
UNFINISHED BUSINESS

Bill No: SB 476
Author: Limón (D), et al.
Amended: 9/7/23
Vote: 21

SENATE HEALTH COMMITTEE: 9-2, 3/22/23

AYES: Eggman, Gonzalez, Hurtado, Limón, Menjivar, Roth, Rubio, Wahab,
Wiener

NOES: Nguyen, Glazer

NO VOTE RECORDED: Grove

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/18/23

AYES: Portantino, Ashby, Bradford, Wahab, Wiener

NOES: Jones, Seyarto

SENATE FLOOR: 30-9, 5/30/23

AYES: Allen, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero,
Cortese, Dodd, Durazo, Eggman, Gonzalez, Hurtado, Laird, Limón, McGuire,
Menjivar, Min, Newman, Padilla, Portantino, Roth, Rubio, Skinner, Smallwood-
Cuevas, Stern, Umberg, Wahab, Wiener

NOES: Dahle, Glazer, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk

NO VOTE RECORDED: Alvarado-Gil

ASSEMBLY FLOOR: 56-18, 9/12/23 - See last page for vote

SUBJECT: Food safety: food handlers

SOURCE: California Labor Federation
One Fair Wage
SEIU California

DIGEST: This bill requires food facility employers to pay an employee for any cost associated with the employee obtaining a food handler card, including

considering the time it takes for the employee to complete the training and certification program to be compensable as “hours worked.”

Assembly Amendments make technical and clarifying changes, including specifying that the time it takes for the employee to complete the training and examination is considered “hours worked” for compensation purposes.

ANALYSIS:

Existing 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 4) 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 consider the time it takes for the employee to complete the training and examination as compensable “hours worked,” for which the employer is required to pay, and to also pay the employee for any necessary expenditures or losses associated with the employee obtaining a food handler card. Requires an employer to relieve an employee of all other work duties while the employee is taking the training course and examination.
- 2) Prohibits employers from conditioning employment on an applicant or employee having an existing food handler card.
- 3) Requires the California Department of Public Health (CDPH) to post on its internet website a link to the website of accredited food handler training programs by January 1, 2025. Requires local public health departments to provide the same link on their website.

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 requires 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 Section 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 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: (a) the ServSafe training fees are used across the association for many purposes, not just for lobbying on certain topics; (b) 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; (c) 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, (d) 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.

Related/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) required 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. Revised and recasted 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) required 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 required 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) required food facilities to have an owner or employee who has successfully passed an approved and accredited

food safety certification examination. Required at least one exam to cost no more than \$60 including the certificate.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee, CDPH estimates annual costs of \$159,000 to develop and continuously update the list of ANSI-accredited food handler training programs (General Fund).

SUPPORT: (Verified 9/12/23)

California Labor Federation (co-source)

One Fair Wage (co-source)

SEIU California (co-source)

California Conference Board of the Amalgamated Transit Union

California Conference of Machinists

California Employment Lawyers Association

California Immigrant Policy Center

California Nurses Association

California School Employees Association

California Teamsters Public Affairs Council

California Work & Family Coalition

Consumer Attorneys of California

Engineers and Scientists of California, IFPTE Local 20

Equal Rights Advocates

Greater Sacramento Urban League

Human Impact Partners

National Council of Jewish Women-California

Parent Voices California

UNITE HERE

United Food and Commercial Workers, Western States Council

Utility Workers Union of America

OPPOSITION: (Verified 9/12/23)

California Asian Chamber of Commerce

California Chamber of Commerce

California Restaurant Association

California Retailers Association

Department of Finance

ARGUMENTS IN SUPPORT: This bill is co-sponsored by One Fair Wage (OFW), the California Labor Federation (CLF), and the 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.

ARGUMENTS IN OPPOSITION: The California Asian Chamber of Commerce, California Retailers Association, 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. The Department of Finance opposes this bill because it results in ongoing General Fund impacts not included in the Administration's spending plan.

ASSEMBLY FLOOR: 56-18, 9/12/23

AYES: Addis, Aguiar-Curry, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Connolly, Mike Fong, Friedman, Gabriel, Garcia, Gipson, Grayson, Haney, Hart, Holden, Irwin, Jackson, Jones-Sawyer, Kalra, Lee, Low, Maienschein, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Pellerin, Petrie-Norris, Quirk-Silva, Rendon, Reyes, Luz Rivas, Blanca Rubio, Santiago, Soria, Ting, Ward, Weber, Wicks, Wilson, Wood, Zbur, Robert Rivas

NOES: Alanis, Chen, Megan Dahle, Davies, Dixon, Essayli, Flora, Vince Fong, Gallagher, Hoover, Lackey, Mathis, Jim Patterson, Joe Patterson, Sanchez, Ta, Waldron, Wallis

NO VOTE RECORDED: Lowenthal, Ramos, Rodriguez, Schiavo, Valencia, Villapudua

Prepared by: Vincent D. Marchand / HEALTH / (916) 651-4111
9/12/23 19:33:26

**** END ****