Assembly Bill No. 450

CHAPTER 492

An act to add Sections 7285.1, 7285.2, and 7285.3 to the Government Code, and to add Sections 90.2 and 1019.2 to the Labor Code, relating to employment regulation.

[Approved by Governor October 5, 2017. Filed with Secretary of State October 5, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 450, Chiu. Employment regulation: immigration worksite enforcement actions.

Existing law prohibits an employer or other person or entity from engaging in, or to directing another person or entity to engage in, unfair immigration-related practices against a person for exercising specified rights. Existing law defines unfair immigration-related practices for these purposes. Existing law grants the Labor Commissioner access to places of labor and authorizes the commissioner to conduct investigations and prosecute actions in relation to the prescribed duties of the office. Existing law creates the Labor Enforcement and Compliance Fund, moneys in which, upon appropriation by the Legislature, are available to support the Division of Labor Standards Enforcement.

This bill would impose various requirements on public and private employers with regard to federal immigration agency immigration worksite enforcement actions. Except as otherwise required by federal law, the bill would prohibit an employer or other person acting on the employer's behalf from providing voluntary consent to an immigration enforcement agent to enter nonpublic areas of a place of labor unless the agent provides a judicial warrant, except as specified. Except as required by federal law, the bill would prohibit an employer or other person acting on the employer's behalf from providing voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or court order, subject to a specified exception. The bill would grant the Labor Commissioner or the Attorney General the exclusive authority to enforce these provisions and would require that any penalty recovered be deposited in the Labor Enforcement and Compliance Fund. The bill would prescribe penalties for failure to satisfy the prohibitions described above of $2,000 up to $5,000 for a first violation and $5,000 up to $10,000 for each subsequent violation, as defined. The bill would specify circumstances for which penalties do not apply.

The bill, except as required by federal law, would require an employer to provide a current employee notice containing specified information, by posting in the language the employer normally uses to communicate

employment information, of an inspection of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving the federal notice of inspection. The bill would require an employer, upon reasonable request, to provide an affected employee a copy of the notice of inspection of I-9 Employment Eligibility Verification forms. The bill would require the Labor Commissioner, by July 1, 2018, to create a template for these purposes and make it available, as specified. The bill would require an employer to provide to an affected current employee, and to the employee's authorized representative, if any, a copy of the written immigration agency notice that provides for the inspection results and written notice of the obligations of the employer and the affected employee arising from the action, as specified. The bill would define affected employee for these purposes. The bill would prescribe penalties for failure to provide the notices of $2,000 up to $5,000 for a first violation and $5,000 up to $10,000 for each subsequent violation, except as specified, to be collected by the Labor Commissioner.

Except as required by federal law, the bill would prohibit an employer from reverifying the employment eligibility of a current employee at a time or in a manner not required by specified federal law. The bill would prescribe a penalty of up to $10,000 for a violation of this prohibition to be recoverable by the Labor Commissioner.

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

SECTION 1. Section 7285.1 is added to the Government Code, to read:

7285.1. (a) Except as otherwise required by federal law, an employer, or a person acting on behalf of the employer, shall not provide voluntary consent to an immigration enforcement agent to enter any nonpublic areas of a place of labor. This section does not apply if the immigration enforcement agent provides a judicial warrant.

(b) An employer who violates subdivision (a) shall be subject to a civil penalty of two thousand dollars ($2,000) up to five thousand dollars ($5,000) for a first violation and five thousand dollars ($5,000) up to ten thousand dollars ($10,000) for each subsequent violation. If a court finds that an immigration enforcement agent was permitted to enter a nonpublic area of a place of labor without the consent of the employer or other person in control of the place of labor, the civil penalty shall not apply. "Violation" means each incident when it is found that subdivision (a) was violated without reference to the number of employees, the number of immigration enforcement agents involved in the incident, or the number of locations affected in a day.

(c) This section shall not preclude an employer or person acting on behalf of an employer from taking the immigration enforcement agent to a nonpublic area, where employees are not present, for the purpose of verifying whether the immigration enforcement agent has a judicial warrant, provided no consent to search nonpublic areas is given in the process.

(d) The exclusive authority to enforce this section is granted to the Labor Commissioner or the Attorney General and enforcement shall be through civil action. Any penalty recovered shall be deposited in the Labor Enforcement and Compliance Fund.

(e) This section applies to public and private employers.

SEC. 2. Section 7285.2 is added to the Government Code, to read:

7285.2. (a) (1) Except as otherwise required by federal law, and except as provided in paragraph (2), an employer, or a person acting on behalf of the employer, shall not provide voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or judicial warrant. This section does not prohibit an employer, or person acting on behalf of an employer, from challenging the validity of a subpoena or judicial warrant in a federal district court.

(2) This subdivision shall not apply to I-9 Employment Eligibility Verification forms and other documents for which a Notice of Inspection has been provided to the employer.

(b) An employer who violates subdivision (a) shall be subject to a civil penalty of two thousand dollars ($2,000) up to five thousand dollars ($5,000) for a first violation and five thousand dollars ($5,000) up to ten thousand dollars ($10,000) for each subsequent violation. If a court finds that an immigration enforcement agent was permitted to access, review, or obtain the employer's employee records without the consent of the employer or other person in control of the place of labor, the civil penalty shall not apply. "Violation" means each incident when it is found that subdivision (a) was violated without reference to the number of employees, the number of immigration enforcement agents involved in the incident, or the number of employee records accessed, reviewed, or obtained.

(c) The exclusive authority to enforce this section is granted to the Labor Commissioner or the Attorney General and enforcement shall be through civil action. Any penalty recovered shall be deposited in the Labor Enforcement and Compliance Fund.

(d) This section applies to public and private employers.

SEC. 3. Section 7285.3 is added to the Government Code, to read:

7285.3. In accordance with state and federal law, nothing in this chapter shall be interpreted, construed, or applied to restrict or limit an employer's compliance with a memorandum of understanding governing the use of the federal E-Verify system.

SEC. 4. Section 90.2 is added to the Labor Code, to read:

90.2. (a) (1) Except as otherwise required by federal law, an employer shall provide a notice to each current employee, by posting in the language the employer normally uses to communicate employment-related information to the employee, of any inspections of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of the inspection. Written notice shall also be given within 72 hours to the employee's authorized representative, if any. The posted notice shall contain the following information:

(A) The name of the immigration agency conducting the inspections of I-9 Employment Eligibility Verification forms or other employment records.

(B) The date that the employer received notice of the inspection.

(C) The nature of the inspection to the extent known.

(D) A copy of the Notice of Inspection of I-9 Employment Eligibility Verification forms for the inspection to be conducted.

(2) On or before July 1, 2018, the Labor Commissioner shall develop a template posting that employers may use to comply with the requirements of subdivision (a) to inform employees of a notice of inspection to be conducted of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency. The posting shall be available on the Labor Commissioner's Internet Web site so that it is accessible to any employer.

(3) An employer, upon reasonable request, shall provide an affected employee a copy of the Notice of Inspection of I-9 Employment Eligibility Verification forms.

(b) (1) Except as otherwise required by federal law, an employer shall provide to each current affected employee, and to the employee's authorized representative, if any, a copy of the written immigration agency notice that provides the results of the inspection of I-9 Employment Eligibility Verification forms or other employment records within 72 hours of its receipt of the notice. Within 72 hours of its receipt of this notice, the employer shall also provide to each affected employee, and to the affected employee's authorized representative, if any, written notice of the obligations of the employer and the affected employee arising from the results of the inspection of I-9 Employment Eligibility Verification forms or other employment records. The notice shall relate to the affected employee only and shall be delivered by hand at the workplace if possible and, if hand delivery is not possible, by mail and email, if the email address of the employee is known, and to the employee's authorized representative. The notice shall contain the following information:

(A) A description of any and all deficiencies or other items identified in the written immigration inspection results notice related to the affected employee.

(B) The time period for correcting any potential deficiencies identified by the immigration agency.

(C) The time and date of any meeting with the employer to correct any identified deficiencies.

(D) Notice that the employee has the right to representation during any meeting scheduled with the employer.

(2) For purposes of this subdivision, an "affected employee" is an employee identified by the immigration agency inspection results to be an employee who may lack work authorization, or an employee whose work authorization documents have been identified by the immigration agency inspection to have deficiencies.

(c) An employer who fails to provide the notices required by this section shall be subject to a civil penalty of two thousand dollars ($2,000) up to

five thousand dollars ($5,000) for a first violation and five thousand dollars ($5,000) up to ten thousand dollars ($10,000) for each subsequent violation. This section does not require a penalty to be imposed upon an employer or person who fails to provide notice to an employee at the express and specific direction or request of the federal government. The penalty shall be recoverable by the Labor Commissioner.

(d) For purposes of this section, an "employee's authorized representative" means an exclusive collective bargaining representative.

(e) This section applies to public and private employers.

(f) In accordance with state and federal law, nothing in this chapter shall be interpreted, construed, or applied to restrict or limit an employer's compliance with a memorandum of understanding governing the use of the federal E-Verify system.

SEC. 5. Section 1019.2 is added to the Labor Code, to read:

1019.2. (a) Except as otherwise required by federal law, a public or private employer, or a person acting on behalf of a public or private employer, shall not reverify the employment eligibility of a current employee at a time or in a manner not required by Section 1324a(b) of Title 8 of the United States Code.

(b) (1) Except as provided in paragraph (2), an employer who violates subdivision (a) shall be subject to a civil penalty of up to ten thousand dollars ($10,000). The penalty shall be recoverable by the Labor Commissioner.

(2) The actions of an employer that violate subdivision (a) and result in a civil penalty under paragraph (1) shall not also form the basis for liability or penalty under Section 1019.1.

(c) In accordance with state and federal law, nothing in this chapter shall be interpreted, construed, or applied to restrict or limit an employer's compliance with a memorandum of understanding governing the use of the federal E-Verify system.

SEC. 6. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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