

ASSEMBLY BILL

No. 2405

Introduced by Assembly Member Gatto

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2405, as introduced, Gatto. Employment: wages: itemized statements.

Existing law requires an employer to provide his or her employee an itemized statement containing specified information at the time the employer pays the employee his or her wages.

This bill would make nonsubstantive changes to that requirement.

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. Section 226 of the Labor Code is amended to
2 read:
3 226. (a) ~~Every employer shall,~~*An employer,* semimonthly or
4 at the time of each payment of wages, *shall* furnish ~~each of~~ *to* his
5 or her ~~employees~~ *employee*, either as a detachable part of the check,
6 draft, or voucher paying the employee's wages, or separately ~~when~~
7 *if* wages are paid by personal check or cash, an accurate itemized
8 statement in writing showing (1) gross wages earned, (2) total
9 hours worked by the employee, ~~except for any employee whose~~
10 *unless the employee's* compensation is solely based on a salary
11 and ~~who~~ *the employee* is exempt from payment of overtime under

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

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

37 (c) An employer who receives a written or oral request to inspect
38 or copy records pursuant to subdivision (b) pertaining to a current
39 or former employee shall comply with the request as soon as
40 practicable, but no later than 21 calendar days from the date of the

1 request. A violation of this subdivision is an infraction.
2 Impossibility of performance, not caused by or a result of a
3 violation of law, shall be an affirmative defense for an employer
4 in any action alleging a violation of this subdivision. An employer
5 may designate the person to whom a request under this subdivision
6 will be made.

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

13 (e) (1) An employee suffering injury as a result of a knowing
14 and intentional failure by an employer to comply with subdivision
15 (a) is entitled to recover the greater of all actual damages or fifty
16 dollars (\$50) for the initial pay period in which a violation occurs
17 and one hundred dollars (\$100) per employee for each violation
18 in a subsequent pay period, not to exceed an aggregate penalty of
19 four thousand dollars (\$4,000), and is entitled to an award of costs
20 and reasonable attorney's fees.

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

24 (B) An employee is deemed to suffer injury for purposes of this
25 subdivision if the employer fails to provide accurate and complete
26 information as required by any one or more of items (1) to (9),
27 inclusive, of subdivision (a) and the employee cannot promptly
28 and easily determine from the wage statement alone one or more
29 of the following:

30 (i) The amount of the gross wages or net wages paid to the
31 employee during the pay period or any of the other information
32 required to be provided on the itemized wage statement pursuant
33 to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

34 (ii) Which deductions the employer made from gross wages to
35 determine the net wages paid to the employee during the pay
36 period. Nothing in this subdivision alters the ability of the employer
37 to aggregate deductions consistent with the requirements of item
38 (4) of subdivision (a).

39 (iii) The name and address of the employer and, if the employer
40 is a farm labor contractor, as defined in subdivision (b) of Section

1 1682, the name and address of the legal entity that secured the
2 services of the employer during the pay period.

3 (iv) The name of the employee and only the last four digits of
4 his or her social security number or an employee identification
5 number other than a social security number.

6 (C) For purposes of this paragraph, “promptly and easily
7 determine” means a reasonable person would be able to readily
8 ascertain the information without reference to other documents or
9 information.

10 (3) For purposes of this subdivision, a “knowing and intentional
11 failure” does not include an isolated and unintentional payroll error
12 due to a clerical or inadvertent mistake. In reviewing for
13 compliance with this section, the factfinder may consider as a
14 relevant factor whether the employer, prior to an alleged violation,
15 has adopted and is in compliance with a set of policies, procedures,
16 and practices that fully comply with this section.

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

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

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

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