

Assembly Bill No. 2658

CHAPTER 288

An act to amend Sections 6310, 6311, and 6399.7 of, and to add Section 6311.5 to, the Labor Code, relating to occupational safety and health.

[Approved by Governor September 29, 2020. Filed with
Secretary of State September 29, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2658, Burke. Occupational safety and health: hazards.

Existing law prohibits an employee from being laid off or discharged for refusing to perform work in violation of prescribed safety standards, where the violation would create a real and apparent hazard to the employee or fellow employees. Existing law creates a cause of action for wages for the time an employee laid off or discharged for such a refusal is without work as a result. Existing law defines the term "employment" for these and other purposes to exclude household domestic service.

This bill, notwithstanding that definition or any other provision, for purposes of the hazard provisions, would define the term "employee" to include a domestic work employee, except for a person who performs 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.

The bill would make it a crime for a person, after receiving notice to evacuate or leave, to willfully and knowingly direct an employee to remain in, or enter, an area closed under prescribed provisions of law due to a menace to the public health or safety, including an employee employed for household domestic work, except as specified. For these purposes, the bill would state that the term employee includes a person who performs household domestic service that is publicly funded. The bill would also make conforming changes.

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. Section 6310 of the Labor Code is amended to read:

6310. (a) No person shall discharge or in any manner discriminate against any employee because the employee has done any of the following:

(1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative.

(2) Instituted or caused to be instituted any proceeding under or relating to their rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of themselves, or others of any rights afforded to them.

(3) Participated in an occupational health and safety committee established pursuant to Section 6401.7.

(4) Reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports and records that are made or maintained pursuant to Subchapter 1 (commencing with Section 14000) of Chapter 1 of Division 1 of Title 8 of the California Code of Regulations, or exercised any other rights protected by the federal Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.), except in cases where the employee alleges they have been retaliated against because they have filed or made known their intention to file a workers' compensation claim pursuant to Section 132a, which is under the exclusive jurisdiction of the Workers' Compensation Appeals Board.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by their employer because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative, of unsafe working conditions, or work practices, in their employment or place of employment, or has participated in an employer-employee occupational health and safety committee, shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

(c) An employer, or a person acting on behalf of the employer, shall not retaliate against an employee because the employee is a family member of a person who has, or is perceived to have, engaged in any acts protected by this section.

(d) For purposes of this section, "employer" or "a person acting on behalf of the employer" includes, but is not limited to, a client employer as defined in paragraph (1) of subdivision (a) of Section 2810.3 and an employer listed in subdivision (b) of Section 6400.

(e) Notwithstanding Section 6303 or other law, as used in this section, "employee" includes a domestic work employee, except for a person who performs 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.

SEC. 2. Section 6311 of the Labor Code is amended to read:

6311. No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard, or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or their fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because the employee refused to perform work in the performance of which this code, any occupational safety or health standard, or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or their fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge. Notwithstanding Section 6303 or other law, as used in this section, “employee” includes a domestic work employee, except for a person who performs 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.

SEC. 3. Section 6311.5 is added to the Labor Code, to read:

6311.5. (a) (1) Except as noted in paragraph (2), a person who, after receiving notice to evacuate or leave, willfully and knowingly directs an employee to remain in, or enter, an area closed due to a menace to the public health or safety as set forth in Section 409.5 of the Penal Code shall be guilty of a misdemeanor.

(2) This section shall not apply to persons authorized to close an area, or to enter an area that has been closed, pursuant to subdivision (a) or (b) of Section 409.5 of the Penal Code. This exemption includes persons listed in subdivision (d) of Section 409.5 of the Penal Code.

(b) Notwithstanding Section 6303 or other law, as used in this section, the term “employee” includes a person employed for household domestic service, including a person who performs household domestic service that is publicly funded, including publicly funded household domestic service provided to a recipient, client, or other beneficiary with a share of cost in that service.

SEC. 4. Section 6399.7 of the Labor Code is amended to read:

6399.7. No person shall discharge or in any manner discriminate against, any employee because such employee has filed any complaint or has instituted, or caused to be instituted, any proceeding under or related to the provisions of this chapter, or has testified, or is about to testify, in any such proceeding, or because of the exercise of any right afforded pursuant to the provisions of this chapter on such employee’s behalf or on behalf of others, nor shall any pay, seniority, or other benefits be lost for exercise of any such right. A violation of the provisions of this section shall be a violation of the provisions of Section 6310. Notwithstanding Section 6303 or other law, as used in this section, “employee” includes a domestic work employee, except for a person who performs 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.

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.