

Assembly Bill No. 854

CHAPTER 256

An act to add Section 273 to the Labor Code, relating to employment.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 854, Arambula. Employment regulation and supervision: unpaid wages.

Existing law provides for the regulation of farm labor contractors and of garment manufacturers by the Labor Commissioner and for their licensure and registration, respectively, by the commissioner.

This bill would require an applicant for licensure as a farm labor contractor, for registration as a garment manufacturer, for renewal or reinstatement of the license or registration, and for a change in key personnel, to submit a statement as to whether he or she has satisfied all requirements involving unpaid wages in a final court judgment, as defined, a final order issued by the commissioner, or an accord. The bill would subject any person who provides false information on the statement to a civil penalty, as specified. The bill would require the commissioner to deny the application if the statement shows unpaid wages, unless the applicant submits a bond or cash deposit to guarantee payment of the wages or a notarized accord demonstrating satisfaction of the obligation. The bill would require the commissioner to suspend the license or registration of a farm labor contractor or a garment manufacturer who made a false representation in the statement and would make reinstatement contingent on the applicant demonstrating compliance with the unpaid wages requirements or submitting an accord showing satisfaction of that obligation. The bill would require a licensee or registrant to notify the commissioner within 90 days of a final court judgment, final order issued by the commissioner, or an accord imposing requirements relating to unpaid wages and submit with the notice security, as previously described, for the unpaid wages. The bill would prohibit a licensee or registrant from having a person who is a named judgment debtor in a final court order or order issued by the commissioner for unpaid wages serving in a key personnel capacity and would require the commissioner to suspend the license or registration of a person who violates this prohibition. The bill would require a licensee or registrant to pay to the Labor Commissioner all reasonable costs incurred in adverse license or registration activities, as defined, under its provisions.

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

SECTION 1. Section 273 is added to the Labor Code, to read:

273. (a) The following definitions apply for purposes of this section:

(1) “All activities relating to an adverse license or registration action” includes, but is not limited to, all of the following which occur as a result of a failure to comply with this section:

(A) Denial of a new application or a renewal application for licensure or registration.

(B) Denial of reinstatement of a license or registration.

(C) Suspension of a license or registration.

(D) Assessment and recovery of civil penalties for knowingly providing false information in the statement required by paragraph (1) of subdivision (b).

(2) “Farm labor contractor” has the same meaning as set forth in Section 1682.

(3) “Final judgment issued by a court” means a judgment with respect to which all possibility of a direct attack, by way of appeal, motion for a new trial, or motion pursuant to Section 663 of the Code of Civil Procedure to vacate the judgment, has been exhausted and also includes any final arbitration award where the time to file a petition for a trial de novo or a petition to vacate or correct the arbitration award has expired, and no petition is pending.

(4) “Garment manufacturer” means a person engaged in garment manufacturing as described in Section 2671.

(5) “Involving unpaid wages” means all amounts required to be paid by a final judgment, order, or accord involving a failure of the licensee or registrant to pay required wages.

(6) “Licensee” has the same meaning as set forth in Section 1682.

(7) “Registrant” means a person who holds a valid and unrevoked garment manufacturer registration.

(b) (1) The Labor Commissioner shall require an applicant for any of the following to submit a statement as to whether the applicant has satisfied all requirements imposed by a final judgment issued by a court or by a final order issued by the Labor Commissioner or by an accord involving unpaid wages:

(A) Licensure as a farm labor contractor.

(B) Registration as a garment manufacturer.

(C) Renewal or reinstatement of a farm labor contractor license or a garment manufacturer registration.

(D) A change in the persons identified pursuant to Section 1689 or subparagraph (B) of paragraph (1) of subdivision (a) of Section 2675.

(2) A person who knowingly provides false information in the statement submitted pursuant to this subdivision shall be subject to a civil penalty of no less than one thousand dollars (\$1,000) nor more than twenty-five thousand dollars (\$25,000), in addition to any civil remedies available to the Labor Commissioner. The penalty shall be recovered by the Labor

Commissioner as part of a hearing relating to a denial of an application for a license or registration, a hearing relating to a denial of a renewal or reinstatement of a license or registration, a hearing to contest the civil penalties assessed under this section by the Labor Commissioner, or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions.

(c) Notwithstanding any other provision of law, the Labor Commissioner shall not approve an application described in subdivision (b) if the statement submitted with it shows that the applicant has failed to satisfy all requirements imposed by a final judgment issued by a court or by a final order issued by the Labor Commissioner or by an accord involving unpaid wages, as described in subdivision (b), unless the applicant submits either of the following to the Labor Commissioner:

(1) A bond or a cash deposit, in addition to any required by Section 240, 1684, 1688, 2675, or 2679, in an amount sufficient to guarantee payment of all amounts due under a final judgment issued by a court or by a final order issued by the Labor Commissioner involving unpaid wages.

(2) A notarized accord between the applicant and the other parties to the judgment, order, or accord demonstrating that the applicant has satisfied all requirements imposed by the judgment, order, or accord involving unpaid wages.

(d) Notwithstanding any other provision of law, if the Labor Commissioner determines after granting an application described in subdivision (b), that the applicant made a false representation on the statement he or she submitted, the Labor Commissioner shall suspend the farm labor contractor license or garment manufacturer registration effective on the date of its issuance, renewal, or reinstatement. The license or registration shall remain suspended until the applicant satisfies either of the following requirements:

(1) Documents to the satisfaction of the Labor Commissioner that he or she has satisfied all requirements imposed by a final judgment issued by a court or by a final order of the Labor Commissioner or by an accord involving unpaid wages.

(2) Files with the Labor Commissioner a notarized accord as described in paragraph (2) of subdivision (c).

(e) (1) A licensee or registrant shall notify the Labor Commissioner in writing within 90 days of the date of a final judgment issued by a court, a final order issued by the Labor Commissioner, or an accord that imposes on the licensee or registrant requirements involving unpaid wages. If the licensee or registrant fails to comply with this notification requirement, the Labor Commissioner shall suspend the license or registration on the date that the Labor Commissioner is informed, or is made aware of, the judgment, order, or accord. The suspension shall remain in effect until the licensee or registrant satisfies either of the requirements described in subdivision (d).

(2) A licensee or registrant who notifies the Labor Commissioner of a judgment, order, or accord pursuant to paragraph (1), shall file with the notice a bond or a cash deposit meeting the criteria of paragraph (1) of subdivision (c).

(f) (1) The Labor Commissioner may reduce the amount of a bond or cash deposit required by this section upon proof, to the satisfaction of the Labor Commissioner, of partial satisfaction of the requirements imposed by a final judgment issued by a court, a final order issued by the Labor Commissioner, or an accord involving unpaid wages. The Labor Commissioner shall not reduce the bond or cash deposit amount below the balance of the entire amount involving unpaid wages. Upon full satisfaction of the requirements involving unpaid wages, the Labor Commissioner may terminate the bond or cash deposit requirement.

(2) Notwithstanding paragraph (1), within one year from the date of filing the bond or cash deposit pursuant to paragraph (1) of subdivision (c) or paragraph (2) of subdivision (e), a licensee or registrant shall submit a notarized accord between the licensee or registrant and the other parties to the judgment, order, or accord demonstrating satisfaction of all requirements imposed by the judgment, order, or accord involving unpaid wages. The Labor Commissioner shall suspend the license or registration of a person who fails to file the notarized accord within that timeframe. Notwithstanding paragraph (1) of subdivision (c), a person who has failed to file a notarized accord within the timeframe required by this subdivision shall have his or her license or registration reinstated only after demonstrating that he or she has satisfied all requirements imposed by a final judgment, order, or accord involving unpaid wages. As an alternative to payment in full of all debts involving unpaid wages, a person may submit a notarized copy of an accord between the licensee or registrant and the other parties to the accord.

(g) The failure of a licensee or registrant to maintain a bond required by this section or to abide by all requirements imposed on a licensee or registrant by an accord involving unpaid wages between the licensee or registrant and the other parties to the accord shall result in the automatic suspension of his or her license or registration.

(h) (1) A licensee or registrant shall not allow a person who is a judgment debtor in a final judgment issued by a court or in a final order issued by the Labor Commissioner involving unpaid wages that imposes requirements that have not been satisfied in their entirety to serve in a capacity described in Section 1689 or subparagraph (B) of paragraph (1) of subdivision (a) of Section 2675.

(2) The Labor Commissioner shall suspend the license of a farm labor contractor or the registration of a garment manufacturer who violates the provisions of paragraph (1). The Labor Commissioner shall reinstate the license or registration upon the resignation of the person named as a judgment debtor or complete satisfaction of the unpaid wages requirements.

(i) A person whose license or registration is suspended pursuant to this section, who is denied issuance or reinstatement of a license or registration, or who has been assessed a civil penalty for knowingly providing false

information in the statement required by paragraph (1) of subdivision (b) shall pay to the Labor Commissioner all reasonable costs incurred by the Labor Commissioner in all activities relating to the adverse license or registration action, commencing with the first notice issued by the Labor Commissioner that he or she has taken any adverse action under this section relative to a license or registration. The Labor Commissioner shall not reinstate a license or registration unless the person has paid all costs assessed by the Labor Commissioner or has entered into an accord with the Labor Commissioner that establishes a payment plan.

(j) This section shall not apply to an applicant for a farm labor contractor license or a garment manufacturer registration or to a licensee or registrant when the unpaid wages, as described by this section, have been discharged in a bankruptcy proceeding.