

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 4, 2011

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 Allen, Cedillo, Fuentes, Ma, and
Monning)
(Coauthor: Senator De León)

February 17, 2011

An act to amend Sections 226, 3351, 3352, 3551, 3708, ~~3715, 6303,~~
~~and 6314~~ *and 3715* 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; and require paid vacation and paid sick days for domestic work employees. 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~~ *secure the payment of workers' compensation for injuries incurred by their employees that arise out of and in the course of employment*. 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~~ *secure the payment of workers' compensation insurance*, as specified.

This bill would remove that exclusion and require all domestic work employers, as defined, to ~~carry~~ *secure the payment of 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

1 in the interest of employees, employers, and the people of the State
2 of California to ensure that the rights of domestic workers are
3 respected, protected, and enforced.

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

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

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

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

39 226. (a) Every employer shall, semimonthly or at the time of
40 each payment of wages, furnish each of his or her employees,

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

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

36 (c) An employer who receives a written or oral request to inspect
37 or copy records pursuant to subdivision (b) pertaining to a current
38 or former employee shall comply with the request as soon as
39 practicable, but no later than 21 calendar days from the date of the
40 request. A violation of this subdivision is an infraction.

1 Impossibility of performance, not caused by or a result of a
2 violation of law, shall be an affirmative defense for an employer
3 in any action alleging a violation of this subdivision. An employer
4 may designate the person to whom a request under this subdivision
5 will be made.

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

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

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

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

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

34
35 PART 4.5. DOMESTIC WORK EMPLOYEES

36
37 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

38
39 1450. This part shall be known and may be cited as the
40 Domestic Work Employee Equality, Fairness, and Dignity Act.

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

(a) “Domestic work” means services related to the care of persons in private households or maintenance of private households or their premises. Domestic work occupations include childcare providers, caregivers of sick, convalescing, or elderly persons, house cleaners, housekeepers, maids, and other household occupations.

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

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

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

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

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

(D) Any person employed by a licensed health facility, as defined in Section 1250 of the Health and Safety Code.

(E) *Any person who is employed by, or contracts with, an organization vendored or contracted through a regional center or the State Department of Developmental Services pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) to provide services and support for persons with developmental disabilities, as defined in Section 4512 of the Welfare and Institutions Code, when funding for those services is provided through the State Department of Developmental Services.*

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

1 (2) “Domestic work employer” does not include any of the
2 following:

3 (A) The State of California or individuals who receive domestic
4 work services through the In-Home Supportive Services program
5 under Article 7 (commencing with Section 12300) of Chapter 3
6 of Part 3 of Division 9 of the Welfare and Institutions Code.

7 (B) An employment agency that ~~is required to comply~~ *complies*
8 with Section 1812.5095 of the Civil Code and that operates solely
9 to procure, offer, refer, provide, or attempt to provide work to
10 domestic workers if the relationship between the employment
11 agency and the domestic workers for whom the agency procures,
12 offers, refers, provides, or attempts to provide domestic work is
13 characterized by all of the factors listed in subdivision (b) of
14 Section 1812.5095 of the Civil Code and Section 687.2 of the
15 Unemployment Insurance Code.

16 (C) A licensed health facility, as defined in Section 1250 of the
17 Health and Safety Code.

18 (d) “Emergency” means an unpredictable or unavoidable
19 occurrence of a serious nature that occurs unexpectedly requiring
20 immediate action.

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

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

27 (g) “Personal attendant” means a person who performs domestic
28 work related to the supervision, feeding, or dressing of a child or
29 other person who, by reason of advanced age, physical disability,
30 or mental deficiency, needs supervision. Personal attendant
31 includes babysitters. The status of “personal attendant” applies if
32 no significant amount of work other than the foregoing is required.

33 1452. The Division of Labor Standards Enforcement shall
34 enforce this part.

35 1453. (a) Any domestic work employee aggrieved by a
36 violation of this part may bring an administrative action pursuant
37 to Section 98 or may bring a civil action in a court of competent
38 jurisdiction against the domestic work employer violating this part.

39 (b) Upon prevailing, a domestic work employee bringing an
40 action pursuant to this section shall be entitled to any legal or

1 equitable relief as may be appropriate to remedy the violation,
2 including the payment of any back wages unlawfully withheld,
3 the payment of an additional sum as liquidated damages or
4 penalties as specified in this part, reinstatement of employment,
5 interest, or injunctive relief, or any combination of these remedies,
6 as appropriate. A domestic work employee bringing a civil action
7 pursuant to this section shall also be entitled to recover an award
8 of reasonable attorney's fees and costs, including expert witness
9 fees.

10 (c) The rights and remedies specified in this part are cumulative
11 and nonexclusive and are in addition to any other rights or remedies
12 afforded by contract or under other provisions of law. If a provision
13 of Wage Order Number 15 of the Industrial Welfare Commission
14 or any other provision of law affords less protection to a domestic
15 work employee, this part shall prevail.

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

20
21 CHAPTER 2. DOMESTIC WORK EMPLOYEE RIGHTS
22

23 1454. Except where otherwise provided in this chapter, Section
24 510 applies to a domestic work employee.

25 1455. (a) A domestic work employee who is required to be
26 on duty for 24 consecutive hours or more shall have a minimum
27 of eight consecutive hours for uninterrupted sleep, except in an
28 emergency.

29 (b) If a domestic work employee is required to be on duty for
30 24 consecutive hours or more, the domestic work employer and
31 the domestic work employee may agree in writing to exclude a
32 bona fide regularly scheduled sleeping period of not more than
33 eight hours for uninterrupted sleep from hours worked, provided
34 that the domestic work employer otherwise complies with this
35 section and Section 1457. If no written agreement to the contrary
36 is present, the eight hours of sleeping time shall constitute hours
37 worked.

38 (c) There is a rebuttable presumption that a domestic work
39 employee did not receive eight consecutive hours for uninterrupted
40 sleep if he or she is required to be on duty for 24 consecutive hours

1 or more and the domestic work employer does not hire a
2 replacement worker for at least eight consecutive hours in the
3 24-hour work period.

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

7 1456. (a) A live-in domestic work employee who is not
8 required to be on duty for 24 consecutive hours or more shall have
9 at least 12 consecutive hours free of duty during each workday of
10 24 hours, of which a minimum of eight consecutive hours are for
11 uninterrupted sleep. A live-in domestic work employee suffered
12 or permitted to work during the 12 consecutive off-duty hours shall
13 be compensated in accordance with Section 510.

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

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

23 1457. Live-in domestic work employees and domestic work
24 employees who work 24 consecutive hours or more shall be
25 provided sleeping accommodations that are adequate, decent, and
26 sanitary according to usual customary standards. Domestic work
27 employees shall not be required to share a bed.

28 1458. Except as otherwise provided in this ~~Part~~ *part*, the
29 provisions of Industrial Welfare Commission Wage Order Number
30 15, except Section 6, shall apply to a domestic work employee.

31 1460. (a) A domestic work employer shall permit a domestic
32 work employee who works five hours or more to choose the food
33 he or she eats and to prepare his or her own meals. A domestic
34 work employer shall permit a domestic work employee to use the
35 job site's kitchen facilities and kitchen appliances without charge
36 or deduction from pay.

37 (b) If a domestic work employer and the domestic work
38 employee agree that the domestic work employer will provide
39 meals and the domestic work employer wishes to offset the costs
40 of those meals pursuant to Industrial Welfare Commission Wage

1 Order Number 15, the domestic work employee may request and
2 receive specific food items for those meals.

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

6 1461. (a) (1) A domestic work employee shall accrue paid
7 vacation benefits at the rate of not less than one hour per every 30
8 hours worked, beginning at the commencement of employment or
9 the operative date of this provision, whichever occurs first. A
10 domestic work employer shall permit a domestic work employee
11 to use accrued paid vacation after one year of service. One year
12 of service is completed on the 365th calendar day of employment.

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

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

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

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

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

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

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

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

33 (C) Appropriate equitable relief.

34 (2) A domestic work employee is not aggrieved by a violation
35 of this section if the domestic work employer can demonstrate that
36 it denied a request to use paid vacation because of an emergency
37 and provided another opportunity for the domestic work employee
38 to take vacation time within three months of the date the domestic
39 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.

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

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

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

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

~~(d) A domestic work employer shall not require as a condition of taking paid sick days 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 sick days.~~

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

~~(1) Reinstatement.~~

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

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

4 ~~(4) Appropriate equitable relief.~~

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.~~

34 ~~SEC. 10.~~ No reimbursement is required by this act pursuant to
35 ~~Section 6 of Article XIII B of the California Constitution because~~
36 ~~the only costs that may be incurred by a local agency or school~~
37 ~~district will be incurred because this act creates a new crime or~~
38 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
39 ~~for a crime or infraction, within the meaning of Section 17556 of~~
40 ~~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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