

Senate Bill No. 1102

Passed the Senate August 31, 2020

Secretary of the Senate

Passed the Assembly August 30, 2020

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2020, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 2810.5 of, and to add Sections 2810.6 and 2810.65 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1102, Monning. Employers: Labor Commissioner: required disclosures.

Existing law requires an employer to provide an employee, at the time of hiring, a written notice including specified information in the language the employer normally uses to communicate employment-related information to the employee. Existing law requires the Labor Commissioner to prepare a template that includes the specified information mentioned above and to make the template available to employers in the manner as determined by the commissioner.

This bill would require an employer to include in their written notice to all employees, specified information required in the event of a federal or state declared disaster or applicable to the county or counties in which the employee will be employed. The bill would prohibit an employer from retaliating against an employee for raising questions about the declarations' requirements or recommendations. This bill would additionally require an employer to provide an H-2A employee, as described, on the day the employee begins work in the state, or begins work for another employer after being transferred, a written notice in Spanish and, if requested by the employee, in English, containing specified information relative to an H-2A employee's rights pursuant to federal and state law. The bill would also require the commissioner to create a template, as specified, by either creating a new template or combining these requirements with an existing notification template for purposes of carrying out this requirement, including a separate section of the template listing key legal rights of H-2A workers under California Law, and to make the template available to employers in the manner as determined by the commissioner by January 2, 2021. The bill would also make conforming changes.

Existing law requires an employer to provide, among other things, compensation for travel time from an employee housing

facility to the worksite, bathroom access, meal and rest break areas to its employees, and to provide protections for those employees from high heat, pesticide exposure, and other safety measures.

This bill would require an employer to provide its employees with specified night work equipment and specified worksite layout information. This bill would also exempt employers from providing compensation for travel between housing facilities and the worksite if the employers are covered by a collective bargaining agreement that meets specified criteria.

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

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

(a) Over 23,000 foreign agricultural temporary workers were admitted to California in 2019 under the federal H-2A farm labor visa program. Many of these farmworkers have never worked in California, and are believed to speak and read little or no English. Fewer still are believed to be familiar with their basic legal rights and remedies under California law.

(b) Although all employers of H-2A farmworkers are required to comply with state and federal law, neither the United States Department of Labor nor the Employment Development Department, who both administer this program, require H-2A employers to disclose in writing to H-2A farmworkers meaningful information about fundamental California labor, housing, health and safety, and other laws that provide for their protection while employed here. Neither the United States Department of Labor nor the Employment Development Department require H-2A employers to inform H-2A farm workers of the existence of either federal or state emergency or disaster declarations that may affect their health and safety during their employment in California.

(c) This act is patterned after existing California law that requires employers to provide basic wage and hour information to all employees at the time of hire, and adds new disclosure requirements with respect to H-2A farmworkers who are brought into California for work in agriculture on a temporary basis.

(d) This act provides that H-2A employers may comply with the new disclosure requirements by furnishing workers with a copy of a template, which is to be developed by the Labor Commissioner

and posted on the commissioner's internet website commencing January 2, 2021.

SEC. 2. Section 2810.5 of the Labor Code is amended to read:

2810.5. (a) (1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any "doing business as" names used by the employer.

(E) The physical address of the employer's main office or principal place of business, and a mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer's workers' compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(I) The existence of either a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed and that was issued within 30 days prior to the employee's first day of employment, that may affect their health and safety during their employment.

(J) Any other information the Labor Commissioner deems material and necessary.

(2) The Labor Commissioner shall prepare a template that complies with the requirements of paragraph (1). The template shall be made available to employers in such manner as determined by the Labor Commissioner.

(3) If the employer is a temporary services employer, as defined in Section 201.3, the notice described in paragraph (1) shall also include the name, the physical address of the main office, the

mailing address if different from the physical address of the main office, and the telephone number of the legal entity for whom the employee will perform work, and any other information the Labor Commissioner deems material and necessary. The requirements of this paragraph do not apply to a security services company that is licensed by the Department of Consumer Affairs and that solely provides security services.

(4) If an employee is admitted under the federal H-2A program pursuant to Section 1188 of Title 8 of the United States Code, the notice described in paragraph (1) may, at the discretion of the Labor Commissioner, also include, in a separate and distinct section, the information set forth in subdivision (c) of Section 2810.6, and the employer shall provide the required notice in Spanish to the H-2A employee on the day the H-2A employee begins work for the employer in the state. An H-2A employee may request that a notice in English also be provided.

(b) An employer shall notify their employees in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies:

(1) All changes are reflected on a timely wage statement furnished in accordance with Section 226.

(2) Notice of all changes is provided in another writing required by law within seven days of the changes.

(c) For purposes of this section and Section 2810.6, “employee” does not include any of the following:

(1) An employee directly employed by the state or any political subdivision thereof, including any city, county, city and county, or special district.

(2) An employee who is exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission.

(3) An employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

SEC. 3. Section 2810.6 is added to the Labor Code, to read:

2810.6. (a) This section shall be known, and may be cited, as “The California Legal Rights Disclosure Act for H-2A Farmworkers.”

(b) (1) Every employer of California employees admitted under the federal H-2A program pursuant to Section 1188 of Title 8 of the United States Code shall, on the first day the employee begins work in California, or begins work for another employer after being transferred by an H-2A or other employer, provide each H-2A employee with a written notice in Spanish and, if requested by the employee, also in English, that includes the information set forth in subdivision (c), and shall include disclosure of the wage rate required by the United States Department of Labor to be paid to the H-2A employee.

(2) Every employer shall notify every H-2A employee of any federal or state emergency or emergency disaster declaration applicable to the county or counties where the H-2A employee is to be employed and that was issued within 30 days prior to the H-2A employee’s first day of employment, or within seven days after any new declaration is issued applicable to those county or counties, that may affect the health and safety of an H-2A employee during the period of their employment, including, but not limited to, the declarations’ requirements or recommendations respecting housing, toilets, handwashing, water, working conditions, health insurance, sick leave, or workers’ compensation. An H-2A employer shall not retaliate against an H-2A employee for raising questions about the declarations’ requirements or recommendations that may relate to employment, housing, or working conditions.

(3) The employer may comply with this subdivision by providing the employee with a copy of the template prepared by the Labor Commissioner pursuant to subdivision (c).

(c) (1) The Labor Commissioner shall prepare a template, in Spanish and English, that complies with the information requirements of subdivision (d).

(2) The template shall be made available to employers in the manner determined by the Labor Commissioner, but shall be posted on the commissioner’s internet website commencing January 2, 2021.

(3) The Labor Commissioner may combine this information, for H-2A employers, with the template currently required under

Section 2810.5, or the commissioner may create a separate template specifically for H-2A employers containing this information.

(d) Except as provided in subdivision (e), the Labor Commissioner shall include in the template required by subdivision (c) substantially the same text as set forth below in a separate and distinct section of the template titled: “Summary of Key Legal Rights of H-2A Workers under California Laws:”

MANDATORY NOTICE OF EXISTENCE OF FEDERAL OR STATE EMERGENCY OR DISASTER DECLARATIONS

H-2A employees must be notified of the existence of any federal or state emergency or emergency disaster declarations applicable to the county or counties where the employee is to be employed and that were issued within 30 days prior to the H-2A employee’s first date of employment, that may affect H-2A employees during the period of their employment. H-2A employees must be notified within seven days after a new declaration is issued applicable to the county or counties where the employee is employed. An H-2A employer shall not retaliate against an H-2A employee for raising questions about the declarations that may relate to employment, housing, or working conditions.

MANDATORY WAGE RATE

H-2A employees must be paid at all times at the highest of the following: (A) the federal H-2A program wage rate; (B) the collective bargaining agreement rate; or (C) the state minimum wage rate. Earnings of employees working on a piece-rate basis must equal the minimum hourly rate required to be paid each day.

The H-2A employer shall disclose in the spaces provided below the applicable wage rate(s) to be paid to the H-2A employee:

OVERTIME WAGE RATE FOR EMPLOYERS OF 26 OR MORE EMPLOYEES

Commencing January 1, 2021, H-2A employees of an employer of 26 or more H-2A and non-H-2A employees must be paid overtime wages at one and one-half times their regular rate for all hours worked over 8 ½ hours in a day or over 45 hours in a week. Commencing January 1, 2022, H-2A employees of an employer of 26 or more H-2A and non-H-2A employees must be paid overtime wages at one and one-half times their regular rate for all

hours worked over 8 hours in a day or over 40 hours in a week and not less than two times their regular rate for all hours worked in excess of 12 hours in one day. Special overtime rules apply to the seventh day of work in a workweek. All H-2A employees shall be paid one and one-half times their regular rate for the first eight hours worked on the seventh day of work in a workweek and two times their regular rate of pay for work in excess of eight hours on the seventh day of work in a workweek. Employees working on a piece-rate basis shall also be paid overtime or double time for piece-rate work where daily or weekly hours are worked beyond the daily or weekly overtime or double time standards.

OVERTIME WAGE RATE FOR EMPLOYERS OF 25 OR FEWER EMPLOYEES

H-2A employees of an employer of 25 or fewer H-2A and non-H-2A employees must be paid overtime wages at one and one-half times their regular rate for all hours worked over 10 hours in a day. Commencing January 1, 2022, H-2A employees of an employer of 25 or fewer H-2A and non-H-2A employees must be paid overtime wages at one and one-half times their regular rate for all hours worked over 9 1/2 hours in a day or over 55 hours in a week. Commencing January 1, 2023, H-2A employees of an employer of 25 or fewer H-2A and non-H-2A employees, must be paid overtime wages at one and one-half times their regular rate for all hours worked over 9 hours in a day and over 50 hours in a week. Commencing January 1, 2024, H-2A employees of an employer of 25 or fewer H-2A and non-H-2A employees must be paid overtime wages at one and one-half times their regular rate for all hours worked over 8 1/2 hours in a day or over 45 hours in a week. Commencing January 1, 2025, H-2A employees of an employer of 25 or fewer H-2A and non-H-2A employees must be paid overtime wages at one and one-half times their regular rate for all hours worked over 8 hours in a day or over 40 hours in a week and not less than two times their regular rate for all hours worked in excess of 12 hours in one day. Special overtime rules apply to the seventh day of work in a workweek. H-2A employees shall be paid one and one-half times their regular rate for the first eight hours worked on the seventh day of work in a workweek and two times their regular rate of pay for work in excess of eight hours on the seventh consecutive day of work. Employees working on a piece-rate basis must also be paid overtime or double time for

piece-rate work where daily or weekly hours are worked beyond the daily or weekly overtime or double time standards.

REQUIRED PAY PERIODS

H-2A employees must be paid at least once each week if employed by a farm labor contractor or at least twice a month if the employer is not a farm labor contractor.

EMPLOYEES MUST BE PAID FOR ALL HOURS WORKED

This includes additional pay for time spent by piece-rate workers for rest periods, heat-stress-related recovery periods, and other nonproductive time. One example of compensated nonproductive time is when H-2A employees must wait at or near the site for crops to dry before initiating agricultural work activity.

REQUIRED REST AND MEAL PERIODS

H-2A employees working on an hourly or piece-rate basis must be provided with a paid 10-minute rest period for each 4 hours worked in a day, and an unpaid, duty-free ½-hour meal period for each 5-hour period worked.

CHARGES FOR MEALS

An H-2A employee shall not be charged for meals not taken.

COMPENSATION WHILE BEING TRANSPORTED BY H-2A EMPLOYER FROM THE EMPLOYEE'S HOUSING TO THE EMPLOYER'S WORKSITE

H-2A employees must receive compensation at their regular rate of pay for time spent while being transported by the employer or its agents from the housing provided by the employer or its agents to the employer's or agent's worksite when the employee must take the transportation provided by the employer or agent.

HOUSING PROTECTIONS AND TENANT RIGHTS

An H-2A employee residing in employer-provided housing is considered a tenant under California law and, in addition to other rights, is permitted to receive guests of their choosing, is entitled to be provided housing that meets minimum habitability standards under state and federal law, and shall not be required to submit to any unannounced, nonemergency searches of the employee's housing. During a declared state or federal emergency or disaster declaration, there may be additional requirements, or recommendations, respecting housing that apply to H-2A employers. An H-2A employer shall notify H-2A employees of these requirements or recommendations.

NO RETALIATION FOR EXERCISE OF LABOR RIGHTS

An H-2A employee has the right to inquire about job conditions or complain about illegal working conditions, organize, engage in concerted activity with others about wages and working conditions, and join a union. It is unlawful for any H-2A employer to retaliate against any employee for exercising any of these rights.

ITEMIZED WAGE STATEMENTS FOR HOURLY AND PIECE-RATE EMPLOYEES

An H-2A employee shall receive a complete and accurate itemized wage statement each pay period that shows all of the following: (A) gross wages earned, (B) total hours worked by the employee, (C) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (D) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (E) net wages earned, (F) the inclusive dates of the period for which the employee is paid, (G) the name of the employee and an employee identification number, (H) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, the name and address of the legal entity that secured the services of the employer, and (I) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

ADDITIONAL REQUIRED ITEMIZED WAGE STATEMENT INFORMATION FOR PIECE-RATE EMPLOYEES

An H-2A employee paid on a piece-rate basis shall also receive a complete and accurate itemized wage statement that separately states the following: (A) the total hours of compensable rest and heat-stress-related recovery periods, (B) the rate of compensation, and the gross wages paid for those periods during the pay period, (C) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

REQUIRED SEXUAL HARASSMENT TRAINING

An H-2A employee of a farm labor contractor shall, at the time of hire, receive training in what constitutes sexual harassment under California law, how to prevent it, and how to report it to their employer and to state agencies. H-2A employees of other employers of five or more are required to be provided one hour of sexual harassment and abusive conduct training once every two years.

REQUIRED TOILETS, HANDWASHING FACILITIES AND DRINKING WATER

At every worksite, an H-2A employee shall be provided with toilet facilities, handwashing facilities, and cool, potable water as required by California law, including separate toilet facilities for each sex for each 20 or fewer employees and one handwashing facility for each 20 or fewer employees. Where there are fewer than five employees, one single-use toilet room for all genders is sufficient provided toilet rooms can be locked from the inside and at least one handwashing facility is provided. Potable, cool water for drinking and single-use cups shall be provided during working hours and placed in locations readily accessible to all employees. Access to such drinking water shall be permitted at all times. During a declared state or federal emergency or disaster declaration, there may be additional requirements, or recommendations, respecting toilet, handwashing, or potable water that apply to H-2A employers. An H-2A employer shall notify H-2A employees of these requirements or recommendations.

PROTECTIONS FROM HIGH HEAT WORKING CONDITIONS

An H-2A employee shall be provided during times of high heat work with heat stress protections, including training in preventing and recognizing heat illness and the employer's emergency response plan; enough cool drinking water to allow each worker to drink one quart per hour; shade for rest and meal breaks when the temperature exceeds 80 degrees Fahrenheit; and the right to be relieved from work in high heat conditions. H-2A employers must implement high heat protections for workers when the temperature equals or exceeds 95 degrees Fahrenheit. These protections shall ensure that the employee takes a minimum 10-minute net preventative cool-down heat-stress-related rest period every two hours. If the workday will extend beyond eight hours, then an additional preventative cool-down rest period will be required every two hours. During a declared state or federal emergency or disaster declaration, regarding wildfires or other natural disasters there may be additional requirements, or recommendations, respecting protective gear or other practices that apply to H-2A employers. An H-2A employer shall notify H-2A employees of these requirements or recommendations.

REQUIRED PESTICIDE EXPOSURE PROTECTIONS

An H-2A employee must be provided with prompt transportation to a medical facility if pesticide illness is reasonably suspected during work hours. H-2A employers must provide pesticide safety training before workers begin work in any field that has been treated with pesticides or is under a restricted entry interval due to pesticide application during the past 30 days. This training must be provided at least once a year.

REQUIRED WORKPLACE SAFETY TRAINING

H-2A employers are required to have a written workplace illness and injury prevention program and must provide training to H-2A employees on safe and healthy work practices. This training shall include health and safety methods and procedures for correcting unsafe or unhealthy workplace conditions identified as a result of any federal or state emergency or disaster declarations and any other new or previously unrecognized workplace hazard.

TRANSPORTATION IN DEFINED “FARM LABOR VEHICLES”

An H-2A employee being transported with eight or more other workers, in addition to the driver, in an employer’s or agent’s vehicle must be transported only in vehicles that have been annually inspected and certified by the Department of the California Highway Patrol and must have, at a minimum, a safety belt for each worker.

NO EMPLOYER CHARGES PERMITTED FOR TOOLS OR EQUIPMENT

The H-2A employer must provide all necessary tools or equipment and an H-2A employee must be fully reimbursed for tools or equipment purchased by the employee. Employees may not be charged for lost, stolen, or damaged tools or equipment.

ELIGIBILITY FOR EMPLOYEE-PAID HEALTH INSURANCE

An H-2A employee is eligible to apply for health care coverage under Covered California, including during a special enrollment period within the first 60 days of their arrival in California. The H-2A employer must inform the employee of the existence of the Covered California marketplace, including a description of the services provided by the marketplace and the manner in which the employee may contact the marketplace to request assistance. An H-2A employee may also be eligible for sick leave, including under California’s paid sick leave law, or emergency sick leave programs

created as a result of a state or federal emergency or disaster declaration. It is unlawful for an H-2A employer to retaliate against an H-2A employee for raising questions about eligibility for sick leave, or seeking to avail themselves of sick leave protections, under the law.

WORKERS' COMPENSATION FOR INJURIES OR ILLNESS

An H-2A employer shall provide H-2A employees California workers' compensation benefits coverage for a work-related injury or illness. An H-2A employee must be given a claim form for benefits by their H-2A employer within one workday of learning of the employee's illness or injury, which may include an illness addressed by a state or federal emergency or disaster declaration. An H-2A employer shall not retaliate against an H-2A employee for raising questions about eligibility for workers' compensation, or seeking to avail themselves of workers' compensation.

RIGHT TO COMPLAIN TO STATE AGENCIES & TO CONTACT OTHERS

An H-2A employee has the right to complain to state agencies, including, but not limited to, the Labor Commissioner, the Employment Development Department, the Division of Occupational Safety and Health, the Department of Fair Employment and Housing, the Department of Housing and Community Development, the Agricultural Labor Relations Board, and the Department of the California Highway Patrol for any violations of applicable state laws or regulations and to contact others for advice or assistance about violations of state or federal laws, including, but not limited to, legal assistance programs or a collective bargaining representative.

MANDATORY NIGHT TIME WORK PROTECTIONS

On any day where work is to be performed between sunset and sunrise, every employer shall provide reflective garments and shall provide headlamps or other lighting for work areas, rest period areas, lunch areas, and bathroom areas. Employers shall also conduct a safety meeting every night at each work site to inform H-2A employees regarding the location of bathroom areas, rest areas, lunch period areas, high traffic areas, and the location of any bodies of water.

ADDITIONAL RIGHTS AND REMEDIES

The template shall plainly state that it does not describe all rights and remedies available to H-2A employees under California or

federal laws for violations of housing, labor, health and safety, or other laws, and is not meant to create or limit any rights but is only a restatement of existing law.

(e) The Labor Commissioner shall revise language in the template required by subdivision (c), as necessary, to do all of the following:

(1) Provide, update, or expand useful agency contact information.

(2) Correct inconsistencies with current laws or regulations.

(3) Add any other information that the Labor Commissioner deems material and necessary.

SEC. 4. Section 2810.65 is added to the Labor Code, immediately following Section 2810.6, to read:

2810.65. (a) An H-2A employee is exempt from the requirement that they must receive compensation at their regular rate of pay for time spent while being transported by the employer or its agents from the housing provided by the employer or its agents to the employer's or agent's worksite or worksites if all of the following conditions are met:

(1) The employee and all other H-2A and/or farm labor contractor employees working for the same agricultural employer are covered by all the terms of a collective bargaining agreement covering directly hired employees, including coverage under a provision for compensation for transportation time.

(2) The collective bargaining agreement contains a grievance and arbitration procedure providing for resolution of disputes concerning transportation and payment of wages.

(3) The employer provides the federal Adverse Effect Wage Rate (AEWR) to all employees performing the same work regardless of whether they are directly hired or hired through a farm labor contractor or H-2A contractor.

(4) The collective bargaining agreement provides for compensation through fringe benefits that exceed the actual monetary value employees would have received as compensation for travel time.

(5) The collective bargaining agreement requires that the employer is obligated to maintain, and actually keeps and maintains, contemporaneous daily records of the time actually spent by the H-2A employee being transported by the employer or its agents to or from the housing provided by the employer or

its agents to or from the employer's or agent's worksite or worksites, and that the employer keep and maintain these records for three years after the termination of the H-2A employee.

(b) The provisions of subdivision (a) shall apply to all collective bargaining agreements entered into, amended, modified, or extended, on or after January 1, 2021. For collective bargaining agreements entered into prior to January 1, 2021, the employer shall maintain contemporaneous daily records of the time actually spent by the H-2A employee being transported by the employer or its agents to or from the housing provided by the employer or its agents to or from the employer's or agent's worksite or worksites, and the employer shall keep and maintain these records for three years after the termination of the H-2A employee.

Approved _____, 2020

Governor