

AMENDED IN SENATE AUGUST 30, 2011

AMENDED IN SENATE AUGUST 15, 2011

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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 350

Introduced by Assembly Member Solorio
(Coauthors: Assembly Members Lara and Mendoza)
(Coauthor: Senator Vargas)

February 10, 2011

An act to amend Sections 1060, 1061, and 1064 of, and to amend the heading of Chapter 4.5 (commencing with Section 1060) of Part 3 of Division 2 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 350, as amended, Solorio. Displaced Janitor Opportunity Act.

Existing law, the Displaced Janitor Opportunity Act, requires contractors and subcontractors, that are awarded contracts or subcontracts by an awarding authority to provide janitorial or building maintenance services at a particular job site or sites, to retain, for a period of 60 days, certain employees who were employed at that site by the previous contractor or subcontractor. The act requires the successor contractors and subcontractors to offer continued employment to those employees retained for the 60-day period if their performance during that 60-day period is satisfactory. The act authorizes an employee who was not offered employment or who has been discharged in violation of these provisions by a successor contractor or successor

subcontractor, or an agent of the employee, to bring an action against a successor contractor or successor subcontractor in any superior court of the state having jurisdiction over the successor contractor or successor subcontractor, as specified.

This bill would rename the act the Displaced Property Service Employee Opportunity Act and make the provisions of the act applicable to property services, which would consist of licensed security, as defined, window cleaning, food cafeteria and dietary services, janitorial services, and cleaning-related or light building maintenance services. This bill would exclude from the definitions of “contractor” and “subcontractor” specified types of food service providers. The bill also would make conforming changes.

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

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

1 SECTION 1. The heading of Chapter 4.5 (commencing with
2 Section 1060) of Part 3 of Division 2 of the Labor Code is amended
3 to read:

4
5 CHAPTER 4.5. DISPLACED PROPERTY SERVICE
6 EMPLOYEE OPPORTUNITY ACT
7

8 SEC. 2. Section 1060 of the Labor Code is amended to read:
9 1060. The following definitions shall apply throughout this
10 chapter:

11 (a) “Awarding authority” means any person that awards or
12 otherwise enters into contracts for property services performed
13 within the State of California, including any subcontracts for those
14 services.

15 (b) “Contractor” means any person that employs 25 or more
16 individuals and that enters into a property service contract with
17 the awarding authority, excluding an organization vendored or
18 contracted through a regional center or the State Department of
19 Developmental Services pursuant to the Lanterman Developmental
20 Disabilities Services Act (Division 4.5 (commencing with Section
21 4500) of the Welfare and Institutions Code) or the California Early
22 Intervention Services Act (Title 14 (commencing with Section
23 95000) of the Government Code) to provide services and supports

1 for persons with developmental disabilities, as defined in Section
2 4512 of the Welfare and Institutions Code, that employs 200 or
3 fewer individuals in the delivery of food services, that enters into
4 a food service contract with the awarding authority or with a
5 contractor to assist that contractor in performing a food service
6 contract, and that provides a written notice to the awarding
7 authority asserting exemption pursuant to this subdivision. In
8 calculating whether an organization employs 200 or fewer
9 individuals for these purposes, persons employed solely to produce
10 commodities or provide services for procurement pursuant to
11 Sections 46 to 48c, inclusive, of Title 41 of the United States Code
12 shall not be counted.

13 (c) "Employee" means any person employed as a property
14 service employee of a contractor or subcontractor who works at
15 least 15 hours per week, has been employed by the contractor for
16 at least four months prior to receiving notification of a contract
17 termination, as described in paragraph (1) of subdivision (a) of
18 Section 1061, and whose primary place of employment is in the
19 State of California under a contract to provide property services.
20 "Employee" does not include a person who is a managerial,
21 supervisory, or confidential employee, including those employees
22 who would be so defined under the federal Fair Labor Standards
23 Act.

24 (d) "Person" means any individual, proprietorship, partnership,
25 joint venture, corporation, limited liability company, trust,
26 association, or other entity that may employ individuals or enter
27 into contracts.

28 (e) "Property service" means janitorial, cleaning-related or light
29 building maintenance, licensed security, window cleaning, or food
30 cafeteria and dietary services. For purposes of this subdivision,
31 "licensed security service" means service rendered by a person
32 covered under a valid collective bargaining agreement who is
33 registered as a security guard pursuant to Chapter 11.5
34 (commencing with Section 7580) of Division 3 of the Business
35 and Professions Code.

36 (f) "Property service contract" means any contract that has the
37 principal purpose of providing property services through the use
38 of property service employees.

39 (g) "Subcontractor" means any person who is not an employee
40 who enters into a contract with a contractor to assist the contractor

1 in performing a property service contract, excluding an organization
2 vendored or contracted through a regional center or the State
3 Department of Developmental Services pursuant to the Lanterman
4 Developmental Disabilities Services Act (Division 4.5
5 (commencing with Section 4500) of the Welfare and Institutions
6 Code) or the California Early Intervention Services Act (Title 14
7 (commencing with Section 95000) of the Government Code) to
8 provide services and supports for persons with developmental
9 disabilities, as defined in Section 4512 of the Welfare and
10 Institutions Code, that employs 200 or fewer individuals in the
11 delivery of food services, that enters into a food service contract
12 with the awarding authority or with a contractor to assist that
13 contractor in performing a food service contract, and that provides
14 a written notice to the awarding authority asserting exemption
15 pursuant to this subdivision. In calculating whether an organization
16 employs 200 or fewer individuals for these purposes, persons
17 employed solely to produce commodities or provide services for
18 procurement pursuant to Sections 46 to 48c, inclusive, of Title 41
19 of the United States Code shall not be counted.

20 (h) “Successor property service contract” means a property
21 service contract for the performance of essentially the same services
22 as were previously performed pursuant to a different property
23 service contract at the same facility that terminated within the
24 previous 30 days. A property service contract entered into more
25 than 30 days after the termination of a predecessor property service
26 contract shall be considered a “successor property service contract”
27 if its execution was delayed for the purpose of avoiding application
28 of this chapter.

29 SEC. 3. Section 1061 of the Labor Code is amended to read:

30 1061. (a) (1) If an awarding authority notifies a contractor
31 that the property service contract between the awarding authority
32 and the contractor has been terminated or will be terminated, the
33 awarding authority shall indicate in that notification whether a
34 successor property service contract has been or will be awarded
35 in its place and, if so, shall identify the name and address of the
36 successor contractor. The terminated contractor shall, within three
37 working days after receiving that notification, provide to the
38 successor contractor identified by the awarding authority, the name,
39 date of hire, and job classification of each employee employed at

1 the site or sites covered by the terminated property service contract
2 at the time of the contract termination.

3 (2) If the terminated contractor has not learned the identity of
4 the successor contractor, if any, the terminated contractor shall
5 provide that information to the awarding authority, which shall be
6 responsible for providing that information to the successor
7 contractor as soon as that contractor has been selected.

8 (3) The requirements of this section shall be equally applicable
9 to all subcontractors of a terminated contractor.

10 (b) (1) A successor contractor or successor subcontractor shall
11 retain, for a 60-day transition employment period, employees who
12 have been employed by the terminated contractor or its
13 subcontractors, if any, for the preceding four months or longer at
14 the site or sites covered by the successor service contract unless
15 the successor contractor or successor subcontractor has reasonable
16 and substantiated cause not to hire a particular employee based on
17 that employee's performance or conduct while working under the
18 terminated contract. This requirement shall be stated by awarding
19 authorities in all initial bid packages that are governed by this
20 chapter.

21 (2) The successor contractor or successor subcontractor shall
22 make a written offer of employment to each employee, as required
23 by this section, in the employee's primary language or another
24 language in which the employee is literate. That offer shall state
25 the time within which the employee must accept that offer, but in
26 no case may that time be less than 10 days. Nothing in this section
27 requires the successor contractor or successor subcontractor to pay
28 the same wages or offer the same benefits as were provided by the
29 prior contractor or prior subcontractor.

30 (3) If at any time the successor contractor or successor
31 subcontractor determines that fewer employees are needed to
32 perform services under the successor property service contract or
33 successor subcontract than were required by the terminated
34 contractor under the terminated contract or terminated subcontract,
35 the successor contractor or successor subcontractor shall retain
36 employees by seniority within the job classification.

37 (c) The successor contractor or successor subcontractor, upon
38 commencing service under the successor property service contract,
39 shall provide a list of its employees and a list of employees of its
40 subcontractors providing property services at the site or sites

1 covered under that contract to the awarding authority. These lists
2 shall indicate which of these employees were employed at the site
3 or sites by the terminated contractor or terminated subcontractor.
4 The successor contractor or successor subcontractor shall also
5 provide a list of any of the terminated contractor's employees who
6 were not retained either by the successor contractor or successor
7 subcontractor, stating the reason these employees were not retained.

8 (d) During the 60-day transition employment period, the
9 successor contractor or successor subcontractor shall maintain a
10 preferential hiring list of eligible covered employees not retained
11 by the successor contractor or successor subcontractor from which
12 the successor contractor or successor subcontractor shall hire
13 additional employees until such time as all of the terminated
14 contractor's or terminated subcontractor's employees have been
15 offered employment with the successor contractor or successor
16 subcontractor.

17 (e) During the initial 60-day transition employment period, the
18 successor contractor or successor subcontractor shall not discharge
19 without cause an employee retained pursuant to this chapter. Cause
20 shall be based only on the performance or conduct of the particular
21 employee.

22 (f) At the end of the 60-day transition employment period, a
23 successor contractor or successor subcontractor shall provide a
24 written performance evaluation to each employee retained pursuant
25 to this chapter. If the employee's performance during that ~~90-day~~
26 *60-day* period is satisfactory, the successor contractor or successor
27 subcontractor shall offer the employee continued employment.
28 Any employment after the 60-day transition employment period
29 shall be at-will employment under which the employee may be
30 terminated without cause.

31 SEC. 4. Section 1064 of the Labor Code is amended to read:

32 1064. Nothing in this chapter shall prohibit a local government
33 agency from enacting ordinances relating to displaced property
34 service employees that impose greater standards than, or establish
35 enforcement provisions in addition to, those prescribed by this
36 chapter.