

AMENDED IN ASSEMBLY APRIL 25, 2016

AMENDED IN ASSEMBLY MARCH 31, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2437

Introduced by Assembly Member Ting

February 19, 2016

An act to add ~~Sections 7401.1 and 7401.2~~ *Section 7353.4* to the Business and Professions Code, and to add ~~Section 238.6 to, and to add Part 10.5 (commencing with Section 2268) to Division 2 of, 98.10 to~~ the Labor Code, relating to ~~nail care establishments, and making an appropriation therefor.~~ *barbering and cosmetology.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2437, as amended, Ting. ~~Nail care establishments: training: wage violations.~~ *Barbering and cosmetology: establishments: posting notice.*

(1) The Barbering and Cosmetology Act provides for the licensure and regulation of barbers, cosmetologists, estheticians, manicurists, electrologists, and apprentices by the State Board of Barbering and Cosmetology. The act requires the licensure of any person, firm, or corporation operating an establishment engaged in a practice regulated by the board, as specified, and requires a licensed establishment to comply with various requirements. *That act requires the board to inspect an establishment within 90 days after issuing the establishment a license and requires the board to maintain a program of random and targeted inspections of establishments, as specified.* A violation of the Barbering and Cosmetology Act is ~~generally a misdemeanor.~~ *misdemeanor unless a specific penalty is otherwise provided.*

~~Existing law prohibits an employer from continuing to conduct business in this state, as specified, if a final judgment against that employer arising from the employer's nonpayment of wages for work performed in this state remains unsatisfied after a specified period of time after the time to appeal has expired and no appeal is pending, except as specified.~~

~~This bill would require the State Board of Barbering and Cosmetology to deny the renewal of a license to an establishment that provides nail care services if that establishment is conducting business in violation of the above provision regarding final judgments arising from an employer's nonpayment of wages for work performed in this state, and would require the board to verify with the Labor Commissioner that such an establishment is not conducting business in violation of those provisions. The bill would also require the Labor Commissioner to notify the board if such an establishment is conducting business in violation of those provisions. The bill would authorize such an establishment to provide evidence to the board that it is not conducting business in violation of those provisions. *require, on and after July 1, 2017, an establishment licensed by the board to post a specified notice in a conspicuous location in clear view of employees and where similar notices are customarily posted. The bill would require the board to inspect an establishment for compliance with that requirement when it conducts the above-mentioned inspection, and would provide that a violation of that posting requirement is punishable as an administrative fine.*~~

(2) Existing law creates the Division of Labor Standards Enforcement within the Department of Industrial Relations, and vests the division with the general duty of enforcing labor laws, including those relating to wage claims and employer retaliation. *Existing law provides that the Labor Commissioner is the Chief of the Division of Labor Standards Enforcement.*

~~This bill would require an establishment, which provides nail care services and is required to be licensed as an establishment under the Barbering and Cosmetology Act, to register with the division and receive specified training regarding workplace rights and wage and hour laws, including, but not limited to, overtime compensation, and would also require the establishment to arrange for the training to be provided to its employees. The bill would require the division to provide that training to such an establishment and its employees. The bill would authorize the division to contract with nonprofit vendors to perform that training~~

~~and would require the division to consider certain factors when approving a nonprofit vendor, including that the vendor has familiarity with the labor laws to be discussed during the training. The bill would authorize the division to charge a fee to each nail care establishment, not to exceed the reasonable regulatory cost of providing the training, and would require that fee to be deposited into the Nail Care Establishment Training Fund, which would be created by this bill. The bill would continuously appropriate the money in that fund solely for the purposes of providing the required training. The bill would also define various terms for these purposes: the Labor Commissioner, on or before June 1, 2017, to create a model posting notice pertaining to the workplace rights and wage and hour laws for employees of establishments licensed under the Barbering and Cosmetology Act. The bill would require the model posting notice to contain clear and concise language and would require the commissioner to post the notice on the commissioner’s Internet Web site, as specified. The bill would require the notice to contain, at a minimum, certain information, including laws regarding overtime compensation. The bill would authorize the commissioner to consult with the Barbering and Cosmetology Board about providing the notice in additional languages other than English.~~

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

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

- 1 SECTION 1. Section 7353.4 is added to the Business and
- 2 Professions Code, to read:
- 3 7353.4. (a) On and after July 1, 2017, an establishment
- 4 licensed by the board shall, upon availability of the posting notice
- 5 developed by the Labor Commissioner pursuant to Section 98.10
- 6 of the Labor Code, post that notice in a manner that complies with
- 7 the requirements of Section 98.10 of the Labor Code in a
- 8 conspicuous location in clear view of employees and where similar
- 9 notices are customarily posted.
- 10 (b) The board shall inspect for compliance with this posting
- 11 requirement when it conducts an inspection pursuant to Section
- 12 7353.
- 13 (c) A violation of this section shall be punished by an
- 14 administrative fine established pursuant to Section 7407 and shall
- 15 not be punished as a misdemeanor under Section 7404.1.

1 SEC. 2. Section 98.10 is added to the Labor Code, immediately
2 following Section 98.9, to read:

3 98.10. (a) On or before June 1, 2017, the Labor Commissioner
4 shall develop a model notice pertaining to workplace rights and
5 wage and hour laws for employees of establishments licensed
6 under Chapter 10 (commencing with Section 7301) of Division 3
7 of the Business and Professions Code. The model posting notice
8 shall contain clear and concise language and be accessible on the
9 Labor Commissioner's Internet Web site so that it is reasonably
10 accessible to an establishment that must comply with Section
11 7353.4 of the Business and Professions Code. The Labor
12 Commissioner may consult with the Board of Barbering and
13 Cosmetology in providing the model posting notice in additional
14 languages other than English.

15 (b) The model notice shall include information, including, but
16 not limited to, all of the following:

17 (1) Misclassification of an employee as an independent
18 contractor.

19 (2) Wage and hour laws, including, but not limited to, minimum
20 wage, overtime compensation, meal periods, and rest periods.

21 (3) Tip or gratuity distribution.

22 (4) How to report violations of the law.

23 (5) Business expense reimbursement.

24 (6) Protection from retaliation.

25 ~~SECTION 1. Section 7401.1 is added to the Business and
26 Professions Code, to read:~~

27 ~~7401.1. (a) The board shall not renew the license of an
28 establishment that provides nail care services if it is conducting
29 business in violation of Section 238 of the Labor Code.~~

30 ~~(b) Before renewing the license of an establishment that provides
31 nail care services as defined in Section 7316, the board shall verify
32 with the Labor Commissioner whether that establishment is
33 conducting business in violation of Section 238 of the Labor Code.~~

34 ~~(c) An establishment that provides nail care services may
35 demonstrate to the board that is not conducting business in violation
36 of Section 238 of the Labor Code by providing evidence to the
37 board.~~

38 ~~SEC. 2. Section 7401.2 is added to the Business and Professions
39 Code, to read:~~

1 ~~7401.2. The board shall not renew the establishment license~~
2 ~~of an establishment that provides nail care services, as defined~~
3 ~~under Section 7316, if the establishment and its employees have~~
4 ~~not received the training required pursuant to Part 10.5~~
5 ~~(commencing with Section 2268) of the Labor Code.~~

6 ~~SEC. 3. Section 238.6 is added to the Labor Code, to read:~~

7 ~~238.6. (a) If an employer is an establishment that offers nail~~
8 ~~care services and is required to obtain a license from the State~~
9 ~~Board of Barbering and Cosmetology pursuant to Chapter 10~~
10 ~~(commencing with Section 7301) of Division 3 of the Business~~
11 ~~and Professions Code is found to be conducting business in~~
12 ~~violation of Section 238, the Labor Commissioner shall notify the~~
13 ~~State Board of Barbering and Cosmetology that the establishment~~
14 ~~is conducting business in violation of Section 238.~~

15 ~~(b) For the purposes of this section, “nail care services” means~~
16 ~~the practice of cutting, trimming, polishing, coloring, tinting,~~
17 ~~cleansing, manicuring, or pedicuring the nails of a person or~~
18 ~~massaging, cleansing, or beautifying from the elbow to the~~
19 ~~fingertips or the knee to the toes of a person.~~

20 ~~SEC. 4. Part 10.5 (commencing with Section 2268) is added~~
21 ~~to Division 2 of the Labor Code, to read:~~

22
23 ~~PART 10.5. NAIL CARE ESTABLISHMENTS~~
24

25 ~~2268. For the purposes of this part, the following terms shall~~
26 ~~have the following meanings:~~

27 ~~(a) “Division” means the Division of Labor Standards~~
28 ~~Enforcement.~~

29 ~~(b) “Establishment” means an establishment licensed under~~
30 ~~Chapter 10 (commencing with Section 7301) of Division 3 of the~~
31 ~~Business and Professions Code that offers nail care services.~~

32 ~~(c) “License” means a license issued to an establishment under~~
33 ~~Chapter 10 (commencing with Section 7301) of Division 3 of the~~
34 ~~Business and Professions Code.~~

35 ~~(d) “Licensee” means an employee of an establishment who is~~
36 ~~licensed under Chapter 10 (commencing with Section 7301) of~~
37 ~~Division 3 of the Business and Professions Code to perform nail~~
38 ~~care services.~~

39 ~~(e) “Nail care” means the practice of cutting, trimming,~~
40 ~~polishing, coloring, tinting, cleansing, manicuring, or pedicuring~~

1 the nails of a person or massaging, cleansing, or beautifying from
2 the elbow to the fingertips or the knee to the toes of a person.

3 ~~2268.1. (a) An establishment shall register with the division
4 pursuant to this part and receive the training required by this part
5 once every license renewal period. An establishment shall also
6 arrange for licensees employed at that establishment to receive the
7 required training from either the division under subdivision (b) or
8 from a nonprofit vendor under subdivision (c).~~

9 ~~(b) (1) By June 1, 2017, the division shall provide training to
10 an establishment and licensees employed at that establishment
11 regarding laws pertaining to workplace rights and wage and hour
12 laws.~~

13 ~~(2) The training shall include, but not be limited to:~~

14 ~~(A) Misclassification of an employee as a contractor.~~

15 ~~(B) Wage and hour laws, such as minimum wage, overtime
16 compensation, meal periods, and rest breaks.~~

17 ~~(C) Protection for retaliation.~~

18 ~~(D) Business expense reimbursement.~~

19 ~~(E) Tip or gratuity distribution.~~

20 ~~(F) How to report violations of the law.~~

21 ~~(3) To the extent possible, the training shall be provided
22 separately to an establishment and licensees.~~

23 ~~(4) The training shall be provided in a culturally competent and
24 linguistically appropriate manner for the demographic groups that
25 work in the nail care industry.~~

26 ~~(c) (1) In lieu of providing training under subdivision (b), the
27 division may contract with an approved nonprofit vendor to provide
28 the training required by this section.~~

29 ~~(2) The division shall consider all of the following when
30 approving a nonprofit vendor to provide the training required by
31 this section:~~

32 ~~(A) The linguistic capabilities of the nonprofit vendor. The
33 nonprofit vendor shall have language capacity to conduct the
34 training in the languages of the demographic groups that work in
35 the nail care industry, including, but not limited to, Vietnamese.~~

36 ~~(B) The nonprofit vendor shall have a demonstrated history of
37 providing culturally competent services to the demographic groups
38 that work in the nail care industry, including, but not limited to,
39 the Vietnamese community.~~

1 ~~(C) The nonprofit vendor shall have familiarity with the laws~~
2 ~~to be discussed in the training. The vendor may obtain this legal~~
3 ~~expertise through other service providers, such as a nonprofit legal~~
4 ~~service agency.~~

5 ~~(D) Any other criteria deemed appropriate by the division.~~

6 ~~(3) The nonprofit vendor shall not charge a fee to the attendees~~
7 ~~of the training.~~

8 ~~2268.2. (a) The division shall charge a fee to an establishment,~~
9 ~~not to exceed the reasonable regulatory cost, for providing the~~
10 ~~training under this part or for contracting out with an approved~~
11 ~~nonprofit vendor to provide the training required under this part.~~

12 ~~(b) The fee shall be deposited into the Nail Care Establishment~~
13 ~~Training Fund, which is hereby created. The fee shall only be used~~
14 ~~for the purposes of providing the training required pursuant to this~~
15 ~~part and, notwithstanding Section 13340 of the Government Code,~~
16 ~~is continuously appropriated without regard to fiscal year solely~~
17 ~~for these purposes.~~