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by Kevin Rehwald

Rights for Caregivers

The Domestic Workers Bill of Rights is vital to ensuring that a marginalized and invisible population of workers has a voice in the law

The Domestic Worker Bill of Rights (DWBR) is a simple but powerful piece of remedial wage and hour legislation signed into law in 2013 as part of a nationwide, grassroots movement of caregivers, caregiver advocates, and other domestic workers who sought basic rights in employment.[1] Eight states, as well as the City of Seattle, have passed versions of the DWBR.[2] California's iteration of the DWBR remedied a claimed unfairness that existed under Wage Order 15,[3] viz., personal attendants were exempt from California's general overtime compensation mandate found in Labor Code Section 510.[4] A "personal attendant," as defined in the statute, is synonymous with an "in-home caregiver," which is defined as any individual working in a private household to feed, dress, or supervise an elderly or disabled person.[5] As such, prior to the DWBR, in-home caregivers were not entitled to overtime compensation while almost all other domestic workers—e.g., chefs and gardeners—had overtime rights.[6]

The overtime exemption for caregivers permitted families, as well as commercial placement agencies, to employ caregivers 24 hours per day, up to six days per week, and not suffer any economic disincentives in the form of premium overtime wages or other penalties. As evidenced by studies, this rule disproportionately impacted women of color, recent immigrants, and other low-income individuals who lacked alternative employment options.[7] The DWBR, with some exceptions, created overtime rights for in-home caregivers who work in excess of nine hours in a workday, or 45 hours in a workweek.[8]

Brief History of DWBR

Before the DWBR, caregivers were, and they continue to be, some of the hardest working and most vulnerable employees in the state. They still lack many other basic protections under the law.[9] As reports have cited, because they work in the homes of their employers, in-home caregivers are often isolated and invisible, making them uniquely susceptible to abuse.[10] According to recent data from the Bureau of Labor Statistics, in-home caregiving is the second fastest growing occupation in the nation, in high demand to meet the needs of an aging Baby Boom generation.[11] Their work not only benefits the elderly and disabled who receive the care, but, as one study concluded, subsidizes the lives and more lucrative careers of the care recipients' family members.[12] However, in 2017, the median annual salary for a home health aide—about $23,000—was barely above the federal poverty line for a family of three.[13] Another study found that 25 percent of California domestic workers are paid below the state minimum wage.[14] Perhaps most shocking of all, the same study found that 23 percent of domestic workers lacked secure access to food and often went hungry.[15]

Despite the growing need for private caregivers—and the substandard and occasionally appalling working conditions they face—the enactment of California's DWBR

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was met with considerable opposition. In 2012, former Governor Jerry Brown vetoed Assembly Bill 899, which was the state's first attempt at creating employment rights for domestic workers.[16] Brown's stated concern was the potential economic impact on households with elderly and disabled members.[17] The following year, however, he did sign AB 241 into law.

While a victory for domestic workers, AB 241 originally included a comprehensive set of employment rights for caregivers.[18] These rights included meal and rest breaks, the right to eight hours of uninterrupted sleep time, the right to sanitary sleeping accommodations, the right to prepare and eat the food of one's choosing, and paid rest days after one year of employment.[19] As it was passed, however, AB 241 only created a single right for caregivers, the right to overtime compensation.[20] Even that right was curtailed in the legislative process. Initially, AB 241's overtime compensation mandate was identical to the one found in Labor Code Section 510.[21] Section 510 requires overtime payments after eight hours in a day or 40 hours in a week, and double-time payments after 12 hours of work in a day.[22] The DWBR, on the other hand, only created overtime rights after nine hours in a day or 45 hours in a week.[23] There is no right to double-time pay, even if a caregiver works 24 hours, seven days per week. Moreover, the DWBR was initially passed as a temporary measure.[24] It included an express sunset clause that was set to repeal the bill by operation of law on January 1, 2017.[25] Thus, DWBR was not a robust "bill of rights" similar to legislation in other states, and its very existence remained tenuous even after it became law.

Following the initial opposition to the DWBR, both the legislature and the courts have started to recognize the vital importance of protecting in-home caregivers.[26] They have acted to defend and arguably expand caregiver rights under the DWBR. Thus, removing the temporary nature of caregiver overtime rights was the first step toward recognizing that caregivers should be on equal footing with other workers in the state. In 2016, the legislature passed Senate Bill 1015, which removed the express sunset clause that was set to repeal the DWBR on January 1, 2017.[27] With passage of SB 1015, overtime rights for caregivers became permanent in California.[28]

Sleep Time Pay

The second important step came when the legislature protected the right to sleep time compensation for in-home caregivers. When AB 241 was originally introduced, it contained two proposed sleep time regulations. The first regulation would have required employers of live-in and 24-hour caregivers to provide eight hours of uninterrupted sleep time each day, which could only be disturbed by an emergency.[29] An emergency was defined as an "unpredictable or unavoidable occurrence of a serious nature that occurs unexpectedly requiring immediate action."[30] As such, employers would not have been permitted to interrupt a caregiver's sleep with foreseeable work duties, like bathroom trips, diaper changes, or attending to a dementia patient who regularly gets up in the middle of the night. Under the second regulation, 24-hour caregivers and their employers would have been free to enter into written agreements to deduct sleep time from compensable hours worked.[31] If the parties did not enter a written agreement, the eight hours of sleep time was compensable.[32]

Ultimately, the legislature deleted both provisions before it passed the DWBR.[33] While the legislative history does not contain a clear answer as to why, these rules did not serve the needs of caregivers or their employers. Employers typically want overnight care due to expected and recurring needs, like the ones listed above. Also, householders usually prefer continuity of care from a single caregiver, especially in cases of Alzheimer's or dementia. Relying on a single caregiver for a 24-hour shift would have been impractical if employers were prohibited from interrupting that caregiver's sleep except in a defined emergency. Caregivers, on the other hand, would have faced pressure to sign sleep time waivers, thereby giving up significant overnight freedom without any compensation.

Regardless of why this bargain was made, the fact that it was made has clear implications for the sleep time rules that apply to in-home caregivers. According to the rules of statutory construction, the fact that the legislature considered, but ultimately rejected, the sleep time rules means that the DWBR should be interpreted without them.[34] Thus, domestic work employers and caregivers are not permitted to enter into written agreements to deduct sleep time from compensable hours worked, and employers can require that caregivers attend to expected and recurring incidents during the night. Existing precedent at the time of the DWBR's passage was that an on-site sleeping requirement is an exercise of employer control, sufficient to bring that time within the standard definition of compensable hours worked.[35] Thus, by deleting the proposed sleep time deduction, and not making any changes to Wage Order 15's definition of hours worked, the legislature manifested its intent to keep sleep time compensable in all cases where the employer imposes an on-site sleeping requirement.

Uncertainty Implication

The only uncertainty about this result came from the case of *Seymore v. Metson Marine, Inc.*, which in 2011 had held that there was an implied sleep time deduction that was based on a federal regulation found at Section 785.22 of the Code of Federal Regulations.[36] According to *Seymore,* this deduction applied to all industry-specific wage orders, even if that wage order did not contain express language allowing an employer to deduct sleep time.[37] Presumably, the legislature's specific consideration and rejection of a sleep time deduction for the DWBR would have trumped *Seymore's* more general rule of an implied sleep time deduction applicable to all wage orders. In fact, the sleep time deduction the legislature rejected for the DWBR was just a modified version of Section 785.22.[38] To add to the uncertainty, while the DWBR was pending before the legislature, the California Court of Appeal for the Second District decided *Mendiola v. CPS Security Solutions, Inc*.[39] This 2013 decision affirmed *Seymore's* conclusion that an implied sleep time deduction applied to all industry-specific wage orders.[40]

The California Supreme Court granted certiorari in *Mendiola,* overturned the Second District's holding and invalidated *Seymore's* implied sleep time deduction.[41] The court's conclusion was the result of a straightforward statutory analysis of the Industrial Welfare Commission (IWC) wage orders.[42] First, the court noted that the IWC wage orders are legislative regulations and, as such, subject to the standard rules of statutory construction.[43] Second, the court reiterated that the wage orders were created to protect employees from employer abuses and must be construed liberally to achieve that result.[44] The court then returned to its earlier decision in *Morillion v. Royal Packing Company*, in which it had already clarified that courts cannot import less protective federal standards for hours worked absent compelling evidence that the IWC intended that the federal rules apply.[45] *Mendiola* further stated that compelling evidence of IWC intent comes only in the form of express language in the applicable wage order that either is similar to the proposed federal regulation or explicitly incorporates the federal rules.[46] Accordingly, *Mendiola* held that there can be no sleep time deductions

that are implied from silence or implied from the mere existence of a federal regulation on point. Instead, a sleep time deduction must be rooted in the express definition of "hours worked" as contained in the applicable wage order.[47] In other words, if a wage order lacks an explicit sleep time deduction, courts cannot infer that one exists from silence, as *Seymore* had done.

After declaring the applicable rules of statutory construction for the wage orders, the court in *Mendiola* then applied those rules to Wage Order 4, which covered the overnight security guards in the case.[48] Because the definition of hours worked in Wage Order 4 does not contain an express sleep time deduction, the court held that none exists.[49] It is important to distinguish the two separate components of *Mendiola's* conclusion concerning sleep time. The first component is the court's decision as to the rules of statutory construction that govern the interpretation of the IWC wage orders. The second component is the court's application of those rules to Wage Order 4. While the court limited the result of its statutory analysis to Wage Order 4, the rules of statutory construction—including the rule that there are no implied sleep time deductions—apply to all wage orders. Moreover, because the construction of IWC wage orders is simply an extension of the standard rules governing the interpretation of statutes, *Mendiola*'s rules also apply with equal force when interpreting the Labor Code.

As it relates to Wage Order 15 and the DWBR, *Mendiola* removed the only remaining ambiguity regarding the compensability of sleep time.[50] Both Wage Order 15 and the DWBR are silent on the issue of sleep time deductions.[51] Because sleep time deductions cannot be implied by silence, no sleep time deductions apply to in-home caregivers. Instead, the long-standing rule that an on-site sleeping requirement gives rise to the right to compensation is the governing rule for in-home caregivers. This conclusion is consistent with the decision to reject an explicit sleep time deduction for caregivers when passing the DWBR.[52] While following with deductive necessity from *Mendiola's* rules of statutory construction, such policy still has not been tested by the courts. It is, however, the official position of California's Division of Labor Standards Enforcement (DLSE), as stated in the most current version of its *Policies and Interpretations Manual*.[53]

The logical consequences of *Mendiola* were also apparent to state Senator Jeff Stone of Riverside County, who quickly realized that the case was problematic for employers who wanted to employ caregivers overnight and not pay them.[54] In 2016, Stone introduced SB 1344, which would have added an express sleep time deduction directly into the DWBR.[55] This bill gave the legislature an opportunity to revisit and even reject its prior decision to make sleep time compensable. Also, if the legislature had originally intended to permit employers to deduct sleep time from compensable hours worked, it had a clear opportunity to make that intent known by passing SB 1344. However, the bill failed to pass. Undeterred, Stone introduced identical legislation the following year in the form of SB 482.[56] This measure died in committee. Thus, the legislature has had three opportunities to pass laws that would have allowed domestic work employers to deduct sleep time from compensable hours worked. It declined to do so on all three occasions, removing any doubt that the legislature intends that in-home caregivers be paid for sleep time.

Notably, SB 1344 and AB 1015 were both pending before the legislature in 2016. The fact that the legislature passed AB 1015 and made the DWBR permanent, but rejected SB 1344's sleep time deduction, demonstrates its current attitude toward protecting and expanding caregivers' rights.

Muddying the Waters

In January 2019, *Duffey v. Tender Heart Home Care Agency* became the first published decision to interpret the DWBR.[57] The plaintiff in that case, Nichelle Duffey, was an in-home caregiver who worked through a placement agency, Tender Heart.[58] Duffey sued Tender Heart for unpaid overtime wages under the DWBR.[59] Tender Heart moved for summary judgment arguing that Duffey was an independent contractor.[60] Tender Heart also argued that it was a non-employer placement agency pursuant to a statutory safe harbor contained in Labor Code Section 1451(c)(2)(B).[61] The trial court rejected the second argument but granted summary judgment on the ground that Duffey was an independent contractor.[62] In ruling that Duffey was an independent contractor, the trial court relied exclusively on the so-called "common law" test of *Borello & Sons*. Duffey appealed and argued that the statutory definition of the employment relationship, contained in the DWBR itself, was the applicable test for employment, not *Borello & Sons*.[63] Duffey further contended that she was an employee under that test.[64]

The court of appeal turned to *Dynamex Operations West, Inc. v. Superior Court* to answer the question of which standard controls the independent contractor analysis for in-home caregivers.[65] *Dynamex* is best known for its conclusion that a so-called "ABC test" governs the independent contractor analysis under the wage orders.[66] However, earlier in the *Dynamex* decision, the California Supreme Court "recognized that different standards [can] apply to different claims."[67] Instead of a single test applicable in every context, *Dynamex* concluded: "[S]tatutory purpose [is] the touchstone for deciding whether a particular category of workers should be considered employees rather than independent contractors for the purposes of social welfare legislation."[68] Relying on *Dynamex*, *Duffey* held that the trial court erred by applying the *Borello & Sons* test exclusively.[69] Instead, *Duffey* held: "[T]he distinction between independent contractor and employer for purposes of the DWBR must be determined by examining the language and purpose of the DWBR itself."[70]

The *Duffey* court analyzed the purpose of the DWBR by looking into the legis lative history of AB 241.[71] From this, it concluded that the DWBR's purpose is to protect a vulnerable and marginalized population of workers.[72] Thus, like other California labor laws, "the DWBR's provisions governing which domestic workers are covered by its overtime requirement must be liberally construed."[73] Following *Dynamex,* the *Duffey* court further held that "the hiring entity bears the burden of establishing a domestic worker is an independent contractor rather than an employee."[74] Thus, similar to general wage and hour law in California, a domestic worker is presumed to be an employee and it is up to the hiring party to prove otherwise.

Regarding the language of the statute, the court initially recognized that the DWBR contains express definitions of a "domestic work employee" and a "domestic work employer."[75] The court then correctly observed that the DWBR's definition of a "domestic work employer" contains one of the three alternative *Martinez v. Combs* formulations verbatim.[76] Specifically, and in pertinent part, the DWBR defines a domestic work employer as any individual who exercises control over the wages, hours, or working conditions of a domestic work employee, which is language that appears in the wage orders.[77] However, *Duffey* also pointed out two places in which the DWBR diverges from the wage orders. First, the DWBR expressly includes corporate officers within its definition of an employer, whereas the wage orders do not permit individual liability for corporate agents.[78] Second, the DWBR's definition omits the "suffer or permits" language that *Dynamex* analyzed.[79]

Because the DWBR omits the "suffer or permit" standard, but includes the *Martinez* language, *Duffey* patterned its analysis on *Martinez* instead of *Dynamex*. However, *Martinez* was a joint-employment case and there was no dispute that the workers there were employees. As such, in *Martinez*, the California Supreme Court rightly focused on the terms "employ" and "employer" from Wage Order 4. However, the question facing *Duffey* was the *Dynamex* question of who qualifies as an employee, not who qualifies as a joint employer. Thus, the DWBR's express definition of the term "domestic work employee" was probably a better starting place for this analysis than the definition of "domestic work employer." However, other than noting that it existed, *Duffey* did not rely on, or even analyze, the statutory definition of a "domestic work employee."

Although *Duffey* may have framed the issue imperfectly, it reached the correct conclusions regarding joint employment under the DWBR. Specifically, the court cited the settled rule of statutory construction that the legislature is deemed to be aware of existing statutes and judicial interpretations of those statutes when enacting legislation.[80] Therefore, courts should presume that when the legislature uses well-defined terms, it intends to incorporate the established meaning of those terms to create a consistent body of law.[81] Because the DWBR uses the well-defined *Martinez* language, *Duffey* reasoned that the legislature intended to incorporate the *Martinez* rules of joint employment.[82] According to *Duffey*, the legislature specifically intended to include the rule that both staffing agencies and end users of labor constitute joint employers, provided that both exercise some control over wages, hours, or working conditions.[83] On this point, the DWBR actually expanded the definition of an employer found in all of the wage orders. Under the DWBR, anyone who exercises control over a caregiver is an employer, even if that control is exercised through a third-party employer, a staffing agency, a temporary agency, or any similar entity.

Next, the court held that the DWBR's definition of a domestic work employer, which also includes, but does not define, the phrase "to employ," also incorporates the common-law test as an alternative to the *Martinez* control standard.[84] Thus, *Duffey* stated that "the DWBR contains two alternative definitions of the employment for purposes of its provisions: (1) when the hiring entity exercises control over the wages, hours or working conditions of a domestic worker, or (2) when a common law employment relationship has been formed."[85] This is essentially a modified version of the three alternative tests under *Martinez*, omitting the suffer or permit standard. The *Duffey* court's statutory analysis here appears to be sound, but it may be misplaced. As such, *Duffey* probably states the correct test for joint employment under the DWBR, even though that issue was not properly before the court.

The court next buttressed its rule of joint employment for agencies and householders by analyzing the structure of the DWBR.[86] It noted that the legislature included a safe harbor provision for staffing agencies that comply with all requirements of Civil Code Section 1812.5095.[87] Agencies that comply are deemed to be non-employers under the statute. Conversely, the existence of the safe-harbor provision was itself evidence that the legislature intended that all non-complying agencies would be liable as employers.[88]

Liability

While the issue of liability for care recipients and their households was not before the court in *Duffey*, it is worth pointing out similar structural features of the DWBR that apply to them. The DWBR contains no express exemptions from employer liability for householders or care recipients.[89] This, coupled with the expanded joint-employment language, shows the legislature likely intended care recipients to be liable in every circumstance. Moreover, the DWBR's definition of employer also states that someone is an employer even if the care is arranged through an agent or a third-party staffing agency.[90] Thus, care recipients cannot evade liability by hiring an agency. They also remain liable if the care is arranged through an agent such as a trustee or legally appointed guardian, or through one of the care recipient's adult children. As it relates to family members of the care recipient, the DWBR exempts specified family members from qualifying as employees.[91] However, the DWBR provides no similar exemption from employer liability for the care recipient's family members. This distinction shows that the legislature knew how to exempt family members when it wanted to and chose not to exempt them from joint-employer liability. Thus, family members of care recipients are also joint employers any time they exercise control over a caregiver's wages, hours, or working conditions. This happens frequently in care relationships.

The *Duffey* court concluded its analysis by applying its tests to Tender Heart. It found that there were disputes of fact as to whether Tender Heart exercised control over the plaintiff's wages and other aspects of her engagement.[92] Moreover, since Tender Heart did not comply with all requirements of Section 1812.5095, the safe harbor did not exempt it from employer liability as a matter of law.[93] Thus, the court overturned summary judgment and remanded the case.

Duffey is important because it interpreted the DWBR expansively, with an eye toward protecting caregivers. It also engaged in sound statutory analysis of the joint-employment issue. However, the decision combined two tests—the independent contractor test and the joint-employment test—that could have been more clearly separated. Instead, the structure and language of the DWBR suggest that the legislature intended these two tests to be distinct.

Specifically, the legislature provided separate definitions of "domestic work employer" and "domestic work employee," indicating that each definition should serve an independent function. Additionally, the fact that the definition of "domestic work employer" contains two of the three alternative *Martinez* tests indicates that the legislature crafted the definition specifically to address joint employment. Conversely, when creating the definition of a "domestic work employee," the legislature departed substantially from the existing wage order definition. This is critical because the wage orders' definition of "employee" carries very little independent meaning: "employee" is defined as anyone who "is employed by an employer."[94] As such, the issues of who qualifies as an employee under the wage orders is dependent on the definition of the term "employer." The DWBR, on the other hand, presents a self-contained definition of "domestic work employee" that does not rely on the terms "employ" or "employer" for its meaning. Accordingly, the fact that *Duffey* analyzed the term "domestic work employer" and completely ignored the DWBR's unique definition of "domestic work employee" suggests that this omission was incorrect. In fact, *Duffey*'s approach appears to have made the DWBR's definition of a "domestic work employee" superfluous, which may itself violate the rules of statutory construction. Moreover, the California Supreme Court's approach in *Morillion*, *Mendiola*, and *Dynamex* seems to require that the independent contractor analysis give due weight, if not outright primacy, to the DWBR's express definition of a "domestic work employee."

The DWBR defines "domestic work employee" to mean "an individual who

performs domestic work and includes live-in domestic work employees and personal attendants."[95] "Domestic work" is defined as "services related to the care of persons in private homes."[96] This definition further states: "Domestic work occupations include…caregivers of people with disability, sick, convalescing or elderly persons…."[97] In other words, under the DWBR, in-home caregivers perform domestic work, and anyone who performs domestic work is defined to be a domestic work employee. This language suggests that all in-home caregivers will meet the statutory test for employment, and as such, probably cannot be classified as independent contractors. Moreover, the DWBR's clear and all-encompassing definition of a "domestic work employee" exists nowhere else in California wage and hour law, which itself demonstrates the legislature's intent to create a standalone test for employment for in-home caregivers.

Because the purpose of the DWBR was to provide a marginalized segment of workers with overtime rights, the law goes right to the heart of the issue and would now appear to provide a bright-line rule that in-home caregivers are employees. As such, there may be no need for multipronged, fact-intensive discussions that rely on decades-old cases under the DWBR. Instead, in-home caregivers would simply be employees as mandated by the legislature. A contrary conclusion would allow householders and commercial agencies to evade paying overtime to caregivers, which would be at odds with the legislative history of the DWBR, as well as the liberal construction mandated under *Duffey*.

The right to overtime compensation for caregivers was the result of several hard-fought battles in the courts and in the legislature. While caregiver rights are still limited, the permanent right to overtime compensation created by the DWBR is vital to ensuring that a marginalized and invisible population of workers has a voice in the law. ■

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[1] Lab. Code §§1450-54.

[2] *See* Bryce Covert, *The New Federal Domestic Workers Bill of Rights Would Remedy Decades of Injustice*, The Nation, Nov. 29, 2018, *available at* https://www.thenation.com/article/federal-domestic-workers-bill-of-rights-harris-jayapal-labor.

[3] *See* Assembly Committee on Labor and Employment, Domestic Worker Employees: Labor Standards 2013-2014 Reg. Sess., at 5 (Apr. 22, 2013) [hereinafter Apr. 22, 2013, Report]; Wage Order 15 has been codified at Cal. Code Regs. tit. 8, §11050.

[4] Cal. Code Regs. tit. 8, §11050(1)(B), 2(J); Lab. Code §510 (a).

[5] Lab. Code §1451(d); *see also See* Guerrero v. Superior Ct., 213 Cal. App. 4th 912, 952-53 (2013) (interpreting Wage Order 15's definition of "personal attendant").

[6] *Id.*

[7] Mujeres Unidas y Activas, Day Labor Program Women's Collective of La Raza Centro Legal, Behind Closed Doors: Working Conditions of California's Household Workers, Data Center (March 2007) [hereinafter Behind Closed Doors].

[8] Lab. Code §1454.

[9] Behind Closed Doors, *supra* note 7, at 3-6.

[10] Apr. 22, 2013 Report, *supra* note 3, at 3.

[11] Alexia Fernandez Campbell, *Domestic Workers Are Using Roma's Oscar Buzz to Demand Equal Rights Under U.S. Law*, Vox (Feb. 26, 2019), https://www.vox.com/policy-and-politics/2019/2/26/18239803/roma-cuaron-domestic-workers-bill-of-rights (citing U.S. Bureau of Labor Statistics, Employment Projections, Fastest Growing Occupations, *available at* https://www.bls.gov/emp/tables/fastest-growing-occupations.htm#ep_table_103.f.1 (last modified April 12, 2019)) [hereinafter Campbell].

[12] Behind Closed Doors, *supra* note 3, at 2.

[13] Campbell, *supra* note 11.

[14] Nat'l Domestic Workers Alliance et al., Home Truths: Domestic Workers in California 2 (2013), *available at* http://www.datacenter.org/wp-content/uploads/HomeTruths.pdf [hereinafter Home Truths]. The California Senate relied on this study when it decided to make the DWBR permanent. *See* Domestic Worker Bill of Rights: Assembly Committee on Labor and Employment, SB 1015, 2015-2016 Reg. Sess. (June 22, 2016) (Comment of Tom Ammiano).

[15] Home Truths, *supra* note 14, at 2.

[16] Sheila Bapat, *In Move That Stunned Advocates, Jerry Brown Vetoes Domestic Workers' Bill of Rights*, Rewire.News (Dec. 7, 2012), https://rewire.news/article/2012/10/01/love-and-strategy-can-conquer-all-ca-governor-vetoes-domestic-workers-bill-rights.

[17] *Id.*

[18] Apr. 22, 2013 Report, *supra* note 3, at 1-3.

[19] *Id.*

[20] *See* Lab. Code §§1454.

[21] *See* Apr. 22, 2013 Report, *supra* note 3, at 2-3.

[22] Lab. Code §510(a).

[23] *Id.* §1454.

[24] *See* A.B. 241, 2013 Assembly, 2013-2014 Reg. Sess. (Cal. 2013).

[25] *Id.*

[26] *See, e.g.*, Duffey v. Tender Heart Home Care Agency, LLC, 31 Cal. App. 5th 232, 248-50 (2019) (holding that the DWBR must be liberally construed to protect domestic workers).

[27] S.B. 1015, 2016 Sen., 2015-2016 Reg. Sess. (Cal. 2016).

[28] *Id.*

[29] *See* A.B. 241, 2013 Assemb., 2015-2016 Reg. Sess. (Cal. 2016) (as introduced Feb. 6, 2013).

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *See* Lab. Code §§1450-54.

[34] See Murphy v. Kenneth Cole Prods., Inc., 40 Cal. 4th 1094, 1108-09 (Cal. 2007) (citing Wilson v. City of Laguna Beach, 6 Cal. App. 4th 643, 555 (1992)) ("The rejection of a specific provision contained in an act as originally introduced is 'most persuasive' that the act should not be interpreted to include what was left out.").

[35] *See* Seymore v. Metson Marine, Inc., 194 Cal. App. 4th 361, 365 (2011) *overruled by* Mendiola v. CPS Security Solutions, Inc., 60 Cal. 4th 833, 845-46 (2015); Aguilar v. Ass'n of Retarded Citizens, 234 Cal. App. 3d 21, 30 (1991).

[36] Seymore, 194 Cal. App. 4th at 382 (citing 29 C.F.R. §785.22).

[37] *Id.*

[38] *See* Apr. 22, 2013 Report, *supra* note 3, at 2.

[39] Mendiola v. CPS Security Solutions, Inc., 159 Cal. Rptr. 3d 159 (2013), *rev'd*, 60 Cal. 4th 833 (2015).

[40] Mendiola, 159 Cal. Rptr. 3d at 175-76 (2013).

[41] Mendiola, 60 Cal. 4th at 845-46 (2015).

[42] *See generally Id.*

[43] *Id.* at 838-40.

[44] *Id.*

[45] *See* Morillion v. Royal Packing Co., 22 Cal. 4th 575, 592 (Cal. 2000) ("Absent convincing evidence of the IWC's intent to adopt the federal standard for determining whether time…is compensable under state law, we decline to import any federal standard, which expressly eliminates protections to employees, by implication").

[46] Mendiola, 60 Cal. 4th at 843.

[47] *Id.*

[48] *Id.* at 843-49.

[49] *Id.* at 847-49.

[50] *Id.* at 3847-49.

[51] *See* Cal. Code Regs. tit. 8, §11050 (2001); Lab. Code §§1450-1454 (2014).

[52] *See* S.B. 1344, 2016 Sen., 2015-2016 Reg. Sess. (Cal. 2016); S.B. 482, 2017 Sen., 2017-2018 Reg. Sess. (Cal. 2017).

[53] The DLSE Enforcement Policies and Interpretations Manual, Dep't of Labor Standards Enforcement 46.4 (2017).

[54] *See* Cal. S.B. 1344, *supra* note 52.

[55] *Id.*

[56] *See* Cal. S.B. 482, *supra* note 52.

[57] Duffey v. Tender Heart Home Care Agency, LLC, 31 Cal. App. 5th 232 (2019).

[58] *Id.* at 238.

[59] *Id.*

[60] *Id.*

[61] *Id.* at 258-59.

[62] *Id.* at 240.

[63] *Id.*

[64] *Id.*

[65] *Id.* at 242-44; *see also* Dynamex Operations W., Inc. v. Superior Ct., 4 Cal. 5th 903 (2018).

[66] Dynamex, 4 Cal. 5th at 917.

[67] Garcia v. Border Transp. Group, LLC, 28 Cal. App. 5th 558, 570 (2018).

[68] Dynamex, 4 Cal. 5th at 935.

[69] Duffey, 31 Cal. App. 5th at 245.

[70] *Id.*

[71] *Id.* at 248-50.

[72] *Id.* at 249-50.

[73] *Id.* at 50.

[74] *Id.*

[75] *Id.* at 245-46.

[76] *Id.* at 246.

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] *Id.* at 247.

[81] *See* People v. Scott, 58 Cal. 4th 1415, 1424 (2014)

[82] Duffey, 31 Cal. App. 5th at 247.

[83] *Id.*

[84] *Id.* at 248.

[85] *Id.* at 250.

[86] *Id.* at 258-61.

[87] Lab. Code §1451(c)(2)(B).

[88] Duffey, 31 Cal. App. 5th at 260-61.

[89] Lab. Code §1451(c)(2) (stating the statutory exemptions from employer liability).

[90] Lab. Code §1451(c)(1).

[91] Lab. Code §1451(b)(2)(B).

[92] Duffey, 31 Cal. App. 5th at 258.

[93] *Id.* at 260-61.

[94] *See* Cal. Code Regs. tit. 8, §11050.

[95] Lab. Code §1451(b)(1).

[96] *Id.*

[97] *Id.*