California State Senate

LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

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AGENDA

Thursday, June 22, 2023
Upon adjournment of Session -- 1021 O Street, Room 2200

MEASURES HEARD IN FILE ORDER

1.	AB 521	Bauer-Kahan	Occupational safety and health standards: construction jobsites: restrooms.
2.	AB 647	Holden	Grocery workers.
3.	AB 694 **(CONSENT)**	Gipson	Teachers: teacher residency apprenticeship programs.
4.	AB 775	Arambula	Personal services contracts: state employees: physician registry for state hospitals.
5.	AB 1121 **(CONSENT)**	Haney	Public works: ineligibility list.
6.	AB 1356	Haney	Relocations, terminations, and mass layoffs.
7.	AB 1123	Addis	California State University: employees: paid parental leave of absence.
8.	AB 1213	Ortega	Workers' compensation: aggregate disability payments.
9.	AB 1246 **(CONSENT)**	Stephanie Nguyen	Public Employees' Retirement System optional settlements.
10.	AB 1254	Flora	State employees: compensation: firefighters.
11.	AB 1273	Bonta	Classified employees: Classified Employee Staffing Ratio Workgroup.
12.	AB 1359	Schiavo	Paid sick days: health care employees.
13.	AB 1766	Labor and Employment	Division of Occupational Safety and Health: regulations.
14.	SCA 7	Umberg	Employment: workers' rights.

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

Bill No:	AB 521	**Hearing Date:**	June 22, 2023
Author:	Bauer-Kahan		
Version:	May 15, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Occupational safety and health standards: construction jobsites: restrooms

KEY ISSUE

Should the Legislature require the California Division of Occupational Safety and Health (CalOSHA) to submit a rulemaking proposal and consider requiring at least one women's restroom at jobsites that already have two or more required restrooms by December 31, 2025?

ANALYSIS

Existing law:

1) Establishes CalOSHA within the Department of Industrial Relations (DIR) to maintain and enforce employee safety. (Labor Code §§6300)

2) Creates the Occupational Safety and Health Standards Board (Board) within DIR, consisting of seven members appointed by the Governor: two from the field of management, two from the field of labor, one from the field of occupational health, one from the field of occupational safety, and one member of the public. (Labor Code §140)

3) Requires a minimum of one separate toilet facility to be provided for each 20 employees or a fraction thereof of each gender. Such facilities may include both toilets and urinals provided that the number of toilets shall not be less than one half of the minimum required number of facilities. Where there are less than five employees, one single-user toilet facility designated for all-gender use is sufficient. Each single-user toilet facility designated for all-gender use counts as one of the required separate toilet facilities if all of the following conditions are met:

    a) The total number of facilities provided is in accordance with the requirement that one separate facility be provided for every 20 employees or a fraction thereof of each gender.

    b) All single-user toilet facilities are designated for all-gender use. (8 CCR §1526)

4) Requires all multi-user separate toilet facilities be provided in equal number to each gender. (8 CCR §1526)

5) Requires apprenticeship programs to make all bathroom facilities available without regard to protected characteristics, including gender and gender identity, except that if the apprenticeship program provides restrooms or changing facilities, the apprenticeship programs may provide separate or all-gender toilets and changing facilities, provided that all

individuals have equal access to facilities consistent with their gender identity. (Labor Code §3073.9)

6) Requires single-user toilet facilities in any business establishment, place of public accommodation, or state or local government agency to be identified as all-gender toilet facilities by signage and designated for use by no more than one occupant at a time or for family or assisted use. "Single-user toilet facility" is defined as a toilet facility with no more than one water closet and one urinal with a locking mechanism controlled by the user. (Health and Safety Code §118600)

7) Authorizes local governments to require that multiuser public toilet facilities within its jurisdiction be designed, constructed, and identified for use by all genders. (Health and Safety Code §118507)

8) Requires every foundry or metal shop to maintain employee wash bowls, sinks, or other appliances and a water closet connected to running water. (Labor Code §2330)

9) Requires every factory, workshop, mercantile or other establishment with one or more employee to provide a sufficient number of clean operational toilet facilities for employee use. When there are five or more employees who are not of the same gender, a sufficient number of separate designated toilet facilities shall be provided for the use of each gender. (Labor Code §2350)

10) Obliges the Board to require all agricultural field toilets are serviced and maintained in a clean, sanitary condition and kept in good repair at all times. (Labor Code §6712)

This bill:

1) Requires CalOSHA, before December 1, 2025, to submit to the Board a rulemaking proposal to consider revising regulations regarding construction jobsite restrooms to require at least one women's designated restroom for jobsites with 2 or more required water closets.

2) Requires the Board to review the proposed changes and consider adopting revised standards for the standards described above on or before December 31, 2025.

3) Makes the following Legislative findings and declarations:

   a) Women are underrepresented in the trades and also face numerous barriers on jobsites.

   b) One of these many barriers is access to a clean and secure restroom.

   c) Shared restrooms often pose sanitary as well as safety concerns for women on jobsites.

   d) In order to ensure the safety and security of women on jobsites, the Legislature further finds and declares that it is necessary to take action to ensure that women have access to at least one separate women's designated restroom at jobsites when other restroom facilities are also available for others at the jobsite.

COMMENTS

1. Background

As of 2020, construction industry employment totaled 10.8 million nationwide. Those identifying as women represent just one-tenth of construction employees, according to the U.S. Bureau of Labor Statistics. Another source shows women's representation at 3 percent of skilled building trade jobs in the nation.[1] A 2022 report derived from three focus groups of tradeswomen revealed the participants identified many physical and psychosocial hazards, which included dangerous work environments, inadequate personal protective equipment, discrimination, and fear of reprisal. Inadequate bathrooms, gender discrimination, harassment, and fear of layoff for reporting concerns were listed as top psychosocial threats. All participant groups shared dissatisfaction with the cleanliness of jobsite water closets and the scarcity of women only bathrooms.[2]

Existing California regulations require a minimum of one single-user toilet on jobsites for every 20 employees or fraction thereof of each gender. For jobsites with 40 employees, the employer shall provide no less than two all gender single user toilets. For those jobsites requiring two facilities, this bill would require one of those facilities to be dedicated to women only.

2. Need for this bill?

According to the author, "On construction sites, women habitually share restrooms with their male coworkers, who don't necessarily have the same issues with using the facilities. Consequently, women will opt out of using these shared facilities, resulting in health impacts such as infections and, in severe cases, permanent kidney damage. Women in the trades already face so many barriers, bathroom access should not be one of them. AB 521 is a simple bill to ensure women on jobsites have access to the clean, private restrooms they deserve."

3. Committee Discussion

Employees Who Are Non-Binary and Identify as Female
In 2016, this Legislature passed first of its kind state legislation that required all single-user restroom facilities in businesses, places of public accommodation, and state and local government agencies to be identified as all-gender facilities to protect transgender and gender non-conforming individuals from harassment and violence. Recent apprenticeship registration numbers indicate that out of 92,437 total active registered apprentices, 83,898 identify as male, 8,453 identify as female, and 53 identify as non-binary. Taking into consideration the existing and future needs of *all* employees, the author and committee may wish to provide CalOSHA with additional guidance to authorize employees who identify as female and non-binary the use of the proposed dedicated restroom on jobsites.

Applicable to Jobsites Without Employees Who Identify as Female

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[1] Curtis HM, Meischke HW, Simcox NJ, Laslett S, Monsey LM, Baker M, Seixas NS. Working Safely in the Trades as Women: A Qualitative Exploration and Call for Women-Supportive Interventions. Front Public Health. 2022 Jan 26;9:781572. doi: 10.3389/fpubh.2021.781572. PMID: 35155345; PMCID: PMC8833840.
[2] Curtis HM, Meischke HW, Simcox NJ, Laslett S, Monsey LM, Baker M, Seixas NS. Working Safely in the Trades as Women: A Qualitative Exploration and Call for Women-Supportive Interventions. Front Public Health. 2022 Jan 26;9:781572. doi: 10.3389/fpubh.2021.781572. PMID: 35155345; PMCID: PMC8833840.

This bill would require CalOSHA to consider requiring one women's restroom on jobsites that require two or more, which is the regulatory requirement for a site with 40 or more employees. Currently, if two women are employed on a jobsite without plumbing, existing regulations authorize the employer to provide at least two all-gender single-user toilet facilities. As currently drafted this bill would direct the Board to consider requiring employers to provide a dedicated toilet on jobsites where there are no women employed.

Term Clarification Needed
This bill requires CalOSHA to draft proposed regulations and have the Board consider requiring a separate restroom dedicated to women. Pursuant to existing regulations, a "restroom" and "water closet" would be interpreted to mean a plumbed flushable toilet. Because these are unavailable on jobsites with no available plumbing, the author and committee may wish to consider using the term "separate toilet facility."

4. Committee Amendments

(a) The Legislature finds and declares all of the following:
  (1) Women and non-binary individuals are underrepresented in the trades and also face numerous barriers on jobsites.
  (2) One of these many barriers is access to a clean and secure restroom.
  (3) Shared restrooms often pose sanitary as well as safety concerns for women and non-binary individuals on jobsites.
(b) In order to ensure the safety and security of women and non-binary individuals on jobsites, the Legislature further finds and declares that it is necessary to take action to ensure that women and non-binary individuals have access to at least one separate women's ~~designated restroom~~ toilet facility at jobsites when other ~~restroom~~ toilet facilities are also available for others at the jobsite.

6722.
(a) The division, before December 1, 2025, shall submit to the standards board a rulemaking proposal to consider revising Section 1526 of Title 8 of the California Code of Regulations to require at least one ~~women's~~ designated ~~restroom~~ *separate toilet facility* for jobsites with two or more required ~~water closets~~ *separate toilet facilities for employees who self-identify as female or non-binary*.
(b) The standards board shall review the rulemaking proposal and consider adopting revised standards for the standards described in subdivision (a) on or before December 31, 2025.

5. Proponent Arguments

According to the State Building and Construction Trades Council of California, "A daily challenge for women in the building trades is restroom access. When women first entered the profession, restrooms were oftentimes used to exclude and bully the women on site. Now, though not as frequently used as a tool of intimidation, restrooms are still a barrier for women, who may face serious sanitary issues when using facilities.

On jobsites, women habitually share restrooms with their male coworkers who don't necessarily have the same issues with using the facilities. Consequently, women will opt out of using these shared facilities, resulting in health impacts such as infections and, in severe cases, permanent kidney damage.

AB 521 resolves these issues by requiring OSHA to submit standards and consider requiring at least one women's restroom at jobsites that already have two or more required water closets by 2025.

This is a simple and straightforward measure that creates a secure and comfortable workplace for everyone by paying attention to the needs of women in the trades."

5. Opponent Arguments:

None received.

6. Prior Legislation:

SB 1194 (Allen - Chapter 839, Statutes of 2022) authorized local governments to require that multiuser public toilet facilities within its jurisdiction be designed, constructed, and identified for use by all genders.

AB 1732 (Ting - Chapter 818, Statutes of 2016) required businesses, places of public accommodation, or state or local government agencies that offer a single-user toilet facility to be designated as an all-gender toilet facility and authorize an inspector to inspect for compliance.

SUPPORT

State Building and Construction Trades Council of California (Sponsor)
California Builders Alliance
California Labor Federation, AFL-CIO
District Council 16 Painters and Allied Trades
Sacramento Regional Builders Exchange
Vulcan Materials Company

OPPOSITION

None received

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

Bill No:	AB 647	**Hearing Date:**	June 22, 2023
Author:	Holden		
Version:	May 18, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Grocery workers

KEY ISSUES

Should grocery worker retention provisions in existing law be revised to include employees of distribution centers and specified "separated employees" who would now be required to be retained by a successor grocery employer for a 90-day transition employment period when a change in control occurs?

Should there be a rebuttable presumption that any employee termination occurring within a year of a change in control of a grocery establishment was due to a nondisciplinary reason?

Should the grocery worker retention provisions apply to any person, as defined, including a proprietorship, joint venture, corporate officer, or executive, who has 300 or more employees nationwide?

Should the Legislature create a private right of action and administrative complaint process, and provide specified remedies, for enforcement of violations of the grocery worker retention provisions?

ANALYSIS

Existing law:

1) Establishes grocery worker retention provisions requiring the buyer of an existing grocery store to retain employees for a 90-day transition period during which an employee may only be discharged for cause, as specified, and considered for continued employment at the end of the transition period. (Labor Code §2500-2522)

2) Defines "change in control" to mean any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets or a controlling interest, including by consolidation, merger, or reorganization, of the incumbent grocery employer or any person who controls the incumbent grocery employer or any grocery establishment under the operation or control of either the incumbent grocery employer or any person who controls the incumbent grocery employer. (Labor Code §2502 (a))

3) Defines "eligible grocery worker" to mean any individual whose primary place of employment is at the grocery establishment subject to a change in control, and who has worked for the incumbent grocery employer for at least six months prior to the execution

of the transfer document. An eligible grocery worker does not include a managerial, supervisory, or confidential employee. (Labor Code §2502 (b))

4) Defines "grocery establishment" to mean a retail store that is over 15,000 square feet in size and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods. A grocery establishment does not include a retail store that has ceased operations for six months or more. (Labor Code §2502 (d))

5) Requires an incumbent grocery employer, within 15 days after the execution of the transfer document (defined as the purchase agreement or other document effecting the change in control), to provide to the successor grocery employer the name, address, date of hire, and employment occupation classification of each eligible grocery worker. (Labor Code §2504 (a))

6) Requires the successor grocery employer to maintain a preferential hiring list of eligible grocery workers identified by the incumbent grocery employer, per the above, and to hire from that list for a period beginning upon the execution of the transfer document and continuing for 90 days after the grocery establishment is fully operational and open to the public. (Labor Code §2504 (b))

7) Requires a successor grocery employer to retain each eligible grocery worker hired for at least 90 days after the eligible grocery worker's employment commencement date. During this 90-day transition employment period, eligible grocery workers shall be employed under the terms and conditions established by the successor grocery employer and pursuant to the terms of a relevant collective bargaining agreement, if any. (Labor Code § 2506 (a))

8) Prohibits the successor grocery employer during the 90-day transition employment period from discharging without cause an eligible grocery worker retained per these provisions. (Labor Code § 2506 (c))

9) Requires, at the end of the 90-day transition employment period, the successor grocery employer to make a written performance evaluation for each eligible grocery worker who was retained. If the eligible grocery worker's performance during the 90-day transition employment period is satisfactory, the successor grocery employer shall consider offering the eligible grocery worker continued employment under the terms and conditions established by the successor grocery employer and as required by law. (Labor Code § 2506 (d))

This bill:

Definitions

1) Revises the definition of "eligible grocery worker" to include separated employee.

2) Defines "separated employee" as an employee who was employed by the incumbent grocery employer for 6 months or more in the 12 months preceding the change in control

and whose most recent separation from active service was due to change in control, lack of business, reduction in force, a transfer of more than 15 miles from the employee's residence, or another economic nondisciplinary reason.

   a. Establishes a rebuttable presumption that any termination occurring within a year of a change in control was due to a nondisciplinary reason.

3) Defines "employer" to mean any person, as defined, including a proprietorship, joint venture, corporate officer, or executive, who has 300 or more employees nationwide.

4) Revises the definition of a "grocery establishment" to:

   a. include a distribution center owned and operated by a grocery establishment that is used primarily to distribute goods to or from its owned stores regardless of its square footage.
   b. specify that it does not include a retail store that has ceased operations for 18 months or more (increase from the current six months reference in current law).

Retention Provisions

5) Requires the incumbent grocery employer, in addition to providing the successor employer with specified employee information, to also provide the eligible worker list and contact information, including their cellular telephone number and email address, to any collective bargaining representative.

6) Specifies that if the incumbent grocery employer does not provide, within 15 days, the information on eligible grocer workers as required by law, the successor grocery employer may obtain the information from a collective bargaining representative.

7) Provides that any separated employee who is offered a position that is more than 15 miles from their place of residence shall have the right to refuse such recall without a loss of seniority and shall still retain a right to recall based on seniority prior to the hiring of any new employees for one year after the separation from employment.

Enforcement Provisions

8) Prohibits an employer from refusing to employ, terminating, reducing the compensation of, or otherwise taking adverse action against any laid-off employee for seeking to enforce their rights under these provisions, as specified.

9) Provides that an aggrieved employee or an employee representative, such as a collective bargaining representative or nonprofit corporation, may bring an action in the superior court of the State of California for violation and may be awarded the following:
   a. Hiring and reinstatement rights, as specified.
   b. Front pay or back pay for each day during which the violation continues.
   c. The value of the benefits the employee would have received under any benefit plans.
   d. Punitive damages pursuant to Section 3294 of the Civil Code.
   e. Reasonable attorney's fees and costs to any employee or employee representative who prevails in an enforcement action.

10) Authorizes an aggrieved employee or employee representative to file a complaint with the Division of Labor Standards Enforcement (DLSE) for a violation of these provisions and may be awarded remedies as follows:
    a. Hiring and reinstatement rights, as specified.
    b. Front pay or back pay for each day during which the violation continues.
    c. The value of the benefits the employee would have received under any benefit plans.

11) Provides the following civil penalties for a violation of these provisions which shall be recovered by the Labor Commissioner (LC), deposited into the Labor and Workforce Development Fund, and paid to the employee as compensatory damages:
    a. One hundred dollars ($100) for each employee whose rights are violated.
    b. An additional amount payable as liquidated damages not to exceed one thousand dollars ($1,000) per employee, as specified.

12) Requires the Labor Commissioner (LC) to enforce these provisions, including investigating an alleged violation and ordering appropriate temporary relief to mitigate the violation and pending the completion of a full investigation or hearing, through specified procedures in existing law, such as issuing a citation against an employer who violates this section and by filing a civil action.

13) Authorizes a court, in an action brought by the LC for enforcement of these provisions, to issue preliminary and permanent injunctive relief to vindicate the rights of employees.

14) Authorizes the LC or court, in an administrative or civil action brought pursuant to these provisions, to award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code.

15) Specifies that these remedies, penalties, and procedures are cumulative.

16) Authorizes the DLSE to promulgate and enforce rules and regulations and issue determinations and interpretations consistent with and necessary for the implementation of these provisions.

17) Requires, when parties agree that a collective bargaining agreement supersedes the existing grocery retention requirements, as specified, the waiver to be explicitly set forth in the agreement in clear and unambiguous terms.

COMMENTS

1. Background:

Effective January 1, 2016, AB 359 (Gonzalez, Chapter 212, Statutes of 2015) requires the buyer of an existing grocery store to retain employees for at least 90 days from the date the grocery store is fully operational and open to the public under the new owner. An amendment to the statute by AB 897 (Gonzalez, Chapter 305, Statutes of 2015) specifies that the law does not apply to retail stores that have ceased operations for six months or more. Proponents of the measures argued that good middle class grocery jobs and the benefits that come with them should not be lost just because shareholders of billion-dollar retailers seek to make even more profits through a Wall Street-style merger.

In 1990, a Wall Street Journal Pulitzer Prize winning article took a look at the impact of the 1986 Safeway buy-out which returned to its new buyers $7.2 billion from an initial $129 million investment. According to the article, "…63,000 managers and workers were cut loose from Safeway through store sales or layoffs. While the majority were re-employed by their new store owners, this was largely at lower wages, and many thousands of Safeway people wound up either unemployed or forced into the part-time work force." (*"Safeway Buy-Out? Take a Trip down Memory Lane," March 5, 2014*)

As noted in the Assembly Labor and Employment Committee analysis of this bill, "The last few decades have seen a rise in the consolidation of grocery store chains by mergers and acquisitions. The recent Kroger and Albertsons proposed billion-dollar merger is just one example. Researchers studying past supermarket mergers have identified significant risks for grocery store workers. They argue that the "consolidation of the food industries is what leads to the exploitation of workers… In the past it has led store closings and loss of good jobs.[1]" In addition, the impact of supermarket consolidation extends to consumers and local communities that rely on and are beholden to food prices. According to the U.S. Department of Agriculture, the merger comes as food prices have risen precipitously—11.2% from September 2021 to September 2022.[2]"

Additionally, according to a report by Food & Water Watch, an advocacy organization fighting for safe food, clean water and a livable climate, "the research shows an alarming trend towards fewer, bigger stores. From 1993 to 2019, the number of grocery stores nationwide declined by roughly 30 percent, as the combined market share of the four largest grocery retailers tripled to 69 percent."[3]

2. Need for this bill?

According to the author, "In October 2022, Kroger and Albertsons announced their plans for an unprecedented $25 billion merger. These two grocery giants operate as some of the nation's largest full-service grocery chains, and have retail footprints in nearly every state and most major metropolitan areas. In addition, they employ over 700,000 workers across their numerous banners, with over 50 manufacturing facilities and over 5,000 retail stores.

While Kroger is leading consumers and workers to believe that this merger will result in more access to cheaper foods, a merger between these two companies will instead result in large scale layoffs for workers and grocery stores closing down. Based on the volume of both chains in California, this could result in an estimated 5,750 jobs lost in the Los Angeles region alone. The latter consequence of grocery store closures will contribute to food deserts, occurring rural areas or vulnerable communities. This will result in increased food costs and a reduction in product variety, including seasonal, organic, and climate-friendly plant-based foods for consumers. With already dwindling grocery store numbers, an unregulated merger of this size has very real implications for our grocery store workers and the communities they serve.

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[1] "Kroger-Albertsons mega-merger could cause more US food deserts, experts say," The Guardian, Matt Krupnick, October 27, 2022, quoting Suzanne Adley, co-director of the Food Chain Workers Alliance.
[2] Quoted in the article in the above footnote.
[3] https://www.foodandwaterwatch.org/2021/11/15/as-food-prices-soar-new-report-details-vast-grocery-industry-consolidation-crisis/#:%7E:text=The%20research%20also%20shows%20an,retailers%20tripled%20to%2069%20percent

AB 647 addresses these concerns by strengthening the existing California Grocery Worker Retention Law, specifically by expanding retention laws to include warehouse employees in retention laws and authorizing the Labor Commissioner to enforce a private right of action for aggrieved employees. In addition, this bill adopts a process for recall and rehiring of grocery workers by requiring the use of a preferential hiring list for successor grocery employers. With this, AB 647 ensures that skilled and trained workers can continue to provide our communities with access to safe food and lessen the economic impact to our social safety net."

3. Proponent Arguments:

The California Labor Federation is in support of the measure arguing that, "the pandemic demonstrated that grocery store workers are essential to the health of the economy and communities. Grocery store workers are trained to ensure access to safe, sanitary food—both on shelves and prepared. Distribution warehouse workers make sure food is delivered to stock grocery shelves. Fully stocked and staffed grocery stores improve community health by providing basic staples, like milk, produce, and bread, at lower prices than liquor or convenience stores. Retail pharmacists provide access to medications and health care services that became even more important during the pandemic as hospitals grappled with the crisis."

According to the sponsors of the measure, the United Food and Commercial Workers, the community-devastating consequences of the proposed Albertsons-Kroger merger underscores the need for AB 647. They note, "the loss of a grocery store and jobs is devastating to communities and local economies. Californians are already struggling with rising food prices and the loss of a job will make it even harder for families to make ends meet, while grocery corporations rake in profits from a merger."

In rebuttal to the Chamber of Commerce's letter, the sponsors argue, "the Chamber's letter labels the bill a "job killer" because "it establishes a private right of action. Yet, this enforcement mechanism is for a very narrow set of circumstances under a law that only covers very large grocery establishments. The enforcement mechanism provided in this bill will preserve these workers' jobs, not kill them. Without any private right of action, workers would have to rely on an underfunded and overwhelmed Labor Commissioner's Office where wait times for workers' claims average over 505 days." Additionally, in response to opponent concerns regarding the rebuttable presumption, the sponsors argue, "the bill establishes a *rebuttable* presumption, meaning it can be rebutted by evidence to the contrary. Evidence that an employee is dismissed for cause is clearly sufficient to defeat the presumption."

The sponsors conclude by stating that, "this bill is aimed at ensuring that "[e]xperienced grocery retail workers with knowledge of proper sanitation procedures, health regulations and laws, and an experience-based understanding of the clientele and communities in which the retailer is located" are retained in their communities to the extent possible, to their enduring benefit."

4. Opponent Arguments:

The California Chamber of Commerce, the California Grocers Association and the California Retailers Association are opposed to the measure arguing that the changes and additions to the Grocery Worker Retention Law (GWRL) are unnecessary as there is no data that supports

such a drastic change. They argue that, "AB 647 creates a broad definition of "separated employee" that will expand the list of covered workers in the GWRL and create legal liabilities." This new definition, they argue, "goes further and creates a rebuttable presumption that any termination occurring within a year of a change in control was due to non-disciplinary reasons." According to the coalition, this new definition "will tie a grocery employers' hands. In the instance that an ethnic grocer wants to purchase a traditional American grocery store, the ethnic grocer will not be able to hire staff that speaks the language and knows the products their customer base consumes, due to the restrictions of this bill. This bill will most likely impact the growth of independent ethnic grocers who wish to expand to other diverse communities."

Additionally, they argue, "AB 647 creates a private right of action by granting employees, collective bargaining representatives and nonprofit corporations the right to bring action in superior court for violations of an employee's right. The bill has a broad list of remedies including, hiring and reinstatement rights, front pay or back pay for each day during which the violation continues, the value of the benefits the employee would have received under any benefit plans, and attorney's fees and costs to any employee or employee representative.

Finally, the most recent amendment to limit this bill to grocery employers with 300 employees or more nationwide, includes family owned and independent operators. Depending on the location of the store, stores in Southern California can employ up to 150 employees per store. Family owned and independent operators with three or more stores will be covered under this bill. Rather than discourage the growth of the independent grocery market, we should be encouraging the access to groceries in communities where there is a need."

5. Staff Comments:

As noted above, this bill would expand the list of eligible grocery workers to include a "separated employee" who would now be eligible to be retained per the grocery worker retention provisions in existing law. This new category of workers includes an employee "whose most recent separation from active service was due to the change in control, lack of business, reduction in force, a transfer of more than 15 miles from the employee's residence, or another economic nondisciplinary reason." Opponents of the measure note that employee separation occurs for many reasons, including by choice, and that this bill would require grocers to reenlist "separated employees," even if that employee separated by choice. *To address this concern, the author may wish to amend the bill to revise the definition of "separated employee" to clarify that it applies only to terminations by the employer for the specified reasons.*

6. Double referral:

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

7. Prior and Related Legislation:

AB 853 (Maienschein, 2023) would prohibit a person from acquiring any voting securities or assets of a retail grocery firm or retail drug firm, as those terms are defined, unless specified written notice is given to the Attorney General at least 180 days before the acquisition is to

become effective. The bill would specify information required to be included in the notice, including information required to assess the competitive effects of the proposed acquisition and to assess the economic and community impact of any planned divestiture or store closures. This bill is pending in Senate Judiciary Committee.

SB 627 (Smallwood-Cuevas, 2023) establishes the Displaced Worker Retention and Transfer Rights Act to (1) prohibit a chain employer (100 or more establishments, as defined) from closing a covered establishment without first giving a displacement notice to workers; (2) require a chain employer to provide workers the opportunity to transfer to a location of the chain within 25 miles of the closing establishment; (3) require chain employers to maintain a preferential transfer list and make job offers based on length of service; (4) prohibit a chain employer from taking adverse action against a covered worker for asserting these rights; and (5) requires the DLSE to enforce these provisions, as specified. This bill is pending in Assembly Labor and Employment Committee.

SB 725 (Smallwood-Cuevas, 2023) would require a successor grocery employer to provide an eligible grocery employee severance pay equal to one week of pay for each full year of employment with the incumbent grocery employer if the successor grocery employer does not hire an eligible grocery worker following a change in control or does not retain an eligible grocery worker for at least 90 days following the change in control or the eligible grocery worker's employment commencement date. The provisions of this bill would apply to successor grocery employers and incumbent grocery employers with less than 300 employees combined. This bill is pending in Assembly Labor and Employment Committee.

SB 93 (Committee on Budget and Fiscal Review) Chapter 16, Statutes of 2021 requires hospitality and service industry employers to offer to rehire qualified former employees who were laid off due to the COVID-19 pandemic. These employees must be notified for the same or similar positions as they last held.

AB 897 (Gonzalez – Chapter 305, Statutes of 2015) specified that AB 359 did not include a retail store that had ceased operations for six months or more.

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

SUPPORT

United Food and Commercial Workers, Western States Council (Sponsor)
California Employment Lawyers Association
California Food and Farming Network
California Labor Federation, AFL-CIO
California State Legislative Board of the Sheet Metal, Air, Rail and Transportation Workers - Transportation Division (SMART-TD)
California Work & Family Coalition
Central California Environmental Justice Network
Centro Binacional Para El Desarrollo Indígena Oaxaqueno
Consumer Attorneys of California
Economic Security Project Action

Indivisible CA: StateStrong
Los Angeles Alliance for A New Economy (LAANE)
Los Angeles County Federation of Labor
Pesticide Action Network
San Mateo Labor Council
TechEquity Collaborative
Western Center on Law and Poverty

OPPOSITION

California Chamber of Commerce
California Grocers Association
California Retailers Association
Westside Council of Chambers of Commerce (WC3)

-- END --

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

Bill No:	AB 694	**Hearing Date:**	June 22, 2023
Author:	Gipson		
Version:	March 27, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Teachers: teacher residency apprenticeship programs

KEY ISSUE

Should the Legislature transition an existing teacher residency program to a registered apprenticeship program through the Division of Apprenticeship Standards and the U.S. Department of Labor to address shortages in the educator workforce, expand the pipeline into the teaching profession, and grow a diverse, local pathway into teaching?

ANALYSIS

Existing law:

1) Establishes apprenticeship programs in various trades, to be approved by the Chief of the Division of Apprenticeship Standards (DAS), within the Department of Industrial Relations, in any trade in the state or in a city or geographic area whenever the apprentice training needs justify establishment. (Labor Code §§3070)

2) Defines "apprentice" as a person at least 16 years of age who has entered into a written apprenticeship agreement with an employer or program sponsor. (Labor Code §3077)

3) Prescribes traditional apprenticeship program standards, which must be approved by the Chief of DAS. (8 CCR §212)

4) Requires the California Apprenticeship Council to adopt statewide minimum training criteria for traditional construction-industry trades and crafts. (8 CCR §212.01)

5) Requires DAS to evaluate apprenticeship programs to ensure standards compliance, proper supervision, required classroom instruction is provided, work processes in the standards are covered, graduates have completed program requirements, and funds were properly obtained and appropriately expended. (Labor Code §3073.1)

6) Provides that the administration and operation of apprenticeship programs shall be supervised by an apprenticeship program sponsor, which shall approve apprentice agreements, adjust disputes and perform such other functions and duties as are agreed to in the apprenticeship program standards. (8 CCR §218)

7) Establishes the Teacher Residency Program (Program) as a grant applicant-based program that partners with one or more teacher preparation programs accredited by the Commission on Teacher Credentialing and in which a prospective teacher instructs at least one-half time alongside a teacher of record, who is designated as the "experienced mentor teacher," for at

least one full school year while engaging in initial coursework. (Education Code §44415)

8) Defines an "experienced mentor teacher" for the purpose of the program as an educator who:

   a) Has at least three years of teaching experience and a clear credential authorizing instruction of special education, or bilingual education, science, technology, engineering, or mathematics pupils, in the subject in which the experienced mentor teacher will be mentoring.

   b) Has a record of successful teaching as demonstrated, at a minimum, by satisfactory annual performance evaluations for the preceding three years.

   c) Receives specific training for the mentor teacher role, and engages in ongoing professional learning and networking with other mentors.

   d) Receives compensation, appropriate release time, or both, to serve as a mentor in the initial preparation or beginning teacher induction component of the teacher residency program. (Education Code §44415)

9) Requires the Commission to make one-time grants of up to $20,000 per teacher candidate to grant applicants to establish new or expand existing teacher residency programs. Grant recipients shall work with one or more Commission-accredited teacher preparation programs and may work with other community partners or nonprofit organizations to develop and implement programs of preparation and mentoring for resident teachers who will be supported through Program funds and subsequently employed by the sponsoring grant recipient. A grant applicant may consist of one or more, or any combination, of the following:

   a) School district.

   b) County office of education.

   c) Charter school.

   d) Regional occupational center or program operated by a joint powers authority.

   e) Nonpublic, nonsectarian school, as defined in Education Code §56034.

10) Requires Program grant recipients do all of the following:

   a) Ensure that candidates are prepared to earn a preliminary teaching credential that will authorize the candidate to teach special education, bilingual education, science, technology, engineering, or mathematics upon completion of the program.

   b) Ensure that candidates are provided instruction in all of the following:

      i) Teaching the content area or areas in which the teacher will become certified to teach;

      ii) Planning, curriculum development, and assessment;

iii) Learning and child development;

iv) Management of the classroom environment;

v) Use of culturally responsive practices, supports for language development, and supports for serving pupils with disabilities; and

vi) Professional responsibilities, including interaction with families and colleagues.

c) Provide a 100% funding match. (Education Code §44415)

11) Requires the Commission to conduct an evaluation of the Program to determine its effectiveness in recruiting, developing support systems for, and retaining special education, and bilingual education, science, technology, engineering, and mathematics, teachers and provide the report to the Department of Finance and the appropriate fiscal and policy committees of the Legislature by December 1, 2023. (Education Code §44417)

12) Repeals the Program on January 1, 2030. (Education Code §44418)

This bill:

1) Requires the Commission to submit Program standards for approval as a registered apprenticeship program through the DAS and the U.S. Department of Labor (USDOL) and act as the sponsoring authority for purposes of the state applying for (USDOL) grant funding and declares the purpose of a teacher residency apprenticeship program is to address shortages in the educator workforce, expand the pipeline into the teaching profession, and grow a diverse, local pathway into teaching.

2) Authorizes a local educational agency (LEA) with a Commission-approved Program to submit the Program for approval as a registered apprenticeship program with DAS, USDOL, or both of those entities.

3) Authorizes an LEA with an unapproved teacher residency apprenticeship program to, in partnership with a higher education institution, submit the unapproved program for approval as a registered apprenticeship program with DAS, USDOL, or both of those entities.

4) Specifies that both new and existing apprentices shall be eligible for any additional forms of federal, state, and local educational agency resources to support the cost of their preparation.

5) Requires the Commission to act as the sponsoring authority when applying for USDOL Grant Funding for the teacher residency apprenticeship program.

6) Provides that teacher residency apprenticeship program funding shall supplement, and not supplant, any funds received by an apprentice through their participation in the Program.

7) Requires approved teacher residency apprenticeship programs to:

a) Expand, strengthen, or improve access to existing teacher residency programs that support designated shortage fields, including but not limited to, special education, bilingual education, science, computer science, technology, engineering, mathematics,

transitional kindergarten, kindergarten, school counseling, and any other fields identified by the Commission based on an annual analysis of state and regional hiring and vacancy data.

b) Expand, strengthen, or improve access to existing teacher residency programs that support local efforts to recruit, develop support systems for, provide outreach and communication strategies to, and retain a diverse teacher workforce that reflects the diversity of the community in which a local educational agency is located.

c) Work with one or more Commission-accredited teacher preparation programs, and may work with other community partners or nonprofit organizations, to develop and implement programs of preparation and mentoring for apprentices who will be supported through program funds and subsequently be employed by the local educational agency.

d) Ensure that apprentices are prepared to earn a preliminary teaching credential, including a PK-3 early childhood education specialist credential in a designated shortage field.

e) Ensure that apprentices are provided with instruction in:

   i) Teaching the content area or areas in which the teacher will become certificated to teach;

   ii) Planning, curriculum development, and assessment;

   iii) Learning and child development;

   iv) Management of the classroom environment;

   v) Use of culturally responsive practices, supports for language development, and supports for serving pupils with disabilities; and

   vi) Professional responsibilities, including interaction with families and colleagues.

f) Provide apprentice mentoring and beginning teacher induction support following the completion of the apprentice's initial credential program necessary to obtain a clear credential, and ongoing professional development and networking opportunities during the apprentice's first years of teaching at no cost to the apprentice.

g) Prepare apprentices to teach in a school within the geographic region served by the local educational agency in which they will work and to learn the instructional initiatives and curriculum of the local educational agency.

h) To the maximum extent feasible, group apprentices in cohorts to facilitate professional collaboration and ensure apprentices are enrolled in a teaching school or professional development program that is organized to support a high-quality teacher learning experience in a supportive work environment.

COMMENTS

1. Background

The Program
In 2018, an education budget trailer bill created the Program with $75 million in general fund dollars to support the recruitment of teachers in designated shortage fields. Fifty ($50) million was intended to provide one-time competitive grants for recruiting and supporting the preparation of special education teachers and $25 million was intended to provide one-time competitive grants for teacher residency programs that recruit and support the preparation of bilingual education, science, technology, engineering, or mathematics teachers. By December 1, 2025, the Commission is required to submit a report to the Department of Finance and appropriate fiscal and policy committees of the Legislature regarding the Program's effectiveness.

Apprenticeship Standards
Apprenticeship standards are authorized in statute, with more detailed requirements in regulation. The job for which an apprentice is to be trained must be in a recognized occupation and customarily requires a period of three months of on-the-job training with one year of instruction and training. Apprenticeship programs must be established by written apprenticeship standards approved by the Chief of DAS. Standards must contain a statement of the occupation, outline of the work process in which the apprentice will receive supervised work experience and on the job training, program sponsor, duties of the apprentice, working conditions unique to the program, compensation, ratio of apprentices to supervisors, the LEA that has agreed to provide instruction to apprentices, and a description of the courses to be provided.

Additionally, apprenticeship program standards must contain provisions for the establishment of an apprenticeship committee (if applicable), administration of the standards, establishment of rules governing the program, qualifications of employers, an educational session for employers to explain apprenticeship program standards, determination of qualifications of apprentice applicants in a fair and impartial manner, procedures for record maintenance, discipline for failure of an apprentice to fulfill their obligations including provisions for fair hearings, mechanism used for the rotation of the apprentice between work processes, on-going evaluation of the capacity for employers to participate in the program, meaningful representation of the interest of the apprentices in the management of the program, and workplace training.

2. Need for this bill?

According to the author, "We need innovative strategies to meet several goals related to our teacher shortage. This incorporates addressing diversity in the workforce and assisting districts to fill vacancies. One of the many barriers to attaining a teaching credential is the costs related to obtaining a degree while trying to sustain oneself without an income during student teaching. I believe that creating teacher residency apprenticeship programs can help alleviate one of the many barriers to becoming a credentialed teacher and help districts develop high-qualified and experienced educators from their own communities.

We also need to provide as many tools as possible to help districts fill their vacancies. As well as require our State Superintendent and the Commission on Teacher Credentialing to collaborate and share public information about district vacancies and help those seeking to enter into the profession a single location to find those vacancies."

3. Committee Discussion

The purpose of this bill is to convert the Program into an approved apprenticeship program to access state and federal apprenticeship funding. Providing on-the-job training that affords a stipend alongside classroom instruction is consistent with the state's apprenticeship models. There are, however, some implementation issues that need consideration. The sponsor notes that the Administration is collaborating with the Commission to ensure a smooth transition from the Program to a registered apprenticeship program.

Committee Amendments
The existing Program would become inoperative once the Program transitions into an apprenticeship program. The author and committee should consider a technical amendment to sunset the existing Program once the apprenticeship program is approved and underway. The committee estimates five years will be sufficient to ensure existing Program participants will have graduated and/or transitioned to the apprenticeship program and future apprenticeship program participants will be able to apply.

4. Double Referral

This bill was first referred to the Senate Education Committee, where it gained passage on consent.

4. Proponent Arguments

According to Children Now, "California has been facing a teacher shortage since 2014. California's teacher shortage is a complex and chronic problem which is a product of our system's design including a failure of compensation to be competitive, and an increasing demand for a racially diverse educator workforce without the accompanying systemic changes needed in recruitment and preparation. California would have to hire an additional 100,000 teachers just to reach the national average. To this end, California needs to be creative in solving our state's teacher that cannot be fixed with short-term solutions.

This bill creates an innovative approach to solving our teacher shortage by allowing our teacher residency programs to be classified as apprenticeship programs. This bill is modeled after a program created in Tennessee. The state of Tennessee has developed a teacher residency apprenticeship program that was approved as a registered apprenticeship by [USDOL] in 2022. Tennessee's Teacher Apprenticeship Program aligns best practices from the initial Tennessee's Grow Your Own programs with the funding and rigors of national apprenticeship standards. By leveraging both state and federal workforce dollars to preserve locally designed programs, Tennessee's model can address the financial, recruitment, and preparation challenges school districts experience when recruiting candidates to become educators, particularly educators of color."

5. Opponent Arguments

None received

6. Prior Legislation

AB 991 (Gallagher, Chapter 497, Statutes of 2019) made technical nonsubstantive changes to statute authorizing the Program.

AB 1808 (Committee on Budget, Chapter 32, Statutes of 2018) appropriated $75 million from the General Fund to the Commission for the Program, including $50 million for one-time competitive grants to develop new, or expand existing, teacher residency programs that recruit and support the preparation of special education teachers, and $25 million to provide one-time competitive grants to develop new, or expand existing, teacher residency programs that recruit and support the preparation of bilingual education, science, technology, engineering, or mathematics teachers.

SUPPORT

Children Now (Sponsor)
Association of California School Administrators
California Faculty Association
California Workforce Association
EdVoice
Silicon Valley Leadership Group

OPPOSITION

None received

-- END --

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

Bill No:	AB 775	**Hearing Date:**	June 22, 2023
Author:	Arambula		
Version:	February 13, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Personal services contracts: state employees: physician registry for state hospitals.

KEY ISSUE

Should the state amend existing law authorizing state agencies to use personal services contracts under specified circumstances to require the Department of State Hospitals (DSH) to establish a physician registry for the Patton State Hospital under a three-year pilot program?

ANALYSIS

Existing law:

1) Establishes the State Civil Service Act to provide a comprehensive personnel system for the state in which appointments are based upon merit and fitness ascertained through practical and competitive examination (Government Code § 18500).

2) Requires that all persons who provide services to the state under conditions that the State Personnel Board (SPB) determines constitute an employment relationship shall hold a civil service appointment unless otherwise exempt by the constitution (GC § 19130).

3) Creates the California Department of Human Resources (CalHR) with powers, duties, and authorities necessary to operate the state civil system pursuant to Article VII of the California Constitution, the California Government Code, the merit principle, and applicable rules duly adopted by SPB (GC § 18502).

4) Creates, under the Dills Act, a system of collective bargaining between the state and its employees' exclusive representatives to negotiate for terms and conditions of employment (GC § 3512 et seq.).

5) Establishes standards for the state's use of personal service contracts to achieve savings if the contract meets certain conditions, including that the contract does not displace civil service employees. Also, the contracted services must not be available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system (GC § 19130).

This bill:

1. Requires the State Department of State Hospitals (DSH) to establish and maintain a physician registry for the Patton State Hospital under a three-year pilot program by January 1, 2025, composed of State Bargaining Unit 16 - Physicians, Dentists, and Podiatrists (BU 16) members, who may elect to join the registry.

2. Requires DSH to compensate a physician who joins the registry and works additional hours as a result of being on the registry for the additional hours, as determined by DSH in a manner necessary to attract employee participation in the registry.

3. Requires DSH to conduct a semiannual survey of managers and employees to determine the efficacy of the registry; to consider, as major factor in the surveys, whether the registry provides cost savings to the state; and to jointly develop the survey with BU 16. The department shall post the survey results on its internet website.

4. Requires DSH to submit a report, as specified, to the Legislature by January 10, 2026, and each year thereafter for the duration of the pilot program, that includes a study of the effectiveness of the registry to determine if the registry compensation rates were successful in addressing the operational needs for flexible services at a lower cost than contract registries.

5. Requires DSH's final report at the end of the pilot to include recommendations on whether DHS should expand the registry to all state hospitals under its jurisdiction.

6. Declares that DSH shall implement the bill's provisions only if the Legislature makes an appropriation for this express purpose in the annual Budget Act or other statute and requires DSH to make a budget request for the funds necessary to establish and maintain the registry for the duration of the pilot program.

7. Establishes a sunset date of January 1, 2029.

COMMENTS

1. Need for this bill?

According to the author,

"At California state hospitals, about 90% of patients are forensic psychiatric patients who were involved in the criminal justice system. Currently, there is no oversight of contracted medical professionals, which can lead to delays in treatment. AB 775 will establish a 3-year physician registry pilot program at Patton State Hospital. This bill will enhance outcomes for patients at Patton State Hospital by securing employment protections for medical professionals at the facility. Strengthening medical workforce protections without outsourcing clinical services will aid patients' medical needs, improve trust between patients and their physicians, and prioritizes a quality continuum of care. This bill will ensure cost-savings for the state and ensure that state medical professionals are not overlooked."

2. Proponent Arguments

According to the Union of American Physicians and Dentists,

"California annually expends about $100 million on contract physicians who work temporarily treating patients in state facilities. AB 775 will save millions of dollars for the state by utilizing available state professionals, rather than expensive contractors, all the while

improving health outcomes for patients under care in CDCR and DSH by improving continuity of care."

3. Opponent Arguments:

None received.

4. Prior Legislation:

SB 422 (Pan, 2022) would have required DSH to establish, by January 1, 2024, a physician registry as a three-year pilot program for the Patton State Hospital to be maintained by DSH and composed of members of State Bargaining Unit 16 (BU 16), who may elect to join the registry. The Governor vetoed the bill.

SUPPORT

American Federation of State, County and Municipal Employees (co-sponsor)
Union of American Physicians and Dentists (co-sponsor)

OPPOSITION

None received

-- END --

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

Bill No:	AB 1121	**Hearing Date:**	June 22, 2023
Author:	Haney		
Version:	March 20, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Public works: ineligibility list

KEY ISSUE

Should awarding authorities be required to submit to the Department of Industrial Relations' (DIR) electronic project registration database a list of contractors that are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project, pursuant to local level debarments or suspension processes?

ANALYSIS

Existing law:

1) Requires that not less than the general prevailing rate of per diem wages, as determined by the Director of Department of Industrial Relations (DIR), 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)

2) Defines "public work" to include, 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, except work done directly by a public utility company pursuant to order of the Public Utilities Commission or other public authority. (Labor Code §1720(a))

3) Requires a contractor or subcontractor to be registered with the DIR to be qualified to bid on, be listed in a bid proposal, or engage in the performance of any public works contract. (Labor Code § 1771.1(a))

4) Requires a contractor or subcontractor to take certain steps, including but not limited to, paying an application fee, making disclosures regarding unpaid wages, and providing evidence of workers' compensation coverage, to qualify for this registration. (Labor Code § 1725.5)

5) Requires the DIR to maintain on its internet website a list of contractors that are currently registered to perform public works. (Labor Code § 1771.1(g))

6) Provides that if the Labor Commissioner or their designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with the above, the contractor or subcontractor shall pay specified penalties. (Labor Code § 1771.1(g))

7) Provides that whenever a contractor or subcontractor performing a public works project is found by the Labor Commissioner to be in violation of public works provisions with intent to defraud, as specified, the contractor or subcontractor or firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is subject to debarment and ineligible for a period of one year to three years from doing either of the following:
   a) Bid on or be awarded a contract for a public works project;
   b) Perform work as a subcontractor on a public works project.
   (Labor Code § 1777.1)

8) Requires the Labor Commissioner to publish on its Internet Website a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project, as specified. The list shall contain the name of the contractor, the Contractors' State License Board license number of the contractor, and the effective period of debarment of the contractor. Contractors shall be added to the list upon issuance of a debarment order and the commissioner shall also notify the Contractors' State License Board when the list is updated. At least annually, the commissioner shall notify awarding bodies of the availability of the list of debarred contractors. (Labor Code § 1777.1(f))

This bill:

1) Requires awarding authorities to submit to the Department of Industrial Relations' electronic project registration database, a list of contractors that are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project, pursuant to local debarment or suspension processes.

2) Requires the list to contain the name of the contractor, the Contractors State License Board license number of the contractor, the specific jurisdiction where the debarment or suspension applies, and the effective period of debarment or suspension of the contractor.

3) Requires that the list be updated at least annually.

COMMENTS

1. Background: Prevailing Wages and Payroll Records

In general, "public works" is defined to include construction, alteration, demolition, installation or repair work done under contract and "paid for in whole or in part out of public funds." The determination of whether a project is deemed to constitute a "public work" is important because the Labor Code requires (except for projects of $1,000 or less) that the "prevailing wage," as determined by the Department of Industrial Relations (DIR), be paid to all workers employed on public works projects. The prevailing wage rate is the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within the locality and in the nearest labor market area.

California's prevailing wage laws ensure that the ability to get a public works contract is not based on paying lower wage rates than a competitor. All bidders are required to use the same wage rates when bidding on a public works project, creating a level playing field for all.

Current law requires that DIR maintain on its internet website a list of contractors that are currently registered to perform public works. Additionally, existing law gives the Labor Commissioner (LC) the authority to bar ineligible contractors from bidding on projects for a period of one to three years, depending on the severity of their public works violations. The LC is also required to publish on its internet website, a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project, as specified. Similarly, violators of public works laws can be debarred by cities, counties and awarding bodies, however, they are not currently required to notify the DIR of such debarments for inclusion on the online ineligible contractors list.

By requiring that locally debarred contractors and subcontractors be listed on the DIR's project registration database, awarding bodies, labor compliance entities, and prime contractors will be better equipped to ensure that locally debarred contractors do not attempt to bid on public works projects in areas where they are not allowed to do so, and assist in ensuring that taxpayer dollars are not going to contractors with egregious labor violations.

2. Need for this bill?

According to the author, "The number of contractors who are suspended or debarred is widely unknown because requirements to publish a list of debarred contractors varies across localities. The inconsistent publishing of this information presents the ability for contractors who have violated labor laws to continue to bid on public works projects in jurisdictions where they haven't been found in violation yet. To ensure transparency and the protection of public dollars, AB 1121 would require awarding agencies of public works contracts to annually post to the Department of Industrial Relations a list of debarred contractors who are ineligible to bid on public works contracts."

3. Proponent Arguments:

According to the sponsors, the International Union of Operating Engineers, "Similar to the labor commissioner, local awarding agencies use local level debarments as a means to ensure accountability and protect taxpayer dollars from going to contractors with egregious violations. For example, Los Angeles County currently has debarred 17 contractors, the City of San Diego has debarred 12, and the City of Irvine has debarred 2 contractors. Overall, the number of contractors who are suspended or debarred by cities, counties, or other awarding bodies is widely unknown, as requirements to publish a list of debarred contractors vary across localities."

As noted by proponents, "While existing federal and state law mandates that a list maintained of debarred or suspended contractors be made public, this only includes contractors that have state or federal suspensions. Cities and counties also rely on contractors to support public works projects in their jurisdictions. Contractors who are debarred or suspended by local authorities are not included in existing lists published by state or federal authorities, thus leaving a gap in transparency surrounding public works contractors. This undermines the state's ability to hold violators accountable and undermines justice for workers who are directly impacted by the violations.

Assembly Bill 1121 would require bodies that award public works contracts to publish and annually update a list of contractors who are ineligible to contract or subcontract on a public works project because of debarment or suspension by local authorities. This bill will

eliminate the lack of communication between local jurisdictions and the state regarding contractors who have a record of violating workers' rights as well as state and federal law."

4. Opponent Arguments:

None received.

SUPPORT

International Union of Operating Engineers, California-Nevada Conference (Sponsor)
American Federation of State, County, and Municipal Employees (AFSCME)
California Labor Federation, AFL-CIO
Construction Employers' Association
District Council 16, International Union of Painters and Allied Trades
State Building and Construction Trades Council of California, AFL-CIO

OPPOSITION

None received

-- END --

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

Bill No:	AB 1356	**Hearing Date:**	June 22, 2023
Author:	Haney		
Version:	April 26, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Relocations, terminations, and mass layoffs

KEY ISSUE

Should the Legislature revise the California Worker Adjustment and Retraining Act to include a "client employer" of a "labor contractor" in the definition of "employer?"

Should the Legislature increase from 60 to 90 days the length of notice an employer must provide to employees prior to terminations, relocations, or mass layoffs?

Should the Legislature prohibit employers from making a general release, waiver of claims, or nondisparagement or nondisclosure agreement a condition of the payment of amounts for which the employer is liable under CalWARN?

ANALYSIS

Existing federal law: establishes the federal Worker Adjustment and Retraining Notification (WARN) Act, which prohibits an employer of 100 or more full-time employees from ordering a mass layoff, relocation, or termination at a covered establishment, as defined, unless, 60 days before the order takes effect, the employer gives written notice of the order to the employees. This applies to businesses that have 100 or more full-time employees that have been employed more than 6 out of the preceding 12 months and businesses that have 100 or more employees, including part-time employees who work more than 4,000 regular hours per week, collectively. (29 U.S.C. §§2101)

Existing state law:

1) Establishes the California WARN (CalWARN) Act, which requires employers with 75 or more full and part-time employees to provide 60 days' notice before employee termination, relocation, or mass layoff of 50 or more employees. (Labor Code §1400-1400.5)

2) Exempts, from the provisions of CalWARN, seasonal employees and employees that are laid off as a result of the completion of a project in specified industries, where the employers are subject to specified wage orders, and the employees were hired with the understanding that their employment was seasonal and temporary. (Labor Code §1400.5)

3) States that an employer that fails to give the required notice, as required by CalWARN, before ordering a mass layoff, relocation, or termination, is liable to each employee entitled to notice, for specified compensation and benefits, calculated for the period of the employer's violation, up to a maximum of 60 days, or half the number of days that the employee was

employed by the employer, whichever period is smaller. (Labor Code §1402)

4) States that an employer who fails to give the notice, as required by CalWARN, is subject to a civil penalty of not more than five hundred dollars ($500) for each day of the employer's violation. Exempts an employer from this civil penalty if the employer pays all applicable employees within three weeks from the date the employer ordered the mass layoff, relocation, or termination. (Labor Code §1403)

5) Permits a person, including a local government, or an employee representative, seeking to establish liability against an employer for violation of CalWARN to bring a civil action on behalf of the person other persons similarly situated, or both, in any court of competent jurisdiction. Additionally, permits a court to award reasonable attorney's fees as part of the costs to any plaintiff who prevails in a civil action. (Labor Code §1404)

6) Provides up to $450 per week for up to 26 weeks for laid off employees, not including independent contractors, self-employed individuals, informal workers, and undocumented workers. (Unemployment Insurance Code §2655)

This bill:

1) Defines "labor contractor" as an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business.

2) Clarifies that a "covered establishment" may be a single location or a group of locations, including any facilities located in this state.

3) Revises the definition of "mass layoff" to mean a layoff during any 30-day period of 50 or more employees at, or reporting to, a covered establishment.

4) Adds to the definition of "employee" a person employed by a labor contractor and performing labor with the client employer for at least six months of the 12 months preceding the date on which the CalWARN notice is required.

5) Revises the seasonal employee exemption under CalWARN to instead require that the season must be complete for the exemption to apply.

6) Prohibits an employer from utilizing compliance with the provisions of CalWARN in connection with a severance agreement and waiver of an employee's right to claims.

7) Increases, from 60 to 90 days, the period of an employer's liability for specified back pay and benefits owed to affected employees for an employer's violation of the CalWARN notice requirement.

8) Requires a labor contractor to remit the payment provided by a client employer, to affected employees, in the full amount calculated, as specified, for a violation of the CalWARN notice requirement.

9) States that an employer that includes a general release, waiver of claims, nondisparagement agreement, or nondisclosure agreement, as a condition of payment owed to an employee

under CalWARN, is subject to a civil penalty of up to five hundred dollars ($500) for each violation.

10) States that any general release, waiver of claims, or nondisparagement or nondisclosure agreement that is made a condition of the payment of amounts for which the employer is liable under CalWARN, as specified, is void as a matter of law and against public policy.

11) Prohibits an employer that is required to give notice, pursuant to CalWARN, from offering an employee a separate agreement that includes a general release, waiver of claims, or nondisparagement or nondisclosure agreement, unless the agreement is offered in exchange for reasonable consideration that is in addition to anything of value to which the individual already is entitled to.

COMMENTS

1. Background

Home to some of the largest companies in the world, California has established itself as a tech capitol. As of 2020, California's workforce consisted of approximately 1.38 million tech workers, representing about 10 percent of the overall workforce in California.[1] The state is home to some of the largest and most profitable companies in the world. The tech industry, in particular, has grown significantly over the last decade.

The tech industry has shifted to using contract workers to fulfill critical parts of their business. In 2019, the New York Times reported on the tech industry's reliance on contracted workers, or workers who are primarily employed by a temp agency and contracted out to "client employers." During this time, Google's overall workforce consisted of 121,000 temp workers as compared to 102,000 full-time employees.[2] Contract workers fulfill roles like software engineers, content moderators, data scientists, quality assurance, cafeteria workers, janitors, warehouse workers, and administrative specialists. This is a growing practice both in tech and other industries. In many cases, contract workers perform similar roles as directly hired employees. Due to the changing economy, since the Spring of 2022, tech companies have laid off about 187,000 people; however, those numbers don't capture contract workers, who are directly affected by mass layoffs, but are largely ineligible for the same protections under CalWARN.

2. Need for this bill?

According to the author, "Innovative industries like tech are a critical part of our state's economy, and we know that tech companies start here in California because of our highly skilled workforce. AB 1356 will protect that workforce—from the engineers to the janitors—by making sure they're treated fairly during a job transition.

To be pro tech, we have to be pro tech-worker. If we don't take care of our tech workers then we'll lose one of California's greatest resources to states like Texas, Washington, or New York. While we respect that downsizing is sometimes an unavoidable part of business, discarding employees that have done nothing wrong – with little to no notice – isn't right and

[1] CompTIA Cyberstates 2021 vFinal
[2] Google's Shadow Work Force: Temps Who Outnumber Full-Time Employees - The New York Times (nytimes.com)

it hurts the competitiveness of our state's tech industry. If *all* of our workers have enough time to look for other work, they're more likely to stay here in California. AB 1356 closes the loopholes in critical layoff protection laws and gives contract workers the basic protections that all workers at these large companies deserve."

3. Committee Discussion

While existing law provides some time to find new employment while the worker can obtain partial wage replacement, hopefully in a timely manner, it may not be sufficient enough time for the individual to find gainful employment or enough resources to obtain training for an opportunity in another sector and cover living expenses. The CalWARN Act requires a 60 day notice for an employer with 75 or more full and part time employees before ordering a mass layoff, relocation, or termination at a commercial or industrial establishment in order to allow the employee time to find another job. Additionally, UI benefits provide some protection, but payments can be significantly delayed. The Legislative Analyst's Office reports 15-20 percent of those who apply for unemployment benefits during ordinary economic times experience a delay.

Amendments
The author is working with stakeholders on future amendments, some of which would add an hour requirement for contract workers in order for them to qualify for the WARN Act. Additionally, the parties are also discussing limiting the local jurisdiction notices to circumstances where there are more than 50 layoffs in one location.

4. Proponent Arguments

The co-sponsors state "California has expanded on the federal [WARN] Act through state protections, but thousands of workers are still falling through the cracks. Recent layoffs in the tech industry have captured headlines, with 187,000 workers laid off since the beginning of 2022. Since July of 2022, nearly 64,000 workers in California alone have been affected by a mass layoff. Twitter, the poster child of recent downsizing, laid off 3,700 workers in November of the same year—a move that drew headlines and widespread concern. Largely missing from the coverage, however, was that 4,400 contract workers were also laid off, and sent home with nothing because the WARN Act currently does not cover many of them.

WARN has left behind thousands of workers, with the potential to leave millions in the lurch. California's contract and temporary workforce comprises approximately 1.9 million employees. In 2018, contract workers at Google outnumbered direct-hire employees, 150,000 to 144,000. The recent layoffs at Meta—noted at the time for their generous layoff packages — did not include contract workers such as campus cafeteria workers, who now must urge the company to provide severance.

Research shows that contract and temporary workers are more likely to be from diverse and underrepresented backgrounds. In Illinois, which has tracked temporary and contract worker demographics since 2018, 85% of the temporary workforce are people of color, despite the fact that people of color comprise just 35% of the overall state workforce. The temporary workforce of California-based tech companies was similarly found to be disproportionately people of color, women, and nonbinary than the directly-employed workforce. A recent survey conducted by Alphabet Workers Union found that Google often did not enforce its

own minimum employment standard for 'temps, vendors, and contractors,' and that there was disparate pay based on race, sexual orientation, and ability.

Employment of third-party contract workers is not isolated to the tech industry. Since the Great Recession, temporary employment in all sectors has increased by 75% compared to 19% in total employment. This large and disproportionately diverse workforce often does not have the same protections as the rest of the workforce. This bill changes that by explicitly extending the WARN Act to millions of contract and temporary workers in California…

The bill also ensures that employers cannot use the WARN Act notice pay to create the false impression that employees are receiving a "severance benefit." People recently laid off from tech companies are reporting that companies are providing some or all of the 60 days of pay in lieu of their WARN-mandated notice along with a separation agreement that waives their legal rights. By offering payments that are already guaranteed under the law in the guise of a separation negotiation, employers induce employees to sign agreements with general releases, waivers of claims, nondisparagement, and nondisclosure provisions. WARN Act rights are already guaranteed to workers impacted by mass downsizing, and AB 1356 makes that clear by requiring any severance agreement to include something of additional value in exchange for signing any waiver of claims or waiver of rights agreement."

5. Opponent Arguments

According to a coalition of opponents, "AB 1356 unnecessarily expands the requirements under California's WARN Act in two ways. First, it increases the amount of notice time from 60 days to 90 days without justification. Increasing the number of days is actually likely to disadvantage workers. If notices must be issued 90 days in advance, this means employers must know well before the 90 day mark who is subject to the closure or layoff at issue. The further that date moves up, the more the employer is in a position where it is guessing with less certainty exactly how many workers this could impact. Out of fear of violating the statute, the employer has no choice but to be over-inclusive in who is receiving notices, leading to layoffs that may not actually be necessary or having to tell workers they are being laid off and then walking that back later, which is poor for worker morale and may lead workers to finding other jobs unnecessarily…Second, recent amendments change the definition of "covered establishment" so that instead of applying to single locations with 75 or more employees, it now covers any business that employs 75 or more employees between all of their locations. That affects the definitions of mass layoff, relocation, and termination. For example, if a company lays off a few employees at different locations that altogether total 50 workers, the WARN Act is now triggered. This is a significant expansion of the law, imposing new burdensome requirements on small locations that were previously never subject to the WARN Act. It would also mean that if 100 layoffs were happening at a facility and one layoff was happening at a second facility across the state, that second facility is now also required to issue a WARN Act notice…

The new group of workers that would fall under the WARN Act requirements is far too broad. "Labor contractor" is defined as "an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business." That definition has been interpreted broadly in other statutes…Further, "employee" for purposes of those employed by labor contractors should be narrowed. Presently, the bill only requires that the worker has performed labor with the

client employer for at least 6 of the 12 months. There is no requirement as to how much work or how frequently. A worker could have worked on a worksite once or twice and now fall under the purview of the bill. It is unlikely the employer even has the most current contact information for that worker.

The bill and these definitions also do not take into account whether the worker performs work at other sites, whether they can be reassigned by the contractor, or the terms of the contract. If the client employer is just one of a worker's five assignments, the justification for receiving a WARN Act notice of a closure is far less than a worker who performs work at one site every single day. Or, if the labor contractor is able to immediately assign the worker to a new client upon learning of a closure or layoff, again the need to follow all of the WARN Act steps is obviated. The bill also does not address the terms of the contract or agreement between the labor contractor and client. This would include a situation where the length of the contract is set to expire before the anticipated closure or layoff or where there is no set term. Further, the payment requirements under section 1402 do not consider the fact that a contract between the labor contractor and employer may already address worker compensation in the event of a closure or layoff. The applicability of the bill to contract workers must be narrowed and reworked."

5. Double Referral

This bill has been double referred to the Senate Committee on Judiciary.

6. Prior Legislation

SB 627 (Smallwood-Cuevas, 2023) would prohibit an employer from closing a large chain establishment of 100 or more chains unless the employer gives a displacement notice to workers 60 days before the closure takes effect. *This bill was referred to the Assembly Committee on Labor and Employment and the Assembly Committee on Judiciary.*

SB 1162 (Limon – Chapter 559, Statutes of 2022) required employers of 100 or more workers hired through labor contractors to provide the Department of Fair Employment and Housing with specified information, including pay data, about their workers. This bill also required employers to provide the pay scale for a position to an applicant for employment and include it in job postings.

SUPPORT

Alphabet Workers Union – Communication Workers of America (co-sponsor)
California Employment Lawyers Association (co-sponsor)
California Labor Federation (co-sponsor)
National Employment Law Project (co-sponsor)
National Legal Advocacy Network (co-sponsor)
TechEquity Collaborative (co-sponsor)
Temp Worker Justice (co-sponsor)
Alliance of Californians for Community Empowerment (ACCE) Action
American Sustainable Business Council
American Sustainable Business Network
Asian Law Alliance

Board of Supervisors for the City and County of San Francisco
California Commission on the Status of Women and Girls
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Environmental Voters
California Faculty Association
California Immigrant Policy Center
California Nurses Association
California School Employees Association
California State Council of Service Employees International Union (SEIU California)
California Teamsters Public Affairs Council
Center for Responsible Lending
Communications Workers of America, District 9
Courage California
East Bay Alliance for a Sustainable Economy
Economic Policy Institute
End Poverty in California
Engineers & Scientists of California, Local 20, IFPTE, AFL-CIO
Equal Rights Advocates
Freelancers Union
Grace Institute - End Child Poverty in Ca
Indivisible CA Statestrong
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Legal Aid At Work
National Council of Jewish Women Los Angeles
People's Collective for Environmental Justice
Santa Clara County Wage Theft Coalition
State Building and Construction Trades Council of California
United Food and Commercial Workers - Western States Council
Voices for Progress
Warehouse Worker Resource Center
Western Center on Law and Poverty
Women's Foundation California
Worksafe

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
California Association for Health Services At Home
California Association of Winegrape Growers
California Attractions and Parks Association
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Hispanic Chamber of Commerce
California League of Food Producers
California Lodging Industry Association
California Restaurant Association

California Retailers Association
Coalition of Small and Disabled Veteran Businesses
Family Business Association of California
Flasher Barricade Association
Hollywood Chamber of Commerce
Independent Lodging Industry Association.
Official Police Garage Association of Los Angeles
Technet

-- END --

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

Bill No:	AB 1123	**Hearing Date:**	June 22, 2023
Author:	Addis		
Version:	February 15, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: California State University: employees: paid parental leave of absence

KEY ISSUE

Should the Legislature require the California State University to provide employees with a paid leave of absence of one semester, as specified, following the birth of a child of the employee or the placement of a child with an employee in connection with adoption or foster care placement?

ANALYSIS

Existing law:

1) Under the California Family Rights Act (CFRA), makes it an unlawful employment practice for an employer, of 5 or more employees, to refuse to grant a request by an eligible employee to take up to 12 workweeks of *unpaid, job-protected* leave during any 12-month period to:
   a) Care for a child born to, adopted by, or placed for foster care with the employee.
   b) Care for the employee's child, parent, grandparent, grandchild, siblings, spouse, or domestic partner who has a serious health condition, as defined.
   c) Address an employee's own serious health condition rendering them unable to perform the functions of their job.
   d) Leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States.
   (Government Code §12945.2)

2) Specifies the following with regards to CFRA:
   a) Defines "employer" as any person who directly employs five or more employees, including the state, and any political or civil subdivision of the state and cities.
   b) Eligible employees must have at least 1,250 hours of service with the employer during the previous 12-month period.
   c) Authorizes an employer to require that an employee's request for leave to take care of a family member, as specified, be supported by a certification issued by the health care provider of the individual requiring care.
   d) Requires the employer to maintain and pay for coverage under a "group health plan" for the duration of the leave at the same level and conditions.
   (Government Code §12945.2)

3) Under the federal Family and Medical Leave Act (FMLA), entitles eligible employees of covered employers (with 50 or more employees) to take up to twelve weeks of unpaid, job-protected leave for specified family and medical reasons with continuation of group health

insurance coverage under the same terms and conditions as if the employee had not taken leave. (29 CFR Part 825, The Family and Medical Leave Act of 1993)

4) Establishes the Paid Family Leave (PFL) program as a partial wage-replacement plan funded through employee payroll deductions and entitles eligible employees with *up to eight weeks of wage replacement benefits* to take time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption, or to participate in a qualifying exigency related to the covered active duty or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the Armed Forces of the United States. (Unemployment Insurance Code §3301)

5) Provides a PFL wage replacement equal to one-seventh of the employee's weekly benefit amount for each full day during which the individual is unable to work, a wage replacement of approximately 60-70 percent depending on income. (Unemployment Insurance Codes §2655 and §3301)

6) PFL does not provide job protection or return to work rights nor does it require continued health coverage during the leave. However, PFL can be taken concurrently with CFRA, for eligible employees, and thus entitle employees to these protections. (Unemployment Insurance Codes §2655 and §3301)

7) Establishes the Donahoe Higher Education Act, setting forth the mission of the UC, CSU, and California Community Colleges (CCC). (Education Code § 66010, et seq.)

8) Confers upon the CSU Trustees the powers, duties, and functions with respect to the management, administration, control of the CSU system and provides that the Trustees are responsible for the rule of government of their appointees and employees. (Education Code §66606 and §89500, et seq.)

9) Requires the CSU Trustees to grant pregnancy leave without pay to female permanent employees for a period not exceeding one year, as determined by the employee except when the employee has notified the trustees as to the period of the leave of absence, any change in the length of the leave is not effective unless approved by the CSU Trustees. (Education Code §89519)

10) For purposes of higher education employer-employee relations, defines "Employee" or "higher education employee" as any employee, including student employees whose employment is contingent on their status as students, of the Regents of the University of California, the Directors of the Hastings College of the Law, or the Trustees of the California State University. However, managerial and confidential employees and employees whose principal place of employment is outside the State of California at a worksite with 100 or fewer employees shall be excluded from coverage under this chapter. (Government Code §3562 (e))

This bill:

1) Requires the trustees of the California State University (CSU) to grant an employee, in each one-year period commencing on the date leave is first taken, one leave of absence with pay

for one semester of an academic year, or equivalent duration, in a one-year period, following the birth of a child of the employee or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.

2) Specifies that for purposes of these provisions, "employee" has the same meaning as in subdivision (e) of Section 3562 of the Government Code (noted above under existing law).

3) Requires the leave of absence to be taken without interruption unless otherwise agreed to by mutual consent between the employee and an appropriate administrator. Specifies that only working days shall be charged against the leave of absence.

4) Specifies that, if these provisions conflict with the provisions of a memorandum of understanding reached, as specified, the memorandum of understanding shall be controlling without further legislative action, except that, if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

COMMENTS

1. Benefits of Paid Leave Policies:

The benefits of paid leave policies are well established. Providing new parents with paid time off to care for newborns or recently adopted children contributes to the child's healthy development, improves maternal health, supports fathers' involvement in care, and enhances families' economic security. Paid leave benefits employers by improving retention and productivity, and can boost labor force participation.

Research shows that paid parental leave policies significantly improve maternal physical and mental health by allowing mothers time to recover from childbirth and adjust to new caregiving responsibilities. About half of women report experiencing pain within the first two months following childbirth, and many experience more serious, potentially life-threatening postpartum complications.[1] A substantial majority of new mothers experience "baby blues" after childbirth, and for about 1 in 5 that condition develops into postpartum depression, with those who are economically insecure at greater risk. Mothers who take paid family leave are less likely to experience symptoms of postpartum depression and less likely to report parenting stress.

According to the National Partnership for Women & Families, providing 12 weeks of paid parental leave on a national scale would lead to 600 fewer infant deaths per year, according to conservative estimates.[2] Additionally, participation in paid leave programs has been associated with better health outcomes for children in elementary school, especially among children from low-income families.

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[1] Eugene R. Declercq *et al.*, "Listening to Mothers[SM] III: Pregnancy and Birth," Childbirth Connection, May 2013, https://www.nationalpartnership.org/our-work/resources/health-care/maternity/listening-to-mothers-iii-pregnancy-and-birth-2013.pdf; Brigid Schulte *et al.*, "Paid Family Leave: How Much Time is Enough?" New America, June 2017, https://www.newamerica.org/better-life-lab/reports/paid-family-leave-how-much-time-enough/maternal-health-and-wellbeing/#.

[2] National Partnership for Women & Families, "The Child Development Case for a National Paid Family and Medical Leave Program," December 2018, https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/the-child-development-case-for-a-national-paid-family-and-medical-leave-insurance-program.pdf

2. Existing Parental Leave Rights and Protections:

Prior to 2021, the California Family Rights Act entitled eligible employees of covered employers with *50 or more employees* to take up to 12 workweeks of *unpaid, job-protected* leave during a 12 month period for specified family care and medical leave reasons. CFRA defined "family care and medical leave" as any of the following:

a) Leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee.
b) Leave to care for a seriously ill parent or spouse
c) Leave because of an employee's own serious health condition

In 2020, after almost a decade of attempts, the scope of CFRA was expanded to apply to employers with *five or more employees* (including the state, and any political or civil subdivision of the state and cities) and allows employees to take leave to care for domestic partners, child of domestic partner, grandparents, grandchildren, siblings, and parent-in-laws. CFRA's federal counterpart, FMLA, continues to apply to employers of 50 or more.

The State Disability Insurance (SDI) program provides short-term Disability Insurance (DI) and Paid Family Leave (PFL) wage replacement benefits to eligible workers who need time off work due to a non-work related illness, injury or pregnancy. SDI is financed by covered workers through payroll deductions. SDI does not provide job protection, only monetary benefits; however, a claimant's job may be protected through other federal or state laws like FMLA and CFRA when taken concurrently.

Workers paying into SDI are able to access the PFL program and receive a partial 60-70 percent wage-replacement benefit for up to eight weeks of leave and, when taken concurrently with CFRA, entitles the employee to a job upon completion of the leave.

3. Paid Maternity/Paternity Leave at CSU:

In December 2021, the CSU and California Faculty Association (CFA) reached a tentative agreement on a new contract for 2022-24. On February 3, 2022, the contract was ratified and is in effect until June 30, 2024. Among other things, the contract calls for a 4% general salary increase retroactive to 7/1/21. Regarding leaves of absence with pay, the collective bargaining agreement provides the following:

Paid Maternity/Paternity Leave
23.4 A bargaining unit employee shall be entitled to a maximum of thirty **(30) days of parental leave** for the reasons specified in provision 22.10 of this Agreement. Such leave shall be taken consecutively, unless mutually agreed otherwise by the employee and the appropriate administrator. This leave shall commence within a one hundred and thirty-five (135) day period beginning sixty (60) days prior to the anticipated arrival date of a new child and ending seventy-five (75) days after the arrival of a new child. Such leave shall be charged only for workdays in such a period of time and may be used for reason of the birth of a child of the employee or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.

> 23.5 A paid parental leave granted in accordance with provision 23.4 runs concurrently with other parental, pregnancy disability and/or family care and medical leave provisions of Article 22, Leaves of Absence Without Pay, and may be supplemented in accordance with the provisions of Article 24, Sick Leave, of this Agreement. Normally, fifteen (15) days of earned sick leave may be charged. A physician's verification of disability shall be required for the use of earned sick leave pursuant to this provision in excess of fifteen (15) days.

Parental Support Workgroup

The 2022-24 contract did not change the parental leave policy (providing 30 paid parental leave days) but it did, however, establish a Parental Support Workgroup. On December 17, 2021, CFA and the CSU signed a Memorandum of Understanding (MOU) agreeing to form this workgroup to review parental support for faculty, at the CSU and other higher education institutions, along with leave utilization and trends within the CSU. The workgroup was directed to create a report of their findings and that report was supposed to be given to the Academic Senate, the Board of Trustees, and the Chancellor within six months of the first meeting. Additionally, the MOU included a provision that the parties further agree that the CSU may increase the number of paid parental leave days provided in the CBA at any time.

The workgroup held its first meeting on June 6, 2022 and the report was expected by December 2022, however, to this day, no report has been released and both the report and the workgroup appear to have stalled.

4. Need for this bill?

As noted above, CSU employees are currently entitled to a 30 day (6 week) fully paid parental leave. Employees are able to extend this time with the use of vacation or sick leave and are protected for up to twelve weeks of unpaid leave under CFRA/FMLA. This bill requires the CSU to provide a *paid leave of one semester*, or equivalent, in a one-year period. CSU semesters are 15 weeks of classes and one week of finals, for a total of 16 weeks.

According to the author, "CSU faculty and employees play a critical role in our state by educating and supporting California's future. Ensuring that they have the right to paid parental leave is long overdue. AB 1123 creates fair working conditions for employees who are parents, rather than penalizing them for their decision to start a family. Specifically, this bill grants employees a leave of absence with pay for one semester of an academic year, or equivalent duration, in a one-year period, following the birth of a child of the employee or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee. AB 1123 affirms and solidifies California's commitment to supporting parents and the well-being of families."

5. Proponent Arguments:

According to the sponsors of the measure, the California Faculty Association, "the existing parental leave policy at the CSU provides for a maximum of 30 days of parental leave for its employees. This policy is woefully inadequate and uncompetitive for today's workplace. It does not allow enough time for parent/child bonding, and it may not be enough time for the body to heal following childbirth. It is simply a health and safety issue for our faculty members that needs to be addressed appropriately.

AB 1123 would remedy this situation by requiring the CSU to provide employees with a minimum of a full semester or two quarters of paid parental leave. A minimum would benefit students in many ways; if faculty are provided a semester off, there is less manipulation of schedules and pressure on faculty to find others to take over their workload. Much of that burden falls on faculty and adds to the stress soon-to-be parents are already facing. In addition, providing for adequate parental leave will improve career advancement and will create greater equity for women faculty and particularly women faculty of color.**"**

6. Opponent Arguments:

The California State University is opposed to the measure and argues that this bill runs counter to the collective bargaining process and removes the fiduciary responsibility entrusted with the Board of Trustees. According to the CSU, "Unlike many parental leave programs that require employees to work for a specified amount of time to access the benefit, the CSU generously allows its employees to access paid parental leave *immediately* upon employment. We also recognize that the general parameters of the generous leave options available to CSU employees may not fit the needs of all employees. This is reflected in the negotiated language used in our collective bargaining agreements which allow for equitable adjustments or flexibility in the application of these benefits.

The proposed significant expansion in both duration of leave time (from 6 to 16 weeks) and the number of eligible employees will have a fiscal impact to the system, as the bill is estimated to cost the CSU and its campuses $21.9 million annually. If more employees choose to utilize the benefit under this bill, the financial impact will be greater. If the Legislature statutorily requires a specified amount of paid parental leave for CSU employees, it will set a precedent for other represented employee groups to seek similar benefits outside of the collective bargaining process. This could encourage legislation in many areas within the collective bargaining realm and create significant cost pressures on the state for reimbursable mandates.

The collective bargaining process allows the CSU and our represented employee groups to consider factors unique to that employee group and come to an agreement on those factors within the financial resources of the CSU, while also considering the impact it may have with students' learning experience. It is the CSU's preference that the system continue to address paid parental leave through the collective bargaining process so changes can be initiated within the resources and tools available to us."

7. Double referral:

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

8. Prior Legislation:

AB 2464 (C. Garcia, 2022, Vetoed), almost identical to this measure, would have required the California State University (CSU) to provide employees with a paid leave of absence of one semester of an academic year, as specified, following the birth of a child of the employee or the placement of a child with an employee in connection with adoption or foster care placement. The Governor's veto message stated:

"This bill requires the California State University (CSU) system to grant an employee a leave of absence with pay for one semester of an academic year, or an equivalent duration in a one-year period, following the birth of a child or in connection with the adoption or foster care placement of a child by an employee.

The CSU Board of Trustees recently ratified a collective bargaining agreement with the California Faculty Association (CFA) that maintained existing parental leave benefits. As part of their negotiations, the CSU and CFA signed a memorandum of understanding establishing a parental support workgroup, charged with reviewing parental support for faculty and making suggestions to relevant leaders. The report is anticipated to be delivered in December 2022. Notably, the MOU states "that the CSU may increase the numbers of paid parental leave days at any time." It is my expectation that CSU will seriously consider these recommendations and take appropriate action.

While I share the goal of supporting working parents employed at our nation's largest and most diverse public university system, this bill creates an estimated $24 million in ongoing General Fund cost pressures not accounted for in the state budget. Further, as the MOU and workgroup illustrate, potential changes to CSU's parental leave policy are more appropriately addressed through the collective bargaining process, which best enables labor and management interest-holders to collaboratively decide issues that impact the system and the people who power it."

SUPPORT

California Faculty Association (Sponsor)
Academic Senate of the California State University
California Federation of Teachers
California Labor Federation
California State University Employees Union (CSUEU)
California Teachers Association
California Teamsters

OPPOSITION

California State University, Office of The Chancellor

-- END --

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

Bill No:	AB 1213	**Hearing Date:**	June 22, 2023
Author:	Ortega		
Version:	April 10, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Workers' compensation: aggregate disability payments

KEY ISSUE

Should the Legislature extend the potential duration of temporary disability payments if an injured employee prevails at an independent medical review?

ANALYSIS

Existing law:

1) Establishes a workers' compensation system, administered by the Division of Workers' Compensation (Division) within the Department of Industrial Relations and requires employers to secure payment of workers' compensation for injuries incurred by employees that arise out of, and in the course of, employment. (Labor Code §§3200)

2) Requires every employer to establish a medical treatment UR process directly or through an insurer or an entity with which the employer or insurer contracts for these services and establishes penalties for failure to establish and comply with UR requirements. (Labor Code §4610)

3) Provides that an employer (or the employer's insurer) can challenge the appropriateness of medical treatment recommended by a treating physician through UR, a system whereby physicians with comparable expertise to the treating provider apply nationally recognized, peer-reviewed, evidence-based medical guidelines to determine whether the recommended treatment is appropriate. This is the only means by which an employer can say "no" to medical treatment recommended for an injured worker. (Labor Code §4610)

4) Establishes the IMR system that operates as the employee's appeal of a UR denial. The IMR system is operated by a vendor selected and regulated by the Division of Workers' Compensation (DWC), and its review is conducted by qualified medical professionals. In most circumstances, a determination by IMR is final and binding on the parties. (Labor Code 4610.5)

5) Provides, for the purpose of workers' compensation temporary disability payments, two-thirds of the weekly loss of wages during the disability, for up to 104 weeks. (Labor Code §§4650)

This bill: provides that, until January 1, 2027, if a UR denial of treatment recommended by a treating physician for an injured worker is overturned by IMR or the Workers' Compensation Appeals Board, any temporary disability benefits paid or owing to the injured worker from the

date of the UR denial until the date of the IMR decision shall not be in the calculation of the aggregate disability payments.

COMMENTS

1. Background

The UR process is used by employers or claims administrators to have a doctor review a medical treatment plan to determine if the proposed treatment is medically necessary after consulting a schedule of uniform treatment guidelines. All employers, or their workers' compensation claims administrators, are required to have a UR program. This program is used to decide whether or not to approve medical treatment recommended by a physician, which must be based on medical treatment guidelines. These guidelines, referred to as the Medical Treatment Utilization Schedule, are adopted by the Division of Workers' Compensation and in most cases are consistent with treatment guidelines adopted by the American College of Occupational and Environmental Medicine.

If the UR reviewer concludes a recommended treatment is not medically necessary, they may modify or deny the treatment request. If the treatment request is modified or denied, the IMR process can be initiated by the injured worker or their physician or attorney within 30 days. Once IMR is initiated, the claims administrator has 14 days to provide records to the IMR provider, who then has 30 days to submit a decision.

According to the Department of Industrial Relations, 124, 345 new TD claims were filed in 2021. Recent data estimates 92.5 percent of all medical treatment requests are approved without objection and 1.6 percent are approved with modifications. Therefore, 94.1 percent are approved by claims or by UR. Of the remaining 5.9 percent, 29 percent are appealed to IMR, which accounts for 1.7 percent of initial medical treatment requests.

2. Need or the bill?

According to the author, "Injured workers are many times a part of minority communities such as people of color, individuals with disabilities, low-income families, and other historically disadvantaged groups. When workers within these groups are injured and no longer able to work while receiving temporary disability (TD) payments, they are struggling to support their families who are reliant on their income for basic necessities such as food, housing costs, and utilities. Some injured workers have their recommended medical treatment erroneously denied under utilization review (UR) while they are on TD and then have the denial overturned. In this situation, the delay in their treatment, although no fault of their own, is still included in the 104 week TD coverage limit.

Injured workers who experience unfair delays should not be stripped of their ability to pay for their housing, utilities and food as they wait for treatment and recovery. AB 1213 would require that when a UR denial is overturned by Independent Medical Review on medical necessity grounds, or by the Workers' Compensation Appeals Board because it was untimely and unreasonable, that temporary disability payments be extended beyond the 104 week limit by the same amount of time the denial delayed the worker's treatment. This bill allows injured workers to receive the treatment they need to truly heal from their job-related injury or illness."

3. Committee Discussion

Anecdotal evidence provided by the author and sponsor describes several recent cases where UR was denied to the injured worker, only to be overturned by IMR, not only causing weeks to months of delay in care, but further harm to the injured employee. Types of denials ranged from cortisone shots to major surgery. While waiting for the IMR determination, injured employees reached and exceeded their 104 week temporary disability cap, leaving them vulnerable to financial loss on top of injury.

The California Workers' Compensation Institute (CWCI) finds this bill would result in additional expense for claims administrators to develop new systems to track the dates of UR denials, IMR determinations, and subsequent treatment authorizations to calculate the number of days to exclude from the TD cap. CWCI estimates claims administrators would need to track 31.7 percent of all TD claims in order to identify and monitor lost-time claims that could be covered under this bill. According to CWCI, "This would further increase California's average loss adjustment expense, which has historically been the most expensive in the country, and as of 2022, exceeded the average amount paid by the median state by 73 percent."

2. Proponent Arguments

According to the California applicants' Attorneys Association, "California's workers' compensation system is a "no-fault" system. That is to say, any worker injured on the job must avail themselves of the state's workers' compensation system and benefits, while foregoing the ability to sue his/her employer for negligence or any other potential contributory factor that led to the underlying injury. The employer is thus shielded from potential litigation costs for any personal injury suffered by the employee.

Injured workers are often treated as though they are at fault by bureaucratic system that is built to delay medical treatment. One such example is manifested by the 104-week time limit on temporary disability payments. The 104-week cap is applied even in instances when the employee's medical treatment has been wrongfully denied and later authorized by either IMR or the WCAB. That is to say, once the 104 week limit is met, an injured workers no longer is eligible for temporary disability payments.

According to industry data relied on by the Division of Workers' Compensation, less than 10% of UR denials are overturned by IMR which delays necessary treatment. It is wrong for TD benefits for so many injured workers to end when necessary treatment was erroneously or unreasonably denied, and the denial delayed the injured worker's recovery and return to work.

AB 1213 provides an elegant and simple solution to this problem. This bill provides that when a denial of medical treatment for an injured worker, made after a Utilization Review (UR), is overturned by Independent Medical Review (IMR) on medical necessity grounds, or by the Workers' Compensation Appeals Board (WCAB), temporary disability payments between the UR denial and its reversal are not to be included within the 104 week coverage time limit.

3. Opponent Arguments:

According to a coalition of opponents, "In 2019, the California Institute on Workers Compensation published a report using the top law firms identified in UR data which showed that some attorneys submitted nearly all their client's treatment denials or modifications to IMR and others sent none. If IMR is not requested, then the decision stands as final. Though the UR process is controlled entirely by the claims administrator or a contractor, it is tightly regulated and every claims administrator and UR provider is audited frequently to review their performance. Audit scores are public and compliance errors are met with steep financial penalties…

We understand why the legislature would be concerned about delays that erode an injured worker's time-limited Temporary Disability (TD) benefits. Fortunately, there is clear data that demonstrates that UR is not a problem. The problem lies with attorneys and doctors who continue to needlessly challenge UR decisions at obscene volumes, despite losing these appeals at a rate of 90% for an entire decade. The UR process is fast, accurate, and accountable. The delay comes from the hundreds of thousands of IMR requests that are needlessly requested on an annual basis and cause a substantial delay for the injured worker…Data continues to suggest that a small number of physicians are driving this high volume of IMR requests and therefore causing delays for injured workers. A 2021 Research Update from the California Workers' Compensation Institute found that 1% of requesting physicians (89 doctors) account for 39.9% of disputed treatment requests. Just ten individual providers account for 11% of the disputed treatment requests. The report also notes that the same providers continue to be a problem year over year…

California's workers' compensation system is known for its complexity, and claims administrators are responsible for collecting, processing, and appropriately accounting for vast amounts of factual, medical, and other pieces of information in the execution of their duties. There are complex systems of accountability and oversight of claims administrators by state regulators, attorneys representing injured workers, and the workers' compensation appeals board. The requirements of AB 1213 would represent a substantial new complication in the administration of claims. Claims administrators would be charged with retroactively determining which benefits paid to an injured worker belonged inside versus outside of the statutory cap, which will lead to disputes and litigation related to the pursuit of penalties. Injured workers are having their benefits wasted with needless disputes, but the data shows clearly that it isn't UR decisions driving that delay. It is the continued flow of time consuming and expensive IMR disputes that uphold UR decisions at a consistently high rate."

4. Prior Legislation:

AB 1295 (Chu, 2017) was identical to this bill, with the exception of the inoperative date. *This bill was held in the Assembly Committee on Insurance.*

SB 1160 (Mendoza - Chapter 868, statutes of 2016) expedited medical care at the beginning of the injured worker's claim, modernized data collection in the workers' compensation system, and implemented anti-fraud measures in the filing and collection of liens.

SB 863 (De Leon - Chapter 363, Statutes of 2012) allowed, among other things, an employee to appeal a UR decision by requesting an independent medical review either immediately after the UR decision or after getting a second UR with additional information.

SUPPORT

California Applicants' Attorneys Association (Sponsor)
AFSCME
California Labor Federation
California Nurses Association
California Professional Firefighters
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Peace Officers Research Association of California

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
American Property Casualty Insurance Association
Association of California Healthcare Districts
Association of Claims Professionals
California Association for Health Services At Home
California Association of Joint Powers Authorities
California Chamber of Commerce
California Coalition on Workers Compensation
California Hotel & Lodging Association
California League of Food Producers
California Special Districts Association
California State Association of Counties
Coalition of Small & Disabled Veteran Business
Flasher Barricade Association
Independent Lodging Industry Association
League of California Cities
Public Risk Innovation, Solutions, and Management (PRISM)
Western Electrical Contractors Association

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

Bill No:	AB 1246	**Hearing Date:**	June 22, 2023
Author:	Stephanie Nguyen		
Version:	June 15, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public Employees' Retirement System optional settlements

KEY ISSUE

Should a retired California Public Employees' Retirement System (CalPERS) member who divorces after retirement and subsequently remarries be able to designate their new spouse as a beneficiary for the member's share of retirement?

ANALYSIS

Existing law:

1) Authorizes a CalPERS member to elect receive upon retirement an optional settlement that provides less than 100% of the member's unmodified retirement allowance in order to fund a retirement allowance for life to the member's beneficiary upon the member's death. (Government Code §§ 21450 et seq. for members who retired on or before December 21, 2017, and §§ 21470 et seq. for members who retire on and after January 1, 2023)

2) Provides specified circumstances for when a retired member can change their beneficiary designation after retirement (GC § 21462, § 21481)

This bill: Allows a retiree who divorces after retirement and subsequently remarries to designate their new spouse as a beneficiary of the retiree's post-divorce retirement settlement.

COMMENTS

1. **Background**

   Optional settlements are alternative payments of a member's pension allowance whereby the member takes an actuarial reduction of the member's pension to provide a lifetime allowance to a designated beneficiary. These are distinct from the survivor's continuance which is an allowance for life paid to a deceased CalPERS member's statutorily defined survivor (a spouse or domestic partner, unmarried minor children, unmarried children who became disabled before age 18, or economically dependent parents of the member, as specified). A survivor's continuance is always payable to the survivor regardless of any beneficiary designation. A spouse can be both a survivor entitled to a survivor's continuance and a beneficiary of an optional settlement. However, a member may designate a person other than the survivor as a beneficiary of an optional settlement.

   Prior law restricted a member's ability after retirement to revise or revoke an optional settlement beneficiary designation except for specified circumstances. However, previous

reforms permitted a member greater flexibility to change beneficiary designations after retirement provided that doing so resulted in no greater cost to the system or to the employer but rather was funded by an adjusted reduction to the member's retirement allowance. In cases, where a member divorces a spouse after retirement, statute permits the member to add a new beneficiary only if the member received 100 % of the member's retirement allowance in the divorce settlement. If the divorce settlement split the retirement account so that the nonmember spouse receives any portion of the member's retirement allowance, the member may not designate a new beneficiary. However, since existing law also protects the nonmember spouse's portion of such a division of a member's account, there is no detrimental effect to the nonmember spouse's interest in allowing the member to designate a new beneficiary for the member's remaining portion given that the member, not the ex-spouse nor the system, nor the employer would be funding the new beneficiary's allowance. This bill would allow the member that ability.

2. Need for this bill?

According to the author,

"Currently, CalPERS retirees can change their beneficiary if they are awarded 100% of their CalPERS retirement benefits in a divorce settlement (Calif GOV CODE 21462)."

"There is no current avenue for retired CalPERS members who divorce after retirement and who receive less than 100 percent of their benefit to add beneficiaries for their remaining CalPERS benefits should they remarry."

3. Proponent Arguments

According to the sponsors,

"AB 1246 seeks to remedy this problem by allowing a retired CalPERS member who divorces after retirement and subsequently remarries to designate their new spouse as a beneficiary for the member's share of retirement."

"This bill will not impact former spouses awarded retirement benefits in any way."

According to the Peace Officers Research Association of California,

"AB 1246 seeks to remedy a problem whereby a divorced retiree who subsequently remarries may designate their new spouse as a beneficiary only if they are awarded 100% of their CalPERS retirement in a divorce settlement. This bill will provide the fairness needed by taking care of spouses of all retirees regardless of previous divorce settlements."

4. Opponent Arguments:

None received.

5. Prior Legislation:

SB 525 (Pan), Chapter 24, Statutes of 2017, provided, among other provisions, technical clean up language to AB 2404's (of 2016) reform of optional settlements.

AB 2404 (Cooley), Chapter 199, Statutes of 2016, revised the optional settlements for CalPERS members that retire on or after January 1, 2018, in order to simplify members' retirement choices and administration of the retirement system.

SUPPORT

Cal Fire Local 2881 (co-sponsor)
California Association of Highway Patrolmen (co-sponsor)
Retired Public Employees Association (co-sponsor)
Peace Officers' Research Association of California (PORAC),

OPPOSITION

None received

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

Bill No:	AB 1254	**Hearing Date:**	June 22, 2023
Author:	Flora		
Version:	February 16, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: State employees: compensation: firefighters.

KEY ISSUE

Should the state use a formula that would pay CAL FIRE Bargaining Unit (BU) 8 members within 15% of the average of the salary for corresponding ranks in 20 specified local fire departments instead of determining state firefighters' pay through collective bargaining under the Dills Act as required by current law?

Should the state and BU 8's union jointly survey annually and calculate the estimated average salaries of the 20 departments?

ANALYSIS

Existing law:

1) Requires CalHR to do the following: 1) establish and adjust salary ranges for each class of position, as specified, on the principle that the state shall pay like salaries for comparable duties and responsibilities; and 2) consider the prevailing rates for comparable service in other public employment and in private business in establishing or changing these ranges. (Government Code (GC) § 19826 (a))

2) Prohibits, however, CalHR from establishing, adjusting, or recommending a salary range for any employees represented by an exclusive representative, as specified. Instead, existing law requires CalHR to submit to the respective parties that are meeting and conferring over the salaries and to the Legislature, a report containing CalHR's findings relating to the salaries of employees in comparable occupations in private industry and other governmental agencies at least six months before the end of an existing memorandum of understanding (MOU) or as otherwise specified. (GC § 19826 (b)-(c))

3) Requires the state to pay, as specified, sworn members of the California Highway Patrol who are rank-and-file members of State Bargaining Unit 5 the estimated average total compensation for each corresponding rank for the Los Angeles Police Department, Los Angeles County Sheriff's Office, San Diego Police Department, Oakland Police Department, and San Francisco Police Department. Total compensation shall include base salary, educational incentive pay, physical performance pay, longevity pay, and retirement contributions made by the employer on behalf of the employee. (GC § 19827)

4) Declares that it is the state's policy to consider prevailing salaries and benefits prior to making salary recommendations in order for the state to recruit skilled firefighters for the California Department of Forestry and Fire Protection (CAL FIRE) and requires CalHR to

take into consideration the salary and benefits of other jurisdictions employing 75 or more full-time firefighters who work in California in order to provide comparability in pay. (GC § 19827.3)

This bill:

1) Requires the state to pay rank-and-file BU 8 firefighters within 15% of the average salary for corresponding ranks in the following 20 California fire departments, as agreed to by state BU 8 and the California Department of Human Resources (CalHR) in 2017: the cities of Bakersfield, Chula Vista, Corona, Escondido, Fullerton, Hayward, Milpitas, Ontario, Oxnard, Rialto, Roseville, San Bernardino, San Mateo, Santa Monica, Stockton, and Torrance; the Livermore-Pleasanton Fire Department; the Novato Fire District; and, the counties of Los Angeles and Ventura.

2) Requires the state and BU 8's exclusive representative to jointly survey and calculate the comparable departments' estimated average salaries based on their projected average total salary as of July 1 of the year in which the parties conduct the survey.

3) Declares that, when determining compensation for CAL FIRE's uniformed classifications, it is the state's policy to consider the salary of corresponding ranks within the comparable jurisdictions, as well as other factors, including internal comparisons.

4) Requires the state to implement any increase in salary for BU 8 firefighters resulting from this bill's provisions through an MOU negotiated pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1).

5) Provides that if this bill's provisions and an MOU conflict, the MOU shall control without further legislative action except that if the MOU's provisions require the expenditure of funds, the provision shall not become effective unless approved by the Legislature and the annual Budget Act.

6) Makes related findings and declarations.

COMMENTS

1. Need for this bill?

According to the author, CAL FIRE firefighters are overworked and severely underpaid compared to their counterparts in local agencies, working 72 hour workweek compared to 54 hour work weeks for local fire departments. This bill would allow state firefighters to have a reasonable, competitive salary.

2. Conflict Notice: This bill and AB 1677 (McKinnor) contain statutory references that are in conflict should both bills become enrolled. This bill creates a new section 19827.4 in the Government Code that AB 1677 (McKinnor) also uses for a different purpose (to establish a salary schedule study related to Bargaining Unit 10 for state scientists). The committee recommends that either this bill or AB 1677 be amended to use instead a new section 198727.6. to avoid the conflict. Because the existing preceding section 19827.3 references

firefighters, it seems logical to retain 199827.4 in this bill and change the reference in AB 1677 to section 198727.6.

3. Proponent Arguments:

According to the California Professional Firefighters,

"AB 1254 will ensure that the full-time professional firefighters of the California Department of Forestry and Fire Protection are paid a wage that is within 15 % of the average salary of similar ranks averaged from 20 fire departments across California. The cross section of departments enumerated in the legislation cover a wide variety of departments from small to large cities as well as county departments and fire districts. Given the size of CAL FIRE's workforce and the geographic diversity of the communities they serve, this approach provides the clearest picture of firefighter compensation across California to ensure fair and competitive wages."

4. Opponent Arguments:

None received.

5. Related Legislation:

AB 1677 (McKinnor) would require the University of California (UC) at Berkeley Labor Center (UCB Labor Center) to undertake a study of the existing salary structure and provide recommendations for alternative models, if applicable, as applied to rank-and-file scientists in State Bargaining Unit 10 (BU 10), among other provisions. The bill is in the Senate Labor, Public Employment and Committee.

SUPPORT

California Attorneys Administrative Law Judges and Hearing Officers in State Employment
California Professional Firefighters

OPPOSITION

None received

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

Bill No:	AB 1273	**Hearing Date:**	June 22, 2023
Author:	Bonta		
Version:	June 13, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Classified employees: Classified Employee Staffing Ratio Workgroup.

KEY ISSUE

Should the state require the California Department of Education (CDE) to convene a workgroup on or before December 31, 2024, in consultation with the Division of Occupational Safety and Health (CalOSHA), the Department of Industrial Relations (DIR), the Labor Commissioner (LC), representatives of employee organizations, and representatives of voluntary local educational agencies for the purpose of reporting recommendations to the Legislature on or before December 31, 2025, on appropriate staffing ratios for classified school employees?

ANALYSIS

Existing law:

1) Establishes in the state government a State Department of Education (CDE) and requires the department to do all of the following: (a) revise and update budget manuals, forms and guidelines; (b) cooperate with federal and state agencies in prescribing rules and regulations, and instructions required by those agencies; (c) assess the needs and methods of collecting and disseminating financial information; (d) conduct workshops and conferences for the purpose of training school district and county personnel; (e) provide consultant services to colleges and universities on courses of instruction relative to school budgets and accounting practices. (f) report the identity of any certificated person who knowingly and willfully reports false fiscal expenditure data relative to the conduct of any educational program. (Education Code (ED) § 33300 and § 33316).

2) Requires a school district or charter school, as a condition of receipt of apportionment for pupils in a transitional kindergarten program to maintain an average transitional kindergarten class enrollment of not more than 24 pupils for each schoolsite and to maintain an average of at least one adult for every 10 pupils for transitional kindergarten classrooms, as specified. (ED § 48000(g))

3) Establishes, within the Labor and Workforce Development Agency, the Department of Industrial Relations (DIR) consisting of five divisions, including the Division of Labor Standards Enforcement (DLSE), led by the Labor Commissioner and tasked with enforcing labor standards; and the Division of Occupational Safety and Health (CalOSHA), tasked with 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 (LC) §§ 21, 50, 50.5, 50.7, 70, 79, 82, 83, 90.5, 6300, 6302(d), and § 6307)

4) Requires the governing board of a school or community college district to employ persons for positions not requiring certification qualifications and classify those employees and positions, as specified. The employees and positions shall be known as the classified service. (ED § 45103 and § 88003)

5) Authorizes school and community college districts to adopt, as specified, a civil service merit system to regulate personnel through a 3-member personnel commission (college districts may have 5 members) and a personnel director (Education Code § 45221 et seq. and Education Code § 88051 et seq.).

6) Where a district adopts a merit system, requires the personnel commission to classify all employees and positions within the district's jurisdiction and designate them as the classified service. However, specified employees, including certificated employees, are exempt from the classified service (Education Code § 45256 and § 88076).

7) Provides for the appointment process of a personnel commission should a school or community college district adopt a merit system election. (EC § 45240 et seq. and § 88060 et seq.)

8) Establishes the Educational Employment Relations Act (EERA) of 1976 providing for collective bargaining in California's public schools (K-12) and community colleges, as specified. (Government Code § 3540 et seq.)

9) Limits the scope of representation for bargaining to matters relating to wages, hours of employment, and other terms and conditions of employment and defines "Terms and conditions of employment" to mean, inter alia, safety conditions of employment. (GC § 3543.2 (a))

This bill:

1. Requires the California Department of Education (CDE) to convene the Classified Employee Staffing Ratio Workgroup on or before December 31, 2024, in consultation with the Division of Occupational Safety and Health (CalOSHA), the Department of Industrial Relations (DIR), the Labor Commissioner (LC), representatives of employee organizations, and representatives of voluntary local educational agencies, including, but not limited to, members of governing boards of school districts.

2. Defines "voluntary local educational agencies" to mean school districts, county offices of education, and special education local plan areas electing to participate in the workgroup.

3. Requires the workgroup to group classified assignments in a manner that reflects the environmental setting of the assignment, the type of work to be completed, the impact on the assignment made by enrollment at a schoolsite, specialized needs, including certifications or licenses, and other reasonable factors.

4. Permits the workgroup to include in the groupings of classified assignments the categories of food service, maintenance and operations, office and technical services, paraeducators, special services, including law enforcement, and transportation services.

5. Requires the workgroup to recommend staffing ratios per identified grouping of classified assignments.

6. Requires the workgroup to take into account the physical, mental, and emotional impact of a pandemic or other emergency environment on workers.

7. Requires the staffing ratios to compare the number of classified staff needed for each group with the number of pupils. The staffing ratio may compare other factors, as relevant to the group of classified workers.

8. Requires the workgroup, on or before December 31, 2025, to report recommendations on appropriate staffing ratios for classified school employees to the Legislature, as specified.

9. Requires the working group to consult with the Chancellor's Office of the California Community Colleges for existing guidance and, if applicable, shall extrapolate from those guidelines in order to include classified employees at community colleges in the report. If there is no guidance, or the workgroup determines that the guidance is not applicable, then the workgroup shall not include community college classified employees in the report.

COMMENTS

1. Need for this bill?

According to the author,

"California students cannot learn without a safe learning environment created by adequate staffing. The outcomes of inadequate staffing are illustrated not just in tragic headlines of students found overdosing in school facilities, but also the basic resources necessary for equal access to instructional materials, quality teachers, and safe schools. Under current law, school districts must assess the safety, cleanliness, and adequacy of school facilities, including any needed maintenance to ensure good repair. While there are reporting requirements to ensure these facility needs, there is not practical guidance on what best practices will help a school maintain the adequate staffing needs to ensure students have this access."

"Research indicates a lower ratio of students to staff in educational settings create better outcomes. While the primary research has been provided in early childhood environments, there is no reason to believe that these outcomes would be different for older students."

2. Proponent Arguments

According to the California Federation of Teachers,

"Classified school employees perform a myriad of jobs that keep schools clean, safe, and operative and ensure that student nutrition offerings, transportation, para-education service, and maintenance needs are met. There are hundreds of classifications that perform this work; from bus drivers to clerical staff, educators for children with special needs, custodial and the list goes on. Unfortunately, not every school site is staffed with adequate personnel to meet the needs of each school site."

"There is currently no guidance for optimal classified staffing ratios for schools. This bill will convene a workgroup to establish ideal classified staff obligation numbers for school sites based on workloads, enrollment, and other reasonable factors."

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 185 (Committee on Budget), Chapter, 571, Statutes of 2022, (the Education Finance budget trailer bill), clarified that Transitional Kindergarten (TK) class size requirements are not subject to collectively bargained kindergarten class size alternative requirements (14); and also clarified how class size and the adult-to-pupil ratio should be defined for purposes of calculating the TK Local Control Funding Formula (25).

SUPPORT

California Federation of Teachers (Sponsor)
American Federation of State, County and Municipal Employees
California School Employees Association
California Teachers Association

OPPOSITION

None received

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

Bill No:	AB 1359	**Hearing Date:**	June 22, 2023
Author:	Schiavo		
Version:	April 19, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Paid sick days: health care employees

KEY ISSUES

Should the Legislature adopt a health care worker sick leave policy that affords workers of specified health care facilities with, in addition to their existing paid sick day's entitlement, four additional days of unpaid sick leave?

Should the current exemption from provisions of the Healthy Workplaces, Healthy Families Act of 2014 (paid sick days) for employees covered by a collective bargaining agreement be removed to instead apply all provisions of the Act to health care workers of covered health care facilities?

Should the Legislature authorize employees of a covered health care facility to bring a civil action against an employer that violates these provisions and entitle the employee to collect specified legal and equitable relief to remedy a violation?

ANALYSIS

Existing law:

1) Under the Healthy Workplaces, Healthy Families Act of 2014, provides, with limited exceptions, that an employee who works in California for 30 or more days within a year from the start of employment is entitled to paid sick days for specified purposes, to be accrued at a rate of no less than one hour for every 30 hours worked, and to be available for use beginning on the 90th day of employment. (Labor Code §246)

2) Authorizes an employer to use a different accrual method than providing one hour for every 30 hours worked as long as an employee has *no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day* of employment or each calendar year, or in each 12-month period. (Labor Code §246(b)(3))

3) Provides that an employer may satisfy the accrual requirements by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of the employee's 120th calendar day of employment. (Labor Code §246(b)(4))

4) Provides that an employer has no obligation to allow an employee's total accrual of paid sick leave to exceed 48 hours or six days, provided that an employee's rights to accrue and use paid sick leave are not otherwise limited, as specified. (Labor Code §246(j))

5) Permits carrying over sick leave to the following year of employment, but also allows an employer to limit the use of the carryover amount, in each year of employment, calendar year, or 12-month period, to 24 hours or three days. (Labor Code §246(d))

6) Specifies that in-home supportive services providers, as defined, accrue sick leave in accordance with a schedule that is based on the timeline for state minimum wage increases up to a maximum of 24 hours or three days when the minimum wage reaches $15 per hour. (Labor Code §246(e))

7) Requires an employer, upon the oral or written request of an employee, to provide paid sick days for the following purposes:

    a. Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.
    b. For an employee who is a victim of domestic violence, sexual assault, or stalking, as specified. (Labor Code, § 246.5)

8) Prohibits an employer from denying an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using or attempting to use accrued sick days (Labor Code §246.5)

9) Establishes a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:

    a. The filing of a complaint by the employee with the Labor Commissioner or alleging a violation, as specified.
    b. The cooperation of an employee with an investigation or prosecution of an alleged violation, as specified.
    c. Opposition by the employee to a policy, practice, or act that is prohibited, as specified. (Labor Code, § 246.5 (c)(2).)

10) Exempts an employee covered by a valid collective bargaining agreement from these provisions if the agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for paid sick days or a paid leave or paid time off policy that permits the use of sick days for those employees, final and binding arbitration of disputes concerning the application of its paid sick days provisions, premium wage rates for all overtime hours worked, and regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate. (Labor Code §245.5(a)(1))

This bill:

1) Establishes new procedures governing the accrual and use of health care worker sick leave for employees of a covered health care facility, as defined, to provide healthcare workers with four additional days of leave per year.

2) Defines the term "paid leave" to mean three days or 24 hours of paid leave.

3) Defines the term "health care worker sick leave" to mean paid sick days plus four additional days of leave per year of employment, calendar year, or 12-month period. The four additional days of leave may be unpaid. If the covered health care facility has a paid leave policy or a paid time off policy, an employee is entitled to use any available accrued paid leave during the four additional days of leave.

4) Requires accrued health care worker sick leave to carry over to the following year of employment and provides that no accrual or carryover is required if the full amount of health care worker sick leave is received at the beginning of each year of employment, calendar year, or 12-month period.

5) Prohibits a covered health care facility from limiting an employee's use of health care worker sick leave.

6) Provides that nothing in this measure shall prohibit a covered health care facility from providing a more generous paid sick leave or paid time off policy, as specified.

7) Provides that the current collective bargaining agreement exemption, as specified in Healthy Workplaces, Healthy Families Act of 2014, does not apply to an employee of a covered health care facility.

8) Provides that specified provisions pertaining to the accrual and carryover of paid sick leave under the Healthy Workplaces, Healthy Families Act of 2014 do not apply to employees of a covered health care facility.

9) Provides that all provisions pertaining to the purposes for which paid sick leave may be utilized and the prohibition on retaliation for asserting the right to take leave, as specified in the Healthy Workplaces, Healthy Families Act of 2014, shall apply to health care worker sick leave.

10) Permits an employee of a covered health care facility to bring a civil action in a court of competent jurisdiction against an employer that violates this measure.

    a. Provides that if an employee prevails in a civil action against an employer, they are entitled to collect legal or equitable relief as may be appropriate to remedy the violation, including reinstatement; backpay and the payment of sick days unlawfully withheld, plus interest thereon; and other appropriate injunctive relief.
    b. Provides that a prevailing employee shall also be entitled to recover reasonable attorney's fees and costs of suit.
    c. Provides that the rights and remedies specified in this measure are cumulative and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other law.

11) Defines "health care facility" as, any of the following:
    a. A facility or other worksite that is part of an integrated health care delivery system, as specified.
    b. A licensed general acute care hospital, as specified.
    c. A licensed acute psychiatric hospital, specified.
    d. A special hospital, as specified.
    e. A licensed skilled nursing facility, as specified.

f. A licensed chemical dependency recovery hospital, as specified.
g. A patient's home when health care services are delivered by an entity owned or operated by a general acute care hospital or acute psychiatric hospital, as specified.
h. A licensed home health agency, as specified.
i. A clinic, as specified.
j. A psychology clinic, as specified.
k. A licensed residential care facility for the elderly, as specified.
l. A psychiatric health facility, as specified.
m. A mental health rehabilitation center, as specified.
n. A federally qualified health center, as specified.
o. A rural health clinic, as specified.
p. An urgent care clinic, as specified.
q. An ambulatory surgical center, as specified.
r. A physician group, as specified.

COMMENTS

1. Background: Paid Sick Leave and COVID-19 Supplemental Paid Sick Leave

Federal law does not require employers to provide sick leave and until 2014, California authorized employers to offer it but didn't require it. AB 1522 (Gonzalez, Chapter 317, Statutes of 2014) enacted the Healthy Workplaces, Healthy Families Act of 2014 to provide employees with paid sick days for prescribed purposes, to be accrued at a rate of no less than one hour for every 30 hours worked. An employee is entitled to use accrued sick days beginning on the 90th day of employment and employers are authorized to limit an employee's use of paid sick days to 24 hours or 3 days in each year of employment. The bill additionally prohibited an employer from discriminating or retaliating against an employee who requests paid sick days.

Supplemental Paid Sick Leave for COVID-19

The COVID-19 pandemic was an unexpected test of the value of paid sick days. In response to the limited number of paid sick days available under existing law, and recognition that COVID-19 was a threat that required more than 24 hours to recover or quarantine from, the federal and state governments acted to provide a higher amount of protected paid sick leave time. At the federal level, the Families First Coronavirus Response Act (FFCRA), until December 31, 2020, required certain employers to provide employees with two weeks (up to 80 hours) and up to an additional 10 weeks, as specified, of paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. However, the FFCRA authorized entities, including a public entity, that employed health care providers or emergency responders, as defined, to elect to exclude such employees from emergency paid sick leave under the Act.

Through AB 1867 (Committee on Budget, Chapter 45, Statutes of 2020), the state attempted to fill the gaps of the FFCRA by establishing the COVID-19 Supplemental Paid Sick Leave and COVID-19 Food Sector Supplemental Paid Sick Leave providing 80 hours of supplemental paid sick leave for food sector workers as well as health care providers for specified COVID-19 related reasons. The bill similarly established COVID-19 supplemental paid sick leave for certain persons employed by private businesses of 500 or more employees

or persons employed as certain types of health care providers or emergency responders by public or private entities. These provisions were retroactively applied, as specified, and expired on December 31, 2020.

Several bills were subsequently passed to extend Supplemental Paid Sick Leave with the last extension sunsetting December 31, 2022. Absent further supplemental paid sick leave adoptions, employees are entitled to three paid sick days pursuant to the Healthy Workplaces, Healthy Families Act of 2014.

2. Benefits of Paid Sick Days:

Studies have identified low-wage workers as particularly susceptible to having little to no access to paid sick time. As pointed out by the Economic Policy Institute, **"**while approximately 64 percent of private-sector American workers currently have access to paid sick days, this topline number masks the fact that higher-wage workers have much greater access to paid sick days than lower-wage workers do: for example, 87 percent of private-sector workers in the top 10 percent of wages have the ability to earn paid sick days, compared with only 27 percent of private-sector workers in the bottom 10 percent."[1] This means that workers with very little disposable income are likely to go to work sick.

These findings are especially troubling considering the impact of leaving illnesses untreated. Access to paid sick leave encourages workers to take time off when they or their family members are ill and need to seek medical care. Most recently with the fight against COVID-19, paid sick leave made a significant difference in controlling the spread of the virus. A recent analysis found that the two-week federal emergency paid sick leave program provided under the Families First Coronavirus Response Act (FFCRA) reduced the spread of the virus. In states where workers were able to access the emergency sick leave, there were 400 fewer confirmed new cases per day than prior to implementation of the FFCRA.[2]

3. How California Compares to Other States:

Once leading the nation as the second state to adopt a paid sick leave policy, behind Connecticut in 2011, California now appears to lag behind other states in the number of sick days provided. An April 2023 California Budget & Policy Center publication examined paid sick leave policies throughout the United States and found that New Mexico leads the country by providing 64 hours of leave applicable to employers of all sizes.[3] The publication also found that a majority of the states that require paid sick leave offer between 40 and 48 hours, with California and Arizona providing the least amount at 24 hours. Although Arizona requires 24 hours for employers of 15 or less workers and 40 hours for employers of 15 or more workers.

4. Need for this bill?

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[1] "Work sick or lose pay? The high cost of being sick when you don't get paid sick days," Economic Policy Institute, June 28, 2017.
[2] Ibid.
[3] Orbach-Mandel, Hannah. "Inadequate Paid Sick Leave." April 2023. California Budget & Policy Center. https://calbudgetcenter.org/resources/california-workers-left-behind-due-to-inadequate-paid-sick-leave/

According to the author, "Current law mandates 3 days of paid sick leave for all workers. Healthcare workers have been disciplined and terminated from employment because of their need to take time off work to care for themselves and their family members. In one case, a nurse with a positive COVID-19 case was disciplined for not returning to work, despite having symptoms and not feeling able to perform their job duties. In another case, a nurse, after working back-to-back shifts, fell asleep at the wheel and called in sick to work. Due to the unscheduled absents, she was disciplined. Working past the point of exhaustion or with illness puts the worker's livelihood at risk through making a clinical error and most importantly, jeopardizes the health and wellbeing of their patients.

Due to the only remedy being relief through the labor commissioner, employers are emboldened to take advantage of a workforce that is mostly women and people of color. Providing for an additional avenue of relief through the court will allow workers to hold employers accountable when their right to sick leave is violated. We depended on healthcare workers throughout the pandemic and we will always look to them for assistance. Giving our healthcare workers 7 protected sick days and the ability to fight for themselves in court will be a huge step forward in making their lives easier."

5. Proponent Arguments:

According to the sponsors of the measure, SEIU California, "Sick leave is critical to ensure that healthcare workers can take the necessary time to care for themselves and their families to be able to provide quality care to their patients." They further write, "After multiple renewals, the COVID-19 supplemental leave expired in December 2022. However, COVID-19 has not disappeared, and hospitalizations and the mental strain on the workforce continue.

Due to the nature of the healthcare industry, which includes long hours in high-stress environments with regular exposure to infectious diseases, physical strain, and mental exhaustion, healthcare workers are regularly put in a position where their critical thinking and decisions are life or death for patients. It is incumbent on healthcare workers to ensure that they are able to perform their functions in service to their patients. However, some healthcare employers have created policies that discipline workers and, in some cases, terminate workers when those workers act in the patient's interest and take accrued sick leave. Ensuring that workers can take a minimum number of days off will protect not just healthcare workers' livelihoods but also the health and well-being of the patients that we serve."

Lastly, they note, "Current California law does not allow a disciplined or terminated employee to take legal action against an employer for taking accrued sick leave. Healthcare workers deserve the time necessary to recuperate from sickness and the ability to defend their right to take it. AB 1359 is a modest approach that ensures that healthcare workers can take sick leave without fearing discipline or termination."

6. Opponent Arguments:

The California Hospital Association is opposed to the measure arguing that, as currently drafted, AB 1359 contains multiple confusing and contradictory provisions that make compliance impossible. CHA argues that, "under existing law, there are clear guidelines on how sick leave must be accrued. Specifically, existing law permits an accrual rate of one hour of sick leave for every 30 hours worked. This provides clear guidance for the handling

of non-traditional employment, like part-time employees or per diem employees. Particularly in the case of per diem employees, who might only work once per year, this guidance was critical to ensure compliance with the law. AB 1359 is silent on accrual rates, leaving health care providers in the dark on how much sick leave to provide part-time or per diem employees."

Additionally, CHA argues that, "this bill includes uniquely punitive enforcement language. As the legislation creates new provisions in state Labor Code, the sick leave provided by AB 1359 is under the Private Attorneys General Act (PAGA). However, AB 1359 also has a separate private right of action for enforcement. This means that the sick leave for health care workers falls under two separate private rights of action — permitting an employer to be sued twice for the same purported violation. Noting the compliance issues listed above, expensive litigation is likely, and any claims will be twice as much, as hospitals and other health facilities will be subjected to enforcement actions under two private rights of action."

7. Committee Staff Comments:

As noted above, this bill establishes a new health care worker unpaid sick leave entitlement of four days to be available to workers in addition to their existing three days of paid sick leave. As currently drafted, this bill incorporates elements of existing paid sick leave provisions that don't necessarily apply to this new unpaid entitlement. Committee staff recommends the following amendments to streamline the language and remove references to accrual that are not relevant since the bill does not have an accrual method.

Amendments

246.6 (a) ~~For a~~An employee of a covered health care facility, as defined in subdivision (f), **is entitled to health care worker sick leave under** the following conditions ~~shall apply to the accrual and use and carryover of health care worker sick leave~~:
~~(1) Accrued health care worker sick leave shall carry over to the following year of employment. This paragraph shall be satisfied and no accrual or carryover is required if the full amount of health care worker sick leave is received at the beginning of each year of employment, calendar year, or 12-month period.~~
(~~2~~**1**) The term "paid **sick** leave" means **~~three days or 24 hours of paid leave~~ paid sick days as currently required to be provided under Labor Code section 246.**
(~~3~~**2**) The term "health care worker sick leave" means paid sick **leave** ~~days~~ plus four additional days of leave per year of employment, calendar year, or 12-month period. The four additional days of leave may be unpaid. If the covered health care facility has a paid leave policy or a paid time off policy, an employee is entitled to use any available accrued paid leave during the four additional days of leave.
(3) Health care worker sick leave shall carry over to the following year of employment. This paragraph shall be satisfied and no carryover is required if the full amount of health care worker sick leave is received at the beginning of each year of employment, calendar year, or 12-month period.
(4) A covered health care facility shall not limit an employee's use of health care worker sick leave.
(5) This subdivision does not prohibit a covered health care facility from providing a more generous paid sick leave or paid time off policy than is required by this section, including, but not limited to, providing for health care worker sick leave in excess of the amounts required pursuant to this section, accrual of paid sick days or health care worker sick leave in

excess of the requirements of paragraph (1), or paid leave for the four additional days of leave required by paragraph (3).
(b) Paragraph (1) of subdivision (a) of Section 245.5 shall not apply to an employee of a covered health care facility.
(c) Subdivision (d) of Section 246 shall not apply to an employee of a covered health care facility.
(d) All provisions of Section 246.5 shall apply to health care worker sick leave as defined in paragraph **(~~3~~2)** of subdivision (a).

8. Double referral:

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

9. Prior and Related Legislation:

SB 616 (Gonzalez, 2023) proposes to increase the amount of paid sick leave employers are required to provide from three to seven days. SB 616 is pending before the Assembly Labor and Employment Committee.

AB 152 (Committee on Budget, Chapter 736, Statutes of 2022) extended the COVID-19 Supplemental Paid Sick Leave provisions to December 31, 2022.

SB 1114 (Committee on Budget and Fiscal Review. Chapter 4, Statutes of 2022) extended the COVID-19 Supplemental Paid Sick Leave provisions until September 30, 2022.

SB 95 (Skinner, Chapter 13, Statutes of 2021) reestablished and extended the COVID-19 Supplemental Paid Sick Leave provisions to September 30, 2021.

AB 995 (Gonzalez, 2021) would have increased the state's paid sick leave program to provide an employee with no less than 40 hours or five days of sick leave by the 200th calendar day of employment. Died on Assembly inactive file.

AB 1867 (Committee on Budget, Chapter 45, Statutes of 2020) established the COVID-19 Supplemental Paid Sick Leave and COVID-19 Food Sector Supplemental Paid Sick Leave, to, until December 31, 2020, provide 80 hours of supplemental paid sick leave, as specified.

AB 555 (Gonzalez, 2019) would have expanded the state's paid sick leave program to provide an employee with no less than 40 hours or five days of sick leave by the 200th calendar day of employment. Died on Assembly inactive file.

AB 2841 (Gonzalez, 2018) would have increased paid sick leave to 40 hours by the 200th calendar day of employment. Died on Assembly Appropriations Committee suspense file.

AB 1522 (Gonzalez, Chapter 317, Statutes of 2014) enacted the Healthy Workplaces, Healthy Families Act of 2014 providing 24 hours or three days of paid sick leave.

SUPPORT

California State Council of Service Employees International Union (SEIU CA) (Sponsor)
American Federation of State, County and Municipal Employees (AFSCME)
California Long-Term Care Ombudsman Association

OPPOSITION

California Hospital Association

-- END --

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

Bill No:	AB 1766	**Hearing Date:**	June 22, 2023
Author:	Committee on Labor and Employment		
Version:	April 13, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Division of Occupational Safety and Health: regulations

KEY ISSUE

Should the Legislature require the Division of Occupational Safety and Health to formulate, propose, and administer regulations pertaining to passenger tramways?

ANALYSIS

Existing federal law: repeals and supersedes the federal Workforce Investment Act of 1998 to the Workforce Innovation and Opportunity Act of 2014 (WIOA), and provides for the establishment of the WDB to develop strategies to support the use of career pathways for the purpose of providing individuals with workforce investment activities, education, and support services necessary for them to enter the workforce or retain employment. (29 U.S.C. §§3101)

Existing state law:

1) Creates the division of Occupational Health and Safety (CalOSHA) within the Department of Industrial Relations (DIR) and vests CalOSHA with the administration and enforcement of occupational health and safety laws and standards, including those for the operation of passenger tramways.

2) Authorized the Occupational Safety and Health Standards Board within DIR and vests the Board with exclusive authority to adopt occupational health and safety standards.

3) Defines passenger tramways as all devices that carry, pull, or push passengers along a level or inclined path (excluding elevators) by means of a haul rope or other flexible element that is driven by a power unit remaining essentially at a single location. Passenger tramways are classified into four categories:

    a) Reversible aerial tramway on which the passengers are transported in a cable-supported carrier and not in contact with the ground or snow surface, and in which the carriers reciprocate between terminals.

    b) Aerial lift on which passengers are transported in gondolas or on chairs that circulate around terminals without reversing the travel path.

    c) Surface lifts on which the passengers are propelled by means of a circulating overhead wire rope while remaining in contact with the ground or snow surface. Transportation is limited to one direction. Connection between the passengers and the wire rope is by means of a device attached to and circulating with the haul rope known as a "towing

outfit."

d) Rope tows on which the passengers grasp the circulating haul rope, or a handle attached to a circulating rope, and are propelled by the circulating haul rope while remaining in contact with the ground or snow surface. The haul rope remains adjacent to the track of the passengers and at an elevation that permits them to maintain their grasp on the haul rope, or handle, throughout that portion of the tow length. (8CCR §3157)

4) Establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, which generally requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law defines "employee" for those purposes to mean every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. (Labor Code §§3200, §3351)

5) Defines employee as any person employed by an employer, and includes any lessee who is charged rent, or who pays rent for a chair, booth, or space; and (1) Who does not use his/her own funds to purchase requisite supplies; and (2) Who does not maintain an appointment book separate and distinct from that of the establishment in which the space is located; and (3) Who does not have a business license where applicable. (Industrial Welfare Commission Order No. 2-2001)

6) Renames the California Workforce Investment Board the California Workforce Development Board (WDB) and renames local workforce investment boards as local workforce development boards. (Unemployment Insurance Code §§14000-14531)

7) Establishes the Employment Training Panel (ETP) within the Employment Development Department and prescribes the functions and duties of ETP with respect to certain employment training programs. Existing law declares the intent of the Legislature that programs developed pursuant to these provisions not replace, parallel, supplant, compete with, or duplicate in any way already existing approved apprenticeship programs. (Unemployment Insurance Code §§10200)

8) Provides that ETP may not withhold information from the public regarding its operations, procedures, and decisions that would otherwise be subject to disclosure under the California Public Records Act. (Unemployment Insurance Code §10205)

This bill:

1) Requires CalOSHA to formulate and propose rules and regulations for adoption by the Board for the safe design, manufacture, installation, repair, maintenance, use, operation and inspection of all passenger tramways as CalOSHA finds necessary for the protection of the general public using passenger tramways.

2) Requires CalOSHA to adopt all other rules and regulations necessary for the administration and enforcement of the preceding provision.

3) States that nothing in the bill shall affect the validity of existing regulations applicable to passenger tramways or shall limit the authority of CalOSHA or the Board to prescribe or

enforce general or special safety orders.

4) Corrects an obsolete cross-reference defining an employee in the provision that requires employers to secure the payment of workers' compensation for injuries incurred by employees from Labor Code §2750.3 to Labor Code §2775.

5) Updates statutory references to instead correctly refer to WIOA, the Board, and the local workforce development boards and deletes a Legislative intent provision that states "In addition, it is further the intention of the Legislature that programs developed pursuant to this chapter shall not replace, parallel, supplant, compete with, or duplicate in any way already existing approved apprenticeship programs."

6) Clarifies that ETP shall not withhold information from the public regarding its operations, procedures, and decisions that would otherwise be subject to disclosure under the Public Records Act.

COMMENTS

1. Background

Passenger Tramway Standards
Common types of passenger tramways include ski lifts, gondolas, drag lifts, and rope tows. The Board has adopted definitions for passenger tramways, but has not yet adopted safety standards, which already exist for elevators and amusement rides. This bill would provide explicit authority by requiring CalOSHA to formulate and propose rules and regulations for adoption by the Board for the safe design, manufacture, installation, repair, maintenance, use, operation and inspection of all passenger tramways as CalOSHA finds necessary for the protection of the general public using passenger tramways. This bill additionally requires CalOSHA to adopt all other rules and regulations necessary for the administration and enforcement of rules and regulations relative to passenger tramways.

Workers' Compensation Code Clean-up
Existing workers' compensation law defines an employee, and additionally includes reference pursuant to Labor Code §2750.3. This code section is no longer operative and was replaced by Labor Code §2775. This bill would change that additional reference to Labor Code §2775, which, pursuant to *Dynamex Operations W. Inc. v. Superior Court* (2018) 4 Cal.5th 903, provided an updated definition of "employee" consistent with subdivision 2(E) of DIR Industrial Welfare Commission Wage Order No. 2-2001.

Workforce Development Code Clean-up
In 2014, the federal Workforce Investment Act of 1998 was renamed and renumbered in federal statute. When this occurred, direction was provided for state and local workforce investment boards to be renamed workforce development boards. This bill would correct those outdated references.

This bill would also strike outdated Legislative intent that ETP programs shall not replace, parallel, supplant, compete with, or duplicate in any way already existing approved apprenticeship programs. According to the author, this provision is outdated given the development of traditional and non-traditional apprenticeship programs, so as to make this particular sentence ambiguous and inconsistent with ETP's funding of Division of

Apprenticeship Standards (DAS) approved apprenticeship programs. Correcting this issue will remove that ambiguity and inconsistency, allowing ETP to further develop its program and the funding of DAS-approved apprenticeship programs, which is consistent with the Governor's stated goals around apprenticeship, and the development of 500,000 new apprentices.

2. Need for the Bill?

According to the author, "This measure is primarily to clean-up language in state law relating to workforce development. In addition, at the request of Labor Agency, the bill gives explicit authority to Cal/OSHA to update its regulations for passenger tramway safety (commonly known as ski lifts). This provision mirrors language already in the Labor Code which permits rulemaking for elevators, temporary amusement rides, and permanent amusement rides."

3. Proponent Arguments

None received

4. Opponent Arguments:

None received.

5. Prior Legislation:

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 for employment status and exempted additional occupations and business relationships.

AB 1270 (E. Garcia - Chapter 94, Statutes of 2015) made necessary changes to existing workforce development statutes to conform to the new federal guidelines under WIOA while preserving core elements of California's workforce development policies. Updates statutory references to the Workforce Investment Act of 1998 to instead refer to the WIOA and make related conforming changes. Renames the California Workforce Investment Board (CWIB) the California Workforce Development Board and revises the membership of the board. Renames the local boards as local workforce development boards and revises their duties consistent with the federal WIOA.

SB 836 (Committee on Budget and Fiscal Review) Chapter 31, Statutes of 2016, removes the term "aerial" in provisions in current law governing the permit and inspection program for aerial passenger tramways and instead refers only to "passenger tramways." Requires the Cal/OSHA to fix and collect fees for inspection of passenger tramways to cover direct costs and a reasonable percentage attributable to the indirect costs of the division for administering those provisions, among other things.

SUPPORT

None received

OPPOSITION

None received

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

Bill No:	SCA 7	**Hearing Date:**	June 22, 2023
Author:	Umberg		
Version:	June 6, 2023		
Urgency:		**Fiscal:**	No
Consultant:	Glenn Miles		

SUBJECT: Employment: workers' rights

KEY ISSUE

Should the State Constitution do the following:

- Grant all Californians the right to join a union and to negotiate with their employers, through their legally chosen representative;
- Grant all Californians the right to protect their economic well-being and safety at work;
- Prohibit state and local government, on or after January 1, 2023, from passing, enacting, or adopting any law that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and workplace safety?

ANALYSIS

Existing law:

1) Under the federal National Labor Relations Act (NLRA), governs collective bargaining in the private sector (Title 29, United States Code (USC), §§151 et seq.,). The NLRA generally preempts state law in the ambit of private sector collective bargaining but leaves it to the states to regulate collective bargaining in their respective public sectors. California public employees have no collective bargaining rights absent specific state statutory authority establishing those rights.

2) 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 Dills Act and Meyers-Milias-Brown Act (MMBA) which provides for state public employer-employee relations and local government employer-employee relations, respectively. (Government Code (GC) §§ 3512 et seq. and 3500 et seq.)

3) Provides publicly employed firefighters the right to self-organization, to form, join, or assist labor organizations, to present grievances and recommendations regarding wages, salaries, hours, and working conditions to the governing body, and to discuss the same with such governing body, through such an organization, but prohibits them from having the right to

strike, or to recognize a picket line of a labor organization while in the course of the performance of their official duties. (Labor Code (LC) § 1962)

4) Defines a "jurisdictional strike" to mean a concerted refusal to perform work for an employer or any other concerted interference with an employer's operation or business, arising out of a controversy between two or more labor organizations as to which of them has or should have the exclusive right to bargain collectively with an employer on behalf of his employees or any of them, or arising out of a controversy between two or more labor organizations as to which of them has or should have the exclusive right to have its members perform work for an employer. (LC § 1118)

5) Declares a jurisdictional strike against public policy and unlawful. (LC § 1115)

This constitutional amendment:

1) Establishes the Right to Organize and Negotiate Act.
2) Declares that all Californians shall have the right to join a union and to negotiate with their employers, through their legally chosen representative, and the right to protect their economic well-being and safety at work.
3) Prohibits, on or after January 1, 2023, any statute or ordinance from being passed, enacted, or adopted that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and workplace safety.

COMMENTS

1. Need for this bill?

According to the author,

"In the last four decades, efforts to dismantle union contracts and erode labor protections has resulted in a significant shift in the distribution of household wealth towards the more wealthy, and has furthermore resulted in a widened income gap. This has disproportionately affected our most vulnerable populations. Workers who were once in the middle class are falling behind financially, and the most marginalized workers, predominantly Black and Latino workers, immigrants, and women, are just one paycheck away from losing their homes or facing financial disaster."

Furthermore, there has been an increase in anti-labor efforts across the country in recent years. On the national level, twenty-eight states have anti-worker, right-to-work laws. In November 2022, Tennessee became the tenth in the nation with a right-to-work provision in its constitution. In comparison, five states have a provision to protect worker collective bargaining rights in their state constitutions – New York, Hawaii, Missouri, New Jersey, and most recently, Illinois. California has many strong laws on the books that promote union activity and protect workers' basic rights to organize and enact worker protections. But more work is needed to counteract anti-union efforts on the local, state, and federal level that threaten the progress workers have achieved that will undermine economic opportunity."

"Therefore, SCA 7 is needed to protect the right to organize and negotiate, and affirm working Californians' most important asset in securing their futures: a strong and robust union."

2. Committee Comments:

This measure would establish a broad based constitutional right for any person in California to form or join a union and for that union to represent the person in collective bargaining with the person's respective employer.

Existing federal and state law exclude many persons from collective bargaining rights depending on their position, their employer, or some other specific justification. For example, the National Labor Relations Act specifically does not include in its definition of employee "any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [45 U.S.C. 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined." (29 USC 152 (3)).

Thus, private sector supervisors generally do not have collective bargaining rights. Public sector supervisors may or may not have collective bargaining rights depending on the state statutory framework under which their eligibility for collective bargaining rights is authorized. Given the broad right extended by SCA 7, it seems those persons would now have the right to collectively bargain. Thus, previously excluded supervisors would now be able to form or join unions. Yet, since those persons are not included under the NLRA, it is unclear how disputes involving their organizing activities and bargaining agreements could be resolved. Presumably, they would be resolved through litigation in state courts and not through NLRB administrative hearings or any other state administrative hearing process. However, federal courts could also intervene if plaintiffs challenged state law on preemption principles alleging that the Congress, through the NLRA, intended for supervisors not to have collective bargaining rights.

Additionally, under state statutory schemes that provide public employees collective bargaining rights, exempt employees would now be able to form and join unions. Presumably, so too would legislative employees, who currently have no existing statutory right to collective bargaining.

It is unclear, given SCA 7's prohibitions on state statutes or local ordinances from interfering or diminishing organizing and collective bargaining rights, whether state or local officials could develop the procedural and detailed regulatory framework necessary to administer collective bargaining through subsequent legislation. Nor is it clear whether existing statutory frameworks prior to January 1, 2023, would be affected, frozen in place, or exempt from SCA 7's provisions.

At least two bills this legislative session seek to establish or amend collective bargaining rights for groups of employees that currently do not have or have limited bargaining rights, AB 1 (McKinnor) and AB 1672 (Haney). The former extends collective bargaining rights to legislative employees while the latter seeks to govern labor relations for independent in-home

supportive services by making the state the employer of record. Typically, new legislative frameworks result in follow-up legislation to clean up or address unforeseen or unintended consequences of the new statutory scheme. It is unclear whether the Legislature would retain that ability for these or other collective bargaining related statutes after passage of SCA 7.

The measure implicates a potential revision through litigation in state and possibly federal courts of existing collective bargaining frameworks. For just one example, it is unclear whether SCA 7 provides an individual collective bargaining right or a right to participate in already formed unions. Under existing collective bargaining structures, and via settled, well-understood processes and adjudicatory frameworks, employees select an *exclusive employee representative* who is then charged with negotiating with the designated employer. SCA 7 may overturn that framework by providing individual rights whereby a person or groups of persons not content with the selected union demands individual or alternative recognition by a different union and a distinct right to negotiate with the employer. Thus, SCA 7 could lead to jurisdictional strikes or conflicts, which current law prohibits.

Additionally, SCA 7 could invalidate existing statute that prohibits, for example, firefighters from striking or recognizing other unions' picket lines or prevent newly forming (and possibly existing) public agencies from including no-strike provisions in their ordinances for public safety personnel.

While sympathetic to the argument that five other states have enshrined a constitutional right to collective bargaining in their constitutions, the committee also must acknowledge that those state courts who have or will create the law surrounding those constitutional provisions do not determine California law or bind California courts. Moreover, those states' adoptions have occurred in circumstances distinct from the development of labor law in California. In some cases, the constitutional provision preceded the statutory development of the state's labor law and both could develop in harmony, one guided by the other. In other cases, the adoption is too novel to provide guidance to California on the potential ramifications to this state's well-developed jurisprudence and statutory framework, particularly with respect to our public employment labor relations statutes. Indeed, the League of California Cities (LCC), in expressing concerns about SCA 7, writes the following:

"SCA 7 upsets the current balance in the system of public employee collective bargaining by enshrining special benefits into the State Constitution that would negatively impact cities throughout the state. California and federal law provide well-informed and well-understood structures for public sector union activity."

The LCC includes in its letter, among other issues, the concerns that SCA 7 could subject many local ordinances to legal challenge, interfere with charter cities' Home Rule provisions, allow individuals to demand unilateral decisions regarding their working conditions, and interfere with existing representation models of public employers negotiating with exclusive employee representatives.

With respect to SCA 7's effect on private sector collective bargaining, it is difficult to know except to say that it will likely only be resolved through litigation. Should the U.S. Supreme Court limit the authority of federal agencies to implement and regulate federal labor law, it is possible that a state constitutional provision could protect private sector employees' bargaining rights. However, that speculatively presumes that the court also weakens federal

labor law presumption provisions to allow states to enter a field up to now, intentionally occupied primarily by federal law.

Additionally, although SCA 7 provides a right to collective bargaining to all Californians, the measure is silent on whether it imposes a duty to bargain on employers. In other jurisdictions, courts have split on the issue. Some hold that the purpose of the constitutional right would be frustrated if employers did not have a duty to bargain. Others hold that since the measure adding the right did not specify such a duty on employers, the right must be more about protecting employees' ability to organize than about forcing employers to bargain. This issue would also require litigation and court resolution.

What does seem certain is that SCA 7 will result in litigation and judicial development of California labor relations law while limiting the power of the Legislature to address those subjects.

3. Author's Amendment

The author has requested the following amendment to the measure to clarify that the Legislature has authority to provide implementing legislation.

SEC. 1.5. (a) This section shall be known, and may be cited, as the Right to Organize and Negotiate Act.

(b) All Californians shall have the right to join a union and to negotiate with their employers, through their legally chosen representative, ~~and the right~~ to protect their economic well-being and safety at work. The Legislature shall provide for the enforcement of these rights.

(c) On or after January 1, 2023, no statute or ordinance shall be passed, enacted, or adopted that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and workplace safety.

4. Proponent Arguments

According to a coalition of labor associations, including the California Labor Federation,

"SCA 7 will put on the ballot a state constitutional amendment to enshrine the right to organize and negotiate with employers in the California Constitution and invalidates new laws and ordinances that violate those rights. SCA 7 will constitutionally protect the right of workers to come to together in a workplace and negotiate with their employer over terms and conditions of employment."

5. Opponent Arguments:

According to a coalition of business associations, including the California Chamber of Commerce, SCA 7 would create a basis to challenge virtually any state or local government infrastructure, energy, or housing project or procurement proposal; eliminate charter city home rule authority over local wages and employment terms; prohibit state and local budget

actions that reduce public employment; prohibit adoption of state or local laws that reduce private sector employment; create several new classes of potential organizing (workers) currently excluded from collective bargaining; and require reexamination potentially dozens or hundreds of proposed statutes from this session that could be in conflict with SCA 7.

6. **Dual Referral:** The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and Retirement Committee and to the Senate Elections Committee.

7. **Prior/ Related Legislation:**

   AB 1 (McKinnor) would provide collective bargaining rights to legislative employees. The bill is currently awaiting referral in the Senate Rules Committee.

   AB 1672 (Haney) would establish the In-Home Supportive Services Employer-Employee Relations Act to govern labor relations for independent providers of in-home support service and deem the state to be the employer of record of provider in each county, a specified. The bill is currently awaiting referral in the Senate Rules Committee.

SUPPORT

State Building and Construction Trades Council (Co-Sponsor)
California Labor Federation (Co-Sponsor)
Actors' Equity
California Federation of Teachers AFL-CIO
California Nurses Association
California School Employees Association
California State Association of Electrical Workers
California State Council of Laborers
California State Legislative Board of the Sheet Metal, Air, Rail and Transportation Workers - Transportation Division (SMART-TD)
California State Pipe Trades Council
California-Nevada Conference of Operating Engineers
Communication Workers of America, District 9
Disability Rights California
IBEW Local 1245
Office of Lieutenant Governor Eleni Kounalakis
SEIU California State Council
SEIU Local 1000
Sheet Metal Workers' Local Union No. 104 (SMART)
State Superintendent of Public Instruction Tony Thurmond
Transport Workers Union of America, AFL-CIO
UC-AFT
UDW/AFSCME Local 3930
UFCW - Western States Council
United Auto Workers
United Nurses Associations of California/Union of Health Care Professionals
United Steelworkers District 12
Western States Council of Sheet Metal Workers

OPPOSITION

Agricultural Council of California
Anaheim Chamber of Commerce
Associated Builders and Contractors of California
Associated General Contractors of California
Association of General Contractors of San Diego
Bay Area Council
BOMA California
Brawley Chamber of Commerce
Brea Chamber of Commerce
California Association of Health Facilities
California Association of Winegrape Growers
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Farm Bureau
California Grocers Association
California League of Food Producers
California Manufacturers & Technology Association
California New Car Dealers Association
California Policy Center
California Restaurant Association
California Retailers Association
Chino Valley Chamber of Commerce
Corona Chamber of Commerce
Dana Point Chamber of Commerce
Family Business Association of California
Fontana Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Housing Contractors of California
Institute of Real Estate Management (IREM)
LA Canada Flintridge Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Business Federation
Mission Viejo Chamber of Commerce
Moreno Valley Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
NAIOP California
National Federation of Independent Business
Orange County Business Council
Pacific Grove Chamber of Commerce
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Chamber of Commerce
Rancho Cordova Chamber of Commerce
Ridgecrest Chamber of Commerce

Santa Maria Valley Chamber of Commerce
Southwest California Legislative Council
Templeton Chamber of Commerce
Tri County Chamber Alliance
Walnut Creek Chamber of Commerce
Western Electrical Contractors Association
Western Growers Association
Yorba Linda Chamber of Commerce

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