

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 359

Introduced by Assembly Member Gonzalez
(Principal coauthor: Assembly Member Ridley-Thomas)
(Principal coauthor: Senator Leyva)
(Coauthors: Assembly Members Bonilla, Bonta, and Chiu)

February 17, 2015

~~An act to amend Section 2800 of the Labor Code, relating to employment. An act to add Part 9.5 (commencing with Section 2500) to Division 2 of the Labor Code, relating to grocery workers.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 359, as amended, Gonzalez. ~~Employer obligations: indemnification. Grocery workers.~~

Existing law regulates various aspects of the workplace and employee safety and health.

This bill would require, upon a change in control, as defined, of a grocery establishment, that an incumbent grocery employer, as defined, prepare a list of specified eligible grocery workers, as defined, for a successor grocery employer, as defined, and would require that the successor grocery employer hire from this list during a 90-day transition period. The bill would require the successor grocery employer to retain eligible grocery workers for a 90-day period, during which time an employee may only be discharged for cause, and, upon the close of that period, the successor grocery employer would be required to consider offering continued employment to these workers. The bill would additionally authorize eligible grocery workers to bring a cause of action against an incumbent or successor grocery employer for a

violation of these provisions, and would specify what may be awarded pursuant to this cause of action. The bill would exempt a grocery establishment located in a food desert from the bill’s requirements, as provided. The bill would provide that a collective bargaining agreement may supersede these requirements and that these provisions do not preempt any local ordinances that provide equal or greater protection to eligible grocery workers.

This bill would provide that its provisions are severable.

~~Existing law requires an employer to indemnify his or her employee for losses caused by the employer’s want of ordinary care.~~

~~This bill would make nonsubstantive changes to that provision.~~

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. Part 9.5 (commencing with Section 2500) is added
2 to Division 2 of the Labor Code, to read:

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PART 9.5. GROCERY WORKERS

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6 2500. (a) Supermarkets and other grocery retailers are the
7 primary points of distribution for food and other daily necessities
8 for the residents of California and are therefore essential to the
9 vitality of every California community.

10 (b) The state has a compelling interest in ensuring the welfare
11 of the residents of its communities through the maintenance of
12 health and safety standards in grocery establishments.

13 (c) Experienced grocery retail workers with knowledge of proper
14 sanitation procedures, health regulations and laws, and an
15 experience-based understanding of the clientele and communities
16 in which the retailer is located are essential in furthering this
17 interest and the state’s investments in health and safety.

18 (d) A transitional retention period for grocery retail workers
19 upon change of ownership, control, or operation of grocery stores
20 ensures stability throughout the state for these vital workers, which,
21 in turn, results in preservation of health and safety standards.

22 2502. For purposes of this part, the following definitions shall
23 apply:

1 (a) “Change in control” means any sale, assignment, transfer,
2 contribution, or other disposition of all or substantially all of the
3 assets or a controlling interest, including by consolidation, merger,
4 or reorganization, of the incumbent grocery employer or any
5 person who controls the incumbent grocery employer or any
6 grocery establishment under the operation or control of either the
7 incumbent grocery employer or any person who controls the
8 incumbent grocery employer.

9 (b) “Eligible grocery worker” means any individual whose
10 primary place of employment is at the grocery establishment
11 subject to a change in control, and who has worked for the
12 incumbent grocery employer for at least six months prior to the
13 execution of the transfer document. “Eligible grocery worker”
14 does not include a managerial, supervisory, or confidential
15 employee.

16 (c) “Employment commencement date” means the date on which
17 an eligible grocery worker retained by the successor grocery
18 employer pursuant to this part commences work for the successor
19 grocery employer in exchange for benefits and compensation under
20 the terms and conditions established by the successor grocery
21 employer and as required by law.

22 (d) “Grocery establishment” means a retail store in this state
23 that is over 15,000 square feet in size and that sells primarily
24 household foodstuffs for offsite consumption, including the sale of
25 fresh produce, meats, poultry, fish, deli products, dairy products,
26 canned foods, dry foods, beverages, baked foods, or prepared
27 foods. Other household supplies or other products shall be
28 secondary to the primary purpose of food sales.

29 (e) “Incumbent grocery employer” means the person that owns,
30 controls, or operates the grocery establishment prior to the change
31 in control.

32 (f) “Person” means an individual, corporation, partnership,
33 limited partnership, limited liability partnership, limited liability
34 company, business trust, estate, trust, association, joint venture,
35 agency, instrumentality, or any other legal or commercial entity,
36 whether domestic or foreign.

37 (g) “Successor grocery employer” means the person that owns,
38 controls, or operates the grocery establishment after the change
39 in control.

1 (h) “Transfer document” means the purchase agreement or
2 other document effecting the change in control.

3 2504. (a) The incumbent grocery employer shall, within 15
4 days after the execution of the transfer document, provide to the
5 successor grocery employer the name, address, date of hire, and
6 employment occupation classification of each eligible grocery
7 worker.

8 (b) The successor grocery employer shall maintain a preferential
9 hiring list of eligible grocery workers identified by the incumbent
10 grocery employer pursuant to subdivision (a) and shall hire from
11 that list for a period beginning upon the execution of the transfer
12 document and continuing for 90 days after the grocery
13 establishment is fully operational and open to the public under
14 the successor grocery employer.

15 (c) If the successor grocery employer extends an offer of
16 employment to an eligible grocery worker pursuant to this part,
17 the successor grocery employer shall retain written verification
18 of that offer for at least three years after the date of the offer. The
19 verification shall include the name, address, date of hire, and
20 employment occupation classification of each eligible grocery
21 worker.

22 2506. (a) A successor grocery employer shall retain each
23 eligible grocery worker hired pursuant to this part for at least 90
24 days after the eligible grocery worker’s employment
25 commencement date. During this 90-day transition employment
26 period, eligible grocery workers shall be employed under the terms
27 and conditions established by the successor grocery employer and
28 pursuant to the terms of a relevant collective bargaining
29 agreement, if any.

30 (b) If, within the period established in subdivision (b) of Section
31 2504, the successor grocery employer determines that it requires
32 fewer eligible grocery workers than were required by the
33 incumbent grocery employer, the successor grocery employer shall
34 retain eligible grocery workers by seniority within each job
35 classification to the extent that comparable job classifications exist
36 or pursuant to the terms of a relevant collective bargaining
37 agreement, if any. Nonclassified eligible grocery workers shall be
38 retained by seniority and according to experience or pursuant to
39 the terms of a relevant collective bargaining agreement, if any.

1 (c) During the 90-day transition employment period, the
2 successor grocery employer shall not discharge without cause an
3 eligible grocery worker retained pursuant to this part.

4 (d) At the end of the 90-day transition employment period, the
5 successor grocery employer shall make a written performance
6 evaluation for each eligible grocery worker retained pursuant to
7 this part. If the eligible grocery worker's performance during the
8 90-day transition employment period is satisfactory, the successor
9 grocery employer shall consider offering the eligible grocery
10 worker continued employment under the terms and conditions
11 established by the successor grocery employer and as required by
12 law. The successor grocery employer shall retain a record of the
13 written performance evaluation for at least three years.

14 2508. (a) The incumbent grocery employer shall post public
15 notice of the change in control at the location of the affected
16 grocery establishment within five business days following the
17 execution of the transfer document. Notice shall remain posted
18 during any closure of the grocery establishment and until the
19 grocery establishment is fully operational and open to the public
20 under the successor grocery employer.

21 (b) Notice shall include, but not be limited to, the name of the
22 incumbent grocery employer and its contact information, the name
23 of the successor grocery employer and its contact information,
24 and the effective date of the change in control.

25 (c) Notice shall be posted in a conspicuous place at the grocery
26 establishment in a manner to be readily viewed by eligible grocery
27 workers and other employees, customers, and members of the
28 public.

29 2510. (a) Eligible grocery workers may bring a cause of action
30 in a superior court of the relevant county against the incumbent
31 grocery employer or the successor grocery employer for a violation
32 of this part and may be awarded any of the following:

33 (1) Hiring and reinstatement rights pursuant to this part,
34 whereupon the 90-day transition employment period shall not
35 commence until the eligible grocery worker's employment
36 commencement date with the successor grocery employer.

37 (2) Front pay or back pay for each day during which the
38 violation continues, and which shall be calculated at a rate of
39 compensation not less than the higher of either:

1 (A) *The average regular rate of pay received by the eligible*
2 *grocery worker during the last three years of the eligible grocery*
3 *worker's employment in the same occupation classification.*

4 (B) *The most recent regular rate received by the eligible grocery*
5 *worker while employed by either the incumbent grocery employer*
6 *or the successor grocery employer.*

7 (3) *The value of the benefits the eligible grocery worker would*
8 *have received under the successor grocery employer's benefit*
9 *plan.*

10 (b) *If the eligible grocery worker is the prevailing party in any*
11 *legal action taken pursuant to this section, the court shall award*
12 *reasonable attorney's fees and costs as part of the costs*
13 *recoverable.*

14 2512. *Parties subject to this part may, by collective bargaining*
15 *agreement, provide that the agreement supersedes the requirements*
16 *of this part.*

17 2516. *This part shall not apply to grocery establishments that*
18 *will be located in geographic areas designated by the United States*
19 *Department of Agriculture as a food desert, based on the original*
20 *food desert measure contained in the Food Access Research Atlas,*
21 *provided that both of the following apply:*

22 (a) *More than six years have elapsed since the most recent*
23 *grocery establishment was located in the area designated as a*
24 *food desert.*

25 (b) *The grocery establishment stocks and during normal business*
26 *hours sells fresh fruit and vegetables in amounts and of a quality*
27 *that is comparable to what the establishment sells in its three*
28 *geographically closest stores, which are located outside of the*
29 *food desert.*

30 2518. *This part shall not be construed to limit an eligible*
31 *grocery worker's right to bring legal action for wrongful*
32 *termination.*

33 2520. *This part does not preempt any city, county, or city and*
34 *county ordinances that provide equal or greater protection to*
35 *eligible grocery workers.*

36 2522. *The provisions of this part are severable. If any provision*
37 *of this part or its application is held invalid, that invalidity shall*
38 *not affect other provisions or applications that can be given effect*
39 *without the invalid provision or application.*

- 1 ~~SECTION 1. Section 2800 of the Labor Code is amended to read:~~
- 2 ~~2800. An employer shall indemnify his or her employee for~~
- 3 ~~losses caused by the employer's want of ordinary care.~~

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