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## **BRIEFING PAPER**

**Wednesday, August 26, 2015**

**1:30 pm – 3:30 pm**

**State Capitol, Room 437**

### **Informational Hearing:**

**Labor Practices, Health, and Safety in California Nail Salons**

### **Introduction**

California is home to more than 8,500 nail salons<sup>i</sup> and over 95,000 nail technicians, accounting for a quarter of the country's nail salon workers. In 2014, roughly 75% of these California nail salons were owned or operated by Vietnamese Americans. Within California's nail technician work force, Vietnamese workers increased from 10 percent in 1987 to 59 percent in 2002 according to a 2006 study by Cornell University.<sup>ii</sup> This percentage continues to grow.

While California has been at the forefront of body product safety and nail salon safety, concerns about environmental health and labor law compliance remain. In May of 2015 two investigative articles using information from more than 150 interviews by the New York Times rekindled a national conversation about the working conditions, standard of living, and health risks of nail salon workers.

### **Recent Events**

In 2005 California passed SB 484 (Migden). The Safe Cosmetics Act took effect in 2007 and requires that manufacturers provide the Department of Public Health a list of any ingredients in their products which are "known to cause cancer or reproductive toxicity." The State of California has the authority to make recommendations on permissible exposure limits and study and investigate the chemicals listed. Additionally, the Division of Occupational Safety and Health (Cal/OSHA) in the Department of

Industrial Relations can regulate these products.<sup>iii</sup> In 2007, the Senate held a hearing on Nail Polish and Product Safety in the Workplace. Several developments have taken place between then and the recent rise in public interest.

In 2010, San Francisco became the first city in the country to create a formal voluntary recognition program for salons which do not use products containing dibutyl phthalate (DBP), toluene, and formaldehyde, more commonly known as the “toxic trio.” The 2010 ordinance, authored by current Assemblymember David Chiu, created The Health Nail Salon Recognition Program which is run by the San Francisco Department of the Environment. San Mateo and Alameda Counties have since created similar programs, and in March of this year Santa Clara County also implemented a Healthy Nail Salon Recognition Program.<sup>iv</sup>

In 2011, out of concern for the accuracy of nail product labeling, the Department of Toxic Substance Control (DTSC) sampled twenty-five nail products purchased in the San Francisco Bay Area. The DTSC report recommends that manufacturers disclose nail product formulations, states the need for more collaboration and coordination among stakeholders, and calls for more outreach and education for workers and owners of nail salons.<sup>v</sup>

The New York Times piece, “The Price of Perfect Nails” published in May of 2015 raises the question of whether nail technicians in California may also be severely underpaid, misclassified as independent contractors instead of employees, or forced into unpaid illegitimate apprenticeships. Compliance with labor law has received less public attention than health concerns in California. However, a class action settlement of \$750,000 against a nail salon chain in San Mateo County demonstrated that despite strong protections for employees in California, nail salon technicians are still vulnerable to violations including wage theft and language discrimination.

This summer the California Healthy Nail Salon Collaborative held a forum in Los Angeles with labor law experts and salon owners. Topics included the differences between employees and independent contractors, wage claims, time cards, what inspectors look for, overtime, and sick leave.<sup>vi</sup> A follow up to the New York Times article by Fortune magazine led one California Salon owner to agree that it is “not unusual for salons to hire nail technicians on commission, which may not equal the minimum wage for the number of hours worked” and state that “cosmetology schools and other training facilities should also teach students and trainees about their rights.”<sup>vii</sup>

## **Jurisdiction**

The jurisdiction for labor law compliance lies with California’s Department of Industrial Relations (DIR) and Division of Labor Standards Enforcement within DIR. Labor law violations which occur in nail salons may not be as unique as the health concerns for workers however outreach to workers and owners about product safety is an avenue to improve education about employee rights and the consequences of labor violations.

As discussed at the forum recently hosted by the California Health Nail Salon Collaborative, more education about owner responsibilities and employee rights may be needed in many nail salons. Labor enforcement issues of concern include language discrimination, workers making less than minimum wage, lack of sick days and overtime, and the misclassification of employees as independent contractors. The DIR outlines that “the state agencies most involved with the determination of the independent contractor status are the Employment Development Department (EDD), which is concerned with employment-related taxes, and the Division of Labor Standards Enforcement (DLSE), which is concerned with whether the wage, hour, and workers’ compensation insurance laws apply.”<sup>viii</sup> The Franchise Tax Board and Contractors State Licensing Board are also involved in independent contractor requirement.

Several agencies are pivotal to achieving health and safety in nail salons. In California, protecting workers from safety hazards at the workplace is the jurisdiction of the Department of Industrial Relations’ Division of Occupational Safety and Health (Cal/OSHA). The Office of Environmental Health Hazard Assessment (OEHHA) with the California Environmental Protection Agency (Cal/EPA) assesses health risks to the public. The California Board of Barbering and Cosmetology (BBC) is responsible for protecting and educating consumers who seek barbering, cosmetology, and electrology services. BBC also regulates the individuals who provide these services and the salons in which the services are performed.

According to the Federal Occupational Safety & Health Administration, nail technicians are “exposed to chemicals found in glues, polishes, removers, emollients and other salon products may experience negative health effects such as asthma and other respiratory illnesses, skin disorders, liver disease, reproductive loss, and cancer.” Repetitive motions, muscle strains, and infection from coming in contact with the blood of clients are also noted as job risk factors.<sup>ix</sup>

The United States Food and Drug Administration (FDA) has authority over drugs and medical devices, but does not conduct approval for cosmetic products, including nail salon products, with the exception of color additives. The safety of products is established by the Cosmetic Ingredient Review panel which was created by the Personal Care Products Council<sup>x</sup>, a national trade association for personal product manufacturers.<sup>xi</sup>

The purpose of this hearing is to get further information hear about concerns from the state, advocates, and industry, with the end goal of discussing policy recommendations for California.

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- <sup>i</sup> Do, Anh. "Little Saigon Forum Sheds Light on Nail Salon Issues." *Los Angeles Times*. Los Angeles Times, 07 Aug. 2015. Web. 25 Aug. 2015. <http://www.latimes.com/local/california/la-me-nail-salon-rights-20150807-story.html>
- <sup>ii</sup> Sherriff, Rona L. "Pedicures At What Price." *California Senate Office of Research* (n.d.): 1-8. Dec. 2008. Web. 24 Aug. 2015. <http://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/Pedicures%20At%20What%20Price.pdf>
- <sup>iii</sup> Migden. "Senate Bill No. 484 Chapter 729: Cosmetics: Chronic Health Effects." *Legislative Counsels Digest* 236.7 (2005): 1-7. 07 Oct. 2005. Web. Aug. 2015.  
SB 484 (Migden), Chapter 729, Statutes of 2005.
- <sup>iv</sup> Kurhi, Eric. "Santa Clara County Targets 'toxic Trio' Used in Nail Salons." *San Jose Mercury News*. San Jose Mercury News, 11 Mar. 2015. Web. 25 Aug. 2015. [http://www.mercurynews.com/health/ci\\_27684852/santa-clara-county-targets-toxic-trio-used-nail](http://www.mercurynews.com/health/ci_27684852/santa-clara-county-targets-toxic-trio-used-nail)
- <sup>v</sup> Guo, Dennis, Pauline Batarseh, Jeff Wong, and Debbie Raphael. "SUMMARY OF DATA AND FINDINGS FROM TESTING OF A LIMITED NUMBER OF NAIL PRODUCTS." *California Environmental Protection Agency DEPARTMENT OF TOXIC SUBSTANCES CONTROL* (n.d.): n. pag. *California Environmental Protection Agency DEPARTMENT OF TOXIC SUBSTANCES CONTROL*. Apr. 2012. Web. Aug. 2015.  
[https://www.dtsc.ca.gov/PollutionPrevention/upload/NailSalon\\_Final.pdf](https://www.dtsc.ca.gov/PollutionPrevention/upload/NailSalon_Final.pdf)
- <sup>vi</sup> Do, Anh. "Little Saigon Forum Sheds Light on Nail Salon Issues." *Los Angeles Times*. Los Angeles Times, 07 Aug. 2015. Web. 25 Aug. 2015. <http://www.latimes.com/local/california/la-me-nail-salon-rights-20150807-story.html>
- <sup>vii</sup> Moran, Gwen. "How the Nail Salon Industry Can Clean up Its Act." *Fortune: How the Nail Salon Industry Can Clean up Its Act Comments*. Fortune Magazine, 14 May 2015. Web. Aug. 2015. <http://fortune.com/2015/05/14/how-the-nail-salon-industry-can-clean-up-its-act/>
- <sup>viii</sup> "Independent Contractors." California Department of Industrial Relations, Division of Labor standards Enforcement. Revised January, 2011. Web. Aug 2015. <http://www.dir.ca.gov/dlse/IndependentContractors.pdf>
- <sup>ix</sup> "Health Hazards in Nail Salons." *Safety and Health Topics | Health Hazards in Nail Salons*. United States Department of Labor, n.d. Web. Aug. 2015. <https://www.osha.gov/SLTC/nailsalons/>
- <sup>x</sup> Sherriff, Rona L. "Pedicures At What Price." *California Senate Office of Research* (n.d.): 1-8. Dec. 2008. Web. 24 Aug. 2015. <http://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/Pedicures%20At%20What%20Price.pdf>
- <sup>xi</sup> "Personal Care Products Council |." *Personal Care Products Council*. N.p., n.d. Web. Aug. 2015.  
<http://www.personalcarecouncil.org/>