

AMENDED IN ASSEMBLY JULY 27, 2020

AMENDED IN SENATE JUNE 2, 2020

AMENDED IN SENATE MARCH 26, 2020

SENATE BILL

No. 1257

Introduced by Senator Durazo

February 21, 2020

An act to amend Sections 6303 and 6314 of, and to add Section 6305.1 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1257, as amended, Durazo. ~~Domestic service employees: employment~~ *Employment safety standards: household domestic services and in-home child care services.*

Existing law, the California Occupational Safety and Health Act of 1973, requires employers to comply with certain standards ensuring healthy and safe working conditions, as specified. Existing law charges the Division of Occupational Safety and Health within the Department of Industrial Relations with enforcement of the act, subject to oversight by the Chief of the Division of Occupational Safety (chief). *Existing law makes a violation of the act a crime.* Under existing law, employment related to household domestic service is excluded from the provisions of the act.

This bill would remove the exclusion for household domestic service from these occupational safety provisions. *The bill, commencing July 1, 2022, would extend coverage under the act to specified types of household domestic services and in-home child care services funded by the In-Home Supportive Services program, a regional center pursuant to the Lanterman Developmental Disabilities Services Act, the California*

Early Intervention Services Act, and other provisions. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The bill would require the chief or a representative of the chief to convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to household domestic service, including individuals with a disability. The bill would require the committee to include an equal number of representatives of household domestic service employees and employers. The bill would also require the chief or a representative of the chief or a representative of the chief to convene an advisory committee, in consultation with the California Health and Human Services Agency and relevant stakeholders, and within 6 months of convening, make findings and recommendations to the Occupational Safety and Health Standards Board regarding health and safety regulations applicable to specified types of household domestic services and in-home child care services funded under the In-Home Supportive Services Program, the Lanterman Developmental Disability Services Act, the California Early Intervention Services Act, and other specified laws. The bill would require the board to adopt regulations pursuant to these provisions within a reasonable time and no later than July 1, 2022.

Existing law authorizes the chief and all qualified and authorized division inspectors and investigators to have free access to any place of employment to make an investigation or inspection during regular working hours, and at other reasonable times when necessary, for the protection of safety and health.

This bill would, when the workplace is a residential dwelling, require the chief or their representative to *initiate telephone* contact the employer in response to an alleged violation received from a domestic service employee within a specified ~~timeframe~~, depending upon whether the reported violation is considered a serious violation. *timeframe*. The bill would require the chief or their representative to provide specified notice to the employer about the alleged violation and to investigate the violation, as specified. *violation in accordance with certain procedures*. The bill would require the employer to provide specified information to the division regarding mitigation efforts to correct the violation and to provide copies of all correspondence received from the division to the domestic service employee. *The bill would authorize the chief or their authorized representative, for complaints alleging serious illness or injury or death in household domestic service, to enter the premises*

with permission or with an inspection warrant without first initiating telephone contact, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no—yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6303 of the Labor Code is amended to
2 read:

3 6303. (a) “Place of employment” means any place, and the
4 premises appurtenant thereto, where employment is carried on,
5 except a place where the health and safety jurisdiction is vested
6 by law in, and actively exercised by, any state or federal agency
7 other than the division.

8 (b) “Employment” includes the carrying on of any trade,
9 enterprise, project, industry, business, occupation, or work,
10 including all excavation, demolition, and construction work, or
11 any process or operation in any way related thereto, in which any
12 person is engaged or permitted to work for hire.

13 (c) “Employment,” for purposes of this division only, also
14 includes volunteer firefighting when covered by Division 4
15 (commencing with Section 3200) pursuant to Section 3361.

16 (d) Subdivision (c) shall become operative on January 1, 2004.

17 (e) *Coverage under this division shall become operative on July
18 1, 2022, for the following employment:*

19 (1) *Household domestic services funded by the In-Home
20 Supportive Services program, under Article 7 (commencing with
21 Section 12300) of Chapter 3 of Part 3 of Division 9 of, or Sections
22 14132.95, 14132.952, and 14132.956 of, the Welfare and
23 Institutions Code.*

24 (2) *Household domestic services funded by a regional center
25 pursuant to the Lanterman Developmental Disabilities Services
26 Act (Division 4.5 (commencing with Section 4500) of the Welfare
27 and Institutions Code) or the California Early Intervention Services*

1 1 *Act (Title 14 (commencing with Section 95000) of the Government*
2 2 *Code).*

3 3 *(3) In-home child care service that is not part of a “child day*
4 4 *care facility” as defined in Section 1596.750 of the Health and*
5 5 *Safety Code, funded pursuant to any program authorized under*
6 6 *the Child Care and Development Services Act (Chapter 2*
7 7 *(commencing with Section 8200) of Part 6 of Division 1 of Title 1*
8 8 *of the Education Code) or the California Work Opportunity and*
9 9 *Responsibility to Kids Act (Chapter 2 (commencing with Section*
10 10 *11200) of Part 3 of Division 9 of the Welfare and Institutions*
11 11 *Code).*

12 SEC. 2. Section 6305.1 is added to the Labor Code, to read:

13 6305.1. (a) The Chief of the Division of Occupational Safety
14 and Health, or a representative of the chief, shall convene an
15 advisory committee to evaluate whether there is a need to develop
16 industry-specific regulations related to household domestic service.
17 *service, including individuals with a disability.* The advisory
18 committee shall include an equal number of representatives of
19 household domestic service employees and employers.

20 (b) *The chief, or a representative of the chief, shall convene an*
21 *advisory committee, in consultation with the California Health*
22 *and Human Services Agency and relevant stakeholders, and within*
23 *six months of convening, make findings and recommendations to*
24 *the Occupational Safety and Health Standards Board regarding*
25 *health and safety regulations applicable to all of the following*
26 *employment:*

27 (1) *Household domestic services funded by the In-Home*
28 *Supportive Services program, under Article 7 (commencing with*
29 *Section 12300) of Chapter 3 of Part 3 of Division 9 of, or Sections*
30 *14132.95, 14132.952, and 14132.956 of, the Welfare and*
31 *Institutions Code.*

32 (2) *Household domestic services funded by a regional center*
33 *pursuant to the Lanterman Developmental Disabilities Services*
34 *Act (Division 4.5 (commencing with Section 4500) of the Welfare*
35 *and Institutions Code) or the California Early Intervention Services*
36 *Act (Title 14 (commencing with Section 95000) of the Government*
37 *Code).*

38 (3) *In-home child care service that is not part of a “child day*
39 *care facility” as defined in Section 1596.750 of the Health and*
40 *Safety Code, funded pursuant to any program authorized under*

1 *the Child Care and Development Services Act (Chapter 2*
2 *(commencing with Section 8200) of Part 6 of Division 1 of Title 1*
3 *of the Education Code) or the California Work Opportunity and*
4 *Responsibility to Kids Act (Chapter 2 (commencing with Section*
5 *11200) of Part 3 of Division 9 of the Welfare and Institutions*
6 *Code).*

7 *(c) The board shall adopt regulations within a reasonable time*
8 *pursuant to this section and no later than July 1, 2022.*

9 SEC. 3. Section 6314 of the Labor Code is amended to read:

10 6314. (a) To make an investigation or inspection, the chief of
11 the division and all qualified divisional inspectors and investigators
12 authorized by the chief shall, upon presenting appropriate
13 credentials to the employer, have free access to any place of
14 employment to investigate and inspect during regular working
15 hours, and at other reasonable times when necessary for the
16 protection of safety and health, and within reasonable limits and
17 in a reasonable manner. The chief or their authorized representative
18 may, during the course of any investigation or inspection, obtain
19 any statistics, information, or any physical materials in the
20 possession of the employer that are directly related to the purpose
21 of the investigation or inspection, conduct any tests necessary to
22 the investigation or inspection, and take photographs. Photographs
23 taken by the division during the course of any investigation or
24 inspection shall be considered to be confidential information
25 pursuant to the provisions of Section 6322, and shall not be deemed
26 to be public records for purposes of the California Public Records
27 Act.

28 (b) If permission to investigate or inspect the place of
29 employment is refused, or the facts or circumstances reasonably
30 justify the failure to seek permission, the chief or their authorized
31 representative may obtain an inspection warrant pursuant to the
32 provisions of Title 13 (commencing with Section 1822.50) of the
33 Code of Civil Procedure. Cause for the issuance of a warrant shall
34 be deemed to exist if there has been an industrial accident, injury,
35 or illness reported, if any complaint that violations of occupational
36 safety and health standards exist at the place of employment has
37 been received by the division, or if the place of employment to be
38 inspected has been chosen on the basis of specific neutral criteria
39 contained in a general administrative plan for the enforcement of
40 this division.

1 (c) The chief and their authorized representatives may issue
2 subpoenas to compel the attendance of witnesses and the
3 production of books, papers, records, and physical materials,
4 administer oaths, examine witnesses under oath, take verification
5 or proof of written materials, and take depositions and affidavits
6 for the purpose of carrying out the duties of the division.

7 (d) In the course of any investigation or inspection of an
8 employer or place of employment by an authorized representative
9 of the division, a representative of the employer and a
10 representative authorized by their employees shall have an
11 opportunity to accompany them on the tour of inspection. Any
12 employee or employer, or their authorized representatives, shall
13 have the right to discuss safety and health violations or safety and
14 health problems with the inspector privately during the course of
15 an investigation or inspection. Where there is no authorized
16 employee representative, the chief or their authorized
17 representatives shall consult with a reasonable number of
18 employees concerning matters of health and safety of the place of
19 employment.

20 (e) During any investigation of an industrial accident or
21 occupational illness conducted by the division pursuant to the
22 provisions of Section 6313, the chief or their authorized
23 representative may issue an order to preserve physical materials
24 or the accident site as they were at the time the accident or illness
25 occurred if, in the opinion of the division, it is necessary to do so
26 in order to determine the cause or causes of the accident or illness,
27 and the evidence is in potential danger of being removed, altered,
28 or tampered with. Under these circumstances, the division shall
29 issue that order in a manner that will avoid, to the extent possible,
30 any interference with normal business operations.

31 A conspicuous notice that an order has been issued shall be
32 prepared by the division and shall be posted by the employer in
33 the area or on the article to be preserved. The order shall be limited
34 to the immediate area and the machines, devices, apparatus, or
35 equipment directly associated with the accident or illness.

36 Any person who knowingly violates an order issued by the
37 division pursuant to this subdivision shall, upon conviction, be
38 punished by a fine of not more than five thousand dollars (\$5,000).

39 (f) (1) In the case where the place of employment is a residential
40 dwelling and the employee is a domestic service employee, the

1 chief of the division or their authorized representative shall initiate
2 telephone contact with the employer as soon as possible, but ~~not~~
3 ~~later than three working days after receipt of a complaint charging~~
4 ~~a serious violation, and not later than 14 calendar days after receipt~~
5 ~~of a complaint charging a nonserious violation.~~

6 (2) When telephone contact is successfully made, the chief of
7 the division or their authorized representative shall do all of the
8 following:

9 (A) Notify the employer of the existence of any alleged unsafe
10 or unhealthful conditions.

11 (B) Describe the alleged hazard and any specific regulatory
12 standard alleged to have been violated.

13 (C) Inform the employer that they are required, pursuant to
14 Section 6401.7, to investigate and abate any hazard discovered
15 during the investigation.

16 (D) Inform the employer by letter sent by facsimile or email,
17 or by certified mail if the employer cannot receive facsimile or
18 email, of each alleged hazard and each specific standard alleged
19 to have been violated.

20 (E) Inform the employer that if the division determines that the
21 employer's response is unsatisfactory for any reason, the division
22 shall seek permission from the employer to enter the residential
23 dwelling to investigate the matter, and, if permission is denied,
24 may secure ~~a court order~~ *an inspection warrant* to conduct an
25 onsite inspection of the residential dwelling.

26 (F) Provide the complainant with copies of the regulation alleged
27 to have been violated, the division's letter to the employer, and all
28 subsequent correspondence concerning the investigation of any
29 alleged hazards.

30 (3) An employer subject to investigation shall do both of the
31 following:

32 (A) Provide to the division, within 14 days of the employer's
33 receipt of the division's letter, a letter describing the results of the
34 employer's investigation of the alleged hazard and a description
35 of all actions taken, in the process of being taken, or planned to
36 be taken, by the employer to abate the alleged hazard, including
37 any applicable measurements or monitoring results, invoices for
38 equipment purchased, and photographs or video that document
39 correction of the alleged hazard.

1 (B) Provide a copy of the division's letter to the employee, and
2 all subsequent correspondence from and to the employer, to the
3 affected employee, or prominently post the letter and
4 correspondence in the method prescribed by subdivision (a) of
5 Section 6318.

6 (g) *For complaints alleging serious illness or injury or death
7 in household domestic service, the chief of the division or their
8 authorized representative may enter the premises with permission
9 or with an inspection warrant issued pursuant to the provisions
10 of Title 13 (commencing with Section 1822.50) of the Code of Civil
11 Procedure, without first initiating telephone contact, as described
12 in subdivision (f).*

13 SEC. 4. *No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.*