SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 291	**Hearing Date:**	July 9, 2025
Author:	Gipson		
Version:	June 24, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Teachers: credentialed educator apprenticeship programs

KEY ISSUE

This bill establishes the Credentialed Educator Apprenticeships Act, which requires the Commission on Teacher Credentialing (CTC) and the Division of Apprenticeship Standards (DAS) to disseminate, approve, and monitor credentialed educator apprenticeship programs in California.

ANALYSIS

Existing law:

1) Establishes the Division of Apprenticeship Standards (DAS) within the Department of Industrial Relations to oversee apprenticeship programs and requires the Chief of the Division (Chief) to perform various functions to promote the welfare of apprentices. (Labor Code §3070 et seq.)

2) Creates, within DAS, the Interagency Advisory Committee on Apprenticeship (IACA), which provides advice and guidance to the Administrator of Apprenticeship and Chief on the development and administration of standards governing preapprenticeship, certification, and on-the-job training and retraining programs outside the building and construction trades and firefighters. (Labor Code §3071.5)

3) Requires DAS to evaluate apprenticeship programs to ensure compliance with specified standards, including that all on-the-job training is properly supervised, that classroom instruction is provided, and that funds were properly obtained and expended. (Labor Code §3073.1)

4) Authorizes a joint apprenticeship committee, unilateral management or labor apprenticeship committee, or an individual employer to administer an apprenticeship program. The Chief may approve programs in any trade in the state or in a city or trade area, whenever the apprentice training needs justify the establishment. Where a collective bargaining agreement exists, a program shall be jointly sponsored unless either party to the agreement waives its right to representation in writing. (Labor Code §3075(a))

5) Defines "apprentice" to mean a person at least 16 years of age who has entered into a written agreement, or apprentice agreement, with an employer or program sponsor. The Chief shall approve the term of apprenticeship for each apprenticeable occupation, as specified. (Labor Code §3077)

6) Provides that the term of apprenticeship may be measured either through the completion of the industry standard for hours of on-the-job learning and related and supplemental instruction, attainment of competency, or a hybrid blend of the time-based and competency-based approaches, as specified, but that programs in the building and construction trades and for firefighters shall use the time-based approach. (Labor Code §3078.5)

7) Requires the local joint apprenticeship committee or the parties to a collective bargaining agreement, or the administrator where there is no collective bargaining agreement or joint committee to approve apprentice agreements. Every apprentice agreement shall be signed by the employer, or his or her agent, or by a program sponsor, as specified, and by the apprentice. (Labor Code §3079)

8) Provides that neither existing law nor approved apprentice agreements can operate to invalidate any apprenticeship provision in any collective bargaining agreement between employers and employees setting up higher apprenticeship standards. (Labor Code §3086)

9) Provides that acceptance of an application for entrance into an apprenticeship program shall not be predicated on the payment of any fee, but that reasonable costs for expense incurred may be charged after an applicant has been accepted into the program. (Labor Code §3091)

10) Allows apprenticeship sponsors to include local educational agencies (LEAs), institutions of higher education (IHEs), labor organizations, and nonprofits, and encourages alignment of apprenticeship programs with affirmative action and public sector workforce needs. (Labor Code §§3075, 3075.1)

This bill:

1) Establishes the Credentialed Educator Apprenticeships Act at the CTC.

2) Requires the CTC to partner with DAS to disseminate, approve, and monitor credentialed educator apprenticeship programs.

3) Requires the CTC to confirm that apprenticeship programs:

    a. Partner with accredited educator preparation and, if applicable, induction programs.
    b. Include at least 300 hours of paid on-the-job training prior to serving as an educator of record.
    c. Require a baccalaureate degree from a regionally accredited institution before serving as an educator of record.
    d. Provide at least 200 hours of mentoring and support annually.

4) Authorizes the CTC to issue apprenticeship certificates or permits to educator candidates who have cleared background checks but have not yet earned a credential.

5) Requires an applicant for a new credentialed educator apprenticeship program or for the expansion of an existing credentialed educator apprenticeship program into a new geographic or credential area to submit documentation showing all of the following to DAS:

    a. The applicant is, or is partnering with, an educator professional preparation program and, if applicable, an induction program, accredited by the CTC.

   b. The proposed credentialed educator apprenticeship program includes at least 300 hours of paid on-the-job training before the educator apprentices may serve as educators of record.
   c. The proposed credentialed educator apprenticeship program requires educator apprentices to earn their baccalaureate degree from a regionally accredited institution of higher education before serving as educators of record.
   d. The proposed credentialed educator apprenticeship program provides mentorship to apprentices throughout their apprenticeship, as specified.

6) Prohibits DAS from approving an application for a credentialed educator apprenticeship program before presenting the program to the CTC for review.

7) Requires a joint apprenticeship committee, or unilateral management or labor apprenticeship committee to administer an apprenticeship program. Where a collective bargaining agreement exists, a program shall be jointly sponsored.

8) Permits apprentices to hold classified positions concurrently, but prohibits performance of duties from other classified roles during apprenticeship hours.

9) Requires DAS to initiate deregistration if an associated preparation or induction program loses CTC accreditation.

10) Authorizes DAS and the CTC to enter into a memorandum of understanding (MOU) to establish application review, data sharing, and oversight procedures.

11) Clarifies that this act does not apply to non-credential apprenticeship programs (e.g., childcare permits under Education Code §8301).

12) Requires DAS, in consultation with the CTC, to adopt regulations consistent with Education Code requirements governing program approval, monitoring, and standards.

COMMENTS

1. Background:

[NOTE: See the Senate Education Committee analysis for detailed background on the CTC and educator preparation programs.]

Division of Apprenticeship Standards (DAS)
DAS creates opportunities for Californians to obtain skills leading to gainful employment and provides employers with a highly skilled and experienced workforce while strengthening California's economy. DAS carries out this mission by administering California apprenticeship law and enforcing apprenticeship standards regarding wages, hours, working conditions, and the specific skills required for state certification in an occupation that is appropriate for apprenticeship. Apprenticeship programs combine academic and technical classroom instruction with paid work experience to train workers. The apprenticeship training system is unique in that its foundation is a partnership between industry, education, and government. Although “traditional” apprenticeship programs are in the building and construction trades, registered apprenticeship programs now exist in a wide variety industries, including healthcare, technology, advanced manufacturing, public service and more.

Employers that participate in apprenticeship programs have the ability to develop the curriculum and tailor it to their needs. As a result, apprenticeships create a diverse, flexible pool of employees with coveted skills. Decreased workforce turnover and increased employee morale are also associated with apprenticeship programs.

In 2018, then gubernatorial candidate, Gavin Newsom pledged to serve 500,000 apprentices by 2029. In the years since, the number of apprentices has increased dramatically. Initiatives to expand apprentices include the Apprenticeship Innovation Funding to scale and expand apprenticeship programs in nontraditional industries, the California Opportunity Youth Apprenticeship grant program to increase opportunities for at-risk youth in the state, and the Equal Representation in Construction Apprenticeships grant program to help women and other underserved populations enter the building and construction trades. Currently, DAS supports over 93,000 active registered apprentices.

Educator Apprenticeships

In February 2023, the Labor Workforce and Development Agency commenced a multi-stakeholder initiative that convened leaders in the education, labor and policy spaces to design, launch, and scale Registered Apprenticeship Programs (RAPs) to train educators across California. The working group was tasked with developing a roadmap for implementing RAPs that builds upon existing educator preparation pathways and investments.

While in office, the Biden Administration took several steps to expand apprenticeships for educators and invest in teacher preparation programs. In August 2022, the Administration's Departments of Labor and Education issued a Dear Colleague Letter calling on states to establish high quality paid registered apprenticeship programs for teaching, to increase collaboration across workforce and education systems, and to ensure teachers receive a livable and competitive wage. The two departments further collaborated to fund an Educator Registered Apprenticeship Intermediary to provide no-cost technical assistance and support to state education agencies, districts, education preparation programs, teacher unions, and other partners to develop educator apprenticeship programs. Additionally, the federal government awarded over $200 million to 46 states and territories to develop and scale educator apprenticeship programs. Unfortunately, the Trump Administration defunded the Educator Registered Apprenticeship Intermediary on May 2, 2025, ending the program in the middle of its second year.

2. Need for this bill?

According to the author:

"California like the rest of the nation is struggling with recruiting and retaining teachers. Teacher shortages are a complex and chronic problem created by the current system that cannot be fixed with short-term solutions. California currently ranks 49th in the country in terms of teacher staffing ratios and would have to hire an additional 100,000 teachers just to reach the national average. Since 2017, more than 100,000 classrooms in the United States have been staffed by instructors who were unqualified for their jobs. When we look at historic patterns and recent data, we know that schools serving high numbers of students of color, students living in poverty, and those with unique learning needs such as English

learners and foster youth, are the most adversely impacted by layoffs or staffing vacancies, with negative effects on their academic achievement and long-term outcomes…

To address aforementioned issues, AB 291 would:

Provide an opportunity for LEAs, alongside labor and community partners, to leverage state and federal funding to mitigate barriers such as the high cost of preparation, unpaid student teaching, and minimal support in the early years of teaching as teacher apprentices would be compensated for on the job preparation and mentored throughout the program…

Direct the Commission on Teacher Credentialing (CTC) and the Division of Apprenticeship Standards (DAS) to partner in the dissemination, approval, and monitoring of the credentialed educator apprenticeship programs."

3. Proponent Arguments:

The sponsors of the measure, Children Now, argue:

"This bill would establish the conditions for creating credentialed educator apprenticeship programs to encourage local educational agencies (LEAs), labor associations, and teacher preparation programs to build a high-quality, well supported, paid entry point into the teaching profession via an apprenticeship program. Utilizing apprenticeship programs would help eliminate and reduce systemic barriers to entering the teaching profession and ensure teacher candidates can succeed in a rewarding teaching profession…

California's persistent teacher shortage has led to school districts making difficult decisions that are not in the best interest of students' academic experience and success. The Learning Policy Institute states in its report titled, Tackling Teacher Shortages: What We Know About California's Teacher Workforce Investments: 'Teacher shortages impact student learning as districts resort to relying on a revolving door of underprepared teachers and substitute teachers, increasing class sizes, and cutting course offerings altogether. Students of color and students from low-income backgrounds bear the brunt of these consequences, as teacher shortages are most severe in schools serving more of these students.'…

AB 291 will provide a compensation and recruitment strategy that facilitates preparing candidates with a stronger foundation early in their career path. The credentialed teacher apprenticeship program can assist in recruiting a more diverse pool of candidates, provide a financial incentive to enter the profession, and offer high-quality, ongoing professional learning for candidates to help ensure they are supported, can be effective, and persist in the profession."

4. Opponent Arguments:

None received.

5. Double Referral:

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

6. Prior Legislation:

AB 694 (Gipson, 2024) would have authorized the establishment of a Teacher Residency Apprenticeship Program to address shortages in the educator workforce, expand the pipeline into the teaching profession, and grow a diverse, local pathway into teaching. *This bill was held in the Senate Appropriations Committee.*

SUPPORT

Children Now (Sponsor)
California State University, Office of the Chancellor
Californians Together
Easterseals Northern California
Edvoice
Nextgen California
Partnership for Los Angeles Schools
Public Advocates
United Administrators of Southern California
Western Governors University

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 339	**Hearing Date:**	July 9, 2025
Author:	Ortega		
Version:	June 18, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Local public employee organizations: notice requirements

KEY ISSUE

This bill requires public agencies regulated by the Meyers-Milias-Brown Act (MMBA) to give a recognized employee organization no less than 60 days' written notice regarding contracts to perform services that are within the scope of work of job classifications represented by the recognized employee organization.

ANALYSIS

Existing law:

1) Authorizes counties to contract for special services on behalf of the following public entities: the county, any county officer or department, or any district or court in the county. Special services or special skills contracts shall be with persons specially trained, experienced, expert and competent to perform the special services. (Government Code (GC) §31000)

2) Authorizes counties to contract with temporary help firms for temporary help to assist county agencies, departments, or offices during any peak load, temporary absence, or emergency other than a labor dispute, provided the board determines that it is in the economic interest of the county to provide such temporary help by contract, rather than employing persons for such purpose. Use of temporary help under this section shall be limited to a period of not to exceed 90 days for any single peak load, temporary absence, or emergency situation. (GC §31000.4)

3) Authorizes cities to contract with any specially trained and experienced person, firm, or corporation for special services and advice in financial, economic, accounting, engineering, legal, or administrative matters. (GC §37103)

4) Authorizes the legislative body of any public or municipal corporation or district to contract with and employ any persons for special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained, experienced, and competent to perform the special services required. (GC §53060)

5) 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 Meyers-Milias-Brown Act (MMBA) which provides for

public employer-employee relations between *local* government employers and their employees, including some, but not all public transit districts. (Government Code §3500 et seq.)

6) Establishes PERB, a quasi-judicial administrative agency charged with administering certain statutory frameworks governing employer-employee relations, resolving disputes, and enforcing the statutory duties and rights of public agency employers and employee organizations. (Government Code §3541)

This bill:

1) Requires the public agency to give the recognized union no less than 60 days' written notice before issuing a request for proposals, request for quotes, or renewing or extending an existing contract, to perform services that are within the scope of work of the job classifications represented by the recognized employee organization.

2) Requires the written notice to include all of the following:

   a. The anticipated duration of the contract.
   b. The scope of work under the contract.
   c. The anticipated cost of the contract.
   d. The draft solicitation, or if not yet drafted, any information that would normally be included in a solicitation.
   e. The reason the public agency believes the contract is necessary.

3) Provides that if an emergency or other exigent circumstance prevents the public agency from providing the required amount of notice the public agency shall provide as much advance notice as is practicable under the circumstances.

4) Requires the public agency and the union, if the union demands so, to meet and confer within a reasonable time in good faith relating to the public agency's proposed decision to enter into the contract and any negotiable effects thereof.

5) Provides that the bill's provisions shall not diminish any rights of an employee or recognized union provided by law or a memorandum of understanding.

6) Provides that the bill's provisions shall not invalidate any provision of a memorandum of understanding in effect on the operative date of this bill.

7) Provides that no reimbursement shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act.

8) Recognizes, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other law.

COMMENTS

1. Committee Amendments

The committee recognizes the importance of ensuring that local public employers adhere to the long-standing state policy that public agency employees, not private contractors, perform public agency work. This bill supports that policy.

However, the committee acknowledges the many concerns expressed by several groups regarding this bill's potential unintended consequences. While unable to address all opposition concerns, the committee recommends the author take the following amendments in this committee to ensure that certain contracts for specialized public works projects are exempt from the bill's provisions to avoid interruptions in key projects. The committee also encourages the author to continue to work with opposition to address their remaining concerns if the bill proceeds:

Government Code 3504.1

(e) (1) This section shall not diminish any rights of an employee or recognized employee organization provided by law or a memorandum of understanding.

(2) This section shall not invalidate any provision of a memorandum of understanding in effect on the operative date of this section.

(3) This section does not apply to a contract for construction, alteration, demolition, installation, repair, or maintenance work that is subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code or a contract for highly specialized data, software, or services related to that construction, alteration, demolition, installation, repair, or maintenance work.

(f) Nothing in this section shall be construed to exempt such contracts from the notice, meet and confer, or other procedural requirements applicable to contracting for services under existing collective bargaining laws, including the Meyers-Milias-Brown Act.

2. Need for this bill?

According to the author:

"Local governments use a procurement process, often involving RFPs and requests for qualifications (RFQs), for externally contracted services. This process is distinct from formal competitive bidding and can have different requirements regarding public bidding laws and disclosure. Additionally, proposals submitted in response to an RFP or RFQ are typically exempt from disclosure under the California Public Records Act.

When local governments decide to contract out the work of their public employees, the Meyers-Milias-Brown Act (MMBA) and the Public Employment Relations Board (PERB) case law requires the agency to notify the union and bargain over either the decision or its impacts. However, very few local governments comply with this requirement. Unions are unaware that their bargaining unit work has been contracted out until it's too late to meaningfully engage their existing bargaining rights."

3. Proponent Arguments

According to Service Employees International Union, California:

"Under the Meyers-Milias-Brown Act (MMBA), California local governments are generally required to notify employee unions before contracting for work traditionally performed by bargaining unit members. This notice is part of the obligation to engage in good faith bargaining and allows the union to negotiate the decision or the impacts of contracting out represented employees. However, since the beginning of the privatization movement, local governments have rarely complied with this requirement. As local governments have increasingly shifted public services to the private sector, union density has declined, resulting in lower wages and working conditions for all Californians.

AB 339 would require local governments to notify unions of plans to contract out bargaining unit work 60 days *before* engaging in an RFP or RFQ process. This notification will allow unions to exercise their right to bargain over the decision or impacts of contracting out before employers begin the process to do so. The 60-day timeframe will allow both parties to schedule and complete multiple negotiation sessions, if needed."

According to California Federation of Labor Unions:

"Contracting out by local government has eliminated good union public sector jobs that provide a path to the middle class. Large-scale privatization has led to the decline of public sector union density and a reduction in working conditions and lower wages. Contracting out practices that fail to adhere to responsible contracting standards further undermine collective bargaining rights of public sector workers while simultaneously reducing the quality of essential services and increasing the cost of public service delivery."

4. Opponent Arguments:

According to the County of Los Angeles:

"AB 339 undermines timely service delivery and creates disincentives for finalizing labor agreements. It applies to contracts overlapping with represented job classifications, impacting a vast majority of LA County contracts. It also expands obligations under the Meyers-Milias-Brown Act (MMBA), interfering with longstanding contracting practices and provisions in Memoranda of Understanding (MOUs), ultimately harming public services.
The bill's lack of a clear definition for emergencies weakens emergency contracting authority and creates inefficiencies. In disasters, such as the January wildfires in Los Angeles, AB 339 would delay recovery, increase costs, and worsen community suffering."

According to the California Association of Nonprofits:

"AB 339 would require nearly every contract proposed by local agencies to be subject to notice and possibly meet-and-confer requirements. This is impractical in execution, and unworkable for ensuring provision of public services, which are often carried out faithfully by nonprofit organizations. Furthermore, there is a lack of clarity about what topics are allowed to be discussed during the 'demand to meet-and-confer', such as limiting discussion purely to the RFP language. As written, AB 339 could deter local agencies from working in partnership with local community organizations like nonprofits, who are at the front lines of

providing critical local services, and who are already under attack by the federal government, adding considerable uncertainty to our sector's ongoing financial viability."

According to a coalition of contracting organization representatives, including the American Council of Engineering Companies:

"AB 339 will significantly delay public works projects and could grind building permit processing, design, and construction of needed housing or infrastructure projects to a halt. Public works projects involve multiple phases of design, which require a diverse array of services – including site assessments, geotechnical services, land surveys, plan check, and traffic studies, to name just a few – that cannot be fully known until earlier phases have [been] completed, making it impossible for agencies to complete all of AB 339's notification pauses at the outset of a project. These notices would therefore be compounded, causing projects to be delayed by multiples of the 60-day pause before a shovel ever touches the ground."

5. Prior Legislation:

AB 2557 (Ortega, 2024) would have placed requirements on local governmental agencies related to contracting out services, as specified. *This bill died in the Senate Appropriations Committee.*

AB 2561 (McKinnor, Chapter 409, Statutes of 2024) required a public agency to present the status of vacancies and recruitment and retention efforts during a public hearing before the governing board at least once per fiscal year and entitles the union for a bargaining unit to make a presentation at the public hearing, as specified.

AB 2489 (Ward, 2024) would have required a local government that wants to contract for special services or temporary help already performed by union employees to notify, in writing, the exclusive representative of the workforce, at least 10 months before beginning a procurement process to contract for special services that are currently, or were in the previous 10 years, performed by employees of the county, any county officer or department, or any district court in the county represented by an employee organization, of its determination to begin that process. *This bill died in the Assembly Appropriations Committee.*

AB 1250 (Jones-Sawyer, 2017) would have prohibited a county from contracting for personal services currently or customarily performed by that county's employees unless it made specified findings. *The Senate Rules Committee held this bill in committee.*

SUPPORT

Service Employees International Union, California (Co-sponsor)
American Federation of State, County and Municipal Employees (Co-sponsor)
California Federation of Labor Unions (Co-sponsor)
California Nurses Association
California Professional Firefighters
California Safety and Legislative Board, Smart – Transportation Division
California School Employees Association

California Teachers Association
Center for Biological Diversity
Central Coast Alliance United for a Sustainable Economy
Courage California
Echo Park United Methodist Church
Equal Rights Advocates
Greenpeace USA
IATSE Local 33
LA Plaza United Methodist Church
Los Angeles Alliance for a New Economy
Los Angeles Black Worker Center
Lutheran Office of Public Policy - California
National Union of Healthcare Workers
Peace Officers Research Association of California
Professional Engineers in California Government
Public Advocates INC.
Santa Barbara County Action Network
Tech Equity Action
UAW Region 6
Union of American Physicians and Dentists
Urban Habitat

OPPOSITION

Abrazar, INC.
Advocate Association of California Water Agencies
American Council of Engineering Companies
American Institute of Architects California
American Society of Civil Engineers, Region 9
American Staffing Association
Aresis Ensemble (City Garage Theatre)
Association of California Healthcare Districts
Association of California Water Agencies
Association of Community Human Service Agencies
Bay Area Air Quality Management District
Bay Area Bioscience Education Community
Building a Generation
C&A: Social Impact Consulting
Cal Chamber
California & Nevada Civil Engineers and Land Surveyors Association
California Alliance of Child and Family Services
California Animal Welfare Association
California Association for Local Economic Development
California Association of Nonprofits
California Association of Public Hospitals & Health Systems
California Association of Recreation & Park Districts
California Association of Sanitation Agencies
California Behavioral Health Association
California Building Officials
California Chapters of the American Public Works Association
California Contract Cities Association

California Geotechnical Engineers Association
California Landscape Contractors Association
California Parks & Recreation Society
California Special Districts Association
California Staffing Professionals
California State Association of Counties
California State Sheriffs' Association
California Transit Association
California-Nevada Section, American Water Works Association
Ceres Community Project
Children's Institute
City of Bakersfield
City of Barstow
City of Beaumont
City of Chino Hills
City of Colton
City of Eureka
City of Fortuna
City of Foster City
City of Inglewood
City of Kerman
City of La Habra
City of La Verne
City of Lakeport
City of Lincoln
City of Livermore
City of Lomita
City of Los Banos
City of Madera
City of Manteca
City of Martinez
City of Montclair
City of Newport Beach
City of Norwalk
City of Pittsburg
City of Redwood City
City of Simi Valley
City of Upland
City of Vernon
City of Vista
City of Waterford
City of Whittier
Coastal Nonprofit Consulting
Collective Resilience
Community Bridges
Contra Costa Water District
County Health Executives Association of California
County of Butte
County of Contra Costa
County of Fresno

County of Humboldt
County of Kern
County of Kings
County of Lake
County of Los Angeles
County of Mendocino
County of Merced
County of Nevada
County of Orange
County of Placer
County of Riverside
County of Sacramento
County of San Benito
County of San Bernardino
County of San Joaquin
County of San Mateo
County of Santa Clara
County of Santa Clara Office of the County Counsel
County of Siskiyou
County of Sutter
County of Tulare
County of Ventura
Creative Alternatives
DUC Learning Center
Elsinore Valley Municipal Water District
Family Service Association
Helix Water District
Immigrant Legal Defense
Jewish Family Service of San Diego
Jurupa Community Services District
Kidstream Children's Museum
League of California Cities
Mend-Meet Each Need With Dignity
Mountain Homeless Coalition
Office of Samoan Affairs
Open Heart Kitchen
Orange County Business Council
Orange County Sanitation District
Oxnard Performing Arts Center Corporation
PATH
Peninsula Family Service
Public Risk Innovation, Solutions, and Management
Queen of Hearts Therapeutic Riding Center, INC.
Raíces Y Cariño
Richmond Community Foundation
Rural County Representatives of California
SACRA/PROFANA
San Diego Humane Society
San Francisco Study Center
Silicon Valley Council of Nonprofits

South San Joaquin Irrigation District
The Aresis Ensemble INC.
The Can Man
The Nonprofit Partnership
Town of Apple Valley
Town of Truckee
Transportation California
Tree People
Turning Point
Turning Point Community Programs
Urban Counties of California
VistAbility
Waymakers

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 485	**Hearing Date:**	July 9, 2025
Author:	Ortega		
Version:	July 1, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez		

SUBJECT: Labor Commissioner: unsatisfied judgments: nonpayment of wages

KEY ISSUE

This bill requires state agencies to deny a new license or permit, or the renewal of an existing license or permit, for employers that have outstanding wage theft judgments and have not obtained a surety bond or reached an accord with the affected employee to satisfy the judgment.

ANALYSIS

Existing law:

1) 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)

2) 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 and promotes economic justice through robust enforcement of labor laws. (Labor Code §79-107)

3) Authorizes the LC to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation, as specified. (Labor Code §96-98)

4) Establishes a citation process for the LC to enforce violations of the minimum wage that includes, but is not limited to, the following procedural requirements:

    a. A citation issued to an employer must be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated, if contract wages are unpaid, or both.
    b. The LC shall promptly take all appropriate action to enforce the citation and to recover the civil penalty assessed, wages, liquidated damages, and any applicable penalties, as specified.
    c. To contest a citation, a person shall, within 15 business days after service of the citation, notify the office of the LC of their appeal by a request for an *informal hearing*.
    d. Any amount found due by the LC as a result of a hearing shall become due and payable 45 days after notice.
    (Labor Code §1197.1 et seq.)

5) Requires the LC, within 15 days after the hearing is concluded, to file in the office of the division a copy of the order, decision, or award (ODA). The ODA shall include a summary of the hearing and the reasons for the decision as well as any sums found owing, damages proved, and any penalties awarded pursuant to the Labor Code, including interest on all due and unpaid wages, as specified. (Labor Code §98.1)

6) Specifies that if no appeal of the ODA is filed within the period specified, the ODA shall, in the absence of fraud, be deemed the final order. Existing law then requires the LC to file, within 10 days of the ODA becoming final, a certified copy of the final order with the clerk of the superior court of the appropriate county unless a settlement has been reached by the parties and approved by the LC. *Judgment shall be entered immediately* by the court clerk in conformity therewith. (Labor Code §98.2)

7) Authorizes, beginning 20 days after a judgment is entered by a court of competent jurisdiction in favor of the LC or an employee, the LC to mail a notice of levy upon all persons having in their possession, or who will have in their possession or under their control, any credits, money, or property belonging to the judgment debtor. (Labor Code §96.8)

8) Prohibits an employer, with a final judgment for nonpayment of wages that remains *unsatisfied after a period of 30 days* after the time to appeal therefrom has expired and no appeal therefrom is pending, from continuing to conduct business in California, unless that employer has obtained a bond from a surety company and filed that bond with the LC, as prescribed, or reached an accord with an individual holding an unsatisfied final judgment, and subjects an employer in violation of these provisions to a civil penalty. (Labor Code §238)

9) Authorizes the LC, if an employer is found to be in violation of the above provision governing unsatisfied judgments, to issue a stop order prohibiting the use of employee labor until the requirements of the above provision governing unsatisfied judgments is satisfied, and requires that any employee affected by the work stoppage be paid by the employer for such time lost, not exceeding 10 days, pending compliance by the employer. (Labor Code §238.1)

10) Authorizes the LC to create a lien on any real property in California of an employer or a successor employer that is conducting business in violation of the above provisions governing unsatisfied judgments, for the full amount of any wages, interest, and penalties claimed to be owed to any employee. (Labor Code §238.2 & §238.3)

11) Provides that, if an employer in the long-term care industry that is also required to obtain a license from the State Department of Public Health (CDPH) or the State Department of Social Services (CDSS) has violated the above provision governing unsatisfied judgments, either of those departments *may deny* a new license or the renewal of an existing license for that employer; requires the LC, upon finding that an employer in the long-term care industry is violating the unsatisfied judgment provision, to notify those departments. (Labor Code §238.4)

12) Defines "state agency," for purposes of the Government Code, as including every state office, officer, department, division, bureau, board, and commission, but does not include the

California State University unless the section explicitly provides that it applies to the university. (Government Code §11000)

This bill:

1) Requires a state agency to deny a new license or permit, or the renewal of an existing license or permit, for an employer that has an outstanding wage theft judgment and has not obtained a surety bond or reached an accord with the affected employee to satisfy the judgment (violations found under Labor Code Section 238).

2) Requires the Labor Commissioner, if it finds that an employer is conducting business in violation of Labor Code Section 238 requiring an employer to obtain a surety bond or reach an accord with the affected employee to satisfy a wage judgment, to notify the applicable state agency with jurisdiction over that employer's license or permit.

3) Authorizes the State Public Health Officer to exempt a hospital employer from these provisions upon a determination that a denial, suspension, or revocation of the hospital's license, permit, or renewal could have imminent or substantial adverse effects upon public health or safety or would violate constitutional law.

4) Defines "state agency" as having the same meaning prescribed by Section 11000 of the Government Code.

5) Repeals Labor Code Section 238.4, authorizing the State Department of Public Health or the State Department of Social Services to deny a new or renewal of an existing license for a long-term care provider employer that is in violation of Labor Code Section 238, which would now be in conflict with the provisions proposed with this bill.

COMMENTS

1. Background

Data on Wage Theft:

California leads the nation with some of the strongest workplace protections for workers. Unfortunately, those laws are meaningless if they are not implemented or enforced, leaving workers struggling to recoup owed wages. Wage theft in California, which impacts low-wage workers disproportionately, is well documented. Wage theft captures many labor law violations including violations of the minimum wage, overtime, denied meal periods, or misclassification of employees as independent contractors, among others. A 2022 report to the Legislature on the state's wage claim adjudication process reveals that there were nearly 19,000 wage claims filed in 2021 with a total of $335 million being owed to workers.[1] Due to challenges in staffing, resources, and a growing case backlog, only approximately $40 million has been in paid in awards or settlements through the wage claim adjudication unit of the LC.[2] In 2022, the Labor Commissioner's office recovered through the wage claim process an average of 63 percent of wages owed, totaling more than $47 million paid to workers.

[1] Wage Claims Adjudication Unit Annual Report Pursuant to Labor Code Section 96.1, Calendar Year 2021, California Labor Commissioner's Office, p. 15.
[2] *Ibid.*

A 2024 Rutgers School of Management and Labor Relations report assessed minimum wage violations across four metropolitan statistical areas of interest – Los Angeles/Long Beach/Anaheim, San Jose/Sunnyvale/Santa Clara, San Diego/Carlsbad/San Marcos, and San Francisco/Oakland/Fremont.[3] Among the key findings of the report are the following:

- An average of $2.3 to $4.6 billion in earned wages were lost by workers each year from 2014 to 2023 due to minimum wage violations across these four metro areas.
- The majority of lost wages were in the Los Angeles area, where we estimate an average of $1.6 to $2.5 billion was lost a year during the study period.
- Those that were paid below the minimum wage lost roughly 20 percent of their total paycheck on average, or nearly $4,000 in earned wages a year if working full-time.
- The most impactful violations occurred in the San Francisco area, where workers lost an average of $4,300 to $4,900 annually to minimum wage violations.
- The number of workers paid below both the state and primary metro minimum wages has more than doubled since 2014, growing particularly dramatically over the most recent year of the study (2023).

Wage theft does not only affect workers, but it also creates unfair competition for responsible employers who follow the law. The State of California is also harmed when labor laws are not enforced because more workers fall into poverty, the safety net is eroded, and payroll taxes are not paid.

Existing Wage Theft Adjudication Process:
As noted under existing law, a worker may file a wage theft claim with the DLSE. The DLSE, also known as the LC's office, is then tasked with resolving wage theft claims by investigating, facilitating a resolution with the worker and employee, and holding a hearing when necessary. In some cases, claims may go directly to civil litigation, skipping the settlement conference and hearing steps.

Once the LC issues an order, decision, or award (ODA), the employer has a limited time after service of the LC decision to file an appeal. If no appeal is filed within the specified period, the LC must file a certified copy of the decision with the appropriate Superior Court and obtain a judgment against the employer for the amount owed. When the LC does request that the court enter the judgment against the employer, the worker can choose the option of referring the judgment to the LC's Enforcement Unit for collection or pursue collection on their own or through the use of an external partner, such as a private attorney or advocacy groups.

The DLSE Enforcement Unit can use a variety of means to collect judgment amounts, including levies against employers' bank accounts and liens on properties. Additionally, DLSE calculates interest accrued on any outstanding judgment amounts for collection purposes. Existing law also requires employers with unpaid wage theft judgments to cease business operations unless they have obtained a surety bond or reached an accord with an individual holding an unsatisfied final judgment. If an employer is found to be in violation of this requirement, they are subject to a civil penalty and the LC can file a lien on the employer's personal and real property, as well as issue a stop work order.

[3] Daniel J. Galvin, Jake Barnes, Janice Fine, and Jenn Round. *Wage Theft in California: Minimum Wage Violations, 2014-2023*. (Rutgers School of Management and Labor Relations, May 2024)

Additionally, if the employer in violation is a long-term care provider, the LC must notify the CDPH or the CDSS, and the CDPH and/or the CDSS *may* deny a new license or a renewal of an existing license. The Contractors State License Board is also empowered to suspend construction contractors' licenses if they have outstanding wage theft judgments.

This bill would, for an employer in an industry that requires they obtain a license or permit to operate, require all state agencies to deny a new license or permit, or the renewal of an existing license or permit, for employers that have unsatisfied wage theft judgments and have not obtained a surety bond or reached an accord with the affected employee to satisfy that judgment.

State Auditor Report on the Labor Commissioner's Office:

In May 29, 2024, the California State Auditor released a report summarizing the findings of an audit of the Division of Labor Standards Enforcement. The State Auditor reviewed the backlog of wage claims submitted by workers from fiscal years 2017-18 through 2022-23, and determined that the LC is not providing timely adjudication of wage claims for workers primarily because of insufficient staffing to process those claims.[4] The backlog of claims grew from 22,000 at the end of fiscal year 2017–18 to 47,000 at the end of fiscal year 2022–23. 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.

Among other things, the report found:

- The LC's office often takes two years or longer to process wage claims, with a median of 854 days to issue a decision (more than six times longer than the law allows).
- Field offices have insufficient staffing to process wage claims with vacancy rates equal to or greater than 10 percent, and 13 field offices with vacancy rates greater than 30 percent. The Auditor estimates that the LC's office needs hundreds of additional positions to resolve its backlog. Contributing to the high vacancy rate is an ineffective and lengthy hiring process and non-competitive salaries.
- The DLSE's Enforcement Unit's work results in only a small percentage of successful payment to workers. *Between January 2018 and November 2023, about 28 percent of employers did not make LC-ordered payments. The LC 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.*

Legislative Response to State Auditor Findings:

In response to last year's state audit of the LC, several bills were introduced this year to either go after unsatisfied judgments in more aggressive ways (SB 261 Wahab, SB 355 Perez, and SB 310 Wiener), deny licenses or permits to employers with owed judgments (this bill), or reform the way the LC responds to claims of unpaid wages (AB 1234). All bills are attempting to improve wage theft processing and collection to deliver owed wages to workers who desperately need them.

[4] Auditor of the State of California (May 2024). *The California Labor Commissioner's Office: Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers*. (Report 2023-104) https://www.auditor.ca.gov/wp-content/uploads/2024/05/2023-104-Report.pdf

2. Need for this bill?

According to the author:

"Wage theft is the most prevalent type of theft in the country, causing more economic loss than all other types of theft combined. In California, workers lose an estimated $2 billion annually due to wage theft, and 30 percent of low-wage workers in the state report experiencing at least one form of wage theft. Even when workers prevail in their wage theft claims, they are more often than not unsuccessful in recovering the stolen money.

In recent years, the Legislature has equipped the Labor Commissioner with additional mechanisms to enforce unpaid wage theft judgments, including by filing a lien or levy in certain situations. While these tools have been helpful for the Labor Commissioner, the vast majority of wage theft judgments still go unpaid. By empowering state agencies to deny a new or renewed license, AB 485 will offer a powerful incentive for employers to satisfy those judgments and prevent future wage theft."

3. Proponent Arguments:

According to the sponsors of the measure, the Santa Clara County Wage Theft Coalition:

"According to the California State Auditor, between 2018 and 2023, the Labor Commissioner's Judgment Enforcement Unit was successful in collecting the entire amount owed in just 12 percent of the cases that were referred to the state for enforcement. A 2022 CalMatters investigation found that, overall, only one in seven court-issued judgments are paid by employers.

In 2019, Santa Clara County's Office of Labor Standards Enforcement began a new enforcement program through which the county suspends food health permits for employers with unpaid wage theft judgments. The program has been very successful at compelling employers to abide by judgments and return stolen wages, with the county only needing to briefly suspend one employer's permit. San Diego County started its own version of this program in 2023, and the state of New Jersey has a similar law for all licenses and industries.

In California, the Contractors State License Board is empowered to suspend construction contractors' licenses if they have outstanding judgments. Similarly, for the long-term care industry, the Labor Commissioner is required to notify the California Department of Public Health (CDPH) and/or California Department of Social Services (CDSS) of outstanding judgments, and CDPH and/or CDSS are authorized to deny the renewal or a new license for that employer. AB 485 would extend this requirement to all industries and employers that hold a state-issued license or permit, as well as make the denial mandatory."

4. Opponent Arguments:

The California Hospital Association is opposed to the measure arguing:

"Under existing law, the Labor Commissioner may use an array of enforcement mechanisms to compel the payment of unpaid wages. This includes issuing a stop work order against an employer that has ignored a judgment for unpaid wages — essentially shutting down a business. AB 485 would take this one step further by requiring the Labor Commissioner to

notify licensing agencies, which would then withhold issuing or renewing a license or permit until the outstanding judgment is satisfied.

For hospitals, this means closure — a detrimental consequence for patients and workers that has a cascading effect on the community. Patients must be transferred to hospitals with capacity, workers must find alternative employment, sensitive equipment must be disabled, blood banks are disrupted, and third-party contracts must be suspended. Moreover, reopening a hospital that has been forced to close is a resource-intensive, lengthy endeavor — and communities are left without access to care in the meantime.

Each hospital recognizes the value and strength its workforce brings to the quality of care and services provided to its patients. To that end, hospitals do not support or condone wage theft — but as a matter of policy, AB 485 goes too far. Providing the Labor Commissioner with additional resources to better utilize existing enforcement mechanisms is a far better approach than threatening to withhold a hospital's license and risk its closure, which ultimately would hurt the patients we all serve."

Additional opposition from the California Association of Health Facilities argues:

"CAHF does not support or condone wage theft and supports provider compliance with state law, but preventing the renewal of a health facility license would shut down essentially all care provided by the facility. LTC residents, most of whom are on Medi-Cal and Medicare, are directly impacted by facility closures as they must immediately be transferred to another licensed facility, putting the health and safety of residents at risk. Without a license, LTC facilities would be unable to admit patients discharged from hospitals, resulting in a loss of available hospital beds. Mandating that an LTC facility must lose its license would have a major impact on facility's patients, residents and access to care by the community, a severe result that is potentially disproportionate to the wage violation."

Lastly, the California Assisted Living Association (CALA) and LeadingAge California, representing licensed Residential Care Facilities for the Elderly (RCFEs) and Continuing Care Retirement Communities (CCRCs) throughout the state, are opposed arguing:

"Current law provides the labor commission with ample remedies to respond to situations of non-compliance, making a new remedy of license denial and revocation unnecessary. Such license denials or revocations would ultimately harm older adults by reducing access to increasingly needed services and potentially leading to displacement. Existing enforcement remedies for wage theft orders already exist, and if needed, consideration should be given to providing resources necessary to enforce existing remedies, rather than putting access to services at risk."

5. Double Referral:

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

6. Prior/Related Legislation:

SB 261 (Wahab and Wiener, 2025) would 1) require the DLSE to post online information of employers with unsatisfied ODAs on a claim for unpaid wages; 2) prescribe when a posting

can be removed; 3) subject, for final judgments unsatisfied after a period of 180 days, the employer to a civil penalty not to exceed three times the outstanding judgment amount; and 4) authorize the Labor Commissioner to adopt regulations to enforce these provisions. *SB 261 is pending the Assembly Labor and Employment Committee.*

SB 310 (Wiener, 2025) would permit the penalty for failure to pay wages owed to employees to be recovered through an independent civil action, as specified. *SB 310 is currently on the Senate Inactive File.*

SB 355 (Perez, 2025) would 1) require employers with unsatisfied judgments for owed wages to provide documentation to the LC that the judgment is fully satisfied or the judgment debtor entered into an agreement for the judgment to be paid in installments, as prescribed; 2) subjects the judgment debtor employer to a civil penalty for violations; and 3) requires the LC to notify the Tax Support Division of the Employment Development Department of unsatisfied judgments as a notice of potential tax fraud. *SB 355 is pending in the Assembly Judiciary Committee.*

AB 1002 (Gabriel, 2025) would authorize the AG to bring a civil action for the temporary suspension or permanent revocation of a contractor's license for failing to pay workers the full amount of wages they are entitled to, failing to pay a wage judgment or for being in violation of an injunction or court order regarding the payment of wages. *AB 1002 is pending in the Senate Business, Professions and Economic Development Committee.*

AB 1234 (Ortega, 2025) would revise the wage theft claims process that the LC must follow to investigate, hold a hearing, and make a determination relating to an employee's complaint. Among other things, this bill permits the entry of default judgments if a defendant fails to answer an employee's complaint, fails to attend a mandatory settlement conference without cause, or fails to appear at the hearing on the complaint and imposes an administrative fee in the amount of 30 percent of the ODA. *AB 1234 is pending in the Senate Judiciary Committee.*

AB 594 (Maienschein, Chapter 659, Statutes of 2023), until January 1, 2029, clarified and expanded public prosecutors' authority to enforce the violation of specified labor laws through civil or criminal actions without specific authorization from the DLSE.

SUPPORT

Santa Clara County Wage Theft Coalition (Sponsor)
Asian Law Alliance
California Federation of Labor Unions, AFL-CIO
California Nurses Association/National Nurses United
California State Association of Electrical Workers
California State Pipe Trades Council
City of San Jose
CLEAN Carwash Worker Center
Contractors State License Board
Day Worker Center of Mountain View
Pilipino Association of Workers and Immigrants South Bay
Santa Clara & San Benito Counties Building & Construction Trades Council
SEIU California

State Building & Construction Trades Council of California
Western States Council Sheet Metal Workers
Working Partnerships USA

OPPOSITION

California Assisted Living Association
California Association of Health Facilities
California Hospital Association
Dental Board of California
LeadingAge California
Valley Industry and Commerce Association

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 1136	**Hearing Date:**	July 9, 2025
Author:	Ortega		
Version:	June 30, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Employment: immigration and work authorization

KEY ISSUES

This bill establishes immigration status-related employment protections and rights, including, among other things: 1) granting workers up to five unpaid working days in order to attend immigration-related matters, as specified; 2) for workers impacted by specified immigration status-related detainments, requiring employers to reinstate the employee to their former job without loss of seniority and displacing the least senior employee in that job classification for up to 12 months after, as specified; 3) prohibiting an employer from disciplining, discharging, or discriminating against an employee because of origin or immigration status, as specified; and 4) requiring the Labor Commissioner to enforce these provisions.

ANALYSIS

Existing federal law:

1) Under the Immigration and Nationality Act (INA), requires an employer to verify, through examination of specified documents, whether or not an individual is authorized to work in the United States. Specifies that if the document is presented and reasonably appears on its face to be genuine, then the employer has complied with this requirement and is not required to solicit or demand any other document. (8 U.S. Code §1324a)

2) Requires every employer to attest, under penalty of perjury, and verify every new hire's employment eligibility by completing *Form I-9 Employment Eligibility Verification* within three business days of the employee's first day of work for pay. The worker must also attest, under penalty of perjury, that they are legally authorized to work in the United States. If an employer complies with the verification requirements when hiring an individual but later discovers that the employee isn't authorized to work in the United States, the employer is prohibited from employing that person. Similarly, it is unlawful to contract an undocumented worker for labor knowing that the individual is unauthorized to work in the United States. (8 U.S. Code §1324a)

3) Employers who knowingly hire an unauthorized individual to work in violation of federal immigration laws may be subject to civil penalties for each violation and, depending on the seriousness of the violation, civil actions in the appropriate U.S. District Court requesting relief, including a permanent or temporary injunction, restraining order, or other order against the employer and their business. Additionally, a pattern or practice of engaging in regular, repeated, and intentional violations may be subject to imprisonment. (8 U.S. Code §1324a)

4) Requires that employers retain a copy of the attestations discussed above and make them available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and for three years or one year after a worker's termination, whichever is later. (8 U.S. Code §1324a)

5) Makes it an unfair immigration-related employment practice for any person or entity to do any of the following:

   a. Discriminate against any individual, except as provided, with respect to the hiring, recruitment, or referral of the individual for employment or the discharging of the individual from employment because of the individual's origin or citizenship.
   b. Request, with the intent of discriminating against an individual, more or different documents than are required under law or refuse to honor documents tendered which, on their face, reasonably appear to be genuine.
   (8 U.S.C. §1324b(a)(1)-(6))

Existing state law:

1) Provides that all protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state. For purposes of enforcing state labor and employment laws, existing law provides that a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws, no inquiry shall be permitted into a person's immigration status except where the person seeking to make this inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law. (Labor Code §1171.5; Civil Code §3339; Government Code §7285; Health & Safety Code §24000)

2) Prohibits an employer or any other person or entity from engaging in, or directing another person or entity to engage in, an *unfair immigration-related practice*, as defined, against any person for the purpose of retaliating against that person for exercising his or her rights under state or local labor law. (Labor Code §1019)

3) Defines "unfair immigration-related practice," for purposes of state law, to mean any of the following practices when undertaken for retaliatory purposes, and not at the direction or request of the federal government:

   a. Requesting more or different documents than are required by federal law or refusing to honor required documents that on their face appear to be genuine.
   b. Using the federal E-Verify system to check the employment authorization status of a person at a time or in a manner not required or authorized by federal law.
   c. Threatening to file or filing of a false police report, or threatening to file or filing a false report or complaint with any state or federal agency.
   d. Threatening to contact or contacting immigration authorities.
   (Labor Code §1019)

4) Permits an employee or any other person who is subject to an unfair immigration-related practice, where the unfair practice is retaliatory in nature, to bring a civil action for equitable

relief and any applicable damages or penalties, and specifies that an employee or other person who prevails shall recover his or her reasonable attorney's fees. (Labor Code §1019)

5) Prohibits an employer, in the course of satisfying federal immigration law, from requesting more or different documents than are required under federal immigration law; refusing to honor valid documents, as specified; or attempting to reinvestigate or reverify an incumbent employee's authorization to work using an unfair immigration-related practice. Violation of these provisions is subject to penalties imposed by the Labor Commissioner, up to $10,000 per violation, and equitable relief. (Labor Code §1019.1)

6) Except as otherwise required by federal law, prohibits a public or private employer, or a person acting on behalf of a public or private employer, from reverifying the employment eligibility of a current employee at a time or in a manner not required by Section 1324a(b) of Title 8 of the United States Code. Violations of these provisions are subject to a civil penalty of up to ten thousand dollars ($10,000) recoverable by the Labor Commissioner. (Labor Code §1019.2)

7) Except as otherwise required by federal law, requires an employer to provide a notice to each employee, by posting in the workplace and containing specified information, of any inspections of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of the inspection. Written notice shall also be given within 72 hours to the employee's authorized representative, if any. Violations of these provisions are subject to civil penalties of two to ten thousand dollars, as specified. (Labor Code §90.2)

8) Except as otherwise required by federal law, prohibits an employer, or a person acting on behalf of the employer, from providing voluntary consent to an immigration enforcement agent to enter any nonpublic areas of a place of labor. This section does not apply if the immigration enforcement agent provides a judicial warrant. Violations of these provisions are subject to civil penalties of two to ten thousand dollars, as specified. (Government Code §7285.1)

9) Except as otherwise required by federal law, prohibits an employer, or a person acting on behalf of the employer, from providing voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or judicial warrant. These provisions do not apply to I-9 Employment Eligibility Verification forms and other documents for which a Notice of Inspection has been provided to the employer. Violations of these provisions are subject to civil penalties of two to ten thousand dollars, as specified. (Government Code §7285.2)

10) Establishes within the Department of Industrial Relations (DIR) and under the direction of the Labor Commissioner, the Division of Labor Standards Enforcement (DLSE) tasked with administering and enforcing labor code provisions concerning wages, hours and working conditions. (Labor Code §56)

This bill:

1) Requires employers, upon request, to release employees for up to five unpaid working days, which may be either consecutive or nonconsecutive, in order to attend appointments, interviews, adjudications, legal proceedings, detainment, or any other meeting at which the

employee's presence is required concerning the employee's immigration status, work authorization, visa status, or any other immigration-related matter.

2) Requires a postintroductory employee, as defined, whose employment has been terminated due to an inability to provide documentation of proper work authorization, to be immediately reinstated by an employer to their former classification without loss of prior seniority provided the employee produces proper work authorization within 12 months of the date of termination.

    a. Requires the employee to be reinstated to their former classification *displacing the least senior employee in that job classification.*
    b. Provides that an employee shall not accrue vacation or other benefits based upon particular employment plan policies during those absences.

3) If the employee needs additional time (past the first 12 months), requires the employer to rehire the employee into the next available opening in the employee's former classification, as a new hire without retaining seniority, upon the former employee providing proper work authorization within a maximum of 12 additional months from the date the employee notifies the employer that they need additional time. If this occurs, the employee shall be subject to an introductory period upon rehire.

4) Specifies that the above requirements apply to both private and public employers, but would exempt a public or private employer with 25 or fewer employees.

5) Prohibits a public or private employer from disciplining, discharging, or discriminating against any employee because of national origin or immigration status, or because the employee is subject to immigration or deportation proceedings, except as required to comply with the law.

6) Prohibits an employee subject to immigration or deportation proceedings from being discharged solely because of pending immigration or deportation proceedings, so long as the employee is authorized to work in the United States.

7) Requires an employer that is notified that an employee has been detained or incarcerated as a result of pending immigration or deportation proceedings, to place the employee on an unpaid leave of absence for a period of 12 months.

    a. If the employee is released and provides appropriate work authorization documentation within the 12-month period, the employee shall be returned to work without loss of seniority to their former job classification, displacing the least senior employee in that job classification.
    b. Employees on a leave of absence shall not accrue vacation or other benefits during the leave of absence.

8) Provides that these provisions shall not invalidate a collective bargaining agreement or memorandum of understanding that provides additional protections to employees.

9) Requires the Labor Commissioner to enforce these provisions.

10) Defines the following terms:

a. "Postintroductory employee" means an employee who has successfully completed their probation period of employment.
b. "Public employer" means the state, political subdivisions of the state, counties, municipalities, and the Regents of the University of California.

11) Makes the provisions of this bill severable and if any provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

COMMENTS

1. Need for this bill?

According to the author:

"Existing law (Labor Code Section 1019) establishes protection for workers from immigration-related retaliation. AB 1136 adds to this section of code a series of much-needed protections not only for immigrants but for all Californians being impacted by the current wave of anti-immigrant sentiment and indiscriminate raids by ICE and Border Patrol. There have been countless examples so far of Californians who have done nothing wrong – some who are not even immigrants – being wrongfully detained and even deported.

In California and across the country, multiple examples have come to light of individuals not just being detained but deported unjustly. Earlier this month, an Arizona woman and her US-born child were arrested at a routine check-in with Immigration and Customs Enforcement (ICE) and sent to Guatemala. In March, an 'administrative error' led to a Maryland man being arrested and sent to El Salvador. And at one of many raids that took place recently in Southern California, multiple workers were detained by federal agents, including American citizens with their passports in their pockets.

These individuals should not be subject to losing their job, their seniority, or facing any other punishment for being wrongly detained or picked up in an immigration sweep. AB 1136 gives Californians who are wrongly detained by immigration enforcement a grace period to return to work."

2. Committee Comments:

Immigrants are the backbone of this country and without their work and contributions, California would not be the fourth largest economy in the world.

As noted above, this bill would provide employees terminated by an employer due to their inability to provide documentation of proper work authorization or an individual detained or incarcerated as a result of pending immigration or deportation proceedings, with the right to be reinstated by their former employer to their previous job, without loss of seniority, thus displacing the least senior employee in that job classification. The current attacks on immigrants demand an urgent and aggressive response to help protect the most vulnerable in our community. This bill includes provisions that are desperately needed for workers impacted by these attacks and facing this uncertainty.

As conversations on this bill continue, the author may wish to consider the following:

- *"Taking from one to feed the other:"* there are several provisions in existing law where the Legislature has mandated, for a limited amount of time, or encouraged employers to hire certain individuals. Below are some examples:

    - California's "Right of Recall" provisions require, until December 31, 2025, certain hospitality and service industry employers to offer to rehire qualified former employees who were laid off due to the COVID-19 pandemic. Employers are required to notify former employees of job openings for the same or similar position as the ones they last held and offer employment, with priority given based on seniority, to those prior employees before new employees can be hired. (Labor Code §2810.8)

    - Under the Displaced Janitor Opportunity Act, regarding contracts to provide janitorial or building maintenance services, current law requires a successor contractor or subcontractor to retain, for a 60-day transition employment period, employees of the terminated contractor and subcontractor, as specified. If at any time the successor determines that fewer employees are needed, the successor contractor or subcontractor shall retain employees by seniority. (Labor Code §1060-1065)

    - Regarding grocery establishments, when a change in control (such as a sale or transfer) occurs, California requires a successor grocery employer to maintain a preferential hiring list of eligible workers identified and hire from that list for a period of 90 days. If the successor employer determines that it requires fewer workers, the successor grocery employer shall retain eligible grocery workers by seniority, as specified. If the eligible worker's performance during the 90-day transition employment period is satisfactory, the successor employer must consider offering the worker continued employment. (Labor Code §2500-2522)

    - For public transit service contracts and contracts for the collection and transportation of solid waste, existing law requires a bidder to declare as part of the bid whether or not they will retain employees of the prior contractor/subcontractor for a 90-day transition period if awarded the contract. Bidders who agree receive a 10-percent bid preference to any bidder who agrees to retain those employees. If, at any time, the successor contractor/subcontractor determines that fewer employees are required, the successor contractor/subcontractor must retain employees by seniority within the job classification, as specified. (Labor Code §1072)

  In none of these provisions does the law require the employer to displace another employee in order to comply with the law. This bill proposes to do that – in an attempt to help one member of the immigrant community impacted by the country's broken immigration system, we would be hurting another member of the community. The restaurant owner who lost their workers due to an immigration raid would have to hire a new workforce in order to continue operating or risk losing their business. The new workers they hire could potentially be at their job for a whole year, but

under this bill, if a previous employee returned with proper paperwork, the employer would have to either demote the new employee, take on another employee (if they can afford and have the need), or fire the new employee in order to comply with the requirements of this bill. *Should the legislature require the displacement of one employee in order to help another?*

- The immigrant worker experience in this country is a very challenging one. These workers live in fear – fear of arrest and deportation for those that are unauthorized to be in the United States, fear of retaliation from bad employers who prey on this fact, and fear of not bringing home enough money to sustain themselves and their families. All of these fears are especially heightened for immigrants under this administration. Given the lack of transparency from the Department of Homeland Security, it is difficult to quantify the extent of workplace immigration enforcement actions. Understanding the frequency and amount of workers impacted by these immigration actions, would give the State a better idea of the impact that this bill could have as well as the impact of these actions on California's economy and workforce. *The author may wish to consider requiring employers to notify the Labor Commissioner when they experience an immigration raid and how many workers were impacted and require the Labor Commissioner to aggregate the data and post it on their website.*

Amendments:

In order to address the concerns raised above, the author would like to amend the bill to do the following:

1. After a termination or detainment and placement on unpaid leave due to an immigration related matter, when a worker is able to return to work with proper authorization, requires the employer to reinstate the individual to their previous job.

2. Strikes the provisions regarding the displacement of the least senior employee in order to accommodate the return, and instead specifies that if there is no position available, an employer shall offer the employee job positions that become available, with priority for hiring given based on length of service, before new employees can be hired. These provisions are consistent with "Right of Recall" provisions of existing law.

3. Once rehired by the employer, requires the employee to receive the prior pay rate and maintain seniority.

This bill has been double referred to our Committee and Senate Judiciary Committee. Due to the double referral, these amendments will need to be taken in the next Committee.

3. Proponent Arguments:

According to proponents, including the California Immigrant Policy Center:

"Mass deportation sweeps have become increasingly common across California, with federal agents indiscriminately detaining immigrants by the dozens with no warrant and no actual knowledge of detainees' immigration status. As mass deportation sweeps increase and

escalate, so will the number of individuals detained, including Californians who may have a provisional immigration status, who are otherwise in the United States legally, and in some cases who are not even immigrants themselves.

AB 1136 takes a series of reasonable steps to guarantee that workers who need to tend to their immigration status or who are caught up in the inevitable erroneous deportation proceedings can get their job back without losing job seniority… AB 1136 creates reasonable protections and remedies that are above the noise of the federal government's mass deportation agenda. This bill gives Californians who are mistakenly caught up in overzealous immigration enforcement a necessary and humane grace period to prove their immigration status and return to their jobs."

4. Opponent Arguments:

A coalition of employer organizations, including the California Chamber of Commerce, are opposed unless amended and write:

"We respect the efforts of this bill to ensure that those who are authorized to work in the United States remain able to do so without fear of losing their job, however we have several concerns about implementation as well as the ability for smaller employers to adhere to these requirements. We respectfully request amendments to address the following:

- Proposed subdivision (a) of Section 1019.6: Some of our members have extensive paid or unpaid time off benefits for employees, which can be used for a variety of different reasons. We would request that employers who offer leave that is above and beyond the minimum required by current law be allowed to require employees to first use those days before using the time provided for in subdivision (a), especially considering the breadth of the types of activities for which this leave could be used.

- Proposed subdivisions (b) and (c) of Section 1019.6: Collectively, these subdivisions would require employers to hold positions open for up to two years for any employee who has been terminated for not having documentation of proper work authorization. While we encourage our members to hold positions open for a reasonable period of time where an employee is trying to renew an expired work authorization, two years is a significant period of time to hold a position open, by far surpassing other available leaves. Further, pursuant to (b), if the documentation is presented at any point within the first year, the employer would be required to 'displace' another employee. Again, while we appreciate the intent of the bill, the unintended consequence of it is either that another employee would need to be laid off or demoted to bring back the first employee or the employer would be forced to employ more people than it can possibly afford.

- Proposed Section 1019.7: This section provides that the employer cannot discharge an employee 'solely' because of pending immigration or deportation proceedings. We would ask for language clarifying that this does not impact the ability of an employer to enforce its attendance policies if, for example, an employee has exhausted their leave as allowed for by proposed subdivision (a) of Section 1019.6. For example, a small restaurant or other business will at some point need to backfill that position.

This section also provides that an employer must provide up to one year of unpaid leave for any employee that is detained or incarcerated as a result of pending immigration or deportation proceedings. Similar to the above comment on Section 1019.6, we are concerned that twelve months is a significant period of time and the similar 'displace' language would require terminating or demoting another employee.

Another issue worth considering is whether compliance with these provisions would constitute 'constructive knowledge' for an employer that an employee may not be authorized to work in the United States. Employers are not permitted to employ someone where they have constructive knowledge that the person is not authorized to work in the United States. That has been interpreted broadly by courts, including where the employer has information "cast[ing] doubt" about whether employee is authorized to work. *See Foothill Packing, Inc., 11 OCAHO 1240, 2015 WL 329579 at *8; Split Rail Fence Company, Inc. v. United States,* 852 F.3d. 1228, 1243 (10th Cir. 2017); *Mester Mfg. Co. v. INS,* 879 F.2d 561 (9th Cir.1989); *New El Rey Sausage Co. v. INS,* 925 F.2d 1153 (9th Cir.1991). If an employee utilizes this leave, it may be deemed sufficient to constitute constructive knowledge that they are not authorized to work in the U.S. We do not unintentionally want to create scenarios where employers are either violating federal law or are considered to have constructive knowledge of someone's immigration status.

Finally, we respectfully request that the bill include a sunset provision. AB 1136 arises during a unique political moment under the current federal administration, when the state seeks to protect immigrant workers from aggressive and often unpredictable immigration enforcement policies. These circumstances reflect an urgent desire to provide added protections due to widespread fear and instability in our communities.

However, it is prudent to include a sunset provision that allows the Legislature to reassess its necessity in light of future federal enforcement priorities and legal developments. Without such a mechanism, the bill's mandates — many of which impose significant obligations on employers — risk becoming permanent solutions to what may prove to be temporary or evolving challenges. A sunset would allow the Legislature to revisit these requirements based on data, experience, and the broader federal policy landscape, ensuring the law remains appropriately tailored and responsive to current circumstances."

5. Double Referral:

This bill has been double referred to the Senate Labor, Public Employment and Retirement Committee and the Senate Judiciary Committee.

6. Prior/Related Legislation:

SB 54 (De Leon, Chapter 495, Statutes of 2017) limited the involvement of state and local law enforcement agencies in federal immigration enforcement.

AB 450 (Chiu, Chapter 492, Statutes of 2017) prohibited an employer from providing access to a federal government immigration enforcement agent to any non-public areas of a place of labor if the agent does not have a warrant.

SB 1001 (Mitchell, Chapter 782, Statutes of 2016) prohibited, among other things, any attempt to reinvestigate or reverify an incumbent employee's authorization to work using an unfair immigration-related practice.

AB 622 (Hernandez, Chapter 732, Statutes of 2015) expanded the definition of an unlawful employment practice to prohibit the use of the E-Verify system at a time or in a manner not required by federal law to check the employment authorization status of an existing employee or an applicant for employment.

AB 263 (Hernandez, Chapter 732, Statutes of 2013) expanded the scope of employment-based retaliation to include immigration-related practices and provided a civil cause of action for employees who are subject to such practices.

SUPPORT

AFSCME Local 3299
California Immigrant Policy Center
California State Council of Laborers
Los Angeles Worker Center Network
Pilipino Workers Center
United Farm Workers

OPPOSITION

Acclamation Insurance Management Services
Agricultural Council of California
Allied Managed Care
Associated Equipment Distributors
California Alliance of Family-Owned Businesses
California Association of Winegrape Growers
California Chamber of Commerce
California Farm Bureau
California Farm Labor Contractor Association
California State Council of SHRM
Coalition of Small and Disabled Veteran Businesses
Flasher Barricade Association
Housing Contractors of California
LeadingAge California
National Federation of Independent Business
Western Growers Association

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 1329	**Hearing Date:**	July 9, 2025
Author:	Ortega		
Version:	April 21, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Jazmin Marroquin		

SUBJECT: Workers' Compensation: Subsequent injuries payments

KEY ISSUE

This bill, for purposes of claims for special additional compensation from the Subsequent Injuries Benefits Trust Fund (SIBTF), specifies the type of evidence necessary to demonstrate the existence of a prior permanent partial disability (PPD), requires that medical-legal evidence be collected only through existing qualified medical evaluation (QME) procedures, transfers responsibility for payment of SIBTF benefits from the State Compensation Insurance Fund (State Fund) to the Director of the Department of Industrial Relations (DIR), and clarifies existing law concerning the calculation of permanent disability rating.

ANALYSIS

Existing law:

1) Establishes a comprehensive system of workers' compensation that provides a range of benefits for an employee who suffers from an injury or illness that arises out of and in the course of employment, regardless of fault. This system requires all employers to insure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by obtaining insurance from a company authorized by the state. (Labor Code §§3200-6002)

2) Establishes the Division of Workers' Compensation (DWC) and Workers' Compensation Appeal Board (WCAB) within DIR and charges them with monitoring the administration of workers' compensation claims and providing administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. (Labor Code §3200 et seq.)

3) Establishes within the workers' compensation system temporary disability (TD) indemnity, permanent disability (PD) indemnity, and permanent partial disability (PPD) indemnity, which offer wage replacement of a specified injured employee's average weekly earnings while an employee is unable to work due to a workplace illness or injury. (Labor Code §§4650-4664)

4) Establishes the Subsequent Injuries Benefits Trust Fund (SIBTF), as a special trust fund in the State Treasury, of which the Director of DIR is a trustee.

    a. Specifies that the fund is continuously appropriated for the non-administrative expenses of the workers' compensation program for workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical

impairments and prohibits the use of the funds for any other purpose (Labor Code §62.5(c)(1))

5) Provides that, if an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional PPD so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury (or "subsequent industrial injury" or "SII") alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, the worker shall be paid in addition to the compensation due for the PPD caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article.

   a. Specifies that the compensation be provided only if either:
      i. The previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the SII affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of total, or
      ii. The permanent disability resulting from the SII, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of total. (Labor Code §4751)

6) Provides that, for injuries occurring *before* January 1, 2013, in determining percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and their age at the time of the injury, *consideration being given to an employee's diminished future earning capacity (DFEC).*

   a. For purposes of this section, the "nature of the physical injury or disfigurement" shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition).
   b. For purposes of this section, an employee's diminished future earning capacity shall be a numeric formula, as specified. (Labor Code §4660)

7) Provides that, for injuries occurring *on or after* January 1, 2013, in determining percentages of partial or permanent total disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and the employee's age at the time of injury.

   a. For purposes of this section, the "nature of the physical injury or disfigurement" shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the AMA Guides to the Evaluation of Permanent Impairment (5th Edition) with the employee's whole person impairment, as provided in the Guides, *multiplied by an adjustment factor of 1.4*. (Labor Code §4660.1)

8) Provides a system of administrative dispute resolution for cases where an injured worker and their employer do not agree over any issue associated with the delivery of traditional, non-SIBTF workers' compensation benefits, including evaluation by a neutral qualified medical evaluator (QME), receipt of a medical-legal report prepared by the QME based on that

evaluation and any other medical records and information provided by the parties, the opportunity to meet before a workers' compensation administrative law judge for adjudication on the dispute based on the medical-legal report, and, if necessary, appeal the administrative law judge's decision to the WCAB for final judgement. (Labor Code §4060 et seq.)

9) Requires WCAB to fix and award the amount of special additional compensation paid and to direct the State Fund to pay additional compensation awarded; and allows the State Fund to draw from the State Treasury of the SIBTF as reimburse itself, as specified. (Labor Code §§4754 and 4755)

10) Levies separate surcharges upon all employers for purposes of deposit in the SIBTF, the Workers' Compensation Administration Revolving Fund (WCARF), the Uninsured Employers Benefits Trust Fund, and the Occupational Safety and Health Fund, and provides that the total amount of the surcharges be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year. (Labor Code §62.5(f)(1))

This bill:

1) Provides that, for compensable SII occurring on or after January 1, 2026, for purposes of determining eligibility for, and the amount of an award of, special additional compensation (i.e. SIBTF benefits), the existence of a prior PPD that existed at the time of the SII shall be determined by substantial evidence, based on medical records, testimony, or other evidence, that the prior PPD predated the SII and that the prior PPD resulted in loss of earnings, interfered with work activities of the employee, or otherwise impacted the ability of the employee to perform work activities or activities of daily living.

2) Specifies that medical-legal evidence in a proceeding filed for SIBTF benefits may only be obtained in accordance with existing procedures for QMEs applicable to traditional workers' compensation claims.

3) Requires the administrative director (AD) of the DWC to create and maintain database of QME physicians who have the necessary training and expertise to perform evaluations for SIBTF claims and specifies this database shall be used by the medical director of DWC to fulfill requests for a panel of QMEs in accordance with existing procedures.

4) Authorizes the Director of DIR to issue regulations as necessary for the implementation and orderly and effective administration of SIBTF medical evaluations.

5) Transfers responsibility for the payment of SIBTF benefits from the State Fund to the Director of DIR.

6) Clarifies, pursuant to existing law, that "permanent disability" in relation to SII occurring *on or after* January 1, 2005, and *prior to* January 1, 2013, is measured by the whole person impairment rating, based on the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), *after adjustment for diminished future earning capacity* and without regard to, or adjustment for, the occupation or age of the employee.

7) Clarifies, pursuant to existing law, that "permanent disability" in relation to SII occurring *on or after* January 1, 2013, is measured by the whole person impairment rating, also referred to as the impairment standard, based on AMA Guides, *after multiplication by the adjustment factor of 4.1*, pursuant to existing law, and without regard to, or adjustment for, the occupation or age of the employee.

COMMENTS

1. Background:

Workers' Compensation and the Subsequent Injuries Benefit Trust Fund
Under the California workers' compensation system, if a worker is injured on a job, the employer must pay for the worker's medical treatment, and provide monetary benefits if the injury is temporary or permanent. In most workers' compensation cases, this compensation is provided in the form of temporary (TD) and/or permanent disability (PD) benefits, which are typically paid out over time based on a formula derived from ratings of the severity of the worker's impairments. In return for receiving free medical treatment, the worker surrenders the right to sue the employer for monetary damages in civil court. This simple premise is sometimes referred to as the "grand bargain."

Workers in California who are injured on the job and whose disability is exacerbated by a pre-existing condition can additionally seek benefits beyond what they would be awarded by the state's workers' compensation system for only the workplace injury. The benefits for the subsequent injury (or SII) are paid by the SIBTF.

The SIBTF was established by the Legislature in the wake of World War II, after veterans who returned home from the war suffered from high rates of pre-existing permanent disabilities. The SIBTF was created in order to address the dilemma of providing disability compensation without accounting for a pre-existing disability that may leave workers without protection and making the employer responsible for the pre-existing disability that may discourage them from hiring workers without visible disabilities.

The SIBTF provides additional compensation to injured workers with a pre-existing disability which, in combination with a work injury, would lead to a higher PD rating than what would be assigned on the basis of their workplace injury (referred to as the SII) alone. Under the SIBTF, injured workers meeting the criteria receive additional PD benefits paid by the SIBTF (rather than by their employer). The benefits under the SIBTF are financed by an assessment on workers' compensation premiums (or on covered payroll for self-insured employers), so that the burden of the SIBTF payments are spread broadly across all employers covered by workers' compensation.

Below are the eligibility requirements for an injured worker to receive SIBTF benefits, as set forth in Labor Code Section 4751:

1. The applicant suffered a SII (subsequent compensable work injury).

2. The applicant had one or more pre-existing PPDs that were actually labor disabling[1] at the time the applicant suffers a SII.
3. The PD resulting from the combination of the pre-existing PPDs and the SII is greater than the PD resulting from the SII alone.
4. The PD resulting from the combined effect of the SII and PPDs together is rated at least 70 percent or higher.
5. The PD resulting from the SII alone, without adjustment for age or occupation, was either: (1) at least 35 percent, or (2) was at least 5 percent and affected a hand, an arm, a foot, a leg, or an eye that is "opposite and corresponding" to a body part that had prior PPD.

Workers who meets the requirements for SIBTF and receive SIBTF benefits get the difference between the combined PD benefits that would be provided based on the SII and pre-existing disabilities and the amount owed to the worker for PD benefits on the SII alone.

Workers with combined disability ratings from 70 to 99 percent qualify for PPD benefits which end after a set number of weeks determined by the PD rating, and a life pension which begins after the PPD has been paid out and ends at death. If the combined rating equals 100 percent, the worker is entitled to lifetime permanent total disability (PTD) benefits, which are paid out at the TD rate. PTD benefits are more generous payments than other disability benefits because the amount paid per week can be much higher and because PTD benefits are paid until death. In a regular workers' compensation case outside of the SIBTF program, lifelong disability benefit payments are infrequent because it is rare for cases to reach a PD rating of 70 percent or higher and PTD cases are even rarer. Additionally, other benefits paid in regular workers' compensation cases, such as medical treatment, are not provided by the SIBTF.

SIBTF Financial Instability and RAND Report Recommendations

In 2023, after a rapid increase of the number of applications and the amount of benefits paid out by the SIBTF, DIR contracted with RAND to conduct a comprehensive study of SIBTF cases filed and resolved in recent years. Their goal was to document basic facts about the SIBTF program to provide a foundation of informed deliberation over policy options in response to the SIBTF's recent growth.[2]

The RAND report found startling trends regarding the SIBTF and its financial instability. The report summarizes the following:

> "A sharp increase in recent years in SIBTF claims and benefits and the potential for even greater liabilities poses a financial challenge for the SIBTF. Total annual payments from the SIBTF on the 12 years of cases considered in this report grew from $13.6 million in 2010 to $232 million in 2022. Looking to the future, this analysis estimates $7.9 billion in

[1] Case law has clarified that the pre-existing disability also needs to be "actually labor disabling." In general, this principle means that the pre-existing disability must have been such that it could have been the basis for workers' compensation permanent partial disability benefits if it had resulted from employment.
No other restrictions on the cause or nature of the pre-existing disability are imposed, however: health conditions that are asymptomatic, previously undiagnosed, developmental, congenital, or associated with aging can all be considered pre-existing disabilities that qualify the worker for SIBTF benefit.

[2] California's Subsequent Injuries Benefits Trust Fund, Recent Trends and Policy Considerations. RAND. June 2024, https://www.dir.ca.gov/dwc/SIBTF-Report.pdf

> SIBTF liabilities for cases filed or pending between 2010 and 2022, the midpoint of an estimated range of $6.4–10.5 billion.
>
> The recent surge in current and future liabilities can in part be attributed to interpretations of SIBTF's governing statutes, which are vague on key issues concerning eligibility and compensation, and which are decades old. More recently, the wide parameters of the governing statutes and SIBTF rules have motivated claimants, their representatives, and vendors to make more frequent claims for injuries which in past decades might have yielded smaller benefits or might not have led to any benefits at all. In the absence of policy changes to ensure the SIBTF is implemented in a sustainable and fair way, decision makers can reasonably expect that funding demands will exceed the currently available resources and assessments on workers' compensation premiums (or on covered payroll for self-insured employers) will have to continue to rise to cover the Fund's growing liabilities."

The RAND report identified several reasons for increasing liabilities to the SIBTF, many that result from a 2020 WCAB decision in *Todd v. SIBTF* [85 Cal. Comp. Cases 576 (App. Bd. En banc)]. According to the report:

> "Prior to the [*Todd*] decision, ratings from impairments to multiple body parts, and the [PD] ratings from the SII and SIBTF cases, were typically combined using a formula referred to as the Combined Values Chart (CVC). The CVC takes into account the theoretical overlapping nature of impairments and disability and produces a combined PD rating that is lower than what would be derived from simply adding together two or more values. For example, two impairments each rated at 50 percent would yield a rating of 75 percent under the CVC. […]
>
> Instead, the *Todd* decision held that simple addition was the correct method to use for combining SII and PPD disability ratings in determining SIBTF eligibility and benefits. […] This decision made it far more likely that an SIBTF case would reach a combined rating of 100 percent. In the examples above, the combined rating would increase from 75 percent pre-Todd to 100 percent post-*Todd*."

The *Todd* decision increased both the number of applicants whose combined PD rating qualified them for SIBTF benefits, as well as the number of applicants whose combined PD rating now reached 100 percent. Because the likelihood of qualifying for generous lifetime benefits increased, the number of SIBTF cases that were resolved through "compromise and release" settlements for a lump sum dramatically decreased, as litigating the case to a final judgement more often resulted in a larger award. This was reflected in a significant increase in non-benefit costs to the SIBTF due to skyrocketing attorney fees, which grew from $770,000 in 2010 to $27 million in 2022.

The author seeks to implement, at least in part, some of the RAND report recommendations with this bill, as is discussed in more detail below. These include 1) incorporating SIBTF medical evaluations into the existing QME process, 2) amending the SIBTF statute to provide a more specific definition of what constitutes a PPD for purposes of SIBTF eligibility, and 3) updating the SIBTF criteria to address the diminished future earnings

capacity. The report also includes several additional recommendations that this bill does not address.[3]

SIBTF and the QME Process

In a traditional workers' compensation claim, if a dispute arises between the injured worker and the employer over whether an injury is work-related, a worker's capacity to return to work, the existence or extent of a permanent disability, or the need for specific or future medical treatment, the injured worker may request a QME – qualified medical evaluators. Under existing law, injured workers filing SIBTF claims are *not* subject to the QME process for the collection of medical-legal evidence. Instead, workers filing SIBTF claims may select their own medical evaluators.

The RAND Report recommends that the Labor Code could be modified to include SIBTF in the QME reforms. The report identifies fraud and abuse resulting from "doctor shopping" as a possible contributor to the financial instability of the SIBTF. The report further explains, "[n]arrowing the choice of medical experts and creating mandatory processes around medical evaluations for SIBTF cases, including potentially requiring that the same medical reports used for the SII be used for purposes of the SIBTF case, could reduce the potential for 'doctor shopping' for evaluators who deliver higher ratings specifically targeted at SIBTF eligibility."

This bill, AB 1329, specifies that medical-legal evidence in a SIBTF claim may only be obtained through the QME process and requires the administrative director of the DWC to create and maintain a database of QME physicians with the necessary training and expertise to evaluate SIBTF claims.

SIBTF Benefits Calculation and Diminished Future Earnings Capacity

In order to qualify for SIBTF benefits, a worker's PD resulting from the SII suffered must equal to 35 percent or more of TD, or 5 percent or more in specified circumstances "when considered alone and without regard to or adjustment for the occupation or the age of the employee." However, the Labor Code does not specify whether the calculation should include adjustments for diminished future earnings capacity (DFEC), or whether DFEC should only be taken into consideration for the combined PD.

The RAND report recommends the Legislature update the SIBTF threshold eligibility criteria to address the future earnings capacity under Labor Code Section 4751, which has not been changed since 1959.

As the Assembly Committee on Insurance points out, "In 2016, the WCAB held in *Geletko v. Cal. Highway Patrol [81 Cal. Comp. Cases 661]* that the omission of reference to this diminished competitive capacity, which roughly corresponds to DFEC, in the 'when considered alone' provision implied that DFEC adjustments should not be excluded in SIBTF threshold calculations. This meant that, for injuries occurring after the incorporation of the DFEC modifier but before the passage of SB 863 (i.e. between January 1, 2005 and January

[3] Other recommendations from the RAND report include specifying that use of the CVC is necessary in SIBTF cases, adopting statute of limitations for SIBTF case filings, increasing investments in SIBTF administration, limiting or capping SIBTF benefits, and considering whether the SIBTF remains necessary in light of modern policy and anti-disability discrimination statutes and protections.

1, 2013), the DFEC modifier should be included when calculating the permanent disability rating for purposes of meeting the threshold to qualify for SIBTF benefits.

Because SB 863 replaced the DFEC modifier with the 1.4 adjustment factor, this also meant that for injuries occurring on or after January 1, 2013, the 1.4 adjustment factor should be included when calculating the permanent disability rating for SIBTF threshold purposes.

To avoid further confusion and unnecessary litigation, this bill would codify the substantive impacts of the *Geletko* decision. Specifically, the bill would clarify that, for SIIs occurring between January 1, 2005 and January 1, 2013, 'PD' should be measured based on the whole person impairment rating calculated based on the AMA Guides after adjustment for DFEC, and that, for SIIs occurring on or after January 1, 2013, 'PD' should be measured based on the whole person impairment rating calculated based on the AMA Guides after multiplication by the 1.4 adjustment factor. The bill also specifies that these provisions are declarative of existing law."

PPD Criteria for SIBTF Eligibility

When the SIBTF was initially established, one of the purposes was to mitigate any potential discrimination from employers for hiring employees with pre-existing disabilities. Around the same time, in an appeal arising from a SII fund case, the California Supreme Court clarified that an applicant's alleged pre-existing disability must have been "actually labor disabling" in order to establish eligibility for SIBTF benefits. This was interpreted to mean that the pre-existing disability could have been the basis for workers' compensation PPD benefits if it had resulted from employment.

However, the RAND report found that a "growing number of SIBTF cases allege PPDs that are common health conditions and/or chronic diseases frequently found in an aging population" and case law offers little guidance on how to apply the "actually labor disabling" principle.

This bill provides a more specific definition of what constitutes a PPD for SIBTF eligibility, based on substantial evidence that the PPD predated the SII and resulted in a loss of earnings, interfered with work activities of the employee, or otherwise impacted the ability of the employee to perform work or daily living activities.

SIBTF Benefits Payment and the State Fund

Existing law requires SIBTF benefits be paid to injured workers by the State Fund, at the direction of the WCAB. The State Fund may draw funds directly from SIBTF to make award payments up to $50,000, and is authorized to reimburse itself from the Workers' Compensation Administration Revolving Fund for the cost of providing this service.

The State Fund was established in 1913 by the Legislature to provide a stable option for workers' compensation insurance to employers in California, including for state agencies. State Fund is a quasi-public entity that competes with other workers' compensation insurance providers on the open market.

This bill shifts the responsibility of administering SIBTF benefits from this complicated State Fund reimbursement scheme to direct payments made by DIR. DIR oversees the SIBTF as its trustee, so formally shifting the responsibility for administering payments SIBTF to DIR simplifies the payment process.

2. Need for this bill?

According to the author:

"Subsequent injuries are handled differently from other Workers Compensation injuries. Several of those differences have resulted in outcomes that are unnecessarily more financially burdensome 1) The use of Qualified Medical Examiners has no limit; 2) There are lesser standards of evidence; 3) Permanent Disability is not defined consistent with the 2004 and 2012 Workers' Comp reforms

Statistically any worker suffering an injury that results in a permanent disability is at a higher risk for a subsequent injury. An employer assumes all of that risk if they give a previously disabled worker a 'second-chance' at supporting themselves. The SIBTF was created so that these second-chance employers are not penalized for hiring a higher risk employee."

3. Proponent Arguments:

According to supporters of the bill, the California Applicant's Attorneys:

"The SIBTF was created after World War II to encourage employers to take the risks associated with hiring a previously disabled vet. Today's growing recognition that PTSD and other mental health issues can in fact be work related injuries has increased the relevancy of the SIBTF.

Injured workers are eligible for workers' compensation benefits regardless of immigration status, including the SIBTF. Undocumented workers do the most dangerous and injury-inducing jobs in society.

AB 1329 aligns the SIBTF QME process, standard for evidence, and definition of permanent disability with the 2004/2012 reforms. Combined, these thoughtful changes will reduce litigation costs, reduce Med-Legal costs, and reduce the number of 100% disability cases. The cumulative impact of these changes will reduce public and private employer assessments by 20-25%."

4. Opponent Arguments:

According to the American Property Casualty Insurance Association, California Chamber of Commerce, California Coalition of Workers' Compensation, Public Risk, Innovation, Solution, and Management (PRISM), all of who are opposed unless amended:

"While both state and federal law have evolved to protect workers from discrimination, SIBTF still serves an important function for injured workers who face the unfortunate results of combined industrial and non-industrial disabilities or impairments. The volume of applicants to SIBTF has nearly tripled over the past decade, causing assessments on employers to rise 800% between 2011 and 2024. Total annual payments from SIBTF have grown from $13.6 million in 2010 to $232 million in 2022. Total fund liabilities for resolved and pending cases between 2010 and 2022 are estimated at $7.9 billion, which is paid by direct assessments on employers.

The precipitous increase in the number of applications and payouts from the fund are the result of several factors, few of which are addressed by the current contents of AB 1329. Our organizations believe that the legislature should address the easily identifiable problems with SIBTF in a comprehensive manner. The Department of Industrial Relations commissioned a study of the fund and its recent explosion in applicants and payments, and made several findings that could help the legislature identify reasonable and balanced policy solutions. Additionally, Governor Newsom's May Revision identified the SIBTF as an important budget-related policy issue that needed to be addressed.

For these reasons, our organizations respectfully oppose your AB 1329 because the bill in print does not adequately address the problems with the SIBTF. We would like to work with your office and the Newsom Administration on amendments that would comprehensively address the significant problems that are destabilizing the fund."

5. Prior Legislation:

SB 863 (De Leon, Chapter 363, Statutes of 2012) enacted major reforms to the workers' compensation system, including establishing the independent medical review and IBR processes for resolving disputes.

SB 899 (Poochigian, Chapter 34, Statues of 2004) enacted major reforms to the workers' compensation system, including authorizing medical provider networks, revising the QME process, and adopting a modified Permanent Disability Rating Schedule that incorporated a DFEC modifier.

SUPPORT

California Applicants' Attorneys Association

OPPOSITION

American Property Casualty Insurance Association
California Chamber of Commerce
California Coalition on Workers Compensation
Public Risk Innovation, Solutions, and Management (PRISM)

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 1514	**Hearing Date:**	July 9, 2025
Author:	Committee on Labor and Employment		
Version:	July 2, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Worker classification: employees and independent contractors: licensed manicurists: commercial fishers

KEY ISSUES

This bill 1) extends the exemption for commercial fishers in American vessels from the ABC test under *Dynamex* (AB 5, Gonzalez, Chapter 296, Statutes of 2019*)* until January 1, 2031 and instead applies the *Borello* test; 2) reapplies and extends, to January 1, 2029, a previously expired AB 5 exemption for licensed manicurists meeting specified criteria; and 3) requires the Employment Development Department (EDD) and the Division of Labor Standards Enforcement (DLSE) to submit specified information to the Legislature regarding claims filed by licensed manicurists, as specified.

ANALYSIS

Existing law:

1) Establishes a comprehensive set of protections for employees, including a time-sure minimum wage, meal and rest periods, workers' compensation coverage in the event of an industrial injury, sick leave, disability insurance (DI) in the event of a non-industrial disability, paid family leave, and unemployment insurance (UI). (Labor Code §§201, 226.7, 246, 512, 1182.12, & 3600 and UI Code §§1251 & 2601)

2) Provides that for purposes of the Labor Code and the Unemployment Insurance Code, where another definition of "employee" is not otherwise specified, and for the wage orders of the Industrial Welfare Commission (IWC), a person providing labor or services for remuneration shall be considered an employee unless the hiring entity satisfies the 3-part ABC test (per *Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903*):

    a. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
    b. The person performs work that is outside the usual course of the hiring entity's business.
    c. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.
    (Labor Code §2775)

3) Exempts from the application of the ABC test, and instead, applies the definition of an employee as set forth in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) (*Borello*), to specified occupations and business relationships, including the use of professional services under certain circumstances. (Labor Code §2778)

4) Exempted, ***until January 1, 2025***, from the ABC test the services provided by licensed manicurists, provided that the individual:

   a. Sets their own rates, processes their own payments, and is paid directly by clients.
   b. Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.
   c. Has their own book of business and schedules their own appointments.
   d. Maintains their own business license for the services offered to clients.
   e. If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.
   (Labor Code §2778(L))

5) Exempts, ***until January 1, 2026,*** a commercial fisher working on an American vessel from the ABC test for employment status but specifies that such individual is eligible for unemployment insurance benefits if they are otherwise eligible, as specified. (Labor Code §2783(g)(4))

6) Defines "commercial fisher" as a person who has a valid, unrevoked commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code. (Labor Code §2783(g)(1))

7) Defines "working on an American vessel" to mean the taking or the attempt to take fish, shellfish, or other fishery resources of the state by any means, and includes each individual aboard an American vessel operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, including maintaining the vessel or equipment used aboard the vessel. (Labor Code §2783(g)(1))

8) Requires the Employment Development Department, each March 1, to issue an annual report to the Legislature on the use of Unemployment Insurance (UI) in the commercial fishing industry. This report shall include, but not be limited to, all of the following:

   a. Reporting the number of commercial fishers who apply for UI benefits.
   b. The number of commercial fishers who have their claims disputed.
   c. The number of commercial fishers who have their claims denied.
   d. The number of commercial fishers who receive unemployment insurance benefits.
   (Labor Code §2783(g)(3))

9) Establishes within the Department of Industrial Relations, the Division of Fair Labor Standards Enforcement (DLSE) led by the Labor Commissioner, tasked with administering and enforcing labor code provisions concerning wages, hours and working conditions. (Labor Code §56)

10) Creates a comprehensive Unemployment Insurance (UI) system, administered by the Employment Development Department (EDD), where employers pay an experienced-based tax on total payroll that are used to fund UI benefits to unemployed workers. (UI Code §§301, 602, 675, 926, 970, 977 & 1251)

This bill:

1) Extends from January 1, 2026 to January 1, 2031, the sunset date on the exemption from the application of the ABC test for commercial fishers working on an American vessel.

2) Additionally, extends the requirement that EDD issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry, including the total number of commercial fishers that are applying for, and receiving, UI benefits.

3) Reapplies and extends, until January 1, 2029, the exemption from the application of the ABC test for licensed manicurists meeting the conditions specified in existing law.

4) Requires the Employment Development Department and the Division of Labor Standards Enforcement to report to the Legislature by June 1, 2026, the annual number of claims filed by licensed manicurists against business or establishment owners since January 1, 2020, involving allegations of misclassification or other violations of the Labor Code, including the number of investigations undertaken, the number of workers impacted, and the number and outcomes of enforcement actions initiated, per business or establishment owner.

COMMENTS

1. Background:

Dynamex and AB 5:

The employer-employee relationship is at the core of the rights and obligations found within Labor Code. Being classified as an employee is essential to trigger most of the employer mandates and worker protections found within existing law. California's wage and hour laws (e.g., minimum wage, overtime, meal periods and rest breaks, etc.), workplace safety laws, and retaliation laws protect employees, but not independent contractors. Additionally, employees can go to state agencies such as the Labor Commissioner's office to seek enforcement of these laws, whereas independent contractors must resolve their disputes or enforce their rights under their contracts through other means.

For several decades, the employer-employee relationship was under pressure due to the increased use of independent contractors and the misclassification of employees. For employers lawfully using the independent contractor model, they trade control over the working conditions for being released from many of the primary obligations of being an employer, including paying overtime, remitting payroll taxes, securing workers' compensation coverage, and ensuring a healthy and safe work environment. Unfortunately, this model created incentives for employers to misclassify employees as independent contractors. In 2017, California's Employment Development Department Tax Audit Program conducted 7,937 audits and investigations, resulting in assessments totaling $249,981,712, and identified nearly *half a million* unreported employees.[1]

The issue culminated with a 2018 Supreme Court decision, *Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903.* Under Dynamex, a worker is considered an

[1] Employment Development Department 2018 Annual Report on Fraud Deterrence and Detection Activities, https://edd.ca.gov/About_EDD/pdf/Fraud_Deterrence_and_Detection_Activities_2018.pdf.

employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions (ABC test):

A. The worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
B. The worker performs work that is outside the usual course of the hiring entity's business; and
C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

In 2019, AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codified the Dynamex decision requiring that employers prove that their workers can meet the ABC test in order to be lawfully classified as independent contractors, and exempted from the test certain professions and business-to-business relationships. AB 5 also provided specified industrial categories where the long-standing *Borello* test would remain the standard for determining who is an employee. Under *Borello,* in *S. G. Borello & Sons, Inc. v Dept. of Industrial Relations* (1989) 48 Cal.3d 341, the California Supreme Court created an 11 point "economic realities" test on whether someone could lawfully be considered an independent contractor.

Also in 2019, AB 170 (Gonzalez, Chapter 415, Statutes of 2019) provided newspaper distributors an exemption from the ABC test under Dynamex and specified that instead, the determination of employee or independent contractor status would be governed by *Borello*. The exemption was set to sunset January 1, 2021. In 2020, AB 323 (Rubio, Chapter 341, Statutes of 2020), among other things, extended the sunset date on the newspaper distributors exemption from January 1, 2021, to January 1, 2022.

Also in 2020, AB 2257 (Gonzalez, Chapter 38, Statutes of 2020) recast and clarified the business-to-business referral agency, and professional services exemption to the 3-part ABC test and exempted additional occupations and business relationships including licensed manicurists (with a sunset date of January 1, 2022) and a commercial fisher working on an American vessel (with a sunset date of January 1, 2023 and a required report on the use of Unemployment Insurance in the commercial fishing industry).

Since then, several bills have been introduced and signed into law extending the sunset dates on some of the AB 5 exemption provisions that had been part of the AB 5 negotiations. For licensed manicurists, the exemption was extended again in 2021 through AB 1561 (Committee on Labor and Employment, Chapter 422, Statutes of 2021) from January 1, 2022 to January 1, 2025. For commercial fisheries, in 2022 AB 2955 (Committee on Labor and Employment, Chapter 443, Statutes of 2022) extended the exemption from January 1, 2023 to January 1, 2026.

EDD Report: Use of Unemployment Insurance in the Commercial Fishing Industry

According to the March 1, 2024 report by Employment Development Department (EDD) on the use of the UI system by commercial fishermen, per existing law as noted above, from January 1 2023 – December 31, 2023:

- The number who applied for UI benefits: 284 (down from 441 in 2020)
- The number of claims disputed: 2 (down from 7 in 2020)
- The number of claims denied: 1 (up from 0 in 2020)
- The number who received UI benefits: 238 (down from 391 in 2020)
- The total amount of UI benefits paid: $1,763,160 (down from $5,613,933.50 in 2020)

This bill:
This bill would extend the commercial fishers AB 5 exemption from January 1, 2026 to January 1, 2031 and the licensed manicurist exemption would be reapplied (expired January 1, 2025) and extended to January 1, 2029. Additionally, to assist in evaluating the industry and the need for a more long term solution, the bill requires EDD and DLSE to report on the number of claims filed by licensed manicurists against business or establishment owners involving misclassification or other Labor Code violations.

2. Need for this bill?

According to the author:

"Certain exempted industries from AB 5 (the test for employment status in the labor code) have expired and without an extension, the workers in those industries must be classified as employees…Labor stakeholders believe that licensed manicurists need a more permanent regulatory framework, with oversight from a state agency, but need time to determine the appropriate framework. This bill will give stakeholders time to develop that framework by extending the exemption for three years.

This bill would extend the sunset on the licensed manicurists' exemption from AB 5 for three years but include important reporting requirements by the EDD and the DLSE on labor violations in the industry to help stakeholders and policymakers develop the appropriate regulatory framework for this profession and better protect these workers from misclassification and wage theft.

The AB 5 exemption for commercial fishers working on an American vessel will sunset on January 1, 2026. In order to maintain continuity in the industry and in recognition of commercial fishing's contribution to our state's food security and supplying sustainably sourced seafood to restaurants in California, AB 1514 extends the exemption until January 1, 2031. The bill continues critical reporting requirements by the EDD to the Legislature on unemployment claims of commercial fishers so we can determine the appropriate employment status for these workers."

3. Proponent Arguments:

Several fisheries are in support, including the Pacific Coast Federation of Fishermen's Associations, arguing:

"Previous extensions, passed with unanimous support in 2019 and 2022, recognized the unique structure of commercial fishing and the well-established federal and state laws that have governed this industry for more than a century. Without reauthorization, the current exemption will expire, creating significant legal and operational uncertainty for fishermen and the businesses that depend on them.

Fishermen are not traditional employees. They are independent harvesters operating under federal maritime laws that provide clear worker protections, including the Jones Act, which ensures compensation for injuries and requires formal agreements between vessel owners and crew regarding wages and working conditions. Additionally, maritime law provides for 'Maintenance and Cure,' a long-standing system ensuring medical care and basic living expenses for injured seamen. These laws, developed over decades, recognize the unique and highly regulated nature of commercial fishing, making AB 5's employee classification framework inappropriate for this industry."

Regarding the licensed manicurists provisions, the Professional Beauty Federation of California is in support and writes:

"We played an instrumental part in drafting the language inserted into AB 5, establishing additional statutory standards for beauty/barbering establishments to lawfully utilize independent contractors (or 'booth renters' in beauty industry parlance). We believe this level of statutory clarity is helpful to all parties in our industry, including the behind-the-chair professionals, the salon owners and our paying customers. We believe it is only fair to continue treating manicurists and their salon owners on equal footing as skin and hair establishments…"

There is additional support from Precision Nails asking for an amendment to expand the reporting requirements to include all beauty workers, licensed or not, writing: "Limiting reports solely to licensed manicurists will further isolate and target this segment of our industry, present a distorted view of the scope of misclassification and discourage manicurists from filing claims out of fear of retaliation and weaponization, individually and collectively."

4. Opponent Arguments:

California Civil Liberties Advocacy is opposed to the measure unless it is amended arguing, "While we support the bill's intent to restore the independent contractor status of licensed manicurists, the current form introduces ambiguity and unnecessary burdens that undercut its stated purpose and risk retraumatizing a workforce disproportionately composed of Vietnamese-American women." CCLA is asking for the following amendments and makes the following concluding comments:

"Unless the following changes are made, we must oppose this bill:

1. Clarify the term "certain licensed manicurists" and align the Digest with the operative language to avoid discriminatory or selective enforcement;
2. Remove the sunset date in Section 2778, subdivision (b)(1)(L)(iii), and make the exemption permanent absent specific legislative repeal;
3. Strike or severely narrow the EDD/DLSE reporting requirement. If retained, the reporting must be anonymized, prospective only, and justified by findings of systemic abuse—which do not currently exist.

California's Vietnamese-American manicurists have already endured the confusion and instability created by the dubious exemptions language of AB 5 (see Lab. Code, § 2775). This community deserves not more probation, but permanent restoration of their dignity and economic self-determination."

There is additional opposition from LanguageLine Solutions and the Association of Language Companies who are both seeking an additional exemption from the ABC test for professional interpreters – as is currently provided for translators. As noted by the Association of Language Companies:

"California has the highest number of residents who are classified as Limited English Proficient, as well as some of the most robust protections for language access rights at the state level, starting with the Dymally-Allatore Act. Language access is a civil right under both California and US laws and regulations, and indeed, it is a gateway right in terms of LEP citizens and residents exercising their constitutional rights to due process, free speech, voting (for citizens), and may other rights. Language access is critical in healthcare, where it is required under 45 CFR 92, the enacting rule for §1557 of the Patient Protection and Affordable Care Act. Language access is the standard of care under the Joint Commission on Accreditation in the healthcare space.

However, the current interpreter exemption in AB 2257 at §2777, is unworkable. Language service companies are not 'referral agencies'— they recruit and vet linguists, ensure compliance with state and federal language access requirements, and assume liability for interpreting services. Under this limited exemption, which as noted above, cleaves interpreters away from translators, California has seen hundreds of interpreters leave the state, or leave the profession. Since the passage of AB 2257 in 2020, this has resulted in the loss of tax revenue to the state, but more problematically, increased difficulty for service providers in healthcare, the courts, municipal governments, and schools in providing language access – a right guaranteed under both California and Federal laws and regulations."

5. Prior Legislation:

AB 224 (Rubio, Chapter 298, Statutes of 2024) extended the exemption for newspaper distributors and carriers from the ABC test under *Dynamex* (AB 5) until January 1, 2030 and instead applied the *Borello* test, and required newspaper distributors and carriers to submit specified information to the Labor Workforce and Development Agency.

AB 2955 (Committee on Labor and Employment, Chapter 443, Statutes of 2022) extended from January 1, 2023, to January 1, 2026, the sunset date on the exemption from the application of the ABC test for commercial fishers working on an American vessel.

AB 1561 (Committee on Labor and Employment, Chapter 422, Statutes of 2021) extended from January 1, 2022 to January 1, 2025, the sunset date on the exemption from the application of the ABC test for licensed manicurists and construction trucking subcontractors. This bill also clarified the scope of the exemption previously granted to a data aggregator and a research subject who willingly engages with a data aggregator to provide individualized feedback, as specified, and clarified that the exemption previously granted to occupations in the insurance industry also extends to an individual providing claims adjusting or third party administration work.

AB 1506 (Kalra, Chapter 328, Statutes of 2021) extended for three years an existing exemption for newspaper distributors and carriers from the ABC Test and required them to submit specified information to the LWDA on the number of carriers for which the publisher

or distributor paid and did not pay payroll taxes for, as well as the wage rates and information to demonstrate compliance of their carriers with the *Borello* test.

AB 2257 (Gonzalez, Chapter 38, Statutes of 2020) recast and clarified the business-to-business referral agency, and professional services exemption from the ABC test for employment status and exempted additional occupations and business relationships.

AB 323 (Rubio, Chapter 341, Statutes of 2020) extended an existing exemption for newspaper distributors and carriers from the ABC test from January 1, 2021 to January 1, 2022, and required an assessment of the effectiveness of contracts to conduct outreach and marketing to specified communities.

AB 170 (Gonzalez, Chapter 415, Statutes of 2019) provided an exemption for newspaper distributors and carriers from the ABC test, as specified, until January 1, 2021.

AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codified the decision of the California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018)* requiring that employers prove that their workers can meet a 3 part (ABC) test in order to be lawfully classified as independent contractors, and exempted from the test certain professions and business-to-business relationships.

SUPPORT

Alliance of Communities for Sustainable Fisheries
Apollo Charters
Augello Enterprises LLC Dba. Southern Coast Trading
Blue Fisheries Inc.
Bodega Bay Fishermen's Marketing Association
Buccaneer Fishing
Cal Marine Fish Company
California Lobster & Trap Fishermen’s Association
California Lovin Fisheries
California Wetfish Producers Association
Carnage Fish Company Inc.
Commercial Fishermen of Santa Barbara
Crescent City Commercial Fishermen's Association
FV Resolution LLC
F/V Verna Jean LLC
Freelance Sportfishing Inc.
Half Moon Bay Seafood Marketing Association
Humboldt Fishermen's Marketing Association
Mack Squid LLC
MacKimmie Fisheries LLC
Marina del Rey Bait Company
Morro Bay Commercial Fishermen’s Organization
Ocean Angel Brand
Oceanside Bait Company
Pacific Coast Federation of Fishermen's Associations (PCFFA)
Pacific Vulture LLC
Port of San Luis Commercial Fishermen's Association

Precision Nails
Professional Beauty Federation of California (PBFC)
Salmon Troller's Marketing Association
San Diego Fishermen's Working Group
San Francisco Crab Boat Owners' Association
Santa Cruz Commercial Fishermen's Association
Silver Bay Seafoods - California, LLC

OPPOSITION

Association of Language Companies
California Civil Liberties Advocacy
LanguageLine Solutions

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 1515	**Hearing Date:**	July 9, 2025
Author:	Committee on Labor and Employment		
Version:	June 23, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Professional employer organizations

KEY ISSUE

This bill attempts to regulate the professional employer organization (PEO) industry by defining key terms and prohibiting a person from providing, advertising, or otherwise holding oneself out as providing professional employer services in the state unless the person registers with the Division of Labor Standards Enforcement.

ANALYSIS

Existing federal law:

1) Defines a certified professional employer organization as a person who applies to be treated as a certified professional employer organization and has been certified by the Treasury Secretary as meeting specified requirements. (26 U.S.C §7705(a))

2) Provides that a certified professional employer organization shall be treated as the employer (and no other person shall be treated as the employer) of any work site employee performing services for any customer of such organization, but only with respect to remuneration remitted by such organization to such work site employee. (26 U.S.C §3511(a))

Existing state law:

1) Establishes within the Department of Industrial Relations 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) Defines a "temporary services employer," also known as a "leasing employer," as an employing unit that contracts with clients or customers to supply workers to perform services for the clients or customers, as well as to perform the following functions:

    a. Negotiate with clients or customers for such matters as time, place, type of work, working conditions, quality, and price of the services;
    b. Determine assignments or reassignments of workers, even though workers retain the right to refuse specific assignments;
    c. Retain the authority to assign or reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer;
    d. Assign or reassign the worker to perform services for a client or customer;
    e. Set the rate of pay of the worker, whether or not through negotiation;

f. Pay the worker from their own account or accounts;
g. Retain the right to hire and terminate workers.
(Labor Code §201.3 and Unemployment Insurance Code §606.5)

3) Provides that if an individual or entity contracts to supply an employee to perform services for a customer or client, and *is* a temporary services employer or a leasing employer, the individual or entity is the employer of the employee who performs the services. (Unemployment Insurance Code §606.5(c))

4) Provides that if an individual or entity contracts to supply an employee to perform services for a client or customer and *is not* a temporary services employer or a leasing employer, the client or customer is the employer of the employee who performs the services. (Unemployment Insurance Code §606.5(c))

5) Provides that an individual or entity that contracts to supply an employee to perform services for a customer or client and pays wages to the employee for the services, *but is not* a leasing employer or a temporary services employer, pays the wages as the agent of the employer. (Unemployment Insurance Code §606.5(c))

6) Provides that whether an individual or entity is the employer of specific employees shall be determined by the ABC Test (AB 5, Chapter 296, Statutes of 2019), except as provided in 2)-6), above. (Unemployment Insurance Code §606.5(a))

This bill:

1) Defines "professional employer organization (PEO)" as a person that meets any of the following criteria:

   a. Is certified by the Secretary of the Treasury pursuant to Section 7705 of Title 26 of the United States Code.
   b. Is accredited by the Employer Assurance Corporation
   c. Provides professional employer services to a client pursuant to a written professional employer agreement intended by the parties to create an ongoing relationship.

2) Defines "professional employer services" as services pursuant to a professional services agreement that provides for all or substantially all employees of a client and includes all of the following:

   a. Reporting employee wages using the federal employer identification number of the PEO.
   b. Securing workers' compensation insurance, as specified.
   c. Offering employee benefit plans.

3) Prohibits a person from providing, advertising, or otherwise holding oneself out as providing professional employer services in the state unless the person registers with DLSE.

4) Requires a PEO, upon registration, to pay an initial registration fee established by DLSE not to exceed the reasonable cost of providing the registration.

COMMENTS

1. Background:

Professional Employer Organizations (PEOs)
The PEO industry originated in the 1970s with the rise of leasing employers. Under this model, employers would terminate their workforce, a leasing company would employ that workforce, and then the leasing company would provide that same workforce back to the client as leased employees. This enabled employers to cut costs. As the popularity of this model increased, businesses began to see other benefits to leasing employees. Today, the modern PEO industry provides human resources, payroll, and employment tax services to small and mid-size businesses. Ideally, the PEO model relieves clients of administrative responsibilities so that they can focus on their core business. PEOs can issue payroll, remit employment tax payments, administer employee benefits and workers' compensation, and recruit, hire, and onboard workers. When PEOs pay wages and taxes, they use their own employer identification number, not the client's. The National Association of Professional Employer Organizations (NAPEO) estimates that more than 200,000 business across the country use a PEO.[1]

A PEO and its client structure their relationship through a client services agreement that specifies how the two will delineate employer responsibilities and liabilities. The NAPEO refers to the relationship between a PEO and its client as "co-employment." The U.S. Code, however, does not define the term, nor does federal tax law recognize the concept. Instead, Treasury Regulation 31.3504-2 authorizes a person that pays wages or compensation to the individuals performing services for any client pursuant to a service agreement to perform the acts required of an employer with respect to the wages or compensation paid. In a "co-employment" agreement, the client company maintains responsibility for and manages product development and production, business operations, marketing, sales, and service, while the PEO provides services related to employment.

Across the country, PEO regulations and licensing requirements vary. In California, PEOs are not statutorily defined or regulated.

2. Comments:

In 2011, AB 975 (Ma) sought to regulate the PEO industry with similar language to AB 1515. Instead of registering with DLSE, AB 975 would have required PEOs to register with the Employment Development Department (EDD). This previous attempt stalled in the Senate Appropriations Committee.

AB 1515 would attempt to regulate the industry by defining key terms and prohibiting a person from providing, advertising, or otherwise holding oneself out as providing professional employer services in the state unless the person registers with DLSE. The bill in print contains few details on the proposed registration requirement and offers no enforcement mechanism. The author's office is committed to working with industry stakeholders to refine the bill's provisions.

3. Need for this bill?

According to the author:

[1] NAPEO, Frequently Asked Questions About PEOs, https://napeo.org/intro-to-peos/faqs/ `

"The PEO industry has been operating lawfully in California for over 30 years. However, unlike most other states, California statutory law generally does not formally define PEOs. This bill seeks to establish a clear statutory definition of PEOs and require them to be registered with the state in order to do business. This is consistent with the regulatory approach taken in approximately 40 other states that define and regulate PEOs in this fashion.

Lack of formal statutory recognition can lead to confusion among regulators and others regarding the status of PEOs, their relationships to their clients, and their relationship to other business models. In addition, establishing a registration requirement with minimum standards for the industry will ensure that only legitimate and good-actor PEOs are able to do business in the state, raising standards for the industry and the state as a whole.

[AB 1515] creates a registration process for PEOs through the DLSE with a fee that shall be determined by the DLSE [and] defines key terms such as what qualifies as a PEO."

4. Proponent Arguments:

According to the National Association of Professional Employer Organizations:

"PEOs provide human resource services to small and mid-size businesses—paying wages and taxes under the PEO's EIN, offering workers' compensation and risk management services, and providing compliance assistance with employment-related rules and regulations. In addition, many PEOs provide HR technology systems and access to 401(k) plans, health, dental, and life insurance, dependent care, and other benefits. In doing so, PEOs help businesses take care of employees by enabling them to offer Fortune 500-level benefits at an affordable cost and providing access to experienced HR professionals. PEOs also help business owners and executives save time by taking administrative and HR related tasks off their plates, allowing them to focus on the success of their businesses.

Across the U.S., PEOs provide services to 200,000 small and mid-sized businesses, employing 4.5 million people. More than 21,000 California businesses – employing more than 470,000 people partner with a PEO.

Since 1991, 38 states have adopted comprehensive legislation to bring regulatory certainty to the industry, to clearly define PEOs and differentiate them from other business models, and to raise industry standards to the benefit of PEOs, their clients, employees of their clients, and state regulators.

The goal of AB 1515 is to enact similar statutory recognition and regulation of the PEO industry in California. We have been working collaboratively this year with the California Federation of Labor Unions, AFL-CIO and other interested stakeholders and those discussions are ongoing. AB 1515 is an Assembly Labor Committee bill intended to facilitate these discussions and serve as a placeholder for final legislative language as these productive discussions continue."

5. Opponent Arguments:

None received.

6. Prior Legislation:

AB 975 (Ma, 2011) would have prohibited a person or entity from providing professional employer services, advertising for professional employer services, or otherwise holding itself out as providing professional employer services in the state unless that person or entity registers as a PEO with EDD, as specified. The bill would have directed EDD to prescribe rules establishing the method for PEOs to report quarterly wages and contributions for worksite employees. *The Senate Appropriations Committee held this bill on suspense.*

AB 2570 (Ma, 2010) would have regulated PEOs by recognizing, for the purposes of the remittance of payroll taxes, a 'co-employment' contractual relationship between a Professional Employer Organization and a business employer. *The Senate Appropriations Committee held this bill on suspense.*

SUPPORT

National Association of Professional Employer Organizations

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 381	**Hearing Date:**	July 9, 2025
Author:	Stefani		
Version:	May 23, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: State contracts: certification process: forced labor and human trafficking

KEY ISSUE

This bill revises state contracting requirements to require contractors and subcontractors to certify that contracts comply with specified human trafficking prohibitions and a detailed series of labor standards. Additionally, the bill creates a new requirement for contractors and subcontractors to develop and implement compliance plans, as specified, and expands the list of potential sanctions for violations of these provisions.

ANALYSIS

Existing law:

1) Under the California Occupational Safety and Health Act, assures safe and healthful working conditions for all California workers by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health. (Labor Code §6300)

2) Requires a contract entered into by any state agency for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, to require that a contractor certify that nothing furnished to the state pursuant to the contract has been laundered or produced by certain types of forced labor, as specified. (Public Contract Code §6108)

3) Specifies that a contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents, employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations (DIR), or the Department of Justice (DOJ) to determine the contractor's compliance, as specified. (Public Contract Code §6108(a))

4) Authorizes certain sanctions to be imposed if a contractor knew or should have known that the apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state were laundered or produced in violation of specified conditions including, among others, voiding the contract under which the items were laundered or provided at the option of the state agency and removing the contractor from the bidder's list for a period not to exceed 360 days. (Public Contract Code §6108(b))

5) Prohibits any state agency from entering into a contract with any contractor unless the contractor meets the following requirements, among others:

   a. Contractors and subcontractors in California shall comply with all appropriate state laws concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards as well as appropriate federal laws.
   b. Contractors and subcontractors shall maintain a policy of not terminating any employee except for just cause, and employees shall have access to a mediator or to a mediation process to resolve certain workplace disputes that are not regulated by the National Labor Relations Board.
   c. Contractors and subcontractors shall ensure that workers are paid, at a minimum, wages and benefits in compliance with applicable local, state, and national laws of the jurisdiction in which the labor, on behalf of the contractor or subcontractor, is performed.
   d. All contractors and subcontractors shall comply with the overtime laws and regulations of the country in which their employees are working.
   e. There may be no form of forced labor of any kind, including slave labor, prison labor, indentured labor, or bonded labor, including forced overtime hours.
   f. No worker may be subjected to any physical, sexual, psychological, or verbal harassment or abuse, including corporal punishment, under any circumstances, including, but not limited to, retaliation for exercising his or her right to free speech and assembly.
   g. No worker may be forced to use contraceptives or take pregnancy tests. No worker may be exposed to chemicals, including glues and solvents, that endanger reproductive health.
   h. Contractors and bidders shall list the names and addresses of each subcontractor to be utilized in the performance of the contract, and list each manufacturing or other facility or operation of the contractor or subcontractor for performance of the contract. The list, which shall be maintained and updated to show any changes in subcontractors during the term of the contract, shall provide company names, owners or officers, addresses, telephone numbers, e-mail addresses, and the nature of the business association.

   (Public Contract Code §6108(g))

6) Specifies that any person who certifies as true any material matter pursuant to the above provisions that he or she know to be false is guilty of a misdemeanor. (Public Contract Code §6108(h))

7) Requires DIR to establish a contractor responsibility program, including a Sweatfree Code of Conduct, to be signed by all bidders on state contracts and subcontracts, as specified. (Public Contract Code §6108(f))

8) Requires employers to establish, implement, and maintain an effective Injury and Illness Prevention Program (IIPP) that must include, among other things, a system for identifying and evaluating workplace hazards. (Labor Code §6401.7)

9) Requires employers, as specified, to establish, implement, and maintain an effective workplace violence prevention plan that includes, among other elements, requirements to maintain incident logs, provide specified trainings, and conduct periodic reviews of the plan. (Labor Code §6401.9)

This bill:

1) Requires, for a contract entered into or renewed on or after January 1, 2026, every contractor working with a state agency for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, to certify that the contract, among other things, complies with the requirement that contractors, contractor employees, subcontractors, subcontractor employees, and their agents are prohibited from all of the following:

    a. Engaging in severe forms of trafficking in persons during the performance period of the contract.
    b. Using forced labor in the performance of the contract.
    c. Destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity or immigration documents, regardless of the issuing authority.
    d. Using misleading or fraudulent practices during the recruitment or hiring of employees, including failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations regarding the key terms and conditions of employment, as specified.
    e. Using recruiters that do not comply with state labor laws and the laws of the country that the recruiting takes place.
    f. Charging employees or potential employees recruitment fees.
    g. Failing to provide or pay for the cost of required return transportation upon the end of employment, as specified.
    h. Providing or arranging housing that fails to meet the housing and safety standards of the country where the work is performed.
    i. If required by law or contract, failing to provide an employment contract, recruitment agreement, or other required work document in writing, as specified.

2) Requires contractors and subcontractors to notify employees of the prohibited activities described above and the actions that may be taken against them for violations.

3) Provides that the contractor is ineligible for, and shall not bid on, or submit a proposal for, a contract described above if that contractor has failed to certify compliance, as specified.

4) Requires a contractor to exercise due diligence in ensuring that its subcontractors comply with the provisions in 1), above, including requiring each subcontractor to sign a certification.

5) Requires a contractor, before a contract or subcontract is awarded, to provide or obtain from the proposed subcontractor and then provide to the contracting officer a certification that states both of the following: the contractor and/or subcontractor has implemented a compliance plan, as specified; and the contractor and/or subcontractor has conducted due diligence, as specified.

6) Requires the compliance plan to comply with all of the following criteria:

    a. The compliance plan shall be appropriate to the size and complexity of the contract and the nature and scope of its activities, as specified.
    b. The compliance plan shall include, at minimum, all of the following:

i. An awareness program to inform employees about the prohibited activities described above and the actions that will be taken against them for violations.
ii. A process for employees to report activity inconsistent with the above provisions, as specified.
iii. A recruitment and wage plan, as specified.
iv. If the contractor or subcontractor intends to provide or arrange housing, a housing plan that ensures that the housing meets the housing and safety standards of the country where the work is performed.
v. Procedures to prevent subcontractors and agents at any tier and at any dollar value from engaging in trafficking in persons, including the prohibited activities described above and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in the prohibited activities.

7) Requires a contractor and subcontractor to comply with all of the following:

a. Disclose to the contracting officer and the state agency with oversight information sufficient to identify the nature and extent of a violation of a prohibited activity described above and the individuals responsible for the conduct.
b. Provide timely and complete responses to state auditors' and investigators' requests for documents.
c. Cooperate fully in providing reasonable access to their facilities and staff, inside and outside the state, to allow contracting agencies and other responsible government agencies to conduct audits, investigations, or other actions to ascertain compliance with this section and other anti-human trafficking laws.
d. Protect all employees suspected of being victims of or witnesses to prohibited activities before returning to the country from which the employee was recruited.
e. Not prevent or hinder an employee from cooperating fully with government authorities.

8) Requires contracts to provide suitable remedies, including termination, to be imposed on contractors and subcontractors that fail to comply with these provisions.

9) Provides that any contractor contracting with the state who knew or should have known that the apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state were laundered or produced in violation of specified conditions when entering into a contract pursuant to the above, may, in addition to existing sanctions, have any or all of the following sanctions applied:

a. The contractor may be required to remove a contractor employee from the performance of the contract.
b. The contractor may be required to terminate a subcontractor.
c. Contract payments may be suspended until the contractor has taken appropriate remedial action.
d. If the state determines contractor noncompliance, there may be a loss of award fee, consistent with the award fee plan, for the performance period the state determined contractor noncompliance.
e. The state may decline to exercise available options under the contract.
f. The contractor may be subject to suspension or debarment.

10) Provides that if a contractor, contractor employee, subcontractor, subcontractor employee, or agent violates specified provisions of the Penal Code, the federal Trafficking Victims Protection Act of 2000, Federal Executive Order 13627, or these provisions, the contractor shall, among other things, do all of the following:

    a. Notify its employees and agents of the prohibited activities described above, and the consequences for violating these provisions, including, but not limited to, removal from the contract, reduction in benefits, or termination of employment.
    b. Take appropriate action against a contractor employee, subcontractor, subcontractor employee, or agent that violates these provisions.
    c. Inform the contracting officer and all appropriate state agencies with oversight information sufficient to identify the nature and extent of a violation of a prohibited activity and the individuals responsible for the conduct, as specified.
    d. Provide timely and complete responses to state auditors' and investigators' requests for documents.
    e. Cooperate fully in providing reasonable access to its facilities and staff, inside and outside the state, to allow contracting agencies and other responsible government agencies to conduct audits, investigations, or other actions to ascertain compliance, as specified.
    f. Protect all employees suspected of being victims of or witnesses to prohibited activities from retaliation from employers, as specified and shall not prevent or hinder the ability of these employees from cooperating fully with state authorities.
    g. Post the minimum requirements of the compliance plan, as specified.
    h. Within 60 days of receiving the contract, provide the compliance plan to the contracting officer.

11) Authorizes an administrative law judge, during a hearing requested by a contractor on the imposition of sanctions, to consider both mitigating and aggravating factors, as specified.

12) Requires a contracting officer, upon receipt of credible information regarding a violation of these provisions, to promptly notify, in accordance with agency procedures, the state agency with oversight, the agency debarring and suspending official, and if appropriate, law enforcement officials with jurisdiction over the alleged offense. The contracting officer may direct the contractor to take specific steps to abate the alleged violation or enforce the requirements of its compliance plan.

13) Defines "forced labor" as knowingly providing or obtaining the labor or services of a person by any of the following:

    a. By threats of serious harm to, or physical restraint against, that person or another person.
    b. By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform labor or services, that person or another person would suffer serious harm or physical restraint.
    c. By means of the abuse or threatened abuse of law or the legal process.

14) Defines "severe forms of trafficking in persons" as either of the following:

    a. Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform that act has not attained 18 years of age.

b. The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

15) Specifies that requirements set forth in this bill shall govern contracts and subcontracts entered into by a state agency, regardless of place of performance.

16) Includes various other definitions, as specified.

17) Makes technical and conforming changes.

COMMENTS

1. Background:

Human and Labor Trafficking in California

A series of 2020 reports by the Little Hoover Commission highlighted the obstacles to tracking and preventing labor trafficking in California.[1] Among the issues identified were the absence of an aggressive state response and a focus on sex trafficking. The Commission also found that while several state agencies play a role in combatting human trafficking, there is no coordinated strategy to target the crime statewide. The state's ability to "flip the script by proactively and strategically looking for traffickers" requires the effective use of state resources.[2]

In 2024, the Legislature passed and governor signed AB 1888 (Arambula, Chapter 614, Statutes of 2024), which created, upon appropriation by the Legislature, the Labor Trafficking Unit within the DOJ to receive labor trafficking reports from law enforcement agencies and other entities, and refer these reports to appropriate agencies for investigation, prosecution, or other remedies. The Legislature has yet to appropriate funds for this office.

Existing State Contracting Requirements

Existing law requires state contractor awardees to certify that no apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor, or exploitation of children in sweatshop labor. Any person who knowingly provides a false certification is guilty of a misdemeanor.

Contractors must also comply with the Sweatfree Code of Conduct (Code). This Code requires, among other things, that all state contractors and subcontractors *certify under penalty of perjury* that they do not use any form of forced labor and that they adhere to all appropriate state and federal laws concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards.[3] The existing law section of this analysis lists all of the contractor and subcontractor requirements contained in the Code. In cases where a contractor violates these conditions, the Code outlines various sanctions including

[1] Little Hoover Commission (September 2020, pages 3-4). Labor Trafficking: Strategies to Uncover this Hidden Crime
[2] Little Hoover Commission (September 2020, page 2). Labor Trafficking: Strategies to Uncover this Hidden Crime
[3] "Sweatfree Code of Conduct," Department of Industrial Relations, https://www.dir.ca.gov/sweatfreecode.htm

financial penalties of up to $1,000 or twenty percent of the value of the products and/or barring the contractor or subcontractor from participating in future state contracts.

Existing Federal Contractor Requirements
According to the Senate Governmental Organization Committee:

"The United States federal government has long had a policy prohibiting government employees and contractor personnel from engaging in trafficking persons. The efficacy of this policy was strengthened in 2015 when the Federal Acquisition Regulation (FAR) rule, entitled 'Ending Trafficking in Persons,' implemented trafficking-related prohibitions for federal contractors and subcontractors.

The FAR requires contractors and subcontractors to notify government procurement personnel whenever they receive credible information of human trafficking or violations of the prohibited practices associated with trafficking, and puts parties on notice that federal agencies may impose remedies, up to and including suspension and debarment, for failure to comply with the requirements.

The regulations apply to all contracts and prohibit contractors and subcontractors from engaging in prohibited practices including:

a. Engaging in severe forms of trafficking persons.
b. Procuring commercial sex acts during the performance of the contract.
c. Using forced labor in the performance of the contract.
d. Destroying, concealing, confiscating, or otherwise denying access by an employee to his or her identity or immigration documents.
e. Using misleading or fraudulent recruitment practices.
f. Using recruiters that do not comply with local labor laws.
g. Charging employees recruitment fees.
h. Failing to provide return transportation for employees upon the end of the contract.
i. Providing or arranging housing that fails to meet the host country housing and safety standards.
j. If required by law or contract, failing to provide an employment contract in writing.

The FAR also requires that U.S. government contracting personnel check the Department of Labor's 'List of Goods Produced by Forced or Indentured Child Labor' when issuing a solicitation for supplies. If the product appears on the list, the contractor is required to certify that it will not supply any end product from countries (subject to certain exceptions) that appear on the list; or to certify that it has made a good faith effort to determine whether forced or indentured labor was used to mine, produce, or manufacture any end product to be furnished under the contract.

If U.S. government personnel have reason to believe that forced or indentured child labor was used to produce an end product, they are required to contact the agency Inspector General, the Attorney General, or the Secretary of the Treasury. Noncompliance with this regulation can lead to termination of the contract, suspension of the contractor, or debarment for up to three years."

AB 381 Additional Certification Requirements, New Sanctions, and Compliance Plans

This bill would expand the list of prohibitions a contractor must certify compliance with before entering into a contract with any state agency. The expanded list is consistent with existing labor law protections. Additionally, the bill would expand the potential sanctions for a contractor who knew or should have known that items furnished to the state were laundered or produced in violation of specified conditions. Among other sanctions, a contractor may now be required to remove a contractor employee from the performance of the contract, terminate a subcontractor, or face suspension of contract payments. Lastly, the bill would require both contractors and subcontractors to implement and maintain a compliance plan to prevent and detect prohibited activities. Before the state awards a contract, these plans must be drafted and posted at the workplace and/or on the contractor's website. These posting requirements are consistent with those required for other workplace protection plans.

2. Comments:

The provisions of this bill aim to protect workers by requiring contractors, subcontractors, and their agents to certify that they are not engaging in a series of prohibited actions and that they have implemented a compliance plan. Outside of the compliance plan, this certification only requires contractors to affirm they are following existing law and *does not impose any new requirements that are not already illegal*. Regardless of certification, a state contractor who violates any of the enumerated prohibitions faces potential sanctions.

The Sweatfree Code of Conduct, described above, requires contractors to certify under penalty of perjury that they comply with all appropriate state and federal laws concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards. Because federal and state law already outlaw all of the prohibitions enumerated in AB 381, any state contract awardee has already certified their compliance. For example, destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity or immigration documents, regardless of the issuing authority, is included in the expanded certification requirement. Existing federal law, under 18 U.S.C. §1592, prohibits this, thus any state contract awardee has already certified compliance under the Code.

3. Need for this bill?

According to the author:

"The federal government, unlike California, has updated measures in place prohibiting companies who contract with government departments from engaging in human trafficking, forced labor, commercial sex and child labor trafficking. This bill would bring California in line with federal government policy by requiring that any company that contracts with the state takes specified measures to prevent human trafficking…

This bill would revise existing law by requiring that any business that wishes to contract with the state of California complies with updated provisions currently enumerated in federal regulations in 2016. These provisions would better identify and prevent human trafficking and other forms of labor exploitation in company supply chains if an applicant for a California contract or a contractor fails to certify that they are taking the enumerated steps to prevent trafficking in their supply chains, then they are not eligible to receive a California contract or can lose their procurement contract with the state…

This bill would provide further guidance on prohibited actions that involve fraud and misrepresentation, so that companies that contract with the California government would understand what is expected. Guidance would include failing to provide key terms of employment in a workers' native language, charging recruitment fees, and failing to provide return transportation for workers."

4. Proponent Arguments:

The sponsors of the measure, the Sunita Jain Anti-Trafficking Initiative, argue:

"AB 381 is not only good policy—it is also a cost-efficient measure with far-reaching implications for preventing human trafficking, both within California's supply chains and globally, given the immense size and influence of California's economy. The evidence supporting this legislation is rooted in publicly available data and findings from federal procurement experts, as well as reports like the Department of State's Trafficking in Persons Report (TIP Report), published annually…

California, with its nearly $300 billion budget, is uniquely positioned to lead the fight against forced labor, human trafficking, and child labor. By updating its government procurement policies, the state can ensure that goods purchased by its agencies are free from exploitation. Public procurement accounts for 13–20% of global GDP, and from 2022-23 alone, California spent $18.98 billion on contracts and purchases. California's immense purchasing power provides an unparalleled opportunity to set global standards, compelling companies to scrutinize their supply chains and eliminate exploitative practices. Businesses, both within the United States and abroad, should not have to compete with unethical producers who undermine working families through the use of forced and trafficked labor…

AB 381 represents a unique opportunity for California to address labor exploitation, protect vulnerable workers, and establish its global leadership in combating trafficking— all while incurring minimal fiscal impact."

5. Opponent Arguments:

None received.

6. Double Referral:

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

7. Prior Legislation:

SB 1157 (Hurtado, 2024) was nearly identical to AB 381. *This bill was held in the Senate Appropriations Committee.*

AB 1888 (Arambula, Chapter 614, Statutes of 2024) established, upon appropriation by the Legislature, the Labor Trafficking Unit within the DOJ to receive labor trafficking reports from law enforcement agencies and other entities and refer these reports to appropriate agencies for investigation, prosecution, or other remedies.

AB 380 (Arambula, 2023) would have established the Labor Trafficking Unit within DIR's DLSE. *This bill was held in the Senate Appropriations Committee.*

AB 235 (B. Rubio, 2023) would have established the Labor Trafficking Unit within the CRD. *This bill was held in the Assembly Appropriations Committee.*

AB 964 (Ortega, 2023) was nearly identical to AB 381. *This bill was held in the Assembly Appropriations Committee.*

SB 657 (Steinberg, Chapter 556, Statutes of 2010) enacted the California Transparency in Supply Chains Act to require retail sellers and manufacturers doing business in the state to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale, as specified.

SB 1231 (Corbett, 2010) would have made various changes including renaming the code of conduct to the Slave and Sweat Free Code of Conduct, mandating state procurement contracts to include certifications that products are not made with abusive labor, and increasing penalties for non-compliance, as specified. *Governor Schwarzenegger vetoed this bill.*

SB 578 (Alarcon, Chapter 711, Statutes of 2003) enacted non-sweatshop labor guidelines to state procurement policies to ensure that goods and services purchased by the State of California be produced in workplaces that adhere to minimum standards for protecting workers.

SB 1888 (Hayden, Chapter 891, Statutes of 2000) extended existing law that prohibits state agencies from procuring foreign goods made by forced labor, convict labor, or indentured labor to include goods made by abusive forms of child labor or exploitation of children in sweatshop labor.

AB 2457 (Figueroa, Chapter 1149, Statutes of 1996) required every contract entered into by a state agency for the procurement of equipment, materials, or supplies to specify that no foreign-made equipment, materials, or supplies furnished to the state may be produced by forced labor, convict labor, or indentured labor, as specified.

SUPPORT

Sunita Jain Anti-Trafficking Initiative, Loyola Law School (Sponsor)
Asian Americans Advancing Justice-southern California
Bet Tzedek Legal Services
Board of Supervisors for the City and County of San Francisco
California Federation of Labor Unions
California Nurses Association
California Women's Law Center
Center for Human Rights and Constitutional Law
Central Valley Justice Coalition
Coalition to Abolish Slavery and Trafficking
Earthworks
Ethix Merch
Gaia

International Corporate Accountability Roundtable
International Institute of Los Angeles
Investor Advocates for Social Justice
Jobs to Move America
LA Raza Centro Legal
Loyola Law School, the Sunita Jain Anti-trafficking Initiative
National Council of Jewish Women- San Francisco Bay Area Section
Praeveni U.S. Inc.
Public Citizen, Inc.
Reach
San Francisco Board of Supervisors
San Francisco Safehouse
Santa Barbara Women's Political Committee
Sierra Club California
United Food and Commercial Workers Western States Council
Verité
Waymakers
Women's Employment Rights Clinic at Golden Gate University School of Law
Women's Transitional Living Center, INC.
Worksafe

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 406	**Hearing Date:**	July 9, 2025
Author:	Schiavo		
Version:	June 27, 2025		
Urgency:	Yes	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Employment: unlawful discrimination: victims of violence

KEY ISSUE

This bill makes technical amendments to Labor and Government code sections related to last year's AB 2499, to clarify the rights of crime victims to use paid time off for specified purposes; designates the Labor Commissioner' Office as the agency that retains jurisdiction of pending cases arising from specified adverse actions against employees on or before December 31, 2024; clarifies the Civil Rights Department (CRD)'s jurisdiction of such cases after that date; and makes conforming changes to the Labor Code and the Government Code to reflect the transfer of responsibilities between the two agencies.

ANALYSIS

Existing law:

1) Establishes the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency 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.)

2) Establishes within the DIR 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, including the investigation of complaints. (Labor Code §§79-107.)

3) Establishes the Civil Rights Department (CRD) in the Business, Consumer Services, and Housing Agency and authorizes it to bring civil actions pursuant to several state and federal laws prohibiting discrimination and protecting civil rights. (Government Code §§12900 et seq.)

4) Makes specified discriminatory actions by an employer unlawful employment practices, unless based upon a bona fide occupational qualification, or, except as specified. (Government Code §12940)

5) Prohibits an employer from, inter alia, discharging or in any manner discriminating or retaliating against an employee who is a victim for taking time off from work to obtain or attempt to obtain any relief. Relief includes, but is not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or their child. (Government Code § 12945.8 (a))

6) Prohibits an employer with 25 or more employees from discharging or in any manner discriminating or retaliating against an employee who is a victim or who has a family member who is a victim for taking time off from work for a number of specified reasons related to obtaining relief. (Government Code §12945.8 (b))

7) Allows an employee to use vacation, personal leave, paid sick leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a specified purposes arising from being a victim of a crime. (Government Code §12945.8 (g))

8) Defines various terms including "Victim" and "Qualifying act of violence", as specified. (Government Code §12945.8 (j))

9) Requires an employer to allow an employee who is a victim of a crime to be absent from work in order to attend judicial proceedings related to that crime. (Labor Code §230.2 (b))

10) Prohibits an employer from discharging from employment or in any manner discriminating against an employee because the employee is absent from work for specified purposes arising from being a victim of a crime. (Labor Code §230.2 (f))

11) Authorizes any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or rights, as specified, may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations. (Labor Code §230.2 (g))

This bill:

1) Makes a technical, non-substantive amendment that recasts the requirement that an employee give reasonable notice to an employer when taking time off for jury duty and combines that requirement in another provision requiring reasonable notice for several types of permitted leave.

2) Moves to the Government Code from the Labor Code, the mandate that commencing January 1, 2026, an employer may not discharge or in any manner discriminate or retaliate against an employee who is a victim or a family member of a victim for taking time off from work in order to attend judicial proceedings related to that crime, including, but not limited to, any delinquency proceeding, a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding where a right of that person is an issue.

3) Clarifies the list of crimes, as specified, for which a victim of crime may take time off to be the following:

    a. For a person against whom any of the following crimes as defined in specified sections of the Penal Code are committed:
        i. A violent felony.
        ii. A serious felony.
        iii. Felonious theft or embezzlement.

b. For a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of any of the following crimes or delinquent acts:
   i. Vehicular manslaughter while intoxicated.
   ii. Felony child abuse likely to produce great bodily harm or a death.
   iii. Assault resulting in the death of a child under eight years of age.
   iv. Felony domestic violence.
   v. Felony physical abuse of an elder or dependent adult.
   vi. Felony stalking.
   vii. Solicitation for murder.
   viii. A serious felony.
   ix. Hit-and-run causing death or injury.
   x. Felony driving under the influence causing injury.
   xi. Sexual assault.

4) Recasts and restores Labor Code §230 and §230.1 that AB 2499 deleted regarding employees' rights to use paid leave, inter alia, for jury duty, judicial proceedings to serve as a witness or answer subpoenas, or to obtain relief from domestic violence. The bill clarifies that pending cases arising from employer violations of these rights, as specified, occurring on or before December 31, 2024, are still valid and within the jurisdiction of the Labor Commissioner. The bill repeals §230 and §230.1 on January 1, 2035.

5) Makes a technical amendment to provide that Labor provisions governing employer violations of employee rights under Labor Code §230.2 and §230.5 (regarding employees who are victims of crimes or whose family members are victims of crimes, to use paid leave to attend judicial proceedings related to the crime, as specified,) apply only to alleged actions or inactions occurring on or before December 31, 2025. The bill repeals §230.2 and 230.5 on January 1, 2035.

6) Makes a technical amendment to Labor Code §246.5 requiring an employer to provide paid sick days for specified purposes on the oral or written request of an employee's request, to reference the appropriate Labor and Government Code sections for which an employee may take paid leave.

7) Contains an urgency clause so that the bill's provisions are effective upon signing by the Governor.

COMMENTS

1. Need for this bill?

According to the author:

"AB 2499 inadvertently left out crime victim survivor protections that should have been transferred from the Labor Code to Government Code. Additionally, AB 2499 did not include timelines for the transfer of enforcement authority over these provisions from the Labor Commissioners Office to the Civil Rights Department."

2. Proponent Arguments

According to the author:

"AB 406 corrects the disjointed timelines and clearly delineates enforcement authority between the Civil Rights Department and the Labor Commissioner's Office by:

- Reenacting Labor Code Section 230 and 230.1 and adding a repeal date of January 01, 2035, to those sections to make clear LCO retains jurisdiction over pending cases where an adverse action took place on or before December 31, 2024.

- Transferring remaining crime victim related protections from Labor Code Sections 230.2 and 230.5 to Government Code Section 12945.8 and adding a sunset date of December 31, 2025, to Labor Code Section 230.2 and 230.5 to house all crime victim related protections within one agency, the Civil Rights Department, and make it easier for crime victims to know where to file claims.

- Aligning paid sick leave under Labor Section 230.2 and 230.5 within the new Government Code Section 12945.8(a)(4) to allow crime victims to use paid sick leave for crime related purposes protected under Government Code Section 12945.8.

- Correcting conflicts between Government Code and Labor Code about permitted uses for paid sick leave. Government Code Section 12945.8 allows an employee to use paid sick leave for jury duty, crime victims appearing in court to comply with a subpoena, or other court order but corresponding Labor Code Section 246.5(a) (2) does not allow for paid sick leave to be used for these purposes. This allows workers to get relief through the wage claim process for paid sick leave used for these purposes."

3. Opponent Arguments:

None received.

4. Dual Referral:

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

5. Prior Legislation:

AB 2499 (Schiavo, Chapter 967, Statutes of 2024) provided an employee of an employer with 25 or more employees who is a victim or who has a family member who is a victim of a crime the right to job-protected leave to attend to their or their family member's needs and ensure their safety. Additionally, the act permitted both an employee victim and an employee who has a family member who is a victim to use sick leave for time off to obtain victim services.

AB 1041 (Wicks, Chapter 748, Statutes of 2022) added a "designated person" to the list of individuals for whom an employee may take leave under CFRA and the Healthy Workplaces, Healthy Families Act of 2014 (Paid Sick Days).

AB 1119 (Wicks, 2021) would have expanded the list of protected characteristics under FEHA to include "family responsibilities," defined to mean the obligations of an employee to

provide direct and ongoing care for a minor child or a care recipient. *AB 1119 was held by the Assembly Appropriations Committee.*

AB 2366 (R. Bonta, 2018) would have extended permitted time off protections to victims of sexual harassment and to the immediate family members providing support to victims of sexual harassment, domestic violence, sexual assault and stalking. *AB 2366 was held by the Assembly Appropriations Committee.*

SB 1383 (Jackson, Chapter 86, Statutes of 2020) expanded the CFRA to provide job-protected leave to additional employees (those working for employers with five or more employees instead of the previous 50 employee threshold) and expanded the list of family members for which an employee can take leave.

SUPPORT

None received.

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 792	**Hearing Date:**	July 9, 2025
Author:	Lee		
Version:	June 12, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Court interpreters

KEY ISSUE

This bill permits the trial court interpreters' union to request multiregional bargaining between the union and the regional court interpreter employment relations committees subject to the mutual consent of the parties.

ANALYSIS

Existing law:

1) Establishes the Trial Court Interpreter Employment and Labor Relations Act (TCIELRA), which provides for public employer-employee relations between trial courts and court interpreters. (Government Code §§71800 et seq.)

2) Defines the following relevant terms:

    a. "Certified interpreter" and "registered interpreter" are persons certified or registered to provide language translation services, not including sign language.
    b. "Employee organization" means a labor organization that has as one of its purposes representing employees in their relations with the trial courts.
    c. "Local compensation" means any amounts paid to employee interpreters by an individual trial court that are not paid pursuant to the regional memorandum of understanding and are not calculated on an hourly basis.
    d. "Recognized employee organization" means an employee organization that has been formally acknowledged to represent the court interpreters employed by the trial courts in a region.
    e. "Regional court interpreter employment relations committee" means one of the four regional court interpreter committees established by statute and subject to rules adopted by the Judicial Council. (Government Code §§71801, 71807)

3) Divides the trial courts into four regions, for purposes of developing regional terms and conditions of employment and for collective bargaining with recognized employee organizations, with each region controlled by a regional court interpreter employment relations committee, as follows:

    a. Region 1: Los Angeles, Santa Barbara, and San Luis Obispo Counties.
    b. Region 2: the counties in the First and Sixth Appellate Districts, except Solano County.
    c. Region 3: the counties in the Third and Fifth Appellate Districts.
    d. Region 4: the counties in the Fourth Appellate District. (Government Code §71807)

4) Permits trial courts in a region to employ certified and registered interpreters to perform spoken language interpretation for the trial courts in full-time, part-time, or intermittent, part-time interpreter positions created by the trial courts, and establishes an order of priority for hiring. (Government Code §71806)

5) Provides that the regional court interpreter relations committee shall set terms and conditions of employment for court interpreters within the region, including, but not limited to, hourly rates of pay, subject to a meet and confer in good faith; when the terms and conditions of employment are adopted by the regional court interpreter relations committee, they shall be binding on the trial courts; unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, other terms and conditions of employment shall be uniform throughout the region, except that health and welfare and pension benefits may be the same as those provided to other employees of the same trial court. (Government Code §71808(a))

6) Provides that trial courts may set additional local compensation, subject to requirements to meet and confer in good faith between the trial court and the recognized employee organization; an agreement establishing local compensation shall be between the trial court and the recognized employee organization, and shall not modify the terms of a regional memorandum of understanding or agreement between the regional court interpreter employment relations committee and the recognized employee organization. (Government Code §71808(b))

This bill:

1) Authorizes a recognized employee organization to request a multiregional bargaining if more than one region is bargaining in a calendar year and subject to the mutual consent of the recognized employee organization and the regional court interpreter employment relations committee.

COMMENTS

1. Need for this bill?

According to the author:

"Current law does not allow consolidated multi-region bargaining to occur for court interpreters, which has led to prolonged negotiations and delayed contract resolution. As a result, recruitment and retention has been difficult, and both the courts as employers and the employee representative organization have not been able to focus on meet workforce challenges."

2. Proponent Arguments

According to the California Federation of Interpreters, Local 39000:

"AB 792 fixes one shortcoming of the California Interpreter Act as it pertains to collective bargaining. Under current law, California is divided into four regions for purposes of negotiating union contracts, each with regional teams appointed from local courts, to negotiate terms of a contract. However, often times these negotiations are prolonged, delaying resolution. At times, this delay is extended such that multiple regions are required to

bargain simultaneously. However, current law does not allow for combined bargaining sessions which would provide a more efficient mechanism to resolve these labor negotiations. It is important to note that such an approach is supported by the existing funding mechanism. Local courts are ultimately not responsible for funding court interpreters – they pay for these services and then have these payments reimbursed out of the state general fund dollar for dollar. So, in the end the state budget is the source of all interpreter funding. Thus, a multi-regional approach is not hampered by local budget decisions, as all funding will be allocated by the Legislature which has never reduced the line item for interpreters.

The more efficiently the courts can reach collective bargaining agreements, the more the courts and union focus time and energy on recruiting individuals to this workforce."

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 1032 (Pacheco, Chapter 556, Statutes of 2023) made various changes to the Trial Court Interpreter Employment and Labor Relations Act (TCIELRA), a statutory framework governing employer-employee relations between trial courts and court interpreters

SB 818 (Escutia, Chapter 257, Statutes of 2003) made technical, non-substantive, and other clean-up changes to TCIELRA.

SB 371 (Escutia, Chapter 1047, Statutes 2002) established TCIELRA which sets forth provisions and procedures governing the employment and compensation of certified and registered trial court interpreters, and court interpreters pro tempore, employed by the trial courts, as specified.

SUPPORT

California Federation of Interpreters, Local 39000 (Sponsor)

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 858	**Hearing Date:**	July 9, 2025
Author:	Lee		
Version:	June 26, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Employment: rehiring and retention: displaced workers: natural disasters

KEY ISSUES

This bill modifies the "Rights of Recall" provisions in existing law for laid-off employees in the hospitality, service, and travel industries impacted by the COVID-19 pandemic by 1) adding a new recall right for workers laid off on or after January 1, 2025 for a reason related to a state of emergency; and 2) extending the sunset date on both the existing COVID-19 right to recall provisions and the expansions proposed with this bill to December 31, 2027.

ANALYSIS

Existing law:

1) Establishes within the Department of Industrial Relations (DIR) and under the direction of the Labor Commissioner, the Division of Labor Standards Enforcement (DLSE) tasked with administering and enforcing labor code provisions concerning wages, hours and working conditions. (Labor Code §56)

2) Requires certain hospitality and service industry employers to offer to rehire qualified former employees who were laid off due to the COVID-19 pandemic, including a public health directive, government shutdown order, lack of business, a reduction in force, or other economic, nondisciplinary reason due to the pandemic. (Labor Code §2810.8)

3) Among other things, under these "Right to Recall" provisions:

    a. Requires employers to notify covered employees of specified enterprises of job openings for the same or similar positions as the ones they last held.

    b. Covered workers include employees at hotels or private clubs with 50 or more guest rooms, airports, airport service providers, or other provision of building services to office, retail, or commercial buildings and event centers.

    c. Requires employers to retain specified records of employees for a period of at least three years including, among other things, the employee's date of hire, their last known address, email, and telephone number, and all records of communications concerning offers of employment made pursuant to these rights.

    d. Within five business days of establishing a position, an employer shall offer its laid-off employees in writing, either by hand or their last known physical address, any by email

and text message (to the extent the employer possesses this information) all job positions that become available, with priority based on length of service, before new employees can be hired.

e. Qualified laid-off employees must respond to notices within five days, as specified.

f. Prohibits employers from refusing to employ, terminate, reduce in compensation, or otherwise take any adverse action against any laid-off employee for seeking to enforce these rights.

g. Authorizes an employer to make simultaneous, conditional offers of employment to laid-off employees, with a final offer provided to the employee with the greatest length of service with the employer.

h. Creates a presumption that a separation due to a lack of business, reduction in force, or other economic, nondisciplinary reason is due to a reason related to the COVID-19 pandemic, unless the employer establishes otherwise by a preponderance of the evidence.

i. Prohibits an employer from refusing to employ, terminating, reducing compensation, or taking other adverse action against a laid-off employee for seeking to enforce their recall and reinstatement rights, as specified.

j. Directs the Division of Labor Standards Enforcement to enforce these provisions and authorizes a laid-off employee to file a complaint with the DLSE for violations and entitles them to hiring and reinstatement rights, front and back pay, as specified, and the value of benefits the employee would have received under the employer's benefit plan.

k. Subjects employers guilty of a violation to specified civil penalties and employees will be entitled to liquidated damages of $500 per employee, per day of violation and will be awarded damages for each day of violation until cured, as specified.

l. These recall rights are ***effective only until December 31, 2025***, and as of that date are repealed. (Labor Code §2810.8)

This bill:

1) Extends and modifies the existing rights of recall provisions for workers laid-off in specified hospitality, service, and travel industries impacted by the COVID-19 pandemic to also include a reason related to a declared state of emergency or local emergency.

2) Expands the definition of "laid-off employee" to include any employee who was employed by the employer for six months or more and whose most recent separation from active employment by the employer occurred on or after January 1, 2025, at a site located within the affected area defined in the proclaimed state of emergency or local emergency and was due to a reason related to that state of emergency.

3) Creates an additional presumption that a separation due to a lack of business, reduction in force, or other economic, nondisciplinary reason is due to a reason related to the state of emergency unless the employer establishes otherwise by a preponderance of the evidence.

4) Defines "state of emergency" to mean the declaration of a state of emergency or a local emergency by the Governor or by a local governing body or official pursuant to the California Emergency Services Act, as specified.

5) Extends the sunset date on these provisions to December 31, 2027.

6) Makes technical and conforming changes.

COMMENTS

1. Background:

Adoption of COVID-19 Recall Rights:
The COVID-19 pandemic and the shutdown orders to mitigate the spread of the virus led to a dramatic loss of jobs and an increase in unemployment beginning in March 2020. Millions of Californians were left unemployed and in critical need of assistance to replace some of the income on which they relied to pay for essentials such as housing and food. By April 2020, the unemployment rate had surpassed previous peaks observed during the Great Recession.

In August 2020, a bill (AB 3216 Kalra) was introduced to attempt to address what was happening on the ground to the workers in the hospitality industry. The bill required hospitality and airport employers to offer its laid-off employees specified information about job positions that become available for which the laid-off employees are qualified, and to offer positions to those laid-off employees based on a preference system, in accordance with specified timelines and procedures. The bill would also have required an incumbent employer, within 15 days after the execution of a transfer document, to provide to the successor employer specified information pertaining to eligible employees and would have required the successor employer to maintain and hire from a preferential hiring list for a specified time period. AB 3216 was vetoed by the Governor who stated:

> *"I recognize the real problem this bill is trying to fix-to ensure that workers who have been laid off due to the COVID19 pandemic have certainty about their rehiring and job security. But, as drafted, its prescriptive provisions would take effect during any state of emergency for all layoffs, including those that may be unrelated to such emergency. Tying the bill's provisions to a state of emergency will create a confusing patchwork of requirements in different counties at different times. The bill also risks the sharing of too much personal information of hired employees. There must be more reasonable tools to effectively enforce the recall provisions."*

In 2021, the Legislature approved and the Governor signed SB 93 (Chapter 16, Statutes of 2021) which established the right of recall to employees working in the hospitality industry – including for hotels, event centers, and airport service and hospitality providers, including workers engaged in building services such as janitorial, maintenance and security services at retail and commercial buildings – who were laid-off due to a non-disciplinary reason related to the COVID-19 pandemic, including lack of business, a government shut-down order, or public health directive.

If these recall rights are violated, employees are entitled to damages of $500 per day of violation and are awarded damages for each day of violation until cured. An employee suffering unlawful retaliation for asserting recall rights may also be awarded back pay, front pay, benefits and reinstatement. SB 93 did not include the successor employer rehire

requirements that AB 3216 included. These rehiring rights were set to end on December 31, 2024 but were subsequently extended to December 31, 2025 through SB 723 (Durazo, Chapter 719, Statutes of 2023).

"*Right to Recall" Law in Action:*
Since the adoption of the "Right to Recall" law, the Labor Commissioner has cited numerous employers for violating these requirements and protections. Some examples include:

- In 2022, the LC cited the Terranea Resort $3.3 million for not offering reinstatement to 53 laid-off workers when the resort reopened. The affected workers included housekeepers, banquet servers, bartenders, junior sous chefs, and massage therapists.[1]

- In 2023, the LC cited the Hyatt Regency Long Beach nearly $4.8 million for violating the recall and reinstatement rights of 25 employees, including restaurant servers, event servers, bartenders, housepersons, turndown attendants, cashiers, and stewards.[2]

- In 2023, the LC cited Flying Food Group more than $1.2 million for failing to timely rehire 21 employees at its sites at LAX and SFO airports.[3]

Extending right of recall rights to states of emergency:
This bill proposes three main changes; 1) extending these rights of recall requirements to workers laid-off due to a proclaimed state of emergency or local emergency; 2) establishing a presumption that layoffs resulting from a lack of business, reduction in force, or other economic reason are due to the state of emergency unless the employer can prove otherwise; and 3) extending the sunset date on both the COVID-19 right to recall provisions that were set to sunset on December 31, 2025, and the new additions made with this bill, to December 31, 2027.

As noted by the Assembly Labor and Employment Committee analysis of this bill, "The 2025 Los Angeles-area wildfires resulted in significant job displacement, with estimates ranging from 24,990 to 49,110 job-years lost, and with low-income and immigrant workers particularly impacted.[4] As many as 35,000 jobs held by Latinos could be permanently lost, according to research by the UCLA Latino Policy and Politics Institute.[5]"

2. Need for this bill?

According to the author:

"The tourism industry has been heavily hit after the natural disasters in L.A. County, and the economic impact has spread to hotels beyond the fire zones, from Santa Monica's Fairmont Miramar to Hotel Bel Air to Beverly Hilton to Downtown LA hotels. With less tourism, businesses are forced to lay off many of their dedicated workers just to remain open. The existing COVID-19 rehiring rights will expire on December 31, 2025, but none exist to protect workers after natural disasters.

[1] https://www.dir.ca.gov/DIRNews/2022/2022-23.html
[2] https://www.dir.ca.gov/DIRNews/2023/2023-76.html
[3] https://www.dir.ca.gov/DIRNews/2023/2023-60.html
[4] https://laedc.org/wpcms/wp-content/uploads/2025/02/LAEDC-2025-LA-Wildfires-Study.pdf
[5] https://latino.ucla.edu/research/wildfires-and-latino-workers-analysis/

This bill extends the COVID-19 rehiring rights protections enacted through SB 93 (2021) and extended by SB 723 (2023) to December 31, 2027. This bill also expands these rehiring rights to include laid-off workers due to a declared state of emergency after January 1, 2025, which would expire on December 31, 2027. The expansion related to a declared state of emergency captures the devastating fires in the Los Angeles area in January 2025."

3. Proponent Arguments:

According to the California Federation of Labor Unions, one of the co-sponsors of the measure:

"At the start of the COVID-19 pandemic, low-income workers in the hospitality industry, primarily immigrants and women of color, were laid off and anxiously waited to see if they could get their jobs back. This trend is repeating with the wildfires. These workers have no source of income or security and after many decades on the job, many older workers fear that employers will only rehire younger, newer workers at lower pay rates.

This situation is not unique to Los Angeles. Natural disasters—floods, fires, mudslides—could hit any part of the state, impacting the tourism industry. The state and federal government steps in to support those displaced by disaster, but workers in the hospitality industry often suffer the economic consequences long after disaster relief agencies are gone. The lingering economic impacts on tourism can mean that workers face eviction, bankruptcy, and long-term unemployment.

The existing COVID-19 rehiring rights will expire December 31, 2025, but none exist to protect workers after natural disasters or other declared emergencies. Many of these hospitality workers will be left again with uncertainty if they are laid off through no fault of their own. AB 858 will ensure California has a stable hospitality workforce by maintaining rehire rights when businesses reopen following layoffs. Extending these rights will allow employees working in the hospitality industry to return to their jobs after temporary layoffs through no fault of their own and provide job security to hundreds of thousands of hospitality workers."

UNITE HERE! Local 11 and UNITE HERE! International Union, also co-sponsoring, write:

"SB 93 and SB 723 are two of the most successful pieces of jobs legislation in the history of California. Around 90% of housekeepers, servers, bartenders, cooks and cashiers at hotels, airports and event centers were laid off during the COVID-19 crisis, which is hundreds of thousands of workers. Today the vast majority of those workers have been offered a return to those same jobs in an orderly transition as businesses reopened.

However, this transition back to work is not yet complete, and we saw new layoffs after recent natural disasters. Some hotel departments have still not reopened from the pandemic, and now the tourism industry has been very impacted by natural disasters like fires in LA and Orange Counties. In Santa Monica, for example, … air quality concerns have torpedoed outdoor dining (the City of Santa Monica is responding with waived fees), mass cancelations of organized trips has crippled tourism businesses (Perry's alone lost nearly $90,000 in cancelled events for February) and the relocation of the Genesis golf tournament from nearby Riviera Country Club has impacted local hotels. Hollywood hotels have experienced very

low occupancy. Many banquets have cancelled. Events have been cancelled at Pasadena Convention Center and Rose Bowl because of displaced people using those venues for shelter. Entire business districts in the fire zones will have to be rebuilt, and the Topanga Ranch Motel was destroyed by the Palisades Fire.

Many of the recent job losses have been among hotel housekeepers, mostly women of color over age 50. These women have the lowest statistical possibility of even being interviewed for a new job. Research has shown us that following economic recessions, women over 50 are affected the most in their experience of long term unemployment. Jobless women are 18 percent less likely to find new work at age 50 to 61 than at age 25 to 34. At 62 or older, they are 50 percent less likely to be rehired, according to the Urban Institute. These workers have no source of income or security and after many decades on the job, many older workers fear that employers would only rehire younger, newer workers at lower pay rates."

4. Opponent Arguments:

A coalition of employer organization, including the California Hotel & Lodging Association and the California Travel Association, are opposed to the measure and write:

"The current statutes were put in place as a state response to the virtually unprecedented nature of the COVID-19 Pandemic. It is inappropriate to extend the same response to all states of emergency because they are not equivalent to the COVID-19 pandemic in:

- *Scale* - As discussed above, the COVID-19 Pandemic and resulting lockdowns shuttered hotels across the state and sparked significant layoffs. Based upon a survey conducted by CHLA of member properties in Los Angeles following the 2025 LA Wildfires, only one respondent indicated that an employee lost their position as a result of the fires. This separation arose not from the fires, but from the drop in subsequent travel demand due to misconceptions about the geography of the LA region and the impact of the fire on popular tourist destinations.
- *Duration and Breadth* – The COVID-19 Pandemic drove multi-year closures across the entire state. Comparatively, natural disasters for which states of emergency are issued are often short-lived events which can pass in a matter of seconds. While cleanup can last for significant periods of time, the impact is restricted on a regional basis and hotels can continue to serve a variety of patrons. This differs from states of emergency, which may remain in effect for up to a decade. Hotels may close for a short time, but they re-open far faster than during the pandemic.
- *Industry and Impact* – During its height, the COVID-19 Pandemic shuttered all non-essential business and travel – including hotels. During states of emergency, the scale of impact is limited by the character of the event. At the time of writing, CHLA fails to recall a single state of emergency with a similar industry impact to COVID-19.

Determining if demand reduction is due to a state of emergency is not clear cut and this measure simultaneously presumes separation is due to COVID-19 and a state of emergency. In his original veto message [AB 3216 of 2020], Governor Newsom stated that tying hotel recall statutes to a state of emergency declaration would create '…a confusing patchwork of requirements…' This measure ignores these concerns and once again proposes to create that same confusing patchwork, but with a twist. Specifically, two presumptions create an all-encompassing implementation requirement…

Enforcement data surrounding the statutes indicates that unintentional violations of the statute can result in penalties in the millions of dollars. A number of hotels continue to hover on the edge of delinquency and a judgment against a hotel, even for minor violations, could make a significant impact on the hotel's ability to remain solvent. Penalties for violation of the statute, regardless of knowledge of violation, are $500 per day until the violation is cured and civil penalties against the employer of $100 for each employee whose rights are violated. Any employee suffering unlawful retaliation for asserting recall rights may also be awarded back pay, front pay benefits and reinstatement. The records we have seen indicate that, historically, complaints to the Labor Commissioner appear to only come from one local labor group against specific non-unionized properties whose employees have rejected unionization attempts."

They conclude by stating, "States of emergency are not equivalent to COVID-19, and it is inappropriate to extend policy put forth to respond to COVID-19 closures as a response to states of emergency. Further, AB 858 puts hoteliers in an impossible position of defending against potential violation allegations under a scheme where determining if demand reduction is due to a states of emergency is not clear cut. For those who are unable to overcome the inversed evidentiary burden to prove that a separation was not due to a state of emergency nor COVID-19, accidental violations of the statute will total millions of dollars. All of this work and stress will be incurred for an unclear employee benefit – current and future hotel employee shortages gives power to employees, but this statute spams employees and delays hiring. Finally, AB 858 fails to address prior, legitimate, concerns raised by a plethora of stakeholders and those in this legislative body while simultaneously extending the duration of this statute beyond that put forth in response to COVID-19."

5. Prior/Related Legislation:

SB 723 (Durazo, Chapter 719, Statutes of 2023) extended, from December 31, 2024 to December 31, 2025, the sunset date on the "right to recall" rights for employees in the hospitality and service industry, and added to these provisions a presumption that a separation due to a lack of business, reduction in force, or other economic, nondisciplinary reason is due to a reason related to the COVID-19 pandemic, unless the employer establishes otherwise by a preponderance of the evidence.

SB 627 (Smallwood-Cuevas, 2023, Vetoed) would have established the Displaced Worker Retention and Transfer Rights Act to, among other things, require a chain employer (100 or more establishments, as defined) to provide workers and their exclusive representative, if any, a displacement notice at least 60 days before the expected date of closure of a covered establishment; require a chain employer to provide workers the opportunity to transfer to a location of the chain within 25 miles of the closing establishment; and require chain employers to maintain a preferential transfer list and make job offers based on length of service. *SB 627 was vetoed by Governor Newsom.*

SB 725 (Smallwood-Cuevas, 2023, Vetoed), among other things, would have required a successor grocery employer, as specified, to provide an eligible grocery employee a payment equal to one week of pay for each full year of employment with the incumbent grocery employer, if the successor grocery employer did not hire the eligible grocery worker following a change in control or did not retain the eligible grocery worker for at least 90

days following the change in control or employment commencement date. *SB 725 was vetoed by Governor Newsom.*

AB 1356 (Haney, 2023, Vetoed) would have, among other things, made changes to the California WARN Act provisions to increase the notice requirement from 60 to 75 days prior to a mass layoff and would revise the definition of "covered establishment." *AB 1356 was vetoed by Governor Newsom.*

AB 647 (Holden, 2023, Chapter 452, Statutes of 2023) strengthened the existing recall and retention protections for grocery workers under the Grocery Worker Retention Law by, among other things, (1) adding an enforcement mechanism to hold the employer accountable for violations; (2) including distribution centers that meet specified requirements within the definition of "grocery establishment"; and (3) exempting incumbent and successor grocery employers whose sum of employees is less than 300 nationwide, as specified.

SB 93 (Committee on Budget and Fiscal Review, Chapter 16, Statutes of 2021) was a trailer bill that made various statutory changes to implement rehiring rights for hospitality, airports, airport service providers and event center rehiring rights for workers who were laid off for reasons related to the COVID-19 pandemic with a December 31, 2024 sunset date.

SB 3216 (Kalra, 2020, Vetoed) would have required employers that operate a hotel, private club, event center, airport hospitality and service provider, janitorial service, building maintenance or security service to recall employees previously laid-off, as specified. The bill also would have required successor employers to maintain a preferential hiring list of eligible employees identified by the incumbent employer and hire from that list for a period of six months after the change of control and to retain those employees for a 90-day transition employment period, and offer continued employment, as specified. *AB 3216 was vetoed by Governor Newsom.*

AB 1669 (Hernandez, Chapter 874, Statutes of 2016) extended an existing bid preference for public transit contractors who agree to retain employees to also include contracts for the collection and transportation of solid waste**,** as specified.

AB 359 (Gonzalez, Chapter 212, Statutes of 2015) established the 90-day worker retention requirements upon a change in control of a grocery establishments.

SUPPORT

California Federation of Labor Unions, AFL-CIO (Co-Sponsor)
Unite Here International Union, AFL-CIO (Co-Sponsor)
Unite Here Local 11 (Co-Sponsor)
California Association of Psychiatric Technicians
California School Employees Association

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
American Petroleum and Convenience Store Association
Anaheim Chamber of Commerce

Brea Chamber of Commerce
California Association of Boutique and Breakfast Inns
California Attractions and Parks Association
California Chamber of Commerce
California Hotel & Lodging Association
California Lodging Industry Association
California Restaurant Association
California Retailers Association
California Travel Association
California Trucking Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Coalition of Small and Disabled Veteran Businesses
Colusa County Chamber of Commerce
Corona Chamber of Commerce
Flasher Barricade Association
Gateway Chambers Alliance
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
LA Canada Flintridge Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Mission Viejo Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
Newport Beach Area Chamber of Commerce
Newport Beach Chamber of Commerce
Norwalk Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Paso Robles Templeton Chamber of Commerce
Rancho Cucamonga Chamber of Commerce
Rancho Mirage Chamber of Commerce
Roseville Area Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
SHRM California
Simi Valley Chamber of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Tri County Chamber Alliance
Valley Industry & Commerce Association
Valley Industry and Commerce Association
West Ventura County Business Alliance

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 889	**Hearing Date:**	July 9, 2025
Author:	Hadwick		
Version:	February 19, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Prevailing wage: per diem wages

KEY ISSUE

This bill makes several changes to the annualization requirement for fringe benefits on both public and private construction projects. AB 889 would, among other things, 1) require employers to annualize all employer payments not made directly to the worker, except as specified; 2) void any exemptions to the annualization requirement issued by the Director of the Department of Industrial Relations prior to January 1, 2026 and revoke the Director's ability to issue exemptions in the future; and 3) require employers to, upon request of the Labor Commissioner, produce records sufficient to verify that they adhered to the annualization requirement.

ANALYSIS

Existing federal law:

1) Establishes the Davis-Bacon and Related Acts (DBRA), applicable to contractors and subcontractors performing work on federally-funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair of public buildings or public works. DBRA contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the local prevailing wages and fringe benefits for corresponding work on similar projects in the area. (40 U.S.C. §3141)

2) Specifies that the DBRA prevailing wage is the combination of the basic hourly wage rate and any fringe benefits rate listed for a specific classification of workers in the applicable Davis-Bacon wage determination. The contractor's prevailing wage obligation may be met by either paying each laborer and mechanic the applicable prevailing wage entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits. (40 U.S.C. §3141)

3) Requires contractors, except under limited circumstances, to annualize their fringe benefit contributions or costs to determine the hourly credit that may be claimed towards their prevailing wage obligation. (29 C.F.R. §5.25(c))

4) Provides that contributions to defined contribution pension plans are excepted from the annualization requirement if the plan is not continuous in nature, does not compensate both non-DBRA and DBRA-covered work, and provides for both immediate participation and essentially immediate vesting. (29 C.F.R. §5.25(c))

5) Requires contractors to annualize the costs of contributions to apprenticeship programs registered with the Department of Labor's Employment and Training Administration, Office

of Apprenticeship (OA), or with a state apprenticeship agency recognized by the OA to determine the amount of hourly credit that can be claimed. A contractor may only take credit for amounts reasonably related to the costs of the apprenticeship benefits actually provided to the contractor's employees. (29 C.F.R. §5.29)

Existing state law:

1) Establishes within the Department of Industrial Relations (DIR) the Division of Labor Standards Enforcement 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) Defines "per diem wages," as it relates to public works, to include employer payments for the following:

   a. Health and welfare.
   b. Pension.
   c. Vacation.
   d. Travel.
   e. Subsistence.
   f. Apprenticeship or other training programs, as specified, to the extent that the cost of training is reasonably related to the amount of the contributions.
   g. Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), as specified.
   h. Industry advancement and collective bargaining agreements administrative fees, provided that these payments are made pursuant to a collective bargaining agreement to which the employer is obligated.
   i. Other purposes similar to those specified above.

   (Labor Code §1773.1(a))

3) Defines employer payments for purposes of annualization to mean:

   a. The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.
   b. The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.
   c. Payments to the California Apprenticeship Council by contractors employing journeymen or apprentices that are equal to the prevailing amount of apprenticeship training contributions in the area of the public works site as determined by the director of DIR (Director).

   (Labor Code §1773.1(b))

4) Provides that employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. Credits for employer payments shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing. However, an increased employer payment contribution that results in a lower hourly straight time or overtime wage shall not be considered a violation of the applicable prevailing wage determination if specified conditions are met. (Labor Code §1773.1(c))

5) Requires the credit for employer payments to be computed on an annualized basis when an employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, *unless one or more of the following occur*:

   a. The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer
   b. The higher rate of payments is required by a project labor agreement.
   c. The payments are made to the California Apprenticeship Council by contractors employing journeymen or apprentices that are equal to the prevailing amount of apprenticeship training contributions in the area of the public works site as determined by the director.
   d. The Director determines that annualization would not serve the purposes of this chapter. (Labor Code §1773.1(e))

6) Provides that a contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council (CAC) the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the CAC any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract. (Labor Code §1777.5(m)(1))

This bill:

1) Makes various finding and declarations regarding annualization, including:

   a. Annualization is a principle adopted by the federal Department of Labor in enforcing the Davis-Bacon Act for crediting contributions made to fringe benefit plans based on effective rate of contributions for all hours worked during a year by an employee on both public (Davis-Bacon) and private projects.
   b. The annualization principle requires that, when converting an employer's fringe benefit contribution into an hourly amount, the amount of employer payments must be divided by the total number of hours worked in a year on all projects, public and private, not just the number of hours worked during that year on public projects.
   c. The annualization rule prevents a contractor from using the prevailing wage work as the disproportionate or exclusive source of funding for benefits. Contractors are not required to provide benefits on a prevailing wage job nor are they required to make benefit payments on private jobs. However, if a contractor chooses to provide fringe benefits on prevailing wage jobs, it must undertake a proper annualization calculation.

2) Requires all employer payments not made directly to the worker to be computed on an annualized basis, regardless of whether any contributions are made or benefits are provided with respect to private construction, with the exception of contributions to defined contribution pension plans that provide for both immediate participation and immediate vesting.

3) Specifies that an employer may take full credit for the hourly amounts contributed to defined contribution pension plans for public works projects even if the employer contributes at a lower rate or does not make contributions for private construction.

4) Removes the ability for the Director to issue exemptions from the annualization requirement if the Director determine that annualization does not further the purpose of public works law.

5) States that an employer has the burden of demonstrating that the credit for employer payments was properly calculated.

6) Requires an employer to, upon request of the LC, produce records of employee hours and employer payments on private construction sufficient for the LC to verify that the credit for employer payments was properly calculated on an annualized basis.

7) Authorizes the LC to deny an employer credit for employer payments if the records in 5), above, are not produced.

8) Revokes any exemptions to the annualization requirements of these provisions issued by the Director prior to January 1, 2026.

9) Requires prevailing wage fringe benefit credit issues not addressed by California statutes or regulations to be governed by the version of the United States Department of Labor Field Operations Handbook in effect on January 1, 2023.

COMMENTS

1. Background:

The prevailing wage in both federal and California law consists of two parts, 1) the basic hourly rate of pay; and 2) employer payments for fringe benefits, such as health insurance, vacation, and pension contributions, among others. Employers receive a credit towards the prevailing wage rate in exchange for providing specified fringe benefits. With few exceptions, this credit must be annualized. Annualization is generally necessary for computing the fringe benefit credit when a contractor employs workers on both public works and private projects. To annualize the per hour cost of providing a benefit, a contractor must divide the total cost of the fringe benefit by the total number of hours worked on both public and private work. This requirement prevents contractors from subsidizing private projects with public funding and it ensures workers are paid actual prevailing wages on public projects by preventing contractors from taking credit against the required prevailing wage for expenses not actually associated with the covered work.

Davis-Bacon and Related Acts (DBRA) Annualization Requirements
The DBRA and federal regulations exempt contributions to defined benefit pension plans from the annualization requirement as long as the plan is not continuous in nature, does not compensate both non-DBRA and DBRA-covered work, and provides for both immediate participation and vesting. Immediate vesting means the benefit vests within the first 500 hours worked. Additionally, employers can request an exemption from the annualization requirement for other benefits that meet both of the following conditions:

a. The benefit provided is not continuous in nature.

b. The benefit does not compensate both private work and DBRA-covered work. A benefit does not compensate both private and DBRA-covered work if any benefits attributable to periods of private work are wholly paid for by compensation for private work.

The DBRA and federal regulations allow employers to take credit for payments to apprenticeship programs registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. Unlike credits for contributions to defined benefit pension plans, credits for apprenticeship programs *must be annualized.* An employer may only take credit for amounts reasonably related to the costs of the apprenticeship benefits actually provided to their employees. Benefits include instruction, books, tools and other materials.

California Annualization Requirements

Section 1773.1 of the Labor Code outlines California's annualization rules. State law requires credit for employer payments to be computed on an annualized basis when an employer seeks credit for payments that are higher for public works projects than for private construction. There are four exemptions from this requirement:

a. The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.
b. The higher rate of payments is required by a project labor agreement.
c. The payments are made to the California Apprenticeship Council pursuant to Section 1777.5 of the Labor Code.
d. The Director determines that annualization would not serve the purposes of public works law.

In the decades since the above-mentioned exemptions were codified, DIR has issued contradictory public guidelines, private rulings, and enforcement decisions regarding what benefit payments are exempt from annualization. For example, the Labor Code only explicitly exempts payments made to the California Apprenticeship Council, but DIR's *Public Works Manual (Manual)* extends this exemption to payments made to approved apprenticeship programs. Complicating matters, the *Manual* states that for enforcement purposes, DIR follows federal enforcement guidelines. However, any exemption for payments for apprenticeship programs is inconsistent with federal guidelines.

AB 889 (Hadwick, 2025)

AB 889 would make the following changes to state law in an effort to clarify which fringe benefits are subject to annualization:

- Require employers to annualize all employer payments not made directly to the worker, except as specified.

- Exempt employer contributions to defined contribution pension plans that provide for both immediate participation and immediate vesting. This change conforms state law with the DBRA and federal regulations.[1]

[1] AB 889 would maintain the existing exemption from annualization requirements for payments to the California Apprenticeship Council. This exemption is unique to California as the DBRA and federal regulations require all employers to annualize payments to apprenticeship programs.

- Require an employer to, upon request of the LC, produce records of employee hours and employer payments on private construction sufficient for the LC to verify that the credit for employer payments was properly calculated on an annualized basis.

- Authorize the LC to deny an employer credit for employer payments if the requested records are not produced.

- Void any exemptions to the annualization requirement issued by the Director prior to January 1, 2026 and revoke the Director's ability to issue exemptions in the future.

2. Need for this bill?

According to the author:

"Since the advent of annualization in the year 2000, DIR has issued public guidelines, private rulings, and enforcement decisions, actions that have sometimes contradicted each other dependent on the administration overseeing the Department and have at times also conflicted with federal prevailing wage rules. Legislation is needed to ensure the States annualization process is clearly codified, aligned with the rules of the US Department of Labor, and that contractors are aware of their obligation to 'annualize' their fringe benefit contributions.

Simply put, AB 889 (Hadwick) seeks to prevent workers on public works projects from experiencing fringe benefit fraud by updating the States annualization law and conforming it to the most recent US Department of Labor rules on annualization…

By providing these changes, AB 889 (Hadwick) will bring clarity to contractors, joint labor management committees, and the Department of Industrial Relations, which will enhance the States' ability to detect fringe benefit fraud (wage theft)."

3. Proponent Arguments:

The sponsors of the measure, the California-Nevada Conference of Operating Engineers and the District Council of Iron Workers, argue:

"Annualization is a principle adopted by the federal Department of Labor in enforcing the Davis-Bacon Act for crediting contributions made to fringe benefit plans based on the effective rate of contributions for all hours worked during a year by an employee on both public construction projects and private construction. The annualization principle requires that when converting an employer's fringe benefit contribution into an hourly amount, the amount of employer payments must be divided by the total number of hours worked in a year on all projects, public and private, not just the number of hours worked during that year on public projects.

Simply put, the annualization rule prevents a contractor from using prevailing wage work as the disproportionate or exclusive source of funding for benefits…

Under a state law passed in 2000 (AB 1646, Steinberg, Ch. 954, Statutes of 2000), contractors must use the annualization rule to calculate the hourly value of their paid fringe benefits, however, the Department of Industrial Relations (DIR) has yet to issue conforming

regulations on annualization. Instead, DIR has issued public guidelines, private rulings, and enforcement decisions; actions that have sometimes contradicted each other dependent on the administration overseeing DIR and have at times also conflicted with federal prevailing wage rules. Legislation is needed to ensure the States annualization process is clearly codified and contractors are aware of their obligation to 'annualize' their fringe benefit contributions.

In an effort to ensure clarity in statute and to prevent workers on public works projects from experiencing fringe benefit fraud, AB 889 (Hadwick) would conform State law with federal Department of Labor rules on annualization and provide clarity with respect to the type of contributions made. Specifically, the bill would specify that annualization calculations must be made for all employer payments that are not directly made to a worker, regardless of whether the employer provides benefits on private construction projects.

The bill would additionally revoke previous exemptions from annualization requirements and clarify that employers must be capable of demonstrating that the hourly credit they are taking for employee fringe benefit payments was properly calculated. Further, the bill would authorize the labor commissioner to deny employer fringe benefit credits for failure to provide proof of accurate calculations."

4. Opponent Arguments:

The Western Electrical Contractors Association argues:

"WECA and its contractor members agree with the author and the bill sponsors that all construction workers are entitled to promised pay and benefits. More specifically, in the public works arena, workers should be protected by robust enforcement of prevailing works law by the Division of Labor Standards Enforcement.

However, we haven't seen compelling evidence that a 'lack of clarity [in existing law] has weakened enforcement, enabling underpayment schemes through excessive fringe benefit credits to become more widespread.'

Worse, WECA believes that this bill introduces ambiguity into the labor code that could jeopardize the ability of some state-approved apprenticeship programs to collect the training contributions they rely upon to train apprentices.

The ambiguity is created by the new language in §1773.1 (e) (2) and (3), and exacerbated by the revocation of annualization determinations of DIR prior to January 1, 2026.

To ensure all registered apprenticeship programs may continue to receive their vitally needed training contributions, a simple fix would be to amend §1773.1 (e) (1) (C) as below:

(C) The payments are made ~~to the California Apprenticeship Council~~ pursuant to Section 1777.5.

This simple change leaves the bill intact with essential worker protections, while ensuring that registered apprenticeship programs continue to be eligible to receive employer training contributions, which are established by collective bargaining agreements and vary from $0.45 to $2.25 per hour, controlled by §1777.5…

WECA, as a Merit Shop Employer Association, is committed to a fair and equal approach to contracting. Their members believe in rewarding employees based on performance and encouraging them to reach their highest level of achievement. Contracts should be awarded based on safety, quality, and value, regardless of labor affiliation."

5. Prior Legislation:

AB 2182 (Haney, 2023, Vetoed) would have made several changes to California's public works law. Among other things, AB 2182 contained annualization provisions nearly identical to AB 889. These provisions were later amended out of the bill before its final vote in the Legislature. *Governor Newsom vetoed this bill.*

SUPPORT

California-Nevada Conference of Operating Engineers (Co-sponsor)
District Council of Iron Workers (Co-sponsor)
California Legislative Conference of Plumbing, Heating & Piping Industry
California State Association of Electrical Workers
California State Pipe Trades Council
International Union of Painters and Allied Trades, District Council 16
National Electrical Contractors Association
Northern California Allied Trades
Southern California Glass Management Association
State Building & Construction Trades Council of California
United Contractors
Wall and Ceiling Alliance
Western Painting and Coating Contractors Association
Western States Council Sheet Metal, Air, Rail and Transportation
Western Wall and Ceiling Contractors Association

OPPOSITION

Associated Builders and Contractors of California
Associated General Contractors of America, San Diego Chapter
Western Electrical Contractors Association

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 963	**Hearing Date:**	July 9, 2025
Author:	Petrie-Norris		
Version:	February 20, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Public works: prevailing wages: access to records

KEY ISSUE

This bill requires an owner or developer undertaking any public works project to make certain records available to the Division of Labor Standards Enforcement (DLSE), multi-employer Taft-Hartley trust funds, and joint labor-management committees (JLMCs), as specified.

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 (JLMCs), 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.)

3) Establishes multiemployer Taft-Hartley trust funds, which are collectively bargained pension, health, or welfare benefit trusts jointly administered by an equal number of employer and employee representatives, as specified. (29 U.S.C. §186(c)(5)-(c)(8))

Existing 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) Defines "public works," for the purposes of regulating public works contracts, as, among other things, construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, out of public funds. (Labor Code §1720(a))

3) Specifies that if the state or political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project *is not subject to public works law*. (Labor Code §1720(c)(3))

4) Defines "de minimis" for purposes of 3), above, to mean the following:

   a. A public subsidy is de minimis if it is both less than $600,000 and less than 2 percent of the total project cost.
   b. Notwithstanding a., above, a public subsidy for a project that consists entirely of single-family dwellings is de minimis if it is less than 2 percent of the total project cost.

   (Labor Code §1720(c)(3))

5) Requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a "public works" project costing over $1,000 dollars and imposes misdemeanor penalties for violation of this requirement. (Labor Code §1771)

6) Requires each contractor and subcontractor to keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the contractor or subcontractor in connection with the public work. (Labor Code §1776 (a))

7) Requires the payroll records in 6), above, to be certified and made available for inspection to all of the following:

   a. An employee or an employee's authorized representative, upon request.
   b. A representative of the body awarding the contract and DLSE.
   c. The public, however, requests by the public shall be made through either the body awarding the contract or DLSE.

   (Labor Code §1776(b))

8) Requires contractors or subcontractors to file a certified copy of payroll records with the entity that requested the records within 10 days after receipt of written request. (Labor Code §1776(d))

9) Requires contractors and subcontractors, in the event that they do not comply within the 10-day period, to pay to the state or subdivision on whose behalf the contract was made or awarded a penalty of $100 per day or portion thereof for every worker until strict compliance is effectuated. A contractor is not subject to a penalty due to the failure of a subcontractor to comply with this section. (Labor Code §1776(h))

10) Specifies that any records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or DLSE shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. (Labor Code §1776(e))

11) Requires any copy of payroll records in 6), above, made available for inspection by, or furnished to, JLMCs to be marked or obliterated only to prevent disclosure of an individual's social security number. Records made available to a multiemployer Taft-Hartley trust fund shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits. (Labor Code §1776(e))

12) Requires contractors and subcontractors, while performing public works, to furnish specified payroll records at least once a month directly to the LC, in an electronic format, in the manner prescribed by the LC, on the department's internet website. (Labor Code §1771.4(a)(3))

13) Requires a contractor, bidder, or other entity to provide to the public entity or other awarding body, on a monthly basis while the project or contract is being performed, a report demonstrating compliance with skilled and trained workforce requirements. (Public Contract Code §2602)

This bill:

1) Requires an owner or developer undertaking any public works project to make the following records available upon request to DLSE, to multiemployer Taft-Hartley trust funds, and to JLMCs, as specified:

    a. Final executed construction contracts.
    b. A certified copy of payroll records, as described in Section 1776 of the Labor Code, if the owner or developer has possession, custody, or control of these records.
    c. If the owner or developer were required to provide an enforceable commitment that a skilled and trained workforce will be used to complete a contract or project, the monthly reports required under Section 2602 of the Public Contract Code.

2) Applies the records requirements in 1), above, to any owner or developer that undertakes a development project that includes work subject to public works law, regardless of whether the project is in its entirety a public work.

3) Provides that any records of work performed that are made available under the requirements of 1), above, be redacted only to prevent disclosure of social security numbers, but allows an owner or developer to redact pricing information from contracts and subcontracts if that information has not been made public.

4) Requires an owner or developer to reasonably assist in identifying responsive records when the requesting department, trust fund, or JLMC has identified the documents or information sought with specificity.

5) Provides that an owner or developer has 10 days in which to comply with a written request for records enumerated in 1), above, and, in the event that the owner or developer fails to comply with a request from a multi-employer Taft-Hartley trust fund or JLMC, requires the fund or JLMC to submit a complaint to DLSE within 10 days after compliance was required. Requires DLSE to promptly investigate any complaints.

6) Provides that if DLSE determines that an owner or developer has failed to comply with the provisions of this bill, the owner or developer shall be subject to a penalty by the LC until strict compliance is effectuated.

7) Provides that the penalty for an owner or developer's failure to provide certified payroll records, as specified, shall be one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated.

8) Provides that the penalty for an owner or developer's failure to provide final executed construction contracts and monthly reports demonstrating compliance with skilled and trained requirements, as specified, shall be five hundred dollars ($500) for each calendar day, or portion thereof, until strict compliance is effectuated.

9) Requires penalties received pursuant to 7) and 8), above, to be deposited in the State Public Works Enforcement Fund, as specified.

10) Requires the Director of DIR to adopt rules consistent with the California Public Records Act governing the release of records enumerated in 1), above, including the establishment of reasonable fees to be charged for reproducing copies of records.

11) Provides that "owner or developer" includes a corporation, limited liability company, partnership, joint venture, or other legal entity but does not include the state or a political subdivision.

COMMENTS

1. Background:

All awarding bodies and contractors working on "public works" projects are required to abide by a set of laws that ensure the responsible use of public funds. Among other things, these laws require awarding bodies to notify DIR of public works contracts and require contractors and subcontractors to maintain accurate payroll records and make them available for inspection or copy. Below is a brief overview of current statutes and regulations that apply to public works projects.

Awarding Bodies

An awarding body is the entity that awards a contract for public works, sometimes known as the project owner. The awarding body could be any public agency (state, county, city, school board, water district, etc.) or a private entity using public funds. On new public works projects valued at $25,000 or more and maintenance projects valued at $15,000 or more, awarding bodies are required to notify DIR within 30 days of the award, but in no event later than the first day in which work is performed. Awarding bodies use the PWC-100 form on DIR's website to fulfill this notification requirement. The form contains the name and registration number issued by DIR of the contractor and any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, and the jobsite location. In lieu of responding to any specific request for contract award information, DIR may make the information provided through the PWC-100 form available for public review online.

In addition to registering the project with DIR, awarding bodies are required to use contractors and subcontractors who register with DIR. A public works contractor is anyone who bids on or enters into a contract to perform work that requires the payment of prevailing wages. This includes sole proprietors and brokers who are responsible for performing work on a project, as well as subcontractors who enter into a contract with another contractor to perform a portion of the work.

Awarding bodies that fail to notify DIR or that enter into a contract with unregistered contractors or subcontractors are subject to penalties of $100 per day of non-compliance, up to a total of $10,000.

Certified Payroll Records (CPRs) Requests

All contractors and subcontractors working on public works projects, with few exceptions, are required to maintain accurate payroll records and make them available for inspection or copy. Records must contain the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the contractor or subcontractor. Access to CPRs varies depending on the requesting entity. For example, representatives from awarding bodies and DLSE can inspect CPRs at all reasonable hours at the principal office of the contractor, whereas the public cannot. CPRs made available to the public or any public agency must be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. Any CPRs made available to a multiemployer Taft-Hartley trust fund shall be marked or obliterated only to prevent disclosure of an individual's full social security address, but shall provide the last four digits. CPRs available to JLMCs shall be marked or obliterated only to prevent disclosure of an individual's social security number.

A request by the public to inspect CPRs must be made through either the awarding body or DLSE. Once made, contractors and subcontractors have ten days upon receipt of a written request to furnish CPRs. In the event that a contractor or subcontractor fails to comply, they forfeit $100 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. To facilitate compliance, DLSE provides a standard public works payroll reporting form (Form A-1-131) in all written requests. However, contractors and subcontractors can use an alternate format as long as it contains all of the required information.

CPRs are an essential tool for combatting wage theft. DLSE and JLMCs use the records to confirm that contractors and subcontractors pay prevailing wages. JLMCs can bring an action in any court of competent jurisdiction against an employer that fails to pay prevailing wages or that fails to provide CPRs. Multiemployer Taft-Hartley trust funds use the records to allocate contributions to pension, health, or welfare benefit trusts.

Electronic Certified Payroll Records Database

Contractors and subcontractors working on public works projects are required to furnish specified payroll records at least once a month directly to the LC, in an electronic format, in the manner prescribed by the LC, on DIR's website. This requirement is separate and distinct from the requirement to make CPRs available within 10 days upon receipt of a written request. Electronic certified payroll records (e-CPRs) do not contain all of the payroll information that is required for a contractor to comply with written requests. Contractors and subcontractors who fail to submit e-CPRs are subject to penalties of $100 per day of non-compliance, up to a total of $5,000 per project. DIR also maintains an online database of e-CPRs accessible only to JLMCs and multiemployer Taft-Hartley trust funds.

Skilled and Trained Requirements and Monitoring

A "skilled and trained" workforce is one where all workers performing work in an apprenticeable occupation in the building and construction trades are either skilled

journeypersons[1] or apprentices registered in a DAS[2] approved apprenticeship program. Additionally, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project must be graduates of an apprenticeship program. Not all public works projects are subject to skilled and trained requirements.

Contractors required to use a skilled and trained workforce to complete a project commit to doing so in an enforceable agreement with the public entity or awarding body. Contractors must comply at every tier and are required to complete and submit to the awarding body a monthly report demonstrating compliance. The report includes the full name of each worker and the name, location, and graduation date of their completed apprenticeship. Should a contractor fail to provide the monthly report or fall out of compliance, the awarding body will withhold payments until compliance is achieved and notify the LC for issuance of a civil wage and penalty assessment. These monthly skilled and trained reports are open to public inspection. DAS is currently working on an online database that will be available to the public and searchable by first name, last name, and graduation date of the worker.

2. Comments:

California's public works laws prevent worker exploitation and promote the creation of a skilled workforce. Prevailing wage and recordkeeping requirements keep contractors that pay low wages to undercut their competition from working on publicly funded projects. Given the prevalence of wage theft in the construction industry, rigorous enforcement of public works law is vital. However, the committee raises the following questions:

- AB 963 would require an owner or developer undertaking any public works project subject to public works requirements (Labor Code, Chapter 1. Public Works, §1720-1861) to make the following records available upon request to DLSE, multiemployer Taft-Hartley trust funds, and JLMCs:

    - Final executed construction contracts.
    - A copy of CPRs if the owner or developer has possession, custody, or control of these records.
    - If applicable, skilled and trained compliance reports.

    In conversations with the committee, the author's office noted that "owners or developers" undertaking a public works project are awarding bodies and that their responsibilities should reflect that. DIR's definition of an awarding body includes private entities. *If owners or developers are awarding bodies and the project is subject to public works law, why are the existing records requirements, detailed above, insufficient?*

- Provisions in this bill require an owner or developer to make final executed contracts available upon request. The author notes that the existing payroll records statute does not require private entities to supply this information.

[1] A "skilled journeyperson" means a worker who either: 1) graduated from an apprenticeship program for the applicable occupation that was approved by DAS or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor, or 2) has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by DAS.

[2] Division of Apprenticeship Standards

However, awarding bodies are required to submit a PWC-100 form to DIR before work on a project can begin. This form contains the name and DIR-issued registration number for each contractor and any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, and the jobsite location. Existing law empowers DIR to make this information available for public review. *Does the PWC-100 form provide the same information that would be available in final executed contracts? If DIR is not readily supplying the information collected in PWC-100 forms, should the provisions of this bill focus on expanding access to this information?*

In previous conversations the author's office noted that private entities, acting as awarding bodies, have erroneously denied JLMCs access to CPRs. Subsequently, the author's intention is to guarantee that private entities working on public works projects comply with records requests. It appears, however, that DLSE, multiemployer Taft-Hartley trust funds, and JLMCs already have access to the records referenced in AB 963. If enforcement, not access is the issue, it is not clear whether another reporting requirement will increase compliance. The author is working with the sponsors and opposition to address some of the questions and concerns raised in this analysis.

3. Need for this bill?

According to the author:

"Access to records relating to publicly-funded projects is critical to ensuring proper use of taxpayer dollars, to prevent public funds from being used by contractors with a history of labor violations, and to ensure proper classification of construction and apprentices. Existing law allows the Division of Labor Standards Enforcement (DLSE), multiemployer Taft-Hartl[e]y trust funds, and joint labor-management committees (JLMCs) the ability to request documents provided to a public entity when using public funds to develop public works projects. However, private entities that utilize public funds to develop public works projects are not required to respond to the same types of requests for project documents, lists of contractors and subcontractors performing work on the projects, payroll records, and other information. This lack of transparency makes it nearly impossible to verify that existing public works laws are being followed and that workers and apprentices are being properly compensated as required by law.

AB 963 will ensure that project owners or project developers performing work funded in whole or in part by taxpayer dollars are in compliance with existing Public Contract and State Labor laws, including prevailing wage requirements."

3. Proponent Arguments:

The International Union of Painters and Allied Trades, District Council 16, sponsors of the measure, argue:

"Often, on construction projects, workers are underpaid and or misclassified and, without oversight, this growing problem will only continue to get worse. Existing law provides the Division of Labor Standards Enforcement (DLSE), multiemployer Taft-Hartley trust funds, and joint labor-management committees with the ability to request documents from contractors when they are using public funds to develop public works projects. It is

imperative that the Public Contract Code, the California Labor Code, and prevailing wage requirements are met on every public works project.

It is understood that private entities are just that, private. However, private entities using public funds also should be held to the same standards and accountability as governmental bodies when it comes to producing project documents and information. Private entities currently have no oversight through the California Public Records Act.

AB 963 will grant the ability to the DLSE, multiemployer Taft-Hartley trust funds, and joint labor management committees to request a limited scope of documents from a corporation, limited liability company, partnership, joint venture, or other legal entity when developing projects that utilize public funds regardless of whether the project is in its entirety a public works project. AB 963 will provide oversight to publicly funded projects to ensure that the Public Contract Code, the California Labor Code, and prevailing wage requirements are being enforced on all public works projects that utilize public funds."

4. Opponent Arguments:

A coalition of opponents, including the California Housing Consortium and Housing California, argue:

"Our organizations represent the development, non-profit, financial, and public sectors united in the goal of increasing the supply of safe, stable, and affordable housing options for the people of California. Given our collective mission, we are concerned that the costs of AB 963 and its impact on affordable housing production would outweigh any benefits from the bill.

We share your interest in ensuring compliance with prevailing wage laws. When a private development is subject to prevailing wage requirements, the general contractor has a duty to ensure that both itself and all of the subcontractors comply with the applicable laws. These companies are responsible for submitting prevailing wage reports to the Department of Industrial Relations (DIR) to demonstrate compliance. The system is on-line, so no paper is produced, and these records can be requested by anyone. If there are issues with the public obtaining the records from DIR, we recommend focusing on improving DIR's response capacity.

Since the records already submitted establish whether prevailing wages were paid or not, it is not clear that the additional documentation referenced in the bill is actually necessary to enforce compliance. According to our members and partners, the proposed list of documents in the bill is overly broad and the third-party compliance firms often employed rarely if ever have the breadth and scope of documents that are specified. As a result, the production of records becomes a burdensome and costly task that provides little to no benefit."

5. Double Referral:

The Senate Rules Committee referred AB 963 to the Senate Labor, Public Employment and Retirement Committee and the Senate Judiciary Committee.

6. Prior Legislation:

AB 538 (Berman, 2025) would require an awarding body, upon request by the public, to obtain CPRs from a contractor and make them available to the requesting entity. Contractors would have 10 days to comply upon receipt of a written notice. *This bill is pending in the Senate Appropriations Committee.*

AB 3186 (Petrie-Norris, 2024) was nearly identical to AB 963, above. This bill was held in the Senate Rules Committee.

AB 2439 (Quirk-Silva, 2024) would have required an owner, developer, or the agent of an owner or developer, that, among other things, receives public funds from a public agency to perform specified public works projects, to make available specified records to JLMCs, multiemployer Taft-Hartley trust funds, and nonprofits established to ensure compliance within the building and construction trades. *This bill was held in the Assembly Appropriations Committee.*

AB 2182 (Haney, 2024, Vetoed) would have, among other things, specified that when the LC requests to review a contractor's payroll records to verify their accuracy, the contractor must make available all of the items specified in the California Code of Regulation's definition of payroll records. *Governor Gavin Newsom vetoed this bill*.

AB 587 (Robert Rivas, Chapter 806, Statutes of 2023) required any copy of records requested by, and made available for inspection by or furnished to, a Taft-Hartley trust fund or JLMC to be on forms provided by the DLSE or contain the same information as the forms provided by the DLSE. Additionally, AB 587 clarified that copies of electronic certified payroll records do not satisfy payroll records requests made by Taft-Hartley trust funds and JLMCs.

SB 954 (Archuleta, Chapter 824, Statutes of 2022) required the Department of Industrial Relations to develop and implement an online database of certified payroll records submitted to comply with public works requirements.

AB 1023 (Flora, Chapter 326, Statutes of 2021) revised the requirement to furnish payroll records monthly to require that the contractor or subcontractor furnish those records at least once every 30 days while work is being performed on the project and within 30 days after the final day of work performed on the project. The bill also required that the contractor or subcontractor furnish these records in an electronic format, in the manner prescribed by the Labor Commissioner, on the department's internet website.

SUPPORT

International Union of Painters and Allied Trades District Council 16 (Sponsor)
A&B Painting, Inc.
All County Flooring
Aragon Construction, Inc.
B.T. Mancini Co., Inc.
C.A. Bucher Painting Co., Inc.
California Federation of Labor Unions
California-Nevada Conference of Operating Engineers
California State Association of Electrical Workers

California State Council of Laborers
California State Pipe Trades Council
Capital Industrial Coatings, LLC
Certified Coatings Company
Concord Drywall Inc.
Conley & Sons Construction
Crown Sheet Metal & Skylights Inc.
Custom Drywall
Devco Drywall Interiors Inc.
District Council of Iron Workers of the State of California and Vicinity
Drywall Finishers Regional Local Union 1136
Eladio and Sons
Ellis Flooring Inc.
Finishing Contractors Association of Southern California
Fisher Design + Build, Inc.
Future Flooring Group Dba. C&S Flooring Systems, Inc.
Genesis Flooring
Giroux Glass Inc..
Glaziers Local 718
Golden Gate Glass & Mirror Co.
Golden State Contract Flooring
Hoem & Associates
International Brotherhood of Boilermakers, Western States Section
International Union of Painters & Allied Trades District Council 36
International Union of Painters and Allied Trades Local 272
International Union of Painters and Allied Trades Local 376
International Union of Painters and Allied Trades Local 507
International Union of Painters and Allied Trades Local 831
International Union of Painters and Allied Trades Local 1036
International Union of Painters and Allied Trades Local 1621
J&J Acoustics, Inc.
Johnson and Turner Painting Company, Inc.
Karsyn Construction Inc.
KBI Painting, Inc.
Kirk Builders
Magnum Drywall, Inc.
Mastria Inc.
MGM Drywall, Inc.
Murphy Industrial Coatings, Inc.
NC Flooring Group INC
Nor Cal Glass
Northern California Allied Trades
Pacific Glazing Contractors
Paramount Interiors LLC
Pari & Gershon Inc.
Polytech Industrial Incorporated
Primal Paint, Inc.
Pro Spectra Contract Flooring, Union City
R.E. Cuddie Co.
Ralls Construction

Redwood Painting Co., Inc.
Reno's Floor Covering, Inc.
Satellite Painting, Inc.
Signature Glass & Windows Inc. Lic # 750091
Silicon Valley Glass Inc.
Southern California Glass Management Association
State Building and Construction Trades Council
Tisys Construction
Vanguard Painting, Inc.
Western Painting and Coating Contractors Association
Western States Council of Sheet Metal Workers
Wm. B. Saleh Co.

OPPOSITION

Associated General Contractors of California
California Building Industry Association
California Housing Consortium
California Housing Partnership
California Solar & Storage Association
Construction Employers' Association
Housing California
Non-profit Housing Association of Northern California
San Diego Housing Federation
Southern California Association of Non-profit Housing
Valley Industry and Commerce Association

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 1048	**Hearing Date:**	July 9, 2025
Author:	Chen		
Version:	April 10, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Jazmin Marroquin		

SUBJECT: Workers' compensation

KEY ISSUE

This bill provides that certain contract disputes regarding discounts applied to a medical treatment bill may be resolved through the Division of Workers' Compensation (DWC) independent bill review (IBR), as specified.

ANALYSIS

Existing law:

1) Establishes a comprehensive system of workers' compensation that provides a range of benefits for an employee who suffers from an injury or illness that arises out of and in the course of employment, regardless of fault. This system requires all employers to insure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by obtaining insurance from a company authorized by the state. (Labor Code §§3200-6002)

2) Establishes the DWC and Workers' Compensation Appeal Board (WCAB) within DIR and charges them with monitoring the administration of workers' compensation claims and providing administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. (Labor Code §3200 et seq.)

3) Requires that a provider of services for an injured worker eligible for workers' compensation benefits, as specified, submit its request for payment with an itemization of services provided and the charge for each service, a copy of all reports showing the services performed, any prescription or referral from the primary treating physician, as specified, and any evidence of authorization for the services to the employer, or to the insurer or third-party claims administrator as established through written agreement. (Labor Code §4603.2(b)(1)(A))

4) Provides that, if the provider disputes the amount paid, the provider may request a second review within 90 days of the explanation of the review, which the employer must respond to within 14 days with a final written determination on each of the items or amounts in dispute, as specified; and provides that, if the provider contests the amount paid after receipt of the second review, the provider shall request an IBR. (Labor Code §4603.2(e))

5) Provides that, if the only dispute between a medical provider and the employer is the amount of payment, and the provider has received a second bill review by the claims administrator that did not resolve the dispute, the provider may request an IBR within 30 calendar days of service of the second review, as specified. (Labor Code §4603.6(a))

6) Requires, upon the receipt of a request for IBR and the required fee, the administrative director (AD) of DWC to assign the request to an independent bill reviewer within 30 days, and requires the reviewer to review the materials submitted by the parties and make a written determination of any additional amounts to be paid to the medical provider, and state the reasons for the determination, as specified. (Labor Code §§4603.6(d)-(e))

7) Provides that the determination of the IBR is final and binding on all parties unless an aggrieved party files with the WCAB a verified appeal from the medical bill review determination within 20 days of service of the determination; and provides that the determination shall be presumed correct only upon clear and convincing evidence that:

   a. The AD acted without or in excess of his or her powers;
   b. The determination was procured by fraud;
   c. The IBR was subject to a material conflict of interest;
   d. The determination was the result of bias on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability; or
   e. The determination was the result of a plainly erroneous express or implied finding of fact, provided that the mistake of fact is a matter of ordinary knowledge based on the information submitted for review and not a matter that is subject to expert opinion. (Labor Code §4603.6(f))

8) Requires the AD to, after public hearings, adopt and revise periodically an official medical fee schedule (OMFS) that establishes reasonable maximum fees paid for medical services provided to workers' compensation patients. (Labor Code §5307.1)

9) Authorizes a medical provider and a contracting agent, employer, or carrier to contract for reimbursement rates that differ from the OMFS, so long as those rates do not exceed the rates established by the OMFS. (Labor Code §5307.11)

This bill:

1) Provides that a payment dispute, for the purposes of IBR under the workers' compensation system, includes a contract dispute involving a discount or reduction from the OMFS that was applied to a medical treatment bill.

2) Requires, if the dispute only involves a percentage discount or reduction that results in IBR upholding the discount or reduction, IBR to provide the rationale for that ruling in a written decision to the medical provider and include the medical provider contract or contracts relied upon to uphold the discount or reduction.

   a. Requires, if the payer cannot produce a valid medical provider contract or contracts justifying the discount or reduction, the IBR organization to award the medical provider payment for the disputed medical treatment bill that is consistent with the OMFS.
   b. Specifies the IBR organization is not required to provide the medical provider with a contract to which the medical provider is not a party.

COMMENTS

1. Background:

Workers' Compensation and the Independent Bill Review Process
Under the California workers' compensation system, if a worker is injured on a job, the employer must pay for the worker's medical treatment, and provide monetary benefits if the injury is permanent. In return for receiving free medical treatment, the worker surrenders the right to sue the employer for monetary damages in civil court. This simple premise is sometimes referred to as the "grand bargain."

The workers' compensation system has several formal mechanisms for resolving disputes regarding the details of the injury, the medical necessity of aspects of the treatment plan, or the billing of insurers by medical providers, etc. that involve qualified medical evaluators (QMEs), workers' compensation administrative law judges, and the WCAB, among others. When a medical provider and an employer or insurer disagree on payment for medical services provided, the medical provider can submit the bill to the insurance claims administrator for a second bill review, with any remaining dispute resolved through the IBR process. The only issue addressed during the IBR process is the amount to be paid for the provided medical service.

As the Assembly Committee on Appropriations points out, "DWC contracts with a single organization, Maximus, to provide all independent medical review and IBR services, subject to an IBR fee paid by the requesting medical provider. According to this bill's sponsor, this fee increased from $180 to $195 on January 1, 2025. Maximus assigns an independent bill reviewer to examine documents submitted by both parties, identifies the appropriate OMFS, and issues a written determination within 60 days of assignment. If the determination finds any additional amount of money is owed to the medical provider, the determination must also order the claims administrator to pay the additional sum owed and reimburse the provider the amount of the filing fee. The IBR determination is deemed the determination of the DWC and is binding on all parties."

Official Medical Fee Schedule
The OMFS establishes the reasonable maximum fees to be paid to a medical provider for medical services provided to a workers' compensation patient. DWC sets and updates the OMFS following a public hearing. However, existing law also authorizes a medical provider and a contracting agent, employer, or insurer to contract for a reimbursement rate that differs from the OMFS, as long as the contracted rate does not exceed the OMFS rate.

Under an arrangement known as a Preferred Provider Organization (PPO), the insurer sends business to the medical provider, and in exchange, the medical provider offers services for a discounted rate to the insurer. However, this system has also given rise to a practice known as "silent PPO discounting," when an intermediary organization network leases to other insurers the network's provider list, including discounted rates the network has brokered on behalf of an insurer to use these providers. A leasing insurer may then "double dip" on discounts by applying the direct discount the insurer has negotiated with the medical provider, as well as the additional discount the network has negotiated with the medical provider.

This bill, AB 1048, *allows* a medical provider to dispute an additional discount resulting from "silent PPO discounting" through the IBR process, and, if successful, receive payment in the amount set by the OMFS. If the IBR process determines the additional discount is

appropriate, this bill requires the medical provider be notified of the relevant contract to which the medical provider is a party that supports the discounted rate.

2. Need for this bill?

According to the author:

"This bill clarifies that the existing DWC [IBR] process can be utilized to resolve treatment contract disputes. If IBR upholds the discount or reduction, they must provide the basis for their reasoning and provide the relevant contract to the medical provider.

This bill addresses the need for greater transparency and accountability in the workers' compensation system, particularly in resolving contract disputes between payers and medical providers. By defining payment disputes to include contract disputes related to discounts or reduction of medical bills, the bill clarifies that these disputes can be handled under the existing [IBR] process. Just like in any other dispute resolved through the [IBR] process, IBR would issue a written decision to the medical provider, along with the relevant contract. This ensures a fairer, more transparent process for resolving disputes and fosters better communication between all parties."

3. Proponent Arguments:

According to the sponsors, the California Orthopaedic Association (COA):

"The [IBR] process was designed to provide a streamlined, impartial method for resolving billing disputes between medical providers and payors. However, current law does not clearly authorize providers to challenge reimbursement reductions stemming from unauthorized or 'silent' Preferred Provider Organization (PPO) discounts—particularly those applied without the provider's knowledge or consent. These discounts can undercut the Official Medical Fee Schedule and, in some cases, result in payments even lower than Medicare rates. For example, an orthopedic surgeon in San Diego was reimbursed significantly below the scheduled rate for a procedure, without any prior agreement to the discount. These opaque reimbursement practices discourage provider participation in the system, leading to diminished access to care for injured workers—especially specialty services.

AB 1048 addresses this gap by clarifying that the IBR can address all payment disputes as we believe it was always intended. This clarification is critical to ensuring consistent and efficient resolution of payment disputes.

Importantly, AB 1048 would impose little to no cost to the state. The IBR process is entirely funded by medical providers, who pay a $195 filing fee to initiate a review by a third-party contractor (currently the company, Maximus). If Maximus determines that the provider is owed even a single penny more, the payor must reimburse both the underpayment and the $195 fee. The Division of Workers' Compensation (DWC) incurs no cost, regardless of the outcome. In fact, by allowing these disputes to remain within IBR rather than being escalated to the Workers' Compensation Appeals Board (WCAB), AB 1048 could reduce state costs by alleviating burdens on the appeals system.

By restoring financial transparency and predictability, AB 1048 will encourage more providers to remain in—or return to—the Workers' Compensation system, ultimately improving access to timely, high-quality care for injured workers."

4. Opponent Arguments:

According to the opponents, which includes the American Property Casualty Insurance Association, and a large coalition of businesses, cities, counties, schools, and public entities:

"Employers are broadly supportive of the IBR process because it reduces unnecessary litigation on simple billing disputes. IBR typically addresses issues related to coding, bundling of services, and application of the official medical fee schedule. Under AB 1048, however, IBR would also be asked to resolve complicated contract disputes related to billing. IBR reviewers are typically insurance and billing professionals who are quite good at resolving routine billing issues. IBR is not, however, staffed by attorneys and judges who are able to resolve legal disputes around contract application.

Many of the contracts subject to IBR under AB 1048 have binding dispute resolution provisions that would be interfered with by funneling the disputes into IBR. These provisions can include internal appeals processes, arbitration, and/or venue selection for dispute resolution. In fact, Labor Code Section 5275(b) specifically allows parties in the workers' compensation system to agree to arbitration to resolve disputes. From our perspective it is bad public policy to move these disputes from qualified arbitrators or judges and into the IBR system.

AB 1048 ignores contracted dispute resolution provisions and instead forces these disputes into an IBR process that isn't built for contract disputes."

5. Prior Legislation:

SB 668 (Hurtado, 2025) would have authorized the DWC AD to adjust the fee schedule for medical-legal evaluations every two years based on an evaluation of medical practice costs. *This bill was held under submission in the Senate Appropriations Committee*.

SB 863 (De Leon, Chapter 363, Statutes of 2012) enacted major reforms to the workers' compensation system, including establishing the independent medical review and IBR processes for resolving disputes.

SUPPORT

California Orthopaedic Association (Sponsor)
California Medical Association (CMA)
California Podiatric Medical Association
Peace Officers Research Association of California (PORAC)
Western Occupational & Environmental Medical Association

OPPOSITION

American Property Casualty Insurance Association
California Association of Joint Powers Authorities

California Chamber of Commerce
California Coalition on Workers Compensation
California Food Producers
California League of Food Producers
Public Risk Innovation, Solutions, and Management (PRISM)
Urban Counties of California (UCC)

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 1067	**Hearing Date:**	July 9, 2025
Author:	Quirk-Silva		
Version:	May 23, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public employees' retirement: felony convictions

KEY ISSUE

This bill mandates public employers to continue investigations of public employees for misconduct, as specified, after the investigated employee retirees and to refer the matter to law enforcement before closing the investigation. The bill also requires the employee forfeit any accrued pension rights and benefits if a felony conviction arises out of any conduct as described.

ANALYSIS

Existing law:

1) Establishes comprehensive public employee pension reform through enactment of the Public Employees' Pension Reform Act (PEPRA) (and related statutory changes) that apply to all public employers and public pension plans on and after January 1, 2013, excluding the University of California and charter cities and counties that do not participate in a retirement system governed by state statute. (Government Code §7522 et seq.)

2) Applies PEPRA to "all state and local public retirement systems and to their participating employers", as specified. (Government Code §7522.02 et seq.)

3) Defines "Public employee" in PEPRA to mean an officer, including one who is elected or appointed, or an employee of a public employer. (Government Code §7522.04 (h))

4) Defines "Public employer" in PEPRA to mean:

   a. The state and every state entity, including, but not limited to, the Legislature, the judicial branch, including judicial officers, and the California State University.
   b. Any political subdivision of the state, or agency or instrumentality of the state or subdivision of the state, including, but not limited to, a city, county, city and county, a charter city, a charter county, school district, community college district, joint powers authority, joint powers agency, and any public agency, authority, board, commission, or district.
   c. Any charter school that elects or is required to participate in a public retirement system. (Government Code §7522.04 (i))

5) Requires an *elected public officer* to forfeit all rights and benefits under, and membership in, any public retirement system in which he or she is a member, effective on the date of final conviction if convicted during or after holding office of any felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft

of public money, perjury, or conspiracy to commit any of those crimes arising directly out of his or her official duties as an elected public officer. (Government Code §7522.70))

6) Requires a *public retirement system member* to forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony, as specified, to the forfeiture date, inclusive, but not rights and benefits attributable to service performed prior to the date of the first commission of the felony. (Government Code §7522.72))

7) Requires a *public employee* to forfeit all accrued rights and benefits in any public retirement system, as specified, if convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits. (Government Code §7522.74))

This bill:

1) Amends the Public Employee's Pension Reform Act (PEPRA) to require a PEPRA-covered employer to continue an investigation of a PEPRA-covered employee under investigation for misconduct arising out of or in the performance of the employee's official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, even after the employee retires if the investigation indicates that the employee may have committed a crime.

2) Requires the employer to refer the matter to the appropriate law enforcement agency if the investigation indicates that a public employee may have committed a crime.

3) Allows the employer to close the investigation upon referring the matter to law enforcement.

4) Provides that the employee shall forfeit all accrued rights and benefits in any public retirement system effective on the date of the conviction "if a felony conviction results arising out of any conduct described" in the bill's provisions.

5) Provides that reimbursement to local agencies and school districts for related costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code if the Commission on State Mandates determines that this act contains costs mandated by the state.

COMMENTS

1. Author Amendments

The author is adding the following amendments to be taken in committee to clarify that the felony conviction must be against the public employee, and not against some third party, for this bill's forfeiture provisions to apply.

Government Code §7522.76. (b)

If the public employer's investigation indicates that a public employee may have committed a crime, the public employer shall refer the matter to the appropriate law enforcement agency and the public employer may then close the investigation. ~~If a felony conviction results arising out of~~ ***If the public employee receives a felony conviction for***

any conduct described in subdivision (a), the public employee shall forfeit all accrued rights and benefits in any public retirement system in which the employee is a member in accordance with Section 7522.70, 7522.72, or 7522.74, as applicable, effective on the date of the conviction.

2. Need for this bill?

According to the author:

"Under existing law, the California Public Employees' Pension Reform Act of 2013 (PEPRA) mandates that a public employee convicted of a felony related to official duties forfeits all accrued retirement benefits.

However, the California Public Employees' Retirement System can only take action to reduce or revoke benefits once a felony conviction is secured.

If an employee retires before an investigation is completed, there may be no official record of wrongdoing, making it difficult to hold individuals accountable.

This gap in oversight allows serious misconduct to go unpunished and prevents findings from being referred to law enforcement or appropriate authorities."

3. Proponent Arguments

According to Oakland Privacy:

"One of the biggest beneficiaries of this pension system is law enforcement, and their ability to retire early with full benefits. Unfortunately, they are also a population that has a high propensity for misconduct, and an even higher incentive to retire mid-investigation to avoid jeopardizing their handsome pensions in the process.

Disgraced Los Angeles ex-Sheriff Lee Baca was reported to receive over $200,000 a year in benefits. Although police unions have fought back pension reform, even some law enforcement have stated that reform is necessary and beneficial. Cleveland police officer Edwin Millan who was convicted of various crimes stated that knowing his actions could lead to losing his pension would have influenced his decision to defraud the public. In addition, former Miami Police Chief Art Acevedo supports pension forfeiture as a way of deterring officers from disgracing their own departments and damaging the reputation of law enforcement and motivating a shift in department culture. While we focused on examples of law enforcement abuse, no public employee should rest assured of having a soft landing funded by taxpayers if convicted of illegal activities.

This bill will close the loophole to circumvent pension forfeiture when a public employee who is at risk of being convicted of a crime takes an early retirement to deter an investigation that might derail their pensions. The risk of pension forfeiture serves as a strong deterrent against engaging in illegal activity and AB 1067 will strengthen the integrity of California's public employee pension program. Taxpayers should not be forced to look the other way when felonious government employees are unjustly burdening an already precarious pension system."

4. Opponent Arguments:

None received.

5. Prior/Related Legislation:

SB 521 (Gonzalez, 2025) would add any felony involving "conflict of interest" to the list of specified crimes for which a conviction disqualifies a public employee for five years from any public employment, including, but not limited to, employment with a city, county, district, or any other public agency of the state and would disqualify a city manager or city attorney permanently. *This bill is under consideration in the Assembly Appropriations Committee.*

SB 850 (Ashby, 2025) would have imposed pension forfeiture conditions on current members of public employee retirement systems to eliminate retroactively all accrued vested pension rights and confiscate accumulated employee contributions of any California Department of Corrections and Rehabilitation employee convicted of sexually assaulting an inmate within the state prison system. *This bill was held under submission in the Senate Appropriations Committee.*

SB 39 (DeLeon, Chapter 775, Statutes of 2013) required an elected or appointed local public officer, as defined, to forfeit any contract or similar claim for retirement or pension benefits, other than those accrued benefits which he/she may be entitled to under the applicable public retirement system, if he/she has been convicted of specified felonies under state or federal law.

SUPPORT

Oakland Privacy

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 1398	**Hearing Date:**	July 9, 2025
Author:	Valencia		
Version:	April 24, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Jazmin Marroquin		

SUBJECT: Workers' compensation

KEY ISSUE

This bill, in order to facilitate the prosecution of workers' compensation fraud, clarifies the following provisions: 1) existing laws on referrals for workers' compensation related-services do not preclude any other applicable laws, and 2) an interested party in a workers' compensation claim must disclose a financial interest in an entity providing services, in writing, to a third-party payer or any other entity paid for services furnished pursuant to a referral.

ANALYSIS

Existing law:

1) Establishes a comprehensive system of workers' compensation that provides a range of benefits for an employee who suffers from an injury or illness that arises out of and in the course of employment, regardless of fault. This system requires all employers to insure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by obtaining insurance from a company authorized by the state. (Labor Code §§3200-6002)

2) Establishes the Division of Workers' Compensation (DWC) and Workers' Compensation Appeal Board (WCAB) within DIR and charges them with monitoring the administration of workers' compensation claims and providing administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. (Labor Code §3200)

3) Specifies that failure to have workers' compensation coverage, or make a false or fraudulent statement to obtain or deny any compensation, is a criminal and civil offense; including a misdemeanor or felony, punishable by imprisonment, and/or fines ranging from $10,000 to $100,000; as well as civil penalties, including stop orders, and personal liability. (Labor Code §§3700-3823)

4) Requires all interested parties in a workers' compensation claim to disclose any financial interest in any entity providing services pertaining to that claim. (Labor Code §139.32)

    a. Except as otherwise permitted by law, prohibits an interested party other than a claims administrator or network service provider from referring a person for services provided by another entity, or using services provided by another entity, if the other entity will be paid for those services through the workers' compensation system and the interested party has a financial interest in the other entity.

b. Prohibits an interested party from entering into an arrangement or scheme, such as a cross-referral arrangement, that the interested party knows, or should know, has a purpose of ensuring referrals by the interested party to a particular entity that, if the interested party directly made referrals to that other entity, would be in violation of this section.

c. Prohibits an entity from presenting a claim for payment to any interested party, individual, third-party payer, or other entity for any services furnished pursuant to a referral prohibited under this section.

d. Prohibits an insurer, self-insurer, or other payer from knowingly paying a charge or lien for any services resulting from a referral for services or use of services in violation of this section.

e. Provides that a violation of these provisions is a misdemeanor, and subject to civil penalties up to $15,000 for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district attorney.

    i. Defines "financial interest in another entity" to mean either of the following:

        1. Any type of ownership, interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between the interested party and the other entity to which the employee is referred for services; or

        2. An agreement, debt instrument, or lease or rental agreement between the interested party and the other entity that provides compensation based upon, in whole or in part, the volume or value of the services provided as a result of referrals.

    ii. Specifies that the following arrangements between an interested party and another entity *do not* constitute a "financial interest in another entity":

        1. A loan between an interested party and another entity, if the loan has commercially reasonable terms, bears interest at the prime rate or a higher rate that does not constitute usury, and is adequately secured, and the loan terms are not affected by either the interested party's referral of any employee or the volume of services provided by the entity that receives the referral.

        2. A lease of space or equipment between an interested party and another entity, if the lease is written, has commercially reasonable terms, has a fixed periodic rent payment, has a term of one year or more, and the lease payments are not affected by either the interested party's referral of any person or the volume of services provided by the entity that receives the referral.

        3. An interested party's ownership of the corporate investment securities of another entity, including shares, bonds, or other debt instruments that were

purchased on terms that are available to the general public through a licensed securities exchange or NASDAQ.

iii. Defines "interested party" to mean any of the following:

1. An injured employee,
2. The employer of an injured employee, and, if the employer is insured, its insurer,
3. A claims administrator, which includes, but is not limited to, a self-administered workers' compensation insurer, a self-administered self-insured employer, a self-administered joint powers authority, a self-administered legally uninsured employer, a third-party claims administrator for an insurer, a self-insured employer, a joint powers authority, or a legally uninsured employer or a subsidiary of a claims administrator,
4. An attorney-at-law or law firm that is representing or advising an employee regarding a claim for workers' compensation,
5. A representative or agent of an interested party, including either of the following:
    a. An employee of an interested party,
    b. Any individual acting on behalf of an interested party, including the immediate family of the interested party or of an employee of the interested party. For purposes of this clause, immediate family includes spouses, children, parents, and spouses of children,
6. A provider of any medical services or products.

iv. Defines "services" to include, but not be limited to:

1. A determination regarding an employee's eligibility for workers' compensation, that includes both of the following:
    a. A determination of a permanent disability rating, as specified.
    b. An evaluation of an employee's future earnings capacity resulting from an occupational injury or illness.
2. Services to review the itemization of medical services set forth on a medical bill, as specified.
3. Copy and document reproduction services.
4. Interpreter services.
5. Medical services, including the provision of any medical products such as surgical hardware or durable medical equipment.
6. Transportation services.
7. Services in connection with utilization review, as specified.

5) Prohibits a person from concealing, or knowingly failing to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled and prohibits knowingly assisting or conspiring with a person to violate this provision. (Penal Code §550(b)(3))

6) Provides that a violation of this is punishable by imprisonment for two, three, or five years, as specified, or by a fine not exceeding $50,000 or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to

exceed one year, or by a fine of not more than $10,000, or by both that imprisonment and fine. (Penal Code §550(c)(3))

This bill:

1) Provides that an interested party in a workers' compensation claim must disclose a financial interest in an entity providing claim services to a third-party payer or any other entity paid for services furnished pursuant to a referral.

   a. Specifies the disclosure must be made in writing, at the time the claim for payment is presented for services furnished pursuant to a referral.

2) Clarifies that existing laws concerning referrals for workers' compensation-related services do not preclude the ability of any other law that may apply to the transaction.

COMMENTS

1. Background:

Workers' Compensation, Fraud, and Illegal Referrals
Under the California workers' compensation system, if a worker is injured on a job, the employer must pay for the worker's medical treatment, and provide monetary benefits if the injury is permanent. In return for receiving free medical treatment, the worker surrenders the right to sue the employer for monetary damages in civil court. This simple premise is sometimes referred to as the "grand bargain."

The workers' compensation system is often a myriad, complex system. If a worker is injured, they must first report the injury to their employer and file a claim in order to receive treatment or benefits. While the injured worker receives an initial evaluation by a medical provider within a network specified by the employer or their insurer, the employer submits a report of the injury to the insurer. A claims administrator with the insurer then determines whether the claim is approved or denied, and if approved, the treatment can be provided. There are several formal dispute resolution processes for any disputes among the interested parties regarding the details of the injury, the medical necessity of aspects of the treatment plan, or the billing of insurers by medical providers, etc. that involve qualified medical evaluators (QMEs), workers' compensation administrative law judges, and the Workers' Compensation Appeals Board (WCAB) among others.

As a result, many different parties and professionals are involved from beginning to end in the workers' compensation process. The injured worker or employer depends on interpreters, attorneys, medical providers, and many other professionals who then depend on other networks from the initial filing of a claim until the completion of treatment. Unfortunately, workers' compensation fraud has also been rampant and costs California billions each year. Workers' compensation fraud can take many forms, including for example, health care providers billing for services never performed, employers under-reporting payroll, and attorneys or claims adjusters facilitating fraud.

Workers' compensation fraud also includes illegal referrals, also known as "kickback schemes." In these fraudulent schemes, individuals or entities providing services related to a workers' compensation claim will refer the injured worker or the employer to another service

provider in which they have financial interest without disclosing that relationship. After that illegal referral, the individual issuing the referral will receive payment from the workers' compensation system for the services provided.

An example of these illegal "kickback schemes" is described in the case of *People v. Luna* (2023) [89 Cal. Comp. Cases 22], discussed below:

> "Luna has been practicing workers' compensation law in California for half a century. […] At the preliminary hearing, the district attorney presented evidence Luna opened a side business called Adelante Interpreters in 2011. Although Luna controlled and ran the business, he did not mention that on the incorporation papers. Instead, he listed his daughters as its acting officers. When Luna's legal clients needed interpreter services in connection with their workers' compensation claims, he invariably enlisted Adelante for those services. Adelante then made insurance claims for the cost of those services. All told, it received payments totaling over $100,000 from 22 different insurance carriers between 2016 and 2020. The parties stipulated those benefits would not have been paid had the carriers known of Luna's interest in Adelante."

Another example of workers' compensation fraud is the recent case, *People v. Woods* (2025) [Super. St. No. 17CF1373];

> "Defendant Jon Woods is an attorney who specialized in workers' compensation law and formed a law firm exclusively dedicated to representing employees. Woods began his firm in 2001. […] Woods began working with USA Photocopy in approximately 2007. USA Photocopy, among other things, provided subpoena services for workers' compensation attorneys. This sometimes involved going to an attorney's office to copy files, bringing them back to the copy center, and preparing subpoenas. But Woods normally e-mailed files to USA Photocopy. USA Photocopy would then prepare the subpoena, serve it, and then pick up the documents once they were ready. USA Photocopy then billed the insurance company for the services. USA Photocopy paid for some of Woods's business expenses. Most notably, beginning in 2010, USA Photocopy paid the salary of certain employees that were hired by Woods and working at his law firm. Woods's firm determined the person's salary and e-mailed USA Photocopy the amount to be paid to that employee. […]
>
> In 2011, Woods met Carlos Arguello. His business relationship with Arguello would become a central focus of the trial. Arguello ran several companies, the primary business being a marketing company called, at one point, Centro Legal Internacional (his companies went by several different names). Ostensibly, Arguello's company offered advertising services to obtain workers' compensation clients. […] Arguello had agreements with certain doctors. When Arguello would sign up a client for legal services, he would immediately schedule an appointment for the client with a doctor in his network. Having the network of doctors was an essential part of making Arguello's advertising business profitable. Otherwise, his advertising business was running at a loss. Woods allowed Arguello to employ his network of doctors for the cases sent to Woods. […] In total, over the course of their relationship, Arguello assigned at least 2,944 cases to Woods. Woods assigned 2,688 cases to Arguello's copy service. Woods worked with Arguello through 2017. Over the course of their relationship, Woods paid Arguello's businesses $1,425,000 in fees for advertising services."

These examples illustrate how people use fraudulent "kickback schemes," in various ways to provide one another with compensation in exchange for providing workers' compensation services, and ultimately defraud the workers' compensation system.

Overlapping Fraud Statutes

The Legislature has passed several laws to protect insurers and the workers' compensation system by making it a crime to participate in a "kickback scheme." Labor Code Section 139.32 requires all interested parties to disclose of any financial interest in any entity providing services. It is also illegal to "refer a person for services provided by another entity, or to use services provided by another entity, if the other entity will be paid for those services . . . and the interested party has a financial interest in the other entity." (Labor Code §139.32(c)). These provisions are punishable as misdemeanors and subject to civil penalties up to $15,000 for each offense.

Additionally, Penal Code Section 550 outlines several prohibitions to insured property and insurers. Under Penal Code Section 550(b)(3), it prohibits a person from concealing, or knowingly failing to disclose the occurrence of, "an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled." The law also prohibits a person from knowingly assisting or conspiring with any person with those provisions. These provisions are punishable as felonies, with the possibility of imprisonment and fines up to $50,000.

Although the Penal Code section is broader than the above described Labor Code section, both are nonetheless similar and both prohibit referrals for service where the person who issue a referral has a financial interest in the other entity and the entity will be paid through the workers' compensation insurance.

As the Assembly Insurance Committee analysis describes, "The relationship between these statutes came into question in *People v. Luna* (2023) [89 Cal. Comp. Cases 22]. For [this referral scheme], the district attorney sought to charge Luna with 22 counts of felony insurance fraud pursuant to Penal Code Section 550(b)(3). In this case, the trial court held, and the appellate court upheld, that the felony charges must be dismissed due to the existence of Labor Code Section 139.32(c), which more specifically addresses the same activity, and punishes it as a misdemeanor. The court relied on the so-called *Williamson* rule, 'which precludes criminal prosecution under a general statute if there is a more specific statute that applies to the defendant's conduct.' (In re *Williamson* (1954) 43 Cal.2d 651)

As a result of this decision, prosecutors have struggled to bring felony charges for illegal referrals under Penal Code Section 550(b)(3). The implications of this preemption are not limited to the lesser penalties provided under Labor Code Section 139.32. Rather, because Penal Code Section 550(b)(3) permits trying the fraudulent activity as a felony, it is subject to the four-year statute of limitations for felony fraud in California. In contrast, Labor Code Section 139.32 is subject to a one-year statute of limitations."

The author of this bill claims:

> "In its ruling, the Appellate Court [in *Luna*] called on the Legislature to address the issue and rectify the court's interpretation stating: '*if this is not the case, the Legislature can easily say so by amending the statute to clarify that a violation of its provisions does not preclude the applicability of any other provision of law*." The court stated: "*The*

legislature has utilized this procedure in response to past judicial decisions, and there is no reason it cannot do so in response to this case, if need be.'

The court's decision effectively created a misdemeanor one-year [statute of limitations (SOL)] for complex medical fraud investigations. This would have a severe impact on law enforcement's ability to fight fraud in California's workers' compensation system.

The court's decision effectively created a misdemeanor one-year SOL for complex medical fraud investigations. This would have a severe impact on law enforcement's ability to fight fraud in California's workers' compensation system."

This bill, AB 1398, would clarify that illegal referral schemes can be prosecuted under either Labor Code Section 139.32(c) or Penal Code Section 550(b)(3). By adding that "[t]his section does not preclude the applicability of any other law that applies or may apply to a transaction" under Labor Code Section 139.32(j), it would allow prosecutors to enforce workers' compensation referral financial interest laws either as a *misdemeanor* (with only a one-year statute of limitations) under the Labor Code or a *felony*, which would allow for use of the four-year statute of limitations under the Penal Code.

Financial Interest Disclosures

The Appellate Court in *Luna* also held that the district attorney could not bring charges for failure to disclose the financial interest under Labor Code Section 139.32(b), which requires all interested parties, as defined, to "disclose to any financial interest in any entity providing services" because the statute was "unconstitutionally vague." This is because the statute does not specify how, when, or to whom the disclosure must be made.

This bill, AB 1398, proposes to resolve the issue of vagueness by specifying that this disclosure shall be made to "a third-party payer or other entity to whom a claim for payment is presented for services pursuant to a referral." The disclosure must also be made in writing, and at the time the claim for payment is presented for services pursuant to a referral.

2. Need for this bill?

According to the author:

"This bill seeks to provide legislative clarity, as the courts have requested, by allowing for workers' compensation fraud claims regarding illegal kickback schemes to be prosecuted utilizing other code sections, outside of Labor Code Section 139.32 (particularly Penal Code Section 550(b)). This would allow longer statute of limitations and the felony charges. Additionally, it addresses the court's concerns about Labor Code Section 139.32 being unconstitutionally vague by specifying to whom disclosures about financial conflicts of interests should be made."

3. Proponent Arguments:

According to a coalition of supporters, including the California Chamber of Commerce:

"Fraud and illegal referrals within the workers' compensation system are of the utmost concern to the employer community. AB 1398 improve enforcement against bad actors by

allowing fraud claims to be prosecuted as felonies and providing additional clarity regarding certain financial disclosures. […]

The court's decision [in *Luna*] effectively created a misdemeanor one-year statute of limitations for complex medical fraud investigations. This would have a severe impact on law enforcement's ability to fight fraud in California's workers' compensation system. AB 1398 clarifies that workers' compensation fraud can be prosecuted by utilizing additional code sections outside of Labor Code Section 139.32."

4. Opponent Arguments:

None received.

5. Prior Legislation:

SB 536 (Archuleta, 2025) would (1) require an insurer or licensed rating organization to notify the Employment Development Department (EDD) of suspected workers' compensation fraudulent acts related to premium fraud for the purpose of notification and investigation, and (2) require EDD, upon written request, to release detailed payroll information, to insurers or licensed rating organizations that would allow the insurer or licensed rating organization to compare the records with the information they are otherwise entitled to receive from employers in workers' compensation claims, in a confidential manner, and if specific requirements are met. *This bill is currently pending in the Assembly Insurance Committee.*

AB 2046 (Daly, Chapter 709, Statutes of 2018), among other things, required (1) an authorized governmental agency that is provided with specified information, upon request, to release information deemed important related to workers' compensation fraud, and (2) authorized governmental agency that seeks to disclose this information to any other governmental agency that is not authorized to receive that information to obtain EDD approval prior to disclosure, as specified.

SB 863 (De Leon, Chapter 363, Statues of 2012) enacted major reforms to the workers' compensation system, including establishing the independent medical review (IMR) procedure for evaluating disputes pertaining to medically necessary treatment, and authorizing appeal of IMR findings in the event there was fraud or a conflict of interest on the part of the IMR.

SUPPORT

American Property Casualty Insurance Association
California Association of Winegrape Growers
California Chamber of Commerce
California Coalition on Workers Compensation
California Farm Bureau
California Hotel & Lodging Association

OPPOSITION

None received.

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