

Senate Bill No. 686

Passed the Senate September 14, 2023

Secretary of the Senate

Passed the Assembly September 13, 2023

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2023, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1455 and 6303 of, and to add Section 6714 to, the Labor Code, relating to domestic workers.

LEGISLATIVE COUNSEL'S DIGEST

SB 686, Durazo. Domestic workers: occupational safety.

Existing law establishes within the Department of Industrial Relations the Division of Labor Standards Enforcement and the Division of Occupational Safety and Health, with duties and powers, as prescribed.

Existing law, the California Occupational Safety and Health Act of 1973, requires employers to comply with certain standards ensuring healthy and safe working conditions, as specified. The act charges the Division of Occupational Safety and Health with enforcement of the act, subject to oversight by the Chief of the Division of Occupational Safety and Health. The act excludes household domestic service from the definition of "employment." The act requires the chief, or a representative of the chief, to convene an advisory committee for the purposes of creating voluntary guidance and making recommendations to the department and the Legislature on policies the state may adopt to protect the health and safety of privately funded household domestic service employees, except publicly funded household domestic service and family daycare homes, as specified. The act requires the advisory committee to develop voluntary industry-specific occupational health and safety guidance relating to workplace hazards and the prevention or minimization of work-related injuries and illnesses. The act requires the advisory committee to make recommendations, as specified, on additional policies to protect the health and safety of household domestic service employees. Under specified circumstances, a violation of the act is a crime.

Existing law requires the Division of Labor Standards Enforcement, upon appropriation of funding for this purpose, to establish and maintain an outreach and education program for the purpose of promoting awareness of, and compliance with, labor protections that affect the domestic work industry and fair and dignified labor standards in this industry and other low-wage

industries. Existing law requires the Division of Labor Standards Enforcement to issue a competitive request to community-based organizations (CBOs) to provide education and outreach services in this connection and prescribes requirements for these organizations. Existing law makes CBOs responsible for developing and consulting with the Division of Labor Standards Enforcement regarding the core education and outreach materials, as specified. Existing law requires the Division of Labor Standards Enforcement and CBOs to meet at least biannually to coordinate efforts around outreach, education, and enforcement, including sharing information, in accordance with applicable privacy and confidentiality laws, that will shape and inform the overall enforcement strategy of the division regarding low-wage industries, including the domestic work industry. Existing law prohibits the Division of Labor Standards Enforcement from expending more than 5% of the budget allocation on the administration of the program.

This bill would make CBOs responsible for developing and consulting with the Division of Occupational Safety and Health regarding the core education and outreach materials regarding health and safety standards, retaliation, and the division's workplace safety complaint and retaliation process, including specific issues that affect the domestic work industry differently. The bill would make CBOs responsible for all costs related to the development, printing, advertising, or distribution of the education and outreach materials. The bill would require the chief, representatives of the consultation services and enforcement branches of the Division of Occupational Safety and Health, and CBOs to meet periodically, as specified, to coordinate efforts around outreach, education, and enforcement. The bill would prohibit the Division of Labor Standards Enforcement and the Division of Occupational Safety and Health from expending more than 5% of the budget allocation on the administration of the program.

This bill, for purposes of the California Occupational Safety and Health Act of 1973, commencing January 1, 2025, would narrow the exclusion of household domestic service from the definition of "employment" to exclude only publicly funded household domestic service and family daycare homes, as specified. The bill would require the Division of Occupational Safety and Health, by

January 1, 2025, to adopt industry guidance to assist household domestic service employers on their legal obligations under existing occupational safety and health laws and regulations that apply to the work activity of household domestic service employees. The bill would require the guidance to be consistent with the voluntary industry guidelines established by the advisory committee. The bill would require a household domestic services employer, by January 1, 2025, to comply with, and adhere to, all applicable occupational safety and health regulations. The bill would require the Division of Occupational Safety and Health, if the division determines that additional industry-specific regulations are necessary, to propose those regulations to the standards board for its review, and would require the standards board to adopt regulations by January 1, 2026.

By expanding the application of criminal penalties under the act to household domestic service employers, this bill would impose a state-mandated local program.

The bill would make related legislative findings and declarations.

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.

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

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

(a) As recognized by Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, it is the policy of the State of California to ensure that every place of employment is safe and healthful for the employees therein.

(b) Domestic work has become a core part of Californians' lives. 2,000,000 households in California rely on domestic workers to provide care for children, housecleaning, and support for seniors and people with disabilities. The vast majority of domestic workers are women of color and immigrants and are particularly vulnerable to unsafe or unhealthy working conditions.

(c) Domestic workers' health and safety have been put at severe risk during the recent disasters that have struck California. Domestic workers acted as frontline workers during the COVID-19 global pandemic. One year into the pandemic, domestic workers were three times more likely to have contracted COVID-19 than the general population in California.

(d) Climate-accelerated disasters have magnified the vulnerability and dangers that domestic workers and day laborers face on a daily basis because they are excluded from California's occupational health and safety protections. The growing frequency and intensity of wildfires and other natural disasters requires that legislators take immediate legislative action to protect the health and safety of these workers.

(e) A June, 2020, report from the University of California, Los Angeles, Labor Occupational Safety and Health Program found that 85 percent of domestic workers surveyed experience musculoskeletal injuries that are associated with chronic pain. Many respondents, 94 percent of whom were Latinx and Asian, reported continuing to work through their injuries for fear of job or financial loss. Those injuries could be prevented by appropriate health and safety guidance and subsequent enforcement.

(f) Because domestic workers care for the most important elements of their employers' lives, families, and homes, it is in the interest of employees, employers, and the people of the State of California to ensure that the health and safety of domestic workers are protected.

(g) On September 27, 2021, Governor Gavin Newsom signed into law Senate Bill 321 (Durazo, Chapter 332 of the Statutes of 2021), creating an advisory committee composed of members of the public and experts to discuss and develop recommendations, ensuring the health and safety of domestic workers in the home setting.

(h) The purpose of the advisory committee is to provide policy recommendations to the Department of Industrial Relations and the Legislature on policies the state may adopt to protect the health and safety of privately funded household domestic service employees, along with drafting voluntary industry-specific guidelines for the purpose of educating household domestic service employers and workers.

(i) In January of 2023, the advisory committee published recommendations based on discussions at advisory committee meetings, review of literature, review of existing policies, and input from experts in the field, workers, employers, and the public.

(j) As part of these recommendations, the advisory committee recommends that the Legislature remove the household domestic services exclusion from the definition of employment in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code.

(k) Accordingly, it is the intent of the Legislature, upon recommendation by the advisory committee, to establish legal responsibilities and methods for promoting compliance by employers for the protection of the health and safety of domestic workers and day laborers by removing the household domestic services exclusion from the California Labor Code.

(l) Further, the advisory committee recommends partnering with trusted community organizations on enforcement and educational efforts through an expansion of the existing Domestic Worker and Employer Outreach and Education Program (DWEOP).

(m) Given the unique structure of the industry and the barriers to rights enforcement and access to information experienced by both domestic work employees and employers, DWEOP has proven to be a successful model for outreach and education.

(n) Since the creation of DWEOP, over 60 different domestic worker rights and employer responsibilities materials have been created in the industry's most common languages. Over the course of two years, over 127,000 outreach contacts with workers and nearly 15,000 outreach contacts with employers were made. More than 280 trainings were conducted in just 18 months and more than 8,400 workers received training on core worker rights topics, as well as information about how to assert and defend those rights at the workplace.

(o) DWEOP has also proven successful in educating employers of their legal responsibilities. Over 22 trainings have been conducted by trusted employer partners, with specialized workshops for home attendant, nanny, and housecleaner employers.

(p) Across the state, more than 580 individual consultations were conducted with workers who had concerns about their workplace conditions; with nearly one-third reporting wage theft, one-third specifically reporting sick leave, rest break, or overtime violations, and many others reporting health and safety, workers'

compensation, and harassment issues. So far, the project team has resolved nearly 50 cases, resulting in more than \$236,000 in owed wages recuperated back into the hands of workers.

(q) DWEOP has worked together with the office of the Labor Commissioner to host a community forum that provided a deeper understanding of the domestic work industry for office of the Labor Commissioner staff.

(r) DWEOP also convened dozens of legal advocates to learn from domestic worker leaders and organizers about the history and trends of the domestic work industry and to uplift lessons and current models for collaborations between legal advocates and community-based organizations.

(s) Accordingly, it is the intent of the Legislature, upon recommendation by the advisory committee, to expand DWEOP as it exists to include health and safety outreach and education.

(t) Additionally, the advisory committee recommends supporting employers to be able to provide healthy and safe conditions by establishing a financial assistance program for low-resourced employers and providing educational resources and technical assistance for employers to facilitate compliance.

SEC. 2. Section 1455 of the Labor Code is amended to read:

1455. (a) (1) The Division of Labor Standards Enforcement, upon appropriation of funds to the division for purposes of this section, shall establish and maintain an outreach and education program. The purpose of the program shall be to promote awareness of, and compliance with, labor protections that affect the domestic work industry and to promote fair and dignified labor standards in this industry and other low-wage industries.

(2) As used in this section, “CBO” means a community-based organization.

(b) The program duration shall continue with an opportunity to expand or renew contingent on allocation of state funds or identification of other revenue sources.

(c) The Division of Labor Standards Enforcement shall issue a competitive request to CBOs to provide education and outreach services primarily focused on, but not limited to, domestic work employees and employers. CBOs shall have demonstrated experience in carrying out outreach and education directed at these populations, including knowledge of, and demonstrated familiarity with, issues facing the domestic work industry.

(d) CBOs shall be responsible for developing, and consulting with the Division of Labor Standards Enforcement regarding, the core education and outreach materials regarding minimum wage, overtime, sick leave, recordkeeping, retaliation, and the division wage adjudication and retaliation process, including specific issues that affect certain industries, such as the domestic work industry, differently. CBOs shall be responsible for all costs related to the development, printing, advertising, or distribution of the education and outreach materials. The materials shall be translated into non-English languages as may be appropriate, as determined by the applicable CBO in consultation with the Division of Labor Standards Enforcement. At the discretion of the Division of Labor Standards Enforcement, the Division of Labor Standards Enforcement shall have final approval over the education and outreach materials.

(e) The Division of Labor Standards Enforcement and CBOs shall meet biannually, or more frequently at the discretion of the division, to coordinate efforts around outreach, education, and enforcement, including sharing information, in accordance with applicable privacy and confidentiality laws, that will shape and inform the overall enforcement, education, and outreach strategies of the division regarding the domestic work industry.

(f) CBOs shall be responsible for developing and consulting with the Division of Occupational Safety and Health regarding the core education and outreach materials regarding health and safety standards, retaliation, and the division's workplace safety complaint and retaliation process, including specific issues that affect the domestic work industry differently. CBOs shall be responsible for all costs related to the development, printing, advertising, or distribution of the education and outreach materials. The materials shall be translated into non-English languages as may be appropriate, as determined by the applicable CBO in consultation with the Division of Occupational Safety and Health.

(g) The Chief of the Division of Occupational Safety and Health, representatives of the consultation services and enforcement branches of the Division of Occupational Safety and Health, and CBOs shall meet quarterly, or more frequently at the discretion of the Division of Occupational Safety and Health, to coordinate efforts around outreach, education, and enforcement, including sharing information, in accordance with applicable privacy and

confidentiality laws, that will shape and inform the overall enforcement, education, and outreach strategies of the Division of Occupational Safety and Health regarding the domestic work industry.

(h) The Division of Labor Standards Enforcement and the Division of Occupational Safety and Health shall not expend more than 5 percent of the budget allocation on the administration of the program.

SEC. 3. Section 6303 of the Labor Code is amended to read:

6303. (a) “Place of employment” means any place, and the premises appurtenant thereto, where employment is carried on, except a place where the health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than the division.

(b) (1) (A) “Employment” includes the carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire, except household domestic service.

(B) This paragraph shall become inoperative on January 1, 2025.

(2) (A) “Employment,” except as provided in subparagraph (B), includes the carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire.

(B) “Employment” does not include either of the following:

(i) Household domestic service that is publicly funded, including publicly funded household domestic service provided to a recipient, client, or beneficiary with a share of cost in that service, unless subject to Section 3342 or 5199 of Title 8 of the California Code of Regulations.

(ii) Family daycare homes, as defined in subdivision (a) of Section 1596.78 of the Health and Safety Code and subdivisions (d) and (f) of Section 1596.792 of the Health and Safety Code.

(C) This paragraph shall become operative on January 1, 2025.

(c) “Employment,” for purposes of this division only, also includes volunteer firefighting when covered by Division 4 (commencing with Section 3200) pursuant to Section 3361.

(d) Subdivision (c) shall become operative on January 1, 2004.

SEC. 4. Section 6714 is added to the Labor Code, to read:

6714. (a) By January 1, 2025, the division shall adopt industry guidance to assist household domestic service employers on their legal obligations under existing occupational safety and health laws and regulations that apply to the work activity of household domestic service employees. The guidance shall be consistent with the voluntary industry guidelines established by the Household Domestic Services Employment Safety Committee convened pursuant to Section 6305.1.

(b) By January 1, 2025, a household domestic services employer shall comply with, and adhere to, all applicable occupational safety and health regulations.

(c) If the division determines that additional industry-specific regulations are necessary, the division shall propose those regulations to the standards board for its review and the standards board shall adopt regulations by January 1, 2026.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2023

Governor