

AMENDED IN SENATE JUNE 28, 2007

AMENDED IN ASSEMBLY APRIL 23, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 435

Introduced by Assembly Member Brownley
(Coauthors: Assembly Members Berg and Jones)
(Coauthors: Senators Kuehl and Migden)

February 16, 2007

An act to amend Section 1197.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 435, as amended, Brownley. Wage discrimination.

Existing law prohibits any employer from discriminating in the amount of wages paid for equal work, based upon the sex of the employee. These provisions are enforced by the Division of Labor Standards Enforcement by investigating complaints filed by employees and filing and prosecuting civil actions on their behalf.

Existing law requires employers to maintain the wage and job classification records of its employees for 2 years.

This bill would require employers to maintain these records for 5 years.

Existing law provides a 2-year statute of limitations for an employee to bring a civil action against an employer to recover wages. This limitation is increased to 3 years in the case of willful violation by the employer.

This bill would extend the statute of limitations to 4 years for a civil action by an employee to recover wages and to 5 years for actions in which there is willful misconduct of the employer.

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

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

1 SECTION 1. Section 1197.5 of the Labor Code is amended to
2 read:

3 1197.5. (a) No employer shall pay any individual in the
4 employer’s employ at wage rates less than the rates paid to
5 employees of the opposite sex in the same establishment for equal
6 work on jobs the performance of which requires equal skill, effort,
7 and responsibility, and which are performed under similar working
8 conditions, except where the payment is made pursuant to a
9 seniority system, a merit system, a system which measures earnings
10 by quantity or quality of production, or a differential based on any
11 bona fide factor other than sex.

12 (b) Any employer who violates subdivision (a) is liable to the
13 employee affected in the amount of the wages, and interest thereon,
14 of which the employee is deprived by reason of the violation, and
15 in an additional equal amount as liquidated damages.

16 (c) The provisions of this section are administered and enforced
17 by the Division of Labor Standards Enforcement. If the division
18 finds that an employer has violated this section, it may supervise
19 the payment of wages and interest found to be due and unpaid to
20 employees under subdivision (a). Acceptance of payment in full
21 made by an employer and approved by the division shall constitute
22 a waiver on the part of the employee of the employee’s cause of
23 action under subdivision (g).

24 (d) Every employer shall maintain records of the wages and
25 wage rates, job classifications, and other terms and conditions of
26 employment of the persons employed by the employer. All of the
27 records shall be kept on file for a period of five years.

28 (e) Any employee may file a complaint with the division that
29 the wages paid are less than the wages to which the employee is
30 entitled under subdivision (a). These complaints shall be
31 investigated as provided in subdivision (b) of Section 98.7. The
32 name of any employee who submits to the division a complaint

1 regarding an alleged violation of subdivision (a) shall be kept
2 confidential by the division until validity of the complaint is
3 established by the division, or unless the confidentiality must be
4 abridged by the division in order to investigate the complaint. The
5 name of the complaining employee shall remain confidential if
6 the complaint is withdrawn before the confidentiality is abridged
7 by the division. The division shall take all proceedings necessary
8 to enforce the payment of any sums found to be due and unpaid
9 to these employees.

10 (f) The department or division may commence and prosecute,
11 unless otherwise requested by the employee or affected group of
12 employees, a civil action on behalf of the employee and on behalf
13 of a similarly affected group of employees to recover unpaid wages
14 and liquidated damages under subdivision (a), and in addition shall
15 be entitled to recover costs of suit. The consent of any employee
16 to the bringing of any action shall constitute a waiver on the part
17 of the employee of the employee's cause of action under
18 subdivision (g) unless the action is dismissed without prejudice
19 by the department or the division, except that the employee may
20 intervene in the suit or may initiate independent action if the suit
21 has not been determined within 180 days from the date of the filing
22 of the complaint ~~with the division~~ *by the department or division*.

23 (g) Any employee receiving less than the wage to which the
24 employee is entitled under this section may recover in a civil action
25 the balance of the wages, including interest thereon, and an equal
26 amount as liquidated damages, together with the costs of the suit
27 and reasonable attorney's fees, notwithstanding any agreement to
28 work for a lesser wage.

29 (h) A civil action to recover wages under subdivision (a) may
30 be commenced no later than four years after the cause of action
31 occurs, except that a cause of action arising out of a willful
32 violation may be commenced no later than five years after the
33 cause of action occurs.

34 (i) If an employee recovers amounts due the employee under
35 subdivision (b), and also files a complaint or brings an action under
36 subdivision (d) of Section 206 of Title 29 of the United States
37 Code which results in an additional recovery under federal law for
38 the same violation, the employee shall return to the employer the

- 1 amounts recovered under subdivision (b), or the amounts recovered
- 2 under federal law, whichever is less.

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