California State Senate

LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

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AGENDA

Wednesday, April 19, 2023
Upon adjournment of Banking and Financial Institutions Committee
1021 O Street, Room 2100

MEASURES HEARD IN FILE ORDER

1.	SB 330	Niello	Labor Code Private Attorneys General Act of 2004.
2.	SB 548 **(CONSENT)**	Niello	Public employees' retirement: joint county and trial court contracts.
3.	SB 391 **(CONSENT)**	Blakespear	Workers' compensation: skin cancer.
4.	SB 479 **(CONSENT)**	Padilla	Unemployment compensation benefits: eligibility.
5.	SB 592	Newman	Labor standards information and enforcement.
6.	SB 616	Gonzalez	Paid sick days: accrual and use.
7.	SB 626	Rubio	Smoking tobacco in the workplace: transient lodging establishments.
8.	SB 848	Rubio	Employment: leave for loss related to reproduction or adoption.
9.	SB 640	Portantino	California State University: food service contracts and hotel development projects.
10.	SB 660	Alvarado-Gil	Public employees' retirement systems: California Public Retirement System Agency Cost and Liability Panel.
11.	SB 881	Alvarado-Gil	Paid sick days: accrual and use.
12.	SB 697	Hurtado	Value of care review.
13.	SB 698 **(CONSENT)**	Wilk	Code of Ethics: California Council on Science and Technology: fellows.
14.	SB 725	Smallwood-Cuevas	Grocery workers.
15.	SB 636	Cortese	Workers' compensation: utilization review.
16.	SB 735	Cortese	Motion picture productions: safety: firearms: ammunition.
17.	SB 885 **(CONSENT)**	Labor, Public Employment and Retirement	Public employees' retirement.

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

Bill No:	SB 330	**Hearing Date:**	April 19, 2023
Author:	Niello		
Version:	March 15, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Labor Code Private Attorneys General Act of 2004

KEY ISSUES

Should the Legislature require an aggrieved employee or representative when, pursuing a Private Attorneys General Act (PAGA) claim, to include in their written notice to the Labor and Workforce Development Agency and to the employer providing the alleged labor code violations to additionally include a statement setting forth the relevant facts, legal contentions, and authorities supporting each alleged violation?

Should they also be required to include an estimate of the number of current and former employees against whom the alleged violations were committed and on whose behalf relief is being sought?

Should they also be required to include a description of the harm alleged to have been suffered by each employee?

Should this written notice be verified, under penalty of perjury, when an aggrieved employee or representative is seeking relief on behalf of 10 or more employees?

ANALYSIS

Existing law:

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

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

3) PAGA specifies that, notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (Labor Agency) or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, ***may, as an alternative***, be recovered through a civil action brought pursuant to specified procedures. In order to file a PAGA action, the following requirements must be met:

For violations specified under Labor Code section 2699.5 (various specified provisions of the Labor Code):

a. The aggrieved employee or representative must give written notice by online filing with the Labor Agency and by certified mail to the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation and pay a $75 filing fee.
b. The Labor Agency must notify the employer and the aggrieved employee or representative by certified mail whether it does or does not intend to investigate the alleged violation within 60-65 calendar days of the notice postmark date.
c. If the Agency decides to investigate the alleged violation, it has up to 120 calendar days to investigate and cite the employer.

For violations of any provision of Division 5 – occupational safety and health violations:

a. The aggrieved employee or representative shall give notice by online filing with the Division of Occupational Safety and Health (Cal/OSHA) and by certified mail to the employer, with a copy to the Labor Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.
b. Cal/OSHA shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300). If Cal/OSHA issues a citation, the employee may not commence an action. Cal/OSHA must notify the aggrieved employee and employer in writing within 14 days of certifying that the employer has corrected the violation.
c. If Cal/OSHA fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

For violations of any provision other than those listed in 2699.5 or Division 5:

a. The aggrieved employee or representative shall give written notice by online filing with the Labor Agency and by certified mail to the employer of the specific provisions alleged to have been violated, including the facts and theories to support the alleged violation and a $75 filing fee.
b. Authorizes the employer to cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee or representative, as specified. If the alleged violation is not cured, the employee may commence a civil action. Includes limitation on the number of times an employer may avail his/herself of the cure provisions.
(Labor Code §2699.3)

4) Specifies that no action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the specified timeframes for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty, as specified. If the Agency declines to investigate or issue a citation, the aggrieved employee or representative may then file a PAGA claim. (Labor Code §§2699-2699.5)

5) Provides that civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor Agency for enforcement of labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities; and 25 percent to the aggrieved employees. (Labor Code §2699(i))

This bill:

For violations specified under Labor Code section 2699.5:

1) When an aggrieved employee or representative provides written notice of the specific provisions of the Labor Code alleged to have been violated, strikes the facts and theories to support the violation provision and instead requires the notice to include:

    a. a statement setting forth the relevant facts, legal contentions, and authorities supporting each alleged violation.
    b. an estimate of the number of current and former employees against whom the alleged violations were committed and on whose behalf relief is being sought.
    c. a description of the harm alleged to have been suffered by each employee.

2) If the aggrieved employee or representative is seeking relief on behalf of 10 or more employees, requires the notice to be verified in the manner prescribed by Section 446 of the Code of Civil Procedure (under penalty of perjury) and a copy of the proposed complaint shall be attached to the notice.

For violations of any provision of Division 5 – occupational safety and cure provisions:

3) Changes various provisions from "may not" to "shall not" to make explicitly clear that an aggrieved employee shall not commence a PAGA action as specified in existing law.

For violations of any provision other than those listed in 2699.5 or Division 5:

4) When an aggrieved employee or representative provides written notice of the specific provisions of the Labor Code alleged to have been violated, strikes the facts and theories to support the violation provision and instead requires the notice to include:

    a. a statement setting forth the relevant facts, legal contentions, and authorities supporting each alleged violation, as well as notice informing the employer of their right to cure the violation, as specified.
    b. an estimate of the number of current and former employees against whom the alleged violations were committed and on whose behalf relief is being sought.
    c. a description of the harm alleged to have been suffered by each employee.

2) If the aggrieved employee or representative is seeking relief on behalf of 10 or more employees, requires the notice to be verified in the manner prescribed by Section 446 of the Code of Civil Procedure (under penalty of perjury) and a copy of the proposed complaint shall be attached to the notice.

3) Strikes an obsolete operative date and makes gender non-conforming changes to various PAGA provisions.

COMMENTS

1. Background on the Private Attorneys General Act (PAGA):

Enacted in 2003 and going into effect in 2004 (SB 796, Dunn, Chapter 906, Statutes of 2003), PAGA allows an aggrieved employee to recover civil penalties normally assessed and collected by the Labor and Workforce Development Agency through a civil action. PAGA grants an aggrieved employee a private right of action to file lawsuits on behalf of themselves, other employees, and the State of California. The Legislature passed PAGA in response to growing underground businesses in California operating outside the state's tax and licensing requirements at a time when regulatory agency staffing levels had dramatically decreased.

Specifically, as was noted in the 2003 Senate Labor Committee and Senate Judiciary Committee analyses, many stakeholders noted that the California Labor and Workforce Development Agency's budget had not kept up with the growth of California's economy. This was in part by design: under Governor George Deukmejian, Cal-OSHA positions were slashed and all hiring was frozen in 1983, and then Cal-OSHA was abolished until court action and a ballot initiative brought Cal-OSHA back into existence in 1988. Under Governor Pete Wilson, hiring freezes and limited resources for labor law enforcement was the norm. By the time Governor Gray Davis assumed office in 1998, labor law enforcement had been deprioritized for sixteen years. Moreover, the impact of this neglect has had a very long tail. To this day, the Department of Industrial Relations continues to be severely underfunded given the size and complexity of our workforce, as evidenced by the wage theft backlog currently impacting the Labor Commissioner's unit.

The Department of Industrial Relations is prioritizing the hiring of more staff and have instituted new initiatives to reduce the backlogs and streamline hiring. Civil penalties recovered through a PAGA action are split between the employees and the state with the Labor and Workforce Development Agency receiving 75% of the amount and the employee bringing the action receiving 25% as well as attorney's fees and costs. Funds received by the Labor Agency are used for enforcement of labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under the Labor Code.

2. PAGA Initiative: "Fair Pay and Employer Accountability Act"

The PAGA Repeal Initiative (#21-0027A1) gathered enough signatures and has qualified for the November 5, 2024 ballot. The initiative would do the following:

- Repeal PAGA;
- Labor Commissioner retains authority to enforce labor laws and impose penalties;
- Eliminates Labor Commissioner's authority to contract with private organizations or attorneys to assist with enforcement;
- Requires Legislature to provide funding of unspecified amount for Labor Commissioner enforcement;

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

According to the summary estimate by Legislative Analyst and Director of Finance on the fiscal impact of the initiative on state local governments: Likely increase in state costs to enforce labor laws that could exceed $100 million per year. Reduction in state penalty revenue used for labor law enforcement in the tens of millions of dollars annually.

Staff notes that this bill proposes changes to PAGA that, if adopted, would go into effect January 1, 2024 and potentially be repealed by the end of 2024 if the initiative is approved by the voters on November 5th.

3. Need for this bill?

According to the author, "This bill seeks to address two problems as follows:

1) Existing law provides a right to cure a narrow, limited number of labor code violations within 33 days from the postmark date of a notice (that alleges a labor code violation). The deficiency of the law is that while an employer may have 33 days (a very small window of time to cure an alleged violation), many businesses- especially small to medium sized businesses- are unaware of their opportunity to cure until it is too late to do so.

2) Existing law imposes specified filing requirements on the aggrieved employee or representative in order to bring the action, including providing notice to the agency and the employer with the specific provisions of the Labor Code alleged to have been violated, and the facts and theories that support the alleged violations. Existing law allows, under PAGA, for an employee to bring an action on behalf of other (current and former) employees. However, the law does not require the notice to include an estimate of the number of employees the action seeks to be on the behalf of. Additionally, there no description of the alleged harm to have been suffered by the employee(s)."

According to the author, "SB 330 seeks to propose two modest reforms to address the two problems listed above:

1) SB 330 improves compliance by including a notification requirement of the existing right to cure for minor PAGA violations. This will help businesses comply with state law and utilize the right to cure provision without providing additional days.
2) SB 330 additionally requires that a notice provides relevant facts, legal contentions and alleged harm when an employee or their representative seek to bring a civil action by an aggrieved employee. When am action is brought, it is important to understand what the alleged harm is and the alleged number of employees that an action is seeking to be brought on the behalf of."

4. Proponent Arguments:

The Orange County Business Council is in support of the measure and argues that this bill, "A 2021 report discovered PAGA cases have grown exponentially in recent years, averaging 5,200 cases statewide between Fiscal Years 16/17-19/20. Many smaller businesses lack the legal resources to navigate a PAGA case, and therefore may be unaware of the right to cure process or other important information regarding PAGA compliance. SB 330 enables employers subject to alleged violations of the Labor Code, except those related to safety, to be equipped with the knowledge needed to adequately respond to a PAGA case."

A coalition of employer organizations are in support of the bill arguing, "California has some of the most onerous and complex labor laws in the country. This complexity is exemplified by PAGA, which essentially allows an individual to pursue a "representative action" on behalf of similarly aggrieved employees without being subject to the filing requirements of a class action. Thousands of PAGA lawsuits are filed every year and continue to grow. Employers have paid about $8 billion in PAGA settlements since 2016 with a $3 billion dollar surge just in the last two years. The breadth of the law and resulting case law has allowed attorneys to abuse PAGA by threatening employers with costly litigation for alleged Labor Code violations to secure a financial settlement, with a substantial amount of the money going to attorneys rather than the injured employees or the state.

They conclude by stating that, "SB 330 is a reasonable, modest proposal that gives employers more information about the allegations at hand and notifies them whether PAGA's right to cure applies. This is beneficial to both the employer and employee because it provides more clarity about the case up front and ensures the employer is aware of the ability to cure the violation, if applicable."

5. Opponent Arguments:

The California Labor Federation is opposed to the measure arguing, "This bill contains provisions meant to discourage low-wage workers from using PAGA when their rights are violated. It would require PAGA claims to provide both factual documentation and legal reasoning beyond what a worker would often know or be able to access. For example, the worker has to document how many other workers are impacted and the harm to each individual. This is a nearly impossible task at this stage in the process. It would also require that workers sign under penalty of perjury which would intimidate workers from filing claims for fear of having made a mistake. None of these proposed changes would actually address the issues frequently raised by the business lobby around the role of unscrupulous lawyers or the inadequacy of settlements. All this bill would do is make it even harder for low-wage and immigrant workers to get justice."

Additional opposition from a coalition of organizations representing and advocating on behalf of workers writes, "In addition, any rise in PAGA lawsuits can be directly linked to the dramatic increase in the number of workers forced into arbitration "agreements" as a condition of their employment. These "agreements" almost universally include class action waivers that effectively prevent workers from vindicating their rights in court. However, the California Supreme Court has held that PAGA claims, because they are enforcement actions on behalf of the State, cannot be forced into individual arbitration. (*See Iskanian v. CLS Transportation Los Angeles LLC*, 59 Cal. 4th 348 (2014). Without PAGA all workers would be forced to pursue labor violations on an individual basis in private, secret arbitrations.

Thus, PAGA now stands as one of the last remaining tools for workers to take collective action to remedy violations of their rights under the Labor Code. With workers losing an estimated $15 billion in minimum wage violations alone every year, it is imperative that we focus on strengthening, not weakening, enforcement mechanisms under the Labor Code."

Furthermore, the coalition argues, "current law already requires the aggrieved employee or representative to give written notice to the agency and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation. This effect of the heightened notice requirements proposed under this bill would be to reduce or eliminate meritorious claims. No other administrative notice requirement requires the kind of detail contemplated by SB 330. Even a claim under the Fair Employment and Housing Act – which requires a sworn statement from the charging party – does not require the level of detail SB 330 would mandate.

There is good reason for the current standard, which already far exceeds the "notice pleading" requirements in place in our Superior Courts. The most obvious reason is that the kind of information SB 330 would require is largely – and in many cases, exclusively – known by the employer. Each worker will have personal knowledge of her experience, and the alleged violations of law; however, each worker cannot be expected to know what practices are common among all employees (across managers, shifts, and job sites, to name but three variables). This is the purpose of an inquiry and investigation by the LWDA and of discovery in a civil action."

They conclude by stating, "Employers that steal wages should not be able to escape liability and penalties because a worker fails to meet burdensome filing requirements. And delaying workers' ability to get into court helps no one - it is just meant to discourage workers from enforcing their rights under the Labor Code. For all the reasons stated above, we must respectfully oppose SB 330."

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 Legislation:

AB 2016 (Fong, 2018) attempted to modify the procedures for bringing a civil action under PAGA, what violations may be cured, the time line for curing those violation and the remedies available to aggrieved employees. AB 2016 failed passage in its first policy committee.

AB 281 (Salas, 2017) would have extended the period of time in which an employer may cure violations of the Labor Code enforced by PAGA from 33 to 65 calendar days. First policy committee hearing cancelled at the request of the author.

AB 1429 (Fong, 2017) would have limited the violations for which an aggrieved employee is authorized to bring a civil action under PAGA and would have required the employee to follow specified procedures before bringing an action. The bill would have capped the civil penalties recoverable under PAGAs at $10,000 per claimant and would have excluded the recovery of filing fees by a successful claimant. AB 1429 would have also required the

superior court to review any penalties sought as part of a settlement agreement under PAGA. Bill was never set for hearing.

AB 1430 (Fong, 2017) would have revised PAGA to require the LWDA, after receiving notification of an alleged PAGA violation, to investigate the alleged violation and either issue a citation or determine if there is a reasonable basis for a civil action. Would have authorized an aggrieved employee to commence an action upon receipt of notice from the LWDA that there is a reasonable basis for a civil action, or if the LWDA fails to provide timely or any notification, as specified. Bill was never set for hearing. Bill never set for hearing.

SB 836 (Committee on Budget, Chapter 31, Statutes of 2016), among other provisions, this budget trailer bill made several changes to PAGA, including an extension of the time period for LWDA to review and investigate PAGA claims. SB 836 also requires a copy of proposed settlement of a PAGA claim to be submitted to LWDA at same that it is submitted to court, and requires parties to provide the LWDA with a copy of the court's judgement.

AB 1506 (R. Hernández, Chapter 445, Statutes of 2015) provides an employer with the right to cure a violation of failing to provide its employees with a wage statement containing the inclusive dates of the pay period and the name and address of the legal entity that is the employer.

SB 1255 (Wright, Chapter 843, Statutes of 2012) provides a statutory definition of what constitutes "suffering injury" for purposes of recovering damages pursuant to the itemized wage statements requirements including failure by the employer to provide a wage statement or failure to provide accurate or complete information regarding the other specified items, as specified.

SB 899 (Poochigian, Chapter 34, Statutes of 2004) exempted workers compensation provisions of the Labor Code from enforcement through PAGA.

SB 1809 (Dunn, Chapter 221, Statutes of 2004) significantly amended PAGA provisions by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties for Labor Code violations.

SB 796 (Dunn, Chapter 906, Statutes of 2003) created PAGA as an alternative private attorney general system for labor law enforcement in order to augment the enforcement abilities of the Labor Commissioner.

SUPPORT

Acclamation Insurance Management Services (AIMS)
Allied Managed Care (AMC)
Anaheim Chamber of Commerce
Antelope Valley Chambers of Commerce
Brea Chamber of Commerce
California Apartment Association
California Assisted Living Association
California Association for Health Services at Home

California Association of Health Facilities
California Association of Sheet Metal and Air Conditioning Contractors National Association
California Chamber of Commerce
California Farm Bureau
California Fuels and Convenience Alliance (CFCA)
California Grocers Association
California New Car Dealers Association
California Restaurant Association
California Retailers Association
California State Council of the Society for Human Resource Management
California Trucking Association
Chino Valley Chamber of Commerce
Citrus Heights Chamber of Commerce
Civil Justice Association of California (CJAC)
Coalition of Small and Disabled Veteran Businesses
Dana Point Chamber of Commerce
Family Business Association of California
Flasher Barricade Association (FBA)
Fontana Chamber of Commerce
Fremont Chamber of Commerce
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Housing Contractors of California
Job Creators for Workplace Fairness Coalition
La Cañada Flintridge Chamber of Commerce
La Verne Chamber of Commerce
Mission Viejo Chamber of Commerce
Modesto Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation for Independent Business (NFIB)
National Association of Theater Owners of California
Oceanside Chamber of Commerce
Orange County Business Council
Palm Desert Area Chamber of Commerce
Paso Robles Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
Roseville Area Chamber of Commerce
San Jose Chamber of Commerce
San Marcos Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
Templeton Chamber of Commerce
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce
Walnut Creek Chamber of Commerce
Western Carwash Association

Western Growers Association

OPPOSITION

American Federation of State, County and Municipal Employees (AFSCME)
California Conference of the Amalgamated Transit Union
California Conference of Machinists
California Employment Lawyers Association
California Labor Federation
California Rural Legal Assistance Foundation
California Teamsters Political Affairs Council
Consumer Attorneys of California
Engineers and Scientists of California
Equal Rights Advocates
Legal Aid at Work
Santa Clara County Wage Theft Coalition
SEIU California
UFCW Western States Council
UNITE HERE
Utility Workers Union of America
Worksafe

-- END --

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

Bill No:	SB 548	**Hearing Date:**	April 26, 2023
Author:	Niello		
Version:	February 15, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public employees' retirement: joint county and trial court contracts

KEY ISSUE

Should the state authorize a county and a trial court that have a joint contract with CalPERS for the provision of retirement benefits for their employees to voluntarily separate the contract into two individual contracts?

ANALYSIS

Existing law:

1. Requires a trial court and a county in which the trial court is located to jointly participate in CalPERS by joint contract for all counties that contract with CalPERS for retirement benefits and authorizes all other counties and trial courts to elect such joint participation. (Government Code (GC) § 20460.1)

2. Provides that a county shall not be responsible for the required employer or employee contributions due on behalf of trial court employees, nor shall a trial court be responsible for the required employer or employee contributions due on behalf of county employees. (GC § 20460.1)

3. Establishes under the California Public Employees' Pension Reform Act of 2013 (PEPRA) a statewide retirement plan formula and requires public employers to offer the PEPRA formula to new employees first hired into public service after January 1, 2013, as defined. (GC § 7522 et seq.).

4. Allows a classic member (i.e., a public employee who first became a member of a public retirement system prior to 2013) to move between public employers or retirement systems, as specified, and be "grandfathered" under the plans that existed on December 31, 2012, prior to implementation of PEPRA. (GC 7522.02).

5. Allows a new public employer, established through a joint powers agreement by existing public agencies who offered the classic pension formula, to offer the classic pension formula to classic members as specified. (GC § 7522.05)

This bill:

1) Authorizes a county and the trial court located within the county to jointly elect to separate their joint CalPERS contract into individual contracts if the county and the trial court both make that election voluntarily, as specified.

2) Authorizes a county and a trial court that separate their joint CalPERS contract into individual contracts to provide their employees the defined benefit plan or formula that those employees received from their respective employers prior to the exercise of the option to separate, provided that the employee subsequently does not otherwise meet the definition of a new employee under PEPRA.

3) Provides that a county and a trial court that elect to separate the joint contract into individual contracts shall do so by ordinances or resolutions adopted by both the affirmative vote of a majority of the members of the governing body of a county and the presiding officer of the trial court. They must do so within 30 days of each other to be effective.

4) Prohibits the separation from being a cause for the modification of employment retirement benefits and prohibits retirement benefit levels under the joint contract from modification until their respective MOU with their employees expires or a period of 24 months, whichever is longer. However, the county and its recognized employee organizations or the trial court and its recognized employee organizations may mutually agree to a modification before then.

5) Requires, after the joint contract separation, that any plan under separate contract that has under 100 members, or otherwise meets applicable board criteria, to participate in a CalPERS risk pool, as specified.

6) Requires CalPERS: to perform a one-time separate computation of the assets and liabilities, as specified, for a county and a trial court that elect to separate their joint contract into individual contracts; to move the assets and liabilities of each entity to their respective individual contract; and subsequently to terminate the joint contract.

COMMENTS

1. Background

In 1997, the state began to significantly restructure its trial court system to transfer the responsibility for financing court operations from the counties to the state. Subsequently, as part of that process, county court staff were neither county employees nor state employees but rather became court employees with their trial court becoming their employer of record. However, trial courts were at first unprepared to take on many of the administrative responsibilities previously handled by county administrative staff. Also, separating from a larger, county employee pool presented potential increased costs to a smaller, trial court employee pool with respect to actuarial risk pools. In counties with CalPERS, the law required the county and the trial court to have a joint contract with CalPERS to provide retirement benefits. The joint contract combines county and trial court assets and liabilities for the purposes of setting a single employer contribution rate.

The joint contract requirement creates certain problems for counties who wish to issue pension obligation bonds or otherwise pre-fund their CalPERS pension obligations to reduce their pension contribution rates. CalPERS cannot apply the additional pre-payments to reduce the pension obligations of just the county employees. Effectively, the county would end up subsidizing the trial court which would enjoy the benefit of a reduced pension contribution rate without paying the additional pre-payments or assuming any obligation to repay the pension obligation bond. Not only is this condition counter to the policy of the state taking

financial responsibility for the trial court from the county, it also impedes the county from implementing the pension obligation and pre-payment scheme since the county has no authority to indebt county residents for non-county expenditures. To circumvent this problem, some counties have established MOUs with their corresponding trial court whereby the county and court calculate their respective pension obligations based upon an agreed formula and the court reimburses the county accordingly. The process is resource intensive and inefficient for all parties.

Since the state is responsible for paying the court's share of pension contributions past versions of this bill raised concerns that establishing separate contracts with CalPERS would raise state costs since small trial courts would be subject to greater actuarial risk for being in a smaller risk pool. Some state finance officials may have even hoped that the state would face reduced costs associated with trial court pension contributions if counties prefunded their pension obligations and trial court pension contributions shared in the resulting reduced unitary contribution rate.

This bill addresses the first issue by requiring, following the separation of the joint contract, any plan under separate contract that has under 100 members, or otherwise meets applicable board criteria, to participate in a specified CalPERS risk pool. As for the second issue, state and federal audit standards require that county and state financial reports accurately reflect each party's actual pension obligation thereby requiring the parties to allocate any pror5atable change in the unitary contribution rate to the corresponding parties.

The bill also ensures that employee benefits remain protected by requiring the retirement benefit levels provided to employees under the joint contract not be modified until after expiration of an existing memorandum of understanding or agreement or a period of 24 months, whichever is longer, unless the county and its recognized employee organizations or the trial court and its recognized employee organizations mutually agree to a modification.

In sum, this bill puts the final piece in place to the court transition program that started over 30 years ago and helps make accurate pension obligation reporting more efficient for counties and courts.

2. Proponent Arguments

According to the sponsor:

"In 1997, the State took action to move all facets of the "courts" from the purview of the counties and separate them operationally, financially, and organizationally. The very last piece that has yet to be separated from the county is the court employees' presence in the county's CalPERS retirement plans which includes the related pension liability. This entanglement in the same retirement plan:

a) prevents counties (and courts) from prepaying pension liabilities for their respective employees, which would benefit all parties involved;
b) requires CalPERS counties to enter into MOUs with the courts to ensure the courts are paying their fair share of unfunded pension liability, especially when compensation and benefits are being negotiated, new laws are enacted and when new accounting standards are implemented;
c) hinders the counties ability to issue pension obligation bonds.

SB 548 would simply provide a mechanism for those counties/courts, who are interested, to move forward with completing the work that began in the late 1990's. It is voluntary and permissive; and would only be triggered when there are willing participants at the local level. SB 548 is necessary to direct how the separation will work and the separation is not possible without new Code."

3. Opponent Arguments:

None received

4. Committee Amendments:

The committee recommends the following minor amendments to clarify that the election to separate the CalPERS contract is voluntary:

SEC. 3.
Section 20471.2 is added to the Government Code, to read:

20471.2.
(a) A county and a trial court ~~***shall***~~ ***that*** *elect to separate the joint contract into individual contracts* ***shall do so*** *by ordinances or resolutions adopted by both the affirmative vote of a majority of the members of the governing body of a county and the presiding officer of the trial court. In order to be effective, the resolution of the presiding officer of the trial court and the resolution or ordinance of the governing body of the county shall be adopted within 30 days of each other.*
(b) The separation shall not be a cause for the modification of employment retirement benefits. The retirement benefit levels provided to employees under the joint contract shall not be modified until after expiration of an existing memorandum of understanding or agreement or a period of 24 months, whichever is longer, unless the county and its recognized employee organizations or the trial court and its recognized employee organizations mutually agree to a modification.
(c) Following the separation of the joint contract, any plan under separate contract that has under 100 members, or otherwise meets applicable board criteria, shall participate in a risk pool pursuant to Section 20840.

5. Prior Legislation:

SB 431 (Aanestad and Wiggins), Chapter 256, Statutes of 2007, required CalPERS to prepare a one-time separate pension fund computation for trial court and all other members in Butte and Solano Counties.

SB 733 (Aanestad, 2005) would have allowed Butte and Solano counties to separate the assets and liabilities of the county from those of the trial courts within those counties to establish separate employer contribution rates under CalPERS. The Assembly Appropriations Committee held the bill on suspense.

SB 2140 (Burton), Chapter 1010, Statutes of 2000, designated courts as independent employers and made trial court staff employees of the courts. Prior to SB 2140, trial court staff were county employees. The bill also required trial courts to participate in CalPERS for retirement benefits through joint contracts with their county in those counties that were already contracting with CalPERS for retirement benefits.

Proposition 220 (Adopted in November 1998) authorized the voluntary unification of each county's superior and municipal courts into a one-tier trial court system.

AB 233 (Escutia), Chapter 850, Statutes of 1997, shifted the primary responsibility of financing trial courts from the counties to the state.

SUPPORT

State Association of County Auditors (Sponsor)
Placer County Board of Supervisors
Solano County Board of Supervisors

OPPOSITION

None received

-- END --

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

Bill No:	SB 391	**Hearing Date:**	April 19, 2023
Author:	Blakespear		
Version:	February 9, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Workers' compensation: skin cancer

KEY ISSUE

Should the Legislature expand the existing workers' compensation presumption pertaining to skin cancer by including peace officers of the Department of Fish and Wildlife and the Department of Parks and Recreation whose primary duties are law enforcement?

ANALYSIS

Existing law:

1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury that arises out of and in the course of employment. This system requires all employers to obtain payment of benefits by either securing the consent of the Department of Industrial Relations to self-insure or by securing insurance against liability from an insurance company duly authorized by the state. (Labor Code §3600 et seq.)

2) Establishes within the workers' compensation system temporary disability benefits that offer wage replacement equal to 2/3 of a specified injured employee's average weekly wages for up to 240 weeks while an employee is unable to work due to a workplace illness or injury. (Labor Code §§4653-4656)

3) Establishes a disputable presumption that the development or manifestation of skin cancer is work related for active lifeguards employed by a city, county, city and county, district, or other public or municipal corporation or political subdivision and active state lifeguards employed by the Department of Parks and Recreation. (Labor Code §3212.11)

4) Entitles specified peace officers to permanent or temporary disability leave, which consists of up to one year of fully paid leave if they are disabled by an injury or illness arising out of and in the course of their duties, paid for out of the Workers' Compensation Fund. These employees include:
    a) City police officers;
    b) City, county, or district firefighters;
    c) Sheriffs;
    d) Officers or employees of any sheriff's offices;
    e) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office;
    f) County probation officers and specified employees, group counselors, or juvenile services officers;
    g) Peace officers listed under Section 830.31 of the Penal Code;

h) Lifeguards employed year round on a regular full-time basis by a county of the first class or by the City of San Diego;
i) Airport law enforcement officers as defined in Section 830.33 of the Penal Code;
j) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department, and;
k) Police officers of the Los Angeles Unified School District. (Labor Code §4850)

5) Defines the following employees as peace officers:
a) Employees of the Department of Fish and Wildlife whose primary duties are enforcement of the Fish and Game Code and;
b) Employees of the Department of Parks and Recreation whose primary duties are enforcement of the Public Resources Code. (Penal Code §830.2)

This bill: adds peace officers of the Department of Fish and Wildlife and the Department of Parks and Recreation, whose primary duties are law enforcement, to the employees covered by the existing workers' compensation presumption for skin cancer.

COMMENTS

1. Background:

The creation of presumptive injuries is a deviation that exists within the space of the normal operation of the California workers' compensation system. Rather than permit the existing system to operate in its normal course, the Legislature has intervened for specific employees to require the employer to assume liability for certain occupational injuries. This bill would expand the existing presumption pertaining to skin cancer, adding approximately 1,000 peace officers of the Department of Fish and Wildlife and the Department of Parks and Recreation whose primary duties are law enforcement. This presumption already exists for lifeguards due to the sun exposure inherent to their jobs and the relative difficulty in which someone could prove a definitive source of skin cancer.

The employees proposed to be added in this bill similarly spend a significant portion of their employment hours outside. Conclusive data on occupational sun exposure and its effect on the propensity of skin cancer are somewhat few and far between; however, both the Canadian and Australian governments have found a correlation between outdoor occupations and skin cancer. The author and sponsors of this bill submitted a study request to the Commission on Health and Safety and Workers' Compensation (Commission) in February 2020 to obtain more data. In May of 2022, the Commission approved the proposal and work commenced. During that timeframe, the sponsors also took the initiative to consult with occupational medical experts at the University of California, who concluded that, from their review of studies, there is ample evidence that occupational sun exposure is strongly associated with melanoma of the head and neck.

2. Need for the Bill?

According to the author, "[California] Fish and Wildlife Officers and State Park Rangers often work 10 to 12 hours per day and many of those hours are spent outside in the sun. For career wildlife officers and park rangers this amounts to decades outside – far more than the average worker. If you earn your living working outdoors, your sun exposure and risk of skin cancer skyrocket. Solar ultraviolet radiation (UVR), the main risk factor for development of

skin cancer, is classified as a group 1 carcinogen by the International Agency for Research on Cancer and World Health Organization. A recent meta-analysis reported that occupationally UVR-exposed workers have almost double the risk of developing cutaneous squamous cell carcinoma (cSCC), and at least a 43% higher risk of developing basal cell carcinoma (BCC) compared with non-exposed workers."

The author's office has provided the committee with examples of existing system failures. Pursuant to existing law, if a Department of Fish and Wildlife officer or park ranger is diagnosed with skin cancer, they follow the workers' compensation application process while seeking and obtaining medical treatment. There have been instances where the application is initially denied, only to have the denial reversed upon appeal. During that time, those affected officers must use their personal leave and health insurance to treat their cancer while navigating the lengthy worker's compensation process.

3. Proponent Arguments:

According to the co-sponsors, the California Statewide law Enforcement Association and the California Fish and Game Warden Supervisors and Managers Association, "California wildlife officers are faced with many dangers ranging from vehicle accidents on remote unimproved forest roads to armed felons who may try to kill us for simply doing their jobs. When the situation goes bad, backup may be many miles or even hours away. These are risks we all accept as wildlife officers. But there is a silent threat that our jobs expose us to that we don't train for like a violent encounter – and that's skin cancer. We spend many hours most days of our career in the sun and experience strongly suggests our wildlife officers have a higher than-average incidence of UV exposure and skin cancer.

For example, when Game Warden Alan Weingarten filed a workers' compensation claim for his melanoma, it was initially denied. Tragically, he succumbed to the disease in 2017, but right before he died – and only after tremendous efforts by him and his family – the denial was reversed upon appeal.

Park Rangers at the California Department of Parks and Recreation face a similar level of risk. SB 391 creates a rebuttable presumption that wildlife officers or park rangers diagnosed with skin cancer were at higher occupational risk. This presumption already applies to almost every other law enforcement officer in the state (for all cancers). SB 391 proposes a narrow, justified presumption for wildlife officers and park rangers.

At the request of Assemblymember Kevin Mullin, who pursued this policy as Assembly Bill 334 last year, the California Health and Safety and Workers Compensation Commission contracted with occupational medicine experts from UC San Francisco and UC Berkeley to conduct an effort to validate the claim that wildlife officers and park rangers are at increased risk of skin cancer compared to the general public. As Dr. James McNicholas and Dr. Gina Solomon write in the executive summary of their analysis (attached), "the weight of the evidence is supportive of a causal relationship in the occupational setting. On the ultimate question of whether the peace officers under consideration sustain enough exposure to merit presumption, our medical opinion is that this is reasonable… that exposure is at least as comparable to other law enforcement officer groups [which already enjoy a presumption]." For skin cancer types that are less likely to be "substantially caused by occupational exposure to UV radiation," the authors remind that "the employer retains the right to rebuttal."

AB 334 passed the legislature unanimously last year but was unfortunately vetoed by Governor Newsom. Nearly 1,000 state employees who put their lives on the line to protect California citizens and our precious natural resources are asking the legislature to have their backs and help us persuade him that this policy is justified and equitable and would be a tremendous benefit to wildlife officers, park rangers, and their families."

3. Opponent Arguments:

None received

4. Prior Legislation:

SB 1127 (Atkins - Chapter 835, Statutes of 2022), among other things, reduced the time period a public safety employer has between the filing of a workers' compensation claim and when the employer must accept liability for a non-rebutted claim and extended the duration of temporary disability benefits from 104 weeks to 240 weeks for cancer presumption statutes.

AB 334 (Mullin, 2021) would have expanded the existing workers' compensation presumption pertaining to skin cancer by including peace officers of the Department of Fish and Game and the Department of Parks and Recreation whose primary duties are law enforcement. *In his veto message, Governor Newsom stated "A presumption is not required for an occupational disease to be compensable. Such presumptions should be provided sparingly and should be based on the unique hazards or proven difficulty of establishing a direct relationship between a disease or injury and the employee's work. Although well-intentioned, the need for the presumption envisioned by this bill is not supported by clear and compelling evidence."*

AB 2665 (Mullin, 2020) was substantively similar to AB 334. *This bill was held in the Assembly Committee on Insurance.*

SB 527 (Block - Chapter 66, Statutes of 2013) added full-time lifeguards employed by the City of San Diego to the class of public safety employees who receive enhanced temporary disability benefits when they are unable to work due to illness or injury that arose out of the course of employment.

SB 863 (De León - Chapter 363, Statutes of 2012) enacted workers' compensation system reform, which, among other things, revised the method for determining temporary disability benefits.

AB 663 (Vargas - Chapter 846, Statutes of 2001) established a compensable injury presumption under workers' compensation for lifeguards employed by specified state and local government agencies.

SUPPORT

California Fish & Game Warden Supervisors and Managers Association (Co-sponsor)
California Statewide Law Enforcement Association (Co-sponsor)
Audubon California
California Fish and Game Wardens Association

California Waterfowl Association
California Wildlife Officers Foundation
Defenders of Wildlife
Endangered Habitats League
Friends of Fish and Game
Monterey Bay Aquarium
Mountain Lion Foundation
National Wildlife Federation
Oceana
Peace Officers Research Association of California
Planning and Conservation League
The Nature Conservancy
24 Individual Active and Retired California Wildlife Officers

OPPOSITION

None received

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

Bill No:	SB 479	**Hearing Date:**	April 19, 2023
Author:	Padilla		
Version:	February 14, 2023		
Urgency:	No	**Fiscal:**	No
Consultant:	Dawn Clover		

SUBJECT: Unemployment compensation benefits: eligibility

KEY ISSUE

Should the Legislature update the unemployment insurance Code to remove double negative language in order to make documents sent to individuals applying for unemployment benefits more understandable?

ANALYSIS

Existing law:

1) Requires the Employment Development Department to pay unemployment compensation benefits to unemployed individuals meeting specified criteria. (Unemployment Insurance Code §1251 et seq.)

2) Provides that an unemployed individual eligible for compensation benefits shall not be deemed ineligible, as specified. (Unemployment Insurance Code §1253.1)

This bill: clarifies existing law by replacing the term "deemed ineligible" with "disqualified for eligibility for unemployment benefits" for purposes of determining and notifying an individual of unemployment eligibility.

COMMENTS

1. Need for this bill?

According the author, "Unemployment Insurance Code contains confusing terminology that causes unnecessary appeals, consuming the time of the Employment Development Department (EDD) and CA Unemployment Insurance Appeals Board (CUIAB). Currently, Unemployment Insurance Code states that people "shall not be deemed ineligible (for unemployment benefits)," due to a variety of specified circumstances that constrained their ability [to] work. As a result of the awkward phrasing, both the EDD and CUIAB use the double negative term "not ineligible" in the concluding paragraph of their benefit decisions. The term confuses individuals eligible for unemployment benefits, who mistakenly believe they are ineligible for benefits, during a stressful period in their lives and causes unnecessary appeals. These appeals cost time and resources, and fundamentally hinder the efficiency of the unemployment benefits process. Both the EDD and CUIAB cite Unemployment Insurance Code as the basis for continuing the use of the confusing double negative terminology. SB 479 would update the Unemployment Insurance Code to eliminate the use of double negative language in consumer documents. The change would help avoid

unnecessary appeals that take up valuable time, frustrate constituents, and increase inefficiencies. The bill would also update gender terms and improve overall readability."

2. Proponent Arguments:

None received

3. Opponent Arguments:

None received

4. Prior Legislation:

AB 731 (Gallagher – Chapter 303, Statutes of 2015) made numerous technical changes to statute pursuant to recommendations of Legislative Counsel.

SUPPORT

None received

OPPOSITION

None received

-- END --

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

Bill No:	SB 592	**Hearing Date:**	April 19, 2023
Author:	Newman		
Version:	February 15, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Labor standards information and enforcement

KEY ISSUE

Should the Legislature provide employers with a defense against prosecution for alleged labor law violations based on guidance documents written by Department of Industrial Relations staff?

Should the Legislature require all entities under the Labor and Workforce Development Agency to translate each of its websites in their entirety into Spanish, Chinese, Tagalog, and Vietnamese?

ANALYSIS

Existing law:

1) Charges the Division of Labor Standards Enforcement (DLSE) within the Department of Industrial Relations (DIR) with enforcement of employment statutes and regulations through administrative actions or litigation under which an employer may face administrative sanctions, civil fines and penalties, and criminal penalties for violations. (Labor Code §79-107)

2) Allows employers that fail to pay minimum wage to avoid penalties if they demonstrate to a court or the Labor Commissioner that the failure was in good faith and they had reasonable grounds for believing they had not violated minimum wage laws or an order of the Industrial Welfare Commission. (Labor Code §1194.2)

3) Requires an employer that fails to provide a wage statement to an employee, either semi-monthly or at the time of compensation, to pay damages and reasonable attorney's fees to the employee if they suffer injury as a result of the employer's knowing and intentional failure to do so. (Labor Code §226(a) and (e))

4) Provides that an employer shall not be subject to liability or punishment for failure to pay minimum wage or overtime compensation under the Fair Labor Standards Act if the employer pleads and proves the failure was in good faith in conformity with and in reliance on any relevant administrative regulation, order, ruling, approval, or interpretation, of any agency of the United States, or any administrative practice or enforcement policy of any such agency. This defense remains valid even if the relevant administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified, rescinded, or invalidated by a judicial authority. (29 USC §258-259, enacted May 14, 1947)

This bill:

1) Provides that, for actions and proceedings that commence on or after January 1, 2024, any person who relies on a published opinion letter or enforcement policy, guidance, frequently asked question document, fact sheet, model policy, template, or chart (document) displayed on the DLSE website **shall not be liable** for costs or subject to punishment, except for restitution of unpaid wages, for a violation of a statute or regulation in a judicial or administrative proceeding if the person pleads and proves to the trier of fact that, at the time the alleged act or omission occurred, the person, acting in good faith, did all of the following:

    a. Relied upon and conformed to the applicable opinion letter or document published by DLSE.

    b. Provided true and correct information to DLSE in seeking an opinion letter or enforcement policy, if applicable.

2) Provides that, beginning January 1, 2024, the **defense against prosecution by DLSE shall apply even if, after the alleged act or omission occurred, the document upon which the person relied is modified, rescinded, or determined by judicial authority to be invalid** or of no legal effect.

3) Provides that there is no defense against prosecution if the alleged act or omission occurred after the opinion letter or enforcement policy upon which the person relied is modified or rescinded, or determined by judicial authority to be invalid or of no legal effect.

4) Requires any person who asserts reliance upon an opinion letter of enforcement policy of DLSE shall post an undertaking with the reviewing court or administrative body. The undertaking shall consist of a bond issued by a licensed surety qualified to do business in this state or a cash deposit with the court or administrative body in the amount of the reasonable estimate of alleged unpaid wages resulting from that reliance. The person shall provide written notification to all parties of the posting of the undertaking. The undertaking shall be on the condition that, if any judgment is entered in favor of the employee, the person shall pay the amount owed pursuant to the judgment. If the person prevails or the case is dismissed, withdrawn, or resolved through the execution of a settlement agreement, the court or administrative body shall return the undertaking to the person within 10 business days.

5) Declares that nothing in this act shall be construed to give any greater legal weight to an opinion letter or enforcement policy than it would otherwise have in the absence of this section and declares that nothing in this act shall be construed to require DLSE to issue an order, ruling, approval, interpretation, or enforcement policy.

6) Declares that nothing in this act shall be construed to authorize DLSE to issue an order, ruling, approval, interpretation, or enforcement policy that is contrary to statute or regulation.

7) Requires the Labor and Workforce Development Agency to translate each of its websites in their entirety into Spanish, Chinese, Tagalog, and Vietnamese by January 1, 2026.

COMMENTS

1. Need for this bill?

According to the author, "The [DLSE] is responsible for enforcing California's labor laws. In doing so, the DSLE is empowered under Labor Code § 98.8 to issue regulations, rules of practice, and procedures to be used as guidance for individuals and employers in complying with state labor law. These materials come in a variety of forms, including the [DLSE] Enforcement Policies and Interpretations Manual, opinion letters, Frequently Asked Questions (FAQs), fact sheets, model policies, templates, and charts.

These materials are primarily provided in English, with a limited number of publications available in a separate Spanish-language index. Further, the [DLSE] website lacks a translation feature, requiring non-English language speakers either navigate a cluttered English-language website or request bilingual interpreters (as required under Labor Code § 105). SB 592 will require the [DLSE] to translate the entirety of its website and all materials published on it into Spanish, Chinese, Tagalog, and Vietnamese, allowing users to more easily navigate the [DLSE] website and materials.

Further, in its capacity as the enforcer of state labor law, employers must adhere to the policies and guidance of the [DLSE] or face penalties or enforcement action. Yet, current law allows for employers following the [DLSE] guidance to be penalized in the event that guidance is subsequently invalidated by a judicial authority. Such was the case in 2018, when in two separate cases, (See *Troester v. Starbucks, Cal.5th 829 (2018)* and *Dynamex Operations W. v. Superior Court, 4 Cal.5th 903 (2018))* the California Supreme Court invalidated decades of [DLSE] guidance and left employers liable to penalties after changes in the law's interpretation."

This bill would require the Labor and Workforce Development Agency, and each entity under it, to translate their websites in their entirety into Spanish, Chinese, Tagalog, and Vietnamese by January 1, 2026. Significant language access barriers exist that disadvantage workers who do not understand and speak or read fluent English. Existing law does not require the Labor and Workforce Development Agency to offer a translation function or translation into most spoken languages for each of its entities in their entirety. This provision would minimize language access barriers for both employees and employers.

2. Committee Discussion:

Defense Against Prosecution
This bill would authorize a defense against prosecution for an employer who relies on a DLSE document that is contrary to settled labor law. The Legislature has been deliberate about which violations arise to what type of penalty, depending on the severity of the violation. As an example, an employer can avoid penalties if they demonstrate to a court or the Labor Commissioner that the failure to pay the minimum wage was in good faith and they had reasonable grounds for believing they had not violated minimum wage laws. The defense against prosecution policy in this bill has been proposed by employer trade associations, opposed by labor organizations, and rejected by the Legislature twice in recent years. It would disregard a century of intentional lawmaking by providing employers with a defense against prosecution should they obtain any document that is not consistent with current state, regulation, or case law.

This bill would also provide that the defense against prosecution shall apply even if, after the alleged act or omission occurred, the document upon which the person relied on is *modified*,

rescinded, or determined by judicial authority to be *invalid* or of no legal effect. Under the Schwarzenegger Administration, the Labor Agency issued pronouncements, opinion letters, enforcement policies, and emergency rules regarding the right to a lunch break, which were in violation of settled law. Most of the actions the administration took regarding meal periods were subsequently invalidated by the courts or withdrawn due to public opposition. Had this bill been in effect at that time, employers could simply have relied on a DLSE document to violate workers' rights.

DSLE Legal Opinions
The existing DLSE opinion process is based on a good faith assumption that only factual information is provided by the party requesting an opinion. The opinions are not intended to be relied on in the place of law. A request for a legal opinion must be submitted by letter and contain a statement that there is no California decision or prior opinion, and that the requestor has researched the subject matter on the DSLE website. Not all requests that are submitted result in an opinion and the information DSLE receives is not vetted for accuracy: it is a good faith opinion based on the information provided by the requestor.

This bill would require a party, when requesting a legal opinion from DLSE, to provide "true and correct" information. Previous versions of this attempted policy have required "true and complete" information to be provided to DLSE when seeking an opinion. Additionally, previous versions of the defense against prosecution language required those seeking opinions from DLSE to provide "all pertinent facts and circumstances" when seeking an opinion. This bill does not include that language. The committee may wish to consider whether this opens the door for bad actors to abuse the DLSE opinion process.

Would this bill end the practice of DLSE issuing opinions?
Should it be enacted, DLSE would need to ensure thorough legal staff oversight of each document published on the website, and continuously monitor website content around the clock as changes to laws, regulations, and court rulings occur. Additionally, DLSE may also see an increase in opinions being requested, given an opinion could negate the law under this bill. The committee may wish to consider whether DLSE has sufficient resources and if it is in the taxpayers' best interest to provide those resources.

2. Proponent Arguments:

The sponsors, the California Chamber of Commerce, California Hispanic Chambers of Commerce, and CalAsian Chamber of Commerce state "The DLSE is a state agency that is charged with enforcing the wage, hour and working condition labor laws. As a part of its effort to fulfill this responsibility, the DLSE issues opinion letters on various wage, hour and working condition topics, Frequently Asked Questions (FAQs) regarding new labor laws, as well as an enforcement manual that sets forth the DLSE's interpretation and position on these issues. This guidance was critical, for example, during the COVID-19 pandemic due to the number of new laws and ever-changing regulations. Currently, employers must refer to the DLSE's written materials for "guidance" on these topics when there is no published, on-point case available. The DLSE can levy penalties against an employer for failing to do so if an employee files a wage claim. The Catch-22 is that employers are provided with no certainty that they will be shielded from penalties if they comply in good faith with the DLSE's written opinions or interpretations. There have been numerous instances where courts have veered in a different direction from established DLSE guidance, resulting in employers owing not only back wages, but also penalties under the Private Attorneys

General Act (PAGA), Labor Code Sections 203, 226, and more… SB 592 eliminates this problem and provides businesses in California with the security to know that, if they seek out and follow written advice from the DLSE regarding how to comply with the law, they can actually rely upon that information. Specifically, SB 592 prevents an employer from being financially penalized through the assessment of statutory civil and criminal penalties, fines and interest if the employer relies in good faith on written advice from the DLSE and a court ultimately determines the DLSE's advice was wrong."

3. Opponent Arguments:

According to the opponent coalition, "This proposal is harmful to workers in many ways. To begin with, a company's reliance on an opinion letter or policy has no bearing on the extent to which a worker was harmed. With widespread wage theft, misclassification and other violations tilting the scales toward employer interests is misguided.

Opinion letters and enforcement policies are not intended to provide legal advice or be relied upon in place of actual laws. An opinion letter is sought by one party and is based on the facts provided. Even assuming an employer is truthful about the facts provided, they may not include additional facts that would have resulted in a contrary response. The worker has no ability to intervene or tell their side of the story. There is no audit or review of underlying documents. In fact, this bill incentivizes employers to be selective in the facts they provide to the DLSE to get a favorable opinion that will shield them from liability.

Enforcement guidance is intended to apply generally and may not fit perfectly into the facts of any specific situation. In addition, enforcement guidance is not always reliably free from political influence. Under then-Governor Schwarzenegger, the DLSE issued guidance curtailing meal period rights that was intended to shield companies from liability. Were this bill law at the time, that would have successfully blocked efforts to hold corporations accountable for violating the law.

In addition, this bill goes even further to protect employers even where the guidance was revoked. If an error is made and then recognized and corrected, an employer can continue to avoid liability by relying on the inaccurate version.

This bill states that it does not give opinion letters or enforcement policies greater legal weight but that is precisely the purpose of the bill. It would allow employers to violate the law if they can point to any policy or opinion letter that they think justifies it, even if that policy is subsequently revoked.

This bill also states that it does not authorize the DLSE to issue policies that violate the law and yet, that is precisely what this bill encourages. It politicizes the role of the agency in interpreting the law, giving them the power to shield companies from liability. It would also encourage corporate law firms to pressure the DLSE to write favorable opinions."

4. Double Referral:

This bill is double referred to the Senate Committee on Judiciary.

5. Prior Legislation:

AB 2068 (Haney – Chapter 485, Statutes of 2022) required employers to post notices that they have received citations for specified Labor Code violations, and any special orders or actions issued to the employer by the Division of Occupational Safety and Health, as specified, in each language of the top seven non-English languages used by limited-English-proficient adults in California, as determined by the United States Census Bureau.

SB 524 (Vidak, 2017) was substantially similar to the liability provisions in this bill and included a sunset date of January 1, 2024. *This bill failed passage in the Senate Committee on Labor and Industrial Relations.*

AB 2688 (Brown, 2014) was nearly identical to SB 524 (Vidak, 2017) but included a sunset date of January 1, 2019. *This bill was held in the Assembly Committee on Labor and Employment.*

SUPPORT

California Chamber of Commerce (Co-sponsor)
California Hispanic Chambers of Commerce (Co-sponsor)
CalAsian Chamber of Commerce (Co-sponsor)
Acclamation Insurance Management Services
Allied Managed Care
Anaheim Chamber of Commerce
Antelope Valley Chambers of Commerce
California Apartment Association
California Association for Health Services At Home
California Association of Health Facilities
California Association of Joint Powers Authorities
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Association of Winegrape Growers
California Bankers Association
California Building Industry Association
California Business Roundtable
California Cattlemen's Association
California Farm Bureau
California Fuels and Convenience Alliance
California Hotel & Lodging Association
California League of Food Producers
California Restaurant Association
California Retailers Association
California State Council of The Society for Human Resource Management (CALSHRM)
California Trucking Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Citrus Heights Chamber of Commerce
Civil Justice Association of California
Coalition of California Chambers – Orange County
Coalition of Small and Disabled Veteran Businesses
Costa Mesa Chamber of Commerce
Dana Point Chamber of Commerce
El Dorado County Chamber of Commerce

El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Family Business Association of California
Flasher Barricade Association
Folsom Chamber of Commerce
Fountain Valley Chamber of Commerce
Fresno Chamber of Commerce
Garden Grove Chamber of Commerce
Gilroy Chamber of Commerce
Govern for California
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Half Moon Bay Coastside Chamber of Commerce
Hollywood Chamber of Commerce
Housing Contractors of California
Imperial Valley Regional Chamber of Commerce
LA Canada Flintridge Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Lincoln Area Chamber of Commerce
Long Beach Area Chamber of Commerce
Menifee Valley Chamber of Commerce
National Federation of Independent Business
Oceanside Chamber of Commerce
Official Police Garages of Los Angeles
Orange County Business Council
Rancho Cordova Area Chamber of Commerce
Rocklin Area Chamber of Commerce
Roseville Area Chamber of Commerce
San Gabriel Valley Economic Partnership
San Juan Capistrano Chamber of Commerce
San Marcos Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
Shingle Springs/Cameron Park Chamber of Commerce
Small Business Majority
South Bay Association of Chambers of Commerce
Southern California Leadership Council
Tulare Chamber of Commerce
United Chamber Advocacy Network
Valley Industry and Commerce Association
West Ventura County Business Alliance
Western Growers Association
Western United Diaries
Wine Institute
Yorba Linda Chamber of Commerce
Yuba Sutter Chamber of Commerce

OPPOSITION

American Federation of State, County, and Municipal Employees of CA (AFSCME CA)
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Employment Lawyers Association (CELA)
California Federation of Teachers (CFT)
California Labor Federation
California Nurses Association (CNA)
California Rural Legal Assistance Foundation (CRLAF)
California Teamsters Public Affairs Council
Consumer Attorneys of California
Engineers & Scientists of California, Local 20, IFPTE
United Food & Commercial Workers Western States Council
UNITE HERE
Utility Workers Union of America

-- END --

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

Bill No:	SB 616	**Hearing Date:**	April 19, 2023
Author:	Gonzalez		
Version:	February 15, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Paid sick days: accrual and use

KEY ISSUES

Should the Legislature increase the 24 hours or three days of paid sick leave currently afforded to employees under existing law to 56 hours or 7 days?

Should the Legislature increase the cap that employers can place on paid sick days from 6 to 14 days and 48 to 112 hours and increase the number of paid sick days an employee can roll over to the next year from 3 to 7 days?

ADDITIONAL KEY ISSUES – AS PROPOSED TO BE AMENDED

Should the Legislature extend procedural and anti-retaliation provisions in existing paid sick leave law to employees covered by a valid collective bargaining agreement that is exempt, if they meet specified criteria, from other provisions of the paid sick leave law?

Should California help railroad workers recover from short-term illnesses by requiring railroad employers to provide their workers with at least seven days of unpaid sick leave annually?

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) Upon the oral or written request of an employee, requires an employer to provide paid sick days for the following purposes (Labor Code §246.5):
    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, among others.

3) 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))

4) 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))

5) 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))

6) 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))

7) 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))

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)

This bill:

1) Modifies, under the state's paid sick leave provisions, the right of an employer to use an alternate sick leave accrual method (than one hour for every 30 hours worked) to require that an employee have no less than *56 hours* of accrued sick leave or paid time off by the 280th calendar day of employment or each calendar year, or in each 12-month period.

2) Provides that an employer may satisfy the paid sick leave accrual requirements by providing not less than *56 hours or seven days* of paid sick leave that is available to the employee to use by the completion of the employee's 280th calendar day of employment.

3) Specifies that an employer is under no obligation to allow an employee's total accrual of paid sick leave to exceed 56 hours or seven days, provided certain conditions are met.

4) Specifies that the term "full amount of leave" means seven days or 56 hours.

5) Amends the schedule for in-home supportive services providers to increase their sick leave accrual maximum to 56 hours or seven days in each year of employment, calendar year, or 12-month period beginning January 1, 2024.

6) Raises the employer's authorized limitation on the employee's use of carryover sick leave to 112 hours or 14 days.

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.

Through AB 1867 (Committee on Budget, Chapter 45, Statutes of 2020), the state established the COVID-19 Supplemental Paid Sick Leave and COVID-19 Food Sector Supplemental Paid Sick Leave, which provided 80 hours of supplemental paid sick leave for food sector workers 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.

In 2021, SB 95 (Skinner, Chapter 13, Statutes of 2021), reestablished the COVID-19 Supplemental Paid Sick Leave provisions to provide up to two weeks or 80 hours of paid leave to eligible employees of employers with 25 or more employees with a September 30, 2021 sunset date. The bill specified that employees were entitled to supplemental sick leave due to quarantine or isolation related to COVID-19, attending an appointment or experiencing symptoms related to COVID-19 vaccine, experiencing COVID-19 symptoms, caring for a family member who is subject to quarantine, or caring for a child whose school or place of care is closed due to COVID-19.

In 2022, SB 1114 (Committee on Budget and Fiscal Review. Chapter 4, Statutes of 2022) again extended the COVID-19 Supplemental Paid Sick Leave provisions to, until September 30, 2022, provide 40 hours of supplemental paid sick leave for covered employees who are unable to work or telework due to certain reasons related to COVID-19, including that the employee is attending a COVID-19 vaccine or vaccine booster appointment for themselves or a family member, or is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccine or vaccine booster. The bill

provided a covered employee, in addition to the COVID-19 supplemental paid sick leave described above, to take up to 40 more hours of COVID-19 supplemental paid sick leave if the covered employee, or a family member for whom the covered employee is providing care, tests positive for COVID-19.

Also in 2022, AB 152 (Committee on Budget, Chapter 736, Statutes of 2022) established the California Small Business and Nonprofit COVID-19 Relief Grant Program within GO-Biz to, until January 1, 2024, assist qualified small businesses or nonprofits that are incurring costs for COVID-19 supplemental paid sick leave. AB 152 also specified that an employer has no obligation to provide additional COVID-19 supplemental paid sick leave if the employee refuses to submit to the specified testing, provided by the employer. The bill also extended the COVID-19 Supplemental Paid Sick Leave provisions from September 30, 2022, to December 31, 2022.

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. According to the Institute for Women's Policy Research, "Adults and children who have the time and care they need to recover from health problems may use fewer health care resources in the long run. Active parental involvement in children's hospital care, for instance, can head off future health care needs because of increased parental education and awareness…Conversely, the failure to provide adequate recuperative time and requisite parental care may tend to exacerbate future health needs." [2]

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.[3]

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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] "No Time to be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave," Institute for Women's Policy Research, Publication # B242p, May 2004.
[3] Ibid.

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.[4] Additionally, the publication found that:

- Washington: no cap, 1 hour for every 40 hours worked (all employers)
- New Mexico: 64 hours (all employers)
- Colorado: 48 hours (all employers)
- Vermont: 40 hours (all employers)
- New Jersey: 40 hours (all employers)
- New York: 40 hours (100 or less employees) or 56 hours (100 or more employees)
- Oregon: 40 hours (employers with 10+ workers)
- Massachusetts: 40 hours (employers with 11+ workers)
- Arizona: 24 hours (15 or less workers) or 40 hours (15 or more workers)
- Maryland: 40 hours (employers with 15+ workers)
- Rhode Island: 40 hours (employers with 18+ workers)
- Connecticut: 40 hours (employers with 50+ workers)
- Michigan: 40 hours (employers with 50+ workers)
- Washington DC: 3 days (25 or less), 5 days (25-99), 7 days (100+ workers)
- California: 24 hours (all employers)

Additionally, seven cities in California already mandate at least 9-10 days of leave for most workers. The seven days required under this bill, will still leave California's sick leave standards weaker than those of San Diego, Santa Monica, West Hollywood, San Francisco, Oakland, Berkeley, and Emeryville.

4. Need for this bill?

According to the author, "The COVID-19 pandemic highlighted the lifesaving impacts of paid sick leave policies, while clearly exposing the gaps in our existing safety net for working families. Workers without union-guaranteed sick leave benefits or generous employers are now often left with only three days to clear a virus that can easily take ten or more to recover from. This assumes a given worker even has all three days left and can easily leave that worker with no way to care for a family member who has fallen ill from a completely different sickness, such as the cold, flu, or RSV.

Temporary expansions of paid sick leave policies, which have all expired, are not enough to provide a reliable safety net for workers and adequately protect public health year-round. Workers without sufficient sick leave are either expected to work while sick, risking the health and safety of co-workers and customers, or stay home and forgo wages, jeopardizing that worker's own ability to survive or keep their job. Studies have found that for those without earned sick days, missing three and a half days of work equates to losing a family's

[4] 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/

entire monthly grocery budget. This especially disadvantages those in service sector jobs traditionally dominated by women and Latino workers, including childcare providers, and janitorial, retail, food service and hospitality workers.

Therefore, SB 616 will increase the amount of paid sick leave employers are required to provide to employees from three to seven days. Workers without paid sick days are twice as likely as those with paid sick days to seek emergency room care for themselves. In times of illness, workers shouldn't have to resort to going to the emergency room for medical care because they couldn't take time off during the workday, or worse, neglecting their health out of fear of losing income. SB 616 will grant working families across the state increased flexibility to be able to take care of themselves and their loved ones."

5. Proponent Arguments:

Writing in support of the measure, the sponsors argue, "COVID-19 presents a perfect example of why expanding paid sick leave is not simply good public policy, but a dire necessity. The virus takes, on average, 5-10 days to "clear" those infected, which means that most workers with active COVID-19 would easily transmit the disease to co-workers and members of the public after just three days. The clear inadequacy of providing three days to handle even this one illness was immediately obvious, leading the Legislature to implement Supplemental Paid Sick Leave for nonoccupational cases and the Cal/OSHA Standards Board to establish Exclusion Pay for occupational exposure. As effective and essential as both programs were, both are now gone."

Additionally, they argue that, "while workers in every industry and in every corner of the state are affected by the need for sick leave, women and workers of color are hit hardest. Latino workers have remained roughly 100 percent more likely, and Black workers 50 percent more likely, than would be expected by their overall share of the population to report not working due to COVID-19 illness or caregiving. Further, an estimated 8.8 million workers nationwide—disproportionately Latino and Black—missed work due to COVID-19 illness or caregiving at the height of the Omicron wave. Six in ten reported losing household income, and one in five noted that their household sometimes or often did not have enough to eat. Extending paid sick days would help the most vulnerable workers survive and help families maintain economic stability."

Furthermore, they argue that "Rising cost of living expenses present another concern, as a growing number of workers just cannot afford to lose even one day's pay. It is estimated that for those without earned sick leave benefits, missing three and a half days of work equates to losing an amount of money equivalent to an entire family's monthly grocery budget. Few low-income families are able to maintain savings sufficient to withstand such a direct hit. For many of these families, SB 616 will, by adding four additional days to the three currently mandated, mean the difference between putting food on the table and kids going hungry."

Lastly, proponents argue that, "When parents are unable to take time off to care for their children, they are also twice as likely to send a sick child to school, putting other students and teachers' health at risk. Parents unable to take such leave are five times as likely to resort to taking a child or family member to an emergency room for medical care, further inflating health care costs for everyone. Guaranteeing at least seven days of paid sick leave will help ensure workers are less likely to report to work while sick and increase the likelihood that

they will seek the medical care they need, speeding their recovery and cutting down on unnecessary emergency room visits."

6. Opponent Arguments:

A coalition of employer organizations, including the California Chamber of Commerce, are opposed to the measure arguing that, "While many in the state are beginning to move on from the COVID-19 pandemic, small businesses are not so lucky. Just last week, the San Francisco Chronicle ran an article explaining that many small businesses are "in survival mode" as they reel from the financial impacts of COVID-19 and rising inflation. This is especially true for businesses with small profit margins like food, retail, and specialty stores that cannot compete with prices offered by larger businesses. Hopes that business may pick up after COVID-19 have not materialized for many and these business owners had had to raise prices, cut jobs, or shut down."

The coalition additionally argues that, "While one more paid benefit may not seem significant in isolation, this mandate must be viewed in the context of all of California's other leaves and paid benefits, especially the special paid leaves required from 2020 through 2023 due to COVID. Despite the economic struggles that businesses have faced recently, the number of overlapping leaves has grown over the last few years and continues to grow. Some are paid and some are unpaid, but even unpaid leaves increase costs on employers because the employer must either shift the work to other existing employees on short notice, which leads to overtime pay, or be understaffed."

Opponents include a list of various leaves available to employees and argue that "This list also does not include local ordinances that have broader paid and unpaid leave requirements than those listed above. These leaves add significantly to the cumulative financial impact of the cost of doing business in California. For example, unscheduled absenteeism costs roughly $3,600 per year for each hourly employee in this state. (*See* "The Causes and Costs of Absenteeism in The Workplace," a publication of workforce solution company Circadian.) The continued mandates placed on California employers to provide employees with numerous rights to protected leaves of absences and other benefits is simply overwhelming."

Furthermore, the coalition notes that SB 616 does not address existing problems with the Act arguing that since enactment, a number of issues have arisen regarding implementation and how it is used for non-statutory reasons. They argue:

- *Local ordinances:* The proliferation of local ordinances creates inconsistency and confusion for California employers that operate in multiple jurisdictions. There are currently nine local ordinances in addition to the Act, which have different rules regarding accrual, caps and use, as well as employees covered, amount of leave and permitted use of documentation.
- *Documentation:* Employers have discovered employees using paid sick leave for non-statutory reasons. It often means that employees subsequently come in sick because they have used their sick days for other reasons. Employers often also see increases in use of the leave around holidays or near the end of seasonal employment, leading to exacerbated labor shortage during those time periods.

- *Rate of Pay:* Currently, paid sick leave must be paid at the employee's "regular rate" of pay. With a lot of uncertainty surrounding this calculation and what should be included, this requirement can become very confusing for employers.
- *Enforcement:* While the Act was moving through the legislature, it was the understanding of the employer community that PAGA penalties were not recoverable under the final version of the bill. It was only last month that a California Court of Appeals upended that interpretation, holding that PAGA does apply to paid sick leave claims. This opens up businesses of every size to threats of litigation for significant penalties over any dispute regarding paid sick leave.

Lastly, the coalition argues that "given the cumulative costs and existing protected leaves of absence with which California employers are already struggling to comply, California should refrain from mandating additional sick days and instead should provide incentives to employers to offer more expansive sick day benefits by reducing costs in other areas."

7. Authors Amendments in Committee:

The author wishes to amend the bill in Committee today to address additional concerns.

CBA Covered Employees

The existing Healthy Workplaces, Healthy Families Act of 2014 (Act or paid sick leave law), excludes specified employees from its provisions, including an employee covered by a valid collective bargaining agreement (CBA employees) meeting specified criteria, as described, including that the CBA 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. Existing paid sick leave law also imposes procedural requirements on employers regarding the use of paid sick days, including by prohibiting retaliation for using paid sick days, by prohibiting the imposition of certain conditions on the use of paid sick days, and by requiring the use of paid sick days for specified health care purposes.

The definition of "employee" under the Act currently excludes CBA covered employees from *all* paid sick leave provisions. *The author wishes to amend the bill in committee today to extend the above described procedural (not the amount or accrual provisions, those would continue to be bargained through their CBA) and anti-retaliation provisions and requirements on the use of paid sick days to CBA employees.* According to the sponsors, these amendments "better protect workers covered by the general industry CBA exemption from similar retaliation or discipline when claiming sick leave, giving these workers the same protected access to leave guaranteed to all other covered workers under current law."

Railroad Employees

Existing federal law:

1) Under the Railroad Unemployment Insurance Act of 1938, which provides two kinds of benefits for qualified railroaders: unemployment benefits and sickness benefits for those who are unable to work because of sickness or injury. Sickness benefits are also payable to female rail workers for periods of time when they are unable to work because of health conditions related to pregnancy, miscarriage, or childbirth. (RUIA, 45 USC. Ch. 11)

2) Under RUIA, no employee shall have or assert any right to unemployment benefits under an unemployment compensation law of any State, as specified, or to sickness benefits under a sickness law of any State with respect to sickness periods occurring after June 30, 1947, based upon employment, as defined. (RUIA, 45 USC. Ch. 11 §363(b))

3) In enacting RUIA, Congress found and declared that by virtue of the enactment of these provisions, the application of State unemployment compensation laws after June 30, 1939 or of State sickness laws after June 30, 1947, to such employment, as specified, would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce. (RUIA, 45 USC. Ch. 11 §363(b))

After California's paid sick leave law went into effect in 2014, six railroad companies sued the California Labor Commissioner. They alleged that the California act was invalid as applied to their employees because it was preempted by RUIA and the Employee Retirement Income Security Act (ERISA). Mainly, the railroads say federal preemption — the legal concept holding that when federal laws are in conflict with state laws, one must defer to the federal statutes — applies here. The railroad companies sought to prohibit the Labor Commissioner from enforcing the act against them. California attorneys argued that the RUIA does not actually cover issues like short-term paid sick leave and tried to draw a distinction in benefits offered.

Staff notes that the sickness benefits under RUIA require railroad workers to satisfy a one-week waiting period requirement, no benefits are payable for the first 7 days of sickness in the employee's first claim in a period of continuing sickness. RUIA appears to fill a need for longer-term paid sickness for absences longer than 7 days and not meant to provide people with unexpected days off for short-term illnesses.

Though applied differently and under varying circumstances, the cross-section of these two laws for railroad workers became the focal point of the lawsuit. The district court ruled in favor of the railroad companies, concluding that RUIA partially preempted California's paid sick leave law and that the remainder of the act was invalid because it unduly burdened interstate commerce. The Labor Commissioner appealed. The 9th Circuit agreed with the underlying court and ruled that, for railroad employees, the *RUIA preempts California's paid sick leave law*.

According to the sponsors of SB 616, "Currently, railroad employees may only take job-protected leave with advance notice, but even when seeking that advance notice, such requests are frequently denied. The end result is leave that's totally irrelevant to sudden illnesses and often inaccessible anyway. Thus, when railroad workers are struck by sudden illness and try to take even any time off as unpaid leave, they are penalized, risking discipline or eventual termination. However, railroad union attorneys familiar with the relevant federal law (the Railroad Unemployment Insurance Act, or RUIA) believe that the ruling at issue would still allow states to prohibit retaliation against workers for using *unpaid* leave when too sick to work. We are therefore simply trying to ensure that railroad workers are, at a minimum, able to avoid discipline or termination when unpaid sick leave is necessary."

*The author wishes to amend the bill in committee today to address railroad employee sick days by establishing an **unpaid sick leave policy** for railroad employees. The amendments would exclude railroad carrier employers and their employees from the paid sick leave*

provisions of existing law, and would instead require these railroad employers to allow their railroad employees to take at least 7 days of unpaid sick leave annually.

Amendments to Labor Code 245.5

(a) "Employee" does not include the following:
(1) ~~An~~ ***Except as provided in subdivision (d) of Section 246.5, an*** employee covered by a valid collective bargaining agreement 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.
…
(5) An employee as defined in Section 351(d) of Title 45 of the United States Code.

(b) ***(1)*** "Employer" means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.
(2) "Employer" does not include any employer described in Section 351(a) of Title 45 of the United States Code.

Amendments to Labor Code Section 246.5

(d) Notwithstanding subdivision (a) of Section 245.5, for purposes of this section, "employee" shall include an employee described in paragraph (1) of subdivision (a) of Section 245.5.

Amendments adding Article 1.6. Unpaid Sick Leave for Railroad Employees

SEC.4. Article 1.6 (commencing with Section 249.5) is added to Chapter 1 of Part 1 of Division 2 of the Labor Code, to read:

Article 1.6. Unpaid Sick Leave for Railroad Employees

249.5. For purposes of this article, the following definitions apply:

(a) "Railroad employee" has the same meaning as defined in Section 351(d) of Title 45 of the United States Code.
(b) "Railroad employer" has the same meaning as defined in Section 351(a) of Title 45 of the United States Code.

249.5.01. (a) Railroad employers shall allow their railroad employees to take at least seven days of unpaid sick leave annually.
(b) This section shall not be construed to supersede any labor agreement between the railroad employer and employee that exists as of January 1, 2024, if the agreement provides for any number of days of paid sick days annually, for the use of at least seven days of unpaid sick leave annually, and that the use of the paid sick days or unpaid sick leave shall not result in any points, demerits, or other disciplinary citations under any applicable attendance policy. For purposes of this subdivision, "labor agreement" includes any related side letter or local carrier agreement.

8. Prior and Related Legislation:

SB 881 (Alvarado-Gil, 2023) proposes to increase the paid sick leave provisions to provide employees with no less than 40 hours or five days of leave by the 200th calendar day of employment. Additionally, the bill 1) would authorize an employer to request that an employee provide a written statement indicating the employee was absent for reasons specified in paid sick leave provisions; 2) when using leave for three or more consecutive days, authorizes employers to request that employees provide reasonable written documentation demonstrating that the absence was for reasons specified in paid sick leave provisions; 3) prohibits a county, city or municipality from adopting any ordinance or law providing leave in excess of what is required by this bill; 4) requires paid sick leave to be compensated at the employee's base rate of pay instead of the employee's regular rate of pay, as specified; and 5) provides that paid sick leave provisions shall not be enforced by the Private Attorneys General Act (PAGA). SB 881 is pending before this Committee at today's hearing.

AB 152 (Committee on Budget, Chapter 736, Statutes of 2022), discussed above, 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), discussed above, extended the COVID-19 Supplemental Paid Sick Leave provisions until September 30, 2022.

SB 95 (Skinner, Chapter 13, Statutes of 2021), discussed above, 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), discussed above, 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 for specified workers.

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 Conference of Machinists (Co-Sponsor)
California Labor Federation (Co-Sponsor)

California Teamsters Public Affairs Council (Co-Sponsor)
SEIU California (Co-Sponsor)
United Food and Commercial Workers, Western States Council (Co-Sponsor)
A Better Balance
AARP California
AFSCME California
Alameda Labor Council
American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
American Medical Women's Association
Asian Americans Advancing Justice - Asian Law Caucus
Asian Law Alliance
Breastfeedla
Bronski, P.C.
California Alliance for Retired Americans
California Attorneys for Criminal Justice
California Breastfeeding Coalition
California Catholic Conference
California Child Care Resource and Referral Network
California Coalition on Family Caregiving
California Commission on Aging
California Conference Board of The Amalgamated Transit Union
California Employment Lawyers Association
California Environmental Voters (Formerly CLCV)
California Food and Farming Network
California Immigrant Policy Center
California Institute for Rural Studies
California Nurse-Midwives Association
California Nurses Association
California Pan-ethnic Health Network
California Partnership to End Domestic Violence
California Professional Firefighters
California Rural Legal Assistance Foundation
California State Council of Service Employees International Union (SEIU California)
California State Legislative Board, Sheet Metal, Air, Rail and Transportation Workers - Transportation Division (SMART-TD)
California Teachers Association
California WIC Association
California Women's Law Center
California Work & Family Coalition
Californians for Pesticide Reform
California Teachers Association
Caring Across Generations
Center for Law and Social Policy (CLASP)
Center for Workers' Rights
Central California Environmental Justice Network
Central Coast Alliance United for A Sustainable Economy
Central Coast Labor Council
Centro Legal De LA Raza
Chinese Progressive Association
Citizens for Choice

Clue (Clergy and Laity United for Economic Justice)
Colage
Community Services Unlimited INC.
Contra Costa Central Labor Council
Disability Rights California
East Bay Alliance for A Sustainable Economy (EBASE)
Electric Universe
Elevator Constructors Local 8
Engineers and Scientists of California, IFPTE Local 20, AFL-CIO
Equal Rights Advocates
Evolve California
Family Caregiver Alliance (FCA)
Family Values @ Work
Family Violence Appellate Project
Fight for $15 and A Union
Food Empowerment Project
Friends Committee on Legislation of California
Futures Without Violence
Grace - End Child Poverty in California
Housing Rights Committee of San Francisco
Human Impact Partners
IFPTE Local 21
Indivisible CA StateStrong
Inland Empire Breastfeeding Coalition
InnerCity Struggle
Instituto De Educacion Popular Del Sur De California (IDEPSCA)
Ironworkers Local 433
Jewish Center for Justice
JTMW LLC
Justice At Last
Justice in Aging
Korean Community Center of The East Bay
LA Best Babies Network
Labor Occupational Health Program
Latinas Contra Cancer
Legal Aid At Work
Los Angeles Alliance for A New Economy
Los Angeles County Federation of Labor, AFL-CIO
MACLA/Movimiento De Arte Y Cultura Latino Americana
Main Street Alliance
Maternal and Child Health Access
Mixteco Indigena Community Organizing Project
Mujeres Unidas Y Activas
NARAL Pro-choice California
National Association of Social Workers, California Chapter
National Council of Jewish Women Los Angeles
National Council of Jewish Women-California
National Domestic Workers Alliance
National Employment Law Project
National Partnership for Women & Families

North Bay Jobs With Justice
North Bay Labor Council
Northern Ca. District Council of The International Longshore and Warehouse Union
Nursing Mothers Counsel
One Fair Wage
Orange County Equality Coalition
Our Family Coalition
Parent Voices California
Pesticide Action Network
Pesticide Action Network North America
Physicians for Social Responsibility - Los Angeles
PowerSwitch Action
Prevention Institute
Public Advocates INC.
Public Counsel
Rape Counseling Services of Fresno
Rising Communities (formerly Community Health Councils)
Sacramento Central Labor Council, AFL-CIO
San Diego County Breastfeeding Coalition
San Mateo County Central Labor Council
Santa Clara County Wage Theft Coalition
SJSU Human Rights Institute
SoCalCOSH
Street Level Health Project
Techequity Collaborative
Thai Community Development Center
The Restaurant Opportunity Center of The Bay
The United Food and Commercial Workers Western States Council
UAW Local 230, Region 6 - Western States
UDW/AFSCME Local 3930
UNITE-HERE, AFL-CIO
United Steelworkers District 12
Utility Workers Union of America
Voices for Progress Education Fund
Warehouse Worker Resource Center
Watsonville Law Center
Women For: Orange County
Women Organized to Make Abuse Non-existent (WOMAN Inc.)
Women's Foundation California
Working Partnerships USA
Worksafe

OPPOSITION

Brea Chamber of Commerce
California Association for Health Services At Home
California Attractions and Parks Association
California Business Properties Association
California Chamber of Commerce
California Credit Union League

California Farm Bureau
California Grocers Association
California Hotel & Lodging Association
California Landscape Contractor's Association
California Landscape Contractors Association
California League of Food Producers
California Manufactures & Technology Association
California Restaurant Association
California Retailers Association
California Trucking Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Coalition of California Chambers – Orange County
Construction Employers' Association
Corona Chamber of Commerce
Family Winemakers of California
Fontana Chamber of Commerce
Fresno Chamber of Commerce
Gilroy Chamber of Commerce
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Hollywood Chamber of Commerce
Housing Contractors of California
LA Canada Flintridge Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Federation of Independent Business
Oceanside Chamber of Commerce
Official Police Garage Association of Los Angeles
Orange County Business Council
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Chamber of Commerce
Roseville Area Chamber of Commerce
San Juan Capistrano Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santee Chamber of Commerce
Simi Valley Chamber of Commerce
South County Chambers of Commerce
Southwest California Legislative Council
Templeton Chamber of Commerce
Torrance Area Chamber of Commerce
Tri County Chamber Alliance
Tulare Chamber of Commerce
Vacaville Chamber of Commerce
Vista Chamber of Commerce
Western Growers Association
Yorba Linda Chamber of Commerce

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

Bill No:	SB 626	**Hearing Date:**	April 19, 2023
Author:	Rubio		
Version:	February 16, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Smoking tobacco in the workplace: transient lodging establishments

KEY ISSUE

Should the Legislature make all guestroom accommodations in a hotel, motel, or similar transient lodging establishment a smoke free workplace to protect workers from secondhand smoke exposure?

ANALYSIS

Existing law:

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

2) Establishes "smoke-free laws," with some exceptions, creating a uniform statewide standard that restricts and prohibits the smoking of tobacco products in enclosed places of employment in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. (Labor Code §6404.5)

3) Prohibits an employer or owner-operator of an owner-operated business from knowingly or intentionally permitting, and a person shall not engage in, the smoking of tobacco products at a *place of employment* or in an enclosed space. (Labor Code §6404.5)

4) Defines "enclosed space" to include covered parking lots, lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building, as specified. (Labor Code §6404.5)

5) Provides that "place of employment" does not include (and therefore authorizes the smoking of tobacco products in) any of the following:
    a. **Twenty percent of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment.**
    b. Retail or wholesale tobacco shops and private smokers' lounges, as defined.

c. Cabs of motortrucks, as defined, or truck tractors, as defined, if nonsmoking employees are not present.
d. Theatrical production sites, if smoking is an integral part of the story in the theatrical production.
e. Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.
f. Private residences, except for private residences licensed as family day care homes where smoking is prohibited, per existing law.
g. Patient smoking areas in long-term health care facilities, as defined. (Labor Code §6404.5)

This bill:

1) Eliminates the exemption in existing law allowing smoking in 20 percent of the guestroom accommodations in a hotel, motel, or similar transient lodging establishments thereby making all such establishments smoke free.

2) Makes findings and declarations regarding the dangers of secondhand smoke exposure citing a 2017 study published in the medical journal Tobacco Induced Diseases which found that housekeeping staff and other workers at hotels and motels without a complete indoor smoking ban are exposed to secondhand smoke, therefore, the bill intends to prohibit the smoking of tobacco products in all (100 percent of) guestroom accommodations in a hotel, motel, or similar transient lodging establishment.

COMMENTS

1. Background: Smoking in the Workplace

For years California had been the leader in the effort to fight the smoking epidemic and was often referred to as "America's Non-Smoking Section," a reputation that came about when California became the first state in the country to ban smoking in nearly every workplace; effectively banning smoking in indoor public spaces. California's workplace smoking prohibition was enacted by AB 13 (Friedman Chapter 310, Statutes of 1994), Restaurants were included in the ban, and bars, taverns, and gaming clubs were phased in by 1998. The law covers all "enclosed" places of employment; therefore, patio or outdoor dining facilities may allow smoking.

While California's law is restrictive, a number of exemptions are allowed which have prevented our state from being considered a 100% smoke-free state by the CDC, 28 other states are currently considered 100% indoor workplace smoke-free. Many local jurisdictions have closed the loop on these exemptions through the enactment of local ordinances. In addition, gaming facilities not under the jurisdiction of the State (tribal casinos) are not required to comply, although some have done so voluntarily for the health of their employees and patrons.

ABX2 7 (Stone, Chapter 4, Statutes of 2015-16 Second Extraordinary Session) removed many (but not all) exemptions in existing law that allowed tobacco smoking in certain indoor workplaces and expanded the prohibition on smoking in a place of employment to include owner-operated

businesses. As noted above under existing law, smoking is still authorized in certain places of employment, including, 20% of hotel, motel or similar transient lodging establishments.

2. Need for this bill?

According to the author, "California led the nation when it adopted its initial ban on smoking in indoor workplaces and indoor public spaces, codified in Section 6404.5 of the Labor Code. Unfortunately, this ban contained an exception for hotels and motels that still exists today, allowing smoking in up to twenty percent off all hotel and motel guest rooms. The dangers of secondhand smoke exposure are well known – and a recent study by San Diego State University found hotels and motels with designated smoking rooms also pose third hand smoke exposure dangers to people, even if they stayed in non-smoking rooms. Several states and over 250 local governments have successfully enacted laws prohibiting smoking in 100 percent of guest rooms. It is time for California to do the same.

SB 626 will protect guests and employees of hotels and motels from the dangers of secondhand smoke exposure by prohibiting the smoking of tobacco products within all hotel and motel rooms in California."

3. Proponent Arguments:

The American Lung Association is in support and writes, "According to the U.S. Surgeon General, there is no risk-free level of secondhand smoke exposure. This includes encounters in outdoor areas. In 2006, the California Air Resources Board also classified secondhand smoke as a "Toxic Air Contaminant" in the same category as asbestos, cyanide, and arsenic – all of which can lead to serious illness and death. Exposure can be especially harmful to vulnerable populations, such as those with asthma, pregnant women, and those with chronic illnesses. The state of California has long recognized the effect of secondhand smoke and has taken major steps to reduce exposure: it is time to finally make all hotels in the state 100% smokefree."

According to the American Cancer Society Cancer Action Network, "Senate Bill 626 will expand California's smoking protections by closing loopholes in California's smokefree workplace law that still allows hotels and motels to permit smoking in up to twenty percent of their guest rooms. This loophole is outdated with several states and hundreds of local governments having already enacted law to prohibit smoking in 100 percent of hotel and motel rooms. The health and wellbeing of hotel and motel guests and employees demands that all hotel guestrooms in California be smokefree."

4. Opponent Arguments:

None received

5. Prior Legislation:

ABX2 7 (Stone, Chapter) removed many (but not all) exemptions in existing law that allowed tobacco smoking in certain indoor workplaces and expands the prohibition on smoking in a place of employment to include owner-operated businesses.

SB 575 (DeSaulnier, 2011), and AB 1467 (DeSaulnier, 2007), were almost identical to this bill and would have eliminated most of the exemptions in code which permit smoking in certain work environments. *SB 575 died in Assembly Governmental Organization Committee, and, AB 1467 was vetoed by the Governor.*

AB 217 (Carter, 2011), would have restricted smoking in long-term health care facilities by only allowing smoking in a designated patient smoking area that is outdoors, as specified. *AB 217 was vetoed by the Governor.*

AB 2067 (Oropeza, Chapter 736, Statutes of 2006), prohibits smoking in covered parking lots and adds to the definition of "enclosed spaces" lobbies, lounges, waiting areas, elevators, stairwells and restrooms that are a structural part of the building, thereby prohibiting smoking in those areas.

AB 846 (Vargas, Chapter 342, Statutes of 2003), prohibits smoking inside a public building and within 20 feet of a main exit, entrance, or operable window of a public building.

SUPPORT

American Cancer Society Cancer Action Network INC.
American Heart Association
American Lung Association of California
California Medical 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:	SB 848	**Hearing Date:**	April 19, 2023
Author:	Rubio		
Version:	March 21, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Employment: leave for loss related to reproduction or adoption

KEY ISSUE

Should the Legislature require employers, of five or more employees, to provide eligible employees with up to five days of reproductive loss leave following a miscarriage, unsuccessful assisted reproduction, failed adoption, failed surrogacy, diagnosis negatively impacting pregnancy, diagnosis negatively impacting fertility, or stillbirth?

ANALYSIS

Existing law:

1) Makes it an unlawful employment practice, under the California Family Rights Act (CFRA), for an employer to refuse to grant a request by a qualified employee to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Defines "family care and medical leave" for this provision to mean taking leave to care for a new child; to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner who has a serious health condition; or to take leave because of the employee's own serious health condition, as specified. (Gov. Code § 12945.2.)

2) Makes it an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:
    a. An individual's exercise of the right to family care and medical leave.
    b. An individual's giving information or testimony as to the individual's own family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.
    (Gov. Code § 12945.2.)

3) Under the Healthy Workplaces, Healthy Families Act of 2014, grants eligible employees, as specified, the right to paid sick days of up to 24 hours or three days in one year. Employees covered by qualifying collective bargaining agreements, In-Home Supportive Services providers, and certain employees of air carriers are not covered by this law. (Labor Code §245-249)

4) Protects employee rights to use accrued sick days by specifying that an employer shall not deny 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 accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or

prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by law. (Labor Code §246.5)

5) Under bereavement leave provisions, makes it an unlawful employment practice for an employer to refuse to grant a request by any employee to take up to five days of bereavement leave upon the death of specified family members. The leave need not be consecutive and must be completed within three months of the date of the death of the family member. The bereavement leave shall be taken pursuant to any existing bereavement leave policy of the employer and, if none exists, the bereavement leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.
(Government Code §12945.7)

6) Makes it unlawful employment practice for an employer to refuse to hire, or to discharge, demote, fine, suspend, expel, or discriminate against, an individual because of either of the following:
   a. An individual's exercise of the right to bereavement leave provided.
   b. An individual's giving information or testimony as to their own bereavement leave, or another person's bereavement leave, in an inquiry or proceeding related to rights guaranteed under this section.
   (Government Code §12945.7)

7) Under Pregnancy Disability Leave, makes it an unlawful employment practice for an employer to refuse to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work, as specified. The employee shall be entitled to utilize any accrued vacation leave during this period of time.
(Government Code §12945)

This bill:

1) Provides, among others, the following definitions:
   a. "Assisted reproduction" means a method of achieving pregnancy through artificial insemination or embryo transfer, including gamete and embryo donation.
   b. "Diagnosis negatively impacting fertility" means a diagnosis that negatively impacts the likelihood of biological conception of a child for an individual, the individual's current spouse or domestic partner, or any other individual who would have been a parent of a child born of the individual who received the diagnosis.
   c. "Diagnosis negatively impacting pregnancy" means a diagnosis that negatively impacts the pregnancy of an individual, an individual's current spouse or domestic partner, or any person who would have been a parent of a child born as a result of the pregnancy.
   d. "Employee" means a person employed by the employer for at least 30 days prior to the commencement of the leave.
   e. "Employer" means either of the following:
      i. A person who employs five or more persons, as specified.
      ii. The state and any political or civil subdivision of the state, including, but not limited to, cities and counties.

f. "Failed adoption" means a failed adoption match or an adoption that is not finalized because it is contested by another party. This event applies to a person who would have been a parent of the adoptee if the adoption had been completed.
g. "Failed surrogacy" means the unsuccessful completion of a surrogacy or establishment of a surrogacy agreement. This event applies to a person who would have been a parent of a child born as a result of the surrogacy.
h. "Miscarriage" means a miscarriage by a person, by the person's current spouse or domestic partner, or by another individual if the person would have been a parent of a child born as a result of the pregnancy.
i. "Stillbirth" means a stillbirth resulting from a person's pregnancy, the pregnancy of a person's current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy that ended in stillbirth.
j. "Unsuccessful assisted reproduction" means an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure. This event applies to the individual, the individual's current spouse or domestic partner, or another individual, if that individual would have been a parent of a child born as a result of the pregnancy.

2) Makes it an unlawful employment practice for an employer to refuse to grant a request by any employee to take ***up to five days of reproductive loss leave*** following a miscarriage, unsuccessful assisted reproduction, failed adoption, failed surrogacy, diagnosis negatively impacting pregnancy, diagnosis negatively impacting fertility, or stillbirth.

3) Requires the employer to allow the days an employee takes for reproductive loss leave to be nonconsecutive and to be completed within three months of the event entitling the employee to that leave.

4) Provides that reproductive loss leave shall be taken pursuant to any existing applicable leave policy of the employer and, if none exists, ***reproductive loss leave may be unpaid***, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

5) Makes it an unlawful employment practice for an employer to refuse to hire, or to discharge, demote, fine, suspend, expel, or discriminate against, an individual because of either of the following:

   a. An individual's exercise of the right to reproductive loss leave.
   b. An individual's giving information or testimony as to their own reproductive loss leave, or another person's reproductive loss leave, in an inquiry or proceeding related to rights guaranteed under this section.

6) Makes it an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or attempt to exercise, any right provided under these provisions.

7) Requires the employer to maintain the confidentiality of any employee requesting leave under these provisions. Any information provided to the employer shall be maintained as confidential and shall not be disclosed except to internal personnel or counsel, as necessary, or as required by law.

8) Provides that an employee's right to reproductive loss leave shall be construed as a separate and distinct right from any right under this part.

COMMENTS

1. Background: Existing Medical Leaves

Federal and California law recognize that there are times in life when an employee must miss work in order to attend to the health and welfare of a family member. California employees may be entitled to several medical leaves depending on the size of their employer and the reason for the leave. Of particular note, the California Family Rights Act (CFRA) allows employees, of employers with 5 or more employees, to take up to 12 weeks of family leave to care for a newborn child or to care for family members suffering from a serious medical condition. In addition, California's Pregnancy Disability Leave (PDL), requires covered employers to provide employees disabled by pregnancy, childbirth, or a related medical condition with unpaid, job-protected leave and/or accommodations. PDL is available when an employee is actually disabled. This includes time off needed for prenatal or postnatal care, severe morning sickness, doctor-ordered bed rest, childbirth, recovery from childbirth, ***loss or end of pregnancy***, or any other related medical condition.

Existing law also requires covered employers to grant eligible employees' request for up to 5 days of bereavement leave upon the death of certain family members. Although all these leaves exist, and loss of a child may be somewhat covered by one leave, nothing specifically addresses the complexities and difficulties that a worker undergoing reproductive assistance endures.

2. Need for this bill?

According to the author, "Reproductive loss is one of the most traumatizing events a person can experience, and unfortunately, it is far too common. Approximately half of all pregnancies end in miscarriage, and up to 15 percent of known pregnancies end in the traumatizing event of miscarriage or stillbirth.[1] Existing family leave programs don't fully apply to parents experiencing reproductive loss. Bereavement Leave does not include instances of stillbirth, miscarriage, fertility, or adoption loss events suffered by millions of families. Additionally, PDL only applies to the parent physically carrying a child to term and does not provide leave time to the other parent.

Several states have recently passed legislation to provide leave for reproductive loss events, including Utah and Illinois in 2022. Local governments such as Pittsburgh, Pennsylvania and Boston, Massachusetts also provide their employees with leave for pregnancy loss. Additionally, many private employers currently provide leave for reproductive loss, including Liberty Mutual Insurance and Altria."

SB 848 would protect the jobs of Californians who experience the trauma of a miscarriage, failed adoption, or other reproductive loss event by providing them with up to 5 days of job-protected leave. SB 848 would require the leave be completed within three months of the

[1] https://www.marchofdimes.org/find-support/topics/miscarriage-loss-grief/miscarriage

reproductive loss and would prohibit an employer from discriminating against or firing an employee for exercising their right to Reproductive Loss Leave.

3. Proponent Arguments:

According to the sponsors, Forever Footprints and Junior Leagues of California State Public Affairs Committee, "Pregnancy and fertility loss is common and is suffered by millions of women across the state, with approximately half of all pregnancies ending in miscarriage. Existing family leave programs are limited in scope and access and do not fully apply to all persons impacted. SB 848 would ensure employees are allowed to take up to five days of reproductive loss leave following a miscarriage, unsuccessful assisted reproduction, failed adoption, failed surrogacy, diagnosis negatively impacting pregnancy, diagnosis negatively impacting fertility, or stillbirth. This would additionally apply to the individual's spouse or domestic partner, or another co-parenting individual, if that individual would have been a parent of a child had they been successful."

4. Opponent Arguments:

The California Chamber of Commerce is opposed unless amended arguing that this bill, "seeks to create a *second* bereavement leave statute specific to events concerning reproduction and fertility. This new leave right is separate from any other leave provided for in current law. We are understanding of the emotional toll that these events can take on an employee, however, we have concerns about the breadth of the bill. While one more leave may not seem burdensome in isolation, it must be viewed in the context of the more than 20 leaves that currently exist or were mandated during the last few years as a result of the pandemic. We are therefore requesting the following amendments:

- *Narrow which events can trigger reproductive loss leave*: Some of the proposed events are quite broad, such as a diagnosis that negatively impacts fertility. There are a multitude of conditions that could be viewed as negatively impacting fertility, even if ultimately there is little to no impact. Some of the terminology is also vague, such as a "failed adoption match". It is unclear if this includes someone who applied for adoption and did not match or only if there was an established match that falls through.
- *Implement a cap on the total amount of leave that can be taken within a 12-month period*: Presently, there is no cap on the amount of time that can be taken under SB 848. Some of the procedures identified as qualifying events can occur monthly or every few months, which would result in a large quantity of leave. Employers always have the ability to voluntarily provide leave in these instances, but an uncapped mandate is difficult to accommodate, especially for small businesses."

5. Staff Comment:

As noted above, existing law provides employees access to leave for various reasons. These leaves are available to address an employee's, or a family member or partner of the employee's, illness or injuries. However, none of those leaves address the receipt of a diagnosis as a reason for which a worker can access the leave. This bill makes it an unlawful employment practice for an employer to refuse to grant a request by any employee to take up to five days of reproductive loss leave following a miscarriage, unsuccessful assisted reproduction, failed adoption, failed surrogacy, ***diagnosis negatively impacting pregnancy,***

diagnosis negatively impacting fertility, or stillbirth. These are undoubtedly difficult diagnoses to receive and an employee deserves the right to take some time to grieve the diagnosis and the implications of it. *However, the committee may wish to consider the appropriateness of including a diagnosis as a reason for which a worker can take this leave considering that the receipt diagnoses of other illnesses are not covered by other existing leaves.*

6. Double Referral:

This bill has been double referred and should it pass our hearing today, will be sent to Senate Judiciary Committee for a hearing.

7. Prior/Related Legislation:

AB 1949 (Low, Chapter 767, Statutes of 2022) provides specified California workers with up to five days of job-protected leave from work to grieve and to attend to logistical matters in the event of the death of a close family member, as defined.

SUPPORT

Forever Footprints (Co- Sponsor)
Junior Leagues of California State Public Affairs Committee (CALSPAC) (Co-Sponsor)
American Society for Reproductive Medicine
California Nurses Association
California Teachers Association
Consumer Attorneys of California
Ella Baker Center for Human Rights
Initiate Justice
LA Best Babies Network
Legal Aid At Work
National Council of Jewish Women Los Angeles
Return to Zero: HOPE
STAR Legacy Foundation

OPPOSITION

California Chamber of Commerce

-- END --

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

Bill No:	SB 640	**Hearing Date:**	April 19, 2023
Author:	Portantino		
Version:	February 16, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: California State University: food service contracts and hotel development projects

KEY ISSUE

Should the state prohibit the Trustees of the California State University (CSU) from entering into a food service contract or undertaking a hotel development project unless the counterparty and the food service employer or hotel employer is party to a labor peace agreement with a labor organization?

ANALYSIS

Existing law:

1) Governs collective bargaining in the private sector under the federal National Relations Labor Relations Act (NLRA) but leaves to the states the regulation of collective bargaining in their respective public sectors. (29 USC 151-169)

2) Provides that the NLRA contains no express preemption provision; however, two categories of state action are implicitly preempted: (1) laws that regulate conduct that is either protected or prohibited by NLRA (Garmon preemption), and (2) laws that regulate in an area Congress intended to leave unregulated or controlled by free play of economic forces (Machinists preemption). (National Labor Relations Act, § 1 et seq., 29 U.S.C.A. § 151 et seq.)

3) Does not, under the NLRA, "bar an employer from communicating the employers views on unions—even anti-union views—to his employees, but he cannot threaten employees with reprisals or promise them benefits in relation to unionization." *NLRB v. Garry Mfg. Co.,* 630 F.2d 934, 938 (3d Cir. 1980) (citing *NLRB v. Gissel Packing Co.,* 395 U.S. 575 (1969)); 29 U.S.C. § 158(c).

4) Requires any collective bargaining agreement between an employer and a labor organization to be enforceable at law or in equity, and provides that a breach of such collective bargaining agreement by any party thereto is subject to the same remedies, including injunctive relief, as are available on other contracts in the courts of this State. (Labor Code § 1126)

5) Provides that while the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees generally have no collective bargaining rights absent specific statutory authority establishing those rights and are not subject to the NLRA. (29 USC 152)

6) 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 Higher Education Employer-Employee Relations Act (HEERA) which provides a statutory framework to regulate labor relations between UC, the California State University (CSU), and the UC Hastings College of Law (Hastings) and their respective employees. (Government Code (GC) § 3500 et seq.)

7) Prohibits a public employer from deterring or discouraging public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization. (GC § 3550)

8) Prohibits a California higher education employer from imposing or threatening to impose reprisals on employees, discriminating or threatening to discriminate against employees, or otherwise interfering with, restraining, or coercing employees because of their exercise of rights guaranteed by HEERA. Nor may the employer dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. (GC § 3571)

9) Provides that the expression of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute, or be evidence of, an unfair labor practice under any provision of HEERA, unless such expression contains a threat of reprisal, force, or promise of benefit; provided, however, that the employer shall not express a preference for one employee organization over another employee organization. (GC § 3575.5)

10) Authorizes CSU's Trustees to enter into contracts, as specified, for the performance of acts or the furnishing of services, facilities, materials, goods, supplies, or equipment. (Education Code (ED) § 89036)

11) Requires the Trustees to prescribe policies and procedures for the acquisition of services, facilities, materials, goods, supplies, or equipment; and for the procedures to include competitive bids or proposals, as specified. (ED § 89036)

This bill:

1) Requires the Trustees to make as a condition precedent to entering into each food service contract or hotel development project, that the counterparty and each food service employer or hotel employer be party to a labor peace agreement with unions representing or seeking to represent the corresponding food service or hotel employees, as specified.

2) Specifies that any food service contract or hotel development project in which the CSU or a CSU auxiliary organization has a proprietary interest and that is performed pursuant to a contract entered into or awarded by an auxiliary organization is subject to the requirement to have a labor peace agreement.

3) Defines "food service contract" to mean a contract with the Trustees or the CSU for a cafeteria or food and beverage outlet on or serving a CSU campus.

4) Defines "food service employer" to mean a person who employs employees performing work at a food service venue under a food service contract.

5) Defines "hotel" to mean any hotel, motel, bed and breakfast inn, or other similar commercial transient lodging establishment, and shall include any contracted, leased, or sublet premises connected to or operated in conjunction with the hotel's purpose.

6) Defines "hotel development project" to mean a real estate development project that includes or is planned to include one or more hotels and in which the Trustees or the CSU have a proprietary interest.

7) Defines "hotel employer" to mean any person who owns, controls, or operates a hotel in a hotel development project and who employs employees at that hotel.

8) Defines "labor organization" to mean any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

9) Defines "labor peace agreement" to mean a written agreement with a labor organization that contains, at a minimum, a provision prohibiting the labor organization and its members from engaging in any picketing, work stoppage, boycott, or other economic interference with food service or hotel operations in which the Trustees have a proprietary interest.

10) Defines "person" to mean an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, or other legal or commercial entity, whether domestic or foreign.

11) Defines "Auxiliary organization" to mean those entities that are included as auxiliary organizations pursuant to EDC § 89901, which include: entities where a CSU official serves as a director; entities established and/or operated by CSU students; entities which operate a commercial service for the benefit of a CSU campus or property; entities whose purpose benefits CSU or whose leadership is provided by CSU, as specified; entities whose purpose is to promote CSU or receive gifts for the CSU's benefit, as specified, or whose leadership is provided by CSU, as specified; and any entity designated by CSU as an auxiliary entity.

12) Defines "proprietary interest" to mean a financial interest in the form of expected lease revenues, expected debt service on a loan provided by the trustees, underwriting or guaranteeing the development of a project or loans related to the project, or any other significant economic and nonregulatory interest in a project that may be adversely affected by labor-management conflict.

COMMENTS

1. Background

The antecedents of this bill appear to originate in a defunct plan by California State University Northridge's (CSUN) non-profit auxiliary corporation, The University Corporation (TUC), to construct a hotel and conference center on the CSUN campus. [1] TUC operates several divisions including CSUN's food service division. Apparently, TUC contracted out food service operations to a private company during the pandemic and may have intended to do the same with hotel operations upon completion of the planned hotel and conference center development project.

According to media reports the project experienced problems with its first developer but TUC found another development partner who came under severe national criticism from members of Congress and union officials for its management practices related to other projects. [2] CSUN and TUC subsequently suspended the project.

This bill prohibits, among other things, projects like CSUN's unless CSUN or TUC (or their counterparts at other CSU campuses) require their service contract counterparties to have a labor peace agreement with the unions representing or seeking to represent the contractors' employees.

A labor peace agreement often limits how or if an employer can discuss its views on whether its workforce should organize into a union. In exchange, a union may agree not to strike or picket the employer. Union representatives may seek such provisions in a labor peace agreement because they view employer communications to employees regarding collective organizing activities as unlawful intimidation and interference with the employees' constitutional right to association given the asymmetry in employer- employee power and a violation of employer neutrality as envisioned by the NLRA. This view generally comports with California labor policy, and where it can effect such neutrality, this Legislature has generally done so.

Unsurprisingly, employers often vigorously assert first amendment speech rights to express their views on collective organizing actions to their workforce and effectively cite the NLRA's own accommodation to those rights provided that doing so contains no threat of reprisal or force or promise of benefit.[3]

One can see this tension in the NLRA in current organizing campaigns involving high profile companies like Starbucks and Amazon, where employers refuse to renounce communication activities presumably aimed at discouraging employees from organizing while union representatives accuse the employers of unfair labor practices before the NLRB.

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[1] https://csunshinetoday.csun.edu/university-news/csun-forms-public-private-partnership-to-develop-on-campus-hotel-and-restaurant/

[2] https://sundial.csun.edu/142155/news/csun-forced-to-start-over-on-campus-hotel/; http://www.golocalworcester.com/news/ris-picerne-and-other-military-housing-violators-targeted-by-presidential-c; https://www.gpb.org/news/2020/09/02/us-sen-elizabeth-warren-pushes-for-answers-georgia-dorm-operator.

[3] 29 USC § 158 (c); N.L.R.B v. Gissel Packing Co., 395 U.S. 575;

Certain companies like Starbucks are unlikely to agree to a labor peace agreement. Thus, this law would likely prevent them from providing services at CSU campuses. Moreover, since the bill applies broadly to CSU auxiliary entities (like TUC) and to their proprietary interests, which include lease revenues, any CSU retail lessee providing cafeteria or food and beverage services would be subject to the bill's requirements.

Nevertheless, the committee's understanding from the author's office is that the author primarily intends to prevent CSU from contracting out food and hotel service jobs that represented CSU employees should perform. The committee is unclear how this bill would accomplish that particular objective since even modified by this bill the law would continue to permit CSU or its auxiliaries to contract out food and hotel services provided that the counterparty agrees to a labor peace agreement. Some large food service providers that service educational institutions not only have labor peace agreements but also have collective bargaining agreements with a workforce represented by important unions. This bill could result in aiding those companies win CSU food and hotel service contracts or could promote collective organizing at companies that currently are not unionized.

The author has also communicated to the committee that there have been several strikes at educational institutions across the country and that the bill is essential to minimize future labor disruptions as much as possible.

Meanwhile, the CSU Chancellor's office has communicated to the committee that CSU has various concerns about possible unintended effects the bill may have, for example, on one campus' student hospitality program that utilizes students as part of their curricula in the campus' food and hotel operations or on the potential deterrent effect the bill could have on proceeding with any future hotel or other auxiliary entity-driven development projects which otherwise could contribute revenues to CSU campuses. It is further confused on how the bill aids in labor peace among CSU employees when those employees are guaranteed collective bargaining rights under HEERA or how the bill protects against contracting out CSU employee positions when it does not implicate existing public contract law provisions.

Since the committee has received no letters of support or opposition for this bill, it is difficult to assess its impact and importance to California labor and education policy.

2. Need for this bill?

According to the author,

"In 2022, there were over 20 strikes across the country – with the largest higher education strike happening in California. Siting unfair labor practices, wanting better pay and benefits, and job security, University of California (UC) academic workers (many whom are graduate students themselves) made the decision to strike. Strikes bring work stoppage, and for California's higher education system, this meant canceled classes, delayed grading, interrupted course finals season and wasted tax dollars."

"As CSU campuses continue to grow and evolve, more campus will develop campus plans with more hospitality and food service needs. Because the State of California has a proprietary interest in the activities and business of CSUs, it is essential to minimize future labor disruptions as much as possible through labor peace agreements."

3. Proponent Arguments

According to the author,

"In entering a labor peace agreement, the CSU, its auxiliaries, and associated labor organizations will then have mechanisms in place to avoid disruptive actions and ensure the State and its interests can continue fulfilling its mission continuously and without interruption."

4. Opponent Arguments:

None received.

5. Dual Referral:

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

6. Prior Legislation:

SB 1444 (Durazo, 2020), was substantially identical to this bill. The Senate Rules Committee referred the bill to the Senate Education which held the bill without a hearing during the Covid pandemic.

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:	SB 660	**Hearing Date:**	April 19, 2023
Author:	Alvarado-Gil		
Version:	March 21, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public employees' retirement systems: California Public Retirement System Agency Cost and Liability Panel

KEY ISSUE

Should the state enact a California Public Retirement System Agency Cost and Liability Panel (ACLP) located in and staffed by the State Controller's Office to provide information on the pension costs and liability that each participating employer assumes by participating in a public retirement system?

ANALYSIS

Existing law:

1) Allows members of public retirement systems with reciprocity agreements to maintain certain benefits, as specified, and authorizes, among other things, the use of final compensation at an ensuing employer when calculating the retirement service from a prior employer. Thus, changes to compensation at ensuing employers can affect the pension liability of prior employers. (Government Code (GC) § 20350 et seq. et al.)

2) Requires the California Public Employees' Retirement System (CalPERS) to define a significant increase in actuarial liability due to increased compensation paid to a nonrepresented employee and to implement program changes to ensure that a contracting agency that creates the significant increase in actuarial liability bears the cost for increased liability, including any portion of that liability that otherwise would be borne by another contracting agency or agencies due to reciprocity. (GC § 20791 (a))

3) Requires the CalPERS actuary, upon determining the significant increase in actuarial liability, to assess the increase to the employer that created it and adjust that employer's rates to account for the increased liability. (GC § 20791 (b))

4) Exempts actuarial liability resulting from compensation paid to an employee for service performed while covered by a memorandum of understanding or compensation paid for service performed while a member of a recognized employee organization. (GC § 20791 (c))

5) Provides that the specified adjustment to actuarial liabilities apply to any significant increase in actuarial liability determined by CalPERS after January 1, 2013, regardless of when the increase in compensation causing the liability occurred. (GC § 20791 (d))

This bill:

1) Enacts the California Public Retirement System Agency Cost and Liability Panel (ACLP) to provide impartial and independent information on the pension costs and liability that each participating employer assumes by participating in a public retirement system.

2) Requires ACLP to submit a written report, as specified, of its findings and recommendations to the Legislature, no later than December 31, 2024, providing information regarding the financial impact a public agency assumes when an employee transfers to another public agency within the same retirement system and when an employee transfers to a public agency in a reciprocal retirement system and concurrently retires under two or more systems.

3) Requires ACLP to have its first meeting no later than March 31, 2024, and to meet quarterly beginning on April 1, 2024.

4) Provides that ACLP's responsibilities include, but are not limited to:

   (a) Determining the overall retirement benefit costs a public agency incurs by participating in a public retirement system.

   (b) Determining how retirement benefit costs are apportioned between public agencies when a member of a public retirement system transfers to a different public agency within the same public retirement system.

   (c) Determining how retirement benefit costs are apportioned between reciprocal public retirement systems when a member concurrently retires under two or more public retirement systems.

   (d) Determining how a public agency's unfunded pension liability is impacted when a member of a public retirement system transfers to a different public agency within the same public retirement system and receives a salary increase.

   (e) Determining how a public agency's unfunded pension liability is impacted when a member of a public retirement system transfers to a public agency that provides retirement benefits through a reciprocal public retirement system.

   (f) Determining how a public agency's unfunded pension liability is impacted when a member concurrently retires under two or more public retirement systems.

   (g) Determining when an unfunded pension liability manifests and how the number of years a member works for one or more public agencies impacts each public agency's unfunded pension liability.

   (h) Replying to policy questions from public retirement systems and public agencies who contract to provide their employees retirement benefits through a public retirement system.

   (i) Providing comment upon request by public agencies.

5) Requires ACLP to consist of 10 members appointed as follows:

(a) An appointee by the Speaker of the Assembly.
(b) An appointee by the Senate Committee on Rules.
(c) An appointee from the Teachers' Retirement Board.
(d) An appointee from the Board of Administration of the Public Employees' Retirement System.
(e) An appointee from the State Association of County Retirement Systems.
(f) An appointee from the Board of Regents of the University of California.
(g) A representative from a public agency that has fewer than 100 employees that contracts with the Public Employees' Retirement System for retirement benefits for their employees.
(h) A representative from a public agency that has more than 100 employees that contracts with the Public Employees' Retirement System for retirement benefits for their employees

6) Provides that ACLP's are nonbinding and advisory only and may not be used as the basis for litigation.

7) Requires ACLP's members to receive reimbursement, paid by the respective authorities that appointed them, for expenses.

COMMENTS

1. Need for this bill?

According to the author,

"There is an issue facing smaller agencies under PERS regarding actuarial liabilities. After an employee under PERS transfers to a different agency with a higher salary, the corresponding actuarial liability of their pension also increases. When an employee retires, all of their previous employers share the said increase in actuarial liability with their current employer. This issue often leads to smaller agencies dedicating large portions of their budgets to paying actuarial benefits of employees at their higher salaries than the salary they had at the smaller agency."

2. Proponent Arguments

According to the bill's supporters the state's smaller rural districts face severe financial impacts when they spend resources to train public safety/ firefighters employees but then lose those employees as they gain experience and move or are recruited to higher paying regions in the state. Since those employees eventually retire on much higher salaries then anticipated by their initial employers there is a dramatic increase in the rural employer's unfunded actuarial liability through public pension reciprocity provisions.

According to the El Dorado County Professional Firefighters Association,

"SB 660 is a necessary first-step to sustain the essential services provided by rural fire protection districts and help them to offer competitive wages and benefits to our firefighters and increase retention."

3. Opponent Arguments:

None received

4. Prior Legislation:

SB 1420 (Dahle, 2022) would have required a "causative agency" (i.e., an employee's subsequent employer) to bear all actuarial liability for an action that would otherwise be borne by an "impacted agency" (i.e., the employee's prior employers) if the action increases the compensation of a member who was previously employed by an impacted agency, and that results in an increased actuarial liability for the previous employer agency beyond what would have been reasonably expected for the member. The bill did not pass out of the Senate Public Employment and Retirement Committee

SB 1033 (Moorlach, 2018) was substantially identical to SB 1420. The bill did not pass out of the Senate Public Employment and Retirement Committee.

AB 340 (Furutani, Chapter 296, Statutes of 2012), established the Public Employees' Pension Reform Act and among other reforms, required CalPERS to define significant increases in actuarial liability due to compensation increases for nonrepresented employees and to devise a program to ensure that the agencies responsible for the compensation increases bear the cost of the associated actuarial liability.

SUPPORT

El Dorado County Board of Supervisors 1st District
El Dorado County Board of Supervisor 5th District
El Dorado County Fire Protection District
El Dorado County Professional Firefighters Association

OPPOSITION

None received

-- END --

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

Bill No:	SB 881	**Hearing Date:**	April 19, 2023
Author:	Alvarado-Gil		
Version:	April 11, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Paid sick days: accrual and use

KEY ISSUES

Should the Legislature increase the 24 hours or three days of paid sick leave currently afforded to employees under existing law to 40 hours or 5 days?

Should existing paid sick leave provisions be amended to strike the requirement that this leave be paid the "regular rate of pay for the workweek in which the employee uses the time" (for example, overtime that the worker regularly makes), to instead require that the time be "paid at the employee's base rate of pay"?

Should employers be authorized to request, when an employee uses paid sick leave, that the employee provide a signed written statement stating that they were absent from work for reasons allowed under paid sick leave provisions?

Should employers be authorized to request, when an employee uses paid sick leave for three or more consecutive work days, reasonable written documentation demonstrating that an employee was absent from work for reasons allowed under paid sick leave provisions?

Should employers not be held liable for paid sick leave violations if the employer denies leave based on a determination that the verification or documentation provided by the employee is false?

Should the Legislature prohibit a new county, city or municipality from adopting (or amending) any ordinance, resolution, law, rule, or regulation regarding paid sick leave (other than COVID-19-specific paid sick leave)?

Should employer paid sick leave violations be exempt from enforcement under the Private Attorneys General Act (PAGA)?

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) Upon the oral or written request of an employee, requires an employer to provide paid sick days for the following purposes (Labor Code §246.5):
    a. Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.
    b. Recover from physical/mental illness or injury due to domestic violence, sexual assault, or stalking, among others.

3) 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))

4) 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))

5) 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))

6) 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))

7) 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))

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

This bill:

1) Modifies, under the state's paid sick leave provisions, the right of an employer to use an alternate sick leave accrual method (than one hour for every 30 hours worked) to require that an employee have no less than *40 hours* of accrued sick leave or paid time off by the 200th calendar day of employment or each calendar year, or in each 12-month period.

2) Provides that an employer may satisfy the paid sick leave accrual requirements by providing not less than *40 hours or five days* of paid sick leave that is available to the employee to use by the completion of the employee's 200th calendar day of employment.

3) Specifies that an employer is under no obligation to allow an employee's total accrual of paid sick leave to exceed 40 hours or five days, provided certain conditions are met.

4) Specifies that the term "full amount of leave" means five days or 40 hours.

5) Amends the schedule for in-home supportive services providers to increase their sick leave accrual maximum to 40 hours or five days in each year of employment, calendar year, or 12-month period beginning January 1, 2026.

6) Raises the employer's authorized limitation on the employee's use of carryover sick leave to 80 hours or 10 days.

7) Strikes the requirement that the paid sick time be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that week, to instead require the leave be *paid at the employee's base rate of pay.*

8) Authorizes an employer to request, when an employee uses paid sick leave, that the employee provide a signed written statement stating that the employee was absent from work for reasons specified in paid sick leave provisions.

9) If an employee uses paid sick leave on three or more consecutive work days, authorizes an employer to request that an employee provide *reasonable written documentation* demonstrating that the employee was absent from work for a reason specified in paid sick leave provisions.

10) Specifies that an employer shall not be in violation of these provisions if the employer denies leave based on a *determination* that the verification or documentation provided is false.

11) On or after January 1, 2024, prohibits a county, city or municipality from adopting (or amending) any ordinance, resolution, law, rule, or regulation regarding paid sick leave other than related to COVID-19-specific paid sick leave.

12) Preempts any existing local ordinance, resolution, law, rule, or regulation regarding earned sick leave, except as specified as follows:

    a. Local COVID-19 specific sick leave ordinances, including those requiring employers to provide paid sick days in excess of those required in this bill.
    b. On and after January 1, 2024, an employer who, pursuant to a local ordinance enacted before January 1, 2023, is required to provide sick leave in an amount that exceeds the sick leave requirements in this bill shall provide the amount of sick leave required by that local ordinance.

13) Exempts paid sick leave provisions from enforcement under the Private Attorneys General Act (PAGA).

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 amounts 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.

Through AB 1867 (Committee on Budget, Chapter 45, Statutes of 2020), the state established the COVID-19 Supplemental Paid Sick Leave and COVID-19 Food Sector Supplemental Paid Sick Leave, which provided 80 hours of supplemental paid sick leave for food sector workers 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.

In 2021, SB 95 (Skinner, Chapter 13, Statutes of 2021), reestablished the COVID-19 Supplemental Paid Sick Leave provisions to provide up to two weeks or 80 hours of paid leave to eligible employees of employers with 25 or more employees with a September 30, 2021 sunset date. The bill specified that employees were entitled to supplemental sick leave due to quarantine or isolation related to COVID-19, attending an appointment or experiencing symptoms related to COVID-19 vaccine, experiencing COVID-19 symptoms, caring for a family member who is subject to quarantine, or caring for a child whose school or place of care is closed due to COVID-19.

In 2022, SB 1114 (Committee on Budget and Fiscal Review. Chapter 4, Statutes of 2022) again extended the COVID-19 Supplemental Paid Sick Leave provisions to, until September 30, 2022, provide 40 hours of supplemental paid sick leave for covered employees who are unable to work or telework due to certain reasons related to COVID-19, including that the employee is attending a COVID-19 vaccine or vaccine booster appointment for themselves or a family member, or is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccine or vaccine booster. The bill

provided a covered employee, in addition to the COVID-19 supplemental paid sick leave described above, to take up to 40 more hours of COVID-19 supplemental paid sick leave if the covered employee, or a family member for whom the covered employee is providing care, tests positive for COVID-19.

Also in 2022, AB 152 (Committee on Budget, Chapter 736, Statutes of 2022) established the California Small Business and Nonprofit COVID-19 Relief Grant Program within GO-Biz to, until January 1, 2024, assist qualified small businesses or nonprofits that are incurring costs for COVID-19 supplemental paid sick leave. AB 152 also specified that an employer has no obligation to provide additional COVID-19 supplemental paid sick leave if the employee refuses to submit to the specified testing, provided by the employer. The bill also extended the COVID-19 Supplemental Paid Sick Leave provisions from September 30, 2022, to December 31, 2022.

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. According to the Institute for Women's Policy Research, "Adults and children who have the time and care they need to recover from health problems may use fewer health care resources in the long run. Active parental involvement in children's hospital care, for instance, can head off future health care needs because of increased parental education and awareness…Conversely, the failure to provide adequate recuperative time and requisite parental care may tend to exacerbate future health needs." [2]

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.[3]

3. How California Compares to Other States:

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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] "No Time to be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave," Institute for Women's Policy Research, Publication # B242p, May 2004.

[3] Ibid.

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.[4] Additionally, the publication found that:

- Washington: no cap, 1 hour for every 40 hours worked (all employers)
- New Mexico: 64 hours (all employers)
- Colorado: 48 hours (all employers)
- Vermont: 40 hours (all employers)
- New Jersey: 40 hours (all employers)
- New York: 40 hours (100 or less employees) or 56 hours (100 or more employees)
- Oregon: 40 hours (employers with 10+ workers)
- Massachusetts: 40 hours (employers with 11+ workers)
- Arizona: 24 hours (15 or less workers) or 40 hours (15 or more workers)
- Maryland: 40 hours (employers with 15+ workers)
- Rhode Island: 40 hours (employers with 18+ workers)
- Connecticut: 40 hours (employers with 50+ workers)
- Michigan: 40 hours (employers with 50+ workers)
- Washington DC: 3 days (25 or less), 5 days (25-99), 7 days (100+ workers)
- California: 24 hours (all employers)

Additionally, seven cities in California already mandate at least 9-10 days of leave for most workers. The five days required under this bill, will still leave California's sick leave standards weaker than those of San Diego, Santa Monica, West Hollywood, San Francisco, Oakland, Berkeley, and Emeryville.

4. Need for this bill?

According to the author, "The COVID-19 pandemic has changed the way we view sick leave and whether three days per year is sufficient. As the way we work has changed the state's leave policy needs to adapt. It has also become clear over the last eight years that the existence of 10 different sick leave laws is a confusing administrative burden and that certain aspects of the Act are having unintended consequences."

5. Proponent Arguments:

According to a coalition of employer organizations in support of the measure, including the California Chamber of Commerce, this bill is "good for both employees and employers. While it increases paid sick leave from 3 to 5 days, it also addresses a significant number of existing compliance hurdles for employers" They argue the following:

- **Local Ordinances:** The biggest compliance hurdle for employers is that it allows cities and counties to adopt different sick leave mandates. The proliferation of local ordinances creates inconsistency and confusion for employers that operate in multiple

[4] 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/

jurisdictions. There are currently nine local ordinances in addition to the Act, which have different rules regarding accrual methods, accrual use caps, use increments, which employees are covered, reasons for using paid sick leave, amount of leave, and the permitted use of documentation. SB 881 addresses this issue by creating one statewide standard.

- **Documentation:** The Act prohibits employers from ever asking for documentation. Employers have discovered employees using paid sick leave for non-statutory reasons, but there is nothing they can do because otherwise they face an alleged violation for interfering with or discouraging the use of leave. Worse, it often means that employees subsequently come in sick because they have used their sick days for other reasons. SB 881 allows employers to request documentation if a worker is out for three or more consecutive days, which is modeled after multiple existing ordinances, and allows the employer to request the employee sign a document certifying the reason for use of the leave is consistent with the reasons allowed under the statute.
- **Rate of Pay:** "regular rate" of pay is not necessarily an employee's normal hourly rate because it must include almost all forms of pay that the employee receives. For example, the following payments are included in the regular rate of pay: hourly earnings, salary, commissions, non-discretionary bonuses, piece work earnings, and the value of meals and lodging. With a lot of uncertainty surrounding this calculation, this requirement can become very confusing for employers. SB 881 would allow leave to be paid at the base rate of pay.
- **Enforcement:** "While the Act was moving through the legislature, it was the understanding of the employer community that PAGA penalties were not recoverable under the final version of the bill. Courts agreed. *See*, *e.g.*, *Stearne v. Heartland Payment Sys. LLC*, 2018 WL 746492 (E.D. Cal. Feb. 6, 2018). It was only last month that a California Court of Appeals upended that interpretation, holding that PAGA does apply to paid sick leave claims. This opens up businesses of every size to threats of litigation for significant penalties over any dispute regarding paid sick leave. SB 881 would therefore clarify that PAGA penalties do not apply to paid sick leave claims."

6. Opponent Arguments:

According to a coalition of worker advocacy organizations, including the California Labor Federation, California has "fallen drastically behind stronger sick days standards adopted in eight local jurisdictions across California, and COVID has made painfully clear the need for workers to be guaranteed more than three paid sick days. That is one reason a broad coalition of labor and worker advocacy groups are co-sponsoring SB 616 (Gonzalez), which will expand our current three-day requirement to seven." SB 881, they argue, "would reduce the number of sick days for millions of workers in California and otherwise severely weaken our existing statewide sick days law."

Additionally, regarding the change to the way paid sick would be compensated as proposed in this bill, the coalition notes, "The regular rate of pay calculation includes various other forms of pay that a worker usually receives and is especially important for piece rate workers, who often work very quickly to earn wages significantly higher than minimum wage. SB 881 would undo this precedent and replace the regular rate of pay requirement with an allowance to employers to only pay sick workers what is called their "base rate of pay."

This calculation can be much lower and denies workers the wages they deserve and on which they depend. This pay cut could also present a major disincentive against claiming sick leave, as a worker may see a large enough reduction that using sick leave would simply not be a feasible option."

Furthermore, they argue, "similar disincentives are again created by two sections that would allow employers to essentially prove the need for sick days. The first, LC 246 (n)(1), would permit employers to require workers to "…*provide a written statement signed by the employee stating that the employee was absent from work for a reason specified in subdivision (a) of Section 246.5."* This bizarrely punitive requirement would potentially require workers to research the Labor Code to prepare a written document that could violate privacy, risk their own safety, and easily be used to accuse a worker of misrepresenting their situation, with obvious implications for discipline and job security.

For example, if a worker is using the time for a very personal medical issue, that could be something they very much do not want to detail to their employer. This could dissuade the worker from ever claiming the leave. Or, if the worker decides to still try to use a sick day, they may not include enough detail in the written statement to satisfy the employer and face discipline or termination. Should the worker be terminated, nothing in the bill would prohibit that signed written statement from being used against them during any dispute over unemployment insurance benefits. Certainly, a wide variety of other unintended consequences would result from such an unnecessary and risky requirement."

Regarding the requirement on documentation, the coalition writes that this, "Presumably, this refers to a note from a health care professional, but the language is unclear. If so, forcing a worker to see a doctor while sick would create significant costs for that worker that could exceed the amount earned via sick leave, strongly discouraging the worker from exercising their rights. If not, this section would create great confusion that would likely just end with the worker feeling extreme pressure to not claim leave and go to work while sick or abandon a sick child or family member who needs care."

Finally, they argue that this bill would "exempt this entire law from the Private Attorneys General Act. This massive takeaway, not included in AB 1522, would drastically weaken enforcement at a time when workers by all accounts need stronger protection under the law. Even the employer community has recently highlighted struggles workers face in using the administrative process to enforce Labor Code violations; leaving workers with fewer enforcement options at this time is simply indefensible."

7. Committee Staff Comments:

There is no question that increasing the number of paid sick days available would help workers recover from an illness and take care of their families while also helping California catch up to other states offering comparable amount of days. This proposal increases paid sick days from three to five days, putting us in parity with several other states. However, this bill also proposes to make several changes to paid sick leave provisions which may have unintended consequences and which the committee should consider as the bill is heard.

- **Rate of Pay*:*** Paid sick time is currently required to be calculated in the same manner as the *regular rate of pay for the workweek* in which the employee uses paid sick time,

whether or not the employee actually works overtime in that workweek. According to the Department of Industrial Relations, in general terms, this means that time taken off as paid sick leave must be paid at an employee's *regular rate of pay***,** either for the workweek in which the paid sick leave was taken, or as determined by averaging over a 90-day period. This bill proposes that the paid time be compensated using only the employee's base pay. When an employee regularly works overtime or works on commission, those extra wages become income in which they rely on to take care of themselves and their families. *If they happen to get sick and need to take some days off, does it make sense that those days be paid at lower wages than what they would have expected to earn had they not suffered an illness?*

- **Written Statement of Reasons for the Leave:** proponents from the employer community are seeking to address abuse of paid sick leave when used for reasons other than those specified under the Act. As correctly noted, existing law does not require or authorize employers to ask the reason for a worker seeking to take paid sick leave. Employee medical privacy is a fundamental right. *How does authorizing an employer to request that an employee provide a signed written statement saying they are absent from work for reasons specified in the paid sick leave provisions protect employee medical privacy rights? And even if the employer isn't directly asking them to provide their medical diagnosis or illness for which they need to take the day, what precedent does this provision set in what and how much information employees are being asked to share with their employer regarding their personal lives?*

- **Documentation of Reasons for the Leave:** similar medical privacy issues arise with the documentation provisions proposed by the bill. However, staff notes that several local ordinances address documentation. For example, the City of San Francisco Paid Sick Leave Ordinance, specifies that "policies or practices that require a *doctor's note* or other documentation for the use of paid sick leave of three or fewer consecutive work days shall be deemed unreasonable. Policies or practices that require a doctor's note or other documentation for the use of paid sick leave of more than three consecutive work days (whether full or partial days) shall be deemed reasonable."[5] Their enforcement manual also requires employers to treat all information obtained from employees regarding their use of paid sick leave in a manner that is consistent with applicable federal, state and local privacy laws. This bill says that the employer can "request that an employee provide *reasonable written documentation* demonstrating that the employee was absent from work for reasons specified in paid sick leave provisions." *Should these provisions be limited to only allow employers to request medical documentation? And if so, given the state of our healthcare system – specifically, staff shortages that have caused delays in getting access to care, is this request appropriate?* Committee staff notes personal experience, of someone who is insured and has the means to go see a doctor, in the difficulties of even finding an appointment with a doctor and having to wait almost a week to get a response from a physician.

- **False Documentation:** the bill specifies that "an employer shall not be in violation of this section if the employer denies leave based on a *determination* that the verification or documentation provided is false." Assuming it is the employer making the determination

[5] City and County of San Francisco, Office of Labor Standards Enforcement. Rules Implementing The San Francisco Paid Sick Leave Ordinance (PSLO). Effective June 7, 2018. https://sf.gov/sites/default/files/2022-12/PSLO%20Final%20Rules%2005%2007%202018.pdf

about which documents appear false. *Should there be more parameters as to how documents needs to be verified and what is or isn't an appropriate denial?*

- **Local Ordinance Preemption:** the bill prohibits, on or after January 1, 2024, a county, city or municipality from adopting (or amending) any ordinance, resolution, law, rule, or regulation regarding paid sick leave other than related to COVID-19-specific paid sick leave. *Although states can preempt cities from legislating on particular issues either by statutory or constitutional law, is it appropriate to limit a local jurisdiction's interest in providing better protections for their workers?*

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 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 this Committee at today's hearing.

AB 152 (Committee on Budget, Chapter 736, Statutes of 2022), discussed above, 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), discussed above, extended the COVID-19 Supplemental Paid Sick Leave provisions until September 30, 2022.

SB 95 (Skinner, Chapter 13, Statutes of 2021), discussed above, 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), discussed above, 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 for specified workers.

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

Acclamation Insurance Management Services
Allied Managed Care
Antelope Valley Chambers of Commerce
California Attractions and Parks Association
California Chamber of Commerce
California Manufacturers and Technology Association
California New Car Dealers Association
California Retailers Association
California State Council of SHRM
California Travel Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Coalition of California Chambers – Orange County
Coalition of Small & Disabled Veteran Business
Dana Point Chamber of Commerce
Flasher Barricade Association
Greater High Desert Chamber of Commerce
Hollywood Chamber of Commerce
Housing Contractors of California
Imperial Valley Regional Chamber of Commerce
LA Canada Flintridge Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Mission Viejo Chamber of Commerce
Newport Beach Chamber of Commerce
Oceanside Chamber of Commerce
Official Police Garage Association of Los Angeles
Orange County Business Council
Palos Verdes Peninsula Chamber of Commerce
Public Risk Innovation, Solutions, and Management (PRISM)
Sacramento Metropolitan Chamber of Commerce
San Juan Capistrano Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Society for Human Resource Management
West Ventura County Business Alliance
Yorba Linda Chamber of Commerce

OPPOSITION

AARP
American Federation of State, County & Municipal Employees of California
Association of California Caregiver Resource Centers
BreastfeedLA
California Alliance for Retired Americans (CARA)
California Child Care Resource and Referral Network
California Coalition on Family Caregiving
California Conference Board of The Amalgamated Transit Union

California Conference of Machinists
California Employment Lawyers Association
California Federation of Teachers, AFL-CIO
California Labor Federation, AFL-CIO
California Nurses Association
California Rural Legal Assistance Foundation (CRLA Foundation)
California School Employees Association
California State Legislative Board, Sheet Metal, Air, Rail and Transportation Workers - Transportation Division (SMART-TD)
California Teamsters Public Affairs Council
California WIC Association
California Work & Family Coalition
Caring Across Generations
Communication Workers of America, District 9
Contra Costa Central Labor Council
Electric Universe
Engineers and Scientists of California, IFPTE Local 20, AFL-CIO
Family Caregiver Alliance (FCA)
Family Values @ Work
Friends Committee on Legislation of California
Hand in Hand: the Domestic Employers Network
Human Impact Partners
Legal Aid At Work
Los Angeles County Federation of Labor, AFL-CIO
Monterey Bay Central Labor Council, AFL-CIO
Napa Solano Central Labor Council
NARAL Pro-choice California
North Bay Labor Council
North Valley Labor Federation
Orange County Labor Federation, AFL-CIO
Parent Voices California
Public Counsel
Restaurant Opportunity Center of the Bay
San Diego County Breastfeeding Coalition
San Francisco Labor Council, AFL-CIO
San Mateo Labor Council, AFL-CIO
Santa Clara County Wage Theft Coalition
South Bay Labor Council
The Restaurant Opportunity Center of The Bay
Transport Workers Union of America, AFL-CIO
United Food and Commercial Workers - Western States Council
Union of American Physicians and Dentists, AFSCME Local 206
UNITE-HERE, AFL-CIO
United Nurses Associations of California/Union of Health Care Professionals
Utility Workers Union of America, AFL-CIO

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

Bill No:	SB 697	**Hearing Date:**	April 19, 2023
Author:	Hurtado		
Version:	February 16, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Value of care review

KEY ISSUE

Should the Legislature require the Department of Industrial Relations to study the viability and regulatory steps to implement a value of care reimbursement system for workers' compensation claims?

ANALYSIS

Existing law:

1) Establishes the Division of Workers' Compensation (DWC) within the Department of Industrial Relations and tasks DWC with the promulgation of the Official Medical Fee Schedule to be used for payment of medical services required to treat work related injuries and illnesses. (Labor Code §3200 et seq.)

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

3) Requires an employer or their insurer to provide medical treatment that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury means treatment that is based upon the guidelines adopted by the administrative director. (Labor Code §4600)

4) Requires DWC, after public hearings, to adopt and revise a fee schedule in accordance with the resource-based value scale that shall establish reasonable maximum fees paid for medical services, other than physician services, for drugs and pharmacy services, health care facility fees, home health care, and all other treatment, care, services, and goods. Except for physician services, all fees shall be in accordance with the fee-related structure and rules of the relevant Medicare and Medi-Cal payment systems, provided that employer liability for medical treatment, including issues of reasonableness, necessity, frequency, and duration. (Labor Code §5307.1)

5) Authorizes an employer or insurer to contract for reimbursement rates different from those in the adopted fee schedule if the medical provider fee schedule differs. (Labor Code §5307.11)

This bill:

1) Requires DIR to conduct a study on the viability of and regulatory steps that would be required to be taken to link health care reimbursement in workers' compensation claims to the value of care provided to injured workers.

2) Requires the study to include a discussion of the viability of developing and adopting an accountable care organization model to manage workers' compensation claims.

3) Requires DIR to hold five stakeholder workshops to discuss the findings of the study and to post the findings of the study on its website.

COMMENTS

1. Background:

Accountable care organizations are groups of doctors, hospitals, and other healthcare providers that collaborate to offer coordinated high quality care to Medicare patients with the goal of avoiding unnecessary duplication of services and preventing medical errors. The concept is to spend more wisely while delivering high quality care so the entities can share savings within the Medicare program.

Medicare and most HMOs use a resource based relative value system as the foundation for calculating payment for physician services, which is based on the principle that payments for physician services should vary with the resource costs for providing those services and is intended to improve and stabilize the payment system. Most states use this value system in their workers' compensation system. In California, this topic has been debated, and the subject of consideration and hearings by DWC. However, it has not been adopted. Resource based relative value systems are not without controversy within the medical community, even as it is a well understood system that is updated regularly by Medicare. Specialists contend that it favors primary care physicians over specialists and would result in unfair reimbursement cuts to specialists. On the other hand, primary care physicians argue that some specialties receive significantly higher reimbursement from California's workers' compensation system.

During the last workers' compensation reform, a fee schedule model was created to provide payment for injured workers' medical care. The reforms were also designed to improve the quality of medical provider networks (MPNs), and in that regard improve the quality of evidence-based medicine as the basis of treating injured workers, and based on these improvements, enhance the ability of employers to provide treatment for injured workers within the MPN. This bill would explore an alternative payment model to assess whether it could provide high quality care for less and reduce litigation.

2. Need for this bill?

According to the author, "The bill would require [DWC] to study the viability of linking workers' compensation medical reimbursements to the value of care being provided. As part of the study, [DWC] would be required to assess needed regulatory steps to implement a change in policy.

The value-of-care basis for determining medical payments differs from the fee-for-service approach currently employed. Presently, providers are paid based on the extent that health

care services are rendered. Value is derived from measuring health outcomes against the cost of the services.

Value-based care in California workers' compensation could provide several benefits for injured workers, employers, and insurance providers… Overall, value-based care in California workers' compensation could help improve the quality of care for injured workers, reduce costs for employers and insurers, increase transparency and reduce litigation, and provide greater flexibility to address the unique needs of California's workers' compensation system."

4. Committee Discussion:

This bill would require DIR to study an alternative payment model to workers' compensation health care reimbursement, assess the viability to adopting an accountable care organization model, and hold five stakeholder workshops to discuss the study findings. As this bill moves along in the process, the author may wish to add a report due date.

3. Proponent Arguments:

According to the sponsor, Boomerang Healthcare, "the proposed legislation seeks to shift the current fee-for-service approach to a value-of-care basis, which measures health outcomes against the cost of services provided. This change could offer significant benefits to injured workers, employers, and insurance providers in California's workers' compensation system. Value-based care could incentivize healthcare providers to prioritize improving health outcomes for injured workers, resulting in better quality of care, improved patient satisfaction, and reduced disability and lost time. Additionally, it could lead to cost savings for both injured workers and their employers, reducing the overall cost of workers' compensation insurance.

Moreover, the proposed bill would direct the DWC to analyze the feasibility of developing and adopting an accountable care organization model to manage workers' compensation claims. This approach would bring providers together to deliver high-quality, coordinated care while also controlling costs and improving quality.

Overall, SB 697 offers a unique opportunity to improve the quality of care for injured workers, reduce costs for employers and insurers, increase transparency, and reduce the need for litigation in California's workers' compensation system. We believe that this proposed legislation would be invaluable in helping Boomerang Healthcare, and the overall Provider community, achieve their goals."

4. Opponent Arguments:

None received

5. Prior Legislation:

SB 863 (De León – Chapter 363, Statutes of 2012) reformed the workers' compensation system, including the implementation of an independent medical review process similar to what had been developed at the Department of Managed Health Care.

SB 923 (De León – Chapter 737, Statutes of 2012) would have required the DWC to adopt a resource based relative value system within workers' compensation. These contents were removed and replaced with unrelated language.

SB 899 (Poochigian – Chapter 34, Statutes of 2004) reformed the workers' compensation system, including substantially changing the permanent disability rating system.

SUPPORT

Boomerang Healthcare (Sponsor)

OPPOSITION

None received

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

Bill No:	SB 698	**Hearing Date:**	April 19, 2023
Author:	Wilk		
Version:	February 16, 2023		
Urgency:	No	**Fiscal:**	No
Consultant:	Glenn Miles		

SUBJECT: Code of Ethics: California Council on Science and Technology: fellows

KEY ISSUE

Should the state clarify that the services provided by a California Science and Technology Policy Fellow are not compensation or a gift to an executive branch state officer otherwise prohibited by state ethics law?

ANALYSIS

Existing law:

1) Requests through a legislative resolution that the President of the University of California, in collaboration with the presidents of the University of Southern California, the California Institute of Technology, and Stanford University and the Chancellor of the California State University, establish the California Council on Science and Technology ("CCST") for the purpose of reporting to the presidents and the chancellor and responding appropriately to the Governor, the Legislature, and other relevant entities on public policy issues significantly related to science and technology. (Assembly Concurrent Resolution No. 162 (Resolution Chapter 148, Statutes of 1988))

2) Recognizes that CCST, in response, formed a 501 (c) (3) corporation to provide expert, unbiased advice to various agencies of state government in connection with science and technology policy issues and in 2009 began placing Ph.D.-level, or equivalent, scientists, engineers, and other experts in legislative offices for the purpose of providing members, committees, and legislative staff with unbiased advice in connection with science and technology-related legislation.

   CCST models its fellowship program on the Science and Technology Policy Fellowships Program administered for the benefit of the United States Congress by the American Association for the Advancement of Science, an international nonprofit organization dedicated to advancing science around the world for societal benefit. (AB 573 (Portantino), Chapter 117, Statutes of 2009)

3) Establishes a code of ethics for members of the legislature, state elective or appointive officers, or judges which prohibits them while serving as such, from having any interest, financial or otherwise, direct or indirect, or engaging in any business or transaction or professional activity, or incurring any obligation of any nature, that is in substantial conflict with the proper discharge of their duties in the public interest and of their responsibilities as prescribed in the laws of this state.

The code also prohibits them from receiving or agreeing to receive, directly or indirectly, any compensation, reward, or gift from any source except the State of California for any service, advice, assistance or other matter related to the legislative process, except fees for speeches or published works on legislative subjects and except, in connection therewith, reimbursement of expenses for actual expenditures for travel and reasonable subsistence for which payment or reimbursement is not made by the State of California. (Government Code (GC) § 8920)

4) Specifies that the services of a CCST Fellow are not compensation, a reward, or a gift to a member of the legislature for which the receipt thereof constitutes a prohibited act pursuant to the legislative code of ethics as defined in GC § 8920. (AB 573 (Portantino), Chapter 117, Statutes of 2009)

5) Prohibits an elected state officer, elected officer of a local government agency, or other specified individual from accepting gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars ($250) and defines " gift" to mean any payment, except as specified, that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. (GC § 89503 and § 82028)

This bill: Amends the Legislative Code of Ethics to include in its exemption regarding services of a CCST fellow for members of the Legislature, any state elective or appointive officer for the purposes of any equivalent rule applicable to an executive branch agency or department.

COMMENTS

1. Need for this bill?

The California Science and Technology Policy Fellowship program annually recruits and trains a cohort of Ph.D. scientists and engineers to spend a year working in the California legislature and the executive branch.

Current law specifies that participation in the CCST program does not constitute compensation, a reward, or a gift to members of the Legislature under legislative ethics laws. However, this exception does not expressly include executive branch officers.

CCST representatives have informed the committee that despite placing CCST fellows in both legislative and executive branch offices for many years, some executive branch officials have been hesitant to accept a fellow for concern that doing so might violate state ethics laws given that a fellow's work represents a thing of value that could considered a gift or compensation to the executive branch officer with whom CCST would place the fellow.

2. Recommended Committee Amendments

The bill's current language may be insufficient to assure reluctant executive branch officers that a CCST fellow's placement is not a gift or compensation that would violate state ethics laws because the provisions only amend Government Code provisions related to operations of the Legislative branch. For example, the Ethics in Government Act of 1990 establishes

prohibitions on elected state officers, elected officers of a local government agency, or other specified individual from accepting gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars ($250) and defines "gift" to mean any payment, as specified.

The committee recommends amendments to do the following:

- Clarify that a CCST fellow's services are not a gift for purposes of Government Code provisions regulating executive branch ethics rules or the Government Code's legislative branch ethics provisions.
- Clarify that a CCST fellow duly authorized by an MOU between the CCST and an executive branch agency or department is not part of the state civil service.
- Require that CCST select fellows according to criteria and pursuant to a process included in the MOU between the CCST and an executive agency or department.
- Provide that a CCST fellow be bound to abide by standards of conduct, economic interest disclosure requisites, and other requirements specified by the state.

3. Proponent Arguments

According to the author,

"In 2009, AB 573 (Portantino) clarified that the services of a CCST Science Fellow provided by CCST and authorized by the Senate, Assembly, or Joint Committee on Rules are not compensation, a reward, or gift to a Member of the Legislature. Since them, CCST has established fellows in the executive branch. SB 698 narrowly extends that provision to also apply to executive fellows."

3. Opponent Arguments:

None received

4. Prior Legislation:

AB 573 (Portantino), Chapter 117, Statutes of 2009, clarified that the services of a California Science and Technology Policy Fellow provided by the California Council on Science and Technology and authorized by the Senate Rules Committee, the Assembly Rules Committee, or the Joint Rules Committee are not compensation, a reward, or a gift to a Member of the Legislature.

SUPPORT

California Council on Science & Technology (Sponsor)

OPPOSITION

None received

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

Bill No:	SB 725	**Hearing Date:**	April 19, 2023
Author:	Smallwood-Cuevas		
Version:	March 20, 2023		
Urgency:	No	**Fiscal:**	No
Consultant:	Dawn Clover		

SUBJECT: Grocery workers

KEY ISSUE

Should the Legislature require a grocery store that purchases another grocery store to provide severance to an employee it is not retaining?

ANALYSIS

Existing law:

1) Provides for a transition employment period for eligible grocery workers by requiring a successor grocery employer to hire from a list of eligible grocery workers provided by the incumbent grocery employer and to retain those employees for 90 days, except as specified. (§2500 et seq.)

2) Requires a successor contractor to retain janitorial employees of an incumbent contractor for 60 days and to offer permanent employment to satisfactory employees at the end of the 60 day period. (Labor Code §1060 et seq.)

3) Requires, for purposes of public transit contracting, a contract-awarding entity to give a 10 percent bid preference to a bidder who agrees to retain public transit employees of the prior contractor for a period of not less than 90 days. (Labor Code §1070 et seq.)

4) Requires that grocery establishments, when a change in control occurs, do the following:
   a) An incumbent grocery employer, within 15 days after the execution of the transfer document, to provide the successor grocery employer the name, address, date of hire, and employment occupation classification of each eligible grocery worker.
   b) The successor grocery employer to maintain a preferential hiring list of eligible grocery workers identified by the incumbent grocery employer and must hire from that list for a period of 90 days, as specified.
   c) During this 90-day transition employment period, eligible grocery workers to be employed under the terms and conditions established by the successor employer and pursuant to the terms of a relevant collective bargaining agreement, if any.
   d) If the successor employer determines that it requires fewer workers, the successor grocery employer shall retain eligible grocery workers by seniority, as specified.
   e) If the eligible grocery worker's performance during the 90-day transition employment period is satisfactory, the successor grocery employer to consider offering the eligible grocery worker continued employment. (Labor Code §§2500-2522)

5) Generally provides 60-70 percent of lost wages as a result of job loss. (Unemployment Insurance Code §2655)

6) 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, (29 U.S.C. §§2101)

7) Establishes the California WARN (Cal/WARN) 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)

8) Exempts, from the provisions of Cal/WARN, 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)

9) States that an employer that fails to give the required notice, as required by Cal/WARN, 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)

10) States that an employer who fails to give the notice, as required by Cal/WARN, 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)

11) Permits a person, including a local government, or an employee representative, seeking to establish liability against an employer for violation of Cal/WARN 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)

12) Defines "grocery establishment" as a retail store in this state 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. Other household supplies or other products shall be secondary to the primary purpose of food sales. A grocery establishment does not include a retail store that has ceased operations for six months or more. (Labor Code §2502(d))

13) Defines "successor grocery employer" as the person that owns, controls, or operates the grocery establishment after the change in control. A successor grocery employer may be the same entity as an incumbent employer when a change in control occurs but the covered employer remains the same. (Labor Code §2502(g))

This bill:

1) Requires 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.

2) Specifies the rate of severance pay shall be the average regular rate of compensation received during the eligible grocery worker's last three years of employment with the incumbent grocery employer or the final regular rate of compensation paid to the eligible grocery worker, whichever rate is higher, or the severance pay required pursuant to a relevant collective bargaining agreement.

3) Revises the definition of "change in control" to add the purchase or acquisition of all cash on hand, to read: any sale, purchase, assignment, acquisition, transfer, contribution, or other disposition of all or substantially all of the assets, cash on hand, or a controlling interest, including by consolidation, merger, or reorganization, of or by 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.

4) Revises the definition of "grocery establishment" to include a distribution center, regardless of square footage, owned and operated by a grocery establishment and used primarily to distribute goods to or from its owned stores.

5) Revises the definition of "successor employer" to include a successor grocery employer may be the same entity as an incumbent employer when a change in control occurs but the covered employer remains the same.

6) Provides that parties subject to a collective bargaining agreement may provide that the agreement supersedes the requirements of this bill, but only if it is explicitly set for in that agreement in clear and unambiguous terms.

COMMENTS

1. Background:

Last fall, Kroger, the largest full service grocery chain in the United States, and Albertson's, the second largest, announced an unprecedented $25 billion merger. Kroger, which is based in Ohio, operates 2800 stores in 35 states and includes brands such as Ralph's, Smith's, and Harris Teeter. Albertson's, based in Idaho, operates 2273 stores in 34 states and includes brands such as Safeway, Jewel Osco, and Shaw's. Together, these two businesses operate in nearly every state and employ approximately 710,000 people, with over 50 manufacturing facilities and 5,000 stores.[1]

[1] https://patch.com/california/los-angeles/kroger-albertsons-25-billion-merger-affect-734-ca-stores

The United States Federal Trade Commission (FTC), as part of its regulatory review of the proposed merger, is gathering information from the industry on how it thinks the merger would impact the landscape, such as product sourcing, pricing, online operations, labor dynamics, store brand programs, and shopper data use. In 2020, the FTC blocked Kroger's proposed acquisition of Winn-Dixie, citing a violation of Section 7 of the Clayton Act (15 U.S.C. §18) and of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) due to substantial loss of competition in several markets.[2]

2. Need for this bill?

The Cal/WARN Act requires 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. 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 provide enough resources to obtain training for an opportunity in another sector and cover living expenses.

According to the author, "From 1993 to 2019, the number of grocery stores nationwide declined by roughly 30 percent. Food industry mergers and acquisitions exceeded 300 in 2019 alone and the US grocery supermarket industry is moving closer to complete concentration and monopoly as demonstrated by the series of mergers and acquisitions over the last 40 years. A hallmark of these mergers is a reduction in the workforce in the form of mass layoffs and worksite closures, which can be devastating for the workers at the site and the communities in which they live… While the notice requirements of the WARN Act and UI benefits provide some protections to workers caught in a layoff or closure, it does not require employers to provide any material support to workers trying to transition. While having the time to find new employment or partial wage replacement is helpful, it is not sufficient to deal with the costs of retraining or the uncovered living expenses while between jobs.

SB 725 will limit the disruptions amongst essential grocery store workers and local communities by providing mandatory severance pay in the event there is a layoff because of a merger or consolidation. This basic protection will allow these essential workers, who have sacrificed their health and safety during the pandemic, to put food on their tables and maintain economic stability during a tumultuous time."

As a result of store closures, New Jersey passed a law in 2020 requiring employers to provide employees let go during a mass layoff with one week of severance for every year of service. In 2022, Maine followed suit by passing a similar law to require employers with 100 or more employees to provide one week of severance for every year of service, in the event of a mass layoff. This bill would likewise ensure severance for displaced employees of chain grocery retailers.

3. Proponent Arguments:

[2] https://www.ftc.gov/news-events/news/press-releases/2000/06/ftc-seek-injunction-block-kroger-co-purchase-winn-dixie-supermarkets-texas-oklahoma

The sponsor, United Food and Commercial Workers Western States Council writes "As conclusively demonstrated, and legally affirmed during the pandemic, grocery store workers with the experience and skill in the safe and sanitary storage and sale of food are essential to the health and well-being of every neighborhood. Building on current law and the lessons of the pandemic, SB 725 enacts new reforms by providing grocery store workers a safety net to prevent and curb the effects of layoffs of grocery workers and licensed medicine-dispensing pharmacy staff who work in grocery store pharmacies; layoffs that would, if unrestrained by the public interest, abruptly and irrevocably compel skilled workers to seek employment elsewhere, draining neighborhoods of their essential skills and economic stimulus. The bill also ensures that the costs of layoffs are shared instead of being exclusively shouldered by taxpayers… Mass layoffs by grocery chains consolidating may increase profits in the short-run, pleasing shareholders, but the costs of that profit-taking are unfairly and entirely shifted to taxpayer-funded programs that offer support for those laid off through social safety net programs… The impact of layoffs are also borne by the community. These are the kinds of workers who are not investing their money in stock portfolios. For workers who are already living paycheck to paycheck, layoffs can result in mass evictions, inability to spend money locally, and vehicles being repossessed. This means a direct loss of sales tax and property tax revenues for the communities they lived in. Inevitably, the loss of this many jobs in one region will have ripple effects through the local economy and further burden our already tattered social safety net."

4. **Opponent Arguments:**

None received

5. **Prior Legislation:**

AB 1356 (Haney, 2023) would, among other things, make changes to the Cal/WARN Act provisions to increase the notice requirement from 60 to 90 days prior to a mass layoff and would revise the definition of "covered establishment." *This bill was referred to the Assembly Committees on Labor and Judiciary.*

SB 627 (Smallwood-Cuevas, 2023) would prohibit a chain employer from closing without providing displacement notice and transfer rights. *This bill passed this Committee on April 12, 2023.*

SB 723 (Durazo, 2023) would remove the sunset date, thereby making them permanent, and reference to COVID-related reasons for layoffs from the existing hospitality, airports, airport service providers and event center rehiring rights adopted per SB 93 in 2021. *This bill is pending before this Committee and is scheduled to be heard on April 26, 2023.*

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

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.

SUPPORT

United Food and Commercial Workers Western States Council (Sponsor)

Black Women for Wellness
California Employment Lawyers Association
California Environmental Voters
California Food and Farming Network
California Immigrant Policy Center
California Labor Federation, AFL-CIO
California State Legislative Board, Sheet Metal, Air, Rail and Transportation Workers - Transportation Division (SMART-TD)
Center for Responsible Lending
Central California Environmental Justice Network
Centro Binacional Para El Desarrollo Indígena Oaxaqueno
Courage California
Economic Security Project Action
Indivisible California Statestrong
Kiwa
Lax-area Democratic Club
Los Angeles Alliance for a New Economy
Los Angeles County Federation of Labor, AFL-CIO
National Council of Jewish Women Los Angeles
Pesticide Action Network
Public Counsel
Restaurant Opportunity Center United
San Mateo Labor Council, AFL-CIO
SEIU California State Council
Techequity Collaborative
Western Center on Law & Poverty
Western Center on Law and Poverty

OPPOSITION

None received

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

Bill No:	SB 636	**Hearing Date:**	April 19, 2023
Author:	Cortese		
Version:	April 10, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Workers' compensation: utilization review

KEY ISSUE

Should the Legislature require workers' compensation utilization review (UR) physicians to be licensed by the Medical Board of California?

ANALYSIS

Existing law:

1) Establishes a workers' compensation system, administered by the Division of Workers' Compensation 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 et seq.)

2) Defines, for the purpose of workers' compensation, "physician" to include physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law. (Labor Code §3209.3)

3) Defines, for purposes of workers' compensation, "psychologist" to mean a licensed psychologist with a doctoral degree in psychology, or deemed to be equivalent by the California Board of Psychology, and who has two years of clinical experience in a recognized setting or has met the standards of the National Register of Health Service Psychologists. (Labor Code §3209.3)

4) 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)

5) Requires the Division of Workers' Compensation to adopt, after public hearings, a fee schedule to establish reasonable fees paid for medical services. (Labor Code §5307.1)

6) Prohibits any person other than a licensed physician from modifying, delaying, or denying requests for authorization of medical treatment for reasons of medical necessity to cure *and* relieve. (Labor code §4610)

This bill:

1) Requires, for private employers, that UR physicians be licensed by the Medical Board of California.

2) Requires, for private employers, that UR psychologists be licensed by the California Board of Psychology.

3) Requires private employers establishing a medical treatment UR process to ensure UR physicians have the same duty of care to an employee as a treating physician.

4) Changes the term "cure and relieve" to "cure or relieve" for purposes of UR.

5) States legislative intent to require physicians performing UR for private California workers to be licensed in California and subject to the Medical Board of California.

COMMENTS

1. Need for this bill?

Delays in obtaining treatment result in poorer outcomes, reduced return to work potential, and excessive costs to the system, none of which are good for injured workers. This bill would require, for private employers, that UR be conducted by a medical professional licensed in California in order to ensure that the Medical Board of California can discipline medical professionals performing UR if they violate practice standards. According to the author, "When an insurance company steps in to deny a surgery or any medical treatment plan, it can be a nightmare scenario for the patient. Medical treatment is stressful enough without insurance stepping in to deny coverage. If insurance companies feel compelled to perform a utilization review, SB 636 would at least make sure the review doctor is licensed and accountable in California."

2. Utilization Review:

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.

3. Cure *and* Relieve v. Cure *or* Relieve:

Existing law prohibits any person other than a licensed physician from modifying, delaying, or denying requests for authorization of medical treatment for reasons of medical necessity to cure *and* relieve. In *Kenneth Grom v. Shasta Wood*, a case for reconsideration before the California Workers' Compensation Appeals Board, it was determined that these phrases can be used interchangeably. For the sake of clarity, the author proposes to change the term to

"cure or relieve" to ensure the term does not create ambiguity regarding the physician's responsibility.

4. Proponent Arguments:

The co-sponsor, AFSCME, States "[UR] is an insurance company's use of a medical professional to review and then approve, modify, or deny treatment recommendations by the doctor who interviewed or examined the patient for a workers' compensation (WC) claim. This review is based on what the insurance company considers to be medically necessary.

Under current law, insurance companies may employ medical professionals licensed in any state to perform UR. As a result, medical professionals not licensed in California are exempt from regulation and discipline by the Medical Board of California and the California Division of Workers' Compensation. When these medical professionals wrongfully modify or deny WC claims, there is no regulatory structure to hold them accountable for malpractice.

Senate Bill 636 requires a medical professional to be licensed in California to perform UR for California WC claims. This bill increases accountability for doctors conducting UR and guarantees that California workers are provided a fair claim review process informed by our state's licensing standards. SB 636 would not prevent physicians based in other states or countries from completing UR so long as they are licensed by the Medical Board of California.

Many UR firms employ only California-licensed physicians and AFSCME has seen no evidence that there is a shortage of these physicians. Therefore, SB 636 should not cause delays in UR or the care received by workers pursuing WC claims."

5. Opponent Arguments:

The American Property Casualty Association, California Association of Joint Powers Authorities, California Chamber of Commerce, and California Coalition of Workers Compensation state this bill "would require any psychologist or physician who conducts utilization review in a workers' compensation claim involving a private employer to be licensed in the State of California. There is no evidence that this would improve care to injured workers. This requirement is entirely unrelated to the effective execution of the duties entrusted to a utilization review psychologist or physician. All decisions made by utilization review psychologists and physicians are required to be based on the medical treatment utilization schedule that has been adopted by the Administrative Director for the Division of Workers' Compensation. If treatment varies from that schedule, it must be based on evidence-based, peer reviewed, nationally recognized standards. Because the utilization review standards are nationally based, there is no scenario in which a California psychologist or physician would be more qualified to make a utilization review decision based solely on the fact that they are licensed in California.

California psychologists and physicians do not have specific knowledge that would make this process any more fair or efficient. Conversely, a requirement that such professionals be licensed in California would only limit the number of doctors available to perform utilization review services, thereby creating a logjam of cases that need to be reviewed. Additionally, this limitation would likely drive up the cost of utilization review services because the demand for those services would increase relative to the number of providers who are legally

able to perform them. Utilization review enables employers to hold psychologists and physicians to evidence based medical treatment standards and to ensure that employees received the best medical treatment possible while keeping costs under control.

Further, the April 10 amendment requiring employers to ensure that a utilization review physician has "the same duty of care" to the employee as a treating physician appears to misunderstand utilization review. Physicians in the utilization review system are reviewing whether specific requests for authorization to provide medical treatment are medically necessary and consistent with existing evidence-based guidelines. The utilization review physician does not interact directly with the patient and patient examination is not the purpose of utilization review. It is therefore unclear exactly what this duty of care language would mean in practice or what the legal ramifications of this duty would be in light of the process and purpose of utilization review."

6. Prior Legislation:

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.

AB 584 (Fong, 2011) would have required a physician conducting UR to be licensed in California. *This bill was vetoed by the Governor Brown, who stated "This requirement of using only California-licensed physicians to conduct utilization review in Workers Compensation cases would be an abrupt change and inconsistent with the manner in which utilization review is conducted by health care service plans under the Knox-Keene Act and by those regulated by the California Department of Insurance."*

AB 933 (Fong, 2010) would have required a physician conducting UR to be licensed in California. *This bill was vetoed by Governor Schwarzenegger, stating "This bill would require a physician conducting utilization review in the workers' compensation system to be licensed in California. Such a requirement would be inconsistent with how utilization review is conducted in other areas of medicine and not in line with best practices nationwide. The proponents of this measure have not demonstrated a need for this disparity in treatment."*

AB 2969 (Lieber, 2008) would have required a physician conducting UR to be licensed in California. *This bill was vetoed by Governor Schwarzenegger, stating "This bill would require a physician conducting utilization review in the workers' compensation system to be licensed in California. Such a requirement would be inconsistent with how utilization review is conducted in other areas of medicine and not in line with best practices nationwide. The proponents of this measure have not demonstrated a need for this disparity in treatment."*

SUPPORT

AFSCME (Co-sponsor)
California Neurology Society (Co-sponsor)
Union of American Physicians and Dentists (Co-sponsor)

OPPOSITION

American Property Casualty Insurance Association
California Association of Joint Powers Authorities
California Chamber of Commerce
California Coalition on Workers Compensation

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

Bill No:	SB 735	**Hearing Date:**	April 19, 2023
Author:	Cortese		
Version:	April 13, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Motion picture productions: safety: firearms: ammunition

KEY ISSUES

Should motion picture production employers be required to hire a qualified set safety advisor to perform an overall risk assessment, specific risk assessments and to be on set daily?

Should these requirements exist as a five year pilot program for motion picture productions receiving a motion picture tax credit?

Should the Legislature restrict and regulate the conditions under which firearms and ammunition may be permitted on motion picture productions to help ensure the safety of all actors and crewmembers – including the requirement of meeting specified staffing levels of qualified personnel as well as having a medic on set when firearms are to be used?

Should firearms and blanks only be permitted on motion picture productions under the custody and control of a qualified property master, armorer or assistant property master meeting specified permitting and training requirements?

Should the pilot program be evaluated by the California Film Commission, in collaboration with the Industry-Wide Labor-Management Safety Committee, and recommendations made to the Legislature as to whether the pilot program should be implemented on a permanent basis?

ANALYSIS

Existing law:

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

2) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6300 et seq.)

3) Establishes the Occupational Safety and Health Standards Board, within DIR, to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for workers. (Labor Code §140-147.6)

4) Requires employers to establish, implement and maintain an effective Injury and Illness Prevention Program (IIPP) that must include, among other things, a system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices and the employer's methods and procedures for correcting those unsafe or unhealthy conditions and work practices in a timely manner. The IIPP must also include the employer's system for communicating with employees on occupational health and safety matters. (Labor Code §6401.7):

5) Requires every employer to file a complete report with Cal/OSHA of every occupational injury or occupational illness to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid. A report must be filed within five days after the employer obtains knowledge of the injury or illness. In addition to this report, in every case involving a serious injury or illness, or death, the employer is required to make an immediate report to Cal/OSHA by telephone or email. (Labor Code §6409.1)

6) Requires Cal/OSHA, if the division learns or has reason to believe that an employment or place of employment is not safe or is injurious to the welfare of an employee, it may, on its own motion, or upon complaint, summarily investigate the employment or place of employment, with or without notice or hearings. Certain timeframes exist if a complaint is deemed to allege a serious violation. (Labor Code §6309)

7) Authorizes citations to be issued to employers when Cal/OSHA has evidence that an employee was exposed to a hazard in violation of any requirement enforceable by the division, including the exposing, creating and controlling employer. (Labor Code §6400)

8) Prohibits a person from discharging or in any manner discriminating against any employee because the employee, among other things, reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports and records, or exercised any other rights protected by the federal Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.), as specified. (Labor Code §6310)

9) Prohibits an employee from being laid off or discharged for refusing to perform work in violation of prescribed safety standards, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of this right shall have a right of action for lost wages for the time the employee is without work as a result of the layoff or discharge. (Labor Code §6311)

10) Regulates the duties and responsibilities of firearm owners and requires them to comply with federal, state and local laws regarding firearm ownership, use and storage *in the home* as well as specified purposes where the California Department of Justice (DOJ) can permit the use of a firearm. (Penal Code §23500-34370)

11) Any person who is at least 21 years of age may apply for an entertainment firearms permit from the Department of Justice. An entertainment firearms permit authorizes the permitholder to possess firearms loaned to the permitholder *for use solely as a prop* in a motion picture, television, video, theatrical, or other entertainment production or event. (Penal Code §29500)

12) Requires that applications for entertainment firearms permits include specified information as well as an application fee, specified by the Department of Justice, and requires the DOJ to issue an entertainment firearms permit only if records indicate that the applicant is not prohibited from possessing or receiving firearms pursuant to any federal, state or local law. (Penal Code §29505, §29510 & §29515)

13) Provides that an entertainment firearms permit issued by the DOJ shall be valid for 1 year, and, if at any time during that year the permit holder becomes prohibited from possessing or receiving firearms pursuant to any law, the permit shall no longer be valid. (Pen. Code §29530(a), (b).)

This bill:

1) Provides several findings and declarations specifying, among other things, that the growing popularity of a diverse array of media platforms and reality television and increased demand for new content and new production has increased the need to ensure safety on sets.

2) Establishes new Labor Code provisions to regulate safety in motion picture productions.

3) Provides, among others, the following definitions:

    a. "Ammunition" means one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles, but does not include blanks.
    b. "Blank" means a cartridge consisting of a primer cap, a shell case, and a quantity of gunpowder, but that does not contain a projectile.
    c. "Firearm" means a device, designed to expel through a barrel a projectile by the force of an explosion or other form of combustion, including the frame or receiver of the device. Does not include a replica, simulated firearm or a special effects device.
    d. "Industry-Wide Labor-Management Safety Committee" (Safety Committee) means the California group composed of union, guild, and employer representatives that establishes best practice safety guidelines for motion picture production and that meets regularly.
    e. "Motion picture production" means the development or creation of motion pictures, television programs, streaming productions, commercial advertisements, music videos, or any other moving images, including, but not limited to, productions made for entertainment, commercial, religious, or educational purposes.
    f. "Risk assessment" is a detailed written review of a script and production plan prepared in accordance with Section 9152.5 (provision in the bill).
    g. "Safety advisor" means a person who works in *tandem with, but independent of*, performers and crew and who is not employed for any other role on the motion picture production; who reports to the unit production manager, or a person or persons having overall responsibility for the safety program, but retains autonomy to address production-related risk, including, as a last resort, the authority to temporarily halt production until a thorough examination of the potential hazard or hazards and the mitigation plan can take place among the decisionmakers on productions; and who meets the following qualifications:
        i. One of the following:

1. At least two years' experience primarily performing safety-related work in the entertainment industry as a department head, foreperson, or in a production safety position within motion picture production.
2. At least 500 verifiable days in another crew position in motion picture production, so long as they possess an appropriate breadth of specialist knowledge, experience, and expertise aimed at minimizing risks to both performers and crew.
3. Five or more years of safety-related work, where safety was a primary role and responsibility, in another industry, so long as they possess an appropriate breadth of specialist knowledge, experience, and expertise aimed at minimizing risks to workers and the public.

ii. Completion of a joint labor and management training on industry protocols, state and federal law, and safety practices in motion picture production.

iii. Completion of a 30-hour training program authorized by the division (OSHA-30 training).

h. "Specific risk assessment" means a specific risk assessment for identified high-risk activities or situations prepared in accordance with Section 9152.5 (in the bill).

Pilot Establishment

4) Establishes the Safety on Set Pilot Program, commencing July 1, 2025 and until June 30, 2030, requiring an employer that receives a motion picture credit, pursuant to specified existing provisions, ***to hire or assign a safety advisor*** by the time the department heads start the preproduction process of planning for construction or high-risk activities to perform a **risk assessment** and, if required under this part, a **specific risk assessment**, as specified.

Safety Advisor

5) Requires that there be a dedicated safety advisor present on every motion picture production with the authority to determine which worksite is most appropriate to have a physical presence on when multiple production-related activities are taking place.

6) Grants the safety advisor access to, and the opportunity to inspect all locations, facilities, equipment, supplies, materials, and props to ensure safety of the performers and crew.

7) Requires production to conduct a daily safety meeting, as specified, and requires the safety advisor to participate in the safety meetings, as specified.

Risk Assessment(s)

8) Requires the risk assessment to be completed in collaboration and consultation with appropriate production personnel, including, but not limited to, department heads and those with specialized knowledge and to commence once the department heads start preproduction planning for construction or high-risk activities.

9) Requires risk assessments to be revised if there are meaningful changes to the proposed activity or location that would change the specific risk assessment or mitigation plan.

10) Requires all risk assessments to be accessible via electronic transmission, upon request, to performers, crew, and labor organization representatives.

11) Requires risk assessments to be performed in accordance with the following:

    a. Written to be a script and production plan that identifies and evaluates preproduction and production activity or production locations that may pose a reasonable risk and hazard to employees and sets forth a mitigation plan of those risks and hazards.

    b. Requires a ***specific risk assessment*** to be performed for the use of the following:
        i. Firearms
        ii. Major pyrotechnics and explosives
        iii. Major stunts
        iv. Process shot moves
        v. Helicopters or trains
        vi. Vehicles off road
        vii. Watercraft in open water
        viii. Workweeks of 60 hours or more.

    c. A ***specific risk assessment*** shall be written and shall comply with the following:
        i. Be focused on identified high-risk activities or situations.
        ii. Include detailed and specific risk mitigation plans and procedures to identify and evaluate workplace hazards that have an elevated risk factor(s) or a combination of multiple risk factors.
        iii. Spell out the precautions and controls to be taken to mitigate that risk and reevaluate the level of risk assuming those controls are implemented or not taken.
        iv. Identify the group of employees affected by the assessed risk.

    d. Grants a safety advisor the authority to determine if, and when, a specific risk assessment is necessary for both on and off set activities and situations, including the following:
        i. Overhead rigging
        ii. Rugged outdoor locations
        iii. Inclement weather
        iv. Animals
        v. Heights
        vi. Intermittent traffic control
        vii. Night shoots
        viii. Other high-risk activities or situations as identified by the safety advisor

Firearms, Blanks and Ammunition

12) Specifies that a firearm and blank shall only be permitted on motion picture productions, for purposes as specified, under the following conditions:
    a. Under the custody and control of a qualified property master, armorer, or assistant property master.
    b. While handling the firearm, the property master, armorer, or assistant property master is the only person who can hand that firearm to the performer or cast or crew member standing in for that performer during the scene and only those individuals shall collect the firearm upon completion of the activity.

c. A property master, armorer, or assistant property master shall have no other duties, responsibilities, or obligations during the time that they are preparing for the use of a firearm and that a firearm is in the possession of the performer. It remains their sole responsibility until firearms are no longer in use and have been locked away.
d. As indicated in Safety Committee bulletins, a safety meeting shall be conducted when firearms are involved in a scene.
e. The employer shall identify a person for performers, crew, labor organization representatives, and the division to contact for issues regarding compliance.
f. The employer has ensured sufficient staffing of qualified property masters, armorers, or assistant property masters, reflective of the scene risk assessment.

13) Requires a qualified property master, armorer, or assistant property master handling a firearm in the course of the motion picture production to have specified firearms permits, trainings certificates and licenses, as specified.

14) Prohibits ammunition on a motion picture production, except as follows:
a. In the controlled and supervised environment of a shooting range or equivalent and for the purposes of actor training or postproduction gunfire sound recording, a documentary, except reenactments, or firearms education.
i. Specifies that all range safety rules, federal, state and local laws, and Industry-Wide Labor-Management Safety Committee Safety Bulletins #1 and #2 shall be followed under the supervision of the property master, armorer, or qualified assistant property master.
ii. Requires appropriate medical personnel to be available.
b. Where ammunition is essential to the subject matter of the work, such as a competitive reality show, a documentary, except dramatic reenactments, or a firearms education and safety training production.
c. While filming footage of trained military or police personnel firing weapons in a controlled military or police facility.

15) Requires every employer to ensure that any employee responsible for handling, or in proximity to, firearms on set completes the Contract Services Administration Trust Fund (CSATF) Firearms Safety Course for the Entertainment Industry, or an equivalent training, as determined by the Safety Committee. This training requirement shall be paid for by the employer and is not limited to crew or guild members.

16) Provides that these provisions do not apply to the following persons when they are on the perimeter of a set where motion picture production is happening:
a. A registered security guard carrying a firearm in compliance with security guard firearms qualifications, as defined, who is employed to provide security to the motion picture production and who, as specified.
b. A sworn peace officer, as defined, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties, as specified.

General Safety and Enforcement Provisions

17) Requires the employer to identify a person for performers, crew, labor organization representatives, and the division to contact for issues regarding compliance.

18) Requires that Cal/OSHA enforce these provisions.

19) Requires employers engaged in motion picture production to report to Cal/OSHA any serious injury or illness, or death, of an employee occurring in, or in connection with, any employment, as specified, and requires the division to investigate, per existing law.

20) Requires every Cal/OSHA inspection to include an evaluation of the employer's injury prevention program and any risk assessment for those participating in the pilot.

21) Provides that, pursuant to existing labor law, if, upon inspection or investigation, Cal/OSHA determines that an employer has violated any standard, rule, order, regulation or these provisions, Cal/OSHA may issue a citation to the employer.

22) Provides that these provisions shall not prevent or limit employer adoption of stricter safety standards.

23) Provides that nothing in these provisions limit, supersede, or eliminate any criminal or civil liability provided under any local, state, or federal law.

Evaluation of the Pilot

24) Requires the employer to select an independent evaluator, from a qualified list of evaluators established by the California Film Commission in collaboration with the Industry-Wide Labor-Management Safety Committee, to prepare a postproduction final safety evaluation report, within 60 days after postproduction, based on the actual risk and compliance experience, as specified.

25) On or before January 1, 2029, the California Film Commission, in collaboration with the Safety Committee, shall provide a nonbinding set of recommendations to the Legislature as to whether the pilot program should be implemented on a permanent basis, and whether to extend its application to all motion picture productions in this state, whether participating in state motion picture tax credits or not.

26) Specifies that the report be submitted pursuant to existing government reporting requirements and specifies that the pilot program provisions sunset on January 1, 2031.

27) Delays the operative date on all these provisions to January 1, 2025.

COMMENTS

1. 2021 Shooting on *"Rust"* Film Set:

On October 21, 2021, while filming the movie *"Rust"* in New Mexico, actor Alec Baldwin fired a revolver used as a prop that had been loaded with a live round injuring the director, Joel Souza, and killing cinematographer Halyna Hutchins. Halyna Hutchins left behind her husband and 9-year-old son. According to an affidavit filed by a deputy with the Santa Fe County Sheriff's Office, an assistant director grabbed one of three prop guns that the film's armorer had placed on set and yelled "cold gun," indicating to the cast and crew that the firearm did not contain a live round. He then handed the gun to Baldwin. When Baldwin

drew the gun from a holster to rehearse the scene, it fired a round in the direction of Hutchins and Souza. Baldwin maintains that he never pulled the trigger.[1]
New Mexico investigators have stated there appears to have been "some complacency" in how weapons were handled on the *"Rust"* set.[2] Several accounts from crew members have described the unsafe working conditions on set of the film, including long work hours, insufficient and 50-mile commute housing accommodations, shortcomings in the production's firearms safety protocols and under-qualified hires. In fact, there are reports that prior to the October 21 shooting, there had been two prop guns that had unintentionally discharged three times, two of which occurred when the guns had previously been declared "cold."[3] Just hours before the shooting, several crew members had walked off the set in protest of the unsafe work conditions.[4]

After over a year of investigation, in January 2023, prosecutors formally charged several individuals involved in the accident, including actor Alec Baldwin and the set's armorer, Hannah Gutierrez-Reed with involuntary manslaughter felony charges. In February 2023, the charges were downgraded. Several lawsuits have been filed in response to the incident, including one filed on February 15, 2022 in Santa Fe District court by the family of Halyna Hutchins against Alec Baldwin and others alleging a wrongful death and loss of consortium (D-101-CV-202200244).

2. Background: Safety in Motion Picture Production Sets

In California, every employer has a legal obligation to provide and maintain a safe and healthful workplace for their employees. Employers must have a written Injury and Illness Prevention Program (IIPP). Additionally, Cal/OSHA has a duty and authority to investigate workplaces for the safety and welfare of employees, either on its own motion or upon complaints. Cal/OSHA is also required to annually compile data pertaining to complaints received and citations issued and post it on its website. Although existing law requires employers to have an effective IIPP that includes training and instruction on safe work practices, nothing in existing law explicitly regulates the safe use of firearms and ammunition on entertainment productions or more specifically addresses the complexities of sets.

Safety Bulletins

Despite the absence of a clear regulatory framework, the motion picture and television industries operate under a series of published best practices, or "safety bulletins," which are researched, written and distributed by the Industry-Wide Labor-Management Safety Committee. The Industry-Wide Labor-Management Safety Committee is composed of union, guild, and employer representatives active in industry safety and health issues. The

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[1] "Alec Baldwin Was Told Gun in Fatal Shooting on Set Was Safe, Officials Say." *New York Times*. 21 October 2021. https://www.nytimes.com/2021/10/21/us/alec-baldwin-shooting-rust-movie.html
[2] "Family of cinematographer killed on movie set sues Alec Baldwin and 'Rust' producers." NPR. February 15, 2022. https://www.npr.org/2022/02/15/1080862149/alec-baldwin-halyna-hutchins-rust-lawsuit
[3] "'Rust' crew describes on-set gun safety issues and misfires days before fatal shooting." *Los Angeles Times*. 22 October 2021. https://www.latimes.com/entertainment-arts/business/story/2021-10-22/alec-baldwin-rust-camera-crew-walked-off-set ; "What We Know About the Fatal Shooting on Alec Baldwin's New Mexico Movie Set." *New York Times*. 16 February 2022. https://www.nytimes.com/article/alec-baldwin-shooting-investigation.html
[4] "Alec Baldwin on 'Rust' shooting: 'Someone is responsible…but I know it's not me'." ABC News. December 2, 2021. https://abcnews.go.com/Entertainment/alec-baldwin-rust-shooting-responsible/story?id=81490389

Safety Bulletins provide guidelines on a broad range of areas, including the safe use of firearms on an entertainment production set. These ***voluntary*** guidelines are often developed in response to incidents that occur on set. Sets are often outside and subject to various weather and terrain conditions. Workers are involved in stunts, climbing, rigging, complex electrical set ups, special effects and other potential threats to their safety on sets, many of which cannot be planned for in advance and all of which can create dangerous situations for workers. As noted above, these Safety Bulletins are only recommended guidelines and are not binding laws or regulations for which Cal/OSHA can ensure compliance.

Safety Bulletin #1 *Recommendations for Safety with Firearms and Use of "Blank Ammunition"* and Bulletin #2 *Special Use of "Live Ammunition"* provide guidelines regarding the use of firearms and special circumstances under which live ammunition may be used.[5] This bill would adopt some of these safety recommendations and restrictions on the use of firearms in entertainment productions.

3. Need for this bill?

According to the author, "All workers deserve a safe and healthy workplace. Because motion picture productions sets have a number and variety of potential hazards, proactive planning and oversight on the ground are key to ensuring safety. Ensuring the overall health and safety on motion picture production sets is especially critical for the safe handling of firearms. Tragic incidents like the one that occurred on the set of "Rust" are preventable, but only when the safety measures are followed by trained, experienced, certified, and professional entertainment industry experts hired by the employer to oversee the firearms used on a production. California must ensure that there are clear laws and guidelines around safety on motion picture productions; ones that facilitate a safety strategy that is preventative rather than reactive. Creating safety bulletins or passing laws once an accident happens is not enough; we should be proactive in raising standards and preventing injuries. Workers in the entertainment industry deserve to go to work and be safe while making a living."

4. Proponent Arguments:

According to the sponsors of the measure, the California IATSE Council, this bill is "landmark legislation that puts in place the enforcement of safety standards to address the wide range of complex safety issues faced by workers on every film and television production." They argue, "Dangers on sets go beyond what might appear the most obvious. Shooting is often outside and subject to all kinds of weather and terrain conditions. Workers are involved in stunts, climbing, rigging, complex electrical set-up, explosions, car chases, loading and unloading heavy equipment and other potential threats to safety, many of which cannot be planned for in advance, and all of which can create potentially dangerous situations for workers. The growing popularity of and demand for programming on a diverse array of media platforms has compressed schedules and increased the pressure to meet too often unrealistic delivery dates, making sets less safe."

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[5] "Safety Bulletin #1: Recommendations for Safety with Firearms and Use of Blank Ammunition." *Industry-Wide Labor-Management Safety Committee*. Revised 16 April 2003. https://www.csatf.org/wp-content/uploads/2018/05/01FIREARMS.pdf ; "Safety Bulletin #2: Special Use of Live Ammunition." *Industry-Wide Labor-Management Safety Committee*. Issued 16 April 2003. https://www.csatf.org/wp-content/uploads/2018/05/02LIVE_AMMUNITION.pdf

According to the sponsors, "Each professional on a set is uniquely focused on their job—armorers for firearm safety, stunt coordinators for stunts, lighting crew, rigging, hair and makeup, drivers and so on. However, there is no designated person on the production whose sole responsibility is to ensure the overall safety of the cast and crew. This bill requires employers to have a trained and qualified Safety Advisor on all productions participating in the California Film & Television Tax Credit Program 4.0, beginning in 2025. They will be on board from pre-production construction, and they will undertake an overall risk assessment in conjunction with the department heads and on-set production experts such as armorers, special effects, and stunt coordinators. They will conduct an additional "specific" risk assessment for activities they deem to be particularly hazardous. Most importantly, they will be on the production every day to ensure the health and safety of cast, crew, and everyone involved in that production."

They conclude stating that, "By codifying proven safety measures created and approved by the industry stakeholders and requiring a critical new safety position, SB 735 sets up a first-in-the-nation on set production structure to keep workers safe and hold employers accountable. By making it a pilot program, beginning in 2025, this legislation provides the motion picture industry led time to get prepared and enables it to use the five-year pilot as an opportunity to create the most effective safety regime in the United States. With this legislation, California becomes the leading force on motion picture production set safety in this country."

Additional support from the Directors Guild of America notes, "SB 735 appreciates the need for a structural solution and imports long-standing safety protections employed in the United Kingdom and Australia. California is the Nation's leader in film and TV production. Thus, it should also be the leader in workplace safety for the many Californians who show up to work in this industry each day."

5. Opponent Arguments:

The Alliance of Special Effects and Pyrotechnic Operators are in opposition writing, "it is of great concern to us that new legislation is attempting to impose upon us draconian Laws that are trying to solve problems that exist outside of our state. Studios in California already implement mandatory safety training. We already employ professional safety departments that are very skilled at identifying and mitigating the risks of potentially dangerous operations. Our department heads and subject matter experts already must collaborate with safety department executives to address all risk bearing activities. Our system works and the results speak for themselves."

6. Author Amendment:

Recent amendments taken April 13th, removed the penalty scheme that applied to the bill before it was narrowed to a pilot program. The pilot program will be enforced per existing law and Cal/OSHA's existing oversight and enforcement mechanisms. It appears that a remnant of the previous penalty scheme was inadvertedly left in the bill. *The author would like to amend the bill in committee today to remove the following section, no longer necessary with the penalty scheme removed.*

<u>Amendment</u>

9160. (a) This part shall not prevent or limit employer adoption of stricter safety standards.
~~(b) Nothing in this section shall limit, supersede, or eliminate any criminal or civil liability provided under any local, state, or federal law.~~

7. Double Referral:

This bill has been double referred and should it pass our hearing today, will be sent to Senate Judiciary Committee.

8. Prior Legislation:

SB 831 (Cortese, 2022) would have restricted the use of ammunition on movie productions and codified minimum training standards for individuals responsible for overseeing firearms on and off sets. SB 735 scales back provisions in SB 831 related to mandating that all employers hire an independent Safety Supervisor and conduct a written risk assessment for each production. Instead, SB 735 creates a 5-year pilot that mandates any employer who receives the motion picture tax credit to employ Safety Advisor and conduct a risk assessments, as prescribed. SB 831 died in Senate Appropriations Committee.

SB 829 (Portantino, 2022) would similarly establish requirements regarding the safe use of firearms, blanks and live ammunition in motion picture productions. Specifically, the bill would require an employer to ensure that a fire code official is present on any production during the time that firearms and blanks are used; requires the Office of the State Fire Marshal to develop training courses for armorers and specified employees who handle and use firearms; and would prohibit employers from employing armorers who have not completed an approved safety course. SB 829 died in Senate Appropriations Committee.

SUPPORT

California IATSE Council (Sponsor)
California Labor Federation, AFL-CIO
Directors Guild of America, INC.
Entertainment Union Coalition
IATSE Local 33
IATSE Local 600
IATSE Local 695
IATSE Local 705
IATSE Local 728
IATSE Local 729
IATSE Local 80
IATSE Local 871
IATSE Local 884

OPPOSITION

Alliance of Special Effects and Pyrotechnic Operators

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

Bill No:	SB 885	**Hearing Date:**	April 19, 2023
Author:	Committee on Labor, Public Employment and Retirement		
Version:	April 17, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public employees' retirement

KEY ISSUE

Should the state make technical, conforming, clarifying, and noncontroversial changes to various sections of the Education and Government Codes administered by the California State Teachers' Retirement System (CalSTRS), the California Public Employees' Retirement System (CalPERS), and the 20 independent County Employee Retirement Law of 1937 Act ("CERL" or "'37 Act') systems[1], respectively, for the purposes of continued appropriate and effective administration of these laws?

ANALYSIS

Existing law:

CalSTRS

1) Provides a list of specified conduct that constitutes cause for discipline of a state employee, or of a person whose name appears on any state employment list and includes conviction of a felony or conviction of a misdemeanor involving moral turpitude. (Government Code (GC) § 19572)

2) Requires the California Department of Justice (DOJ) to maintain state summary criminal history information (Penal Code (PC) § 11105 (a));

3) Requires the California Attorney General to furnish state summary criminal history information to state officials if needed in the course of their duties, provided that specified employee protection provisions, including Labor Code § 432.7, apply when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties. (PC § 11105 (b))

4) Authorizes, under federal law, the FBI to exchange criminal history record information (CHRI) with officials of state and local governmental agencies for licensing and employment purposes pursuant to state statute which approved by the U.S. Attorney General. (Pub. L. 92-544, 28 CFR § 20.33)

[1] The State Association of County Retirement Systems (SACRS) represents the 20 county retirement systems established under the 37 Act/ CERL.

5) Prohibits an employer from seeking from any source whatsoever, or utilizing, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or post trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law. (LC § 432.7)

6) However, does not prohibit an employer from seeking criminal background information regarding, a particular conviction if, pursuant to federal or state law the employer is required by law to obtain the information, as specified (LC § 432.7 (m));

7) Also, does not prohibit an employer required by law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history from complying with those requirements, or to prohibit the employer from seeking or receiving an applicant's criminal history report that has been obtained pursuant to procedures otherwise provided for under federal, state, or local law (LC § 43.7 (n)).

CalPERS / Judges Retirement System II (JRS II)

8) Authorizes CalPERS to charge interest on the amount of any payment due and unpaid by a contracting agency until the system receives payment at the greater of the annual return on the system's investments for the year prior to the year in which the agency did not make timely payments or a simple annual rate of 10 percent. (GC § 20537)

9) Establishes the California Employers' Pension Prefunding Trust Fund (CEPPT) as a special trust fund in the State Treasury to allow state and local public agency employers that provide a defined benefit pension plan to their employees to prefund their required pension contributions. (GC § 21711)

10) Creates the Public Employees' Retirement Fund (PERF) as a trust fund, administered in accordance with the Public Employees' Retirement Law, solely for the benefit of CalPERS members, retired members, and their survivors and beneficiaries. (GC § 20170)

11) Provides that moneys in the PERF are continuously appropriated, without regard to fiscal years, for payments which shall be made upon warrants drawn by the Controller upon demands made by CalPERS. Upon CalPERS' demand, the Controller shall draw warrants to make payments by electronic fund transfers. (GC § 20172)

12) Requires the Controller to direct and superintend the collection of all money due the State, as specified. (GC § 12418)

13) Requires the Controller to draw warrants on the Treasurer for the payment of money directed by law to be paid out of the State Treasury; but provides that a warrant shall not be drawn unless authorized by law, as specified. (GC § 12440)

14) Authorizes specified, actuarial adjusted, optional settlements that a JRS II member may elect to provide for the judge's surviving spouse or estate upon the judge's death and provides, under optional settlement one, that a judge's balance of accumulated contributions go to the judge's spouse or estate. (GC § 75570 et seq.)

37 Act County Retirement Systems / CERL / State Association of County Retirement Systems (SACRS)

1) Defines "Pensionable compensation" (terminology that applies to members subject to the California Public Employees' Pension Reform Act of 2013 (PEPRA)) to mean the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules, subject to specified limitations. (GC § 7522.34)

2) Defines "Compensation earnable" (terminology that applies to Legacy or Classic, i.e., non-PEPRA, members) to mean the average compensation as determined by the retirement board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. (GC § 31461)

3) Defines "Final compensation" under PEPRA to mean the highest average annual pensionable compensation earned by the member during a period of at least 36 consecutive months, or at least three consecutive school years if applicable, immediately preceding his or her retirement or last separation from service if earlier, or during any other period of at least 36 consecutive months, or at least three consecutive school years if applicable, during the member's applicable service that the member designates on the application for retirement. (GC § 7522.32)

4) Requires the retirement system to determine the final compensation of a PEPRA or Legacy member who has less than three years of service by dividing the member's total compensation by the number of months of credited service and multiplying by 12. (GC § 31462 and § 31462.05)

5) Provides for members whose service is temporary, seasonal, intermittent, or part-time, that "final compensation" only means one-third of the total compensation earned, as specified. (GC § 31462.2)

6) Requires the retirement system to notify specified members who have attained age 70 that they will receive their deferred retirement allowance or a lump sum distribution, as applicable, at age 72 pursuant to federal IRS Required Minimum Distribution (RMD) provisions. (GC § 31706)

This bill:

CalSTRS (Education Code §22338)

1) Adds a specific Education Code statute to facilitate CalSTRS' request to the DOJ for FBI background requests by conforming with recent changes to FBI guidelines requiring that requests for national criminal background information cite specific state authorization for department requests.

2) Limits an authorized criminal history check to employees and applicants whose duties include or would include:

a. Access to confidential or sensitive information and data maintained by CalSTRS or submitted to CalSTRS by its members or others;
b. Performing duties delegated to CalSTRS' chief executive officer;
c. Legal services and operations;
d. Actuarial , investment, audit, accounting, and financial services;
e. A position that requires driving as an essential function.

3) Requires CalSTRS to submit fingerprint images and related information as required for affected employees to DOJ and for DOJ to provide a state or federal response to CalSTRS pursuant to specified provisions of the Penal Code.

4) Requires CalSTRS to use the records and information received from DOJ exclusively for the authorized purposes of employment related to causes for discipline and to screen applicants for employment while a tentative offer is still pending with CalSTRS, as specified.

CalPERS / JRS II (Government Code §§ 20537, 21714.5, 75571, and 75571.5)

5) Caps the interest which CalPERS can charge local agencies on unpaid due payments at a simple annual rate of 10 percent.

6) Authorizes a state or local public agency employer to request a disbursement of funds from its CEPPT account and transfer those funds directly to the PERF. Requires CalPERS to certify to the Controller the total amount to transfer and requires the Controller to transfer the amount from the CEPPT to the PERF.

7) Authorizes a JRS II member in cases where there is not a surviving spouse to designate a beneficiary under optional settlement one for the return of remaining contributions and revises gendered pronouns.

37 ACT County Retirement Systems / CERL / SACRS (Government Code §§ 31462, 31462.05, 31462.2, 31593, 31706, 31725.7, 31726, and 31776.3)

8) Makes non-substantive, technical changes to provisions calculating final compensation for members with less than three years of service credit or whose service is temporary, seasonal, intermittent, or part-time to conform to post-PEPRA terminology regarding *compensation earnable* (applicable to Legacy members) and *pensionable compensation* (applicable to PEPRA members).

9) Conforms provisions relating to Required Minimum Distributions to federal law under the SECURE ACT 2.0 by referencing the federal law instead of referencing a specific age, which federal law changes periodically.

10) Makes minor typographical corrections.

COMMENTS

1. Need for this bill?

SB 885 (Senate Labor, Public Employment and Retirement Committee) is the annual omnibus housekeeping bill for statutes regulating the CalPERS, CalSTRS, and '37 Act

county retirement systems. The bill makes various technical, conforming, and minor changes to the Education and Government codes necessary for the efficient administration of the retirement systems.

- Provisions proposed by CalSTRS seek to conform to new federal requirements by the U.S. Attorney General and the FBI regulating access to national criminal background information by providing a specific statute to cite CalSTRS' authority to seek such information. Traditionally, CalSTRS and other state departments have cited to the Government Code section regulating state employee causes of discipline. The FBI has indicated that citation will be insufficient in the future. Thus, several state departments are currently analyzing how to comply with the FBI's new guidelines. CalSTRS adopted this bill's version of language at DOJ's recommendation.

- CalPERS' provisions seek to eliminate inefficient or burdensome outcomes of existing statute. Since investment return is not expected to be more than 10 percent annually in the foreseeable future, it is inefficient to require CalPERS to analyze each contracting agency's late payment penalty to decide which is higher, ten percent or the previous year's rate of investment return.

  Likewise, it is inefficient that a contracting agency cannot transfer funds directly from its CEPPT to CalPERS but instead must receive a warrant from the Controller, cash it, draw another warrant payable to CalPERS and send it to CalPERS. This bill will authorize the Controller to transfer the funds directly to CalPERS.

  Finally, current statute unduly burdens JRS II members without an estate plan who select Option 1 (which provides that if the judge predeceases a spouse, the judge's remaining accumulated contributions shall go to the spouse or the judge's estate). If a spouse predeceases the judge without a trust in place, a beneficiary currently must go to probate court to receive the judge's remaining contributions upon the judge's death. The proposed change would allow the judge to designate a beneficiary.

- SACRS proposed revisions conform secondary statutory provisions to the correct corresponding post-PEPRA terms for determining final compensation for members with fewer than three years of service; modify RMD references to federal tax law provisions instead of to the specific age cited in federal tax law; and make minor changes to fix typographical errors.

2. Proponent Arguments

According to CalSTRS:

"This measure contains the annual provisions that make various technical, conforming, or minor changes to the Teachers' Retirement Law for the California State Teachers' Retirement System (CalSTRS), alongside technical and conforming changes to the Public Employees' Retirement Law and the law related to the Judges' Retirement System II."

"This bill is necessary to permit continued effective administration of CalSTRS. Any administrative costs associated with these provisions are minor and absorbable, and there are no program costs resulting from them."

According to CalPERS:

"SB 885 would amend sections of the Government Code administered by CalPERS to:

- Authorize the State Controller's Office to execute fund to fund transfers between the California Pension Prefunding Trust (CEPPT) Fund and the Public Employees' Retirement Fund (PERF).
- Cap the interest assessed on CalPERS contracting agencies at 10 % when a contracting agency fails to remit the required contributions when due, rather than the higher of either the prior year's investment rate of return or 10%.
- Authorize a judge who is a member of the Judges' Retirement System (JRS) II to designate a beneficiary when opting for the return of remaining contributions options settlement (Option 1) in cases where there is no surviving spouse.

We urge your support of this legislation to support CalPERS' strategic goal to develop, design, and administer benefit programs and business processes that are innovative, effective, efficient, and valued by our members, employers, and stakeholders, and ensure that statutes administered by CalPERS are as clear and unambiguous as possible."

According to the State Association of County Retirement Systems:

"SB 885 includes various cleanup changes to the CERL, including technical typographical corrections and a tax compliance amendment regarding Required Minimum Distribution ages being changed by the SECURE 2.0 Act."

"These changes are necessary cleanup to CERL. On behalf of SACRS, we respectfully urge your support."

3. Opponent Arguments:

None received

4. Dual Referral:

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

5. Prior Legislation:

Chapter 231, Statutes of 2022 (AB 1824, Assembly Public Employment and Retirement Committee), made technical, conforming, and minor changes to the Education and Government codes necessary for the efficient administration of the retirement systems.

Chapter 186, Statutes of 2021 (SB 634, Senate Labor, Public Employment and Retirement Committee), made technical, conforming, or non-controversial changes to retirement system-related statutes administered respectively by CalSTRS, CalPERS, and the 37 Act county retirement systems.

SUPPORT

California Public Employees' Retirement System (Co-sponsor)
California State Teachers' Retirement System (Co-sponsor)
State Association of County Retirement Systems

OPPOSITION

None received

-- END --