

SUPREME COURT
FILED

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Deputy

Case No. S246711

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

ZB, N.A. and ZIONS BANCORPORATION,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO,

Respondent;

KALETHIA LAWSON,

Real Party In Interest.

After a Decision by the Court of Appeal
Fourth Appellate District, Division One
Case Nos. D071279 & D071376 (Consolidated)

**PETITIONERS' MOTION FOR JUDICIAL NOTICE IN SUPPORT
OF ANSWER TO *AMICUS CURIAE* BRIEF; DECLARATION OF
BRIAN C. SINCLAIR; [PROPOSED] ORDER GRANTING MOTION**

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TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to Rules 8.54, 8.252 and 8.520(g) of the California Rules of Court, as well as Evidence Code Sections 451, 452, 453 and 459, Petitioners move for judicial notice of the following documents:

Exhibit 1: Third Reading, Senate Rules Committee, Assembly Bill 2899 (2015-2016 Reg. Sess.), August 3, 2016, published at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB2899.

Exhibit 2: Legislative Counsel's Digest, Assembly Bill No. 469, October 9, 2011, and text of Assembly Bill No. 469, published at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB469.

Exhibit 3: Assembly Committee on Labor & Employment, Report on AB No. 60 (1999-2000 Reg. Sess.), March 17, 1999, published at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=199920000AB60.

Exhibit 4: Assembly Committee on Appropriations, Report on AB No. 60 (1999-2000 Reg. Sess.), April 21, 1999, published at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=199920000AB60.

Exhibit 5: Assembly Republican Bill Analysis, Assembly Bill No. 60 (1999-2000 Reg. Sess.), March 15, 1999, obtained from Legislative Intent Service, Inc.

Exhibit 6: Third Reading, Senate Rules Committee, on AB 970 (2015-2016 Reg. Sess.), August 26, 2015, published at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB970.

Exhibit 7: Investigation Procedures Overview section of Dept. of Indus. Relations website (last reviewed on 10/4/2018), published at: https://www.dir.ca.gov/dlse/Investigation_Procedures_Overview.html.

Exhibit 8: Report A Labor Violation To The California Labor Commissioner's Bureau Of Field Enforcement brochure, Rev. 06/2014, published at: https://www.dir.ca.gov/dlse/Brochure-BOFE_WEB-EN.pdf.

Petitioners refer to the above-listed documents in their Answer to the Amicus Brief filed by the California Employment Lawyers Association to provide this Court with relevant legislative history. This motion is based on the attached Memorandum of Points and Authorities, the exhibits, and the complete records and files of this Court, as well as the Proposed Order attached hereto.

MEMORANDUM OF POINTS AND AUTHORITIES

Evidence Code § 459 provides reviewing courts the same power to take judicial notice of documents as trial courts under Evidence Code sections 450 *et seq.* (EVID. CODE § 459.) Similarly, California Rules of Court, Rules 8.252 and 8.520, provide that a reviewing court may take judicial notice of documents relevant to the issues under review. (CAL. RULES OF COURT, RULES 8.252(a)(2)(A), 8.520(g).)

In their respective briefs, the parties and amicus curiae dispute whether “underpaid wages” recoverable under Section 558 constitute wages or civil penalties. If this Court decides the “underpaid wages” are, in fact, wages versus penalties, the Court does not need to decide whether the FAA preempts California law when an employee seeks unpaid wages under Section 558 as part of a PAGA claim. Therefore, the legislative history and agency interpretations of Section 558, and related statutes, are relevant to determine the foundational issue of whether underpaid wages under Section 558 constitute a civil penalty or wage restitution.

A reviewing court may take judicial notice of material outside the record, including legislative history, when necessary “to discern legislative intent.” (*Ewing v. Goldstein* (2004) 120 Cal.App.4th 807, 814 and fn. 7 [taking judicial notice of legislative history not in record “to ascertain and effectuate the underlying legislative intent”], *quoting Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal.App.4th 23, 30, fn. 10.)

The documents to be noticed were not presented to the trial court. Petitioners offer these documents to demonstrate that the interpretation of “civil penalties” under Section 558 offered by CELA and Lawson, and the interpretation of Section 558 adopted by the Fourth Appellate District below, is incorrect, as reflected in the legislative history and agency interpretations of Section 558. All of the documents relate to the enactment, interpretation, and enforcement of Section 558, which is relevant to the issue before the Court.

A. The Court should take judicial notice of Exhibits 1-6 because they are official, publicly available reports or analyses of the legislative history of Labor Code § 558.

“In a search to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute.” (*Schmidt*, 14 Cal.App.4th at p. 30, fn. 10.) In the construction of a statute the intention of the Legislature . . . is to be pursued, if possible.” (CODE OF CIVIL PROC. § 1859.) “The court will take judicial notice of the legislative history of a statute in order to ascertain the purpose of and meaning of an ambiguous statute.” (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45 fn. 9.)

Technically, “[a] request for judicial notice of published material is unnecessary. Citation to the material is sufficient.” (*Quelimane*, 19 Cal.4th, at p. 45, fn. 9) A reviewing court may, however, take judicial notice of “reports of

Senate and Assembly committees. . . ., committee reports and analyses or digests of the Legislative Counsel” because it is reasonable to infer that all members of the Legislature considered them when voting on the proposed statute. (*Ibid.*)

Exhibits 1-6 all constitute legislative analysis and committee reports relating to the enactment of Labor Code § 558 and § 1197.1, which includes enforcement provisions applicable to Section 558. Here, Exhibits 1-6 include (1) Assembly Committee reports, which summarize legislation adopting or amending Sections 558 and 1197.1; (2) Legislative Counsel’s Digest, which summarizes an amendment to Section 1197.1; (3) readings of the legislation to the Senate Rules Committee, which summarizes amendments to various Labor Code provisions, including Sections 558 and 1197.1; and (4) the Republican Bill analysis of AB 60, which was provided by Republican Assembly members to understand the bill during the legislative process. All of these materials are properly the subject of judicial notice. (*See Quelimane*, 19 Cal.4th, at p. 45, fn. 9; *see also Hale v. S. Cal. Ipa Medical Group* (2001) 86 Cal.App.4th 919, 927 [“In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute.”]; *People v. Allen* (2001) 88 Cal.App.4th 986, 995 fn. 16 [relying on committee reports and Republican Senate Bill analysis to interpret statute]; *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1153 [explaining that courts should review legislative history

to aid in interpreting a statute]; *Martin v. Szeto* (2004) 32 Cal.4th 445, 450 [reviewing legislative committee bill reports to interpret legislature’s intent].)

Here, Exhibits 1- 6 constitute legislative history of Labor Code §§ 558 and 1197.1, which includes enforcement procedures applicable to Section 558 . Therefore, the Court should take judicial notice of these documents.

B. The Court should take judicial notice of Exhibits 7-8 because they are agency interpretations of Labor Code § 558.

Exhibit 7 is a webpage from the Investigation Procedures Overview section of the Department of Industrial Relations (“DIR”) website. The webpage provides an overview of the DIR’s process for investigating labor law violations and issuing citations when violations are discovered. Exhibit 8 is a brochure issued by the California Labor Commissioner’s Bureau Of Field Enforcement, which provides a more detailed description of the Labor Commissioner’s process for investigating labor law violations and issuing citations.

The Court may take judicial notice these documents, since they constitute a governmental agency’s ““construction of a statutory scheme it is entrusted to administer.”” (*In re Israel O.* (2015) 233 Cal.App.4th 279, 289, quoting *Chevron U.S.A. v. NRDC* (1984) 467 U.S. 837, 844; see also *Etcheverry v. Tri-Ag Service, Inc.* (2000) 22 Cal.4th 316, 330-331 (taking


judicial notice of government agency interpretation of law as an “official act . . . within the meaning of Evidence Code section 452, subdivision (c)”.) Moreover, a court may take judicial notice of information from government agency websites. (*All One God Faith, Inc. v. Organic & Sustainable Industry Standards, Inc.* (2010)183 Cal.App.4th 1186, 1998 fn. 12; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 559 [in interpreting a statute, courts “should certainly take the agency’s interpretation into consideration, having due regard for the agency’s expertise and special competence, as well as any reasons the agency may have proffered in support of its interpretation”].)

Here, Exhibits 7 and 8 reflect the Labor Commissioner’s interpretation of the wage citation process, including its interpretation that civil penalties and unpaid wages are two distinct forms of relief when it engages in field enforcement actions authorized by Labor Code §§ 558 and 1197.1. Therefore, the Court should take judicial notice of these documents.

Respectfully submitted,

Dated: October 9, 2018

RUTAN & TUCKER, LLP
JAMES L. MORRIS
BRIAN C. SINCLAIR
GERARD M. MOONEY

By: 

Brian C. Sinclair
Counsel for Petitioners ZB, N.A.
and ZIONS BANCORPORATION

DECLARATION OF BRIAN C. SINCLAIR

I, Brian C. Sinclair, declare as follows:

1. I am a partner in the law firm of Rutan & Tucker, LLP, counsel of record for petitioners ZB, N.A. and Zions Bancorporation (“Petitioners”) in this action. I am a member in good standing of the State Bar of California and the bar of this Court. I make this Declaration in support of Petitioners’ motion for judicial notice. The following facts are based on my personal knowledge and my review of business records, which are kept in the ordinary course of business. If called as a witness, I could and would testify competently to these facts under oath.

2. Attached as Exhibit 1 is a true and correct copy of the Third Reading, Senate Rules Committee, Assembly Bill 2899 (2015-2016 Reg. Sess.), dated August 3, 201. I downloaded a copy of this document on October 3, 2018, from the California Legislative Information website at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB2899. I downloaded the document from the “08/03/16 – Senate Floor Analyses” link under Bill Analysis. I highlighted relevant excerpts of the document.

3. Attached as Exhibit 2 is a true and correct copy of the Legislative Counsel’s Digest, Assembly Bill No. 469, dated October 9, 2011, and the text of Assembly Bill No. 469. I downloaded a copy of this document on October 3, 2018 from the California Legislative Information website at:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=2011201

20AB469. I highlighted relevant excerpts of the document.

4. Attaches as Exhibit 3 is a true and correct copy of Assembly Committee on Labor & Employment, Report on Assembly Bill No. 60 (1999-2000 Reg. Sess.), dated March 17, 1999. I downloaded a copy of this document on October 3, 2018, from the “03/16/99 – Assembly Committee” link under Bill Analysis on the California Legislative Information website at:

http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=199

920000AB60. I highlighted relevant excerpts of the document.

5. Attached as Exhibit 4 is a true and correct copy of Assembly Committee on Appropriations, Report on Assembly Bill No. 60 (1999-2000 Reg. Sess.), dated April 21, 1999. I downloaded a copy of this document on October 3, 2018 from the “04/20/99 – Assembly Committee” link under Bill Analysis on the California Legislative Information website at:

http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=199

920000AB60. I highlighted relevant excerpts of the document.

6. Attached as Exhibit 5 is a true and correct copy of the Assembly Republican Bill Analysis, Assembly Bill No. 60 (1999-2000 Reg. Sess.), dated March 15, 1999. I obtained a copy of this document from Legislative Intent Service, Inc. I highlighted relevant excerpts of the document.

7. Attached as Exhibit 6 is a true and correct copy of the Third Reading, Senate Rules Committee, on Assembly Bill No. 970 (2015-2016 Reg. Sess.), dated August 26, 2015. I downloaded a copy of this document on October 3, 2018, from the “08/26/15 – Senate Floor Analyses” link under Bill Analysis on the California Legislative Information website: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB970. I highlighted relevant excerpts of the document.

8. Attached as Exhibit 7 is a true and correct copy of the Investigation Procedures Overview section of the Dept. of Ind. Relations website. I downloaded a copy of this document on October 3, 2018, at: https://www.dir.ca.gov/dlse/Investigation_Procedures_Overview.html. I highlighted relevant excerpts of the document.

9. Attached as Exhibit 8 is a true and correct copy of the Report A Labor Violation To The California Labor Commissioner’s Bureau Of Field Enforcement brochure, Rev. 06/2014. I downloaded a copy of this document on October 3, 2018, at: https://www.dir.ca.gov/dlse/Brochure-BOFE_WEB-EN.pdf. I highlighted relevant excerpts of the document.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 9, 2018, at Costa Mesa, California.



Brian C. Sinclair

ORDER

Pursuant to Rules 8.54, 8.252 and 8.520(g) of the California Rules of Court and Evidence Code Sections 452(d) and 459, as well as the Request for Judicial Notice filed by Petitioners ZB N.A. and Zions Bancorporation (“Petitioners”), and good cause appearing therefor, the Court takes judicial notice of the following documents as presented by Petitioners:

Exhibit 1: Third Reading, Senate Rules Committee, Assembly Bill 2899 (2015-2016 Reg. Sess.), August 3, 2016.

Exhibit 2: Legislative Counsel’s Digest, Assembly Bill No. 469, October 9, 2011, and text of Assembly Bill No. 469.

Exhibit 3: Assembly Committee on Labor & Employment, Report on AB No. 60 (1999-2000 Reg. Sess.), March 17, 1999.

Exhibit 4: Assembly Committee on Appropriations, Report on AB No. 60 (1999-2000 Reg. Sess.), April 21, 1999.

Exhibit 5: Assembly Republican Bill Analysis, Assembly Bill No. 60 (1999-2000 Reg. Sess.), March 15, 1999.

Exhibit 6: Third Reading, Senate Rules Committee, on AB 970 (2015-2016 Reg. Sess.), August 26, 2015.

Exhibit 7: Investigation Procedures Overview section of Dept. of Indus. Relations website (last reviewed on 10/4/2018).

Exhibit 8: Report A Labor Violation To The California Labor
Commissioner's Bureau Of Field Enforcement brochure, Rev.
06/2014.

Dated: _____

Justice of the California Supreme Court

THIRD READING

Bill No: AB 2899
Author: Roger Hernández (D)
Amended: 5/4/16 in Assembly
Vote: 21

SENATE LABOR & IND. REL. COMMITTEE: 4-1, 6/29/16
AYES: Mendoza, Jackson, Leno, Mitchell
NOES: Stone

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 52-24, 5/23/16 - See last page for vote

SUBJECT: Minimum wage violations: challenges

SOURCE: Author

DIGEST: This bill requires that, prior to filing an appeal of a decision by the Labor Commissioner (LC) relating to a violation of wage laws, employers must post a bond with the LC which covers the unpaid wages and damages owed to employees.

ANALYSIS:

Existing law:

- 1) Allows employees, who claim that they have not been paid the minimum wage, to file an administrative claim with the LC rather than filing a civil suit. This claim can then be heard in an administrative adjudication hearing (Labor Code §98).
- 2) Allows the decisions of these hearings to be appealed to the Superior Court, but employers who wish to file an appeal in this way must first post a bond with the court that covers the amount owed under the previous decision, order, or award,

only in those circumstances when an employee filed the original claim (Labor Code §98.2).

This bill:

- 1) Creates a wage bond requirement for employer appeals challenging a citation and decision *initiated by the LC, when the LC finds a violation of wage laws.*
- 2) Requires that this bond must be filed with the LC and include the total amount of any minimum wages, liquidated damages, and overtime compensation owed as specified in the citation being challenged. The bond amount would not include amounts for penalties.
- 3) Specifies that the bond shall be issued by a surety duly-authorized to do business in the state, and in favor of unpaid employees, thus ensuring that the employer makes payments owed.

Comments

Need for this bill? According to the author, under current law, an employee may file a wage claim with the LC for unpaid wages. If the LC rules in favor of the employee, the employer may appeal to the Superior Court, but must first file a wage bond for the amount of unpaid wages owed. This preserves the ability of the employee to collect their wages in case the employer shuts down or hides their assets to evade payment of the judgment. However, this same bond requirement and protection does not exist for actions and decisions initiated by the LC involving wage law violations. This bill requires that before appealing a decision by the LC, whether an employee filed the original claim or the LC issued a citation, employers must post a bond to ensure employees receive any payments owed to them.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/2/16)

California Rural Legal Assistance Foundation

OPPOSITION: (Verified 8/2/16)

None received

ARGUMENTS IN SUPPORT: The author states that, under current law, in addition to an employee complaint, the LC can cite an employer for unpaid wages

after an investigation. If the LC rules against the employer, the employer may appeal to the Superior Court. Therefore, this bill would similarly require an employer, prior to filing such an appeal, to post a wage bond for the amount of the unpaid wages. As a result, the author believes that this bill helps bring consistency to the processes and remedies regarding both employee wage claims and LC enforcement actions.

ASSEMBLY FLOOR: 52-24, 5/23/16

AYES: Alejo, Atkins, Baker, Bloom, Bonilla, Bonta, Brown, Burke, Calderon, Campos, Chang, Chau, Chiu, Chu, Cooper, Dababneh, Daly, Dodd, Frazier, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Gray, Roger Hernández, Holden, Irwin, Jones-Sawyer, Levine, Linder, Lopez, Low, McCarty, Medina, Mullin, Nazarian, O'Donnell, Quirk, Ridley-Thomas, Rodriguez, Salas, Santiago, Mark Stone, Thurmond, Ting, Weber, Williams, Wood, Rendon

NOES: Achadjian, Travis Allen, Bigelow, Brough, Chávez, Dahle, Beth Gaines, Gallagher, Grove, Hadley, Harper, Jones, Kim, Lackey, Maienschein, Mathis, Mayes, Melendez, Obernolte, Olsen, Steinorth, Wagner, Waldron, Wilk

NO VOTE RECORDED: Arambula, Cooley, Eggman, Patterson

Prepared by: Brandon Seto / L. & I.R. / (916) 651-1556
8/3/16 18:21:30

**** END ****



AB-469 Employees: wages. (2011-2012)

SHARE THIS:



Assembly Bill No. 469

CHAPTER 655

An act to amend Sections 98, 226, 240, 243, 1174, and 1197.1 of, and to add Sections 200.5, 1194.3, 1197.2, 1206, and 2810.5 to, the Labor Code, relating to employment.

[Approved by Governor October 09, 2011. Filed with Secretary of State
October 09, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 469, Swanson. Employees: wages.

(1) Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law provides for criminal and civil penalties for violations of statutes and orders of the commission regarding payment of wages.

This bill would provide that in addition to being subject to a civil penalty, any employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to paying restitution of wages to the employee.

This bill would make it a misdemeanor if an employer willfully violates specified wage statutes or orders, or willfully fails to pay a final court judgment or final order of the Labor Commissioner for wages due.

(2) Existing law provides that an action by the Division of Labor Standards Enforcement within the Department of Industrial Relations for collection of a statutory penalty or fee must be commenced within one year after the penalty or fee became final.

This bill would extend the period within which the division may commence a collection action, as defined, from one year to 3 years.

(3) Existing law permits the Labor Commissioner to require an employer who has been convicted of a subsequent wage violation or who has failed to satisfy a judgment to post a bond in order to continue business operations.

This bill would extend the time required for a subsequently convicted employer to maintain a bond from 6 months to 2 years and would require that a subsequently convicted employer provide an accounting of assets, as specified, to the Labor Commissioner.

(4) Existing law requires an employer to post specified wage and hour information in a location where it can be viewed by employees.

This bill would require an employer to provide each employee, at the time of hiring, with a notice that specifies the rate and the basis, whether hourly, salary, commission, or otherwise, of the employee's wages and to notify each employee in writing of any changes to the information set forth in the notice within 7 calendar days of the changes unless such changes are reflected on a timely wage statement or another writing, as specified. No notice

would be required for an employee who is employed by the state or any subdivision thereof, exempt from the payment of overtime, or covered by a collective bargaining agreement containing specified information.

(5) In addition to the crime and employer obligations imposed by this bill, the Labor Code provides for other work-related standards and duties that, upon violation, are subject to specified penalties.

This bill would state that the Labor Code establishes minimum penalties for failure to comply with wage-related statutes and regulations.

Because this bill would create a new crime or expand the definition of a crime, it would impose a state-mandated local program.

(6) This bill would incorporate additional changes to Section 98 of the Labor Code proposed by AB 240, that would become operative only if AB 240 and this bill are both enacted, both bills become effective on or before January 1, 2012, and this bill is enacted last.

This bill would also incorporate additional changes to Section 226 of the Labor Code proposed by AB 243, that would become operative only if AB 243 and this bill are both enacted, both bills become effective on or before January 1, 2012, and this bill is enacted last.

(7) 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 is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the Wage Theft Prevention Act of 2011.

SEC. 2. Section 98 of the Labor Code is amended to read:

98. (a) The Labor Commissioner is authorized to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation properly before the division or the Labor Commissioner, including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. It is within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of the filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute. A party who has received actual notice of a claim before the Labor Commissioner shall, while the matter is before the Labor Commissioner, notify the Labor Commissioner in writing of any change in that party's business or personal address within 10 days after the change in address occurs.

It is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the rights of the parties.

(b) When a hearing is set, a copy of the complaint, which shall include the amount of compensation requested, together with a notice of time and place of the hearing, shall be served on all parties, personally or by certified mail, or in the manner specified in Section 415.20 of the Code of Civil Procedure.

(c) Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form as the Labor Commissioner may prescribe, setting forth the particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

(d) No pleading other than the complaint and answer of the defendant or defendants shall be required. Both shall be in writing and shall conform to the form and the rules of practice and procedure adopted by the Labor Commissioner.

(e) Evidence on matters not pleaded in the answer shall be allowed only on terms and conditions the Labor Commissioner shall impose. In all these cases, the claimant shall be entitled to a continuance for purposes of review of the new evidence.

(f) If the defendant fails to appear or answer within the time allowed under this chapter, no default shall be taken against him or her, but the Labor Commissioner shall hear the evidence offered and shall issue an order, decision, or award in accordance with the evidence. A defendant failing to appear or answer, or subsequently contending to be aggrieved in any manner by want of notice of the pendency of the proceedings, may apply to the Labor Commissioner for relief in accordance with Section 473 of the Code of Civil Procedure. The Labor Commissioner may afford this relief. No right to relief, including the claim that the findings or award of the Labor Commissioner or judgment entered thereon are void upon their face, shall accrue to the defendant in any court unless prior application is made to the Labor Commissioner in accordance with this chapter.

(g) All hearings conducted pursuant to this chapter are governed by the division and by the rules of practice and procedure adopted by the Labor Commissioner.

(h) (1) Whenever a claim is filed under this chapter against a person operating or doing business under a fictitious business name, as defined in Section 17900 of the Business and Professions Code, which relates to the person's business, the division shall inquire at the time of the hearing whether the name of the person is the legal name under which the business or person has been licensed, registered, incorporated, or otherwise authorized to do business.

(2) The division may amend an order, decision, or award to conform to the legal name of the business or the person who is the defendant to a wage claim, if it can be shown that proper service was made on the defendant or his or her agent, unless a judgment had been entered on the order, decision, or award pursuant to subdivision (d) of Section 98.2. The Labor Commissioner may apply to the clerk of the superior court to amend a judgment that has been issued pursuant to a final order, decision, or award to conform to the legal name of the defendant, if it can be shown that proper service was made on the defendant or his or her agent.

SEC. 2.5. Section 98 of the Labor Code is amended to read:

98. (a) The Labor Commissioner is authorized to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage fixed by an order of the Industrial Welfare Commission or by statute, properly before the division or the Labor Commissioner, including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. It is within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of the filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute. A party who has received actual notice of a claim before the Labor Commissioner shall, while the matter is before the Labor Commissioner, notify the Labor Commissioner in writing of any change in that party's business or personal address within 10 days after the change in address occurs.

It is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the rights of the parties.

(b) When a hearing is set, a copy of the complaint, which shall include the amount of compensation requested, together with a notice of time and place of the hearing, shall be served on all parties, personally or by certified mail, or in the manner specified in Section 415.20 of the Code of Civil Procedure.

(c) Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form as the Labor Commissioner may prescribe, setting forth the particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

(d) No pleading other than the complaint and answer of the defendant or defendants shall be required. Both shall be in writing and shall conform to the form and the rules of practice and procedure adopted by the Labor Commissioner.

(e) Evidence on matters not pleaded in the answer shall be allowed only on terms and conditions the Labor Commissioner shall impose. In all these cases, the claimant shall be entitled to a continuance for purposes of review of the new evidence.

(f) If the defendant fails to appear or answer within the time allowed under this chapter, no default shall be taken against him or her, but the Labor Commissioner shall hear the evidence offered and shall issue an order, decision, or award in accordance with the evidence. A defendant failing to appear or answer, or subsequently contending to be aggrieved in any manner by want of notice of the pendency of the proceedings, may apply to the Labor Commissioner for relief in accordance with Section 473 of the Code of Civil Procedure. The Labor Commissioner may afford this relief. No right to relief, including the claim that the findings or award of the Labor Commissioner or judgment entered thereon are void upon their face, shall accrue to the defendant in any court unless prior application is made to the Labor Commissioner in accordance with this chapter.

(g) All hearings conducted pursuant to this chapter are governed by the division and by the rules of practice and procedure adopted by the Labor Commissioner.

(h) (1) Whenever a claim is filed under this chapter against a person operating or doing business under a fictitious business name, as defined in Section 17900 of the Business and Professions Code, which relates to the person's business, the division shall inquire at the time of the hearing whether the name of the person is the legal name under which the business or person has been licensed, registered, incorporated, or otherwise authorized to do business.

(2) The division may amend an order, decision, or award to conform to the legal name of the business or the person who is the defendant to a wage claim, if it can be shown that proper service was made on the defendant or his or her agent, unless a judgment had been entered on the order, decision, or award pursuant to subdivision (d) of Section 98.2. The Labor Commissioner may apply to the clerk of the superior court to amend a judgment that has been issued pursuant to a final order, decision, or award to conform to the legal name of the defendant, if it can be shown that proper service was made on the defendant or his or her agent.

SEC. 3. Section 200.5 is added to the Labor Code, to read:

200.5. (a) Notwithstanding any provision of this code or Section 340 of the Code of Civil Procedure, to collect a civil penalty, fee, or penalty fee under this division, the Division of Labor Standards Enforcement shall commence an action within three years from the date the penalty or fee became final. Upon commencement of an action, the clerk of the superior court shall enter judgment immediately in conformity therewith.

(b) This section applies only to penalty assessments or fees that became final on or after the effective date of the act adding this section.

(c) For purposes of this section, "commence an action" means to file a request for entry of judgment on a civil penalty or fee with the clerk of the superior court of the relevant county.

(d) For purposes of this section, "final" means the time to appeal has expired and there is no appeal pending.

SEC. 4. Section 226 of the Labor Code is amended to read:

226. (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

(d) This section does not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(f) A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.

(g) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

(h) This section does not apply to the state, to any city, county, city and county, district, or to any other governmental entity, except that if the state or a city, county, city and county, district, or other governmental entity furnishes its employees with a check, draft, or voucher paying the employee's wages, the state or a city, county, city and county, district, or other governmental entity shall, by January 1, 2008, use no more than the last four digits of the employee's social security number or shall use an employee identification number other than the social security number on the itemized statement provided with the check, draft, or voucher.

SEC. 4.5. Section 226 of the Labor Code is amended to read:

226. (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

(d) This section does not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(f) A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.

(g) The listing by an employer of the name and address of the legal entity that secured the services of the employer in the itemized statement required by subdivision (a) shall not create any liability on the part of that legal entity.

(h) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

(i) This section does not apply to the state, to any city, county, city and county, district, or to any other governmental entity, except that if the state or a city, county, city and county, district, or other governmental entity furnishes its employees with a check, draft, or voucher paying the employee's wages, the state or a city, county, city and county, district, or other governmental entity shall use no more than the last four digits of the employee's social security number or shall use an employee identification number other than the social security number on the itemized statement provided with the check, draft, or voucher.

SEC. 5. Section 240 of the Labor Code is amended to read:

240. (a) If any employer has been convicted of a violation of any provision of this article, or if any judgment against an employer for nonpayment of wages remains unsatisfied for a period of 10 days after the time to appeal therefrom has expired, and no appeal therefrom is then pending, the Labor Commissioner may require the employer to deposit a bond in such sum as the Labor Commissioner may deem sufficient and adequate in the circumstances, to be approved by the Labor Commissioner. The bond shall be payable to the Labor Commissioner and shall be conditioned that the employer shall, for a definite future period, not exceeding two years, pay the employees in accordance with the provisions of this article, and shall be further conditioned upon the payment by the employer of any judgment which may be recovered against the employer pursuant to the provisions of this article.

(b) If an order to post a bond issued against an employer under this section remains unsatisfied for a period of 10 days after the time to appeal therefrom has expired, and no appeal from the order is then pending, the Labor Commissioner may require the employer to provide an accounting of assets of the employer, including a list of all bank accounts, accounts receivable, personal property, real property, automobiles or other vehicles, and any other assets, in a form and manner as prescribed by the Labor Commissioner. An employer shall provide an amended accounting of assets, if ordered by the Labor Commissioner to do so. If, within 10 days after a demand for an accounting of assets, made by certified or registered mail, the employer fails to provide an accounting, or if the employer fails to provide an amended accounting after receiving a demand by the Labor Commissioner to do so, the Labor Commissioner may bring an action in the name and on behalf of the people of the State of California against such employer to compel the employer to furnish the accounting. An employer who fails to provide an accounting as required by this subdivision shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000).

(c) If, within 10 days after demand for the bond, which demand may be made by mail, the employer fails to deposit the bond, the Labor Commissioner may bring an action in the name and on behalf of the people of the State of California against the employer in a court of competent jurisdiction to compel the employer to furnish the

bond or to cease doing business until the employer has done so. The employer has the burden of proving either that the bond is unnecessary or that the amount demanded is excessive. If the court finds that there is just cause for requiring the bond, and that the bond is reasonably necessary or proper to secure prompt payment of the wages of the employees of the employer and the employer's compliance with the provisions of this article, the court may enjoin the employer, whether an individual, partnership, corporation, company, trust, or association, and such other person or persons as may have been or may be concerned with or in any way participating in the failure to pay the wages resulting in the conviction or in the judgment, from doing business until the requirement is met, and make other and further orders appropriate to compel compliance with the requirement.

SEC. 6. Section 243 of the Labor Code is amended to read:

243. (a) If, within 10 years of either a conviction for a violation of this article or failing to satisfy a judgment for nonpayment of wages, or of both, it is alleged that an employer on a second occasion has been convicted of again violating this article or is failing to satisfy a judgment for nonpayment of wages, an employee or the employee's legal representative, an attorney licensed to practice law in this state, may, on behalf of himself or herself and others, bring an action in a court of competent jurisdiction for a temporary restraining order prohibiting the employer from doing business in this state unless the employer deposits with the court a bond to secure compliance by the employer with this article or to satisfy the judgment for nonpayment of wages.

(b) Upon the filing of an affidavit that, to the satisfaction of the court, shows reasonable proof that an employer, for the second time within 10 years, has been convicted of violating this article or has failed to satisfy a judgment for the nonpayment of wages, or both, the court may grant an order that prohibits the employer within 30 days from conducting any business within the state unless the employer deposits a bond payable to the Labor Commissioner, with the condition that the employer make wage payments in accordance with this article, or that the employer pay any unsatisfied judgment for nonpayment of wages, or both. The court shall order that the bond be on deposit with the Labor Commissioner at all times within a five-year period from the date of the order, that the employer employs more than 10 employees. The court shall order that the bond be in an amount equal to twenty-five thousand dollars (\$25,000) or 25 percent of the weekly gross payroll of the employer at the time of the posting of the bond, whichever is greater, and that the term of the bond be for the duration of the service of the employee who brought the action, until past due wages have been paid, or until satisfaction of all judgments for nonpayment of wages. The bond shall also be payable for wages, interest on wages and for any damages arising from any violation of orders of the Industrial Welfare Commission, and for any other monetary relief awarded to an employee as a result of a violation of this code. To aid in the enforcement of this section, upon a request by the Labor Commissioner or an employee bringing an action pursuant to this section, the court may additionally require the employer to provide an accounting of assets of the employer, including a list of all bank accounts, accounts receivable, personal property, real property, automobiles or other vehicles, and any other assets, in a form and manner as prescribed by the court. An employer shall provide an amended accounting of assets if ordered by the court to do so. If, within 10 days after a demand for an accounting of assets, which demand may be made by certified or registered mail, the employer shall fail to provide an accounting, or if the employer fails to provide an amended accounting being ordered to do so, the court may take all appropriate action to enforce its order, including the imposition of appropriate sanctions.

(c) For purposes of subdivision (b), an employer shall be deemed to have been convicted of having violated this article or to have failed to satisfy a judgment for the second time within 10 years if, to secure labor or personal services in connection with his or her business, the employer uses the services of an agent, contractor, or subcontractor who is convicted of a violation of this article or fails to satisfy a judgment for wages respecting those employees, or both, but only if the employer had actual knowledge of the person's failure to pay wages. In issuing a temporary restraining order pursuant to this section, the court, in determining the amount and term of the bond, shall count the agent's, contractor's, or subcontractor's employees as part of the employer's total workforce. This subdivision shall not apply where a temporary restraining order against the agent, contractor, or subcontractor as an employer has been issued pursuant to subdivision (b).

(d) An employer who, for the third time within 10 years of the first occurrence, is alleged to have violated this article or to have failed to satisfy a judgment for nonpayment of wages, or both, shall be deemed by the court to have commenced a new five-year period for which the posting of a bond may be ordered in accordance with subdivision (b), except that the court may, in its discretion, require the posting of a bond in a greater amount as it determines appropriate under the circumstances.

(e) A former employee who was a party to an earlier action against an employer in which a judgment for the payment of wages was obtained, and who alleges that the employer has failed to satisfy the judgment for the payment of wages, in addition to any other available remedy, may petition the court pursuant to subdivision (b)

for a temporary restraining order against the employer to cease doing business in this state unless the employer posts a bond with the court.

(f) Actions brought pursuant to this section shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence may be given by law.

(g) Nothing in this section shall be construed to impose any mandatory duties on the Labor Commissioner.

SEC. 7. Section 1174 of the Labor Code is amended to read:

1174. Every person employing labor in this state shall:

(a) Furnish to the commission, at its request, reports or information that the commission requires to carry out this chapter. The reports and information shall be verified if required by the commission or any member thereof.

(b) Allow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

SEC. 8. Section 1194.3 is added to the Labor Code, to read:

1194.3. An employee may recover attorney's fees and costs incurred to enforce a court judgment for unpaid wages due pursuant to this code.

SEC. 9. Section 1197.1 of the Labor Code is amended to read:

1197.1. (a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee, as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If, upon inspection or investigation, the Labor Commissioner determines that a person has paid or caused to be paid a wage less than the minimum, the Labor Commissioner may issue a citation to the person in violation. The citation may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated. The Labor Commissioner promptly shall take all appropriate action, in accordance with this section, to enforce the citation and to recover the civil penalty assessed and wages in connection with the citation.

(c) If a person desires to contest a citation or the proposed assessment of a civil penalty and wages therefor, the person shall, within 15 business days after service of the citation, notify the office of the Labor Commissioner that appears on the citation of his or her request for an informal hearing. The Labor Commissioner or his or her deputy

or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty and wages shall be affirmed, modified, or dismissed.

The decision of the Labor Commissioner shall consist of a notice of findings, findings, and an order, all of which shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil Procedure. Any amount found due by the Labor Commissioner as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from this finding to the appropriate superior court. The party shall pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ shall be taken within 45 days of service of the notice of findings, findings, and order thereon.

(d) A person to whom a citation has been issued shall, in lieu of contesting a citation pursuant to this section, transmit to the office of the Labor Commissioner designated on the citation the amount specified for the violation within 15 business days after issuance of the citation.

(e) When no petition objecting to a citation or the proposed assessment of a civil penalty and wages is filed, a certified copy of the citation or proposed civil penalty and wages may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the citation or proposed assessment of a civil penalty and wages.

(f) When findings and the order thereon are made affirming or modifying a citation or proposed assessment of a civil penalty and wages after hearing, a certified copy of these findings and the order entered thereon may be entered by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(g) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk shall make no charge for the service provided by this section to be performed by him or her.

(h) The civil penalties provided for in this section are in addition to any other penalty provided by law.

(i) This section shall not apply to any order of the commission relating to household occupations.

SEC. 10. Section 1197.2 is added to the Labor Code, to read:

1197.2. (a) In addition to any other penalty imposed by law, an employer who willfully fails to pay and has the ability to pay a final court judgment or final order issued by the Labor Commissioner for all wages due to an employee who has been discharged or who has quit within 90 days of the date that the judgment was entered or the order became final is guilty of a misdemeanor. For purposes of this section, "final court judgment or final order" means a court judgment or order as to which the time to appeal has expired and there is no appeal pending. If the total amount of wages due is less than one thousand dollars (\$1,000), upon conviction therefor, the employer shall be fined not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or imprisoned in a county jail for not more than six months, for each offense. If the total amount of wages due is more than one thousand dollars (\$1,000) upon conviction therefor, the employer shall be fined not less than ten thousand dollars (\$10,000) nor more than twenty thousand dollars (\$20,000), or imprisoned in a county jail for not less than six months, nor more than one year, or both the fine and imprisonment, for each offense. If there are multiple failures to pay wages involving more than one employee, the total amount of wages due to all employees shall be aggregated together for purposes of determining the level of fine and the term of imprisonment.

(b) As used in this section, "willfully" has the same meaning as provided in Section 7 of the Penal Code.

(c) Nothing in this section precludes prosecution under any other provision of law.

SEC. 11. Section 1206 is added to the Labor Code, to read:

1206. Notwithstanding any other provision of law, this code establishes minimum penalties for failure to comply with wage-related statutes and regulations.

SEC. 12. Section 2810.5 is added to the Labor Code, to read:

2810.5. (a) (1) At the time of hiring, an employer shall provide each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

- (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
- (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.
- (C) The regular payday designated by the employer in accordance with the requirements of this code.
- (D) The name of the employer, including any "doing business as" names used by the employer.
- (E) The physical address of the employer's main office or principal place of business, and a mailing address, if different.
- (F) The telephone number of the employer.
- (G) The name, address, and telephone number of the employer's workers' compensation insurance carrier.
- (H) Any other information the Labor Commissioner deems material and necessary.

(2) The Labor Commissioner shall prepare a template that complies with the requirements of paragraph (1). The template shall be made available to employers in such manner as determined by the Labor Commissioner.

(b) An employer shall notify his or her employees in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies:

- (1) All changes are reflected on a timely wage statement furnished in accordance with Section 226.
- (2) Notice of all changes is provided in another writing required by law within seven days of the changes.

(c) For purposes of this section, "employee" does not include any of the following:

- (1) An employee directly employed by the state or any political subdivision thereof, including any city, county, city and county, or special district.
- (2) An employee who is exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission.
- (3) An employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

SEC. 13. (a) Section 2.5 of this bill incorporates amendments to Section 98 of the Labor Code proposed by both this bill and Assembly Bill 240. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2012, (2) each bill amends Section 98 of the Labor Code, and (3) this bill is enacted after Assembly Bill 240, in which case Section 2 of this bill shall not become operative.

(b) Section 4.5 of this bill incorporates amendments to Section 226 of the Labor Code proposed by both this bill and Assembly Bill 243. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2012, (2) each bill amends Section 226 of the Labor Code, and (3) this bill is enacted after Assembly Bill 243, in which case Section 4 of this bill shall not become operative.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: March 17, 1999

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT
 Darrell Steinberg, Chair
 AB 60 (Knox) - As Amended: March 15, 1999

SUBJECT : Wages and hours: daily and weekly overtime.

SUMMARY : Establishes a framework for the payment of daily overtime compensation: time and one half pay after eight hours of daily work; up to four hours of make-up time per week without payment of overtime compensation; the adoption through an employee election of an alternative work week schedule or menu of schedules offered by an employer. Specifically, this bill :

- 1) Codifies the payment of daily overtime compensation at a rate of one and one half (1) times regular pay after eight hours of daily work and 40 hours of weekly work; at a rate of twice regular pay after 12 hours of daily work and eight hours of work on the seventh day of any workweek. This bill deletes the authority of parties to a contract to otherwise expressly stipulate the number of hours that constitute a day's work.
- 2) Establishes a procedure for an employer to propose an alternative workweek schedule or a menu of alternative workweek schedules, which may be approved by a 2/3 vote of affected employees. An alternative workweek schedule established pursuant to this procedure could allow up to 10 hours of daily work before overtime compensation is required. The procedure includes:
 - a) Approval upon a 2/3 vote by secret ballot of affected employees in a designated work unit;
 - b) Specific written notice and disclosures by the employer to the affected employees concerning the proposal;
 - c) Supervision of the election by a neutral third party from a list established by the Labor Commissioner upon written request by an employee;
 - d) Review by the Labor Commissioner of the designation of a "work unit" upon written request of an employee.

Establishes procedures for the repeal of an alternative

workweek schedule. An election to repeal an alternative workweek schedule may be initiated by a petition signed by one third (1/3) of the affected employees, and adopted by a majority vote of such employees. An alternative workweek schedule may also be repealed by an employer due to business necessity.

Nullifies any alternative workweek schedule that was adopted pursuant to the five wage orders amended effective January 1, 1998 (1,4,5,7, and 9) except for those adopted by a 2/3 vote of affected employees in a secret ballot election prior to that date which provide for a regular schedule of no more than 10 hours per day.

Provides that an employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal, or nullification of an alternative workweek schedule. Requires an employer to make a reasonable effort to find a work schedule not exceeding eight hours per day to accommodate any affected employee who was eligible to vote in an alternative workweek election but who is unable to work the alternative schedule adopted.

- 1) Establishes that within a workweek, an employee may, with the consent of an employer, take up to four hours time off work for a personal obligation, and then make up the lost time on other days without payment of daily overtime compensation for the extra hours worked on the makeup day(s), which would be otherwise required.
- 2) Authorizes the Industrial Welfare Commission (IWC) to exempt "administrative, executive, or professional and other classes of salaried employees" from overtime premium pay requirements,

provided that the employees:

- a) Earn not less than three times the state minimum wage (approximately \$2988 currently); and
- b) Are "primarily" engaged (more than one-half time) in the duties which meet the test of the exemption.

Prohibits the IWC from including pharmacists and registered nurses within this exemption unless they otherwise meet the minimum earnings and duties requirements specified for exemption of executive or administrative employees.

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Prohibits the IWC from exempting outside salespersons from any part of the wage orders unless they meet specific requirements concerning percentage of time engaging in outside sales activities, as defined.

The IWC's authority to establish such exemptions would expire on July 1, 2000. Thereafter, such exemptions could be modified, but not expanded, and new exemptions could not be established.

- 1) Exempts from overtime premium pay requirements employees who are covered by a collective bargaining agreement which requires premium wage rates for all overtime hours worked, and which establishes a wage rate of not less than thirty percent (30%) more than the state minimum wage.
- 2) Requires the IWC to adopt wage orders consistent with this act without convening wage boards. The bill provides that such wage orders are final and conclusive for all purposes.
- 3) Repeals specific statutory provisions governing daily and weekly overtime requirements for employees of:
 - a) A ski establishment (no daily overtime; weekly overtime after 56 hours).
 - b) A licensed commercial passenger fishing boat (no daily or weekly overtime).
 - c) A licensed hospital (daily overtime after 12 hours).
 - d) A stable (daily overtime after 10 hours; weekly overtime after 56 hours).

Codifies an exemption from the requirement for one day off work in seven days for cases of work in an emergency, work performed in the protection of life or property from loss or destruction, and in hardship cases. Daily overtime requirements would apply in such cases.

- 1) Retains specific statutory exemptions relating to daily and weekly overtime requirements:
 - a) For employees who perform work in the necessary care of

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animals, crops, or agricultural lands;

- b) For employees of a common carrier engaged in or connected with the movement of any train;
- c) For employees of a commercial (non-passenger) fishing boat;
- d) For student employees, camp counselors, or program counselors of an organized camp;
- e) For employees of certain 24-Hour manufacturing facilities with preexisting workweek arrangements.

- 1) Codifies the current wage order requirement for meal periods after five hours of work, and adds a requirement for a second meal period after 10 hours of work.

2) Adds new civil penalties of \$50 per employee for each pay period for a first violation, and \$100 per employee for each per pay period for subsequent violations of the Chapter. The bill also consolidates procedures for enforcing such requirements.

EXISTING LAW

1) Provides under the California Constitution (Art. XIV 1) authority for the Legislature to:

- (a) Enact statutes governing the general welfare of employees including hours of work; and,
- (b) Confer on a commission legislative, executive and judicial powers for those purposes.

Under this authority, the Legislature has adopted general and specific statutes concerning hours of work, and the Legislature has conferred those powers to the IWC.

1) Provides, by statute, that eight hours of labor constitute a day's work, unless it is otherwise stipulated by parties to a contract; and further provides that employees are entitled to one day's rest in seven. The statutes further provide that these requirements do not apply to work performed:

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- a) In the necessary care of animals, crops or agricultural lands;
- b) In the protection of life or property from loss or destruction;
- c) For any common carrier connected with the movement of any train;
- d) To employees covered by a valid collective bargaining agreement respecting the employees hours of work.
- e) By part-time employees whose hours of employment do not exceed 30 hours in any week or six hours in one day.

In addition to the above exceptions, the Chief of the Division of Labor Standards Enforcement (DLSE) may, when hardship may result, exempt any employer or employees from the above requirement.

1) Provides, under 15 wage orders adopted by the IWC, pursuant to delegated authority, rules governing wages, hours, and working conditions in particular industries. At the present time, the IWC has issued:

- a) Eight wage orders requiring, generally, the payment of time-and-one-half compensation for work exceeding eight hours per day, 40 hours per week, and for the first eight hours on the seventh consecutive day of work. Double time is generally required for work in excess of 12 hours per day and eight hours on the seventh consecutive day of work in the following industries:
 - 2 - Personal service industry
 - 3 - Canning, freezing, and preserving industry
 - 6 - Laundry, linen supply, dry cleaning, and dyeing industry
 - 8 - Industries handling products after harvest
 - 10 - Amusement and recreation industry
 - 11 - Broadcasting industry
 - 12 - Motion picture industry
 - 13 - Industries preparing agricultural products for market, on the farm
- b) Two wage orders with daily overtime after longer work

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days:

- 14 - Agricultural occupations (10 hours)

15 - Household occupations (live in - 12 hours)

a) Five wage orders with no daily overtime. These wage orders formerly included the payment of time-and-one-half compensation for work exceeding eight hours per day. They were amended to repeal daily overtime effective January 1, 1998:

- 1 - Manufacturing industry
- 4 - Professional, technical, clerical, mechanical and similar occupations
- 5 - Public housekeeping industry
- 7 - Mercantile industry
- 9 - Transportation industry

1) Further provides, under the wage orders:

- a) An exemption from overtime for "administrative, executive, and professional" employees whose work is primarily intellectual, managerial or creative and who receive a salary of not less than \$1150 (\$900 for some orders) per month;
- b) An exemption from overtime for public employees;
- c) A procedure for the adoption of an alternative workweek of up to four ten-hour days without the payment of overtime compensation as long as the work does not exceed 40 hours per week. Alternative workweeks must be approved in a secret ballot election by two-thirds of the affected employees.

1) Requires, under the California Constitution (Art. XIV 2) and statute, payment of overtime for work in excess of eight hours per day or 40 hours per week when performed by employees of public work contractors.

2) Provides, by statute, hours of work and related exemptions for specific industries including: ski establishments, the commercial fishing industry, organized camps, licensed hospital personnel, stable employees, and railroad employees.

3) Provides, under the federal Fair Labor Standards Act (FLSA), minimum requirements under federal law, but allows the states to adopt additional protections. The FLSA requires the payment of time-and-one-half compensation after 40 hours per week. The FLSA exempts from this overtime provision a variety of occupations, including agricultural employees, camp employees, and administrative and professional employees.

FISCAL EFFECT : Unknown

COMMENTS :

1) The five wage orders amended by the IWC January 1, 1998. Effective January 1, 1998, the IWC amended five wage orders to eliminate daily overtime and provide that: "No overtime pay shall be required for hours worked in excess of any daily number." (Emphasis added.) The five wage orders cover the following industry or occupational groups: Manufacturing; Professional, clerical, mechanical and similar occupations; Public housekeeping industry; Mercantile industry; and, the Transportation industry. Bill supporters estimate that eight million workers were previously covered by daily overtime requirements in these industries and occupations.

2) A brief history. Beginning in 1913, the IWC had jurisdiction over working hours only of women and minors. Exercising its authority, the IWC established daily overtime after eight hours for those groups. In 1974, the discriminatory impact of this approach was struck down in Federal Court. The IWC's efforts to adopt new wage orders led to a protracted legal battle. In 1980, the California Supreme Court upheld the adoption of final wage orders incorporating the eight-hour day for male and female employees. Five of those wage orders remained in effect until they were amended to repeal daily overtime on January 1, 1998. That action resulted in an unsuccessful legal challenge, legislation including SB 680 (1997) which was passed but vetoed by Governor Wilson, and this bill.

3) Two provisions concerning flexibility. This bill would establish daily overtime after eight hours as the general rule in California. It contains two prominent features related to flexibility:

First, it provides for the adoption of alternative workweek schedules pursuant to an employee election. The alternative workweek procedure is common to the IWC's wage orders. Two significant differences: (1) This bill allows a menu of alternative workweek options rather than a single choice such as a 4/10 (four ten hour day) schedule; (2) This bill limits the alternative schedules to not more than 10 hours per day without triggering daily overtime. The ten-hour limitation is contained in most, but not all of the wage orders. Others allow up to 12 hours without daily overtime compensation.

Second, it contains a four hour per week makeup time provision. This does not exist under current law or wage orders.

- 4) Redefining exempt employees and creating new classes of exempt employees. All of the wage orders designate "administrative, executive or professional" employees as exempt employees who are not covered by overtime provisions. The wage order exemptions have a salary threshold and require that the employee engage in certain types of work deemed to be administrative, executive or professional in nature. This bill raises the salary threshold and requires that the duties triggering the exemption constitute 51% or more of the employees time. These changes would remove exempt status from lower paid managers and employees who are not primarily engaged in exempt duties.

This bill also authorizes the IWC to create new classes of exempt employees who meet the wage and time thresholds. However, this authority will expire on July 1, 2000.

- 5) Effect on three twelve-hour day alternative work schedules. This bill declares null and void alternative workweeks adopted pursuant to the five wage orders amended in January 1998 except for alternative workweeks that (1) provide for a schedule of not more than 10 hours in a workday and (2) which were adopted pursuant to a secret ballot election by 2/3 of the affected employees pursuant to those wage orders prior to 1998.

In covered industries, such as hospitals, a three day/twelve hour schedule without overtime compensation would be voided by this provision. The 12 hour shifts could still be maintained, but overtime pay would be required after eight hours, or after

10 hours if a new alternative workweek schedule was approved. A 12 hour shift without overtime compensation could be established pursuant to a qualified collective bargaining agreement. Since this bill also requires the IWC to amend wage orders to be consistent with this measure, other wage orders will presumably be amended to limit alternative workweek schedules to 10 hours of daily work without overtime pay.

- 6) An explanatory note. Maximum daily hours of work, overtime compensation, and flextime are terms which are sometimes misunderstood. The maximum legal daily hours of work are not at issue in this bill or the disputed wage orders. The issues in controversy are when premium overtime pay (time and one-half or double time) is triggered, and which employees may be exempt from premium overtime pay. Flextime, that is, the variable starting times for a workday is also not controlled by either the bill or the wage orders. The purpose of overtime premium compensation requirements as viewed by the courts has been to induce the employer to reduce the hours of work and employ more individuals, while compensating employees for the burdens of overtime work.

- 7) Other bills. A similar measure, SB 1000 (Burton), has been introduced in the Senate.

- 8) Support. Arguments in support of this bill may be

characterized as follows:

- a) Lost employee income. The elimination of the eight-hour day has severely cut the incomes of part-time and contingent workers who fail to qualify for premium pay under the 40 hour workweek. The IWC's actions affected up to eight million workers and business may annually reclaim up to \$1 billion in lost wages as a result of these actions.
- b) Health and safety. Numerous studies have linked long work hours to increased rates of accident and injury. Without the eight-hour limitation, many employers would lengthen the workday to 12 or more hours, resulting in extreme fatigue and stress to workers.

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- c) Family life. Family life suffers when either or both parents are kept away from home for an extended period of time on a daily basis.
- d) Protection of the 40 hour workweek. In addition to daily overtime, this bill codifies the 40 hour workweek in state law, which would protect employees in California if legislation which has been proposed in Congress to weaken the 40 hour workweek requirements in the federal law is enacted.
- e) Flexibility. While both sides of this issue support the concept of flexibility, under the approach in this bill employees retain the right to approve or disapprove of an alternative workweek schedule, while under the IWC's actions, the employer has the authority to force employees to work longer work schedules without their consent.

1)Opposition. Arguments in opposition to this bill may be characterized as follows:

- a) Bottom line. Relief from existing overtime rules as provided by the IWC amended wage orders has earned employers millions of dollars and allows them to control their production schedules. Employers should be able to work employees 10 or 12 hours a day, without the penalty of overtime if competitive forces necessitate such work schedules. Flexibility would result in greater productivity and enhanced prosperity for all Californians.
- b) Employee benefits. Former IWC wage orders were too restrictive and did not allow flexible work schedules. This bill is more restrictive than the former IWC wage orders. The alternative workweek process is too cumbersome. Employees need more flexibility to respond to today's work and life needs.
- c) Interstate competition. California should conform to FLSA overtime requirements in order to allow California business to compete with other states. This bill sets California even farther apart from overtime rules in other states.
- d) Twelve hour days. Hospitals and other industries which have adopted 12 hour day schedules argue that the cost of

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maintaining this schedule while paying overtime after eight hours (or 10 hours in the case of an alternative work schedule) would be prohibitive.

- e) Unique industry work patterns. The ski industry, among others, argues that conditions of employment in that industry is unique and justifies a continuing exemption from daily overtime requirements.

REGISTERED SUPPORT / OPPOSITION :

Support

American Federation of State, County and Municipal Employees
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Federation of Teachers
California Labor Federation
California Nurses Association
California State Association of Electrical Workers
California State Building and Construction Trades Council
California State Council of Laborers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Engineers & Scientists of California
Hotel Employees, Restaurant Employees International Union
Long Beach Police Officers Association
Peace Officers Research Association of California
Region 8 States Council of the United Food & Commercial Workers
Sacramento County Deputy Sheriffs' Association
Service Employees International Union
Westaff
Western States Council of Sheet Metal Workers
Numerous Individuals

Opposition

ABC Service
All Phase Construction
Alliance Staffing Associates
Alta Insurance Agency, Inc.
American Eagle Wheel Corporation
Apex Painting Inc.
Apple Valley Transfer & Storage, Inc.

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Associated Desert Newspapers, Inc.
Astro Seal, Inc.
ATL Trucking
Bank of Marin
Behr Process Corporation
Best Rents, Inc.
Blue Chip Inventory Service, Inc.
Broom & Broom Inc.
Bush's Automotive, Inc.
California Association for Health Services at Home
California Association for Local Economic Development
California Association of Health Facilities
California Bus Association
California Cartage Company Inc.
California Healthcare Association
California Landscape Contractors Association
California Manufacturers Association
California Newspaper Publishers Association
California Ski Industry Association
Cameron & Cameron, Inc.
camp frasier
CareMore Medical Management Company
Carlsbad Chamber of Commerce
Carter's Pet Mart
Catalina Island Camps
CellularOne of San Luis Obispo
Chateau La Jolla Inn
Choices Transitional Services
Christopher P. Thomas Accounting
Circle Machine Company
City of Porterville
Coast Lithographics
Columbia Steel Inc.
Consolidated Fabricators Corp.
Contractors Equipment Company
Coop Engineering, Inc.
Corning Truck & RV Center
Criterion Machine Works
David C. Coykendall, D.D.S., Inc.
De Best MFG. Co., Inc.
Diamond Well Drilling Company
Dominican College of San Rafael
Edward's Federal Credit Union
Fair Oaks Water District
Farr West Fashions

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Fleetwood Motor Homes of California, Inc.
Fleetwood Travel Trailers of California, Inc.
Franklin Construction Inc.
Gateway Business Forms, Inc.
General Test Laboratory
GeoSoils, Inc.
Gibson Capital Management
glasforms inc
Golden State Fence Co.
Golden West K-9
Greater Stockton Chamber of Commerce
Griffin Property Management
Haddick's Auto Body and Towing
Hartis, Hare & Company, Inc.
Hayden Automotive
Hemet Federal Savings and Loan Association
Heritage Estates, Inc.
Hermosa Beach Chamber of Commerce
Holiday Inn Plaza Park
Hycor Biomedical Inc.
Hydro Fitting MFG. Corp.
HyPower Hydraulics
Industrial Contracting Engineers Inc.
Industrial Tools Incorporated
Industry Manufacturers Council
Intri-Plex Technologies
ITLA Capital Corporation
Jasmine Vineyards
Jazzercise, Inc.
Jonbec Care Inc.
Junior Steel Co.
KCAC, Inc.
L.P.G. Associates
Lake Henshaw Resort Inc.
Lakeview Professional Services, Inc.
Law Offices of Buresh, Kaplan, Jang, Feller & Austin
Lobel Financial
Long Beach Memorial Medical Center
Los Angeles Cardiology Associates
Los Angeles Federal Credit Union
Lustre-Cal Nameplate Corporation
Manteca Community Action Programs and Services
Marin Produce Company, Inc.
McCormick & Company, Inc.
Medical Home Care Professionals, Inc.

Memorial Health Services
metech International Inc.
Michael's Restaurant
Millennium Home Theatre & Audio
Modesto Chamber of Commerce
National Federation of Independent Business
NDS Drainage & Landscape Products
Nevada City Citizen's Restaurant
New Directions Sign Service
Norquist Salvage Corporation
Northern California Grocers Association
Norton Packaging Incorporated
Outboard Jets
Pacheco Brothers Gardening, Inc.
Pacific Millennium
Pacific Millennium Trading Corporation
Packaging Innovators Corporation
Pharmaceutical Care Network
Pizza World Supreme
Planet Kids
Poly Seal Industries
Preventive Dental Care Centers Management Services, Inc.
Printing Industries of California
Professional Community Management, Inc.
ProFlame, Inc.
Rangers Die Casting Company, Inc.
Redding Oil Company
Rhyne Design Cabinets
Ronald L. Wolfe & Associates
Sacramento Animal Medical Group
Sacramento Metropolitan Chamber of Commerce
Salinas Valley Chamber of Commerce
San Carlos Agency, Inc. Real Estate
San Lorenzo Lumber Co., Inc.
San Rafael Chamber of Commerce
Santa Barbara Association of Realtors
Seawright Custom Precast
Secure Transportation
Sheraton Los Angeles Harbor Hotel
Simi Valley Chamber of Commerce

Skip Gibbs Company, Inc.
Small Engine and Power Tool Repair, Inc.
SmileCare Dental Group
Squires-Belt Material Company
Stiern Southwest Veterinary Hospitals

Stokes Ladders, Inc.
Teknor Apex Company
The Go Between Incorporated
Today's Staffing Source
Tom Sawyer Camps, Inc.
Tow Industries, Baatz Enterprises Inc.
Trico Drum Sales Inc.
Tulare County Alcoholism Council, Incorporated
Tulare County Board of Supervisors
Turning point of Central California, Inc.
Turnkey Technologies, Inc.
UAE Energy Operations Corp.
Victorville Chamber of Commerce
Visalia Chamber of Commerce
Western Carwash Association
Western Wood Fabricators
Wild Sports
Wolfard Glassblowing Co.
Numerous Individuals

Analysis Prepared by : Ralph Lightstone / L. & E. /
(916)319-2091

Date of Hearing: April 21, 1999

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

AB 60 (Knox) - As Amended: March 22, 1999

Policy Committee: Labor and
Employment Vote: 6-3Urgency: No State Mandated Local
Program: Yes Reimbursable: NoSUMMARY :

This bill enacts the Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999, which generally provides that employees shall be paid overtime at specified rates for hours worked in excess of eight hours in one day.

FISCAL EFFECT :

The Department of Industrial Relations (DIR) estimates that this bill would result in costs to its Division of Labor Standards Enforcement (DLSE) of up to \$1 million to review and process increased numbers of overtime wage claims and alternative workweek requests. DIR estimates that these costs would be offset by revenues generated from the civil penalties authorized by the bill.

KEY PROVISIONS :

The bill includes the following key provisions:

1) Premium Overtime Pay

- a) Except for an employee working pursuant to an alternative workweek schedule, the bill provides that employees must be compensated for hours worked in excess of eight hours in one day at the rate of 1- the employee's regular rate of pay, and for hours worked in excess of 12 hours in one day at the rate of twice the employee's regular rate of pay.
- b) Deletes the authority of parties to a contract to

otherwise expressly stipulate the number of hours that constitute a day's work.

2) Alternative Workweek Schedules

- a) Codifies the authority of employees under existing Industrial Welfare Commission (IWC) wage orders to adopt an alternative workweek schedule that permits work of up to 10 hours per day without the payment of overtime. Hours worked in excess of 10 hours in one day pursuant to an alternative workweek schedule must be compensated for at the rate of 1- the employee's regular rate of pay, and hours worked in excess of 12 hours in one day must be compensated at the rate of twice the employee's regular rate of pay.
- b) Establishes a procedure for an employer to propose an alternative workweek schedule or a menu of alternative workweek schedules, requiring approval of two-thirds of the affected employees, in conformance to specified notice and secret ballot provisions.
- c) Establishes a procedure for the repeal of an alternative workweek schedule, which may be initiated by a petition signed by one-third of the affected employees and adopted by a majority vote of such employees. Specifies that an employer may repeal an alternative workweek schedule due to business necessity.
- d) Nullifies any alternative workweek schedule adopted pursuant to five wage orders amended effective January 1, 1998, except for those adopted by a two-thirds vote of the affected employees in a secret ballot election prior to that date, and which provide for a regular schedule of no

more than 10 hours per day. This applies to wage order 1 (manufacturing), wage order 4 (professional, technical, clerical, mechanical and similar occupations), wage order 5 (public housekeeping industry), wage order 7 (mercantile industry), and wage order 9 (transportation industry).

3) Exemptions

- a) Provides that if an employer approves the written request of an employee to make up work that is lost as a result of a personal obligation of the employee, the first four hours of that make-up work, if performed in the same

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workweek in which the time was lost, may not be counted towards the total hours worked in a day for purposes of overtime requirements.

- b) Provides an exception from the overtime pay requirements for administrative, executive, professional or other classes of salaried employees, providing that the employee earns at least three times the state minimum wage and is primarily engaged in duties that meet the test of the exemption.
- c) Deletes the authority of the IWC to establish new exemptions after July 1, 2000.
- d) Exempts from the overtime pay requirements employees covered by a collective bargaining agreement that requires premium wage rates for all overtime hours worked and establishes a wage rate of not less than 30% more than the state minimum wage.
- e) Repeals statutory provisions governing daily and weekly overtime requirements for employees of ski establishments, licensed commercial passenger fishing boats, licensed hospitals, and stables.
- f) Retains specific statutory exemptions from daily and weekly overtime requirements for agricultural employees, employees of a common carrier (train), employees of a commercial (non-passenger) fishing boat, student employees, camp counselors, or program counselors of an organized camp, and for employees of certain 24-hour manufacturing facilities with preexisting workweek arrangements.

4) Meal Periods

- a) Codifies the IWC wage order requirement for meal periods after five hours of work, and imposes a second meal period requirement after 10 hours of work, subject to certain exemptions.

5) Penalties

- a) Authorizes new civil penalties of \$50 per employee for each pay period for a first violation of the overtime pay requirements of the bill, and \$100 per employee for each

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pay period for subsequent violations. The bill assigns enforcement responsibilities to the Labor Commissioner.

COMMENTS :

- 1) Background . The California Constitution authorizes the Legislature to enact statutes governing the general welfare of employees, including hours of work, and to confer to a commission legislative, executive and judicial powers for such purposes. The Legislature has both adopted statutes governing hours of work and conferred authority over these matters to the Industrial Welfare Commission (IWC). There currently are 15 IWC wage orders governing wages, work hours and working conditions in specific industries.
- 2) Elimination Of Daily Overtime . Effective January 1, 1998, the IWC amended five wage orders to eliminate daily overtime for any number of hours worked in the following industries or

occupational groups: (1) manufacturing; (2) professional, clerical, mechanical and similar occupations; (3) public housekeeping industry; (4) mercantile industry; and (5) transportation industry. Bill supporters estimate that these wage orders have eliminated up to \$1 billion in daily overtime pay for eight million workers.

3) Arguments In Support . Supporters state the elimination of the eight-hour day has severely cut incomes of employees in the five industries covered by the amended IWC wage orders, particularly for part-time workers that fail to qualify for premium pay under the 40-hour workweek. Additionally, proponents cite studies that have linked long work hours to increased accident rates, and note the damage to family life that occurs when one or both parents are kept away from home on an extended basis. Finally,

AB 60 (KNOX)
EMPLOYMENT: OVERTIME

Version: 3/15/99 Last Amended
Vote: Majority
OPPOSE***

Vice-Chair: Bob Margett
Tax or Fee Increase: No

By mandating a rigid 8-hour overtime law instead of a flexible 40-hour workweek, this bill limits flextime work for 8 million, kills entry level jobs, reduces productivity, and inflates labor costs/consumer prices.

THIS BILL IS THE AFL-CIO'S TOP PRIORITY. CHAIRMAN STEINBERG Wants TO "WORK TO DEVELOP RULES OF FLEXIBILITY WHEN AN EMPLOYEE WANTS TO WORK AN ALTERNATIVE WORK SCHEDULE." Governor Davis recently expressed an appreciation of flexible work hours for individuals before the Building Trades Council.

THE AUTHOR'S LAST MINUTE AMENDMENTS (3/15/99) ELIMINATES MANY INDUSTRY AND OCCUPATIONAL EXEMPTIONS AND EXCEPTIONS NECESSARY TO MAKE A RIGID PATERNALISTIC SCHEDULING LAW WORKABLE.

IN CONTRAST GOP PROPOSES AMENDMENTS TO PROTECT FLEXTIME FOR INDIVIDUAL WORKERS AND RETAIN EXEMPTIONS CARVED OUT BY THE LEGISLATURE TO FIT THE PRACTICAL NEEDS OF EMPLOYEES AND EMPLOYEES ALIKE.

Policy Question

Ought the state of California stand between worker and employer rights to consent to contracts flexibly adjusting work schedules for mutual benefit?

Ought consenting adults be able to balance conditions of their family, educational, and recreational lives with their employer and their work without the interference of organized labor or disorganized bureaucrats?

Summary

AS AMENDED (3/15/99):

1. Deletes the right of the individual employee [or independent contractor?] and employer to contract for flexible

Assembly Republican Labor Votes (6-3) 3/17/99	
Ayes: None	
Noes: Margett, Mc Clintock, Oller	
Abs. / NV: None	
Assembly Republican Votes (0-0) 1/1/98	
Ayes: None	
Noes: None	
Abs. / NV: None	
Assembly Republican Votes (0-0) 1/1/98	
Ayes: None	
Noes: None	
Abs. / NV: None	
Assembly Republican Votes (0-0) 1/1/98	
Ayes: None	
Noes: Nonc	
Abs. / NV: None	

2. Limits personal time make-up hours without overtime pay to 4 hours per workweek.
3. Repeals current flexible scheduling and instead codifies a process of secret elections (conducted by qualified neutral third parties at noticed and disclosed meetings petitioned by one third of employees) no more than once a year to either adopt by a two-thirds vote or to repeal by a majority vote either a single alternative workweek schedule (of no longer than 10 hours) or an employer's menu from which each [and every?] individual employee would be entitled to choose his own schedule [without employer control].
4. Requires time-and-a-half overtime pay for work in excess of 8 hours per day, any hours in excess of alternative workweek agreement (e.g. 10 hours), and 40 hours per week.
5. Requires double-time for work exceeding 12 hours per day and exceeding 8 hours on days beyond alternative workweek (e.g. day five of a four day 10-hour plan).
6. Retains labor union exemptions from overtime law -- allowing flextime (e.g. 12 hour days) -- where wage rate is 30 % above the minimum wage.
7. Creates a new labor union exemption (under a collective bargaining agreement) from one day of rest in seven.
8. Eliminates DIR authority to grant hardship exemptions from overtime

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- requirements. (Sec. 9, Section 554).
9. Applies daily overtime to part time employees. (Sec. 10, Section 556.)
 10. Pays salaried exempt employees straight time pay for overtime. (sec. 515 (d))
 11. Eliminates exemptions from overtime pay for cops, firemen, and emergency medical services – “any cases of emergency, ... work performed in the protection of life or property from loss or destruction.”
 12. Eliminates flexible alternative workweek schedules allowed by Work Orders #s 1,4,5,7, 9 –
 - Manufacturing
 - Professional, technical, clerical, mechanical occupations (e.g. teachers)
 - Public housekeeping (e.g. restaurants, hotels, also health care industry)
 - Mercantile (retail, wholesale)
 - Transportation.
 13. Eliminates explicit exemptions for public employees contained in existing wage orders.
 14. Eliminates overtime pay exemptions for:
 - Administrative, executive, or professional personnel (under \$3,000 per month)
 - Licensed lawyers, doctors, dentists, pharmacists, optometrists, architects, engineers, teachers, accountants. (Defined as admin, exec under Work Orders).
 - Registered Nurses and pharmacists
 - Health care industry (under wage order 5 inc. hospitals, skilled nursing, intermediate, and residential, and convalescent care.)
 - Outside salespersons (narrowly defined)
 - Ski establishment employees
 - Commercial fishing industry
 - Licensed hospital personnel
 - Horse stable employees
 15. Allows IWC to restore exemptions only for administrative, executive, and professional earning three times the minimum wage – \$34,856.
 16. Gives IWC only one meeting and six months, July 2000, to adopt any exemptions.
 17. Orders the IWC to adopt final and conclusive wage orders (regulations) consistent with this measure in a ONE single public hearing, without convening wage boards.
 18. Allows employer to repeal an alternative schedule for reasons of “business necessity” only if employees receive a 45-day notice.
 19. Allows employees to vote out any existing alternative schedule under existing law.
 20. Requires Labor Commissioner to “maintain a list of approved neutral third party organizations with experience in conducting

employee elections.”

21. Codifies the IWC orders prohibiting employment for more than 5 hours without a 30 minute meal break and further prohibits work for more than 10 hours without a second meal break of 30 minutes; allows waiver of only one meal break in twelve hours.
22. Increases from \$900 to three times the minimum wage (\$3,000) the monthly compensation that an employee would be required to receive to exempted from overtime requirements as an administrative, executive, or professional employee;
23. In addition to recovery of underpaid wages, subjects employer or person acting on behalf of an employer (supervisor, bookkeeper?) to pay civil penalties for violating any provisions (inc. complex elections) of \$50 initially for each period in which an employee was underpaid and \$100 for each subsequent violation, and establishes the procedures for contesting a citation or penalty. **Pays recovered wages to employee, but penalties are not paid to employee;** and
24. Imposes a state-mandated local program, for which reimbursement of local agencies is disclaimed.

Support

(Verified as of 3/16/99): American Federation of State, County and Municipal Employees; CA. Conference Board of the Amalgamated Transit Union; CA Conference of Machinists
 CA Federation of Teachers; CA Labor Federation;
 CA Nurses Association
 CA State Association of Electrical Workers;
 CA State Building and Construction Trades Council; CA State Council of Laborers
 CA State Pipe Trades Council; CA Teamsters Public Affairs Council; Engineers & Scientists of CA Hotel Employees; Restaurant Employees International Union; Long Beach Police Officers Association; Peace Officers Research Assoc. of CA; Region 8 States Council of the United Food & Commercial Workers; Sacramento County Deputy Sheriffs' Association; Service Employees International Union; Westaff Western States Council of Sheet Metal Workers; Numerous Individuals

Opposition

(Verified 3/16/99) ABC Service; All Phase Construction; Alliance Staffing Associates; Alta Insurance Agency, Inc.; American Eagle Wheel Corporation; Apex Painting Inc.; Apple Valley Transfer & Storage, Inc.; Associated Desert Newspapers, Inc.; Astro Seal, Inc.; ATL Trucking;

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Assembly Republican Bill Analysis

AB 60 (Knox)

Bank of Marin; Behr Process Corporation; Best Rents, Inc.; Blue Chip Inventory Service, Inc.; Broom & Broom Inc.; Bush's Automotive, Inc.; CA Association for Health Services at Home; CA Association for Local Economic Development; CA Association of Health Facilities; CA Bus Association; CA Cartage Company Inc.; CA Healthcare Association; CA Landscape Contractors Association; CA Manufacturers Association; CA Newspaper Publishers Association; CA Ski Industry Association; Cameron & Cameron, Inc.; camp frasier; CareMore Medical Management Company; Carlsbad Chamber of Commerce; Carter's Pet Mart; Catalina Island Camps; Cellular One of San Luis Obispo; Chateau La Jolla Inn; Choices Transitional Services; Christopher P. Thomas Accounting; Circle Machine Company; City of Porterville; Coast Lithographics; Columbia Steel Inc.; Consolidated Fabricators Corp.; Contractors Equipment Company; Coop Engineering, Inc.; Corning Truck & RV Center; Criterion Machine Works; David C. Coykendall, D.D.S., Inc.; De Best MFG. Co., Inc.; Diamond Well Drilling Company; Dominican College of San Rafael; Edward's Federal Credit Union; Fair Oaks Water District; Farr West Fashions; Fleetwood Motor Homes of CA, Inc.; Fleetwood Travel Trailers of CA, Inc.; Franklin Construction Inc.; Gateway Business Forms, Inc.; General Test Laboratory; GeoSoils, Inc.; Gibson Capital Management; glasforms inc; Golden State Fence Co.; Golden West K-9; Greater Stockton Chamber of Commerce; Griffin Property Management; Haddick's Auto Body and Towing; Hartis, Hare & Company, Inc.; Hayden Automotive; Hemet Federal Savings and Loan Association; Heritage Estates, Inc.; Hermosa Beach Chamber of Commerce; Holiday Inn Plaza Park; Hycor Biomedical Inc.; Hydro Fitting MFG. Corp.; HyPower Hydraulics; Industrial Contracting Engineers Inc.; Industrial Tools Incorporated; Industry Manufacturers Council; Intri-Plex Technologies; ITLA Capital Corporation; Jasmine Vineyards; Jazzercise, Inc.; Jonbec Care Inc.; Junior Steel Co.; KCAC, Inc.; L.P.G. Associates; Lake Henshaw Resort Inc.; Lakeview Professional Services, Inc.; Law Offices of Buresh, Kaplan, Jang, Feller & Austin; Lobel Financial; Long Beach Memorial Medical Center; Los Angeles Cardiology Associates; Los Angeles Federal Credit Union; Lustre-Cal Nameplate Corp.; Manteca Community Action Programs and Services; Marin Produce Company, Inc.; McCormick & Company, Inc.; Medical Home Care Professionals, Inc.; Memorial Health Services; Metech International Inc.; Michael's Restaurant; Millennium Home Theatre & Audio; Modesto Chamber of Commerce; National Federation of Independent Business; NDS Drainage & Landscape Products; Nevada City Citizen's Restaurant; New Directions Sign Service; Norquist Salvage Corporation; Northern CA Grocers Association; Norton Packaging Incorporated;

Outboard Jets; Pacheco Brothers Gardening, Inc.; Pacific Millennium; Pacific Millennium Trading Corporation; Packaging Innovators Corporation; Pharmaceutical Care Network; Pizza World Supreme; Planet Kids; Poly Seal Industries; Preventive Dental Care Centers Management Services, Inc.; Printing Industries of CA; Professional Community Management, Inc.; ProFlame, Inc.; Rangers Die Casting Company, Inc.; Redding Oil Company; Rhyne Design Cabinets; Ronald L. Wolfe & Associates; Sacramento Animal Medical Group; Sacramento Metropolitan Chamber of Commerce; Salinas Valley Chamber of Commerce; San Carlos Agency, Inc. Real Estate; San Lorenzo Lumber Co., Inc.; San Rafael Chamber of Commerce; Santa Barbara Association of Realtors; Seawright Custom Precast; Secure Transportation; Sheraton Los Angeles Harbor Hotel; Simi Valley Chamber of Commerce; Skip Gibbs Company, Inc.; Small Engine and Power Tool Repair, Inc.; SmileCare Dental Group; Squires-Belt Material Company; Stiem Southwest Veterinary Hospitals; Stokes Ladders, Inc.; Teknor Apex Company; The Go Between Incorporated; Today's Staffing Source; Tom Sawyer Camps, Inc.; Tow Industries, Baatz Enterprises Inc.; Trico Drum Sales Inc.; Tulare County Alcoholism Council, Inc.; Tulare County Board of Supervisors; Turning point of Central CA, Inc.; Turnkey Technologies, Inc.; UAE Energy Operations Corp.; Victorville Chamber of Commerce; Visalia Chamber of Commerce; Western Carwash Association; Western Wood Fabricators; Wild Sports; Wolfard Glassblowing Co.; Numerous Individuals.

Arguments In Support of the Bill

Labor unions support this bill on the basis of its declarations stating that:

1. Longer workdays result in fatigue and stress to workers;
2. The 40-hour work week costs workers overtime pay essential to their survival;
3. Family life suffers when parents are away from home daily for an extended time.

Arguments In Opposition to the Bill

1. **Equal rights for all workers.** Every worker ought to have the same rights to a flexible work schedule, as do members of organized labor. Most union workers are exempted, but unions routinely negotiate for flexible schedules for their members. The standard union contract with hospital employee's demand a 12-hour day (and four-day weekends). Yet unions vehemently oppose the benefits of flextime for the 85% of workers in CA who either do not pay union dues or are not public employees.
2. **Proposed GOP amendments would allow individual employees to work out flexible schedules with their employers and preserve exemptions and exceptions developed over**

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many years to make CA 's impractical [w] work. In contrast, the Author's amendments of 3/15/99 allow employees to select alternative schedules only through a complex election process from an employer menu of rigid regularly scheduled alternative work schedules.

3. **Flexibility is popular.** In the one year that the IWC has allowed flextime it has been extremely popular. Its 40-hour overtime rule created three-day weekends and more time for kids, parents, school, and play. Working parents go back to school a day or two or three a week to improve their lives and their value at work or alternatively to coach little league, run a boy scout or girl scout troop, volunteer at church, help the poor and homeless, mentor or tutor a troubled child. All workers, not just union workers, need work time flexibility. A 1992 survey by the American Management Association found that 87% of workers polled listed more flexibility in their work day as their Number One issue and only three states including California have required lockstep, inflexible overtime rules that are out of step and out of touch with the desires of workers and their families.
4. **Bureaucratic process kills flexibility.** AB 60 is the antithesis of flexibility and regresses even farther than the currently outmoded California regulations rejected by 47 other states. AB 60 compounds existing bureaucratic lethargy by making the employer jumps through a new series of bureaucratic hoops, including a complex elections process that thousands of California manufacturers and other employers found unworkable when tried by the IWC. Any deviation from this one-size-fits-all, rigid process makes elections null and void or subjects employers – and their supervisors and bookkeepers – to costly civil penalties.
5. **Flexibility increases Productivity.** Recent studies and experience have shown flextime's real benefits. In Managing a Flexible Workplace, B. Olmstead and S. Smith (Amacom, 1996), flexible scheduling is credited by firms such as Xerox, Tandem Computers and Corning Inc., with cutting absenteeism by 30%, offering an alternative to layoffs, building employee morale and productivity and making managers more productive.
6. **Flexibility is Profamily.** Social psychologist Deborah Lee in Having It All, Having Enough, (Amacom, 1996) observed that flexibility is the one component workers "consistently identify as creating balance between work and family." And, a recent study by Stanford's Hoover Institution showed that the 40-hour week overtime regulation was likely to result in an additional \$500 million in annual earned income for Californians.
7. **Flexibility is friendly to the environment.** Allowing 3 or 4 day work weeks produces safer

commutes and a cleaner environment by reducing peak hour travel, congestion, gridlock, accidents, injuries, fatalities, air pollution, fuel consumption. AQMD has negotiated 3-12, 4-10, 9-80 work schedules with public employers in Los Angeles to reduce commuting days, traffic congestion, and air pollution.

8. **Rigid scheduling is intrusive and paternalistic.** Preventing an individual worker and an employer from freely contracting terms agreeable to both oppresses the liberty and well being of both. This bill enriches a burdensome, bumbling bureaucracy at the expense of both individual choice and economic growth. It may be an unconstitutional abrogation of the right of contracts and its procedures may violate rights to due process and/or the Administrative Procedures Act.
9. **Fixed workdays hurt productivity and competitiveness.** This bill drives up the cost of non-union labor to the disadvantage of business and reduces productivity and efficiency. Outmoded regulation creates competitive disadvantages for California businesses, potentially exporting jobs to other states.
10. **This bill will cost California consumers, taxpayers, and businesses – to the exclusion of 47 competing states – untold billions of dollars in higher costs for labor, services, and products.** Regressive, NOT progressive.

Fiscal Effect

Unknown.

Comments

1. **Background - Federal law:** The Federal Fair Labor Standards Act (FLSA) and 47 states require the payment of time-and-a-half after 40 hours of work per week. The FLSA does not mandate daily overtime pay nor do 47 states California ONLY law: For over 20 years the California legislature and the IWC have chosen to exempt some dozen industries and occupations from a strict 8-hour overtime pay – e.g. agriculture, mining, **licensed hospitals, pharmacy, seasonal skiing, outside sales, managers and professionals, relatives, ride operators, professional actors, camp counselors, railroads, commercial passenger fishing boats, race horse trainers, construction (?), manufacturing.**
2. This bill eliminates or limits bold categories – requires overtime after 8 hours.
3. **California Regulation:** California overtime requirements are set by the IWC in wage orders, i.e. regulations, and do not require legislative approval. In early April 1997 the Wilson appointed IWC voted to change its regulations, effective 1/1/98, from the restrictive 8-hours-per-day overtime rule to the more flexible 40-hours-per-week rule used in 47 other states. These regulations instituted flexible work hours

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for about 9 million workers in most of California's workforce.

4. Unsuccessful Labor Union Challenges.

Organized labor first tried to invalidate the appointment of one of the labor representatives on the IWC to nullify the IWC vote. A court rejected this effort in early June 1998. A second legal challenge claimed the IWC did not have the authority to amend overtime rules. In late June 1998, the San Francisco Superior Court held that the IWC clearly had authority. Upon appeal, Presiding Justice J. Clinton Peterson in the 3-0 ruling (joined by Justices Zerne Hanning and Barbara Jones) of the 1st District Court of Appeals, said that mandatory overtime after eight hours has been, "Increasingly out of step with the desire of workers and employers for more flexible work weeks."

5. In 1997-98 bills were introduced to rescind actions of the IWC. SB 680 Solis and AB 15 (Knox) passed 42 - 32 without a single Republican AYE vote.

6. **Existing Law: 8-hour Day.** Under existing law 8 hours constitute a day's work unless otherwise contracted. This bill would eliminate this right to contract for any other number of hours; provide compensation at 1 and 1 / 2 times the regular rate of pay for hours worked in excess of 8 hours in one day and twice the regular rate of pay for hours worked in excess of 12 hours in one day; subject employer, or other "person acting on behalf of an employer" (independent contractors?).

7. **Existing wage orders** for various industries and occupations specify the rate of overtime compensation required to be paid to an employee for work in excess of 40 hours per week and provide that no employer is in violation of those overtime provisions if the employees of the employer have adopted a

voluntary written agreement.

- 8. This bill allows a written request of an employee to make up work time that is lost as a result of a personal obligation for up to 4 hours in a workweek without being counted towards overtime pay.
- 9. Existing wage orders of the IWC provide that no person employed in an administrative, executive, or professional capacity is required to be paid overtime. This bill limits that exemption.
- 10. **As amended 3/15/99** by the author, this bill also would tighten exemptions for nurses and pharmacists; eliminate statutory exemptions for seasonal skiing, licensed health care facilities, and commercial passenger fishing boats; eliminate Wage Order exemptions from 8-hour overtime pay for mining, on-site construction, and logging industries; limits exempt (administrative and professional) employees to those making over \$36,000; disallows the collective bargaining exemption for employees earning less than the minimum wage plus 30% (\$15,000); abbreviates IWC fact finding hearings to a single public hearing; prohibits an employer from reducing normal rates of pay as a means of reducing the cost impact of overtime pay - eliminating wage adjustments as a means of making flexible schedules affordable. This may reward health workers recently organized by the SIEU and penalize nonunion health care facilities. As for abbreviating the IWC hearings process it should be noted that the IWC spent nearly two years on five public hearings, volumes of written testimony, and extensive analysis of the issue of flexible work weeks before issuing the five wage orders this bill seeks to overturn.

Policy Consultant: Roger Canfield 3/15/99 pn 3/15/99
Fiscal Consultant:

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THIRD READING

Bill No: AB 970
Author: Nazarian (D)
Amended: 8/24/15 in Senate
Vote: 21

SENATE LABOR & IND. REL. COMMITTEE: 3-1, 6/10/15
AYES: Mendoza, Leno, Mitchell
NOES: Stone
NO VOTE RECORDED: Jackson

SENATE APPROPRIATIONS COMMITTEE: 5-1, 6/22/15
AYES: Lara, Beall, Hill, Leyva, Mendoza
NOES: Bates
NO VOTE RECORDED: Nielsen

ASSEMBLY FLOOR: 48-26, 5/18/15 - See last page for vote

SUBJECT: Labor Commissioner: enforcement of employee claims

SOURCE: California Rural Legal Assistance Foundation

DIGEST: This bill authorizes the Labor Commissioner to issue a citation to enforce local minimum wage and overtime laws, as well as against an employer or person acting on behalf of an employer for violations of existing law related to reimbursements for expenses.

Senate Floor Amendments of 8/24/15 specify that the amended provisions and sections of the bill do not change the applicability of local minimum wage or local overtime laws to any entity.

Senate Floor Amendments of 7/14/15 specify that nothing in the amended sections of the bill address the applicability of local overtime wage laws to a state agency.

Senate Floor Amendments of 6/29/15 (1) clarify that the Labor Commissioner, pursuant to a request from the local entity, may issue a citation to an employer for the violation of a local overtime or minimum wage ordinance if the local entity has not cited the employer for the violation, and (2) clarify that if the Labor Commissioner issues a citation the local entity shall not cite the employer for the same violation.

ANALYSIS:

Existing law:

- 1) Authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers.
- 2) Provides the Labor Commissioner with the authority to investigate employee complaints and allows the Labor Commissioner to hold a hearing in any action to recover wages, including orders of the Industrial Welfare Commission. The Labor Commissioner may require an award in the amount of the wages owed, plus interest. (Labor Code §§ 98 & 98.2)
- 3) Sets civil penalties for any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission ranging from \$50 upon first violation for each underpaid employee for each pay period to \$100 for subsequent violations. (Labor Code §558)
- 4) States that if upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of provisions relating to hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. (Labor Code §558)
- 5) States that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum is unlawful. (Labor Code §1197)
- 6) Provides that any employer who pays an employee a wage less than the minimum fixed by the Industrial Welfare Commission shall be subject to a civil

penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties. (Labor Code §1197.1)

- 7) States that if upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage less than the minimum wage the Labor Commissioner may issue a citation. (Labor Code §1197.1)
- 8) States that an employer shall indemnify (or compensate) his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee at the time of obeying the directions believed them to be harmful. (Labor Code §2802)

This bill:

- 1) Specifies that where a local entity has the legal authority to issue a citation against an employer for a violation of any applicable local overtime or minimum wage law, the Labor Commissioner, pursuant to a request from the local entity, may issue a citation against an employer for a violation of a local overtime or minimum wage law of the local entity has not cited the employer for the same violation.
- 2) States that if the Labor Commissioner issues a citation for a violation of any applicable local overtime or minimum wage law, the local entity shall not cite the employer for the same violation.
- 3) Authorizes the Labor Commissioner, if it is determined that a person has paid or caused to paid a wage less than the minimum under applicable law, to issue a citation to the person in violation.
- 4) Authorizes the Labor Commissioner to issue a citation against an employer or person acting on behalf of an employer for violations of existing law related to reimbursement obligations for expenses.
- 5) Adds that the minimum wage for employees includes any applicable state or local law and that this does not change the applicability of local minimum wage laws to any entity.

- 6) Specifies that nothing in the amended sections of the bill address the applicability of local minimum wage or overtime wage laws to any entity.

Comments

Need for this bill? Currently, California workers can file a civil action or may file an administrative complaint with the Labor Commissioner to recover unpaid wages. As was discussed above, an employee who waged a successful civil action to receive unpaid minimum wage balances would be entitled to recover the full amount of the unpaid balance of wages, including interest, reasonable attorney's fees and costs of suit. Liquidated damages could then also be awarded. After AB 240 (Bonilla, Chapter 272, Statutes of 2011) was enacted, a worker can also be awarded liquidated damages through the Labor Commissioner hearing process.

A worker may also recover owed wages as a result from an inspection from the Division of Labor Standards and Enforcement's (DLSE) Bureau of Field Enforcement (BOFE). BOFE conducts inspections of industries to ensure compliance with the Labor Code. While BOFE does not pursue individual wage claims, at times the investigation results in an audit of the employer's time and payroll records. If this occurs, the DLSE will attempt to collect wages for all employees found to have been underpaid. However, the DLSE cannot collect liquidated damages, requiring the worker to file an administrative complaint with DLSE to collect liquidated damages.

Labor Code Sections 558, 1197, and 1197.1, provide a legal framework for enforcement of state minimum wage and overtime wage requirements. Local municipalities, such as San Francisco, Oakland, Berkeley, and San Jose, have implemented local living wage laws.

According to the author, existing law does not specify that recovery of local minimum wage or overtime wage requirement owed to a worker can be included in the Labor Commissioner/BOFE minimum wage citation process and states that higher minimum wage and indemnity charges can only be recovered by a worker either in a civil action or via a Berman hearing.

The author notes that this bill allows the Labor Commissioner to issue a citation for employer violations of illegal tool or equipment deductions and encourages compliance with higher local living wage laws by giving the Labor Commissioner the discretion to cite when finding violations of those laws. The author argues that AB 970 is intended to eliminate significant gaps in the Labor Commissioner's

citation authority and promotes government efficiency in labor law enforcement, strengthens the deterrent effect of its enforcement efforts, and increases the probability of workers recovering unpaid wages. The author also notes that AB 970 ensures that workers have the same monetary relief whether they pursue their claims administratively, by way of the courts or via the Labor Commissioner's existing authority.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, the Department of Industrial Relations indicates that it will incur annual ongoing costs of \$125,000 (special funds) to implement the provisions of this bill.

SUPPORT: (Verified 8/26/15)

California Rural Legal Assistance Foundation (source)
Bet Tzedek Legal Services
California Immigrant Policy Center
California Labor Federation, AFL-CIO
California Nurses Association
California Teamsters Public Affairs Council
Consumer Attorneys of California
Maintenance Cooperation Trust Fund
Roots of Change
The Wage Justice Center

OPPOSITION: (Verified 8/26/15)

Associated Builders and Contractors of California
Association General Contractors
California Ambulance Association
California Association for Health Services at Home
California Automotive Wholesalers' Association
California Bankers Association
California Chamber of Commerce
California Employment Law Council
California Grocers Association
California Manufacturers and Technology Association
California New Car Dealership Association
California Pool & Spa Association
California Restaurant Association

California Trucking Association
Chamber of Commerce Mountain View
El Centro Chamber of Commerce & Visitors Bureau
Fullerton Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater Fresno Area Chamber of Commerce
Lake Tahoe South Shore Chamber of Commerce
National Federation of Independent Business
Palm Desert Area Chamber of Commerce
Redondo Beach Chamber of Commerce and Visitors Bureau
San Jose Silicon Valley Chamber of Commerce
Santa Clara Chamber of Commerce & Convention-Visitor's Bureau
Santa Maria Valley Chamber of Commerce Visitor and Convention Bureau
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Western Electrical Contractors Association

ARGUMENTS IN SUPPORT: According to proponents, existing Labor Code Section 2802 requires an employer to indemnify his or her employees for “all necessary expenditures or losses” incurred by the employee in direct consequence of his or her duties. Proponents note that a very common violation of this provision involves illegal charges for tools or equipment necessary to perform the job, but which are deducted from workers’ pay notwithstanding. Proponents note that under existing law, workers may file a civil action to recover these illegal deductions from their pay, or may seek to recover them in a Berman wage claim hearing. However, proponents argue that the Labor Commissioner cannot issue a citation for this violation, even if she determines upon inspection or investigation that the charges are illegal and have not been repaid to the worker – this bill specifically authorizes the Labor Commissioner to issue citations in such situations.

However, proponents state that as more local California authorities have enacted higher minimum wage laws applicable to the lowest paid workers in their jurisdictions, the Labor Commissioner has been processing claims to enforce these higher wage requirements in Berman wage hearings. They argue that this bill recognizes this evolution and authorizes the Labor Commissioner to also issue a citation when she determines an employer has violated an applicable local wage law.

Lastly, proponents contend that this bill is likely to make a significant contribution to encouraging compliance with higher local living wage laws by giving the Labor Commissioner the discretion to cite when she finds violations of these laws.

Proponents argue that employers would be subject to the same citation amounts, and have the same appeal rights, as would apply if they were cited for a violation of state minimum wage or overtime requirements. Proponents note that the Labor Commissioner has been enforcing these local wage requirements in her wage claim hearings; this bill simply extends authority to cite when violations are encountered in the field.

ARGUMENTS IN OPPOSITION: A coalition of employer groups, including the California Chamber of Commerce, opposes this bill, stating that it will subject employers to layers of penalties and enforcement efforts, increased annual assessments, and a limited opportunity to appeal.

First, opponents note that beginning in 2009 the costs of state labor law enforcement were primarily transferred from the General Fund to private sector employers through annual assessments on workers' compensation premiums, which are based upon the employers' payroll. Accordingly, any increase in the Labor Commissioner's jurisdiction will likely result in an increase to all employers' annual assessments. Employers statewide should not have to pay for these increased assessments for the enforcement of local laws where they are not located.

Lastly, opponents state that under the citation process, an employer challenging a citation can request an administrative hearing to contest the citation and may only challenge the administrative ruling pursuant to a writ of mandate. A writ of mandate limits the superior court's scope of review of the evidence and arguments the court may consider for purposes of challenging the administrative ruling. Comparatively, in wage claim adjudication through the Labor Commissioner's office, an employer has a right to a trial *de novo* to superior court if the employer wants to challenge an administrative ruling, which provides the court with unlimited review of the underlying complaint as well as any new issues, evidence or arguments raised on appeal. Accordingly, to the extent the Labor Commissioner is resolving any local minimum wage violations through the wage claim process, that process provides a fairer opportunity for an employer to appeal a ruling it believes was issued in error rather than the citation process.

ASSEMBLY FLOOR: 48-26, 5/18/15

AYES: Alejo, Bloom, Bonilla, Bonta, Burke, Calderon, Campos, Chau, Chiu, Chu, Cooley, Cooper, Dababneh, Daly, Dodd, Eggman, Frazier, Cristina Garcia,

Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Roger Hernández, Holden, Irwin, Jones-Sawyer, Levine, Lopez, Low, McCarty, Medina, Mullin, Nazarian, O'Donnell, Quirk, Rendon, Ridley-Thomas, Salas, Santiago, Mark Stone, Thurmond, Ting, Weber, Williams, Wood, Atkins


NOES: Achadjian, Travis Allen, Baker, Bigelow, Brough, Chang, Chávez, Dahle, Beth Gaines, Gallagher, Gray, Grove, Hadley, Harper, Jones, Lackey, Linder, Maienschein, Mayes, Obernolte, Olsen, Patterson, Steinorth, Wagner, Waldron, Wilk

NO VOTE RECORDED: Brown, Kim, Mathis, Melendez, Perea, Rodriguez

Prepared by: Deanna Ping / L. & I.R. / (916) 651-1556
8/26/15 17:02:20

**** END ****

Investigation Procedures Overview

 en Español

Reports of labor law violations are reviewed and prioritized for possible investigation.

During an investigation, investigators typically visit the workplace to conduct an inspection. The investigators may speak with the employer at the workplace and interview workers at another location that is away from the employer. They ask workers questions about the work hours, meal and rest periods and other working conditions. Investigators do not share workers' responses with the employer or ask workers about their immigration status.

If you are nervous about speaking to investigators at your workplace, you can ask them for their business card and call them after they leave your workplace to arrange an off-site interview.

When investigators determine that an employer did not follow required labor laws, they issue citations for civil penalties and wages that the employer owes the workers. The investigators work with the employer to correct the problem, and to ensure the employer abides by all labor laws.

If the Labor Commissioner's Office recovers any wages that you are owed, you will be notified by mail after your employer pays the citations.

Additional information for workers about the investigation process is available in the following languages:

English	Korean	Tagalog	Chinese
Spanish	Russian	Vietnamese	

August 2016

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Wage claims

Bureau of Field Enforcement

Public works complaints
Claims for retaliation or discrimination

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About Us
Locations, Contacts, and Hours of
Operation

Jobs at DIR

WAGE THEFT IS A CRIME

You can **pay your bill online.**
Need to make a payment?
(Haga un pago en línea.)

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**REPORT
A LABOR
VIOLATION**

TO THE CALIFORNIA
LABOR COMMISSIONER'S
**BUREAU OF FIELD
ENFORCEMENT**

The Labor Commissioner's Office,

also called the Division of Labor Standards Enforcement (DLSE), is part of the California Department of Industrial Relations. The Labor Commissioner's Office is the state agency that investigates complaints of labor law violations. It enforces labor standards to ensure employees are not permitted to work under substandard, unlawful conditions. It also protects employers who comply with the law from having to compete with those who do not.

YOU DO NOT NEED A SOCIAL SECURITY NUMBER OR PHOTO IDENTIFICATION TO FILE A COMPLAINT.

YOU MAY FILE A COMPLAINT REGARDLESS OF YOUR IMMIGRATION STATUS.

YOU DO NOT NEED A LAWYER AND THE LABOR COMMISSIONER WILL PROVIDE AN INTERPRETER IN YOUR LANGUAGE.

THE LABOR COMMISSIONER'S OFFICE ENFORCES LABOR LAWS THROUGH THE FOLLOWING UNITS:

THE WAGE CLAIM ADJUDICATION UNIT reviews and decides individual claims for unpaid wages and other labor law violations.

THE GARMENT WAGE CLAIM ADJUDICATION UNIT reviews and decides claims filed by garment workers under the Garment Worker Protection Act, a law known as AB 633.

THE BUREAU OF FIELD ENFORCEMENT (BOFE) investigates reports of employers' failure to provide minimum wage, overtime, or meal and rest periods to groups of workers. BOFE also investigates complaints against employers for violations of workers' compensation, child labor, recordkeeping, licensing, and registration laws.

THE PUBLIC WORKS UNIT investigates violations of labor laws on public works construction projects. Prevailing wages are wages that are higher than the state minimum wage and are required for workers on most public construction projects.

THE RETALIATION COMPLAINT INVESTIGATION UNIT investigates complaints of retaliation. Retaliation occurs when an employer takes actions such as firing a worker, or reducing hours or pay because the worker took steps to enforce his or her labor rights.

THE JUDGMENT ENFORCEMENT UNIT helps workers collect their wages after the Labor Commissioner determines that an employer owes unpaid wages.

VIOLATION OF BASIC LABOR LAW PROTECTIONS SUCH AS NOT PAYING MINIMUM WAGE AND OVERTIME IS CALLED **WAGE THEFT**. REPORT EMPLOYERS WHO COMMIT WAGE THEFT TO THE LABOR COMMISSIONER.

HOW TO REPORT A LABOR VIOLATION



1 ABOUT BOFE

The Bureau of Field Enforcement (BOFE) investigates reports of widespread violations that affect groups of workers. If you have information about a business or employer that violates labor laws, such as failure to pay minimum and overtime wages, you may file a “Report of Labor Law Violation” with BOFE. A BOFE representative will review the report to determine whether to investigate the employer. If BOFE starts an investigation, it may inspect the worksite, issue citations for violations, work with the employer to correct the problem, and collect any unpaid wages owed to workers.

BOFE focuses on industries in which labor law violations are common, such as agriculture, restaurant, janitorial, warehouse, hotel, garment, car wash, and construction. BOFE does not investigate individual wage claims. To pursue your own claim for unpaid wages, you should file a wage claim with the Labor Commissioner’s Wage Claim Adjudication Unit, in addition to filing a BOFE report. A notice of your wage claim will be sent to your employer.

CALIFORNIA LABOR LAWS PROTECT ALL WORKERS REGARDLESS OF IMMIGRATION STATUS. THE LABOR COMMISSIONER’S OFFICE WILL NOT ASK ABOUT YOUR IMMIGRATION STATUS OR REPORT YOUR IMMIGRATION STATUS TO OTHER GOVERNMENT AGENCIES.



2

HOW TO FILE A REPORT OF LABOR LAW VIOLATION

CHECK THE DEADLINE

- You must file reports for violations of minimum wage, overtime, illegal deductions from pay, or unpaid reimbursements within **three years**.
- You must file reports based on a written contract within **four years**.

Complete and file the "Report of Labor Law Violation" form with the Labor Commissioner's district office closest to where you worked. The complaint form provides a checklist of labor law violations for you to select from. This form is available in English and Spanish at all of the office locations and on the agency's website (www.dir.ca.gov/dlse).

If you go in person to file your report at an office of the Labor Commissioner, there may be interpreters to help you in your language. However, if you need an interpreter, it is a good idea to bring someone who can interpret for you at this first visit. After you file a report and indicate your language on the form, an interpreter will be provided as needed.

Submit the report with copies of any documents that may support your complaint. Do not provide an original document, as it may not be returned to you. The Labor Commissioner will attempt to keep your name confidential but in certain situations, workers' names may be revealed to the employer.

BOFE will review your complaint and decide whether to start an investigation of the employer. If BOFE decides to investigate, a Deputy Labor Commissioner (BOFE Deputy) will be assigned to conduct the investigation and may contact you for more information about your complaint. BOFE Deputies do not provide case updates to the public while an investigation is ongoing.



3 **WHAT TO EXPECT** DURING A WORKPLACE INSPECTION

As part of the investigation, BOFE Deputies may inspect a worksite for evidence of labor law violations.

DURING THE INSPECTION, BOFE DEPUTIES MAY DO THE FOLLOWING:

- Interview the employer (including manager and supervisors) about suspected violations and review payroll and timekeeping records.
- Interview workers about hours of work, wages, rest breaks, and other working conditions. These interviews will take place outside of the worksite and away from the employer's view whenever possible. If you are nervous about speaking to BOFE Deputies at your worksite, you may ask for their business cards and call them after the inspection.

If you provide information to BOFE Deputies, your personal information will not be revealed unless required by law.

After the worksite inspection, BOFE Deputies may contact workers to collect more information and documentation. Workers with information about the employer's labor law violations may be asked to serve as witnesses. Your participation in the investigation is completely voluntary.

Sometimes, BOFE conducts inspections with other State agencies. For example, the Division of Occupational Safety and Health (Cal/OSHA) may join the investigation if there are suspected health and safety violations, and the Employment Development Department (EDD) may join if there are suspected tax and payroll violations. These agencies may also ask for your assistance in answering questions or providing documentation.



4 FINAL STEPS OF THE BOFE INVESTIGATION PROCESS

If BOFE finds certain labor law violations, such as unpaid wages, it can issue citations against the employer. Citations can require the employer to correct violations, pay all workers unpaid wages, and pay civil penalties to the Labor Commissioner.

Employers may appeal citations in order to have the amounts reduced or to have the citations dismissed. If an employer appeals, a hearing will be held at the Labor Commissioner's Office to review the evidence submitted by the BOFE Deputy and the employer. Witnesses will be asked to testify at the hearing, including workers who play an important role by providing personal testimony. In some cases, BOFE relies on statements from workers who saw or experienced the labor law violations in order to prove that they occurred. For example, if there are no employer records that show unpaid wages, the BOFE Deputy may need workers to testify in order to prove that work was done without pay.

If the employer loses the citation appeal hearing, the Labor Commissioner will attempt to collect the total citation amount from the employer. If the employer contests the Hearing Officer's decision, the employer can appeal the decision in Superior Court. In addition, the Labor Commissioner may file a civil lawsuit against employers to stop ongoing violations or work with other government agencies to pursue criminal charges. In that case, BOFE Deputies may ask workers to testify in a civil lawsuit or criminal prosecution of the employer.

If your address or phone number changes after you have filed a complaint, be sure to contact the BOFE Deputy assigned to your case to provide updated information so that you can still be reached.

YOU MAY FILE A BOFE REPORT FOR VIOLATIONS OF THE FOLLOWING LABOR LAWS:

Minimum Wage: Almost all employees in California must receive the minimum wage as required by State law, whether they are paid by piece rate, commission, hourly, or by salary.

Overtime: Most workers in California must receive overtime pay of:

- 1.5 times the regular rate of pay for all hours worked over 8 hours in a workday or over 40 hours in a week.
- Double the regular rate of pay for all hours worked over 12 hours in a workday.

If a worker works 7 days in a workweek, the worker must be paid:

- 1.5 times the regular rate of pay for the first 8 hours on the 7th day.
- Double the regular rate of pay for all hours worked over 8 hours on the 7th day.

Be aware that overtime laws do not apply to all workers and certain workers, such as domestic workers and farm workers, are covered by different overtime laws.

Meal and Rest Breaks: Most workers in California must receive an uninterrupted 30-minute meal period for every 5 hours worked and a paid 10-minute rest period for every 4 hours worked. You may be entitled to a rest break even if you work less than 4 hours. Certain workers such as domestic workers and farm workers are covered by different meal and rest break laws.

Unlawful Deductions from Pay: Your employer may not withhold or deduct wages from your pay, except for withholdings required by law (such as social security tax). Common violations include deductions for uniforms or tools.

Reimbursement of Expenses: You must receive reimbursement for expenses such as supplies and tools needed for your job, including the cost of mileage if you are required to use your personal car for work (other than commuting to and from your job). However, if you earn at least twice the minimum wage, your employer can require you to provide certain hand tools customarily used in your occupation.

Reporting Time Pay: If you report to work expecting to work your usual schedule, but receive less than half of your usual hours, you must still be paid for at least half of your usual hours (for a minimum of at least 2 hours). For example, a farm worker who reports to work for an 8-hour shift and only works for 1 hour must receive 4 hours of pay—1 for the hour worked, and 3 as reporting time pay, so that the worker receives pay for at least half of the expected 8-hour shift.

Split Shift Premium: If you are required to work 2 or more shifts a day with an unpaid break of more than an hour, your employer may be required to pay a "split shift premium," which is calculated based on your rate of pay.

Paydays: You have the right to a regularly scheduled payday, and your employer must post a notice at your workplace of the regular paydays, and the time and place of payment.

Record Keeping and Pay Stubs: Employers must keep records for each employee of daily hours worked and rate of pay. Whether you are paid by check, in cash, or otherwise, your employer must provide a pay stub or wage statement that details the total hours worked, wages earned, deductions, and your employer's name and address. If you are paid by piece rate, the statement should also show the number of piece rate units completed and the piece rate per unit.

Workers' Compensation Insurance Coverage: Your employer must have workers' compensation insurance in case you get injured or sick on the job.

Child Labor: Minors under the age of 18 must have work permits. Under no circumstances can employers permit minors to work in any hazardous occupations. In general, minors may work no more than 4 hours on a school day and 8 hours on non-school days, depending on the time of day the work is scheduled. Some industries such as farm work and entertainment may have different work hour limitations.

FAQs

1. Can I report a labor violation anonymously?

Yes. However, filing a report without providing your name or contact information may prevent or delay an investigation if BOFE Deputies need more information in order to continue.

2. When will I receive the money that is owed to me?

BOFE will send you the wages it recovers on your behalf once investigations and citations are complete, which may take anywhere from a few months to a few years. If the employer refuses to pay or appeals the citations, your payment may be delayed. You may try to recover your unpaid wages separately by filing an individual wage claim. If you file a wage claim and the Labor Commissioner orders your employer to pay you wages, you can try to collect wages directly from your employer.

3. What if my boss fires, demotes, or punishes me for reporting a labor violation?

California law states that it's illegal for employers to fire or punish you for exercising your workplace rights. For example, employers cannot threaten you with deportation, fire you or send you home, or prevent you from getting another job because you filed a BOFE report. If your employer does retaliate, you can file a complaint for retaliation with the Labor Commissioner's Retaliation Complaint Unit.

4. Can I file a report if I was misclassified as an independent contractor?

California's labor laws do not apply to independent contractors. However, if you believe that you have been improperly classified as an independent contractor, you may file a report of labor law violations. Some employers misclassify their employees as independent contractors in order to avoid paying legally required wages, workers' compensation insurance, and payroll taxes. If the person or business that hired you treats you as an independent contractor but it controls how you do your work, it is possible that you are actually an employee and not an independent contractor. The Labor Commissioner will consider multiple factors in order to determine whether workers have been misclassified as independent contractors.

5. What if my employer makes me give back the money I get from BOFE?

It is illegal for your employer to request that you to return any money to them. If this happens, contact the BOFE Deputy assigned to the investigation immediately.



LABOR COMMISSIONER'S OFFICE LOCATIONS

BAKERSFIELD

(661) 587-3060

EL CENTRO

(760) 353-0607

FRESNO

(559) 244-5340

LONG BEACH

(562) 590-5048

LOS ANGELES

(213) 620-6330

OAKLAND

(510) 622-3273

REDDING

(530) 225-2655

SACRAMENTO

(916) 263-1811

SALINAS

(831) 443-3041

SAN BERNARDINO

(909) 383-4334

SAN DIEGO

(619) 220-5451

SAN FRANCISCO

(415) 703-5300

SAN JOSE

(408) 277-1266

SANTA ANA

(714) 558-4910

SANTA BARBARA

(805) 568-1222

SANTA ROSA

(707) 576-2362

STOCKTON

(209) 948-7771

VAN NUYS

(818) 901-5315

CERTIFICATION OF WORD COUNT UNDER RULE 8.504(D)

The undersigned certifies that according to the word processing program used to prepare this brief, it consists of 1,059 words, exclusive of the matters that may be omitted under Rule 8.504(d) of the California Rules of Court.

Dated: October 9, 2018

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PROOF OF SERVICE

KALETHIA LAWSON v. CALIFORNIA BANK & TRUST, et al.
Supreme Court of California Case No. S246711
San Diego Superior Court Case No. 37-2016-00005578-CU-OE-CTL
Court of Appeal Fourth Appellate District, Div. One, Case Nos. D071376 &
D071279

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-1931.

On October 9, 2018, I served on the interested parties in said action the within:

PETITIONERS' MOTION FOR JUDICIAL NOTICE IN SUPPORT OF ANSWER TO *AMICUS CURIAE* BRIEF; DECLARATION OF BRIAN C. SINCLAIR; [PROPOSED] ORDER GRANTING MOTION

as stated below:

SEE ATTACHED SERVICE LIST

(BY OVERNIGHT DELIVERY) by depositing in a box or other facility regularly maintained by FedEx, an express service carrier, or delivering to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed as shown above, with fees for overnight delivery provided for or paid.

****VIA TRUEFILING ELECTRONIC E-SERVICE SYSTEM:** I transmitted via the Internet a true copy(s) of the above-entitled document(s) through the Court's Mandatory Electronic Filing System via the TrueFiling Portal and concurrently caused the above-entitled document(s) to be sent to the recipients listed above pursuant to the E-Service List maintained by and as it exists on that database. This will constitute service of the above-listed document(s).

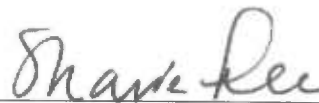
(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 9, 2018, at Costa Mesa, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Marie Lee

(Type or print name)



(Signature)

SERVICE LIST

KALETHIA LAWSON v. CALIFORNIA BANK & TRUST, et al.
Supreme Court of California Case No. S246711
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