

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 889

Introduced by Assembly Members Ammiano and V. Manuel Pérez
(Coauthors: Assembly Members Cedillo, Fuentes, and Monning)
(Coauthor: Senator De León)

February 17, 2011

An act to amend Sections 226, 3351, 3352, 3551, 3708, 3715, 6303, and 6314 of, to repeal Section 4156 of, and to add Part 4.5 (commencing with Section 1450) to Division 2 of, the Labor Code, relating to domestic work employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 889, as amended, Ammiano. Domestic work employees.

Existing law regulates the wages, hours, and working conditions of any man, woman, and minor employed in any occupation, trade, or industry, whether compensation is measured by time, piece, or otherwise, except for individuals employed as outside salesmen and individuals participating in specified national service programs. Under existing law, the Industrial Welfare Commission within the Department of Industrial Relations is authorized to adopt rules, regulations, and orders to ensure that employers comply with those provisions of law.

This bill would specially regulate the wages, hours, and working conditions of domestic work employees, as defined. Specifically, this bill would, among other things, provide a private right of action for a domestic work employee when those regulations are violated by his or her employer; provide an overtime compensation rate for domestic work employees; require annual pay increases, paid vacation, and paid sick days for domestic work employees; and require that a domestic work

employer provide written notice of termination 21 days in advance. *This bill would also expressly state that the provisions of Wage Order Number 15 of the Industrial Welfare Commission, with specified exceptions, apply to a domestic work employee, but would provide that these new domestic work provisions shall prevail over protections in that order or any other law that afford less protection to a domestic work employee.*

Existing law requires an employer to provide its employees with specified information regarding their wages either semimonthly or at the time of each wage payment. Under existing law, this requirement does not apply to employers of persons who engage in specified types of household domestic service.

This bill would delete the exclusion for employers of persons who engage in specified types of household domestic service, thereby requiring those employers to provide the above-described information.

Existing law requires employers to carry workers' compensation insurance. The failure to secure workers' compensation as required by the workers' compensation law is a misdemeanor. Under existing law, employers of persons who engage in specified types of household domestic service and who work less than a specified number of hours are excluded from that definition of employer and are therefore excluded from the requirement to carry workers' compensation insurance, as specified.

This bill would remove that exclusion and require all domestic work employers, as defined, to carry workers' compensation insurance and would make conforming changes. By expanding the definition of a crime, this bill would impose a state-mandated local program.

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. Under existing law, employment related to household domestic services is excluded from the provisions of the act.

This bill would remove that exclusion and require domestic work employers to comply with the requirements of the act.

The Division of Occupational Safety and Health of the Department of Industrial Relations is charged with enforcing occupational health and safety laws, orders, and standards, including the investigation of alleged violations of those provisions.

This bill would provide a process for investigating alleged violations of the above provisions when the place of employment is a residential dwelling.

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: yes.

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) As recognized by the State of California in Resolution
4 Chapter 119 of the Statutes of 2010, it is the policy of the state to
5 encourage and protect the rights of domestic work employees.

6 (b) California's domestic workers, which includes housekeepers,
7 nannies, and caregivers for children, persons with disabilities, and
8 the elderly, work in private households to care for the health, safety,
9 and well-being of the most important aspects of Californians' lives:
10 their families and homes.

11 (c) Domestic workers play a critical role in California's
12 economy, working to ensure the health and prosperity of California
13 families and freeing others to participate in the workforce, which
14 is increasingly necessary in these difficult economic times. The
15 labor of domestic workers is central to the ongoing prosperity of
16 the state but, despite the value of their work, domestic workers
17 have not received the same protection under state laws as workers
18 in other industries. Most domestic workers labor to support families
19 and children of their own, and more than half are primary income
20 earners, but two-thirds of domestic workers earn low wages or
21 wages below the poverty line.

22 (d) Because domestic workers care for the most important
23 elements of their employers' lives, their families and homes, it is
24 in the interest of employees, employers, and the people of the State
25 of California to ensure that the rights of domestic workers are
26 respected, protected, and enforced.

(e) The vast majority of domestic workers are women of color and immigrants and are particularly vulnerable to unlawful employment practices and abuses. Domestic workers usually work alone, behind closed doors, and out of the public eye, leaving them isolated, vulnerable to abuse and exploitation, and unable to advocate collectively for better working conditions. Domestic workers often labor under harsh conditions, work long hours for low wages without benefits or job security, and face termination without notice or severance pay, leaving many suddenly without both a job and a home. In the worst cases, domestic workers are verbally and physically abused or sexually assaulted, forced to sleep in conditions unfit for human habitation, and stripped of their privacy and dignity.

(f) Domestic workers are still excluded from the most basic protections afforded the rest of the labor force under state and federal law, including the rights to fair wages, safe and healthy working conditions, workers' compensation, and protection from discriminatory and abusive treatment. The treatment of domestic workers under federal and state laws has historically reflected stereotypical assumptions about the nature of domestic work, specifically that the relationship between employer and "servant" was "personal," rather than commercial, in character, that employment within a household was not "real" productive work, and that women did not work to support their families.

(g) Given the limited legal protections historically provided to domestic workers, and bearing in mind the unique conditions and demands of this private, home-based industry, the Legislature, as an exercise of the police power of the State of California for the protection of the public welfare, prosperity, health, safety, and peace of its people, further finds that domestic workers are entitled to industry-specific protections and labor standards that eliminate discriminatory provisions in the labor laws and guarantee domestic workers basic workplace rights to ensure that domestic workers are treated with equality, respect, and dignity.

SEC. 2. Section 226 of the Labor Code is amended to read:

226. (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing

1 showing (1) gross wages earned, (2) total hours worked by the
 2 employee, except for any employee whose compensation is solely
 3 based on a salary and who is exempt from payment of overtime
 4 under subdivision (a) of Section 515 or any applicable order of
 5 the Industrial Welfare Commission, (3) the number of piece-rate
 6 units earned and any applicable piece rate if the employee is paid
 7 on a piece-rate basis, (4) all deductions, provided that all deductions
 8 made on written orders of the employee may be aggregated and
 9 shown as one item, (5) net wages earned, (6) the inclusive dates
 10 of the period for which the employee is paid, (7) the name of the
 11 employee and his or her social security number, except that by
 12 January 1, 2008, only the last four digits of his or her social security
 13 number or an employee identification number other than a social
 14 security number may be shown on the itemized statement, (8) the
 15 name and address of the legal entity that is the employer, and (9)
 16 all applicable hourly rates in effect during the pay period and the
 17 corresponding number of hours worked at each hourly rate by the
 18 employee. The deductions made from payments of wages shall be
 19 recorded in ink or other indelible form, properly dated, showing
 20 the month, day, and year, and a copy of the statement or a record
 21 of the deductions shall be kept on file by the employer for at least
 22 three years at the place of employment or at a central location
 23 within the State of California.

24 (b) An employer that is required by this code or any regulation
 25 adopted pursuant to this code to keep the information required by
 26 subdivision (a) shall afford current and former employees the right
 27 to inspect or copy the records pertaining to that current or former
 28 employee, upon reasonable request to the employer. The employer
 29 may take reasonable steps to assure the identity of a current or
 30 former employee. If the employer provides copies of the records,
 31 the actual cost of reproduction may be charged to the current or
 32 former employee.

33 (c) An employer who receives a written or oral request to inspect
 34 or copy records pursuant to subdivision (b) pertaining to a current
 35 or former employee shall comply with the request as soon as
 36 practicable, but no later than 21 calendar days from the date of the
 37 request. A violation of this subdivision is an infraction.
 38 Impossibility of performance, not caused by or a result of a
 39 violation of law, shall be an affirmative defense for an employer
 40 in any action alleging a violation of this subdivision. An employer

1 may designate the person to whom a request under this subdivision
2 will be made.

3 (d) An employee suffering injury as a result of a knowing and
4 intentional failure by an employer to comply with subdivision (a)
5 is entitled to recover the greater of all actual damages or fifty
6 dollars (\$50) for the initial pay period in which a violation occurs
7 and one hundred dollars (\$100) per employee for each violation
8 in a subsequent pay period, not exceeding an aggregate penalty of
9 four thousand dollars (\$4,000), and is entitled to an award of costs
10 and reasonable attorney's fees.

11 (e) A failure by an employer to permit a current or former
12 employee to inspect or copy records within the time set forth in
13 subdivision (c) entitles the current or former employee or the Labor
14 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
15 penalty from the employer.

16 (f) An employee may also bring an action for injunctive relief
17 to ensure compliance with this section, and is entitled to an award
18 of costs and reasonable attorney's fees.

19 (g) This section does not apply to the state, to any city, county,
20 city and county, district, or to any other governmental entity, except
21 that if the state or a city, county, city and county, district, or other
22 governmental entity furnishes its employees with a check, draft,
23 or voucher paying the employee's wages, the state or a city, county,
24 city and county, district, or other governmental entity shall, by
25 January 1, 2008, use no more than the last four digits of the
26 employee's social security number or shall use an employee
27 identification number other than the social security number on the
28 itemized statement provided with the check, draft, or voucher.

29 SEC. 3. Part 4.5 (commencing with Section 1450) is added to
30 Division 2 of the Labor Code, to read:

31
32 PART 4.5. DOMESTIC WORK EMPLOYEES

33
34 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

35
36 1450. This part shall be known and may be cited as the
37 Domestic Work Employee Equality, Fairness, and Dignity Act.

38 1451. As used in this part, the following definitions apply:

39 (a) "Domestic work" means services related to the care of
40 persons in private households or maintenance of private households

1 or their premises. Domestic work occupations include childcare
2 providers, caregivers of sick, convalescing, or elderly persons,
3 house cleaners, housekeepers, maids, and other household
4 occupations.

5 (b) (1) “Domestic work employee” means an individual who
6 performs domestic work and includes live-in domestic work
7 employees and personal attendants.

8 (2) “Domestic work employee” does not include any of the
9 following:

10 (A) Any person who performs services through the In-Home
11 Supportive Services program under Article 7 (commencing with
12 Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare
13 and Institutions Code.

14 (B) Any person who is the parent, grandparent, spouse, child,
15 or legally adopted child of the domestic work employer.

16 (C) Any person under 18 years of age who is employed as a
17 babysitter for a minor child of the domestic work employer.

18 (c) (1) “Domestic work employer” means a person, including
19 corporate officers or executives, who directly or indirectly, or
20 through an agent or any other person, including through the
21 services of a third-party employer, temporary service, or staffing
22 agency or similar entity, employs or exercises control over the
23 wages, hours, or working conditions of a domestic work employee.

24 (2) “Domestic work employer” does not include the State of
25 California or individuals who receive domestic work services
26 through the In-Home Supportive Services program under Article
27 7 (commencing with Section 12300) of Chapter 3 of Part 3 of
28 Division 9 of the Welfare and Institutions Code.

29 (d) “Emergency” means an unpredictable or unavoidable
30 occurrence of a serious nature that occurs unexpectedly requiring
31 immediate action.

32 (e) “Hours worked” means the time during which a domestic
33 work employee is subject to the control of a domestic work
34 employer, and includes all time the domestic work employee is
35 suffered or permitted to work, whether or not required to do so.

36 (f) “Live-in domestic work employee” means a domestic work
37 employee who lives in the establishment where he or she works.

38 (g) “Personal attendant” means a person who performs domestic
39 work related to the supervision, feeding, or dressing of a child or
40 other person who, by reason of advanced age, physical disability,

1 or mental deficiency, needs supervision. Personal attendant
2 includes babysitters. The status of “personal attendant” applies if
3 no significant amount of work other than the foregoing is required.

4 1452. The Division of Labor Standards Enforcement shall
5 enforce this part.

6 1453. (a) Any domestic work employee aggrieved by a
7 violation of this part may bring an administrative action pursuant
8 to Section 98 or may bring a civil action in a court of competent
9 jurisdiction against the domestic work employer violating this part.

10 (b) Upon prevailing, a domestic work employee bringing an
11 action pursuant to this section shall be entitled to any legal or
12 equitable relief as may be appropriate to remedy the violation,
13 including the payment of any back wages unlawfully withheld,
14 the payment of an additional sum as liquidated damages or
15 penalties as specified in this part, reinstatement of employment,
16 interest, or injunctive relief, or any combination of these remedies,
17 as appropriate. A domestic work employee bringing a civil action
18 pursuant to this section shall also be entitled to recover an award
19 of reasonable attorney’s fees and costs, including expert witness
20 fees.

21 (c) The rights and remedies specified in this part are cumulative
22 and nonexclusive and are in addition to any other rights or remedies
23 afforded by contract or under other provisions of law. *If a provision*
24 *of Wage Order Number 15 of the Industrial Welfare Commission*
25 *or any other provision of law affords less protection to a domestic*
26 *work employee, this part shall prevail.*

27 (d) Notwithstanding any provision of this code or Section 340
28 of the Code of Civil Procedure, to commence an action for a
29 violation of this part a domestic work employee shall file an
30 administrative or civil complaint within three years of the violation.

31
32 CHAPTER 2. DOMESTIC WORK EMPLOYEE RIGHTS
33

34 1454. Except where otherwise provided in this chapter, Section
35 510 applies to a domestic work employee.

36 1455. (a) A domestic work employee who is required to be
37 on duty for 24 consecutive hours or more shall have a minimum
38 of eight consecutive hours for uninterrupted sleep, except in an
39 emergency.

1 (b) If a domestic work employee is required to be on duty for
2 24 consecutive hours or more, the domestic work employer and
3 the domestic work employee may agree in writing to exclude a
4 bona fide regularly scheduled sleeping period of not more than
5 eight hours for uninterrupted sleep from hours worked, provided
6 that the domestic work employer otherwise complies with this
7 section and Section 1457. If no written agreement to the contrary
8 is present, the eight hours of sleeping time shall constitute hours
9 worked.

10 (c) There is a rebuttable presumption that a domestic work
11 employee did not receive eight consecutive hours for uninterrupted
12 sleep if he or she is required to be on duty for 24 consecutive hours
13 or more and the domestic work employer does not hire a
14 replacement worker for at least eight consecutive hours in the
15 24-hour work period.

16 (d) A domestic work employer shall pay a sum of fifty dollars
17 (\$50) to the domestic work employee for each day that the domestic
18 employer violates this section.

19 1456. (a) A live-in domestic work employee who is not
20 required to be on duty for 24 consecutive hours or more shall have
21 at least 12 consecutive hours free of duty during each workday of
22 24 hours, of which a minimum of eight consecutive hours are for
23 uninterrupted sleep. A live-in domestic work employee suffered
24 or permitted to work during the 12 consecutive off-duty hours shall
25 be compensated in accordance with Section 510.

26 (b) A live-in domestic work employee shall not be required to
27 work more than five days in any one workweek without a day off
28 of not less than 24 consecutive hours, except in an emergency. A
29 live-in domestic work employee who is suffered or permitted to
30 work in excess of five workdays in any workweek shall be
31 compensated in accordance with Section 510.

32 (c) A domestic work employer shall pay a sum of fifty dollars
33 (\$50) to the domestic work employee for each day that the domestic
34 work employer violates this section.

35 1457. Live-in domestic work employees and domestic work
36 employees who work 24 consecutive hours or more shall be
37 provided sleeping accommodations that are adequate, decent, and
38 sanitary according to usual customary standards. Domestic work
39 employees shall not be required to share a bed.

1 1458. (a) ~~If a domestic work employee is required to report~~
2 ~~for work and does so report but is not put to work or is furnished~~
3 ~~less than half of his or her usual or scheduled day's work, the~~
4 ~~domestic work employee shall be paid for half the usual or~~
5 ~~scheduled day's work, but in no event for less than two hours nor~~
6 ~~more than four hours, at the domestic work employee's regular~~
7 ~~rate of pay, which shall not be less than the minimum wage.~~

8 (b) ~~If a domestic work employee is required to report for work~~
9 ~~a second time in any one workday and is furnished less than two~~
10 ~~hours of work on the second time he or she reports for work, the~~
11 ~~domestic work employee shall be paid for two hours at the~~
12 ~~domestic work employee's regular rate of pay, which shall not be~~
13 ~~less than the minimum wage.~~*Except as otherwise provided in this*
14 *Part, the provisions of Industrial Welfare Commission Wage Order*
15 *Number 15, except Section 6, shall apply to a domestic work*
16 *employee.*

17 (c) ~~Subdivisions (a) and (b) do not apply under any of the~~
18 ~~following conditions:~~

19 (1) ~~Operations cannot commence or continue due to threats to~~
20 ~~domestic work employees or property.~~

21 (2) ~~Operations cannot commence due to the recommendation~~
22 ~~of civil authorities.~~

23 (3) ~~Public utilities fail to supply electricity, water, or gas, or~~
24 ~~there is a failure in the public utilities or sewer system.~~

25 (4) ~~The interruption of work is caused by an act of God or other~~
26 ~~cause not within the domestic work employer's control.~~

27 (5) ~~The domestic work employee is paid on standby status and~~
28 ~~is called to perform assigned work at a time other than the domestic~~
29 ~~work employee's scheduled reporting time.~~

30 1459. (a) A domestic work employee shall earn a wage
31 increase each year on the same day of the employee's original date
32 of hire. The increase shall be in a percentage amount corresponding
33 to the prior year's percentage increase, if any, in the Consumer
34 Price Index for urban wage earners and clerical workers for
35 California as computed by the Division of Labor Statistics and
36 Research within the department.

37 (b) In any action brought to recover unpaid annual cost of living
38 pay increases pursuant to Section 1453, a domestic work employee
39 shall be entitled to recover liquidated damages in an amount equal
40 to the wages unlawfully unpaid and interest thereon.

1 (c) Notwithstanding subdivision (b), if the domestic work
2 employer demonstrates to the satisfaction of the court or the Labor
3 Commissioner, as applicable, that the act or omission giving rise
4 to the action was in good faith and that the domestic work employer
5 had reasonable grounds for believing that the act or omission did
6 not violate subdivision (a), the court or Labor Commissioner may,
7 in its discretion, refuse to award liquidated damages or award any
8 amount of liquidated damages not exceeding the amount specified
9 in subdivision (b).

10 ~~1460. (a) A domestic work employer shall not employ a~~
11 ~~domestic work employee for a work period of more than five hours~~
12 ~~per day without a meal period of not less than 30 minutes, except~~
13 ~~that if the total work period for the day of the domestic work~~
14 ~~employee is no more than six hours, the meal period may be waived~~
15 ~~by mutual consent of the domestic work employer and the domestic~~
16 ~~work employee.~~

17 ~~(b) A domestic work employer shall not employ a domestic~~
18 ~~work employee for a work period of more than 10 hours per day~~
19 ~~without providing the domestic work employee with a second meal~~
20 ~~period of not less than 30 minutes, except that if the total hours~~
21 ~~worked is no more than 12 hours, the second meal period may be~~
22 ~~waived by mutual consent of the employer and the employee only~~
23 ~~if the first meal period was not waived.~~

24 ~~(c) Unless the domestic work employee is relieved of all duty~~
25 ~~during a 30-minute meal period, the meal period shall be~~
26 ~~considered an on-duty meal period and counted as time worked.~~
27 ~~An on-duty meal period shall be permitted only if the nature of~~
28 ~~the work prevents a domestic work employee from being relieved~~
29 ~~of all duty and shall be by written agreement, revocable at any~~
30 ~~time by the domestic work employee, between the domestic work~~
31 ~~employer and domestic work employee.~~

32 ~~(d) If a domestic work employer fails to provide to a domestic~~
33 ~~work employee a meal period in accordance with this section, the~~
34 ~~domestic work employer shall pay the domestic work employee~~
35 ~~one additional hour of pay at the domestic work employee's regular~~
36 ~~rate of compensation for each workday that the meal period is not~~
37 ~~provided.~~

38 ~~1461. (a) Every domestic work employer shall authorize and~~
39 ~~permit all domestic work employees to take rest periods, which,~~
40 ~~insofar as practicable, shall be in the middle of each work period.~~

~~The authorized rest period time shall be based on the total hours worked daily at the rate of 10 minutes net rest time per four hours, or major fraction thereof, of work. However, a rest period need not be authorized for domestic work employees whose total daily work time is less than three and one-half hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.~~

~~(b) If a domestic work employer fails to provide a domestic work employee a rest period in accordance with the applicable provisions of this order, the domestic work employer shall pay the domestic work employee one additional hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.~~

~~1462.~~

1460. (a) A domestic work employer shall permit a domestic work employee who works five hours or more to choose the food he or she eats and to prepare his or her own meals. A *domestic work employer shall permit a domestic work employee may* to use the job site's kitchen facilities and kitchen appliances without charge or deduction from pay.

(b) If a domestic work employer and the domestic work employee agree that the domestic work employer will provide meals and the domestic work employer wishes to offset the costs of those meals pursuant to Industrial Welfare Commission Wage Order Number 15, the domestic work employee may request and receive specific food items for those meals.

(c) A domestic work employer who violates this section shall pay a sum of fifty dollars (\$50) to each domestic work employee for each day that he or she violated this section.

~~1463.~~

1461. (a) (1) A domestic work employee shall accrue paid vacation benefits at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this provision, whichever occurs first. A *domestic work employer shall permit a domestic work employee may* to use accrued paid vacation after one year of service. One year of service is completed on the 365th calendar day of employment.

(2) Unused accrued paid vacation benefits shall carry over from year to year. However, a domestic work employer may limit a domestic work employee's use of accrued paid vacation as follows:

(A) After the first year of service, a domestic work employee may use 40 hours or five days of paid vacation in each calendar year, whichever is greater.

(B) After the fifth year of service, a domestic work employee may use 80 hours or 10 days of paid vacation in each calendar year, whichever is greater.

(C) After the tenth year of service, a domestic work employee may use 120 hours or 15 days of paid vacation in each calendar year, whichever is greater.

(b) A domestic work employer shall not require, as a condition of taking paid vacation, that the domestic work employee search for or find a replacement worker to cover the hours during which the domestic work employee is on paid vacation leave.

(c) (1) A domestic work employee aggrieved by a violation of this section shall be entitled to all of the following:

(A) The amount of any paid vacation unlawfully withheld.

(B) A penalty of two hundred fifty dollars (\$250).

(C) Appropriate equitable relief.

(2) A domestic work employee is not aggrieved by a violation of this section if the domestic work employer can demonstrate that it denied a request to use paid vacation because of an emergency and provided another opportunity for the domestic work employee to take vacation time within three months of the date the domestic work employee originally requested to use paid vacation.

(d) Upon request, a domestic work employer shall provide to a domestic work employee an annual statement indicating the amount and periods of accrued vacation.

~~1464.~~

1462. (a) (1) A domestic work employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this provision, whichever occurs first. *A domestic work employer shall permit a domestic work employee may to use* accrued paid sick days as they are accrued, beginning on the 90th calendar day of employment

(2) Unused accrued paid sick days shall carry over from year to year. However, a domestic work employer may limit a domestic

1 work employee's use of paid sick days to 40 hours or five days in
2 each calendar year, whichever is greater.

3 (b) (1) A domestic work employee may use accumulated sick
4 days for the diagnosis, care, or treatment of an existing health
5 condition; preventive care; or care and services related to domestic
6 violence or sexual assault.

7 (2) A domestic work employee may use accumulated sick days
8 for himself or herself, or his or her child or legal ward; parent;
9 sibling; grandparent; grandchild; and spouse or registered domestic
10 partner under any state or local law. The aforementioned child,
11 parent, sibling, grandparent, and grandchild relationships include
12 biological relationships and relationships resulting from adoption;
13 step-relationships; legal guardianships; foster care relationships;
14 and in loco parentis relationships. "Child" includes a child of a
15 domestic partner.

16 (c) A domestic work employer is not required to provide
17 compensation to a domestic work employee for accrued, unused
18 paid sick days upon termination, resignation, retirement, or other
19 separation from employment.

20 (d) A domestic work employer shall not require as a condition
21 of taking paid sick days that the domestic work employee search
22 for or find a replacement worker to cover the hours during which
23 the domestic work employee is on paid sick days.

24 (e) A domestic work employee aggrieved by a violation of this
25 section shall be entitled to all of the following:

26 (1) Reinstatement.

27 (2) The amount of any sick days unlawfully withheld.

28 (3) A penalty equal to the amount of the paid sick days
29 unlawfully withheld multiplied by three, or two hundred fifty
30 dollars (\$250), whichever amount is greater.

31 (4) Appropriate equitable relief.

32 1465. (a) (1) A domestic work employee is entitled to written
33 notice of termination 21 days before his or her final day of
34 employment.

35 (2) If a domestic work employer does not provide notice of
36 termination as required by paragraph (1), the domestic work
37 employee is entitled to his or her wages for the period of violation,
38 up to a maximum of 21 days.

39 (b) A domestic work employer may terminate a domestic work
40 employee without providing the notice required in paragraph (1)

1 of subdivision (a) if the termination is based on the domestic work
2 employee causing intentional physical or psychological harm to
3 the person he or she cares for or intentional physical damage to
4 the work premises.

5 SEC. 4. Section 3351 of the Labor Code is amended to read:

6 3351. "Employee" means every person in the service of an
7 employer under any appointment or contract of hire or
8 apprenticeship, express or implied, oral or written, whether lawfully
9 or unlawfully employed, and includes:

10 (a) Aliens and minors.

11 (b) All elected and appointed paid public officers.

12 (c) All officers and members of boards of directors of
13 quasi-public or private corporations while rendering actual service
14 for the corporations for pay; provided that, where the officers and
15 directors of the private corporation are the sole shareholders
16 thereof, the corporation and the officers and directors shall come
17 under the compensation provisions of this division only by election
18 as provided in subdivision (a) of Section 4151.

19 (d) A person employed by the owner or occupant of a residential
20 dwelling whose duties are incidental to the ownership,
21 maintenance, or use of the dwelling, including the care and
22 supervision of children, persons of advanced age, or persons with
23 physical or mental disabilities, or whose duties are personal and
24 not in the course of the trade, business, profession, or occupation
25 of the owner or occupant.

26 (e) All persons incarcerated in a state penal or correctional
27 institution while engaged in assigned work or employment or
28 engaged in work performed under contract.

29 (f) All working members of a partnership or limited liability
30 company receiving wages irrespective of profits from the
31 partnership or limited liability company, provided that where the
32 working members of the partnership or limited liability company
33 are general partners or managers, the partnership or limited liability
34 company and the partners or managers shall come under the
35 compensation provisions of this division only by election as
36 provided in subdivision (a) of Section 4151. If a private corporation
37 is a general partner or manager, "working members of a partnership
38 or limited liability company" shall include the corporation and the
39 officers and directors of the corporation, provided that the officers
40 and directors are the sole shareholders of the corporation. If a

1 limited liability company is a partner or member, “working
2 members of the partnership or limited liability company” shall
3 include the managers of the limited liability company.

4 (g) For the purposes of subdivisions (c) and (f), the persons
5 holding the power to revoke a trust as to shares of a private
6 corporation or as to general partnership or limited liability company
7 interests held in the trust, shall be deemed to be the shareholders
8 of the private corporation, or the general partners of the partnership,
9 or the managers of the limited liability company.

10 SEC. 5. Section 3352 of the Labor Code is amended to read:

11 3352. “Employee” excludes the following:

12 (a) Any person defined in subdivision (d) of Section 3351 who
13 is employed by his or her parent, spouse, or child.

14 (b) Any person performing services in return for aid or
15 sustenance only, received from any religious, charitable, or relief
16 organization.

17 (c) Any person holding an appointment as deputy clerk or deputy
18 sheriff appointed for his or her own convenience, and who receives
19 no compensation from the county or municipal corporation or from
20 the citizens thereof for his or her services as the deputy. This
21 exclusion is operative only as to employment by the county or
22 municipal corporation and does not deprive any person so
23 deputized from recourse against a private person employing him
24 or her for injury occurring in the course of and arising out of the
25 employment.

26 (d) Any person performing voluntary services at or for a
27 recreational camp, hut, or lodge operated by a nonprofit
28 organization, exempt from federal income tax under Section 501
29 of the Internal Revenue Code, of which he or she or a member of
30 his or her family is a member and who receives no compensation
31 for those services other than meals, lodging, or transportation.

32 (e) Any person performing voluntary service as a ski patrolman
33 who receives no compensation for those services other than meals
34 or lodging or the use of ski tow or ski lift facilities.

35 (f) Any person employed by a ski lift operator to work at a snow
36 ski area who is relieved of and not performing any prescribed
37 duties, while participating in recreational activities on his or her
38 own initiative.

39 (g) Any person, other than a regular employee, participating in
40 sports or athletics who receives no compensation for the

1 participation other than the use of athletic equipment, uniforms,
2 transportation, travel, meals, lodgings, or other expenses incidental
3 thereto.

4 (h) Any person performing voluntary service for a public agency
5 or a private, nonprofit organization who receives no remuneration
6 for the services other than meals, transportation, lodging, or
7 reimbursement for incidental expenses.

8 (i) Any person, other than a regular employee, performing
9 officiating services relating to amateur sporting events sponsored
10 by any public agency or private, nonprofit organization, who
11 receives no remuneration for these services other than a stipend
12 for each day of service no greater than the amount established by
13 the Department of Personnel Administration as a per diem expense
14 for employees or officers of the state. The stipend shall be
15 presumed to cover incidental expenses involved in officiating,
16 including, but not limited to, meals, transportation, lodging, rule
17 books and courses, uniforms, and appropriate equipment.

18 (j) Any student participating as an athlete in amateur sporting
19 events sponsored by any public agency, public or private nonprofit
20 college, university or school, who receives no remuneration for
21 the participation other than the use of athletic equipment, uniforms,
22 transportation, travel, meals, lodgings, scholarships, grants-in-aid,
23 or other expenses incidental thereto.

24 (k) Any law enforcement officer who is regularly employed by
25 a local or state law enforcement agency in an adjoining state and
26 who is deputized to work under the supervision of a California
27 peace officer pursuant to paragraph (4) of subdivision (a) of Section
28 832.6 of the Penal Code.

29 (l) Any law enforcement officer who is regularly employed by
30 the Oregon State Police, the Nevada Department of Motor Vehicles
31 and Public Safety, or the Arizona Department of Public Safety and
32 who is acting as a peace officer in this state pursuant to subdivision
33 (a) of Section 830.39 of the Penal Code.

34 (m) Any person, other than a regular employee, performing
35 services as a sports official for an entity sponsoring an
36 intercollegiate or interscholastic sports event, or any person
37 performing services as a sports official for a public agency, public
38 entity, or a private nonprofit organization, which public agency,
39 public entity, or private nonprofit organization sponsors an amateur
40 sports event. For purposes of this subdivision, "sports official"

1 includes an umpire, referee, judge, scorekeeper, timekeeper, or
2 other person who is a neutral participant in a sports event.

3 (n) Any person who is an owner-builder, as defined in
4 subdivision (a) of Section 50692 of the Health and Safety Code,
5 who is participating in a mutual self-help housing program, as
6 defined in Section 50087 of the Health and Safety Code, sponsored
7 by a nonprofit corporation.

8 SEC. 6. Section 3551 of the Labor Code is amended to read:

9 3551. (a) Every employer subject to the compensation
10 provisions of this code shall give every new employee, either at
11 the time the employee is hired or by the end of the first pay period,
12 written notice of the information contained in Section 3550. The
13 content of the notice required by this section shall be prescribed
14 by the administrative director after consultation with the
15 Commission on Health and Safety and Workers' Compensation.

16 (b) The notice required by this section shall be easily
17 understandable and available in both English and Spanish. In
18 addition to the information contained in Section 3550, the content
19 of the notice required by this section shall include:

20 (1) Generally, how to obtain appropriate medical care for a job
21 injury.

22 (2) The role and function of the primary treating physician.

23 (3) A form that the employee may use as an optional method
24 for notifying the employer of the name of the employee's "personal
25 physician," as defined by Section 4600, or "personal chiropractor,"
26 as defined by Section 4601.

27 (c) The content of the notice required by this section shall be
28 made available to employers and insurers by the administrative
29 director. Insurers shall provide this notice to each of their
30 policyholders, with advice concerning the requirements of this
31 section and the penalties for a failure to provide this notice to all
32 employees.

33 SEC. 7. Section 3708 of the Labor Code is amended to read:

34 3708. In such action it is presumed that the injury to the
35 employee was a direct result and grew out of the negligence of the
36 employer, and the burden of proof is upon the employer, to rebut
37 the presumption of negligence. It is not a defense to the employer
38 that the employee was guilty of contributory negligence, or
39 assumed the risk of the hazard complained of, or that the injury
40 was caused by the negligence of a fellow servant. No contract or

1 regulation shall restore to the employer any of the foregoing
2 defenses.

3 SEC. 8. Section 3715 of the Labor Code is amended to read:

4 3715. (a) Any employee whose employer has failed to secure
5 the payment of compensation as required by this division, or his
6 or her dependents in case death has ensued, may, in addition to
7 proceeding against his or her employer by civil action in the courts
8 as provided in Section 3706, file his or her application with the
9 appeals board for compensation and the appeals board shall hear
10 and determine the application for compensation in like manner as
11 in other claims and shall make the award to the claimant as he or
12 she would be entitled to receive if the employer had secured the
13 payment of compensation as required, and the employer shall pay
14 the award in the manner and amount fixed thereby or shall furnish
15 to the appeals board a bond, in any amount and with any sureties
16 as the appeals board requires, to pay the employee the award in
17 the manner and amount fixed thereby.

18 (b) (1) In any claim in which it is alleged that the employer has
19 failed to secure the payment of compensation, the director, only
20 for purposes of this section and Section 3720, shall determine, on
21 the basis of the evidence available to him or her, whether the
22 employer was prima facie illegally uninsured. A finding that the
23 employer was prima facie illegally uninsured shall be made when
24 the director determines that there is sufficient evidence to constitute
25 a prima facie case that the employer employed an employee on
26 the date of the alleged injury and had failed to secure the payment
27 of compensation, and that the employee was injured arising out
28 of, and occurring in the course of, the employment.

29 (2) Failure of the employer to furnish within 10 days the written
30 statement in response to a written demand for a written statement
31 prescribed in Section 3711, addressed to the employer at its address
32 as shown on the official address record of the appeals board, shall
33 constitute in itself sufficient evidence for a prima facie case that
34 the employer failed to secure the payment of compensation.

35 (3) A written denial by the insurer named in the statement
36 furnished by the employer as prescribed in Section 3711, that the
37 employer was so insured as claimed, or the nonexistence of a valid
38 certificate of consent to self-insure for the time of the claimed
39 injury, if the statement furnished by the employer claims the
40 employer was self-insured, shall constitute in itself sufficient

1 evidence for a prima facie case that the employer had failed to
2 secure the payment of compensation.

3 (4) The nonexistence of a record of the employer's insurance
4 with the Workers' Compensation Insurance Rating Bureau shall
5 constitute in itself sufficient evidence for a prima facie case that
6 the employer failed to secure the payment of compensation.

7 (5) The un rebutted written declaration under penalty of perjury
8 by the injured employee, or applicant other than the employee,
9 that the employee was employed by the employer at the time of
10 the injury, and that he or she was injured in the course of his or
11 her employment, shall constitute, in itself, sufficient evidence for
12 a prima facie case that the employer employed the employee at
13 the time of the injury, and that the employee was injured arising
14 out of, and occurring in the course of, the employment.

15 (c) (1) When the director determines that an employer was
16 prima facie illegally uninsured, the director shall mail a written
17 notice of the determination to the employer at his or her address
18 as shown on the official address record of the appeals board, and
19 to any other more recent address the director may possess. The
20 notice shall advise the employer of its right to appeal the finding,
21 and that a lien may be placed against the employer's and any parent
22 corporation's property, or the property of substantial shareholders
23 of a corporate employer as defined by Section 3717.

24 (2) Any employer aggrieved by a finding of the director that it
25 was prima facie illegally uninsured may appeal the finding by
26 filing a petition before the appeals board. The petition shall be
27 filed within 20 days after the finding is issued. The appeals board
28 shall hold a hearing on the petition within 20 days after the petition
29 is filed with the appeals board. The appeals board shall have
30 exclusive jurisdiction to determine appeals of the findings by the
31 director, and no court of this state has jurisdiction to review, annul,
32 or suspend the findings or the liens created thereunder, except as
33 provided by Article 2 (commencing with Section 5950) of Chapter
34 7 of Part 4 of Division 4.

35 (d) (1) Any claim brought against an employer under this
36 section may be resolved by the director by compromise and release
37 or stipulated findings and award as long as the appeals board has
38 acquired jurisdiction over the employer and the employer has been
39 given notice and an opportunity to object.

1 (2) Notice may be given by service on the employer of an
2 appeals board notice of intention to approve the compromise and
3 release or stipulated findings and award. The employer shall have
4 20 days after service of the notice of intention to file an objection
5 with the appeals board and show good cause therefor.

6 (3) If the employer objects, the appeals board shall determine
7 if there is good cause for the objection.

8 (4) If the appeals board finds good cause for the objection, the
9 director may proceed with the compromise and release or stipulated
10 findings and award if doing so best serves the interest of the
11 Uninsured Employers Fund, but shall have no cause of action
12 against the employer under Section 3717 unless the appeals board
13 case is tried to its conclusion and the employer is found liable.

14 (5) If the appeals board does not find good cause for the
15 objection, and the compromise and release or stipulated findings
16 and award is approved, the Uninsured Employers Fund shall have
17 a cause of action against the employer pursuant to Section 3717.

18 (e) The director may adopt regulations to implement and
19 interpret the procedures provided for in this section.

20 SEC. 9. Section 4156 of the Labor Code is repealed.

21 SEC. 10. Section 6303 of the Labor Code is amended to read:

22 6303. (a) "Place of employment" means any place, and the
23 premises appurtenant thereto, where employment is carried on,
24 except a place where the health and safety jurisdiction is vested
25 by law in, and actively exercised by, any state or federal agency
26 other than the division.

27 (b) "Employment" includes the carrying on of any trade,
28 enterprise, project, industry, business, occupation, or work,
29 including all excavation, demolition, and construction work, or
30 any process or operation in any way related thereto, in which any
31 person is engaged or permitted to work for hire.

32 (c) "Employment," for purposes of this division only, also
33 includes volunteer firefighting when covered by Division 4
34 (commencing with Section 3200) pursuant to Section 3361.

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

36 SEC. 11. Section 6314 of the Labor Code is amended to read:

37 6314. (a) To make an investigation or inspection, the chief of
38 the division and all qualified divisional inspectors and investigators
39 authorized by him or her shall, upon presenting appropriate
40 credentials to the employer, have free access to any place of

1 employment to investigate and inspect during regular working
2 hours, and at other reasonable times when necessary for the
3 protection of safety and health, and within reasonable limits and
4 in a reasonable manner. The chief or his or her authorized
5 representative may, during the course of any investigation or
6 inspection, obtain any statistics, information, or any physical
7 materials in the possession of the employer that are directly related
8 to the purpose of the investigation or inspection, conduct any tests
9 necessary to the investigation or inspection, and take photographs.
10 Photographs taken by the division during the course of any
11 investigation or inspection shall be considered to be confidential
12 information pursuant to the provisions of Section 6322, and shall
13 not be deemed to be public records for purposes of the California
14 Public Records Act.

15 (b) If permission to investigate or inspect the place of
16 employment is refused, or the facts or circumstances reasonably
17 justify the failure to seek permission, the chief or his or her
18 authorized representative may obtain an inspection warrant
19 pursuant to the provisions of Title 13 (commencing with Section
20 1822.50) of the Code of Civil Procedure. Cause for the issuance
21 of a warrant shall be deemed to exist if there has been an industrial
22 accident, injury, or illness reported, if any complaint that violations
23 of occupational safety and health standards exist at the place of
24 employment has been received by the division, or if the place of
25 employment to be inspected has been chosen on the basis of
26 specific neutral criteria contained in a general administrative plan
27 for the enforcement of this division.

28 (c) The chief and his or her authorized representatives may issue
29 subpoenas to compel the attendance of witnesses and the
30 production of books, papers, records, and physical materials,
31 administer oaths, examine witnesses under oath, take verification
32 or proof of written materials, and take depositions and affidavits
33 for the purpose of carrying out the duties of the division.

34 (d) In the course of any investigation or inspection of an
35 employer or place of employment by an authorized representative
36 of the division, a representative of the employer and a
37 representative authorized by his or her employees shall have an
38 opportunity to accompany him or her on the tour of inspection.
39 Any employee or employer, or their authorized representatives,
40 shall have the right to discuss safety and health violations or safety

1 and health problems with the inspector privately during the course
2 of an investigation or inspection. Where there is no authorized
3 employee representative, the chief or his or her authorized
4 representatives shall consult with a reasonable number of
5 employees concerning matters of health and safety of the place of
6 employment.

7 (e) During any investigation of an industrial accident or
8 occupational illness conducted by the division pursuant to the
9 provisions of Section 6313, the chief or his or her authorized
10 representative may issue an order to preserve physical materials
11 or the accident site as they were at the time the accident or illness
12 occurred if, in the opinion of the division, it is necessary to do so
13 in order to determine the cause or causes of the accident or illness,
14 and the evidence is in potential danger of being removed, altered,
15 or tampered with. Under these circumstances, the division shall
16 issue that order in a manner that will avoid, to the extent possible,
17 any interference with normal business operations.

18 A conspicuous notice that an order has been issued shall be
19 prepared by the division and shall be posted by the employer in
20 the area or on the article to be preserved. The order shall be limited
21 to the immediate area and the machines, devices, apparatus, or
22 equipment directly associated with the accident or illness.

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

26 (f) (1) In the case where the place of employment is a residential
27 dwelling, the chief of the division or his or her authorized
28 representative shall initiate telephone contact with the employer
29 as soon as possible, but not later than three working days after
30 receipt of a complaint charging a serious violation, as described
31 in Section 6309, and not later than 14 calendar days after receipt
32 of a complaint charging a nonserious violation.

33 (2) When telephone contact is successfully made, the chief of
34 the division or his or her authorized representative shall do all of
35 the following:

36 (A) Notify the employer of the existence of any allegedly unsafe
37 or unhealthful conditions.

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

1 (C) Inform the employer that he or she is required pursuant to
2 Section 6401.7 to investigate and abate any hazard discovered
3 during the investigation.

4 (D) Inform the employer by letter sent by facsimile or electronic
5 mail, or by certified mail if the domestic work employer cannot
6 receive facsimile or electronic mail, of each alleged hazard and
7 each specific standard alleged to have been violated.

8 (E) Inform the employer that if the division determines that the
9 employer's response is unsatisfactory for any reason, the division
10 shall seek permission from the employer to enter the residential
11 dwelling to investigate the matter, and, if permission is denied,
12 may secure a court order to conduct an onsite inspection of the
13 residential dwelling.

14 (F) Provide the complainant with copies of the regulation alleged
15 to have been violated, the division's letter to the employer, and all
16 subsequent correspondence concerning the investigation of any
17 hazards.

18 (3) An employer subject to investigation shall do both of the
19 following:

20 (i) Provide to the division, within 14 days of the employer's
21 receipt of the division's letter, a letter describing the results of the
22 employer's investigation of the alleged hazards and a description
23 of all actions taken, in the process of being taken, or planned to
24 be taken, by the employer to abate the alleged hazard, including
25 any applicable measurements or monitoring results, invoices for
26 equipment purchased, and photographs or video that document
27 correction of the alleged hazard.

28 (ii) Provide a copy of the division's letter to the employer, and
29 all subsequent correspondence from and to the employer, to the
30 affected employee, or prominently post the letter and
31 correspondence in the method prescribed by subdivision (a) of
32 Section 6318.

33 SEC. 12. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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