

AMENDED IN ASSEMBLY MAY 18, 2023

AMENDED IN ASSEMBLY MARCH 28, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1484

**Introduced by Assembly Member Zbur
(Coauthors: Assembly Members Haney and Ortega)**

February 17, 2023

An act to add Section 3507.7 to the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1484, as amended, Zbur. Temporary public employees.

(1) Existing law, the Meyers-Milias-Brown Act (act), authorizes local public employees, as defined, to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on matters of labor relations. Existing law generally requires that the scope of representation under the act include all matters relating to employment conditions and employer-employee relations, while excepting the consideration of the merits, necessity, or organization of any service or activity provided by law or executive order. Existing law states that the Legislature finds and declares that the duties and responsibilities of local agency employer representatives under the act are substantially similar to the duties and responsibilities required under existing collective bargaining enforcement procedures and therefore the costs incurred by the local agency employer representatives in performing those duties and responsibilities under that act are not reimbursable as state-mandated costs.

This bill would impose specified requirements with respect to the temporary employees, as defined, of a public employer who have been hired to perform the same or similar type of work that is performed by permanent employees represented by a recognized employee organization. In this regard the bill would require those temporary employees to be automatically included in the same bargaining unit as the permanent employees, as specified, upon the request of the recognized employee organization. The bill would also require a public employer to, upon hire, provide each temporary employee with their job description, wage rates, and eligibility for benefits, anticipated length of employment, and procedures to apply for open, permanent positions. By imposing new duties on local agencies that employ temporary employees, the bill would impose a state-mandated local program. The bill would require complaints alleging a violation of its provisions to be processed as unfair practice charges under the act. The bill would additionally include the same findings and declarations as set forth above.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement shall be made pursuant to these statutory provisions for costs mandated by the state pursuant to this act, but would recognize that a local agency or school district may pursue any available remedies to seek reimbursement for these costs.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Local governments have increasingly hired temporary
- 4 employees to provide public services.
- 5 (b) Temporary employees are disproportionately women and
- 6 people of color, and the lesser rights of temporary employees
- 7 exacerbate race and gender inequity in public employment.
- 8 (c) There is a statewide interest in ensuring that temporary
- 9 employees are protected by state laws providing for fair labor

1 relations and that the increasing use of temporary employees does
2 not undermine public employee labor relations.

3 (d) Section 2 of this act is intended to apply to all public
4 employers covered by the Meyers-Milias-Brown Act (Chapter 10
5 (commencing with Section 3500) of Division 4 of Title 1 of the
6 Government Code).

7 SEC. 2. Section 3507.7 is added to the Government Code, to
8 read:

9 3507.7. (a) For purposes of this section, “temporary employee”
10 means a temporary employee, casual employee, seasonal employee,
11 periodic employee, extra-help employee, relief employee,
12 limited-term employee, per diem employee, and any other public
13 employee who has not been hired for a permanent position.

14 (b) Notwithstanding any other law, the following requirements
15 apply with respect to temporary employees of a public employer
16 who have been hired to perform the same or similar type of work
17 that is performed by permanent employees represented by a
18 recognized employee organization:

19 (1) Upon the request of the recognized employee organization
20 to the public employer, the following apply:

21 (A) Temporary employees shall be automatically included in
22 the same bargaining unit as the permanent employees if temporary
23 employees are not presently within the unit definition. *This*
24 *subparagraph does not require the same terms and conditions of*
25 *employment for permanent and temporary employees.*

26 (B) The terms and conditions of employment of permanent and
27 temporary employees in the same bargaining unit shall be
28 addressed in a single memorandum of understanding. This
29 subparagraph shall apply upon the expiration of the existing
30 memoranda of understanding that covers the permanent and
31 temporary employees, unless the recognized employee organization
32 and public employer agree to an earlier date. *This subparagraph*
33 *does not require the same terms and conditions of employment for*
34 *permanent and temporary employees.*

35 (2) The public employer shall provide, upon hire, each
36 temporary employee with their job description, wage rates, and
37 eligibility for benefits, anticipated length of employment, and
38 procedures to apply for open, permanent positions. The same
39 information shall be provided to the recognized employee
40 organization, along with the employee information required under

1 Section 3558 for the temporary employee, within five business
2 days of hiring the temporary employee.

3 (3) The public employer shall include, when providing the
4 employee organization with the employee information required
5 by Section 3558, the anticipated end date of employment for each
6 temporary employee or actual end date if the temporary employee
7 has been released from service since the last list was provided.

8 (4) (A) Whether a temporary employee who subsequently
9 obtains permanent employment receives seniority or other credit
10 or benefit for their time spent in temporary employment shall be
11 a matter within the scope of representation in bargaining units that
12 include permanent employees.

13 (B) Whether a temporary employee receives a hiring preference
14 over external candidates for permanent positions shall be a matter
15 within the scope of representation in bargaining units that include
16 temporary employees.

17 (C) This paragraph shall apply to the extent that the
18 memorandum of understanding may lawfully address these
19 subjects. This paragraph shall be effective with respect to any
20 memorandum of understanding covering permanent employees
21 entered into after the effective date of this section.

22 (5) Unless a memorandum of understanding that covers both
23 temporary and permanent employees expressly refers to this
24 paragraph and waives its requirements, temporary employees in
25 that bargaining unit who have been employed for more than 30
26 calendar days shall be entitled to use any grievance procedure in
27 the memorandum of understanding to challenge any discipline
28 without cause. This paragraph shall be effective only with respect
29 to a memorandum of understanding entered into after the effective
30 date of this section. This paragraph does not require public
31 employers to retain temporary employees whose services are no
32 longer needed, to require pretermination hearings before the
33 dismissal of temporary employees, or to prevent a public employer
34 from replacing temporary employees with employees hired for
35 permanent positions.

36 (c) Complaints alleging violations of this section shall be
37 processed as unfair practice charges pursuant to Section 3509.

38 (d) *Nothing in this section supersedes or provides any exemption*
39 *to the restrictions or requirements related to individuals working*
40 *after retirement from a public retirement system.*

1 ~~(d)~~

2 (e) The Legislature finds and declares that the duties and
3 responsibilities of local agency employer representatives under
4 this section are substantially similar to the duties and
5 responsibilities required under existing collective bargaining
6 enforcement procedures and therefore, the costs incurred by the
7 local agency employer representatives in performing those duties
8 and responsibilities under this section are not reimbursable as
9 state-mandated costs.

10 SEC. 3. No reimbursement shall be made pursuant to Part 7
11 (commencing with Section 17500) of Division 4 of Title 2 of the
12 Government Code for costs mandated by the state pursuant to this
13 act. It is recognized, however, that a local agency or school district
14 may pursue any remedies to obtain reimbursement available to it
15 under Part 7 (commencing with Section 17500) and any other law.

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SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

AB 1484 (Zbur) - Temporary public employees

Version: May 18, 2023

Urgency: No

Hearing Date: August 14, 2023

Policy Vote: L., P.E. & R. 4 - 1

Mandate: Yes

Consultant: Robert Ingenito

Bill Summary: AB 1484 would require inclusion of temporary employees in the same bargaining unit as permanent employees upon request of the recognized employee organization to a local public employer.

Fiscal Impact:

- The Public Employment Relations Board (PERB) indicates that it would incur annual General Fund costs of up to \$236,000 to implement the provisions of the bill.
- By increasing the duties of local public employers, as specified, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). The magnitude is unknown, but potentially in excess of \$50,000 annually.

Background: Temporary employees are employees who have not been hired for a permanent position. Although these workers are classified as temporary, these employees are often rehired by employers year after year, suggesting that their need is permanent. Temporary employees may be excluded from union contracts that cover permanent workers doing similar work and often do not receive the same wages, rights, or benefits a permanent employees.

In recent years, the proportionate number of temporary employees to permanent employees has reportedly increased. For example, the author's office cites estimates that temporary employees account for 20 percent of San Mateo County's workforce, and 40 percent in Oakland.

PERB is a quasi-judicial administrative agency charged with administering the collective bargaining statutes covering employees of California's public schools, colleges, and universities, employees of the State of California, employees of California local public agencies (cities, counties and special districts), trial court employees, trial court interpreters, supervisory employees of the Los Angeles County Metropolitan Transportation Authority, Judicial Council employees, Orange County Transportation Authority employees, Bay Area Rapid Transit District (BART) employees, Sacramento Regional Transit District employees, Santa Cruz Metropolitan Transit District employees, Santa Clara Valley Transportation Authority employees, and child care providers who participate in a state-funded early care and education program.

Proposed Law: This bill would, among other things, do the following:

- Apply the following requirements to temporary employees (as defined) of a public employer who have been hired to perform the same or similar type of work that is performed by permanent employees represented by a recognized employee organization:
 - Upon the request of the recognized employee organization to the public employer, the bill would require:
 - Temporary employees to be automatically included in the same bargaining unit as the permanent employees if temporary employees are not presently within the unit definition. This subparagraph does not require the same terms and conditions of employment for permanent and temporary employees.
 - The terms and conditions of employment of permanent and temporary employees in the same bargaining unit to be addressed in a single memorandum of understanding. This subparagraph shall apply upon the expiration of the existing memoranda of understanding that covers the permanent and temporary employees, unless the recognized employee organization and public employer agree to an earlier date. This subparagraph does not require the same terms and conditions of employment for permanent and temporary employees.
 - Require the public employer to provide, upon hire, each temporary employee with their job description, wage rates, and eligibility for benefits, anticipated length of employment, and procedures to apply for open, permanent positions. The same information shall be provided to the recognized employee organization, as specified.
 - Require the public employer to include, when providing the employee organization with the employee information required by PECC, the anticipated end date of employment for each temporary employee or actual end date if the temporary employee has been released from service since the last list was provided.
 - Require that the scope of representation in bargaining units:
 - That include permanent employees includes the matter of whether a temporary employee who subsequently obtains permanent employment receives seniority or other credit or benefit for their time spent in temporary employment shall be a matter within the scope of representation.
 - That include temporary employees includes the matter of whether a temporary employee receives a hiring preference over external candidates for permanent positions.

- Are not subject to the above two matters unless the memorandum of understanding may lawfully address those subjects.
- Apply to any memorandum of understanding covering permanent employees entered into after the effective date of this section.
- Grant temporary employees in a bargaining unit who have been employed for more than 30 calendar days use of any grievance procedure in a memorandum of understanding that covers both temporary and permanent employees to challenge any discipline without cause unless the memorandum of understanding expressly refers to this paragraph and waives its requirements.
 - This provision is effective only with respect to a memorandum of understanding entered into after the effective date of this section.
 - This provision does not require public employers to retain temporary employees whose services are no longer needed, to require pretermination hearings before the dismissal of temporary employees, or to prevent a public employer from replacing temporary employees with employees hired for permanent positions.
- Require that complaints alleging violations of this bill's provision be processed as unfair practice charges with PERB pursuant to its powers under the Myers-Milias-Brown Act (MMBA).

Related Legislation: AB 1752 (Santiago, 2022) would have required community college districts (CCD) to adopt terms of compensation for part-time faculty of at least the same ratio to the full-time faculty for comparable duties to ensure pay parity for part-time faculty and would have required districts that do not have collective bargaining agreements with their part-time employees to bargain with them, as specified. The bill was held under submission on the Suspense File of the Assembly Appropriations Committee.

Staff Comments: Staff notes that while the bill has been crafted in an effort to eliminate the potential of creating a new mandate, the Commission on State Mandates cites two decisions where the courts have determined that the evidence contradicts what is in statute. For example, *Carmel Valley Fire Protection Dist v. State of California* (1987) 190 Cal. App. 3rd 521, 541 notes: *As a general defense against the order to reimburse, State insists that the Legislature itself concluded that the claimed costs are not reimbursable. This determination took the combined form of disclaimers, findings, and budget control language. State interprets this self-serving legislation, as well as the legislative and gubernatorial deletions, as forever sweeping away State's obligation to reimburse the state-mandated costs at issue. Consequently, any order that ignores these restrictions on payments would amount to a court-ordered appropriation. As we shall conclude, these efforts are merely transparent attempts to do indirectly that which cannot lawfully be done directly.*

Also, Long Beach Unified School District v. State of California (1990) 225 Cal App. 3rd 155, 184 notes: *Having concluded that certain appropriations are generally available to reimburse Long Beach Unified School District (LBUSD), we turn to an additional issue raised by the State: that the "finding" by the Legislature that the Executive Order does not impose a "state mandated local program" prevents reimbursement. Unsupported legislative disclaimers are insufficient to defeat reimbursement. (Carmel Valley.) As discussed, LBUSD, pursuant to Section 6, has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right. (Hale v. Bohannon (1952) 38 Cal. 2nd 458, 471 [2441 P. 2d 4].*

As noted above, this bill would result in labor organizations filing unfair practice charges with PERB where the public agency (1) refuses to move temporary employees into a bargaining unit after a request by the exclusive representative, (2) fails to provide information about its temporary employees, or (3) refuses to bargain in good faith over terms and conditions for temporary employees. Because public agencies must move temporary employees into an established bargaining unit only if they perform the "same or similar" work as the permanent employees, PERB notes that it is likely that disputes would arise involving whether the duties are the same or similar. Similarly, disputes would arise about whether a temporary employee is a public employee or employed by a staffing agency. PERB further notes that questions that concern the identity of the employer are fact intensive and often legally complex, potentially resulting in protracted adjudication of these disputes.

PERB anticipates that other ambiguities in the language would result in unfair practice charges as well. For example, it is unclear whether the public agency must immediately bargain over terms and conditions for temporary employees where the current MOU does not cover them. Overall, these disputes would likely result in an increase of 20-25 charges per year. PERB estimates that, on average, each unfair practice case costs about \$9,447 to adjudicate. Therefore, this bill would increase PERB's annual costs from \$189,000 to \$236,000.

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