

AMENDED IN ASSEMBLY MAY 18, 2015

AMENDED IN ASSEMBLY MAY 14, 2015

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 Chiu,
Eduardo Garcia, Gatto, Holden, O'Donnell, and Rendon)

February 17, 2015

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. Grocery workers.

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

This bill, upon a change in ~~control, as defined,~~ *control* of a grocery establishment, would require an incumbent grocery ~~employer, as defined,~~ *employer* to prepare a list of specified eligible grocery ~~workers, as defined,~~ *workers* for a successor grocery employer, ~~as defined,~~ and would require the successor grocery employer to 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, prohibit the successor grocery employer from discharging those workers *without cause* during that period, and, upon the close of that period, require the successor grocery employer to consider offering continued

employment to those 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.

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
 2 added 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 ~~will ensure~~ *ensures* stability throughout the state for these vital
 21 workers, which, in turn, ~~will result~~ *results* in preservation of health
 22 and safety standards.

23 2502. For purposes of this part, the following definitions shall
 24 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 person
5 who controls the incumbent grocery employer or any grocery
6 establishment under the operation or control of either the incumbent
7 grocery employer or any person who controls the incumbent
8 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
25 of 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 at the time of the
31 change 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 in
39 control.

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

3 2504. (a) The incumbent grocery ~~employer, employer shall,~~
4 within 15 days after the execution of the transfer document, ~~shall~~
5 provide to the successor grocery employer the name, address, date
6 of hire, and employment occupation classification of each eligible
7 grocery 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 the
14 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 of
18 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 agreement,
29 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 incumbent
33 grocery employer, the successor grocery employer shall retain
34 eligible grocery workers by seniority within each job classification
35 to the extent that comparable job classifications exist or pursuant
36 to the terms of a relevant collective bargaining agreement, if any.
37 Nonclassified eligible grocery workers shall be retained by
38 seniority and according to experience or pursuant to the terms of
39 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, and
24 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 plan.~~

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

12 2512. Parties subject to this part may, by collective bargaining
13 agreement, provide that the agreement supersedes the requirements
14 of this part.

15 2516. This part shall not apply to grocery establishments that
16 will be located in geographic areas designated by the United States
17 Department of Agriculture as a food desert, based on the original
18 food desert measure contained in the Food Access Research Atlas,
19 provided that both of the following apply:

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

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

28 2518. This part shall not be construed to limit an eligible
29 grocery worker's right to bring legal action for wrongful
30 termination.

31 2520. This part does not preempt any city, county, or city and
32 county ordinances that provide equal or greater protection to
33 eligible grocery workers.

34 2522. The provisions of this part are severable. If any provision
35 of this part or its application is held invalid, that invalidity shall
36 not affect other provisions or applications that can be given effect
37 without the invalid provision or application.