

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2405**

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**Introduced by Assembly Member Gatto**

February 19, 2016

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An act to amend Section ~~226~~ 230.8 of the Labor Code, relating to ~~wages~~: *employment*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2405, as amended, Gatto. Employment: ~~wages~~: ~~itemized statements~~: *employees: time off*.

*Existing law prohibits an employer who employs 25 or more employees working at the same location from discharging or discriminating against an employee who is a parent, as defined, having custody of a child in a licensed child day care facility or in kindergarten or grades 1 to 12, inclusive, for taking off up to 40 hours each year to find, enroll, or reenroll their child in a school, to participate in school activities, or address emergency situations at school, subject to specified conditions. Existing law requires an employee to use vacation or other paid time off when taking time off under these provisions and authorizes the use of unpaid time off, to the extent made available by the employer.*

*This bill would require an employer to annually provide an employee at least 24 hours of paid time off for the purposes of a planned absence under these provisions, except as specified, and would instead authorize an employee to use vacation or paid time off, or use unpaid time off, if available, when taking time off under these provisions.*

*The bill would provide a remedy to an employee whose request for time off under these provisions is denied by the employer. The bill would require the Labor Commissioner to create a poster listing the protections*

available to employees and would require an employer to post it at the workplace, as specified.

~~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~~-yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 230.8 of the Labor Code is amended to  
2 read:

3 230.8. (a) (1) An employer who employs 25 or more  
4 employees working at the same location shall not discharge or in  
5 any way discriminate against an employee who is a parent of one  
6 or more children of the age to attend kindergarten or grades 1 to  
7 12, inclusive, or a licensed child care provider, for taking off up  
8 to 40 hours each year, for the purpose of either of the following  
9 child-related activities:

10 (A) To find, enroll, or reenroll his or her child in a school or  
11 with a licensed child care provider, or to participate in activities  
12 of the school or licensed child care provider of his or her child, if  
13 the employee, prior to taking the time off, gives reasonable notice  
14 to the employer of the planned absence of the employee. Time off  
15 pursuant to this subparagraph shall not exceed eight hours in any  
16 calendar month of the year.

17 (B) To address a child care provider or school emergency, if  
18 the employee gives notice to the employer.

19 (2) If more than one parent of a child is employed by the same  
20 employer at the same worksite, the entitlement under paragraph  
21 (1) of a planned absence as to that child applies, at any one time,  
22 only to the parent who first gives notice to the employer, such that  
23 another parent may take a planned absence simultaneously as to  
24 that same child under the conditions described in paragraph (1)  
25 only if he or she obtains the employer's approval for the requested  
26 time off.

27 (b) (1) The employee ~~shall~~ may utilize existing vacation,  
28 personal leave, or compensatory time off for purposes of the  
29 planned absence authorized by this section, unless otherwise

1 provided by a collective bargaining agreement entered into before  
2 January 1, 1995, and in effect on that date. An employee also may  
3 utilize time off without pay for this purpose, to the extent made  
4 available by his or her employer. ~~The~~

5 (2) *The employee shall annually be provided at least 24 hours*  
6 *of paid time off for the purposes of the planned absence authorized*  
7 *by this section, unless otherwise provided in a collective bargaining*  
8 *agreement entered into before January 1, 2017.*

9 (3) *Except as set forth in paragraph (2), the entitlement of any*  
10 *employee under this section shall not be diminished by any*  
11 *collective bargaining agreement term or condition that is agreed*  
12 *to on or after January 1, 1995.*

13 ~~(2)~~

14 (4) Notwithstanding paragraph (1), in the event that all  
15 permanent, full-time employees of an employer are accorded  
16 vacation during the same period of time in the calendar year, an  
17 employee of that employer may not utilize that accrued vacation  
18 benefit at any other time for purposes of the planned absence  
19 authorized by this section.

20 (c) The employee, if requested by the employer, shall provide  
21 documentation from the school or licensed child care provider as  
22 proof that he or she engaged in child-related activities permitted  
23 in subdivision (a) on a specific date and at a particular time. For  
24 purposes of this subdivision, “documentation” means whatever  
25 written verification of parental participation the school or licensed  
26 child care provider deems appropriate and reasonable.

27 (d) Any employee who is *denied time off under this section,*  
28 *discharged, threatened with discharge, demoted, suspended, or in*  
29 *any other manner discriminated or retaliated against in terms and*  
30 *conditions of employment by his or her employer because the*  
31 *employee has taken or requested time off to engage in child-related*  
32 *activities permitted in subdivision (a) shall be entitled to*  
33 *reinstatement and reimbursement for lost wages and work benefits*  
34 *caused by the acts of the ~~employer.~~ employer, and appropriate*  
35 *equitable relief. Any employer who willfully refuses to rehire,*  
36 *promote, or otherwise restore an employee or former employee*  
37 *who has been determined to be eligible for rehiring or promotion*  
38 *by a grievance procedure, arbitration, or hearing authorized by*  
39 *law shall be subject to a civil penalty in an amount equal to three*  
40 *times the amount of the employee’s lost wages and work benefits.*

1 (e) An employee who is discharged, threatened with discharge,  
2 demoted, suspended, or in any other manner discriminated or  
3 retaliated against in the terms and conditions of employment by  
4 his or her employer because the employee has exercised his or her  
5 rights as set forth in subdivision (a) may file a complaint with the  
6 Division of Labor Standards Enforcement of the Department of  
7 Industrial Relations pursuant to Section 98.7.

8 (f) In each workplace of the employer, the employer shall display  
9 a poster in a conspicuous place containing all the information  
10 specified in paragraph (2) of subdivision (a). The Labor  
11 Commissioner shall create a poster containing this information  
12 and make it available to employers. The poster shall state all of  
13 the following:

14 (1) An employee is entitled to accrue, request, and use 24 hours  
15 of paid time off for their child’s school-related activities.

16 (2) That retaliation or discrimination against an employee who  
17 requests paid time off or uses time off, or both, is prohibited and  
18 that an employee has the right under this article to file a complaint  
19 with the Labor Commissioner against an employer who retaliates  
20 or discriminates against the employee.

21 (e)

22 (g) For purposes of this section, the following terms have the  
23 following meanings:

24 (1) “Parent” means a parent, guardian, stepparent, foster parent,  
25 or grandparent of, or a person who stands in loco parentis to, a  
26 child.

27 (2) “Child care provider or school emergency” means that an  
28 employee’s child cannot remain in a school or with a child care  
29 provider due to one of the following:

30 (A) The school or child care provider has requested that the  
31 child be picked up, or has an attendance policy, excluding planned  
32 holidays, that prohibits the child from attending or requires the  
33 child to be picked up from the school or child care provider.

34 (B) Behavioral or discipline problems.

35 (C) Closure or unexpected unavailability of the school or child  
36 care provider, excluding planned holidays.

37 (D) A natural disaster, including, but not limited to, fire,  
38 earthquake, or flood.

39 ~~SECTION 1. Section 226 of the Labor Code is amended to~~  
40 ~~read:~~

1 226. ~~(a) An employer, semimonthly or at the time of each~~  
2 ~~payment of wages, shall furnish to his or her employee, either as~~  
3 ~~a detachable part of the check, draft, or voucher paying the~~  
4 ~~employee's wages, or separately if wages are paid by personal~~  
5 ~~check or cash, an accurate itemized statement in writing showing~~  
6 ~~(1) gross wages earned, (2) total hours worked by the employee,~~  
7 ~~unless the employee's compensation is solely based on a salary~~  
8 ~~and the employee is exempt from payment of overtime under~~  
9 ~~subdivision (a) of Section 515 or any applicable order of the~~  
10 ~~Industrial Welfare Commission, (3) the number of piece-rate units~~  
11 ~~earned and any applicable piece rate if the employee is paid on a~~  
12 ~~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 only the last four digits of his or her social security~~  
17 ~~number or an employee identification number other than a social~~  
18 ~~security number, (8) the name and address of the legal entity that~~  
19 ~~is the employer and, if the employer is a farm labor contractor, as~~  
20 ~~defined in subdivision (b) of Section 1682, the name and address~~  
21 ~~of the legal entity that secured the services of the employer, and~~  
22 ~~(9) all applicable hourly rates in effect during the pay period and~~  
23 ~~the corresponding number of hours worked at each hourly rate by~~  
24 ~~the employee and, beginning July 1, 2013, if the employer is a~~  
25 ~~temporary services employer as defined in Section 201.3, the rate~~  
26 ~~of pay and the total hours worked for each temporary services~~  
27 ~~assignment. The deductions made from payment of wages shall~~  
28 ~~be recorded in ink or other indelible form, properly dated, showing~~  
29 ~~the month, day, and year, and a copy of the statement and the~~  
30 ~~record of the deductions shall be kept on file by the employer for~~  
31 ~~at least three years at the place of employment or at a central~~  
32 ~~location within the State of California. For purposes of this~~  
33 ~~subdivision, "copy" includes a duplicate of the itemized statement~~  
34 ~~provided to an employee or a computer-generated record that~~  
35 ~~accurately shows all of the information required by this subdivision.~~

36 ~~(b) An employer that is required by this code or any regulation~~  
37 ~~adopted pursuant to this code to keep the information required by~~  
38 ~~subdivision (a) shall afford current and former employees the right~~  
39 ~~to inspect or copy records pertaining to their employment, upon~~  
40 ~~reasonable request to the employer. The employer may take~~

1 reasonable steps to ensure the identity of a current or former  
2 employee. If the employer provides copies of the records, the actual  
3 cost of reproduction may be charged to the current or former  
4 employee.

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

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

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

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

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

38 (i) The amount of the gross wages or net wages paid to the  
39 employee during the pay period or any of the other information

1 required to be provided on the itemized wage statement pursuant  
2 to items (2) to (4), inclusive, (6), and (9) of subdivision (a):

3 (ii) ~~Which deductions the employer made from gross wages to~~  
4 ~~determine the net wages paid to the employee during the pay~~  
5 ~~period. Nothing in this subdivision alters the ability of the employer~~  
6 ~~to aggregate deductions consistent with the requirements of item~~  
7 ~~(4) of subdivision (a).~~

8 (iii) ~~The name and address of the employer and, if the employer~~  
9 ~~is a farm labor contractor, as defined in subdivision (b) of Section~~  
10 ~~1682, the name and address of the legal entity that secured the~~  
11 ~~services of the employer during the pay period.~~

12 (iv) ~~The name of the employee and only the last four digits of~~  
13 ~~his or her social security number or an employee identification~~  
14 ~~number other than a social security number.~~

15 (C) ~~For purposes of this paragraph, “promptly and easily~~  
16 ~~determine” means a reasonable person would be able to readily~~  
17 ~~ascertain the information without reference to other documents or~~  
18 ~~information.~~

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

26 (f) ~~A failure by an employer to permit a current or former~~  
27 ~~employee to inspect or copy records within the time set forth in~~  
28 ~~subdivision (e) entitles the current or former employee or the Labor~~  
29 ~~Commissioner to recover a seven-hundred-fifty-dollar (\$750)~~  
30 ~~penalty from the employer.~~

31 (g) ~~The listing by an employer of the name and address of the~~  
32 ~~legal entity that secured the services of the employer in the itemized~~  
33 ~~statement required by subdivision (a) shall not create any liability~~  
34 ~~on the part of that legal entity.~~

35 (h) ~~An employee may also bring an action for injunctive relief~~  
36 ~~to ensure compliance with this section, and is entitled to an award~~  
37 ~~of costs and reasonable attorney’s fees.~~

38 (i) ~~This section does not apply to the state, to any city, county,~~  
39 ~~city and county, district, or to any other governmental entity, except~~  
40 ~~that if the state or a city, county, city and county, district, or other~~

1 ~~governmental entity furnishes its employees with a check, draft,~~  
2 ~~or voucher paying the employee's wages, the state or a city, county,~~  
3 ~~city and county, district, or other governmental entity shall use no~~  
4 ~~more than the last four digits of the employee's social security~~  
5 ~~number or shall use an employee identification number other than~~  
6 ~~the social security number on the itemized statement provided with~~  
7 ~~the check, draft, or voucher.~~

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