

AMENDED IN SENATE JANUARY 24, 2000

**SENATE BILL**

**No. 945**

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**Introduced by Senator Vasconcellos**

February 25, 1999

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An act to amend Section 1171 of the Labor Code, and to amend Section 634.5 of the Unemployment Insurance Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 945, as amended, Vasconcellos. Employment.

(1) Existing law governing employment prescribes wages, hours, and working conditions for all employees in the state except individuals employed as outside salesmen.

This bill would additionally except from those employment law provisions, individuals participating in a national service program, such as AmeriCorps, carried out using specified federal assistance.

(2) Existing law governing unemployment insurance defines "employment" for those purposes, and with respect to certain public entities and certain nonprofit organizations, exempts from that definition certain specified services.

This bill would add as exempted services in this regard, service performed as a participant in a national service program carried out using specified federal assistance.

(3) *This bill would state legislative findings, declarations, and intent in this regard.*

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

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

1 SECTION 1. *The Legislature finds and declares all of*  
2 *the following:*

3 (a) *That AmeriCorps is a unique and valuable*  
4 *program created by the United States federal*  
5 *government that seeks to provide young Americans*  
6 *opportunities to engage themselves in volunteer-like*  
7 *service in their communities, while earning credits*  
8 *toward their college or university education. Because*  
9 *AmeriCorps participants become involved in*  
10 *unpredictable service commitments (from individual to*  
11 *community emergencies), their hours of service are*  
12 *irregular at times.*

13 (b) *There are now approximately \$32 million of*  
14 *federal funds coming into California supporting 60*  
15 *different and distinct AmeriCorps programs with nearly*  
16 *9,400 participants.*

17 (c) *California wage and hour laws do not always*  
18 *readily fit the exigencies of these AmeriCorps programs,*  
19 *and efforts to fit them together would produce negative*  
20 *results. In particular, AmeriCorps does not provide*  
21 *funding or authorization for overtime pay.*

22 (d) *Organized labor supported the creation of the*  
23 *AmeriCorps program by the federal government, and in*  
24 *each and all of the other 49 states the AmeriCorps*  
25 *programs are not required to meet state law with respect*  
26 *to wages and hours.*

27 (e) *Failure to provide these salutary AmeriCorps*  
28 *programs exemption from California's wage and hour law*  
29 *and related unemployment insurance laws could*  
30 *jeopardize the operation and availability of these*  
31 *programs for young Californians.*

32 SEC. 2. (a) *The Legislature hereby intends to*  
33 *recognize the unique and valuable character of the*  
34 *AmeriCorps program, and its 60 programs now operating*  
35 *in California, and to assure their ready operation by*  
36 *providing them a unique exemption from the California*  
37 *wage and hour law and an exemption from state*  
38 *unemployment insurance laws.*



1 (b) In so doing, it is not the intention of the Legislature  
2 to create any precedent that would otherwise curtail the  
3 full operation of California's wage and hour law or its  
4 unemployment insurance laws.

5 SEC. 3. Section 1171 of the Labor Code is amended to  
6 read:

7 1171. The provisions of this chapter shall apply to and  
8 include men, women and minors employed in any  
9 occupation, trade, or industry, whether compensation is  
10 measured by time, piece, or otherwise, but shall not  
11 include any individual employed as an outside salesman  
12 or any individual participating in a national service  
13 program carried out using assistance provided under  
14 Section 12571 of Title 42 of the United States Code.

15 ~~SEC. 2.~~

16 SEC. 4. Section 634.5 of the Unemployment  
17 Insurance Code is amended to read:

18 634.5. Notwithstanding any other provision of this  
19 code or any other code or law, no provision of this code  
20 or any other code or law excluding service from  
21 "employment" shall apply to any public entity defined by  
22 Section 605 or to any nonprofit organization described by  
23 Section 608, except as provided by this section. With  
24 respect to any public entity defined by Section 605 or any  
25 nonprofit organization described by Section 608,  
26 "employment" does not include service excluded under  
27 Sections 629, 631, 635, and 639 to 648, inclusive, or service  
28 performed in any of the following:

29 (a) In the employ of (1) a church or convention or  
30 association of churches or (2) an organization which is  
31 operated primarily for religious purposes and which is  
32 operated, supervised, controlled, or principally  
33 supported by a church or convention or association of  
34 churches.

35 (b) By a duly ordained, commissioned, or licensed  
36 minister of a church in the exercise of his or her ministry  
37 or by a member of a religious order in the exercise of  
38 duties required by the order.



1 (c) In the employ of any public entity defined by  
2 Section 605, if the service is performed by an individual  
3 in the exercise of his or her duties as any of the following:

4 (1) An elected official.

5 (2) A member of a legislative body, or a member of the  
6 judiciary, of a state or political subdivision thereof.

7 (3) A member of a State National Guard or Air  
8 National Guard.

9 (4) An employee serving on a temporary basis in case  
10 of fire, storm, snow, earthquake, flood, or other similar  
11 emergency.

12 (5) In a position which, under or pursuant to state law,  
13 is designated as either of the following:

14 (A) A major nontenured policymaking or advisory  
15 position.

16 (B) A policymaking or advisory position, the  
17 performance of the duties of which ordinarily does not  
18 require more than eight hours per week.

19 (6) As an election official or election worker if the  
20 amount of remuneration reasonably expected to be  
21 received by the individual during the calendar year for  
22 services as an election official or election worker is less  
23 than two hundred dollars (\$200), provided that this  
24 paragraph shall not take effect unless and until the service  
25 is excluded from service to which paragraph (1) of  
26 subdivision (a) of Section 3309 of the federal  
27 Unemployment Tax Act (26 U.S.C. Sec. 3301 et seq.)  
28 applies by reason of exemption under subdivision (b) of  
29 Section 3309 of that act.

30 (d) Except as provided by Section 605.5, by an  
31 individual receiving rehabilitation or remunerative work  
32 in a facility conducted for the purpose of carrying out a  
33 program of either:

34 (1) Rehabilitation for individuals whose earning  
35 capacity is impaired by age or physical or mental  
36 deficiency or injury; or

37 (2) Providing remunerative work for individuals who  
38 because of their impaired physical or mental capacity  
39 cannot be readily absorbed in the competitive labor  
40 market.



1 (e) As part of an unemployment work relief or work  
2 training program assisted or financed in whole or in part  
3 by any federal agency or an agency of a state or political  
4 subdivision thereof, by an individual receiving work  
5 relief or work training.

6 (f) By a ward or an inmate of a custodial or penal  
7 institution pursuant to Article 1 (commencing with  
8 Section 2700), Article 4 (commencing with Section 2760),  
9 and Article 5 (commencing with Section 2780) of  
10 Chapter 5 of, and Article 1 (commencing with Section  
11 2800) of Chapter 6 of, Title 1 of Part 3 of the Penal Code,  
12 Section 4649 and Chapter 1 (commencing with Section  
13 4951) of Part 4 of Division 4 of the Public Resources Code,  
14 and Sections 883, 884, and 1768 of the Welfare and  
15 Institutions Code.

16 (g) By an individual under the age of 18 *years* in the  
17 delivery or distribution of newspapers or shopping news,  
18 not including delivery or distribution to any point for  
19 subsequent delivery or distribution.

20 (h) By an individual in, and at the time of, the sale of  
21 newspapers or magazines to ultimate consumers, under  
22 an arrangement under which the newspapers or  
23 magazines are to be sold by him or her at a fixed price, his  
24 or her compensation being based on retention of the  
25 excess of the price over the amount at which the  
26 newspapers or magazines are charged to him or her  
27 whether or not he or she is guaranteed a minimum  
28 amount of compensation for the service, or is entitled to  
29 be credited with the unsold newspapers or magazines  
30 turned back.

31 (i) As a substitute employee whose employment does  
32 not increase the size of the employer's normal work force,  
33 whose employment is required by law, and whose  
34 employment as a substitute employee does not occur on  
35 more than 60 days during the base period, except that this  
36 subdivision shall not take effect unless and until the  
37 United States Secretary of Labor, or his or her designee,  
38 finds that this subdivision is in conformity with federal  
39 requirements.



- 1 (j) As a participant in a national service program
- 2 carried out using assistance provided under Section 12571
- 3 of Title 42 of the United States Code.
- 4 This section shall become operative on July 1, 1978.

