

Oppose AB 889

This Does NOT Mirror The New York Bill

AB 889 is fashioned after a domestic worker's bill of rights passed in 2010 in New York. That law specifically excludes (i) individuals working on a "casual basis," (ii) individuals providing companionship services who are employed by an employer or agency other than the family, and (iii) relatives (through blood, marriage or adoption) of the employer. AB 889 does not exclude personal attendants employed by third party employers, but does exclude IHSS and family caregivers.

False Assumptions About The Home Care Industry

AB 889 presumes that employees working for third party companies are being mistreated underpaid, not insured and working in deplorable conditions. Third party employers who employ personal attendants are already required to pay minimum wage, provide workers compensation insurance coverage, ensure safe working conditions, and comply with other applicable labor laws and regulations, and thus should be exempted from this bill.

Undue And Unprecedented Employer Mandates

No other industry is mandated to provide paid vacations to their employees. This requirement will create additional expense which will ultimately result in an increase in the cost of care to consumers, who are often elderly, frail, and living on fixed incomes.

Protect The Personal Attendant Exemption

The elimination of the overtime exemption for personal attendants will adversely impact both home care workers and the seniors they serve. Personal attendants under IWC Wage Order 15, when properly classified, are required to be paid at least minimum wage for all hours worked, but are exempt from overtime pay. This critical exemption strikes a balance between the cost of care and pay for the employee. Personal attendants are usually subject to significant down time during work hours, as the needs of one individual in the home are generally sporadic. During such times, these workers often have the freedom to pursue personal activities and even sleep, yet they are still paid as if on duty. Requiring additional overtime pay would instead decrease their employment opportunities as employers limit their weekly hours to 40 or less to avoid the overtime expense. Additionally, seniors who require more than 8 hours of care daily will be faced with the choice of paying a premium for their care or having several workers in and out of their home throughout the course of the day - which can be very disruptive and confusing for those with memory impairment.

Increased Liabilities For Employers

The Worker's Compensation provision in AB 889 presumes that "any injury to the employee was a direct result and grew out of the negligence of the employer, and the burden of proof is upon the employer, to rebut the presumption of negligence. This stance opens up a Pandora's Box of liability for the employer and will further increase costs of worker's compensation insurance.

Impact On The Underground Economy

Home care is the one of fastest growing industries in the state. There is currently already a robust underground economy in home care where neither the consumer nor the worker have any protections against financial, physical, or emotional abuse. The underground economy has no oversight, taxes are not paid, liability is not covered, and it often leads to one side taking advantage of the other. Each component of AB 889 will introduce an additional cost burden for employers of domestic workers, which will widen the gap between the cost of care provided by legitimate companies and privately hired workers, and will ultimately lead to decreased payroll tax revenue as more families hire privately and simply pay cash directly to workers. Ironically, as a result of the growth of the underground economy, the problems AB 899 intends to address will only worsen.

