

ASSEMBLY BILL

No. 196

Introduced by Assembly Member Carter

January 27, 2011

An act to amend Sections 213 and 226 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 196, as introduced, Carter. Employment: compensation.

Existing law authorizes employers in certain circumstances to deposit an employee's wages or advance on wages in a bank, savings and loan association, or credit union of the employee's choice.

This bill would also authorize an employer to deposit an employee's wages or advance on wages in an industrial bank or a trust company. In addition, this bill would permit an employer to transfer an employee's wages or advance on wages to a card issued by a specified financial institution, if the employee voluntarily authorizes the transfer and the card can be used to access funds at an automated teller machine in California, provided the employee is entitled to at least one pay card transaction without charge per pay period. The bill would also refer to a savings association instead of a savings and loan association.

Existing law also requires every employer, at the time of each payment of wages, to furnish his or her employees with an accurate itemized statement in writing showing specified information.

This bill would authorize the employer to provide the accurate itemized statement electronically, provided that the electronic statement contains all required information and the employer provides the employee with electronic access in a confidential setting during normal business hours to print the statement.

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 213 of the Labor Code is amended to
 2 read:
 3 213. Nothing contained in Section 212 shall:
 4 (a) Prohibit an employer from guaranteeing the payment of bills
 5 incurred by an employee for the necessities of life or for the tools
 6 and implements used by the employee in the performance of his
 7 or her duties.
 8 (b) Apply to counties, municipal corporations, quasi-municipal
 9 corporations, or school districts.
 10 (c) Apply to students of nonprofit schools, colleges, universities,
 11 and other nonprofit educational institutions.
 12 (d) Prohibit an employer, *if voluntarily authorized by an*
 13 *employee*, from depositing wages due or to become due or an
 14 advance on wages to be earned in an account in any bank, ~~savings~~
 15 ~~and loan industrial bank, trust company, savings~~ association, or
 16 credit union of the employee’s choice ~~with a place of business~~
 17 ~~located in this state, provided that the employee has voluntarily~~
 18 ~~authorized that deposit in this state.~~ If an employer discharges an
 19 employee or the employee quits, ~~the employer may pay the wages~~
 20 ~~earned and unpaid at the time the employee is discharged or quits~~
 21 ~~by making a deposit authorized pursuant to this subdivision,~~
 22 ~~provided that the employer complies with the employee’s voluntary~~
 23 ~~authorization for deposit shall be deemed terminated and the~~
 24 provisions of this article relating to the payment of wages upon
 25 termination ~~or quitting of employment~~ *of employment shall apply.*
 26 (e) Prohibit an employer, *if voluntarily authorized by an*
 27 *employee*, from transferring wages due or to become due or an
 28 advance on wages to be earned to a card issued to the employee
 29 by a bank, industrial bank, trust company, savings association, or
 30 credit union of the employee’s choice that can be used to access
 31 funds at an automated teller machine in this state, provided that
 32 the employee is entitled to at least one pay card transaction without
 33 charge per pay period.
 34 SEC. 2. Section 226 of the Labor Code is amended to read:

1 226. (a) Every employer shall, semimonthly or at the time of
2 each payment of wages, furnish each of his or her employees,
3 either as a detachable part of the check, draft, or voucher paying
4 the employee's wages, or separately when wages are paid by
5 personal check or cash, an accurate itemized statement ~~in writing~~
6 ~~showing (1) gross wages earned, (2) total hours worked by the~~
7 ~~employee, except for any employee whose compensation is solely~~
8 ~~based on a salary and who is exempt from payment of overtime~~
9 ~~under subdivision (a) of Section 515 or any applicable order of~~
10 ~~the Industrial Welfare Commission, (3) the number of piece-rate~~
11 ~~units earned and any applicable piece rate if the employee is paid~~
12 ~~on a piece-rate basis, (4) all deductions, provided that all deductions~~
13 ~~made on written orders of the employee may be aggregated and~~
14 ~~shown as one item, (5) net wages earned, (6) the inclusive dates~~
15 ~~of the period for which the employee is paid, (7) the name of the~~
16 ~~employee and his or her social security number, except that by~~
17 ~~January 1, 2008, only the last four digits of his or her social security~~
18 ~~number or an employee identification number other than a social~~
19 ~~security number may be shown on the itemized statement, (8) the~~
20 ~~name and address of the legal entity that is the employer, and (9)~~
21 ~~all applicable hourly rates in effect during the pay period and the~~
22 ~~corresponding number of hours worked at each hourly rate by the~~
23 ~~employee. The deductions made from payments of wages shall be~~
24 ~~recorded in ink or other indelible form, properly dated, showing~~
25 ~~the month, day, and year, and a copy of the statement or a record~~
26 ~~of the deductions shall be kept on file by the employer for at least~~
27 ~~three years at the place of employment or at a central location~~
28 ~~within the State of California: either electronically, as provided~~
29 ~~in subdivision (d), or in writing showing all of the following:~~
30 (1) *Gross wages earned.*
31 (2) *Total hours worked by the employee, except for any employee*
32 *whose compensation is solely based on a salary and who is exempt*
33 *from payment of overtime under subdivision (a) of Section 515 or*
34 *any applicable order of the Industrial Welfare Commission.*
35 (3) *The number of piece-rate units earned and any applicable*
36 *piece rate if the employee is paid on a piece-rate basis.*
37 (4) *All deductions, provided that all deductions made on written*
38 *orders of the employee may be aggregated and shown as one item.*
39 *The deductions made from payments of wages shall be recorded*
40 *in ink or other indelible form, properly dated, showing the month,*

1 day, and year, and a copy of the statement or a record of the
2 deductions shall be kept on file by the employer for at least three
3 years at the place of employment or at a central location within
4 the State of California.

5 (5) Net wages earned.

6 (6) The inclusive dates of the period for which the employee is
7 paid.

8 (7) The name of the employee and his or her social security
9 number, except that only the last four digits of his or her social
10 security number or an existing employee identification number
11 other than a social security number may be shown on the check.

12 (8) The name and address of the legal entity that is the employer.

13 (9) All applicable hourly rates in effect during the pay period
14 and the corresponding number of hours worked at each hourly
15 rate by the employee.

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

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

35 (d) Notwithstanding any other provision of law, an employer
36 may furnish the itemized statement required by subdivision (a) in
37 an electronic format, provided that the electronic record contains
38 all the information required by this section and the employer,
39 during normal business hours, provides the employee with

1 *electronic access in a confidential setting to print the itemized*
2 *statement.*

3 ~~(d)~~

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

10 ~~(e)~~

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

19 ~~(f)~~

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

25 ~~(g)~~

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

29 ~~(h)~~

30 (i) This section does not apply to the state, to any city, county,
31 city and county, district, or to any other governmental entity, except
32 that if the state or a city, county, city and county, district, or other
33 governmental entity furnishes its employees with a check, draft,
34 or voucher paying the employee's wages, the state or a city, county,
35 city and county, district, or other governmental entity shall, by
36 January 1, 2008, use no more than the last four digits of the
37 employee's social security number or shall use an employee
38 identification number other than the social security number on ~~the~~

- 1 ~~itemized statement provided with the~~ *that* check, draft, or voucher,
- 2 *or electronic itemized statement.*

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