount of seven times the average number of hours the employee worked each day in the entire period preceding the date that the employee began their paid leave.

For both systems:

13) Specifies that nothing shall diminish the obligation of a school or community college district to comply with any collective bargaining agreement entered into by a school or community college district and an exclusive bargaining representative that provides greater disability or parental leave rights to employees than the rights established under these provisions.

COMMENTS

1. Background:

Parental leave is proven to benefit families and communities by improving long-term health outcomes for mothers and children, decreasing stress for caregivers and new parents, encouraging equitable co-parenting, and reducing income volatility. Whether or not that leave is paid or has some wage replacement component is crucial in allowing families to take time to care for themselves and their families while financially providing for them.

A 2010 study by the International Labour Organization of the United Nations found that out of 167 countries studied, 97 percent provide paid maternity leave for women. Only four out of the 167 countries studied did not: Lesotho, Papua New Guinea, Swaziland, and the United States.[1]

[1]International Labour Organization, "Maternity and paternity at work: Law and practice across the world." https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_242615.pdf

California has several medical leaves under which an employee may be able to take time off of work to care for their illness, that of specified family members or for the bonding with a new child. Below is a brief summary of some and their eligibility requirements.

	CA Family Rights Act (CFRA) ***Job Protected***	**Paid Family Leave (PFL)** ***No Job Protection***	**Pregnancy Disability Leave (PDL)** ***Job Protected***	**Family Medical Leave Act (FMLA)** ***Job Protected***	**AB 2901 (This bill)**
Employers Covered	Five or more employees	One or more (employee pays, employee gets)	Five or more employees	50+ employees within 75-mile radius	Public School/Community College district No size specified
Employee Eligibility	Worked 1,250 hours in prior 12 months	Once employee earns $300 in base period for fund contribution	Immediate as necessary	Worked 1,250 in prior 12 months	Unspecified
Reason for Leave	Employee serious health condition; seriously ill family member care; bond with newborn or newly placed adopted or foster child	Care for seriously ill family member; bond with a child within 1 year of birth, foster care or adoption placement; qualifying event because of a family member's military deployment	Disability due to pregnancy, childbirth or related medical condition	Bond with a child w/in 1 year of birth, adoption or foster care placement OR due to serious pregnancy-related health condition	Pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions
Length of Leave	12 weeks in 12-month period	8 weeks in 12-month period	Up to 4 months	Up to 12 weeks	Determined by employee and physician
Paid or Unpaid	Unpaid, may run concurrent with other paid leave	Partial wage replacement (60-70% now, 70-90% after 1/1/25)	Unpaid, may run concurrent with SDI for partial wage replacement	Unpaid, employee can use vacation, paid sick time	Full pay, up to a maximum of 14 weeks
Continued Health Coverage	Yes	No	Yes	Yes	Unspecified

Points of note regarding these leaves:

- When both state and federal laws apply, the employee receives the benefit of the more protective law.
- PFL provides benefit payments but not job protection; however, the employee's job may be protected if taken concurrently with FMLA or CFRA.
- There is no pay associated with the FMLA and CFRA, other than what the employee has earned in other accrued leaves that may apply.
- Employees may only be eligible for the PFL program if they are covered by the SDI program. SDI is employee funded. If an employee does not pay into the SDI program, they are not eligible to receive disability benefits PFL.

2. Existing leave options for public school and community college district employees:

As noted by the Assembly Higher Education Committee analysis of this bill:

"The pregnancy-leave compensation provided to community college employees (beyond differential pay as required by law) likely varies considerably based on local bargaining agreements and participation in disability insurance programs. It is unclear how many community college or school districts participate in SDI, but some do as of 2021, including the Los Angeles Unified School District. Some districts do not participate in SDI but contract for private disability insurance, and some do not provide any such benefit. At least two school districts, the Grossmont Union High School District and the Palm Springs Unified School District, had agreed through collective bargaining to provide six weeks of paid maternity leave."

This bill (AB 2901):
As noted under existing law above, it is currently unlawful to refuse to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take leave not to exceed four months. The employee is entitled to use any vacation or sick leave they may have available during this time. Once those options are exhausted, *the employee can receive differential pay for the remaining time, for up to five months.* Differential pay takes the educator's regular salary minus the cost of their substitute. Employees may be eligible for the PFL program but only if they are covered by the SDI program (not all employees are). If PFL is not an option, the employee is left with a partial salary benefit or possibly nothing and must choose whether to take the time to bond with, or recover from a loss of, a child with no income.

This bill would mandate that K-12 public schools and community college districts provide up to 14 weeks of fully paid leave for employees experiencing pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from any of those conditions. Staff notes that this bill does not have any eligibility requirements like other existing leaves have. CFRA and FMLA, for example, require an employee to work 1,250 hours in a 12-month period for the employer before being able to access the leave.

3. Need for this bill?

According to the author:

"California's public school educators do not have pregnancy leave. Only after they have used all their sick leave are educators eligible to receive differential pay for up to five months when they cannot work due to pregnancy-related disabilities. Differential pay is the educator's regular salary less the cost of their substitute. School employees are left with the decision to either 'schedule' pregnancies based on the school calendar or try to get by with significantly less pay. This current practice disproportionately discriminates against women as they are required to deplete their leave balances to bear children. The decision to have children is not an illness.

Improving pregnancy leave will help retain educators during a historic shortage of workers choosing public education for their career. While educators enter the profession to help students and make a difference, many today are feeling acute levels of stress and are considering leaving the profession. This retention problem is made worse because of the lack

of pregnancy leave, as many are forced to leave the profession when they are pregnant and often do not return. This compounds significant challenges to educator retention and recruitment, in an environment where California schools are having widespread difficulty hiring and retaining educators, due in part to low pay, high housing costs and other rising costs of living.

This bill will finally end the discriminatory practice of giving employees who are pregnant no choice but to deplete their sick leave. When an educator is forced to use up their sick leave for pregnancy leave, they return to the classroom with no leave to care for sick family members or themselves. The current policy encourages sick educators to come to school endangering other educators, parents and students. By requiring school and community college districts to provide 14 weeks of fully paid pregnancy disability leave, this bill will help employees working in public schools and community colleges to take necessary time off without sacrificing their financial security, the health of their families or the health of their school communities."

4. Proponent Arguments:

According to one of the sponsors of the measure, the California Teachers Association:

"Establishing pregnancy disability leave will help retain educators during a historic educator shortage. Studies show that while educators enter the profession to help students and make a difference, many today are feeling acute levels of stress and are considering leaving the profession. This retention problem is made worse because of the lack of paid disability leave, as many are forced to leave the profession when they are pregnant and often do not return. This compounds significant challenges to educator retention and recruitment, in an environment where California schools are having widespread difficulty hiring and retaining educators, due in part to low pay, high housing costs and other rising costs of living."

CTA further notes that:

"When an educator retires, CalSTRS converts unused sick leave to additional service credit. But school employees who have exhausted their sick leave due to pregnancy, miscarriage, childbirth, termination of pregnancy or recovery from those conditions are penalized. CTA believes all persons, regardless of gender, should be given equal opportunity for employment, promotion, compensation, including equal pay for comparable worth.

Let's do the math: According to CalSTRS data analyzing the inequity between average retirement benefits over the past 5 years, women have a retirement benefit that is about $267 less than their male counterparts every month, and women convert about 35 less unused sick days to retirement credit. CalSTRS presumes that a woman will live to age 91, and if she retires at age 62, she will receive that monthly retirement benefit for 29 years. Receiving a retirement benefit that is $267 less every month over that period, means that on average a woman will receive $92,916 less in retirement benefits than their male counterparts.

As we embrace our diversity and move legislation forward that introduces 'the California way' to the world, we have an opportunity to bring more equity to retirement benefits. CTA believes in an inclusive society and calls upon all people and all levels of government to eliminate, by statute and practice, gender barriers that prevent some individuals from exercising rights enjoyed by others."

5. Opponent Arguments:

Opposition from the Association of California School Administrators rests on the fiscal impact it would place on local educational agencies (LEAs) and the complexity this would add to an already complicated, extensive set of employee-leave programs. They write:

"*No Dedicated Funding Source:* Regrettably, the additional costs of this paid leave would be carried by the LEA and could reach hundreds of millions of dollars annually statewide between employee salary and in benefits. For certificated employees, costs are also created from the additional substitute teaching positions needed to fill temporary vacancies. It also would result in greater pension liability as sick leave accrual would count towards final benefit calculations. Given the nature of school finance, AB 2901 would draw from a finite pool of resources at the same time that the state is facing a significant budget deficit. LEAs are also implementing new student services such as Universal Transitional Kindergarten, school meals programs, and Extended Learning Opportunity Programs.

Combined Leave Could Add up to an Entire Academic Year: School employees are provided leave coverage through existing state and federal laws, including those related to pregnancy disability, maternity and paternity leave, new child bonding and related health and caregiver issues. The interplay between these various leave-related statutory provisions, and the ability of employees to receive pay while on these leave programs, has become increasingly complex. Based on current law, depending on the level of sick leave and/or vacation they have accumulated, a school employee could already be fully paid for the majority of their pregnancy-related disability leave. Further, the combination of leave benefits provided for bonding and other parental duty-related needs could create the scenario of a school employee being on leave with full or partial pay status from August through April. This is nearly an entire academic year.

This bill is also notable because it proposes to create a new type of leave that includes none of the parameters that apply to other existing leaves offered for similar purposes. AB 2901 does not require any days of service prior to use, or use of sick leave for eligibility. It may be used as many times as determined needed by the employee's doctor and it is paid (both salary and benefits.) We understand the purpose of AB 2901 but we must consider the fiscal impact, as well as the impact on the ability to fully staff classrooms, educational programs, and other school-based services that are already threatened by a persistent teacher and classified staff shortage."

Lastly, the School Employers Association of California argues, "The bill also does not address the academic and emotional impact on students due to the absence of their regular teachers. The frequent use of rotating substitute teachers can disrupt learning continuity and negatively affect educational outcomes. If we provide additional leave for our teachers, we need to seriously consider policies around substitute teachers in California as a part of this conversation."

6. Double Referral:

This bill was double referred and prior to our hearing was heard and passed by the Senate Education Committee.

7. Prior Legislation:

AB 500 (Gonzalez, 2019, Vetoed) would have required that school districts, charter schools, and community colleges provide at least six weeks of full pay for pregnancy-related leaves of absence taken by certificated, academic, and classified employees. This bill was vetoed by Governor Newsom who stated the following:

> *Providing every California worker with paid family leave is a noble goal and a priority for my administration. However, this bill will likely result in annual costs of tens of millions of dollars that should be considered as part of the annual budget process and as part of local collective bargaining. Moreover, this proposal should be considered within the broader context of the Paid Family Leave Task Force, which is assessing increased paid family leave for all of California's workers.*

SUPPORT

California State Treasurer Fiona Ma (Co-Sponsor)
California Teachers Association (Co-Sponsor)
State Superintendent of Public Instruction Tony Thurmond (Co-Sponsor)
American Federation of State, County and Municipal Employees
Asian Law Alliance
BreastfeedLA
California Breastfeeding Coalition
California Child Care Resource and Referral Network
California Domestic Workers Coalition
California Employment Lawyers Association
California Faculty Association
California Federation of Teachers
California Labor Federation
California Legislative Women's Caucus
California Retired Teachers Association
California School Employees Association
California State Teachers' Retirement System
California WIC Association
California Women's Law Center
California Work & Family Coalition
Caring Across Generations
Center for Community Action and Environmental Justice
Center for Workers' Rights
Child Care Law Center
Children Now
Citizens for Choice
Delta Kappa Gamma California
Early Edge California
Electric Universe
Equal Rights Advocates
Faculty Association of California Community Colleges
Food Empowerment Project
Friends Committee on Legislation of California

Health Access California
Human Impact Partners
Jewish Center for Justice
LA Alliance for A New Economy
LA Best Babies Network
Legal Aid At Work
National Council of Jewish Women Los Angeles
National Partnership for Women & Families
National Women's Political Caucus of California
Orange County Equality Coalition
Our Family Coalition
Parent Voices California
Poder Latinx
Public Counsel
Reproductive Freedom for All California
San Diego County Breastfeeding Coalition
San Francisco Unified School District
SEIU California
UAW Region 6
UFCW - Western States Council
Worksafe

OPPOSITION

Association of California School Administrators
California Association of School Business Officials (CASBO)
San Bernardino County District Advocates for Better Schools
School Employers Association of California
Small School Districts Association

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