

Assembly Bill No. 241

CHAPTER 374

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.

[Approved by Governor September 26, 2013. Filed with
Secretary of State September 26, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 241, 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, 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, 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.

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

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

PART 4.5. DOMESTIC WORK EMPLOYEES

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

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

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

(a) (1) “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 people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids, and other household occupations.

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

(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, or Sections 14132.95, 14132.952, and 14132.956 of, the Welfare and Institutions Code.

(B) Any person who is the parent, grandparent, spouse, sibling, 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 in the employer’s home.

(D) Any person employed as a casual babysitter for a minor child in the domestic employer’s home. A casual babysitter is a person whose employment is irregular or intermittent and is not performed by an individual whose vocation is babysitting. If a person who performs babysitting services on an irregular and intermittent basis does a significant amount of work other than supervising, feeding, and dressing a child, this exemption shall not apply and the person shall be considered a domestic work employee. A person who is a casual babysitter who is over 18 years of age retains the right to payment of minimum wage for all hours worked, pursuant to Wage Order No. 15-2001 of the Industrial Welfare Commission.

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

(F) Any person who is employed pursuant to a voucher issued through a regional center or 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) or 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 any funding for those services is provided through the State Department of Developmental Services.

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

(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.

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

(A) Any person or entity that employs or exercises control over the wages, hours, or working conditions of an individual who performs domestic work 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, or Sections 14132.95, 14132.952, and 14132.956 of, the Welfare and Institutions Code or who is eligible for that program.

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

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

(d) “Personal attendant” means any person employed by a private householder or by any third-party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a child, or a person who by reason of advanced age, physical disability, or mental deficiency needs supervision. The status of personal attendant shall apply when no significant amount of work other than the foregoing is required. For purposes of this subdivision, “no significant amount of work” means

work other than the foregoing did not exceed 20 percent of the total weekly hours worked.

1452. The Governor shall convene a committee composed of personal attendants or their representatives and the employers of personal attendants or their representatives. The committee shall study and report to the Governor on the effects this part has on personal attendants and their employers.

1453. This part shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

CHAPTER 2. DOMESTIC WORK EMPLOYEE RIGHTS

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

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.