Assembly Bill No. 1978

CHAPTER 373

An act to add Part 4.2 (commencing with Section 1420) to Division 2 of the Labor Code, relating to employment.

[Approved by Governor September 15, 2016. Filed with Secretary of State September 15, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1978, 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.

This 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 Labor Commissioner, who is the chief of 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 an employer to include specific information in the registration application. The bill would prohibit the division from granting registration under specific circumstances. The bill would require the commissioner to maintain on the department's Internet Web site a public database 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 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 civil

fines in the Labor Enforcement and Compliance Fund and would direct that the moneys in the fund from those fees and fines be used only 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 division.

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

SECTION 1. Part 4.2 (commencing with Section 1420) is added to Division 2 of the Labor Code, to read:

PART 4.2. PROPERTY SERVICE WORKERS PROTECTION

1420. For purposes of this part:

(a) (1) "Covered worker" means a janitor, including any individual predominantly working, whether as an employee, independent contractor, or a franchisee, as a janitor, as that term is defined in the Service Contract Act Directory of Occupations maintained by the United State Department of Labor.

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

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

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

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

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

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

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

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

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

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

(C) Is an immediate family member of any owner, partner, officer, licensee, or director of the predecessor employer or of any person who had a financial interest in the predecessor employer. "Immediate family member" means a spouse, parent, sibling, son, daughter, uncle, aunt, niece, nephew, grandparent, grandson, granddaughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, or cousin.

(f) "Commissioner" means the Labor Commissioner of the Division of Labor Standards Enforcement of the department.

(g) "Supervisor" has the same meaning as in subdivision (t) of Section 12926 of the Government Code.

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

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

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

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

(d) The age of all minor employees.

(e) Any other conditions of employment.

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

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

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

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

1426. At least 60 days prior to the expiration of each registrant's registration, the Division of Labor Standards Enforcement shall send a renewal notice to the last known address of the registrant. However, omission of the Division of Labor Standards Enforcement to provide the renewal notice in accordance with this section shall not excuse a registrant from making timely application for renewal of registration, shall not be a defense in any action or proceeding involving failure to renew registration, and shall not subject the Division of Labor Standards Enforcement to any legal liability.

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

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

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

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

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

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

(A) The date of incorporation.

(B) The state in which incorporated.

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

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

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

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

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

(6) The names, residential addresses, telephone numbers, and social security numbers of the following persons:

(A) All corporate officers, if the business entity is a corporation.

(B) All persons exercising management responsibility in the applicant's office, regardless of form of business entity.

(C) All persons, except bona fide employees on regular salaries, who have a financial interest of 10 percent or more in the business, regardless of the form of business entity, and the actual percent owned by each of those persons.

(7) The policy number, effective date, expiration date, and name and address of the carrier of the applicant business' current workers' compensation coverage.

(8) (A) Whether the employer and any persons named in response to subparagraph (A), (B), or (C) of paragraph (6) presently:

(i) Owe any unpaid wages.

(ii) Have unpaid judgments outstanding.

(iii) Have any liens or suits pending in court against himself or herself.

(iv) Owe payroll taxes, or personal, partnership, or corporate income taxes, Social Security taxes, or disability insurance.

(B) An applicant who answers affirmatively to any item described in subparagraph (A) shall provide, as part of the application, additional information on the unpaid amounts, including the name and address of the party owed, the amount owed, and any existing payment arrangements.

(9) (A) Whether the employer and any persons named in response to subparagraph (A), (B), or (C) of paragraph (6) have ever been cited or assessed any penalty for violating any provision of this code.

(B) An applicant who answers affirmatively to any item described in subparagraph (A) shall provide additional information, as part of the application, on the date, nature of citation, amount of penalties assessed for each citation, and the disposition of the citation, if any. The application shall describe any appeal filed. If the citation was not appealed, or if it was upheld on appeal, the applicant shall state whether the penalty assessment was paid.

(10) Effective January 1, 2020, all new applications for registration and renewal of registration shall complete the sexual violence and harassment prevention training requirements prescribed by the division and developed pursuant to Section 1429.5.

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

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

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

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

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

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

(b) The employer has failed to remit the proper amount of contributions required by the Unemployment Insurance Code or the Employment Development Department has made an assessment for those unpaid contributions against the employer that has become final and the employer has not fully paid the amount of delinquency for those unpaid contributions.

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

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

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

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

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

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

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

(1) The reasonable costs of administering the registration of janitorial contractors pursuant to this part by the Division of Labor 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.

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