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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 1978**

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**Introduced by Assembly Member Gonzalez**  
**(Coauthors: Assembly Members Campos, Chu, Cristina Garcia,**  
**Lopez, McCarty, Rodriguez, Santiago, Thurmond, and Weber)**  
**(Coauthor: Senator Beall)**

February 16, 2016

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An act to ~~amend Section 12940 of the Government Code, and to~~  
~~amend Section 1106 of, and to add Part 4.2 (commencing with Section~~  
1420) to Division 2 of the Labor Code, relating to employment.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1978, as amended, Gonzalez. Employment: property service workers.

Existing law establishes the Department of Industrial Relations in the Labor and Workforce Development Agency to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. Existing law establishes within the department the Division of Labor Standards Enforcement, which is vested with the general duty of enforcing labor laws, including those relating to wage claims and

employer retaliation. Existing law requires the Labor Commissioner, defined as the Chief of the Division of Labor Standards Enforcement, to establish and maintain a field enforcement unit in order to ensure that minimum labor standards are met.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees, including a requirement that every employer establish, implement, and maintain an effective injury prevention program. The act requires the program to be written, except as specified, and to include certain elements.

This bill would establish specific standards and protections for property service workers, to be known as the Property Service Workers Protection Act, *workers* and define terms for its purposes.

The bill would require the Labor Commissioner, no later than July 1, 2018, to develop worker and supervisor materials for a prescribed 4-hour training regarding sexual violence and sexual harassment and to make those materials available to employers, covered workers, and the public through, among other means, posting on its Internet Web site. The bill would require the commissioner, beginning July 1, 2019, to update these materials annually. The bill would, on and after July 1, 2018, require employers who provide janitorial services to have a system to require that covered workers and supervisors, at least annually, receive prescribed in-person training on workplace sexual violence and sexual harassment. The bill would require the commissioner to establish standards and requirements for trainers and recordkeeping relating to training. The bill would require the Labor Commissioner to develop minimum qualifications for trainers who provide the training.

The bill would require the Occupational Safety and Health Standards Board, by January 1, 2018, to adopt standards developed by the Division of Occupational Safety and Health, in consultation with a specified advisory group, that require an employer to adopt a workplace sexual violence and sexual harassment prevention plan as a part of its injury and illness prevention plan, to protect covered workers from workplace sexual violence and sexual harassment.

*The bill would require every employer subject to its provisions to keep accurate records of specific information regarding employees for 3 years. The bill would require the division to enforce its provisions and would authorize the division to adopt any regulations necessary to carry out the provisions of the bill.*

*The bill would require every employer, effective July 1, 2018, to register annually with the Labor Commissioner in accordance with prescribed procedures. The bill would prohibit an employer from conducting any business without registration as required by the bill and would authorize the commissioner to revoke a registration under certain circumstances. The bill would set application and renewal fees for registration.*

~~The bill would require the registration of employers conducting janitorial business, as prescribed, and establish specific authority for the Labor Commissioner to enforce and implement that requirement. The bill would set application and renewal fees. The bill would prohibit an employer, on or after July 1, 2018, from conducting any janitorial business without a valid registration. The bill would require an employer to include specific information in the registration application, subscribed and sworn to under penalty of perjury, thereby imposing a state-mandated local program by expanding the scope of the crime of perjury. application. The bill would prohibit the division from granting of registration under specific circumstances, authorize the director to deny, suspend, or void a registration in certain circumstances. The bill would require the commissioner, on and after July 1, 2018, commissioner to maintain on the commissioner's department's Internet Web site a regularly updated, searchable database of registered employers, and, on and after July 1, 2019, a searchable public database regarding the compliance and enforcement activities of the department. of registered property service employers.~~

*The bill would require the division, by January 1, 2019, to establish a biennial in-person sexual violence and harassment prevention training requirement for employees and employers with the assistance of a prescribed advisory committee to be convened by the director. The bill would require employers, as of July 1, 2018, and until the division establishes that training requirement, to provide employees with a pamphlet of the Department of Fair Employment and Housing on sexual harassment.*

~~The bill would establish various compliance and enforcement provisions, including a requirement that the director establish a Property Services Compliance Unit to enforce the act. The bill would establish civil fines and provide for labor compliance agreements, stop order authority, audits, and investigations. The bill would impose a state-mandated local program by making it a crime to conduct any~~

~~janitorial business without a valid registration, or to fail to observe a stop order.~~

The bill would *establish civil fines for specific violations of its provisions and vest in the commission the exclusive authority to enforce the civil fine provisions. The bill would require the deposit of registration fees and specific civil fines in the State Janitorial Contractor Registration Fund, which the bill would create, Labor Enforcement and Compliance Fund and make would direct that the moneys in the fund from those fees and fines be available, upon appropriation, for the reasonable costs of administering the registration of janitorial contractors and the costs and obligations associated with the administration and enforcement of the bill by the commissioner. The bill, to provide adequate cash flow for those purposes, would authorize the Director of Finance, with the concurrence of the Secretary of the Labor and Workforce Development Agency, to approve a short-term loan each fiscal year from the Labor and Workforce Development Fund to the State Janitorial Contractor Registration Fund. division.*

~~The bill would make conforming changes regarding the definition of an employer.~~

~~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-no.~~

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

- 1     SECTION 1. Part 4.2 (commencing with Section 1420) is added
- 2     to Division 2 of the Labor Code, to read:
- 3
- 4     PART 4.2. PROPERTY SERVICE WORKERS PROTECTION
- 5
- 6     1420. For purposes of this part:
- 7     (a) (1) "Covered worker" means a janitor, including any
- 8     individual predominantly working, whether as an employee,
- 9     independent contractor, or a franchisee, as a janitor, as that term
- 10    is defined in the Service Contract Act Directory of Occupations
- 11    maintained by the United State Department of Labor.

1 (2) "Covered worker" does not include any individual whose  
2 work duties are predominantly final cleanup of debris, grounds,  
3 and buildings near the completion of a construction, alteration,  
4 demolition, installation, or repair work project, including, but not  
5 limited to, street cleaners.

6 (b) "Current and valid registration" means an active  
7 registration pursuant to this part that is not expired or revoked.

8 (c) "Department" means the Department of Industrial Relations.

9 (d) "Director" means the Director of Industrial Relations.

10 (e) (1) "Employer" means any person or entity that employs  
11 at least one employee and one or more covered workers and that  
12 enters into contracts, subcontracts, or franchise arrangements to  
13 provide janitorial services. The term "employer" includes the term  
14 "covered successor employer."

15 (2) "Covered successor employer" means an employer who  
16 meets one or more of the following criteria:

17 (A) Uses substantially the same equipment, supervisors, and  
18 workforce to offer substantially the same services to substantially  
19 the same clients as a predecessor employer, unless the employer  
20 maintains the same workforce pursuant to Chapter 4.5  
21 (commencing with Section 1060) of Part 3. In addition, an  
22 employer who has operated with a current and valid registration  
23 for at least the preceding three years shall not be considered a  
24 covered successor employer for using substantially the same  
25 equipment, supervisors, and workforce to substantially the same  
26 clients, if all of the following apply:

27 (i) The individuals in the workforce were not referred or  
28 supplied for employment by the predecessor employer to the  
29 successor employer.

30 (ii) The successor employer has not had any interest in, or  
31 connection with, the operation, ownership, management, or control  
32 of the business of the predecessor employer within the preceding  
33 three years.

34 (B) Shares in the ownership, management, control of the  
35 workforce, or interrelations of business operations with the  
36 predecessor employer.

37 (C) Is an immediate family member of any owner, partner,  
38 officer, licensee, or director of the predecessor employer or of any  
39 person who had a financial interest in the predecessor employer.

40 "Immediate family member" means a spouse, parent, sibling, son,

1 daughter, uncle, aunt, niece, nephew, grandparent, grandson,  
2 granddaughter, mother-in-law, father-in-law, brother-in-law,  
3 sister-in-law, or cousin.

4 (f) “Commissioner” means the Labor Commissioner of the  
5 Division of Labor Standards Enforcement of the department.

6 (g) “Supervisor” has the same meaning as in subdivision (t) of  
7 Section 12926 of the Government Code.

8 1421. Every employer shall keep accurate records for three  
9 years, showing all of the following:

10 (a) The names and addresses of all employees engaged in  
11 rendering actual services for any business of the employer.

12 (b) The hours worked daily by each employee, including the  
13 times the employee begins and ends each work period.

14 (c) The wage and wage rate paid each payroll period.

15 (d) The age of all minor employees.

16 (e) Any other conditions of employment.

17 1422. The Division of Labor Standards Enforcement shall  
18 enforce this part. The commissioner may adopt any regulations  
19 necessary to carry out this part.

20 1423. Effective July 1, 2018, every employer shall register with  
21 the commissioner annually.

22 1424. When a certificate of current and valid registration is  
23 originally issued or renewed under this part, the Division of Labor  
24 Standards Enforcement shall provide related and supplemental  
25 information to the registrant regarding business administration  
26 and applicable labor laws. As of July 1, 2018, employers covered  
27 by this part shall provide all covered workers a copy of the  
28 Department of Fair Employment and Housing pamphlet  
29 DFEH-185, entitled “Sexual Harassment,” until the sexual  
30 violence and harassment prevention training requirement is  
31 established pursuant to Section 1429.5.

32 1425. Proof of current and valid registration shall be by an  
33 official Division of Labor Standards Enforcement registration  
34 form.

35 1426. At least 60 days prior to the expiration of each  
36 registrant’s registration, the Division of Labor Standards  
37 Enforcement shall send a renewal notice to the last known address  
38 of the registrant. However, omission of the Division of Labor  
39 Standards Enforcement to provide the renewal notice in  
40 accordance with this section shall not excuse a registrant from

1 *making timely application for renewal of registration, shall not*  
2 *be a defense in any action or proceeding involving failure to renew*  
3 *registration, and shall not subject the Division of Labor Standards*  
4 *Enforcement to any legal liability.*

5 *1427. The Division of Labor Standards Enforcement shall*  
6 *collect from each employer an initial nonrefundable application*  
7 *fee of five hundred dollars (\$500), and an annual fee of five*  
8 *hundred dollars (\$500) on the anniversary date of initial*  
9 *application, and may periodically adjust the registration fee in an*  
10 *amount sufficient to fund all direct and indirect costs to administer*  
11 *and enforce this part.*

12 *1428. An employer shall not conduct any business without*  
13 *complying with the registration requirements of this part. The*  
14 *commissioner may revoke a registration if he or she finds an*  
15 *employer to be out of compliance with any requirement of this part*  
16 *or to have failed to satisfy any of the conditions of Section 1429.*

17 *1429. The Division of Labor Standards Enforcement shall not*  
18 *approve the registration of any employer until all of the following*  
19 *conditions are satisfied:*

20 *(a) The employer has executed a written application, in a form*  
21 *prescribed by the commissioner and subscribed and sworn to by*  
22 *the employer containing the following:*

23 *(1) The name of the business entity and, if applicable, its*  
24 *fictitious or "doing business as" name.*

25 *(2) The form of the business entity and, if a corporation, all of*  
26 *the following:*

27 *(A) The date of incorporation.*

28 *(B) The state in which incorporated.*

29 *(C) If a foreign corporation, the date the articles of*  
30 *incorporation were filed with the California Secretary of State.*

31 *(D) Whether the corporation is in good standing with the*  
32 *California Secretary of State.*

33 *(3) The federal employer identification number (FEIN) and the*  
34 *state employer identification number (SEIN) of the business.*

35 *(4) The address of the business and the telephone number and,*  
36 *if applicable, the addresses and telephone numbers of any branch*  
37 *locations.*

38 *(5) Whether the application is for a new or renewal registration*  
39 *and, if the application is for a renewal, the prior registration*  
40 *number.*

- 1     (6) *The names, residential addresses, telephone numbers, and*  
2 *social security numbers of the following persons:*  
3     (A) *All corporate officers, if the business entity is a corporation.*  
4     (B) *All persons exercising management responsibility in the*  
5 *applicant's office, regardless of form of business entity.*  
6     (C) *All persons, except bona fide employees on regular salaries,*  
7 *who have a financial interest of 10 percent or more in the business,*  
8 *regardless of the form of business entity, and the actual percent*  
9 *owned by each of those persons.*  
10    (7) *The policy number, effective date, expiration date, and name*  
11 *and address of the carrier of the applicant business' current*  
12 *workers' compensation coverage.*  
13    (8) (A) *Whether the employer and any persons named in*  
14 *response to subparagraph (A), (B), or (C) of paragraph (6)*  
15 *presently:*  
16     (i) *Owe any unpaid wages.*  
17     (ii) *Have unpaid judgments outstanding.*  
18     (iii) *Have any liens or suits pending in court against himself or*  
19 *herself.*  
20     (iv) *Owe payroll taxes, or personal, partnership, or corporate*  
21 *income taxes, Social Security taxes, or disability insurance.*  
22    (B) *An applicant who answers affirmatively to any item*  
23 *described in subparagraph (A) shall provide, as part of the*  
24 *application, additional information on the unpaid amounts,*  
25 *including the name and address of the party owed, the amount*  
26 *owed, and any existing payment arrangements.*  
27    (9) (A) *Whether the employer and any persons named in*  
28 *response to subparagraph (A), (B), or (C) of paragraph (6) have*  
29 *ever been cited or assessed any penalty for violating any provision*  
30 *of this code.*  
31    (B) *An applicant who answers affirmatively to any item*  
32 *described in subparagraph (A) shall provide additional*  
33 *information, as part of the application, on the date, nature of*  
34 *citation, amount of penalties assessed for each citation, and the*  
35 *disposition of the citation, if any. The application shall describe*  
36 *any appeal filed. If the citation was not appealed, or if it was*  
37 *upheld on appeal, the applicant shall state whether the penalty*  
38 *assessment was paid.*  
39    (10) *Effective January 1, 2020, all new applications for*  
40 *registration and renewal of registration shall complete the sexual*



1 violence and harassment prevention training requirements  
2 prescribed by the division and developed pursuant to Section  
3 1429.5.

4 (11) Such other information as the commissioner requires for  
5 the administration and enforcement of this part.

6 (b) The employer has paid a registration fee to the Division of  
7 Labor Standards Enforcement pursuant to Section 1427.

8 (c) Notwithstanding any other law, violation of this section shall  
9 not be a crime.

10 1429.5. The Division of Labor Standards Enforcement shall  
11 establish a biennial in-person sexual violence and harassment  
12 prevention training requirement for employees and employers  
13 covered by this part by January 1, 2019. To assist in developing  
14 these standards, the director shall convene an advisory committee  
15 to recommend requirements for a sexual harassment prevention  
16 training program. The advisory committee shall be composed of  
17 representatives of the Division of Labor Standards Enforcement,  
18 the Division of Occupational Safety and Health, and the  
19 Department of Fair Employment and Housing, and shall also  
20 include representatives from a recognized or certified collective  
21 bargaining agent that represents janitorial workers, employers,  
22 labor-management groups in the janitorial industry, sexual assault  
23 victims advocacy groups, and other related subject matter experts.  
24 The director shall convene the advisory committee no later than  
25 July 1, 2017. The advisory committee shall consider the  
26 requirements of Section 12950.1 of the Government Code when  
27 developing the recommended standard. The Division of Labor  
28 Standards Enforcement shall propose the requirements for the  
29 sexual violence and harassment prevention training requirement  
30 no later than January 1, 2018.

31 1430. The Division of Labor Standards Enforcement shall not  
32 register or renew the registration of an employer in any of the  
33 following circumstances:

34 (a) The employer has not fully satisfied any final judgment for  
35 unpaid wages due to an employee or former employee of a business  
36 for which the employer is required to register under this chapter.

37 (b) The employer has failed to remit the proper amount of  
38 contributions required by the Unemployment Insurance Code or  
39 the Employment Development Department has made an assessment  
40 for those unpaid contributions against the employer that has

1 *become final and the employer has not fully paid the amount of*  
2 *delinquency for those unpaid contributions.*

3 *(c) The employer has failed to remit the amount of Social*  
4 *Security and Medicare tax contributions required by the Federal*  
5 *Insurance Contributions Act (FICA) to the Internal Revenue*  
6 *Service and the employer has not fully paid the amount or*  
7 *delinquency for those unpaid contributions.*

8 *1431. The commissioner shall maintain a public database of*  
9 *property service employers, on the Internet Web site of the*  
10 *department, including the name, address, registration number,*  
11 *and effective dates of registration.*

12 *1432. (a) An employer who fails to register pursuant to Section*  
13 *1423 is subject to a civil fine of one hundred dollars (\$100) for*  
14 *each calendar day that the employer is unregistered, not to exceed*  
15 *ten thousand dollars (\$10,000).*

16 *(b) Any person or entity that contracts with an employer who*  
17 *lacks a current and valid registration, as displayed on the online*  
18 *registration database at the time the contract is executed, extended,*  
19 *renewed, or modified, under this part on the date the person or*  
20 *entity enters into or renews a contract or subcontract for janitorial*  
21 *services with the employer is subject to a civil fine of not less than*  
22 *two thousand dollars (\$2,000) nor more than ten thousand dollars*  
23 *(\$10,000) in the case of a first violation, and a civil fine of not less*  
24 *than ten thousand dollars (\$10,000) nor more than twenty-five*  
25 *thousand dollars (\$25,000) for a subsequent violation.*

26 *(c) Notwithstanding any other provision of law, the authority*  
27 *to enforce this section is vested exclusively with the commissioner.*  
28 *The procedures for issuing, contesting, and enforcing judgments*  
29 *for citations or civil penalties issued by the commissioner shall be*  
30 *the same as those set forth in Section 1197.1.*

31 *1433. (a) All registration fees collected pursuant to Section*  
32 *1427, all civil fines collected pursuant to Section 1432, and any*  
33 *other moneys as are designated by statute or order shall be*  
34 *deposited in the Labor Enforcement and Compliance Fund.*

35 *(b) Moneys deposited in the fund pursuant to Section 1427 and*  
36 *Section 1432 shall be used only for the following purposes:*

37 *(1) The reasonable costs of administering the registration of*  
38 *janitorial contractors pursuant to this part by the Division of Labor*  
39 *Standards and Enforcement.*

(2) *The costs and obligations associated with the administration and enforcement of this part by the Division of Labor Standards and Enforcement.*

(c) *The annual employer registration renewal fee specified in of Section 1427, and any adjusted application renewal fee, shall be set in amounts that are sufficient to support the direct costs and a reasonable percentage attributable to the indirect costs of the division for administering this part.*

1434. *A successor employer is liable for any wages and penalties its predecessor employer owes to any of the predecessor employer's former employee or employees, if the successor employer meets any of the following criteria:*

(a) *Uses substantially the same workforce to offer substantially the same services as the predecessor employer. This factor does not apply to employers who maintain the same workforce pursuant to Chapter 4.5 (commencing with Section 1060) of Part 3.*

(b) *Shares in the ownership, management, control of the labor relations, or interrelations of business operations with the predecessor employer.*

(c) *Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the affected employees of the predecessor employer.*

(d) *Is an immediate family member of any owner, partner, officer, or director of the predecessor employer of any person who had a financial interest in the predecessor employer.*

**All matter omitted in this version of the bill  
appears in the bill as amended in the  
Assembly, June 22, 2016. (JR11)**

CORRECTIONS:

Title—Line 1.

Digest—Pages 1 and 2.

Text—Pages 3, 4, 5, 6, 7, 8, and 9.

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