
SENATE COMMITTEE ON HEALTH
Senator Dr. Susan Talamantes Eggman, Chair

BILL NO: SB 476
AUTHOR: Limón
VERSION: February 14, 2023
HEARING DATE: March 22, 2023
CONSULTANT: Vincent D. Marchand

SUBJECT: Food safety: food handlers

SUMMARY: Requires food facility employers to pay an employee for any cost associated with the employee obtaining a food handler card, including the time it takes for the employee to complete the training and certification program, and the cost of the food handler certification program.

Existing state law:

- 1) Establishes the California Retail Food Code (CalCode) to provide for the regulation of retail food facilities. Health and sanitation standards are established at the state level through the CalCode, while enforcement is charged to local agencies, carried out by the 58 county environmental health departments, and four city environmental health departments (Berkeley, Long Beach, Pasadena, and Vernon). [HSC §113700, et seq.]
- 2) Defines a “food facility” as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level. Excludes various entities from the definition of a “food facility,” including a cottage food operation, and a church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs no more than three days in any 90 day period. [HSC §113789]
- 3) Defines “food handler” as an individual who is involved in the preparation, storage, or service of food in a food facility. [HSC §113790]
- 4) Requires all food handlers to obtain a “food handler card” within 30 days from the date of hire, and to maintain a valid food handler card for the duration of employment. Requires the food handler course to provide basic, introductory instructions on specified elements of knowledge, including foodborne illness, the relationship between personal hygiene and food safety, methods of preventing food contamination, and procedures for cleaning and sanitizing equipment. [HSC §113948]
- 5) Requires food facilities to have at least one person who has successfully passed an approved and accredited food safety certification examination, but does not require this person to be present at the food facility during all hours of operation. Specifies the requirements for the food safety certification examination, which, in addition to a more detailed version of all of the elements of knowledge for the food handler card specified in 6) above, is required to include problems and potential solutions associated with facility and equipment design, and describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual. [HSC §113947.1, §113947.2]

- 6) Requires an employer to indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. [LAB §2802]
- 7) Specifies that the requirement in 6) above applies to any expense or cost of any employer-provided or employer-required educational program or training for an employee providing direct patient care, but excludes from the definition of “employer-provided or employer-required educational program or training” the requirements for a license, registration, or certification necessary to legally practice in a specific employee classification to provide direct patient care. [LAB §2802.1]
- 8) Requires an employer having five or more employees to provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees, and at least one hour to all nonsupervisory employees, at least once every two years. [GOV §12950.1]

This bill:

- 1) Requires employers to pay an employee for any cost associated with the employee obtaining a food handler card, including, but not limited to, the time it takes for the employee to complete the training, the cost of the food handler certification program, and the time it takes to complete the certification program.
- 2) Requires employers to relieve an employee of all other work duties while the employee is taking the training course and examination.
- 3) Prohibits employers from conditioning employment on an applicant or employee having an existing food handler card.
- 4) Requires CDPH to make a list of all certified food handler training programs, along with the cost of each program, available on its website by January 1, 2025. Requires local public health departments to provide a link of this page on their website or provide the same list on their website.

FISCAL EFFECT: This bill has not been analyzed by a fiscal committee.

COMMENTS:

- 1) *Author’s statement.* According to the author, currently in California, all foodservice workers are required to undergo a food safety training and receive a food handler card. A recent New York Times article discovered that one of the most popular training services, ServSafe, was using some of the revenue to fund lobbying campaigns, often aimed at suppressing the wages of workers. ServSafe is the dominate food handling training company in the country controlling an estimated 70% of the market. They make money by charging workers for food handling trainings in all 50 states. This bill would require employers pay for the food handler training, and the employees time within 30 days after hire. It also spurs more industry competition by requiring CDPH to make public all accredited food handler training providers and the cost of their trainings on their website. Workers and employers can choose the best and most affordable or free trainer from a public list.
- 2) *Food handler certification.* SB 602 (Padilla, Chapter 309, Statutes of 2010) was enacted to require food handlers to obtain food handler cards. The California Restaurant Association

was identified as the sponsor of this legislation. The intent of food handler certification is to provide employees who handle non-prepackaged food with an overview of key elements of food safety in order to prevent the transmission of foodborne illnesses. Both the course and test for food handlers is required to be available online, and the test does not require a proctor. Topics covered include foodborne illness, time and temperature control, personal hygiene, cross-contamination prevention, and proper cleaning and sanitizing techniques. To obtain a food handler card, applicants are required to take the food handler training course and pass the assessment test with a score of at least 70%. The food handler test and card are required to be provided by a training provider that is accredited by the American National Standards Institute (ANSI), and at least one vendor is required to offer the course for \$15 or less. There are many ANSI-accredited food handler training providers, and a number of them offer the course and card for around \$10. Food handler cards are valid for three years. The law requiring food facilities to have all food handlers obtain a food handler card does contain some exemptions, including those working in temporary food facilities, grocery stores, unionized food facilities, and food facilities with in-house training approved in another state (many chain restaurants, such as Burger King, Denny's, and McDonald's, are exempted under this provision). Additionally, food handlers that were subject to pre-existing local food handler programs in the counties of Riverside, San Bernardino, and San Diego are exempted.

- 3) *Who pays for training requirements in employment settings?* Generally speaking, if an employer requires employees to obtain training, the employer is required to pay for that training, which is both a federal requirement under the Fair Labor Standards Act, as well as a state requirement under Labor Code §2802 (see Existing Law #6) above). However, if a certification is required by the state in order to be employed in a given employment category, there is generally no requirement that an employer pay for training leading to licensure or certification. According to an opinion issued by the Division of Labor Standards Enforcement (DLSE) of the Department of Industrial Relations concerning whether an employer must pay for the cost of a class that an employee had to take in order to retain their job selling life insurance, DLSE stated that “While the license may be a requirement of the employment, it is not the type of cost encompassed by Labor Code §2802. The most important aspect of licensure is that it is required by the state or locality as a result of public policy. It is the employee who must be licensed and unless there is a specific statute which requires the employer to assume part of the cost, the cost of licensing must be borne by the employee.”

However, there are numerous examples of laws or regulations where the state requires the employer to provide training, and it is clear that the employer is required to pay for the cost of this training. One example is the requirement that employers with five or more employees provide sexual harassment training. Additionally, there is a long list of various training requirements under California's Division of Occupational Health and Safety, specific to different types of industries. These training requirements are designed to ensure safe practices at those places of employment, and employers are obligated to provide the training at the employer's cost. The key distinction in these cases where the state requires training is that the statute or regulation makes it clear that the burden is on the employer to provide the training, while the statute on food handlers is structured so that the burden was placed on the worker to obtain the certificate.

- 4) *New York Times article on ServSafe food handler certification program.* The New York Times (NYT) published an article on January 17, 2023, entitled, “How Restaurant Workers Help Pay for Lobbying to Keep Their Wages Low.” According to the article, when new

restaurant workers pay \$15 to take the ServSafe online class in food safety, they are also helping to fund a nationwide lobbying campaign to keep their own wages from increasing. The article states that ServSafe doubles as a fund-raising arm of the National Restaurant Association (NRA), which has spent decades fighting increases to the minimum wage at the state and federal levels. According to the NYT, first, in 2007, the NRA took control of a training business, then they helped lobby states to mandate the kind of training they already provided, producing a flood of paying customers. According to the NYT, more than 3.6 million workers have taken this training, providing about \$25 million in revenue to the restaurant industry's lobbying arm since 2010, which was more than the NRA spent on lobbying in the same period based on filings with the Internal Revenue Service. The NYT article stated that other companies also offer this training, but cited restaurant industry veterans as saying that ServSafe is the dominant force in the market. The article quoted someone who runs a competing food handler program as stating that he believed ServeSafe had at least 70% of the market.

The NRA published a rebuttal of the article on its website entitled "6 Things the New York Times Got Wrong," which included the following primary points: (1) the ServSafe training fees are used across the association for many purposes, not just for lobbying on certain topics; (2) restaurant workers are not required to choose ServSafe products and have their choice of where to obtain food handler training, and the costs are often reimbursed by employers; (3) NRA has never shied away from its connection to ServSafe, and are proud of its long history in helping prevent the risk of foodborne illness; and, (4) the NRA did not lobby for food handler mandates in any state, and believes food safety training is essential to the safety of everyone coming to a restaurant.

- 5) *Prior legislation.* AB 1532 (Bauer-Kahan, Chapter 131, Statutes of 2019) enacted the Natalie Giorgi Sunshine Act to require the food handler training course to include instructions on safe handling food practices for major food allergens.

SB 1067 (Huff, Chapter 195, Statutes of 2016) requires the food safety certification examination, which must be completed by at least one person at every retail food facility, to include major food allergens and the symptoms that these allergens could cause in individuals who have allergic reactions. Revises and recasts provisions of law governing the serving of raw and undercooked meat, and makes various other updates and minor changes to the laws governing retail food facilities.

SB 602 (Padilla, Chapter 309, Statutes of 2010) requires a food handler, as defined, to obtain a food handler card within 30 days from the date of hire at a food facility, with specified exceptions, and requires at least one of the accredited food safety certification examinations to be offered for no more than \$15.

AB 1978 (Campbell, Chapter 72, Statutes of 1998) requires food facilities to have an owner or employee who has successfully passed an approved and accredited food safety certification examination. Requires at least one exam to cost no more than \$60 including the certificate.

- 6) *Support.* This bill is co-sponsored by One Fair Wage (OFW), the California Labor Federation (CLF), and the Service Employees International Union (SEIU California). OFW states that it is a national organization of nearly 300,000 restaurant and service workers and 2,500 restaurant owners all working together to raise wages and working conditions in the

service sector and to end all subminimum wages in the United States. OFW states that it helped expose the NRA's use of worker money to fund their national lobbying campaigns via the NYT article. OFW pointed to the NYT's finding that from 2007, when NRA bought ServSafe, to 2021, the NRA's spending on lobbying and politics has doubled. OFW states that the increase in funding is correlated with states passing food handler card laws requiring workers to take trainings. OFW states this bill will stop the egregious misuse of worker's hard-earned money by an employer trade association to lobby against higher wages and better conditions. This bill will require employers to pay for workers' food handler training time and the associated training fees. It also spurs more industry competition by requiring the CDPH to make public all accredited food handler training providers and the cost of their trainings on their website. CLF makes similar arguments, stating that food service workers across California were deceived, and that without their knowledge or consent, workers paid \$25 million of their own money to fund corporate lobbying. CLF argues this bill rights this wrong by putting an end to worker funding of corporate lobbying by requiring employers to pay for mandatory food handler training, instead of putting that burden on the workers. SEIU California states this bill balances public health with the urgent need to prevent corporate fundraising off the backs of workers.

- 7) *Opposition.* The California Restaurant Association and the California Chamber of Commerce submitted a joint letter of opposition to this bill, stating that it imposes significant new costs on restaurant employers at a time when they are still dealing with pandemic-related losses. Opponents state that at the time the California legislature enacted the food handler card law, three southern California counties had food card certification requirements for restaurant workers, which were costly and required in-classroom training and proctored tests. Other counties were considering their own certification program, potentially creating a patchwork of expensive and disparate requirements county by county. The author of SB 602 from 2010 worked with stakeholders to develop the framework for the food handler card legislation, and one of the important components was that the food handler card was the property of the worker and would be compliant for work in any retail food establishment. This was deemed an equitable solution, and was also consistent with state guidance on when employers must reimburse workers for work-related expenses. According to opponents, the DLSE distinguishes between training costs required by law, such as a license required by the state, versus employer-required training. Opponents state that since the food handler card is required by the state, it has been the responsibility of individuals who work in food service to obtain the certification/training. SB 602 created consistency in food safety training requirements throughout the state, allowed the food card to travel with the employee between jobs, and combatted against expensive, in-person training by allowing online training and requiring a test to be available for \$15 or less. Opponents state that neighborhood restaurants continue to face operating challenges including workforce shortages, supply chain issues, and inflationary costs that haven't been seen in 40 years. All of this is in addition to the financial debt that was incurred during the pandemic due to government ordered restaurant closures and new operational requirements. Any new cost increase will create further strain as restaurants simply try to get back on a solid financial and operational footing.
- 8) *Policy comment related to the food manager certification requirement.* As described in Existing Law #5) above, separate from the food handler certification requirement, there is also a requirement that at least one person in a food facility (often the owner for small restaurants) is required to pass a "food safety" certification examination. This requirement, known as the food manager certification, is lengthier and more detailed than the food handler certification program, and the examination must be proctored. While neither the food

manager or the food handler statutes explicitly specify who pays for the costs associated with the training and certification, the statutes are constructed differently. The food manager section of law places the burden on the food facility: “Food facilities...shall have an owner or employee who has successfully passed...a food safety certification examination...” The food handler requirement, on the other hand, places the burden on the food handler: “A food handler...shall obtain a food handler card...” According to the California Restaurant Association, they believe that most restaurants incur the cost of the food manager certification requirements, because of the difference in the way the obligation is structured. However, since the author is making it explicit that the costs of the food handler program are to be borne by the food facility, the author may also wish to make the food manager program statute more explicit in the same way.

SUPPORT AND OPPOSITION:

- Support:** California Labor Federation (co-sponsor)
 One Fair Wage (co-sponsor)
 California Conference Board of the Amalgamated Transit Union
 California Conference of Machinists
 California Employment Lawyers Association
 California Teamsters Public Affairs Council
 Engineers and Scientists of California, IFPTE Local 20
 Equal Rights Advocates
 Human Impact Partners
 National Council of Jewish Women-California
 Parent Voices California
 Service Employees International Union
 UNITE HERE
 United Food and Commercial Workers, Western States Council
 Utility Workers Union of America
- Oppose:** California Chamber of Commerce
 California Restaurant Association

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