

AMENDED IN ASSEMBLY JANUARY 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 693

Introduced by Assembly Member Roger Hernández

February 21, 2013

~~An act to amend Section 2810 of the Labor Code, relating to employment.~~ *An act to amend Section 51.9 of the Civil Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 693, as amended, Roger Hernández. ~~Employment.~~ *Sexual harassment: interns.*

Existing law provides that a person can be liable for sexual harassment in specified business, service, or professional relationships between a plaintiff and a defendant.

This bill would provide that a person acting in a supervisory capacity relative to an intern, as defined, can be liable for sexual harassment of an intern.

~~Existing law prohibits a person or entity from entering into a contract or agreement for labor or services with specified types of contractors, including warehouse contractors, if the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 51.9 of the Civil Code is amended to read:

2 51.9. (a) A person is liable in a cause of action for sexual
3 harassment under this section when the plaintiff proves all of the
4 following elements:

5 (1) There is a business, service, or professional relationship
6 between the plaintiff and defendant. Such a relationship may exist
7 between a plaintiff and a person, including, but not limited to, any
8 of the following persons:

9 (A) Physician, psychotherapist, or dentist. For purposes of this
10 section, “psychotherapist” has the same meaning as set forth in
11 paragraph (1) of subdivision (c) of Section 728 of the Business
12 and Professions Code.

13 (B) Attorney, holder of a master’s degree in social work, real
14 estate agent, real estate appraiser, accountant, banker, trust officer,
15 financial planner loan officer, collection service, building
16 contractor, or escrow loan officer.

17 (C) Executor, trustee, or administrator.

18 (D) Landlord or property manager.

19 (E) Teacher.

20 (F) *A person acting in a supervisory capacity relative to an*
21 *intern.*

22 ~~(F)~~

23 (G) A relationship that is substantially similar to any of the
24 above.

25 (2) The defendant has made sexual advances, solicitations,
26 sexual requests, demands for sexual compliance by the plaintiff,
27 or engaged in other verbal, visual, or physical conduct of a sexual
28 nature or of a hostile nature based on gender, that were unwelcome
29 and pervasive or severe.

30 (3) There is an inability by the plaintiff to easily terminate the
31 relationship.

32 (4) The plaintiff has suffered or will suffer economic loss or
33 disadvantage or personal injury, including, but not limited to,
34 emotional distress or the violation of a statutory or constitutional
35 right, as a result of the conduct described in paragraph (2).

36 (b) In an action pursuant to this section, damages shall be
37 awarded as provided by subdivision (b) of Section 52.

1 (c) Nothing in this section shall be construed to limit application
2 of any other remedies or rights provided under the law.

3 (d) The definition of sexual harassment and the standards for
4 determining liability set forth in this section shall be limited to
5 determining liability only with regard to a cause of action brought
6 under this section.

7 (e) *For the purpose of this section, “intern” means a person*
8 *who performs work for an employer that, even though it includes*
9 *actual operation of the facilities of the employer, is similar to*
10 *training that would be given in an educational environment, is for*
11 *the benefit of the intern, and does not displace regular employees*
12 *and who is not necessarily entitled to a job at the conclusion of*
13 *the internship. “Intern” may include, but is not limited to, a paid*
14 *intern, unpaid intern, or extern.*

15 SECTION 1. ~~Section 2810 of the Labor Code is amended to~~
16 ~~read:~~

17 ~~2810. (a) A person or entity shall not enter into a contract or~~
18 ~~agreement for labor or services with a construction, farm labor,~~
19 ~~garment, janitorial, security guard, or warehouse contractor, if the~~
20 ~~person or entity knows or should know that the contract or~~
21 ~~agreement does not include funds sufficient to allow the contractor~~
22 ~~to comply with all applicable local, state, and federal laws or~~
23 ~~regulations governing the labor or services to be provided.~~

24 ~~(b) There is a rebuttable presumption affecting the burden of~~
25 ~~proof that there has been no violation of subdivision (a) if the~~
26 ~~contract or agreement with a construction, farm labor, garment,~~
27 ~~janitorial, security guard, or warehouse contractor meets all of the~~
28 ~~requirements in subdivision (d).~~

29 ~~(c) Subdivision (a) does not apply to a person or entity who~~
30 ~~executes a collective bargaining agreement covering the workers~~
31 ~~employed under the contract or agreement, or to a person who~~
32 ~~enters into a contract or agreement for labor or services to be~~
33 ~~performed on his or her home residences, provided that a family~~
34 ~~member resides in the residence or residences for which the labor~~
35 ~~or services are to be performed for at least a part of the year.~~

36 ~~(d) To meet the requirements of subdivision (b), a contract or~~
37 ~~agreement with a construction, farm labor, garment, janitorial,~~
38 ~~security guard, or warehouse contractor for labor or services shall~~
39 ~~be in writing, in a single document, and contain all of the following~~
40 ~~provisions, in addition to any other provisions that may be required~~

1 by regulations adopted by the Labor Commissioner from time to
2 time:

3 (1) The name, address, and telephone number of the person or
4 entity and the construction, farm labor, garment, janitorial, security
5 guard, or warehouse contractor through whom the labor or services
6 are to be provided.

7 (2) A description of the labor or services to be provided and a
8 statement of when those services are to be commenced and
9 completed.

10 (3) The employer identification number for state tax purposes
11 of the construction, farm labor, garment, janitorial, security guard,
12 or warehouse contractor.

13 (4) The workers' compensation insurance policy number and
14 the name, address, and telephone number of the insurance carrier
15 of the construction, farm labor, garment, janitorial, security guard,
16 or warehouse contractor.

17 (5) The vehicle identification number of any vehicle that is
18 owned by the construction, farm labor, garment, janitorial, security
19 guard, or warehouse contractor and used for transportation in
20 connection with any service provided pursuant to the contract or
21 agreement, the number of the vehicle liability insurance policy
22 that covers the vehicle, and the name, address, and telephone
23 number of the insurance carrier.

24 (6) The address of any real property to be used to house workers
25 in connection with the contract or agreement.

26 (7) The total number of workers to be employed under the
27 contract or agreement, the total amount of all wages to be paid,
28 and the date or dates when those wages are to be paid.

29 (8) The amount of the commission or other payment made to
30 the construction, farm labor, garment, janitorial, security guard,
31 or warehouse contractor for services under the contract or
32 agreement.

33 (9) The total number of persons who will be utilized under the
34 contract or agreement as independent contractors, along with a list
35 of the current local, state, and federal contractor license
36 identification numbers that the independent contractors are required
37 to have under local, state, or federal laws or regulations.

38 (10) The signatures of all parties, and the date the contract or
39 agreement was signed.

1 ~~(e) (1) To qualify for the rebuttable presumption set forth in~~
2 ~~subdivision (b), a material change to the terms and conditions of~~
3 ~~a contract or agreement between a person or entity and a~~
4 ~~construction, farm labor, garment, janitorial, security guard, or~~
5 ~~warehouse contractor must be in writing, in a single document,~~
6 ~~and contain all of the provisions listed in subdivision (d) that are~~
7 ~~affected by the change.~~

8 ~~(2) If a provision required to be contained in a contract or~~
9 ~~agreement pursuant to paragraph (7) or (9) of subdivision (d) is~~
10 ~~unknown at the time the contract or agreement is executed, the~~
11 ~~best estimate available at that time is sufficient to satisfy the~~
12 ~~requirements of subdivision (d). If an estimate is used in place of~~
13 ~~actual figures in accordance with this paragraph, the parties to the~~
14 ~~contract or agreement have a continuing duty to ascertain the~~
15 ~~information required pursuant to paragraph (7) or (9) of subdivision~~
16 ~~(d) and to reduce that information to writing in accordance with~~
17 ~~the requirements of paragraph (1) once that information becomes~~
18 ~~known.~~

19 ~~(f) A person or entity who enters into a contract or agreement~~
20 ~~referred to in subdivisions (d) or (e) shall keep a copy of the written~~
21 ~~contract or agreement for a period of not less than four years~~
22 ~~following the termination of the contract or agreement. Upon the~~
23 ~~request of the Labor Commissioner, any person or entity who~~
24 ~~enters into the contract or agreement shall provide to the Labor~~
25 ~~Commissioner a copy of the provisions of the contract or~~
26 ~~agreement, and any other documentation, related to paragraphs~~
27 ~~(1) to (10), inclusive, of subdivision (d). Documents obtained~~
28 ~~pursuant to this section are exempt from disclosure under the~~
29 ~~California Public Records Act (Chapter 3.5 (commencing with~~
30 ~~Section 6250) of Division 7 of Title 1 of the Government Code).~~

31 ~~(g) (1) An employee aggrieved by a violation of subdivision~~
32 ~~(a) may file an action for damages to recover the greater of all of~~
33 ~~his or her actual damages or two hundred fifty dollars (\$250) per~~
34 ~~employee per violation for an initial violation and one thousand~~
35 ~~dollars (\$1,000) per employee for each subsequent violation, and,~~
36 ~~upon prevailing in an action brought pursuant to this section, may~~
37 ~~recover costs and reasonable attorney's fees. An action under this~~
38 ~~section shall not be maintained unless it is pleaded and proved that~~
39 ~~an employee was injured as a result of a violation of a labor law~~

1 or regulation in connection with the performance of the contract
2 or agreement.
3 (2) ~~An employee aggrieved by a violation of subdivision (a)~~
4 ~~may also bring an action for injunctive relief and, upon prevailing,~~
5 ~~may recover costs and reasonable attorney’s fees.~~
6 (h) ~~The phrase “construction, farm labor, garment, janitorial,~~
7 ~~security guard, or warehouse contractor” includes any person, as~~
8 ~~defined in this code, whether or not licensed, who is acting in the~~
9 ~~capacity of a construction, farm labor, garment, janitorial, security~~
10 ~~guard, or warehouse contractor.~~
11 (i) (1) ~~The term “knows” includes the knowledge, arising from~~
12 ~~familiarity with the normal facts and circumstances of the business~~
13 ~~activity engaged in, that the contract or agreement does not include~~
14 ~~funds sufficient to allow the contractor to comply with applicable~~
15 ~~laws.~~
16 (2) ~~The phrase “should know” includes the knowledge of any~~
17 ~~additional facts or information that would make a reasonably~~
18 ~~prudent person undertake to inquire whether, taken together, the~~
19 ~~contract or agreement contains sufficient funds to allow the~~
20 ~~contractor to comply with applicable laws.~~
21 (3) ~~A failure by a person or entity to request or obtain any~~
22 ~~information from the contractor that is required by an applicable~~
23 ~~statute or by the contract or agreement between them, constitutes~~
24 ~~knowledge of that information for purposes of this section.~~
25 (j) ~~For the purposes of this section, “warehouse” means a facility~~
26 ~~the primary operation of which is the storage or distribution of~~
27 ~~general merchandise, refrigerated goods, or other products.~~