

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: May 14, 2013

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations
Committee

FROM: Gerry F. Miller 
Chief Legislative Analyst

Council File No.: 13-0002-S42
Assignment No.: 13-03-0224

SUBJECT: Resolution (Alarcon - Huizar) to support AB 241 (Ammiano).

CLA RECOMMENDATION: Adopt the attached Resolution to include in the City's 2013-2014 State Legislative Program SUPPORT for AB 241 (Ammiano) which would declare the intention of the legislature to extend equal rights to domestic workers and standardize an industry made largely invisible.

SUMMARY

Resolution (Alarcon - Huizar) states that domestic workers are employed in the private homes of their employers to perform a variety of tasks and, in California, this workforce is comprised largely of female immigrants who often work in conditions where they are isolated and invisible and thus vulnerable to abuse and exploitation. Currently pending in the State Legislature is AB 241 (Ammiano) which would declare the intention of the legislature to extend equal protections to domestic workers. The Resolution notes that, in July 2011, the City adopted Resolution (Huizar - Cardenas) to include in its 2011-12 State Legislative Program support of AB 889 (Ammiano) which would have regulated the wages, hours, and working conditions of domestic workers; however, AB 889 was vetoed by the Governor (C.F. 11-0002-S109). The Resolution advises that there continues to be a statewide need to codify the rights of domestic workers into law and that AB 241 (Ammiano) is consistent with past City actions to support safe working conditions and fair treatment for all workers. Therefore, the Resolution requests the City to support AB 241 (Ammiano).

BACKGROUND

On February 6, 2013, AB 241 was introduced by state Sen. Tom Ammiano to declare the intention of the Legislature to extend equal rights to domestic workers and standardize an industry made largely invisible. Also known as the "Domestic Worker Bill of Rights," AB 241 provides for the regulation of wages, hours, and working conditions. The bill states that domestic work includes services related to the care of persons in private households and includes childcare providers, caregivers of people with disabilities or the elderly, and housecleaners. According to the bill, domestic workers do not include certain family members and/or persons who receive compensation from the In-Home Supportive Services Program.

On March 19, 2013, the State Assembly amended AB 241 to clarify that domestic workers are entitled to be protected by labor standards for the provision of basic workplace rights. The bill further states that domestic workers often have need to support children and families of their own, are comprised primarily of immigrant women, and frequently earn low wages and live below the poverty line.

Among other requirements, AB 241 would provide the following statewide labor standards relative to domestic work:

- A live-in domestic employee or a domestic employee who is required to be on duty for 24 hours or more will be provided a minimum of eight hours of uninterrupted sleep.
- A live-in domestic employee will be provided reasonable sleeping accommodations in a room separate from other occupants in the residence.
- An employee shall have access to the job site's facilities to prepare and eat their own food if they work more than five hours per day.
- Domestic work employee may file an administrative or legal action within three years if these provisions are violated and, if successful, will be entitled to an award of reasonable attorney's fees.
- The Division of Labor Standards Enforcement will develop regulations and be responsible for enforcement and implementation.

On July 13, 2011, the Council adopted a Resolution to support AB 889 (Ammiano) which would have specially regulated the wages, hours, and working conditions of domestic work employees and contained many of the same provisions as AB 241(C.F. 11-0002-S109). On September 30, 2012 the Governor vetoed the legislation. Among other issues, the Governor's veto message questioned whether adoption of the legislation would result in fewer jobs and hours available for domestic workers and how the State would enforce the new law in the privacy of residents' homes. It should be noted that, based on the provisions of AB 889, it is anticipated that the State will incur unknown additional costs for implementation and enforcement if AB 241 becomes law.

The need for action to address the health, safety, and economic well-being of domestic workers continues to be an issue statewide. AB 241 is consistent with past and current City efforts to support safe conditions and fair treatment for workers. Therefore, we recommend support of AB 241 to extend equal rights to domestic workers and standardize an industry made largely invisible.

Departments Notified

None.

Bill Status

2013

Apr. 25	Approved in Committee on Labor and Employment (5 to 2) and re-referred to Committee on Appropriations.
March 20	Re-referred to Committee on Labor and Employment.
March 19	Referred to Committee. on Labor and Employment From Committee chair, with author's amendments.
February 7	To be heard in committee March 9.
February 6	Read first time.



Brian Randol
Analyst

Attachments: 1. Resolution
2. Text of AB 241, as amended in the Assembly on March 19, 2013

RESOLUTION RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS

13-0002-542

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have been first adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, domestic workers are employed in the private homes of their employers to perform a variety of tasks such as housecleaning and childcare; and

WHEREAS, in California this workforce is comprised largely of female immigrants who often experience substandard conditions, earn low wages, and lack access to basic healthcare; and

WHEREAS, domestic workers often work in conditions where they are isolated and invisible and thus vulnerable to abuse and exploitation; and

WHEREAS, domestic workers do not currently possess many of the basic legal protections enjoyed by other workers in California, including the right to safe working conditions; and

WHEREAS, currently pending in the State Legislature is AB 241 (Ammiano) which would declare the intention of the legislature to extend equal protections to domestic workers; and

WHEREAS, in July 2011 the City adopted a Resolution (Huizar – Cardenas) to support Assembly Bill 889 (Ammiano) which would have specially regulated the wages, hours, and working conditions of domestic work employees (C.F. 11-0002-S109); however, this bill was vetoed by the Governor; and

WHEREAS, there continues to be a need for statewide action to codify the rights of domestic workers into law and provide such workers the opportunity to possess the same workplace rights and protections enjoyed by others; and

WHEREAS, support of AB 241 (Ammiano) is consistent with past City actions to support safe working conditions and fair treatment for all workers;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that upon the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013-14 State Legislative Program support of AB 241 (Ammiano), which would declare the intention of the legislature to extend equal rights to domestic workers and standardize an industry made largely invisible.

PRESENTED BY: *Richard Alarcon*
RICHARD ALARCON
Councilmember, 7th District

SECONDED BY: *[Signature]*

BMR *[Signature]*

MAR 22 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 241

Introduced by Assembly Member Ammiano

February 6, 2013

An act relating to employment to amend Sections 3351, 3352, 3551, 3708, and 3715 of, and to add Part 4.5 (commencing with Section 1450) to Division 2 of, the Labor Code, relating to domestic work employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 241, as amended, Ammiano. Domestic workers: protections: work employees: labor standards.

(1) Existing law regulates the wages, hours, and working conditions of any man, woman, and minor employed in any occupation, trade, or industry, whether compensation is measured by time, piece, or otherwise, except as specified. Existing law creates the Industrial Welfare Commission and authorizes it to adopt rules, regulations, and orders to ensure that employers comply with those provisions. Existing law makes violations of certain of these provisions a misdemeanor.

This bill would specially regulate the wages, hours, and working conditions of domestic work employees, as defined, with specified exceptions. The bill would define domestic work as services related to the care of persons in private households or maintenance of private households or their premises, which would include childcare providers, caregivers of people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids, and other household occupations. The bill would provide an overtime compensation rate for domestic work employees, with specified exceptions. The bill would expressly apply Wage Order No. 15-2001 of the Industrial Welfare

Commission, with specified exceptions, to a domestic work employee, except that the new domestic work provisions established by this bill will prevail over provisions that afford less protection. The bill would prescribe standards for determining whether travel time spent by a personal attendant, as defined, accompanying a domestic work employer are to be considered hours worked. The bill would further establish standards for sleeping periods, including accommodations for a domestic work employee who is required to sleep in a private household and would apply provisions regarding meal and rest breaks, as specified, to personal attendants. The bill would require that a domestic worker, after one year of work with the same employer, receive paid days of rest in each calendar year that would be compensated at the employee's regular rate of pay and calculated pursuant to a specified method related to the number of hours worked in an average week. The bill would require the Division of Labor Standards Enforcement to enforce these provisions. The bill would also provide a domestic work employee a private right of action to enforce these provisions. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of and in the course of employment. The failure to secure workers' compensation as required by the workers' compensation law is a misdemeanor. Under existing law, employers of persons who engage in specified types of household domestic service and who work less than a specified number of hours are excluded from that definition of employer and are therefore excluded from the requirement to secure the payment of workers' compensation, as specified. By expanding the definition of a crime, this bill would impose a state-mandated local program.

This bill would remove that exclusion and require all domestic work employers, as defined, to secure the payment of workers' compensation and would make conforming changes. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(3) 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.

~~Existing law generally provides employees with protection regarding wages, hours, and working conditions.~~

~~This bill would declare the intent of the Legislature to enact legislation to provide labor protection for domestic work employees.~~

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

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

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

3 *(a) As recognized by the State of California in Resolution*
4 *Chapter 119 of the Statutes of 2010, it is the policy of the state to*
5 *encourage and protect the rights of domestic work employees.*

6 *(b) California's domestic workers, which includes housekeepers,*
7 *nannies, and caregivers for children, persons with disabilities,*
8 *and the elderly, work in private households to care for the health,*
9 *safety, and well-being of the most important aspects of*
10 *Californians' lives: their families and homes.*

11 *(c) Domestic workers play a critical role in California's*
12 *economy, working to ensure the health and prosperity of California*
13 *families and freeing others to participate in the workforce, which*
14 *is increasingly necessary in these difficult economic times. The*
15 *labor of domestic workers is central to the ongoing prosperity of*
16 *the state but, despite the value of their work, domestic workers*
17 *have not received the same protection under state laws as workers*
18 *in other industries. Although domestic workers labor to support*
19 *families and children of their own, and often are primary income*
20 *earners, many earn low wages and live below the poverty line.*

21 *(d) Because domestic workers care for the most important*
22 *elements of their employers' lives, their families and homes, it is*
23 *in the interest of employees, employers, and the people of the State*
24 *of California to ensure that the rights of domestic workers are*
25 *respected, protected, and enforced.*

26 *(e) The vast majority of domestic workers are women of color*
27 *and immigrants and are particularly vulnerable to unlawful*
28 *employment practices. Domestic workers usually work alone,*
29 *behind closed doors, and out of the public eye, leaving them*
30 *isolated, vulnerable to abuse and exploitation by some employers,*
31 *and unable to advocate collectively for better working conditions.*

1 Many domestic workers labor under harsh conditions and work
2 long hours for low wages without any benefits. For those who are
3 live-in employees, when terminated, they lose not only their jobs
4 but their homes. This bill recognizes that many personal attendants
5 have positive working relationships with their employers. However,
6 it must also be recognized that there are other situations where
7 domestic workers are verbally and physically abused or sexually
8 assaulted, forced to sleep in conditions unfit for human habitation,
9 and stripped of their privacy and dignity.

10 (f) Many domestic workers are still excluded from the most
11 basic protections afforded to the rest of the labor force under state
12 and federal law, including the rights to fair wages, safe and healthy
13 working conditions, workers' compensation, and protection from
14 discriminatory and abusive treatment. The treatment of domestic
15 workers under federal and state laws has historically reflected
16 stereotypical assumptions about the nature of domestic work,
17 specifically that the relationship between employer and "servant"
18 was "personal," rather than commercial, in character, that
19 employment within a household was not "real" productive work,
20 and that women did not work to support their families.

21 (g) Recognizing that people with disabilities often need personal
22 attendants in order to be active participants in work, community,
23 social, and cultural life, this bill creates certain modifications to
24 the definition of compensable hours worked to accommodate
25 situations when out-of-town travel with a personal attendant is
26 necessary. The bill further modifies the existing definition of
27 compensable hours worked in Wage Order No. 15-2001 of the
28 Industrial Welfare Commission to allow for an unpaid sleep period
29 of up to eight hours for personal attendants under specified
30 circumstances. Personal attendants, who have long been denied
31 the right to take meal and rest breaks, will be afforded the
32 protection of Sections 11 and 12 of Minimum Wage Order
33 No. 15-2001, which includes a provision for on-duty meals when
34 the nature of the work prevents an employee from being relieved
35 of all duty.

36 (h) Given the limited legal protections historically provided to
37 domestic workers, and bearing in mind the unique conditions and
38 demands of this private, home-based industry, the Legislature, as
39 an exercise of the police power of the State of California for the
40 protection of the public welfare, prosperity, health, safety, and

1 *peace of its people, further finds that domestic workers are entitled*
2 *to industry-specific protections and labor standards that eliminate*
3 *discriminatory provisions in the labor laws and guarantee domestic*
4 *workers basic workplace rights to ensure that domestic workers*
5 *are treated with equality, respect, and dignity.*

6 *SEC. 2. Part 4.5 (commencing with Section 1450) is added to*
7 *Division 2 of the Labor Code, to read:*

8
9 *PART 4.5. DOMESTIC WORK EMPLOYEES*

10
11 *CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS*

12
13 *1450. This part shall be known and may be cited as the*
14 *Domestic Worker Bill of Rights.*

15 *1451. As used in this part, the following definitions apply:*

16 *(a) "Domestic work" means services related to the care of*
17 *persons in private households or maintenance of private*
18 *households or their premises. Domestic work occupations include*
19 *childcare providers, caregivers of people with disabilities, sick,*
20 *convalescing, or elderly persons, house cleaners, housekeepers,*
21 *maids, and other household occupations.*

22 *(b) (1) "Domestic work employee" means an individual who*
23 *performs domestic work and includes live-in domestic work*
24 *employees and personal attendants.*

25 *(2) "Domestic work employee" does not include any of the*
26 *following:*

27 *(A) Any person who performs services through the In-Home*
28 *Supportive Services program under Article 7 (commencing with*
29 *Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare*
30 *and Institutions Code.*

31 *(B) Any person who is the parent, grandparent, spouse, sibling,*
32 *child, or legally adopted child of the domestic work employer.*

33 *(C) Any person under 18 years of age who is employed as a*
34 *babysitter for a minor child of the domestic work employer in the*
35 *employer's home.*

36 *(D) Any person employed as a casual babysitter for a minor*
37 *child in the domestic employer's home. A casual babysitter is a*
38 *person whose employment is irregular and intermittent and who*
39 *does not work more than six hours per week caring for the same*
40 *minor child or children. If a person who performs babysitting*

1 services on an irregular and intermittent basis does a significant
2 amount of work other than supervising, feeding, and dressing a
3 child, this exemption shall not apply and the person shall be
4 considered a domestic work employee. A person who is a casual
5 babysitter who is over 18 years of age retains the right to payment
6 of minimum wage for all hours worked, pursuant to Wage Order
7 No. 15-2001 of the Industrial Welfare Commission.

8 (E) Any person employed by a licensed health facility, as defined
9 in Section 1250 of the Health and Safety Code.

10 (F) Any person who is employed by, or contracts with, an
11 organization vendored or contracted through a regional center or
12 the State Department of Developmental Services pursuant to the
13 Lanterman Developmental Disabilities Services Act (Division 4.5
14 (commencing with Section 4500) of the Welfare and Institutions
15 Code) and the California Early Intervention Services Act (Title
16 14 (commencing with Section 95000) of the Government Code) to
17 provide services and support for persons with developmental
18 disabilities, as defined in Section 4512 of the Welfare and
19 Institutions Code, when funding for those services is provided
20 through the State Department of Developmental Services.

21 (G) Any person who provides child care and who, pursuant to
22 subdivision (d) or (f) of Section 1596.792 of the Health and Safety
23 Code, is exempt from the licensing requirements of Chapters 3.4
24 (commencing with Section 1596.70), 3.5 (commencing with Section
25 1596.90), and 3.6 (commencing with Section 1597.30) of Division
26 2 of the Health and Safety Code, if the parent or guardian of the
27 child to whom child care is provided receives child care and
28 development services pursuant to any program authorized under
29 the Child Care and Development Services Act (Chapter 2
30 (commencing with Section 8200) of Part 6 of Division 1 of Title 1
31 of the Education Code) or the California Work Opportunity and
32 Responsibility to Kids Act (Chapter 2 (commencing with Section
33 11200) of Part 3 of Division 9 of the Welfare and Institutions
34 Code).

35 (c) (1) "Domestic work employer" means a person, including
36 corporate officers or executives, who directly or indirectly, or
37 through an agent or any other person, including through the
38 services of a third-party employer, temporary service, or staffing
39 agency or similar entity, employs or exercises control over the
40 wages, hours, or working conditions of a domestic work employee.

1 (2) "Domestic work employer" does not include any of the
2 following:

3 (A) The State of California or an individual who receives
4 domestic work services through the In-Home Supportive Services
5 program under Article 7 (commencing with Section 12300) of
6 Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions
7 Code or who is eligible for that program based on his or her
8 income.

9 (B) An employment agency that complies with Section 1812.5095
10 of the Civil Code and that operates solely to procure, offer, refer,
11 provide, or attempt to provide work to domestic workers if the
12 relationship between the employment agency and the domestic
13 workers for whom the agency procures, offers, refers, provides,
14 or attempts to provide domestic work is characterized by all of the
15 factors listed in subdivision (b) of Section 1812.5095 of the Civil
16 Code and Section 687.2 of the Unemployment Insurance Code.

17 (C) A licensed health facility, as defined in Section 1250 of the
18 Health and Safety Code.

19 (d) "Emergency" means an unpredictable or unavoidable
20 occurrence of a serious nature that occurs unexpectedly requiring
21 immediate action.

22 (e) "Hours worked" means the time during which a domestic
23 work employee is subject to the control of a domestic work
24 employer and includes all time the domestic work employee is
25 suffered or permitted to work, whether or not required to do so.

26 (f) "Live-in domestic work employee" means an employee who
27 resides in the domestic work employer's household at least five
28 days per week and for whom the employer makes sleep
29 accommodations available in compliance with Section 1457.

30 (g) "Personal attendant" means any person employed by a
31 private party or employed by any third-party employer recognized
32 in the health care industry to work in a private household, to
33 supervise, feed, or dress a person who, by reason of advanced age,
34 physical disability, or mental deficiency, needs supervision. A
35 person is a personal attendant only if no significant amount of
36 work other than the foregoing is required. For purposes of this
37 subdivision, no significant amount of work means that the work
38 did not exceed 20 percent of the total weekly hours worked.

39 1452. The Division of Labor Standards Enforcement shall
40 enforce this part.

1 1453. (a) Any domestic work employee aggrieved by a
2 violation of this part may bring an administrative action pursuant
3 to Section 98 or may bring a civil action in a court of competent
4 jurisdiction against the domestic work employer violating this
5 part.

6 (b) A domestic work employee who brings an action pursuant
7 to this section and prevails shall be entitled to any legal or
8 equitable relief permitted by law as may be appropriate to remedy
9 the violation. A domestic work employee bringing a civil action
10 pursuant to this section shall also be entitled to an award of
11 reasonable attorney's fees and costs, including expert witness fees.

12 (c) The rights and remedies specified in this part are cumulative
13 and nonexclusive and are in addition to any other rights or
14 remedies afforded by contract or under other provisions of law.
15 If a provision of Wage Order No. 15-2001 of the Industrial Welfare
16 Commission or any other provision of law affords less protection
17 to a domestic work employee, this part shall prevail. If a provision
18 of Wage Order No. 15-2001 of the Industrial Welfare Commission
19 or any other provision of law affords more protection to a domestic
20 work employee, the wage order shall prevail.

21 (d) Notwithstanding any provision of this code or Section 340
22 of the Code of Civil Procedure, to commence an action for a
23 violation of this part a domestic work employee shall file an
24 administrative or civil complaint within three years of the violation.

25
26 CHAPTER 2. DOMESTIC WORK EMPLOYEE RIGHTS

27
28 1454. A domestic work employee shall be compensated
29 pursuant to Section 510, except as provided in Section 1455 or
30 1456.

31 1455. (a) A domestic work employee who is a live-in employee
32 or is required to be on duty for 24 consecutive hours or more shall
33 have a minimum of eight consecutive hours for uninterrupted sleep,
34 except in an emergency. Any time worked during an emergency
35 interruption constitutes hours worked.

36 (b) If a domestic work employee is a live-in employee or is
37 required to be on duty for 24 consecutive hours or more, the
38 domestic work employer and the domestic work employee may
39 agree in writing to exclude from hours worked a bona fide
40 regularly scheduled sleeping period of not more than eight hours

1 *for uninterrupted sleep from hours worked, provided that the*
2 *employee has eight hours free of duty and available for continuous,*
3 *uninterrupted sleep and the domestic work employer otherwise*
4 *complies with this section and Section 1457. Absent a written*
5 *agreement, the eight hours available for sleep shall constitute*
6 *hours worked.*

7 *1456. If a domestic work employer who is a person with a*
8 *disability needs to be accompanied by a personal attendant when*
9 *traveling out of town, all time spent accompanying the employer*
10 *in transit, and all time attending to, or carrying out, directives of*
11 *the employer constitutes hours worked. Periods during which the*
12 *personal attendant is completely relieved of duty, is not required*
13 *to be at the same location as the employer, and that are long*
14 *enough to enable the attendant to use the time effectively for his*
15 *or her own purposes do not constitute hours worked. The employer*
16 *and the employee may agree to exclude from hours worked a bona*
17 *fide sleeping period of not more than eight hours, provided that*
18 *there is a written agreement and the employee has eight hours free*
19 *of duty and available for continuous, uninterrupted sleep.*

20 *1457. Any domestic work employee who is required to sleep*
21 *in the private household of his or her employer shall be provided*
22 *sleeping accommodations that are adequate, decent, and sanitary*
23 *according to usual customary standards. These domestic work*
24 *employees shall be provided a room separate from any household*
25 *resident and shall not be required to share a bed.*

26 *1458. Sections 11 and 12 of Wage Order No. 15-2001 of the*
27 *Industrial Welfare Commission shall apply to a personal attendant.*

28 *1460. A domestic work employer shall permit a domestic work*
29 *employee who works five hours or more a day to choose the food*
30 *he or she eats and to prepare his or her own meals. A domestic*
31 *work employer shall permit a domestic work employee to use the*
32 *job site's kitchen facilities and kitchen appliances without charge*
33 *or deduction from pay. If a domestic work employee is informed*
34 *that a person in the household has bona fide health issues related*
35 *to food, including, but not limited to, food allergies, or has*
36 *religious or dietary restrictions which make presence of some*
37 *foods unacceptable, the employee shall not eat or prepare that*
38 *food in the household.*

39 *1461. After one year of work with the same employer, a*
40 *domestic worker shall be entitled to paid days of rest in each*

1 *calendar year that shall be compensated at the employee's regular*
2 *rate of pay and calculated as follows:*

3 *(a) If the employee worked an average of fewer than a total of*
4 *20 hours per week for an employer over the last year, the employee*
5 *is entitled to one day of paid rest from that employer for the*
6 *calendar year, as long as the employee is not employed on a casual*
7 *basis. Employment on a casual basis, for purposes of this section,*
8 *is work that is intermittent or irregular.*

9 *(b) If the employee worked an average of 20 but fewer than 30*
10 *hours per week for an employer over the last year, the employee*
11 *is entitled to two days of paid rest from that employer for the*
12 *calendar year.*

13 *(c) If the employee worked an average of 30 or more hours per*
14 *week for an employer, the employee is entitled to three days of*
15 *paid rest for the calendar year from that employer.*

16 *(d) If an employee is terminated or quits without having used*
17 *all paid days of rest, the unused paid days of rest shall be paid to*
18 *the employee as wages at the final rate of pay. An employee shall*
19 *carry over accrued unused paid days of rest from one year to the*
20 *next.*

21 *SEC. 3. Section 3351 of the Labor Code is amended to read:*

22 3351. "Employee" means every person in the service of an
23 employer under any appointment or contract of hire or
24 apprenticeship, express or implied, oral or written, whether lawfully
25 or unlawfully employed, and includes:

26 (a) Aliens and minors.

27 (b) All elected and appointed paid public officers.

28 (c) All officers and members of boards of directors of
29 quasi-public or private corporations while rendering actual service
30 for the corporations for pay; provided that, where the officers and
31 directors of the private corporation are the sole shareholders
32 thereof, the corporation and the officers and directors shall come
33 under the compensation provisions of this division only by election
34 as provided in subdivision (a) of Section 4151.

35 ~~(d) Except as provided in subdivision (h) of Section 3352, any~~
36 *A person employed by the owner or occupant of a residential*
37 *dwelling whose duties are incidental to the ownership,*
38 *maintenance, or use of the dwelling, including the care and*
39 *supervision of children, persons of advanced age, or persons with*
40 *physical or mental disabilities, or whose duties are personal and*

1 not in the course of the trade, business, profession, or occupation
2 of the owner or occupant.

3 (e) All persons incarcerated in a state penal or correctional
4 institution while engaged in assigned work or employment—
5 defined in paragraph (1) of subdivision (a) of Section 10021 of
6 Title 8 of the California Code of Regulations; or engaged in work
7 performed under contract.

8 (f) All working members of a partnership or limited liability
9 company receiving wages irrespective of profits from the
10 partnership or limited liability company; *company*, provided that
11 where the working members of the partnership or limited liability
12 company are general partners or managers, the partnership or
13 limited liability company and the partners or managers shall come
14 under the compensation provisions of this division only by election
15 as provided in subdivision (a) of Section 4151. If a private
16 corporation is a general partner or manager, “working members
17 of a partnership or limited liability company” shall include the
18 corporation and the officers and directors of the corporation,
19 provided that the officers and directors are the sole shareholders
20 of the corporation. If a limited liability company is a partner or
21 member, “working members of the partnership or limited liability
22 company” shall include the managers of the limited liability
23 company.

24 (g) For the purposes of subdivisions (c) and (f), the persons
25 holding the power to revoke a trust as to shares of a private
26 corporation or as to general partnership or limited liability company
27 interests held in the trust, shall be deemed to be the shareholders
28 of the private corporation, or the general partners of the partnership,
29 or the managers of the limited liability company.

30 *SEC. 4. Section 3352 of the Labor Code is amended to read:*

31 3352. “Employee” excludes the following:

32 (a) Any person defined in subdivision (d) of Section 3351 who
33 is employed by his or her parent, spouse, or child.

34 (b) Any person performing services in return for aid or
35 sustenance only, received from any religious, charitable, or relief
36 organization.

37 (c) Any person holding an appointment as deputy clerk or deputy
38 sheriff appointed for his or her own convenience, and who receives
39 no compensation from the county or municipal corporation or from
40 the citizens thereof for his or her services as the deputy. This

1 exclusion is operative only as to employment by the county or
2 municipal corporation and does not deprive any person so
3 deputized from recourse against a private person employing him
4 or her for injury occurring in the course of and arising out of the
5 employment.

6 (d) Any person performing voluntary services at or for a
7 recreational camp, hut, or lodge operated by a nonprofit
8 organization, exempt from federal income tax under Section ~~101(6)~~
9 *501* of the Internal Revenue Code, of which he or she or a member
10 of his or her family is a member and who receives no compensation
11 for those services other than meals, lodging, or transportation.

12 (e) Any person performing voluntary service as a ski patrolman
13 who receives no compensation for those services other than meals
14 or lodging or the use of ski tow or ski lift facilities.

15 (f) Any person employed by a ski lift operator to work at a snow
16 ski area who is relieved of and not performing any prescribed
17 duties, while participating in recreational activities on his or her
18 own initiative.

19 (g) Any person, other than a regular employee, participating in
20 sports or athletics who receives no compensation for the
21 participation other than the use of athletic equipment, uniforms,
22 transportation, travel, meals, lodgings, or other expenses incidental
23 thereto.

24 ~~(h) Any person defined in subdivision (d) of Section 3351 who~~
25 ~~was employed by the employer to be held liable for less than 52~~
26 ~~hours during the 90 calendar days immediately preceding the date~~
27 ~~of the injury for injuries, as defined in Section 5411, or during the~~
28 ~~90 calendar days immediately preceding the date of the last~~
29 ~~employment in an occupation exposing the employee to the hazards~~
30 ~~of the disease or injury for injuries, as defined in Section 5412, or~~
31 ~~who earned less than one hundred dollars (\$100) in wages from~~
32 ~~the employer during the 90 calendar days immediately preceding~~
33 ~~the date of the injury for injuries, as defined in Section 5411, or~~
34 ~~during the 90 calendar days immediately preceding the date of the~~
35 ~~last employment in an occupation exposing the employee to the~~
36 ~~hazards of the disease or injury for injuries, as defined in Section~~
37 ~~5412.~~

38 (i)

39 (h) Any person performing voluntary service for a public agency
40 or a private, nonprofit organization who receives no remuneration

1 for the services other than meals, transportation, lodging, or
2 reimbursement for incidental expenses.

3 (g)

4 (i) Any person, other than a regular employee, performing
5 officiating services relating to amateur sporting events sponsored
6 by any public agency or private, nonprofit organization, who
7 receives no remuneration for these services other than a stipend
8 for each day of service no greater than the amount established by
9 the Department of Human Resources as a per diem expense for
10 employees or officers of the state. The stipend shall be presumed
11 to cover incidental expenses involved in officiating, including, but
12 not limited to, meals, transportation, lodging, rule books and
13 courses, uniforms, and appropriate equipment.

14 (h)

15 (j) Any student participating as an athlete in amateur sporting
16 events sponsored by any public agency, public or private nonprofit
17 college, university or school, who receives no remuneration for
18 the participation other than the use of athletic equipment, uniforms,
19 transportation, travel, meals, lodgings, scholarships, grants-in-aid,
20 or other expenses incidental thereto.

21 (i)

22 (k) Any law enforcement officer who is regularly employed by
23 a local or state law enforcement agency in an adjoining state and
24 who is deputized to work under the supervision of a California
25 peace officer pursuant to paragraph (4) of subdivision (a) of Section
26 832.6 of the Penal Code.

27 (m)

28 (l) Any law enforcement officer who is regularly employed by
29 the Oregon State Police, the Nevada Department of Motor Vehicles
30 and Public Safety, or the Arizona Department of Public Safety and
31 who is acting as a peace officer in this state pursuant to subdivision
32 (a) of Section 830.32 of the Penal Code.

33 (n)

34 (m) Any person, other than a regular employee, performing
35 services as a sports official for an entity sponsoring an
36 intercollegiate or interscholastic sports event, or any person
37 performing services as a sports official for a public agency, public
38 entity, or a private nonprofit organization, which public agency,
39 public entity, or private nonprofit organization sponsors an amateur
40 sports event. For purposes of this subdivision, "sports official"

1 includes an umpire, referee, judge, scorekeeper, timekeeper, or
2 other person who is a neutral participant in a sports event.

3 ~~(o)~~

4 (n) Any person who is an owner-builder, as defined in
5 subdivision (a) of Section 50692 of the Health and Safety Code,
6 who is participating in a mutual self-help housing program, as
7 defined in Section 50087 of the Health and Safety Code, sponsored
8 by a nonprofit corporation.

9 *SEC. 5. Section 3551 of the Labor Code is amended to read:*

10 3551. (a) Every employer subject to the compensation
11 provisions of this code, ~~except employers of employees defined~~
12 ~~in subdivision (d) of Section 3351,~~ shall give every new employee,
13 either at the time the employee is hired or by the end of the first
14 pay period, written notice of the information contained in Section
15 3550. The content of the notice required by this section shall be
16 prescribed by the administrative director after consultation with
17 the Commission on Health and Safety and Workers' Compensation.

18 (b) The notice required by this section shall be easily
19 understandable and available in both English and Spanish. In
20 addition to the information contained in Section 3550, the content
21 of the notice required by this section shall include:

22 (1) Generally, how to obtain appropriate medical care for a job
23 injury.

24 (2) The role and function of the primary treating physician.

25 (3) A form that the employee may use as an optional method
26 for notifying the employer of the name of the employee's "personal
27 physician," as defined by Section 4600, or "personal chiropractor,"
28 as defined by Section 4601.

29 (c) The content of the notice required by this section shall be
30 made available to employers and insurers by the administrative
31 director. Insurers shall provide this notice to each of their
32 policyholders, with advice concerning the requirements of this
33 section and the penalties for a failure to provide this notice to all
34 employees.

35 *SEC. 6. Section 3708 of the Labor Code is amended to read:*

36 3708. In such action it is presumed that the injury to the
37 employee was a direct result and grew out of the negligence of the
38 employer, and the burden of proof is upon the employer, to rebut
39 the presumption of negligence. It is not a defense to the employer
40 that the employee was guilty of contributory negligence, or

1 assumed the risk of the hazard complained of, or that the injury
2 was caused by the negligence of a fellow servant. No contract or
3 regulation shall restore to the employer any of the foregoing
4 defenses.

5 ~~This section shall not apply to any employer of an employee, as~~
6 ~~defined in subdivision (d) of Section 3351, with respect to such~~
7 ~~employee, but shall apply to employers of employees described~~
8 ~~in subdivision (b) of Section 3715, with respect to such employees.~~

9 *SEC. 7. Section 3715 of the Labor Code is amended to read:*

10 3715. (a) Any employee, ~~except an employee as defined in~~
11 ~~subdivision (d) of Section 3351, whose employer has failed to~~
12 ~~secure the payment of compensation as required by this division,~~
13 ~~or his or her dependents in case death has ensued, may, in addition~~
14 ~~to proceeding against his or her employer by civil action in the~~
15 ~~courts as provided in Section 3706, file his or her application with~~
16 ~~the appeals board for compensation and the appeals board shall~~
17 ~~hear and determine the application for compensation in like manner~~
18 ~~as in other claims and shall make the award to the claimant as he~~
19 ~~or she would be entitled to receive if the employer had secured the~~
20 ~~payment of compensation as required, and the employer shall pay~~
21 ~~the award in the manner and amount fixed thereby or shall furnish~~
22 ~~to the appeals board a bond, in any amount and with any sureties~~
23 ~~as the appeals board requires, to pay the employee the award in~~
24 ~~the manner and amount fixed thereby.~~

25 ~~(b) Notwithstanding this section or any other provision of this~~
26 ~~chapter except Section 3708, any person described in subdivision~~
27 ~~(d) of Section 3351 who is (1) engaged in household domestic~~
28 ~~service who is employed by one employer for over 52 hours per~~
29 ~~week, (2) engaged as a part-time gardener in connection with a~~
30 ~~private dwelling, if the number of hours devoted to the gardening~~
31 ~~work for any individual regularly exceeds 44 hours per month, or~~
32 ~~(3) engaged in casual employment where the work contemplated~~
33 ~~is to be completed in not less than 10 working days, without regard~~
34 ~~to the number of persons employed, and where the total labor cost~~
35 ~~of the work is not less than one hundred dollars (\$100) (which~~
36 ~~amount shall not include charges other than for personal services),~~
37 ~~shall be entitled, in addition to proceeding against his or her~~
38 ~~employer by civil action in the courts as provided in Section 3706,~~
39 ~~to file his or her application with the appeals board for~~
40 ~~compensation. The appeals board shall hear and determine the~~

1 ~~application for compensation in like manner as in other claims,~~
2 ~~and shall make the award to the claimant as he or she would be~~
3 ~~entitled to receive if the person's employer had secured the~~
4 ~~payment of compensation as required, and the employer shall pay~~
5 ~~the award in the manner and amount fixed thereby, or shall furnish~~
6 ~~to the appeals board a bond, in any amount and with any sureties~~
7 ~~as the appeals board requires, to pay the employee the award in~~
8 ~~the manner and amount fixed thereby.~~

9 ~~It is the intent of the Legislature that the amendments to this~~
10 ~~section by Chapter 17 of the Statutes of 1977, make no change in~~
11 ~~the law as it applied to those types of employees covered by this~~
12 ~~subdivision prior to the effective date of Chapter 1263 of the 1975~~
13 ~~Regular Session.~~

14 (e)

15 (b) (1) In any claim in which it is alleged that the employer
16 has failed to secure the payment of compensation, the director,
17 only for purposes of this section and Section 3720, shall determine,
18 on the basis of the evidence available to him or her, whether the
19 employer was prima facie illegally uninsured. A finding that the
20 employer was prima facie illegally uninsured shall be made when
21 the director determines that there is sufficient evidence to constitute
22 a prima facie case that the employer employed an employee on
23 the date of the alleged injury and had failed to secure the payment
24 of compensation, and that the employee was injured arising out
25 of, and occurring in the course of, the employment.

26 Failure

27 (2) Failure of the employer to furnish within 10 days the written
28 statement in response to a written demand for a written statement
29 prescribed in Section 3711, addressed to the employer at its address
30 as shown on the official address record of the appeals board, shall
31 constitute in itself sufficient evidence for a prima facie case that
32 the employer failed to secure the payment of compensation.

33 A

34 (3) A written denial by the insurer named in the statement
35 furnished by the employer as prescribed in Section 3711, that the
36 employer was so insured as claimed, or the nonexistence of a valid
37 certificate of consent to self-insure for the time of the claimed
38 injury, if the statement furnished by the employer claims the
39 employer was self-insured, shall constitute in itself sufficient

1 evidence for a prima facie case that the employer had failed to
2 secure the payment of compensation.

3 ~~The~~

4 (4) *The* nonexistence of a record of the employer's insurance
5 with the Workers' Compensation Insurance Rating Bureau shall
6 constitute in itself sufficient evidence for a prima facie case that
7 the employer failed to secure the payment of compensation.

8 ~~The~~

9 (5) *The* un rebutted written declaration under penalty of perjury
10 by the injured employee, or applicant other than the employee,
11 that the employee was employed by the employer at the time of
12 the injury, and that he or she was injured in the course of his or
13 her employment, shall constitute, in itself, sufficient evidence for
14 a prima facie case that the employer employed the employee at
15 the time of the injury, and that the employee was injured arising
16 out of, and occurring in the course of, the employment.

17 ~~(d)~~

18 (c) (1) When the director determines that an employer was
19 prima facie illegally uninsured, the director shall mail a written
20 notice of the determination to the employer at his or her address
21 as shown on the official address record of the appeals board, and
22 to any other more recent address the director may possess. The
23 notice shall advise the employer of its right to appeal the finding,
24 and that a lien may be placed against the employer's and any parent
25 corporation's property, or the property of substantial shareholders
26 of a corporate employer as defined by Section 3717.

27 ~~Any~~

28 (2) *Any* employer aggrieved by a finding of the director that it
29 was prima facie illegally uninsured may appeal the finding by
30 filing a petition before the appeals board. The petition shall be
31 filed within 20 days after the finding is issued. The appeals board
32 shall hold a hearing on the petition within 20 days after the petition
33 is filed with the appeals board. The appeals board shall have
34 exclusive jurisdiction to determine appeals of the findings by the
35 director, and no court of this state has jurisdiction to review, annul,
36 or suspend the findings or the liens created thereunder, except as
37 provided by Article 2 (commencing with Section 5950) of Chapter
38 7 of Part 4 of Division 4.

39 ~~(e)~~

1 (d) (1) Any claim brought against an employer under this
2 section may be resolved by the director by compromise and release
3 or stipulated findings and award as long as the appeals board has
4 acquired jurisdiction over the employer and the employer has been
5 given notice and an opportunity to object.

6 Notice

7 (2) Notice may be given by service on the employer of an
8 appeals board notice of intention to approve the compromise and
9 release or stipulated findings and award. The employer shall have
10 20 days after service of the notice of intention to file an objection
11 with the appeals board and show good cause therefor.

12 If

13 (3) If the employer objects, the appeals board shall determine
14 if there is good cause for the objection.

15 If

16 (4) If appeals board finds good cause for the objection, the
17 director may proceed with the compromise and release or stipulated
18 findings and award if doing so best serves the interest of the
19 Uninsured Employers Fund, but shall have no cause of action
20 against the employer under Section 3717 unless the appeals board
21 case is tried to its conclusion and the employer is found liable.

22 If

23 (5) If appeals board does not find good cause for the objection,
24 and the compromise and release or stipulated findings and award
25 is approved, the Uninsured Employers Fund shall have a cause of
26 action against the employer pursuant to Section 3717.

27 (f)

28 (e) The director may adopt regulations to implement and
29 interpret the procedures provided for in this section.

30 *SEC. 8. No reimbursement is required by this act pursuant to*
31 *Section 6 of Article XIII B of the California Constitution because*
32 *the only costs that may be incurred by a local agency or school*
33 *district will be incurred because this act creates a new crime or*
34 *infraction, eliminates a crime or infraction, or changes the penalty*
35 *for a crime or infraction, within the meaning of Section 17556 of*
36 *the Government Code, or changes the definition of a crime within*
37 *the meaning of Section 6 of Article XIII B of the California*
38 *Constitution.*

1 ~~SECTION 1. It is the intent of the Legislature to enact legislation~~
2 ~~to provide labor protection for domestic work employees.~~

O