

AMENDED IN ASSEMBLY MAY 29, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 155

Introduced by Assembly Member Alejo

January 22, 2013

An act to amend Section 226 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 155, as amended, Alejo. Employment: payroll records: right to inspect.

Existing law requires an employer to furnish each employee with an accurate itemized statement showing, among other things, the gross and net wages earned, the inclusive dates of the pay period, and all deductions. Existing law requires the employer to keep on file a copy of the statement for at least 3 years at a specified location. Existing law affords current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. ~~Existing law authorizes the employer~~ *Under existing law, if the employer provides copies of the records, the employer is authorized to charge any actual costs of reproduction of the employee's records to the current or former employee.*

This bill would require the employee to elect to inspect or copy, or receive a copy of, or any combination thereof, his or her employment records *and would require the employer to comply with that election. The bill would entitle a former employee terminated for workplace violence or harassment only to receive a copy of the records, without any charge by the employer. The bill would define "actual cost of reproduction" to mean only the per page cost to the employer for the*

physical duplication of the records. The bill would also declare the Legislature's intent in this regard.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) In 1988, the Legislature passed, and the Governor signed
4 into law, Senate Bill 2155 that amended employees' preexisting
5 statutory right to inspect their itemized pay records under Section
6 226 of the Labor Code and extended to them a new right to receive
7 a copy of these basic pay records upon reasonable request to their
8 employer.

9 (b) Senate Bill 2155 was sponsored by California Rural Legal
10 Assistance, Inc., and was supported by the Alien Legalization
11 Program for Agriculture (whose membership included the
12 California Farm Bureau Federation and the Western Growers
13 Association), the California Labor Federation, and others. There
14 was no opposition to Senate Bill 2155, which passed by 37 "Aye"
15 and no "No" votes in the Senate and by 70 "Aye" and 1 "No" votes
16 in the Assembly.

17 (c) According to the Senate Committee on Labor and Industrial
18 Relations March 1988 analysis of Senate Bill 2155, as introduced,
19 the bill's proponents contended that Senate Bill 2155 was
20 "necessary to ensure that workers have the right to obtain copies
21 of their payroll records, especially in the case of undocumented
22 workers who are applying for amnesty under the federal
23 Immigration Reform and Control Act of 1986 (IRCA)."

24 (d) The Senate Rules Committee's August 11, 1988, Senate
25 Floor Analysis (for final passage of the bill as amended in the
26 Assembly) stated: "This bill would permit current or former
27 employees to copy payroll deduction records that are maintained
28 by the employer. ... Employers would be empowered to charge
29 former and current employees for the actual costs of reproducing
30 the records."

31 (e) The Department of Industrial Relations, in its August 26,
32 1988, Enrolled Bill Report recommending that the Governor sign
33 the bill, stated: "This bill would require an employer, who is

1 mandated by law to keep wage deduction records, to allow
2 employees to inspect and/or copy such records. [The bill also]
3 permits employers to charge employees for the actual costs of
4 reproducing the records.”

5 (f) The Department of Finance, in its August 29, 1988, Bill
6 Analysis recommending that the Governor sign the bill, stated:
7 “[Senate Bill] 2155 gives employees or former employees the right
8 to copy these records and allows the employer to take reasonable
9 steps to verify the identity of the employee and to charge for the
10 reproduction of the records.”

11 (g) The author of the bill, Senator Nicolas C. Petris, in his
12 September 6, 1988, letter urging Governor Deukmejian to sign
13 Senate Bill 2155 into law, stated “Senate Bill 2155 clarifies current
14 law by spelling out that when employers are required to make basic
15 pay records ‘available’ to workers, that means they are required
16 to provide a copy, upon reasonable request.”

17 (h) Despite more than 20 years of consistent interpretation of
18 these provisions of the Labor Code, the California Superior Court
19 in the County of Riverside determined, in *Esteban v. JSO, Inc.*
20 d.b.a. *America’s Labor Supply, Inc.*, Docket No. INC-1104544,
21 that the Labor Code provisions enacted by Senate Bill 2155 do not
22 obligate an employer to make copies: “If the Legislature wanted
23 to require an employer to copy records on request, it could easily
24 have said so.”

25 (i) The amendments made by this bill to provisions of Section
26 226 of the Labor Code enacted by Senate Bill 2155 are expressly
27 intended to overturn *Esteban v. JSO, Inc.*, and are further intended
28 to make clear that these provisions afforded a current or former
29 employee the right to inspect or copy, or receive copies of, his or
30 her payroll records, or any combination thereof; that it was solely
31 the employee, and not the employer, who was authorized to make
32 that election under the statute; and that the amendments to these
33 provisions made by this bill are declaratory of existing law.

34 SEC. 2. Section 226 of the Labor Code is amended to read:

35 226. (a) Every ~~employer shall~~, *employer*, semimonthly or at
36 the time of each payment of wages, *shall* furnish each of his or
37 her employees, either as a detachable part of the check, draft, or
38 voucher paying the employee’s wages, or separately when wages
39 are paid by personal check or cash, an accurate itemized statement
40 in writing showing *all of the following*: (1) gross wages earned,

1 (2) total hours worked by the employee, except for any employee
2 whose compensation is solely based on a salary and who is exempt
3 from payment of overtime under subdivision (a) of Section 515
4 or any applicable order of the Industrial Welfare Commission, (3)
5 the number of piece-rate units earned and any applicable piece
6 rate if the employee is paid on a piece-rate basis, (4) all deductions,
7 provided that all deductions made on written orders of the
8 employee may be aggregated and shown as one item, (5) net wages
9 earned, (6) the inclusive dates of the period for which the employee
10 is paid, (7) the name of the employee and only the last four digits
11 of his or her social security number or an employee identification
12 number other than a social security number, (8) the name and
13 address of the legal entity that is the employer and, if the employer
14 is a farm labor contractor, as defined in subdivision (b) of Section
15 1682, the name and address of the legal entity that secured the
16 services of the employer, and (9) all applicable hourly rates in
17 effect during the pay period and the corresponding number of hours
18 worked at each hourly rate by the employee and, beginning July
19 1, 2013, if the employer is a temporary services employer as
20 defined in Section 201.3, the rate of pay and the total hours worked
21 for each temporary services assignment. The deductions made
22 from payment of wages shall be recorded in ink or other indelible
23 form, properly dated, showing the month, day, and year, and a
24 copy of the statement and the record of the deductions shall be
25 kept on file by the employer for at least three years at the place of
26 employment or at a central location within the State of California.
27 For purposes of this subdivision, “copy” includes a duplicate of
28 the itemized statement provided to an employee or a
29 computer-generated record that accurately shows all of the
30 information required by this subdivision.

31 (b) An employer that is required by this code or any regulation
32 adopted pursuant to this code to keep the information required by
33 subdivision (a) shall afford current and former employees the right
34 to inspect or copy records pertaining to their employment, upon
35 reasonable request to the employer, *except that a former employee*
36 *terminated for workplace violence or harassment shall be entitled*
37 *only to receive a copy of the records, without any charge by the*
38 *employer.* The employer may take reasonable steps to ensure the
39 identity of a current or former employee. In making a request under
40 this subdivision, an employee shall elect to inspect or copy the

1 records, or to receive a copy of the records, or any combination
2 thereof. If the employer provides copies of the records, the
3 *employer may charge the actual cost of reproduction—may be*
4 *charged* to the current or former employee. *For purposes of this*
5 *subdivision, “actual cost of production” means only the per page*
6 *cost to the employer for the physical duplication of the records.*

7 (c) An employer who receives a written or oral request to inspect
8 or copy records, or to receive a copy of the records, or any
9 combination thereof, as specified by the employee pursuant to
10 subdivision (b) pertaining to a current or former employee shall
11 comply with the request as soon as practicable, but no later than
12 21 calendar days from the date of the request. A violation of this
13 subdivision is an infraction. Impossibility of performance, not
14 caused by or a result of a violation of law, shall be an affirmative
15 defense for an employer in any action alleging a violation of this
16 subdivision. An employer may designate the person to whom a
17 request under this subdivision will be made.

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

24 (e) (1) An employee suffering injury as a result of a knowing
25 and intentional failure by an employer to comply with subdivision
26 (a) is entitled to recover the greater of all actual damages or fifty
27 dollars (\$50) for the initial pay period in which a violation occurs
28 and one hundred dollars (\$100) per employee for each violation
29 in a subsequent pay period, not to exceed an aggregate penalty of
30 four thousand dollars (\$4,000), and is entitled to an award of costs
31 and reasonable attorney’s fees.

32 (2) (A) An employee is deemed to suffer injury for purposes
33 of this subdivision if the employer fails to provide a wage
34 statement.

35 (B) An employee is deemed to suffer injury for purposes of this
36 subdivision if the employer fails to provide accurate and complete
37 information as required by any one or more of items (1) to (9),
38 inclusive, of subdivision (a) and the employee cannot promptly
39 and easily determine from the wage statement alone one or more
40 of the following:

- 1 (i) The amount of the gross wages or net wages paid to the
 2 employee during the pay period or any of the other information
 3 required to be provided on the itemized wage statement pursuant
 4 to items (2) to (4), inclusive, (6), and (9) of subdivision (a).
- 5 (ii) Which deductions the employer made from gross wages to
 6 determine the net wages paid to the employee during the pay
 7 period. Nothing in this subdivision alters the ability of the employer
 8 to aggregate deductions consistent with the requirements of item
 9 (4) of subdivision (a).
- 10 (iii) The name and address of the employer and, if the employer
 11 is a farm labor contractor, as defined in subdivision (b) of Section
 12 1682, the name and address of the legal entity that secured the
 13 services of the employer during the pay period.
- 14 (iv) The name of the employee and only the last four digits of
 15 his or her social security number or an employee identification
 16 number other than a social security number.
- 17 (C) For purposes of this paragraph, “promptly and easily
 18 determine” means a reasonable person would be able to readily
 19 ascertain the information without reference to other documents or
 20 information.
- 21 (3) For purposes of this subdivision, a “knowing and intentional
 22 failure” does not include an isolated and unintentional payroll error
 23 due to a clerical or inadvertent mistake. In reviewing for
 24 compliance with this section, the factfinder may consider as a
 25 relevant factor whether the employer, prior to an alleged violation,
 26 has adopted and is in compliance with a set of policies, procedures,
 27 and practices that fully comply with this section.
- 28 (f) A failure by an employer to permit a current or former
 29 employee to inspect or copy records, or to receive a copy of the
 30 records, or any combination thereof, as specified by the employee
 31 pursuant to subdivision (b) within the time set forth in subdivision
 32 (c) entitles the current or former employee or the Labor
 33 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
 34 penalty from the employer.
- 35 (g) The listing by an employer of the name and address of the
 36 legal entity that secured the services of the employer in the itemized
 37 statement required by subdivision (a) shall not create any liability
 38 on the part of that legal entity.

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

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

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