

# SB321 COMMITTEE REPORT

October 2022 - DRAFT

## EXECUTIVE SUMMARY - *coming later*

## BACKGROUND AND PURPOSE

In 2021, Governor Newsom signed into law SB321, *Employment safety standards: advisory committee: household domestic services* (Labor Code Section 6305.1), which requires the Chief of the Division of Occupational Safety and Health to convene an advisory committee composed of key stakeholders in this industry. The purpose of the advisory committee is to provide policy recommendations to the Department of Industrial Relations (DIR) and the Legislature on policies the state may adopt to protect the health and safety of privately-funded household domestic service employees, along with drafting voluntary industry-specific guidelines for the purpose of educating household domestic service employers and workers.

The SB321 Advisory Committee (AC) was made up of individuals who represent key stakeholders, including employers, workers, non-profit advocates, and health and safety experts, and who, as a whole, also brought experience in the various sectors including house cleaning, caregiving, childcare, and day labor work. The AC met monthly between April and December 2022. The outputs of these meetings are the policy recommendations and voluntary guidelines put forth by the AC based on their discussions, literature reviews, review of existing policies, and input from experts in the field, workers, employers, and the public.

The AC heard presentations about the profiles and demographic characteristics of household service workers and employers, the common health and safety hazards and resulting injuries and illnesses, as well as the historic context for the exclusion of the household services industry from basic labor protections, including from Cal/OSHA and FedOSHA regulations. This exclusion, rooted in systemic racism, sexism, and xenophobia, has left domestic workers and day laborers vulnerable to job-related injuries and illnesses. Researchers from the UCLA Labor Center and the UCLA Labor Occupational Safety and Health Program (UCLA-LOSH) together with the Instituto de Educacion Popular del Sur de California (IDEPSCA, or Institute of Popular Education of Southern California) provided an overview to the AC on the profile of the industry and the health and safety experiences of these workers. The National Domestic Workers Alliance provided background on different policy models and best practices to ensure safe workplaces, as well as suggested measures for employers and workers to mitigate health and safety hazards. In addition, the AC's process was informed by presentations from the California Domestic Workers Coalition (CDWC) on the findings from a series of listening sessions that were conducted in April and May 2022. CDWC convened 17 organizations to hold listening

sessions with approximately 600 participants: 325 domestic workers, 245 day laborers, and 30 employers. The reports and presentations that were submitted for the AC's consideration are listed Appendix A and are available at: <https://www.dir.ca.gov/dosh/doshreg/House-Domestic/advisory-comm.html>

In their first meeting, the AC participated in a visioning activity to set forth the goals and desired outcomes that would guide their work and discussions. The AC considers that a healthy job for domestic workers and day laborers means:

1. Employers have a responsibility to create a safe workplace and ensure protective measures are in place
2. There is a written agreement about work tasks and expectations
3. Workers are involved in identifying hazards and solutions
4. Workers receive training on how to work safely with tools, equipment, chemicals, and information on the hazard and their rights
5. Employers know which tasks are most dangerous; understand risk involved with the work
6. Employers provide equipment including equipment needed to do the job safely, and personal protective equipment
7. Workers are able to speak up when there is a problem, without facing retaliation
8. Workers are respected for their experience, work with dignity
9. Workers have the capacity and training to do the jobs they are assigned.

The AC agreed to criteria that would help focus their discussions and the development of the policy recommendations and voluntary guidelines and were in keeping with SB321. The work of the AC would be:

- Focused on prevention of workplace injuries and illnesses
- Focused on occupational safety and health hazards and work that falls within the scope of Cal-OSHA
- Within the scope of workers named in SB321; that is, privately-hired domestic workers and day laborers, with the exception of family daycare homes.

## **POLICY RECOMMENDATIONS**

The charge to the AC was to make recommendations that may be adopted by the Department of Industrial Relations or the Legislature to protect the health and safety of household domestic service employees. In developing these recommendations, the AC was asked to consider:

1. How to protect the privacy of individuals who employ domestic workers in their private residences in the context of future potential enforcement of health and safety

standards, orders, and regulations, including applicability to household domestic service employers of the existing civil monetary penalty structure for violations.

2. Identifying and evaluating common workplace hazards specific to the industry.
3. The scope and applicability of existing regulations to the industry.
4. The need to develop industry-specific requirements.
5. How to conduct training and outreach to employers and employees in the industry.

This report describes the recommendations that were developed by the SB321 Advisory Committee to suggest strategies that would protect the health and safety of domestic workers and day laborers. These recommendations are grouped into four categories:

- Legal Responsibilities and Enforcement
- Ensuring Safe Work Environments
- Outreach and Education
- Partnerships with Community Organizations

The extent of agreement or disagreement with specific recommendations or differing views on a topic within the AC are also noted in this report, where relevant.

## **Legal Responsibilities and Enforcement**

*Recommendations in this category involve the fundamental need for employers to have legal responsibility for the working conditions.*

### **Context of discussions:**

The SB321 Advisory Committee consistently emphasized that once someone hires another person to come to their home to carry out work, the home is in effect a workplace and the employer has the responsibility to ensure it is a safe place to work. The AC also recognizes the importance of a multi-level effort to ensure the safety and health of domestic workers and day laborers – an effort that includes as a central element the “authority of law,” or legal responsibility and enforceable requirements with potential consequences – supplemented with resources, education, and compliance support to employers. The AC agrees that the responsibility for creating and maintaining a safe workplace falls on employers.

The AC discussed the issues around protecting the privacy of individuals who employ domestic workers in their private residences, the applicability of existing civil monetary penalty structure for violations, and the applicability of existing regulations to the household domestic services industry. Moreover, the AC heard information on the existing

Cal/OSHA penalty structures for citations and about citation history being made available as public records, and discussed how the possible consequence of a monetary penalty is especially important to changing employer behavior and maintaining accountability.

On the issue of privacy, the AC believes that using an escalating approach to investigate complaints, while providing resources and support to employers, would adequately protect employers' privacy while also ensuring protections to workers' health. Comments raised by Committee members include:

- A homeowner creates a worksite when they employ people to come work within a home and should have corresponding obligations associated with this
- The need to prioritize the protection of workers' health; having work based within a home does not justify a lack of legal recourse for workers who face risks
- Other government entities that enforce environmental codes or have social service functions already have mechanisms to enter homes when needed
- There shouldn't be an undue focus on privacy concerns related to inspections, especially considering that the number of complaints will likely be minimal relative to the size of the workforce
- The importance of also ensuring the workers' rights to privacy should they seek help or file a complaint and having strong protections from retaliation
- The importance of considering privacy and safety concerns related to health, medical records or disability, as well as immigration status, and obtaining feedback from employers in protected classes such as people with disabilities.
- Employers should have the opportunity to become educated and reach compliance before intervention or citation by Cal/OSHA.

### **Committee's Recommendations:**

#### **1. Remove the household domestic services exclusion from the California labor code.**

The AC calls on the Legislature to remove the exclusion of household domestic services that exists in California labor code Section 6303(b), Division 5, Safety in Employment, Part 1, Occupational Safety and Health, Chapter 1, Jurisdiction and Duties of the Labor Code, to ensure that these are places of employment covered by Cal/OSHA.

The AC considers removing the exclusion as a fundamental and necessary step in protecting workers' health and safety. They described that many people who hire household domestic workers do not see themselves as employers with legal responsibilities, and that it is critical to have a legal basis and requirements that reinforce that responsibility and motivate employers to take actions to mitigate hazards or provide consequences if they fail to do so.

**1A. Once the statutory exclusion is removed, the Department of Industrial Relations (DIR) and Cal/OSHA shall enforce health and safety regulations in these sectors.**

The AC recommends that...

Q to COMMITTEE: what does the CMTTEE want to state here - FOR EXAMPLE...

1. That all existing Cal/OSHA regulations apply and are enforced in the household domestic services sector (?)

*and/or*

2. That Cal/OSHA develop industry-specific regulations, drawing on the work and lessons learned in developing draft voluntary guidelines (?)

- a. The AC heard testimony about the importance of having specific and clear standards that are relevant to the home environment

*and/or*

3. Other options?

Some AC members expressed the importance of using the Voluntary Guidelines as a useful starting point for the rulemaking process and in the assessment of how existing Cal/OSHA regulations could be adapted for the home environment. Others expressed the need to have multiple options for the ways in which employers can correct a hazard, and not be overly prescriptive. In the context of the Voluntary Guidelines, the latter group commented that these list steps that *could* be taken, versus *all* being required.

**1B. DIR and Cal/OSHA should use the multi-employer responsibility policy to hold the owner or renter of the home jointly liable for the working conditions in cases where there are multiple employers.**

For example, when an “owner of the route” or other agency sends workers to the home. This could be a multi-employer situation and the homeowner or renter still plays a critical role in creating or exposing workers to hazardous conditions and instituting effective controls.

**2. Implement an industry-specific system for investigation and enforcement.**

Cal/OSHA should implement an enforcement system that will be appropriate for a home setting, and that balances privacy concerns with rigorous and essential protection of workers’ health. This system would include various methods for off-site inspections and an escalating process based on employers’ response to initial steps. It could include:

- a. Letters or phone calls from Cal/OSHA as a first warning, and that provide the

- opportunity to correct the violation without a citation
- b. Referral to a mediation program in order to support the employer to reach compliance without citation (see Recommendation 3)
- c. Allowing multiple ways for workers and employers to share evidence, including phone or video calls as an alternative to on-site inspections
- d. Holding investigative conferences at the Cal/OSHA offices or another offsite location, similar to the existing process used by the Division of Labor Standards Enforcement (DLSE)
- e. Escalating actions based on unsatisfactory response to initial letter or contact, repeat violations and/or the gravity of complaint – that is, if there is a complaint that could result in serious injury or illness or death, Cal/OSHA would take more immediate actions.

The AC recognizes that there would be a transition period for employers to learn their new responsibilities and, as detailed in other sections of this report, that many employers will need guidance to fulfill their obligations and a subset will need financial support. The AC is sympathetic to this employer community, who in many ways will have characteristics similar to other very small businesses, and believes there is a way to support employers with compliance while also holding them accountable if they put workers at risk. The AC also believes that a tiered system of warnings with the opportunity to correct hazards may alleviate the burden of penalties for certain employers who may have scarce financial resources.

### **3. Develop and fund a pilot mediation program.**

The DIR and Cal/OSHA should pilot and promote a mediation program in partnership with community organizations to offer employers and workers dispute resolution services to correct and abate hazards. This program could serve as an alternative enforcement pathway for employers who are in the process of understanding the new legal requirements, and would allow both the employer and worker to voluntarily participate and agree on corrective actions. A mediation program run by community organizations could facilitate workers' reporting of problems and would provide resources and support to employers who would have the opportunity to correct hazards while avoiding a citation and Cal/OSHA's intervention.

**Q to COMMITTEE: Is there criteria or anything more to describe the types of community organizations to participate in this?**

### **4. Maintain the existing civil monetary penalty structure for health and safety violations.**

The AC believes that the existing penalties that Cal/OSHA issues act as a deterrent to violations and that employers should be cited in cases of willful noncompliance. After hearing a presentation on the current Cal/OSHA penalty assessment system, and learning that for small businesses in many cases there is an opportunity to reduce the fee by 40% once the violation has been corrected, the AC considers the penalty system

to be reasonable.

At the same time, the AC reiterates the importance of providing employers in this sector with support and the opportunity to correct violations and avoid citations if possible (as described in Recommendations 2 and 3). Apart from cases in which there is an imminent hazard that endangers life or can result in serious injury, a tiered system of enforcement could allow for correction of hazards before citations are issued.

With respect to citations being part of a public record, comments were made about how the DLSE already has a public record of violations in this sector. Furthermore, worker representatives brought up the need to know if an employer had prior violations as an important way to gauge their own situation.

**5. Provide resources for employers to facilitate compliance.**

Cal/OSHA Consultation Services should develop resources and provide support to employers, much as they already do when a new standard is promulgated. In these cases, Cal/OSHA Consultation often develops new resources such as checklists for employers, templates of model Injury and Illness Prevention Programs (IIPP), webinars, and other direct outreach. This type of support will be important to promote employer compliance and ensure they have the knowledge and resources to do so. At the same time, it is important to ensure that Consultation Services staff is trained in the household services industry.

The AC has stated that a model IIPP specific to the household services industry is an important tool to provide guidance to employers who would now be required to develop their own IIPPs. The IIPP would have the benefit of reinforcing employers' responsibility in:

- identifying and controlling hazards
- providing training in the languages workers understand
- encouraging the participation of workers in the development and review of the plan as well as in identifying hazards and solutions.

**5A. A resource helpline should be made available by DIR to employers and workers,** where they can receive assistance and support from Cal/OSHA in a timely manner.

**6. Create a liaison position within Cal/OSHA and train Cal/OSHA staff.**

The AC has stressed the importance of having Cal/OSHA staff with expertise in the industry, and that community partners could conduct training for Cal/OSHA staff similar to one they carried out with over 200 Deputies from the Division of Labor Standards Enforcement (DLSE). Developing the knowledge and skills of Cal/OSHA staff would increase their effectiveness working in this sector, as they would have a better understanding of the context for the worker and employer relationships, profiles of employers, workers, common hazards etc. Cal/OSHA should also prioritize having staff

who speak the languages spoken by many workers in this sector, including English, Spanish, and Tagalog, among others.

A Liaison would also facilitate important relationships with community partners and with employer representatives to provide support to workers and employers. Especially once the exclusion is removed, a Cal/OSHA liaison could play a critical role during the transition to applying standards specific to the industry of domestic work.

**7. Uphold robust anti-retaliation protections for workers who speak out.**

The AC agrees that essential to the safety and health of workers is the ability to speak out and take action to address problems in the workplace. Cal/OSHA should reinforce this message in their communications to employers, making it clear that workers have rights and are protected from retaliation regardless of immigration status. DLSE's Bureau of Field Enforcement should rapidly respond to complaints of possible retaliation and reinforce protections against discrimination based on the documentation status.

## **Ensuring Safe Work Environments**

*Recommendations in this category involve ensuring the conditions at the workplace support health and safety.*

### **Context of discussions:**

The SB321 committee recognizes that, in order to secure the health and safety of domestic workers and day laborers, the work environment needs to be supportive of prevention. In other words, a job site that has the necessary equipment, supplies, and tools for workers to work safely, where workers are trained and receive information, and where there is a culture that promotes safety and is centered on respectful communication. Once again, the AC discussed how it is important to take into consideration that employers will need specific guidance and information on where to obtain equipment and supplies, and that many will need financial support to be able to do so. This may be particularly true for seniors and people with disabilities who hire attendants/caregivers and potentially need equipment like safe lifting devices. The AC also highlighted that in many cases, ensuring the safety of the worker in the home also protects or enhances the safety of the employers and their families.

### **Committee's Recommendations:**

(See also recommendations in the Outreach and Education section that follows and Recommendation 5 above.)

**8. Establish a financial assistance program for low-resourced employers.**

(Q to COMMITTEE: Who is this directed to?) should explore models to develop a system by which employers can receive financial support to procure the necessary equipment

workers need to do their jobs safely. The AC offered several suggestions to advance this idea, including: using fees collected from fines and penalties and allocating them to this purpose; looking at other health insurers such as MediCal (consider Oregon model to purchase climate accelerated disaster equipment); establishing criteria for a reimbursement system to ensure fair distribution; having a loaner program where applicable; and, subsidizing personal protective equipment (PPE) and equipment as a way to incentivize employer participation.

**9. Promote and disseminate the *Voluntary Guidelines to Protect the Health and Safety of Household Services Workers* developed by the SB321 Committee.**

One of the AC's primary responsibilities was to develop a set of industry-specific voluntary guidelines that can be used to educate employers and workers on the ways to mitigate common hazards that domestic workers and day laborers can face. In developing these guidelines, the AC considered the existing Cal/OSHA regulations that could be applicable in this sector and drew on their experience in the industry to identify concrete and practical guidance that is adapted for the home setting.

Q to COMMITTEE:

What does the AC want to include in this policy report on the promotion and dissemination of the guidelines?

The AC recommends that the guidelines be promoted by Cal/OSHA....?  
Other?

That the guidelines be used as a starting point when rulemaking begins)?

## **Outreach and Education**

*Recommendations in this category involve ensuring that workers and employers have access to effective education programs.*

### **Context of discussions:**

The AC is in agreement that a multipronged approach is needed to reach a broad sector of workers and employers. Previous sections in this report have already made reference to education and outreach in describing the role of Cal/OSHA Consultation to develop and provide resources for employers, and the role of community-based organizations in outreach and education efforts. The AC stresses the importance of having training and materials that are tailored to specific audiences and address factors including literacy, language, and accessibility. The AC also stresses the need to have access to a variety of formats and options for education and training.

Comments raised by AC members include:

- The need for clear and specific guidance, that is both practical and accessible, to facilitate employers' ability to implement mitigating strategies

- The need to emphasize the role and responsibility of employers in ensuring training for workers, even if they are not the training providers themselves
- Employers will need to supplement any core training with information specific to each job, task, or particular home setting
- Workers should receive training during work hours and all training should happen during paid time
- The need for training to be tailored to specific audiences, taking into account factors such as literacy, language, and accessibility and developing culturally sensitive curriculum and materials
- Engaging CBOs in the development of materials and resources, as well as organizations that do work with people with disabilities and disabled self-advocates
- Materials and resources for employers and workers should be plain-language materials in multiple formats and, in considering accessibility, should also include plain text for screen reader accessibility, text with pictures, videos with visuals and narration, and American Sign Language translation where possible
- Suggestion that worker training include disability justice training, to increase workers' understanding of disability and aging and how to engage employers and respect differences based on individual strength and function
- The need for broad dissemination and publicity of available resources; members commented on how existing outreach methods by community organizations reach about 10% of the workforce and therefore highlighted the importance of supplementing these organizations' efforts with increased resources and also using a variety of mechanisms for outreach

### **Committee's Recommendations:**

For discussion at the October meeting - How does the AC want to frame the training rec's for employers and for workers? (see suggested language below based on notes)

Re. the employer training - is it only in context of the exclusion being removed (and suggestion it be mandatory) or are there recommendations in a voluntary context?

For the worker training - do the suggestions address the situation in which a worker works in multiple homes? Are they receiving core training multiple times? (Some Committee members did not support the idea of a certificate or "card" they can carry indicating training was completed, others did?)

What does "day of" training include and how would that be implemented?

- Videos?
- Simple fact sheets to prompt an overview of different hazards based on task? – similar to the "tailgate training model" which are short chats before work begins (See [sample Tailgate Training Guides](#))

- Other?  
Library of simple fact sheets to talk about the topics –

#### **10. Develop a training program for domestic household service employers.**

The AC recommends that Cal/OSHA create a training program for employers to become familiar with the common hazards and ways to address them, as well as their responsibilities and role in developing site-specific IPPs. Some AC members recommended that this be mandatory for all employers, while others stated it should not be mandatory but rather promoted as a useful resource for employers to understand responsibilities.

This training should be offered in different formats to increase accessibility, including virtual training and webinars as well as in-person sessions and some carried out in partnership with CBOs. The training and resources, such as checklists and other resources for more information on specific hazards, should also provide tools for employers to use in hazard identification and control and in sharing information with workers.

#### **11. Develop a core worker training program.**

The AC recommends that Cal/OSHA partner with CBOs to develop a core worker training program for domestic workers and day laborers. This training program should be offered in various formats including in-person and online sessions for greater accessibility, and disseminated by various partners and multiple outreach mechanisms, including through CBOs (DWEOP model), Cal/OSHA, and other partners like local public health departments. Some AC members suggested that these trainings be offered with incentives and a certificate of completion that workers could show their employers.

Some AC members stated that employers should be responsible for ensuring workers complete the training, even if they do not provide it themselves. While some employer representatives agreed this could be a good idea, others expressed that this would be difficult for employers to enforce.

In addition, it is important that training be flexible and can be something that is provided on the 'day of' work, for example as workers begin a work shift. For example, in the context of a day laborer, training can focus on hazards most relevant to that day's tasks. For this purpose, short videos available in multiple languages would be effective.

The AC also recommends that the training program include different formats and languages to fulfill training requirements, including English, Spanish and Tagalog, and others as needed.

#### **12. Develop a broad campaign to reach workers and employers.**

The AC recommends that the Department of Industrial Relations develop a campaign

with the goal of “saturating public knowledge” and reaching workers and employers through multiple mechanisms (can look at other successful campaigns such as the heat illness prevention campaign). This campaign would promote employers’ role and responsibility, workers’ rights, and the industry-specific guidance to address and mitigate common hazards.

**13. Develop and promote resources to *supplement core health and safety training*.** The AC encourages the development and promotion of other materials that are useful resources in addressing workers’ health and safety. These include:

- A resource list of professionals who can provide guidance and training on the types of equipment needed by people with disabilities. This would facilitate greater understanding and access to a broad range of options for both the workers and employers.
- Sample written work agreements, which serve as a way to have a shared understanding of expectations, job duties and hours, and facilitate identification of hazards based on the tasks and duties listed. These agreements also serve to address hazards related to workload and pace of work, as workers would be able to review expectations and provide estimates and feedback on how much can realistically be accomplished within a certain amount of time. The organization Hand-in-Hand: The Domestic Workers’ Employers Network has templates for such agreements, which can be promoted and further disseminated.

Worker representatives on the AC emphasized the importance of providing guidance to employers on what types of tasks could fall within a typical scope of work and which should not be requested or assigned because they are too dangerous, unless the worker and employer have specific training and equipment.

## **Partnerships with Community Organizations**

*Recommendations in this category involve the importance of partnering with trusted community organizations in enforcement and educational efforts.*

### **Context of discussions:**

Given the unique structure of the industry and the barriers to rights enforcement and information, experienced by both workers and employers, the AC emphasizes the importance of partnering with community-based organizations (CBOs) that serve as “trusted messengers” and have demonstrated experience in this sector. The AC highlights the significant role these partnerships can play in the success of advancing and maintaining safe worksites and believes it is important to continue building upon and strengthening these relationships in order to ensure that workers and employers can overcome barriers to safer workplaces. Comments raised by AC members include that CBOs can:

- Facilitate access to workers and employers, and have experience identifying the appropriate formats and messages for training and communications
- Provide support to both workers and employers when problems arise, and facilitate a process (for example through the recommended mediation program – see Recommendation 3) to correct hazards while avoiding citations and penalties
- Draw on their networks and experience with other models around the country and globally (?) to address workers’ rights for household workers.

**Committee’s Recommendations:**

**14. Establish partnerships with community-based organizations that represent workers and employers.**

The AC recommends that Cal/OSHA establish partnerships with community-based organizations for the successful design and implementation of enforcement and educational programs. Ongoing consultation between Cal/OSHA and CBOs could include guidance on the focus and ways to target enforcement activities, the pilot mediation program described in Recommendation 3, and collaboration in outreach and education efforts. These relationships can help address problems before they reach the level of a citation, or worse an accident or injury on the job.

Additionally, the AC recommends maintaining the current or establishing a new Advisory Committee made up of workers, employers, and health and industry experts to monitor the progress of compliance and troubleshoot challenges.

**15. Expand the existing Domestic Worker and Employer Outreach and Education Program (DWEOP).**

The AC recommends that Cal/OSHA use the DWEOP model and expand it to include promotion of compliance measures and health and safety standards. DWEOP is an existing education and outreach program in the household services sector that is a collaboration between community-based organizations and DLSE to reach, educate, and train domestic workers and employers about the rights and protections domestic workers have under California labor law. The current model has been a successful partnership between DLSE and CBOs, and includes outreach, training, 1-1 consultations on labor violations, organizational capacity-building, and leadership development components.

In addition to worker-centered community organizations, it is important to engage others including Aging and Disability Resource Centers, Independent Living Centers, HiCap Counseling, Childcare Resource and Referral Organizations, and other organizations specifically designed to support with care access needs.

## **OTHER ISSUES**

The AC recognizes that there are issues that do not fall within the scope or criteria established for their work but are important to recognize as they affect the experience of domestic workers and day laborers with respect to health and safety overall. The AC wants to name these issues for future attention. These include:

- Access to workers' compensation benefits if injured on the job
- Expanded access to affordable medical care and a safety net for all
- Training and workforce development strategies to support workers in continuing to enhance their skills
- Protection from sexual harassment on the job and implementation of effective strategies to prevent it
- The need for long term care infrastructure and addressing issues of affordability when it comes to meeting the needs of California's older adults and people with disabilities
- Looking for ways to better understand who is a household services employer, possibly by Cal/OSHA working with other agencies within DIR (such as DLSE, Division of Workers' Compensation) to share household employer data and jointly strategize their outreach and education efforts

### **To come:**

Appendix A with list of presentations and reports made available to the AC