

August 6, 2013

Honorable Kevin de León
California Senate
State Capitol 2206
Sacramento, CA 95814

AB 241: Oppose Unless Amended

Dear Senator de León:

The Disability Rights Education and Defense Fund (DREDF) is a national law and policy center that advances the civil and human rights of people with disabilities through legal advocacy, training, education, and public policy and legislative development. As disability advocates and as members of the disability community, we highly value the personal assistants who work with us and enable so many of us to live as independently as possible in our communities. We agree that personal assistants and other domestic workers should enjoy employment protections and benefits such as overtime and decent and sanitary sleep conditions if overnight stays are required. Nonetheless, we also remain profoundly concerned that, as drafted, AB 241 will have a negative impact on people with disabilities who, as a constituent group, are as economically and socially marginalized as domestic workers, equally at risk of exploitation and abuse, and who continually live with the unique threat of medically unnecessary institutionalization and segregation.

This position is consistent with the position that DREDF has taken in the past with regard to AB 889, the predecessor bill to AB 241. We recognize and appreciate the work of Assemblyman Ammiano and his staff in AB 241 to address some of the concerns raised by the disability community in regard to that earlier bill. For example, AB 241 attempts to address the situation of an employer with a disability who requires personal attendant services while travelling out of town. Our core concern, however, remains. We do not know how employers with disabilities who rely heavily on personal assistance services, and who pay substantial portions of their fixed total income towards personal assistance and necessary health-related services (e.g., 40% or higher) will be able to sustain an independent life in the community if they become directly responsible for paying overtime. Those people with disabilities will face myriad unpalatable "choices": personal assistance hours vs. food or rent or medications, reducing the hours of long-time trusted personal assistants who want and need the hours in order to hire strangers, hiring unqualified or incompatible individuals in rural or market situations where personal assistants are rare, or giving up gainful employment and spending down assets in order to qualify for Medicaid and public personal assistance hours. Once again, we forcefully assert the twin reality that employers with disabilities do not hire personal assistants as an option or a luxury, and the vast majority of people with disabilities already live at their financial limits.

People with disabilities across the country, including those in California who are Medi-Cal's In-Home Supportive Services (IHSS) consumers or who pay privately, are already struggling to deal with the impact of changes to the federal Labor Standards Act that have been proposed by the Department of Labor (DOL). The anticipated federal extension of weekly overtime protections to "companionship services" will bring wage and hour protections to many who work as personal assistants in California. AB 241 seeks to deepen and broaden domestic worker rights at even greater expense to people with disabilities in the state who privately employ personal assistants by imposing the obligation of daily overtime.

Another example of how AB 241's extends beyond the DOL regulations is found in the further amended language of proposed Section 1457, which reads as follows.

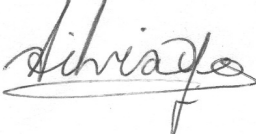
1457. Any domestic work employee who is required to sleep in the private household of his or her employer shall be provided sleeping accommodations for full-time occupancy that are adequate, decent, and sanitary according to usual customary standards. ~~These A domestic work-employees employee shall be provided a room separate from any household resident and shall not be required to share a bed.~~

The added requirements that sleeping accommodations must be provided "for full time occupancy" and must be "a room separate from any household resident" implies that employers with disabilities must provide any individual attendant whose job includes staying overnight with a fully private room for their sole occupancy. AB 241's sponsors have often indicated that employers with disabilities could avoid overtime through the employment of sufficient numbers of personal assistants working multiple shifts. If an employer with disabilities who potentially needs overnight care employs this strategy, only those few employers fortunate enough to own housing with multiple available rooms would be able to hire personal assistants. Even if section 1457 is more narrowly interpreted to merely require a separate room that a personal assistant can occupy solely during his or her time at work, the re-written provision would essentially prevent employers with disabilities from hiring attendants for potential overnight care if the employer lives in a studio or one bedroom apartment, or shares a small home with their children, parents, or other family members. Organization we absolutely support the worker's right to "adequate, decent and sanitary" sleeping accommodations and private bed, but we cannot support the requirement for a separate room or rooms when so many private pay employers with disabilities already face barriers to finding the accessible and affordable housing they need in the community.

We understand that AB 241 will be heard early next week in the Senate Appropriations Committee. DREDF has previously outlined its position in detail with regard to AB 241's predecessor bill, AB 889, in a May 5, 2011 letter which is also attached here. Ultimately, AB 889 was amended so that the issue of employment protections for domestic workers would be sent to the Industrial Relations Commission who would study the impact upon people with disabilities before developing and issuing regulations. DREDF changed our Opposition position to Neutral with this last amendment. Unfortunately, the return in AB 241 to a position that will immediately impose burdensome overtime and sleep obligations on people with disabilities who hire

personal assistants, without undertaking any further study of the bill's impact, means that DREDF must take an Oppose position.

Yours Truly,

A handwritten signature in black ink, appearing to read "Silvia Yee", written over a horizontal line.

Silvia Yee
Senior Staff Attorney

Encl: DREDF's May 5, 2011 Letter regarding AB 889

CC: Honorable Tom Ammiano and Members of the Senate Appropriations Committee