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AMENDED IN ASSEMBLY MAY 24, 2013

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 241**

**Introduced by Assembly Member Ammiano**  
**(Coauthors: Assembly Members Fong and Weber)**  
(Coauthors: Senators *Block*, De León, Hueso, and Lara)

February 6, 2013

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An act to add Part 4.5 (commencing with Section 1450) to Division 2 of, and to repeal Section 1454 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, until January 1, 2017, regulate the hours of work of certain domestic work employees and provide an overtime compensation rate for those 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. The bill would, until January 1, 2017, require the Governor to convene a committee to study and report to the Governor on the effects of this act. 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.~~

6     ~~(b) California’s domestic workers, which include 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. Although domestic workers labor to support~~  
19    ~~families and children of their own, and often are primary income~~  
20    ~~earners, many earn low wages and live below the poverty line.~~

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

26    ~~(e) The vast majority of domestic workers are women of color~~  
27    ~~and immigrants who are particularly vulnerable to unlawful~~  
28    ~~employment practices. Domestic workers usually work alone,~~  
29    ~~behind closed doors, and out of the public eye, leaving them~~  
30    ~~isolated, vulnerable to abuse and exploitation by some employers,~~  
31    ~~and unable to advocate collectively for better working conditions.~~  
32    ~~Many domestic workers labor under harsh conditions and work~~  
33    ~~long hours for low wages without any benefits. For those who are~~  
34    ~~live-in employees, when terminated, they lose not only their jobs~~  
35    ~~but their homes. This bill recognizes that many personal attendants~~

1 have positive working relationships with their employers. However,  
2 it must also be recognized that there are other situations where  
3 domestic workers are verbally and physically abused or sexually  
4 assaulted, forced to sleep in conditions unfit for human habitation,  
5 and stripped of their privacy and dignity.

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

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

33 (h) Given the limited legal protections historically provided to  
34 domestic workers, and bearing in mind the unique conditions and  
35 demands of this private, home-based industry, the Legislature, as  
36 an exercise of the police power of the State of California for the  
37 protection of the public welfare, prosperity, health, safety, and  
38 peace of its people, further finds that domestic workers are entitled  
39 to industry-specific protections and labor standards that eliminate  
40 discriminatory provisions in the labor laws and guarantee domestic

1 ~~workers basic workplace rights to ensure that domestic workers~~  
2 ~~are treated with equality, respect, and dignity.~~

3 ~~SEC. 2.~~

4 SECTION 1. Part 4.5 (commencing with Section 1450) is added  
5 to Division 2 of the Labor Code, to read:

6

7 PART 4.5. DOMESTIC WORK EMPLOYEES

8

9 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

10

11 1450. This part shall be known and may be cited as the  
12 Domestic Worker Bill of Rights.

13 1451. As used in this part, the following definitions apply:

14 (a) (1) "Domestic work" means services related to the care of  
15 persons in private households or maintenance of private households  
16 or their premises. Domestic work occupations include childcare  
17 providers, caregivers of people with disabilities, sick, convalescing,  
18 or elderly persons, house cleaners, housekeepers, maids, and other  
19 household occupations.

20 (2) "Domestic work" does not include care of persons in  
21 facilities providing board or lodging in addition to medical, nursing,  
22 convalescent, aged, or child care, including, but not limited to,  
23 residential care facilities for the elderly.

24 (b) (1) "Domestic work employee" means an individual who  
25 performs domestic work and includes live-in domestic work  
26 employees and personal attendants.

27 (2) "Domestic work employee" does not include any of the  
28 following:

29 (A) Any person who performs services through the In-Home  
30 Supportive Services program under Article 7 (commencing with  
31 Section 12300) of Chapter 3 of Part 3 of Division 9 of, ~~and or~~  
32 Sections 14132.95, 14132.952, and 14132.956 of, the Welfare and  
33 Institutions Code.

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

36 (C) Any person under 18 years of age who is employed as a  
37 babysitter for a minor child of the domestic work employer in the  
38 employer's home.

39 (D) Any person employed as a casual babysitter for a minor  
40 child in the domestic employer's home. A casual babysitter is a

1 person whose employment is irregular ~~and or intermittent and who~~  
2 ~~does not work more than an average of six hours per week in any~~  
3 ~~given month caring for the same minor child or children and is~~  
4 ~~not performed by an individual whose vocation is babysitting.~~ If  
5 a person who performs babysitting services on an irregular and  
6 intermittent basis does a significant amount of work other than  
7 supervising, feeding, and dressing a child, this exemption shall  
8 not apply and the person shall be considered a domestic work  
9 employee. A person who is a casual babysitter who is over 18  
10 years of age retains the right to payment of minimum wage for all  
11 hours worked, pursuant to Wage Order No. 15-2001 of the  
12 Industrial Welfare Commission.

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

15 (F) Any person who is employed pursuant to a voucher issued  
16 through a regional center or who is employed by, or contracts with,  
17 an organization vendored or contracted through a regional center  
18 or the State Department of Developmental Services pursuant to  
19 the Lanterman Developmental Disabilities Services Act (Division  
20 4.5 (commencing with Section 4500) of the Welfare and  
21 Institutions Code) or the California Early Intervention Services  
22 Act (Title 14 (commencing with Section 95000) of the Government  
23 Code) to provide services and support for persons with  
24 developmental disabilities, as defined in Section 4512 of the  
25 Welfare and Institutions Code, when any funding for those services  
26 is provided through the State Department of Developmental  
27 Services.

28 (G) Any person who provides child care and who, pursuant to  
29 subdivision (d) or (f) of Section 1596.792 of the Health and Safety  
30 Code, is exempt from the licensing requirements of Chapters 3.4  
31 (commencing with Section 1596.70), 3.5 (commencing with  
32 Section 1596.90), and 3.6 (commencing with Section 1597.30) of  
33 Division 2 of the Health and Safety Code, if the parent or guardian  
34 of the child to whom child care is provided receives child care and  
35 development services pursuant to any program authorized under  
36 the Child Care and Development Services Act (Chapter 2  
37 (commencing with Section 8200) of Part 6 of Division 1 of Title  
38 1 of the Education Code) or the California Work Opportunity and  
39 Responsibility to Kids Act (Chapter 2 (commencing with Section

1 11200) of Part 3 of Division 9 of the Welfare and Institutions  
2 Code).

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

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

11 ~~(A) The State of California or an individual who receives Any~~  
12 ~~person or entity that employs or exercises control over the wages,~~  
13 ~~hours, or working conditions of an individual who performs~~  
14 domestic work services through the In-Home Supportive Services  
15 program under Article 7 (commencing with Section 12300) of  
16 Chapter 3 of Part 3 of Division 9 of, ~~and or~~ Sections 14132.95,  
17 14132.952, and 14132.956 of, the Welfare and Institutions Code  
18 or who is eligible for that program ~~based on his or her income.~~

19 (B) An employment agency that complies with Section  
20 1812.5095 of the Civil Code and that operates solely to procure,  
21 offer, refer, provide, or attempt to provide work to domestic  
22 workers if the relationship between the employment agency and  
23 the domestic workers for whom the agency procures, offers, refers,  
24 provides, or attempts to provide domestic work is characterized  
25 by all of the factors listed in subdivision (b) of Section 1812.5095  
26 of the Civil Code and Section 687.2 of the Unemployment  
27 Insurance Code.

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

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

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

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

1     ~~(g)~~  
 2     ~~(d)~~ “Personal attendant” means any person employed by a  
 3 private householder or by any third-party employer recognized in  
 4 the health care industry to work in a private household, to  
 5 supervise, feed, or dress a child, or a person who by reason of  
 6 advanced age, physical disability, or mental deficiency needs  
 7 supervision. The status of personal attendant shall apply when no  
 8 significant amount of work other than the foregoing is required.  
 9 For purposes of this subdivision, “no significant amount of work”  
 10 means work other than the foregoing did not exceed 20 percent of  
 11 the total weekly hours worked.

12     ~~1452. The Division of Labor Standards Enforcement shall~~  
 13 ~~enforce this part.~~

14     ~~1453. (a) Any domestic work employee aggrieved by a~~  
 15 ~~violation of this part may bring an administrative action pursuant~~  
 16 ~~to Section 98 or may bring a civil action in a court of competent~~  
 17 ~~jurisdiction against the domestic work employer violating this part.~~

18     ~~(b) A domestic work employee who brings an action pursuant~~  
 19 ~~to this section and prevails shall be entitled to any legal or equitable~~  
 20 ~~relief permitted by law as may be appropriate to remedy the~~  
 21 ~~violation. A domestic work employee bringing a civil action~~  
 22 ~~pursuant to this section shall also be entitled to an award of~~  
 23 ~~reasonable attorney’s fees and costs, including expert witness fees.~~

24     ~~(c) The rights and remedies specified in this part are cumulative~~  
 25 ~~and nonexclusive and are in addition to any other rights or remedies~~  
 26 ~~afforded by contract or under other provisions of law. If a provision~~  
 27 ~~of Wage Order No. 15-2001 of the Industrial Welfare Commission~~  
 28 ~~or any other provision of law affords less protection to a domestic~~  
 29 ~~work employee, this part shall prevail. If a provision of Wage~~  
 30 ~~Order No. 15-2001 of the Industrial Welfare Commission or any~~  
 31 ~~other provision of law affords more protection to a domestic work~~  
 32 ~~employee, the wage order or provision of law shall prevail.~~

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

37     ~~1452. The Governor shall convene a committee composed of~~  
 38 ~~personal attendants or their representatives and the employers of~~  
 39 ~~personal attendants or their representatives. The committee shall~~

1 *study and report to the Governor on the effects this part has on*  
 2 *personal attendants and their employers.*  
 3 *1453. This part shall remain in effect only until January 1,*  
 4 *2017, and as of that date is repealed, unless a later enacted statute,*  
 5 *that is enacted before January 1, 2017, deletes or extends that*  
 6 *date.*

7  
 8 CHAPTER 2. DOMESTIC WORK EMPLOYEE RIGHTS  
 9

10 ~~1454. (a) A domestic work employee shall be compensated~~  
 11 ~~pursuant to Section 510 for all hours worked, except as provided~~  
 12 ~~in subdivision (b) or in Section 1455 or 1456.~~

13 ~~(b) A domestic work employee who is a personal attendant~~  
 14 ~~shall be compensated as follows:~~

15 ~~(1) Hours in excess of nine (9) hours in a day shall be~~  
 16 ~~compensated at one and one-half (1 1/2) times the employee's~~  
 17 ~~regular rate of pay.~~

18 ~~(2) Hours in excess of sixteen (16) hours in a day shall be~~  
 19 ~~compensated at two (2) times the employee's regular rate of pay.~~

20 ~~1455. (a) A domestic work employee who is a live-in employee~~  
 21 ~~or is required to be on duty for 24 consecutive hours or more shall~~  
 22 ~~have a minimum of eight consecutive hours for uninterrupted sleep,~~  
 23 ~~except in an emergency.~~

24 ~~(b) If a domestic work employee is a live-in employee or is~~  
 25 ~~required to be on duty for 24 consecutive hours or more, the~~  
 26 ~~domestic work employer and the domestic work employee may~~  
 27 ~~agree in writing to exclude from hours worked a bona fide regularly~~  
 28 ~~scheduled sleeping period of not more than eight hours for~~  
 29 ~~uninterrupted sleep from hours worked, provided that the employee~~  
 30 ~~has eight hours free of duty and available for continuous,~~  
 31 ~~uninterrupted sleep and the domestic work employer otherwise~~  
 32 ~~complies with this section and Section 1457. If the sleeping period~~  
 33 ~~is interrupted by an emergency, only time spent working during~~  
 34 ~~the emergency constitutes hours worked. Absent a written~~  
 35 ~~agreement, the eight hours available for sleep shall constitute hours~~  
 36 ~~worked.~~

37 ~~1456. If a domestic work employer who is a person with a~~  
 38 ~~disability needs to be accompanied by a personal attendant who~~  
 39 ~~is a domestic work employee when traveling out of town, all time~~  
 40 ~~spent accompanying the employer in transit, and all time attending~~

1 to or under the control of the employer constitutes hours worked.  
2 Periods during which the personal attendant is completely relieved  
3 of duty, is not required to be at the same location as the employer,  
4 and that are long enough to enable the attendant to use the time  
5 effectively for his or her own purposes do not constitute hours  
6 worked. The employer and the employee may agree to exclude  
7 from hours worked a bona fide sleeping period of not more than  
8 eight hours, provided that there is a written agreement and the  
9 employee has eight hours free of duty and available for continuous,  
10 uninterrupted sleep.

11 1457. Any domestic work employee who is required to sleep  
12 in the private household of his or her employer shall be provided  
13 sleeping accommodations that are adequate, decent, and sanitary  
14 according to usual customary standards. A domestic work  
15 employee shall be provided a room separate from any household  
16 resident and shall not be required to share a bed.

17 1458. Sections 11 and 12 of Wage Order No. 15-2001 of the  
18 Industrial Welfare Commission shall apply to a personal attendant  
19 who is a domestic work employee.

20 1460. A domestic work employer shall permit a domestic work  
21 employee who works five hours or more a day to choose the food  
22 he or she eats and to prepare his or her own meals. A domestic  
23 work employer shall permit a domestic work employee to use the  
24 job site's kitchen facilities and kitchen appliances without charge  
25 or deduction from pay. If a domestic work employee is informed  
26 that a person in the household has bona fide health issues related  
27 to food, including, but not limited to, food allergies, or has religious  
28 or dietary restrictions that make presence of some foods  
29 unacceptable, the employee shall not eat or prepare that food in  
30 the household.

31 1454. *A domestic work employee who is a personal attendant*  
32 *shall not be employed more than nine hours in any workday or*  
33 *more than 45 hours in any workweek unless the employee receives*  
34 *one and one-half times the employee's regular rate of pay for all*  
35 *hours worked over nine hours in any workday and for all hours*  
36 *worked more than 45 hours in the workweek.*

37 ~~SEC. 3.~~

38 *SEC. 2.* No reimbursement is required by this act pursuant to  
39 Section 6 of Article XIII B of the California Constitution because  
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or  
2 infraction, eliminates a crime or infraction, or changes the penalty  
3 for a crime or infraction, within the meaning of Section 17556 of  
4 the Government Code, or changes the definition of a crime within  
5 the meaning of Section 6 of Article XIII B of the California  
6 Constitution.

O