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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 241

Introduced by Assembly Member Ammiano
(Coauthors: Senators De León, Hueso, and Lara)

February 6, 2013

An act 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 241, as amended, Ammiano. Domestic work employees: labor standards.

(1) 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 as specified. Existing law creates the Industrial Welfare Commission and authorizes it to adopt rules, regulations, and orders to ensure that employers comply with those provisions. Wage Order No. 15-2001 of the commission regulates wages, hours, and working conditions for household occupations. Existing law makes violations of certain of these provisions a misdemeanor.

This bill would enact the Domestic Worker Bill of Rights to specially regulate the wages, hours, and working conditions of certain domestic work employees. The bill would define various terms for the purposes

of the act, including defining domestic work to mean services related to the care of persons in private households or maintenance of private households or their premises, which would include childcare providers, caregivers of people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids, and other household occupations. The bill would provide an overtime compensation rate for those domestic work employees, with specified exceptions. The bill would prevail if a provision of the household occupations wage order or any other provision of law affords less protection to a domestic work employee, and that wage order or provision of law would prevail if the wage order or any other provision of law affords more protection to a domestic work employee. The bill would prescribe standards for determining whether time spent by a personal attendant who is a domestic work employee, when traveling out of town accompanying a domestic work employer who is a person with a disability, constitutes hours worked. The bill would further establish standards for sleeping periods, including accommodations for a domestic work employee who is required to sleep in the private household of the employer, and would apply provisions of the household occupations wage order regarding meal and rest breaks to personal attendants who are domestic work employees. The bill would require the Division of Labor Standards Enforcement to enforce these provisions. The bill would also provide a domestic work employee a private right of action to enforce these provisions. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(2) 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.

1 (b) California’s domestic workers, which include housekeepers,
2 nannies, and caregivers for children, persons with disabilities, and
3 the elderly, work in private households to care for the health, safety,
4 and well-being of the most important aspects of Californians’ lives:
5 their families and homes.

6 (c) Domestic workers play a critical role in California’s
7 economy, working to ensure the health and prosperity of California
8 families and freeing others to participate in the workforce, which
9 is increasingly necessary in these difficult economic times. The
10 labor of domestic workers is central to the ongoing prosperity of
11 the state but, despite the value of their work, domestic workers
12 have not received the same protection under state laws as workers
13 in other industries. Although domestic workers labor to support
14 families and children of their own, and often are primary income
15 earners, many earn low wages and live below the poverty line.

16 (d) Because domestic workers care for the most important
17 elements of their employers’ lives, their families and homes, it is
18 in the interest of employees, employers, and the people of the State
19 of California to ensure that the rights of domestic workers are
20 respected, protected, and enforced.

21 (e) The vast majority of domestic workers are women of color
22 and immigrants who are particularly vulnerable to unlawful
23 employment practices. Domestic workers usually work alone,
24 behind closed doors, and out of the public eye, leaving them
25 isolated, vulnerable to abuse and exploitation by some employers,
26 and unable to advocate collectively for better working conditions.
27 Many domestic workers labor under harsh conditions and work
28 long hours for low wages without any benefits. For those who are
29 live-in employees, when terminated, they lose not only their jobs
30 but their homes. This bill recognizes that many personal attendants
31 have positive working relationships with their employers. However,
32 it must also be recognized that there are other situations where
33 domestic workers are verbally and physically abused or sexually
34 assaulted, forced to sleep in conditions unfit for human habitation,
35 and stripped of their privacy and dignity.

36 (f) Many domestic workers are still excluded from the most
37 basic protections afforded to the rest of the labor force under state
38 and federal law, including the rights to fair wages, safe and healthy
39 working conditions, and protection from discriminatory and abusive
40 treatment. The treatment of domestic workers under federal and

1 state laws has historically reflected stereotypical assumptions about
2 the nature of domestic work, specifically that the relationship
3 between employer and “servant” was “personal,” rather than
4 commercial, in character, that employment within a household
5 was not “real” productive work, and that women did not work to
6 support their families.

7 (g) Recognizing that people with disabilities often need personal
8 attendants in order to be active participants in work, community,
9 social, and cultural life, this bill creates certain modifications to
10 the definition of compensable hours worked to accommodate
11 situations when out-of-town travel with a personal attendant is
12 necessary. The bill further modifies the existing definition of
13 compensable hours worked in Wage Order No. 15-2001 of the
14 Industrial Welfare Commission to allow for an unpaid sleep period
15 of up to eight hours for domestic work employees who are live-in
16 employees or who are required to be on duty for 24 consecutive
17 hours or more, under specified circumstances. Domestic work
18 employees who are personal attendants, who have long been denied
19 the right to take meal and rest breaks, will be afforded the
20 protection of Sections 11 and 12 of Wage Order No. 15-2001,
21 which includes a provision for on-duty meals when the nature of
22 the work prevents an employee from being relieved of all duty.

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

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

1 PART 4.5. DOMESTIC WORK EMPLOYEES

2
3 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

4
5 1450. This part shall be known and may be cited as the
6 Domestic Worker Bill of Rights.

7 1451. As used in this part, the following definitions apply:

8 (a) (1) “Domestic work” means services related to the care of
9 persons in private households or maintenance of private households
10 or their premises. Domestic work occupations include childcare
11 providers, caregivers of people with disabilities, sick, convalescing,
12 or elderly persons, house cleaners, housekeepers, maids, and other
13 household occupations.

14 (2) “Domestic work” does not include care of persons in
15 facilities providing board or lodging in addition to medical, nursing,
16 convalescent, aged, or child care, including, but not limited to,
17 residential care facilities for the elderly.

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

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

23 (A) Any person who performs services through the In-Home
24 Supportive Services program under Article 7 (commencing with
25 Section 12300) of Chapter 3 of Part 3 of Division 9 of, and Sections
26 14132.95, 14132.952, and 14132.956 of, the Welfare and
27 Institutions Code.

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

30 (C) Any person under 18 years of age who is employed as a
31 babysitter for a minor child of the domestic work employer in the
32 employer’s home.

33 (D) Any person employed as a casual babysitter for a minor
34 child in the domestic employer’s home. A casual babysitter is a
35 person whose employment is irregular and intermittent and who
36 does not work more than an average of six hours per week in any
37 given month caring for the same minor child or children. If a person
38 who performs babysitting services on an irregular and intermittent
39 basis does a significant amount of work other than supervising,
40 feeding, and dressing a child, this exemption shall not apply and

1 the person shall be considered a domestic work employee. A person
2 who is a casual babysitter who is over 18 years of age retains the
3 right to payment of minimum wage for all hours worked, pursuant
4 to Wage Order No. 15-2001 of the Industrial Welfare Commission.

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

7 (F) Any person who is employed pursuant to a voucher issued
8 through a regional center or who is employed by, or contracts with,
9 an organization vendored or contracted through a regional center
10 or the State Department of Developmental Services pursuant to
11 the Lanterman Developmental Disabilities Services Act (Division
12 4.5 (commencing with Section 4500) of the Welfare and
13 Institutions Code) or the California Early Intervention Services
14 Act (Title 14 (commencing with Section 95000) of the Government
15 Code) to provide services and support for persons with
16 developmental disabilities, as defined in Section 4512 of the
17 Welfare and Institutions Code, when any funding for those services
18 is provided through the State Department of Developmental
19 Services.

20 (G) Any person who provides child care and who, pursuant to
21 subdivision (d) or (f) of Section 1596.792 of the Health and Safety
22 Code, is exempt from the licensing requirements of Chapters 3.4
23 (commencing with Section 1596.70), 3.5 (commencing with
24 Section 1596.90), and 3.6 (commencing with Section 1597.30) of
25 Division 2 of the Health and Safety Code, if the parent or guardian
26 of the child to whom child care is provided receives child care and
27 development services pursuant to any program authorized under
28 the Child Care and Development Services Act (Chapter 2
29 (commencing with Section 8200) of Part 6 of Division 1 of Title
30 1 of the Education Code) or the California Work Opportunity and
31 Responsibility to Kids Act (Chapter 2 (commencing with Section
32 11200) of Part 3 of Division 9 of the Welfare and Institutions
33 Code).

34 (c) (1) “Domestic work employer” means a person, including
35 corporate officers or executives, who directly or indirectly, or
36 through an agent or any other person, including through the
37 services of a third-party employer, temporary service, or staffing
38 agency or similar entity, employs or exercises control over the
39 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 an individual who receives
4 domestic work services through the In-Home Supportive Services
5 program under Article 7 (commencing with Section 12300) of
6 Chapter 3 of Part 3 of Division 9 of, and Sections 14132.95,
7 14132.952, and 14132.956 of, the Welfare and Institutions Code
8 or who is eligible for that program based on his or her income.

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

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

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

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

27 (f) “Live-in domestic work employee” means an employee who
28 resides in the domestic work employer’s household at least five
29 days per week and for whom the employer makes sleep
30 accommodations available in compliance with Section 1457.

31 (g) “Personal attendant” means any person employed by a
32 private householder or by any third-party employer recognized in
33 the health care industry to work in a private household, to
34 supervise, feed, or dress a child, or a person who by reason of
35 advanced age, physical disability, or mental deficiency needs
36 supervision. The status of personal attendant shall apply when no
37 significant amount of work other than the foregoing is required.
38 For purposes of this subdivision, “no significant amount of work”
39 means work other than the foregoing did not exceed 20 percent of
40 the total weekly hours worked.

1 1452. The Division of Labor Standards Enforcement shall
2 enforce this part.

3 1453. (a) Any domestic work employee aggrieved by a
4 violation of this part may bring an administrative action pursuant
5 to Section 98 or may bring a civil action in a court of competent
6 jurisdiction against the domestic work employer violating this part.

7 (b) A domestic work employee who brings an action pursuant
8 to this section and prevails shall be entitled to any legal or equitable
9 relief permitted by law as may be appropriate to remedy the
10 violation. A domestic work employee bringing a civil action
11 pursuant to this section shall also be entitled to an award of
12 reasonable attorney’s fees and costs, including expert witness fees.

13 (c) The rights and remedies specified in this part are cumulative
14 and nonexclusive and are in addition to any other rights or remedies
15 afforded by contract or under other provisions of law. If a provision
16 of Wage Order No. 15-2001 of the Industrial Welfare Commission
17 or any other provision of law affords less protection to a domestic
18 work employee, this part shall prevail. If a provision of Wage
19 Order No. 15-2001 of the Industrial Welfare Commission or any
20 other provision of law affords more protection to a domestic work
21 employee, the wage order or provision of law shall prevail.

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

26
27 CHAPTER 2. DOMESTIC WORK EMPLOYEE RIGHTS

28
29 1454. (a) A domestic work employee shall be compensated
30 pursuant to Section 510 for all hours worked, except as provided
31 *in subdivision (b) or in Section 1455 or 1456.*

32 (b) *A domestic work employee who is a personal attendant*
33 *shall be compensated as follows:*

34 (1) *Hours in excess of nine (9) hours in a day shall be*
35 *compensated at one and one-half (1 1/2) times the employee’s*
36 *regular rate of pay.*

37 (2) *Hours in excess of sixteen (16) hours in a day shall be*
38 *compensated at two (2) times the employee’s regular rate of pay.*

39 1455. (a) A domestic work employee who is a live-in employee
40 or is required to be on duty for 24 consecutive hours or more shall

1 have a minimum of eight consecutive hours for uninterrupted sleep,
2 except in an emergency.

3 (b) If a domestic work employee is a live-in employee or is
4 required to be on duty for 24 consecutive hours or more, the
5 domestic work employer and the domestic work employee may
6 agree in writing to exclude from hours worked a bona fide regularly
7 scheduled sleeping period of not more than eight hours for
8 uninterrupted sleep from hours worked, provided that the employee
9 has eight hours free of duty and available for continuous,
10 uninterrupted sleep and the domestic work employer otherwise
11 complies with this section and Section 1457. If the sleeping period
12 is interrupted by an emergency, only time spent working during
13 the emergency constitutes hours worked. Absent a written
14 agreement, the eight hours available for sleep shall constitute hours
15 worked.

16 1456. If a domestic work employer who is a person with a
17 disability needs to be accompanied by a personal attendant who
18 is a domestic work employee when traveling out of town, all time
19 spent accompanying the employer in transit, and all time attending
20 to or under the control of the employer constitutes hours worked.
21 Periods during which the personal attendant is completely relieved
22 of duty, is not required to be at the same location as the employer,
23 and that are long enough to enable the attendant to use the time
24 effectively for his or her own purposes do not constitute hours
25 worked. The employer and the employee may agree to exclude
26 from hours worked a bona fide sleeping period of not more than
27 eight hours, provided that there is a written agreement and the
28 employee has eight hours free of duty and available for continuous,
29 uninterrupted sleep.

30 1457. Any domestic work employee who is required to sleep
31 in the private household of his or her employer shall be provided
32 sleeping accommodations ~~for full-time occupancy~~ that are
33 adequate, decent, and sanitary according to usual customary
34 standards. A domestic work employee shall be provided a room
35 separate from any household resident and shall not be required to
36 share a bed.

37 1458. Sections 11 and 12 of Wage Order No. 15-2001 of the
38 Industrial Welfare Commission shall apply to a personal attendant
39 who is a domestic work employee.

1 1460. A domestic work employer shall permit a domestic work
2 employee who works five hours or more a day to choose the food
3 he or she eats and to prepare his or her own meals. A domestic
4 work employer shall permit a domestic work employee to use the
5 job site’s kitchen facilities and kitchen appliances without charge
6 or deduction from pay. If a domestic work employee is informed
7 that a person in the household has bona fide health issues related
8 to food, including, but not limited to, food allergies, or has religious
9 or dietary restrictions that make presence of some foods
10 unacceptable, the employee shall not eat or prepare that food in
11 the household.

12 SEC. 3. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.