

AMENDED IN SENATE AUGUST 25, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2857

**Introduced by ~~Committee on Labor and Employment~~
(~~Steinberg (Chair), Gallegos, Knox, Migden, Romero, and~~
~~Shelley) Assembly Member Steinberg~~**

March 2, 2000

An act to amend ~~Section 98.2~~ of Sections 92, 98.2, 1174.5, 1194.2, and 1197.1 of, and to add Sections 226.7 and 245 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2857, as amended, ~~Committee on Labor and Employment~~ Steinberg. Wage and hour remedies.

Existing law authorizes the Labor Commissioner, his or her deputies, and agents to issue subpoenas for the purpose of carrying out the laws which the Division of Labor Standards Enforcement is responsible for enforcing.

This bill would authorize using a prescribed notice in lieu of a subpoena in adjudicatory proceedings before the Labor Commissioner to compel attendance of a party, person for whose benefit the proceeding is prosecuted or defended, or any officer, director, or managing agent thereof. The notice would have the same force and effect as a subpoena.

Existing law provides a procedure for the adjudication of wage claims within the Department of Labor Standards Enforcement. This procedure includes its initiation through an employee complaint, investigation, administrative hearing

before a hearing officer, and decision and award by the Labor Commissioner. Existing law also provides for the right of appeal of that decision with a hearing de novo by a municipal or superior court.

This bill would exempt that appeal to the municipal or superior court from the requirement of judicial arbitration applicable to specified civil proceedings in those courts.

Existing law authorizes the Industrial Welfare Commission to adopt orders respecting wages, hours, and working conditions.

This bill would make any employer that requires any employee to work during a meal or rest period mandated by an order of the commission subject to a civil penalty of \$50 per violation and liable to the employee for twice the employee's average hourly or piecework pay. An aggrieved employee could bring an administrative action before the Labor Commissioner or could commence a civil action for recovery of these amounts, and if the employee prevails in such a civil action, the employee would be entitled to recover attorney's fees.

Under existing law, the Labor Commissioner is empowered to implement administrative proceedings for the recovery of unpaid wages and penalties.

This bill would provide that whenever the Labor Commissioner makes an award based upon a finding that the employer has engaged in a pattern or practice of violating wage and hour laws, the Labor Commissioner may require the employer to post a prescribed notice of the violation with specified information for not less than 60 days. The bill would specify a civil penalty for violation of the posting requirement.

Existing law requires employers to keep records showing the names and addresses of employees and the ages of minor employees and makes an employer's willful failure to maintain these records or payroll records subject to a civil penalty of \$500.

This bill would revise the amount of the civil penalty to \$100 per employee for each payroll period up to a maximum of 2 years. The bill would also make these civil penalties applicable to an employer that fails to keep records required by wage orders of the commission.



Under existing law, an aggrieved employee, or the Department of Industrial Relations or its Division of Labor Standards Enforcement, with or without the employee's consent, may bring a civil action to recover unpaid minimum wages or overtime compensation, interest, costs, and reasonable attorney's fees. In these civil actions to recover unpaid minimum wages, the employee is entitled to additional damages equal to the unpaid wages and interest thereon, except that if the employer can show that the act or omission giving rise to the violation was in good faith and that the employer had reasonable grounds for believing there was no violation, the court may refuse to award those damages.

This bill would make technical, clarifying changes in these provisions and also make them applicable to proceedings before the Labor Commissioner.

Under existing law, any employer or person who pays or causes to be paid less than the minimum wage prescribed by order of the commission is subject to prescribed civil penalties assessed and collected by the Labor Commissioner in proceedings initiated by the issuance of a citation.

This bill would include in these proceedings restitution of the underpaid wages, interest, and statutory liquidated damages.

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 92 of the Labor Code is amended*
2 *to read:*

3 92. (a) The Labor Commissioner; and his or her
4 deputies and agents; may issue ~~subpenas~~ subpoenas to
5 compel the attendance of witnesses and parties and the
6 production of books, papers and records; administer
7 oaths; examine witnesses under oath; take the
8 verification, acknowledgment, or proof of written
9 instruments; and take depositions and affidavits for the
10 purpose of carrying out the provisions of this code and all
11 laws ~~which~~ that the division is to enforce.



1 (b) In any adjudicatory hearing before the Labor
2 Commissioner, a notice in lieu of a subpoena may be used
3 to compel the attendance of a party, a person for whose
4 benefit the proceeding is prosecuted or defended, or any
5 officer, director, or managing agent of a party or such a
6 person. The service of a subpoena in these cases is not
7 required if written notice requesting the witness to
8 attend, with the time and place of the hearing, is served
9 upon the party or person, or his or her attorney of record.
10 The notice shall be served at least 10 days before the time
11 requested for attendance unless the hearing officer
12 prescribes a shorter time. The giving of the notice shall
13 have the same effect as service of a subpoena on the
14 witness. Section 1013 of the Code of Civil Procedure shall
15 be applicable to service of these notices.

16 (c) The notice specified in subdivision (b) may
17 include a request that the party or person bring with him
18 or her books, papers, records, documents, or other things.
19 The notice shall state the exact materials or things to be
20 produced and that the party or person has them in his or
21 her possession or under his or her control.

22 (d) A party or person required to attend or produce
23 records at a hearing pursuant to notice under subdivision
24 (b) may object to the notice as provided in Section
25 11450.30 of the Government Code.

26 (e) Notice under subdivision (b) has the same force
27 and effect as a subpoena issued by the Labor
28 Commissioner pursuant to subdivision (a) and may be
29 enforced, and willful disobedience punished, in
30 accordance with Section 93.

31 SEC. 2. Section 98.2 of the Labor Code is amended to
32 read:

33 98.2. (a) Within 10 days after service of notice of an
34 order, decision, or award the parties may seek review by
35 filing an appeal to the municipal or superior court, in
36 accordance with the appropriate rules of jurisdiction,
37 where the appeal shall be heard de novo. The de novo
38 proceedings in the municipal or superior court shall be
39 exempt from Section 1141.11 of the Code of Civil
40 Procedure. A copy of the appeal request shall be served



1 upon the Labor Commissioner by the appellant. For
2 purposes of computing the 10-day period after service,
3 Section 1013 of the Code of Civil Procedure shall be
4 applicable.

5 (b) If the party seeking review by filing an appeal to
6 the municipal or superior court is unsuccessful in the
7 appeal, the court shall determine the costs and reasonable
8 attorney's fees incurred by the other parties to the appeal,
9 and assess that amount as a cost upon the party filing the
10 appeal.

11 (c) If no notice of appeal of the order, decision, or
12 award is filed within the period set forth in subdivision
13 (a), the order, decision, or award shall, in the absence of
14 fraud, be deemed the final order.

15 (d) The Labor Commissioner shall file, within 10 days
16 of the order becoming final pursuant to subdivision (c),
17 a certified copy of the final order with the clerk of the
18 municipal or superior court, in accordance with the
19 appropriate rules of jurisdiction, of the appropriate
20 county unless a settlement has been reached by the
21 parties and approved by the Labor Commissioner.
22 Judgment shall be entered immediately by the court
23 clerk in conformity therewith. The judgment so entered
24 shall have the same force and effect as, and shall be
25 subject to all of the provisions of law relating to, a
26 judgment in a civil action, and may be enforced in the
27 same manner as any other judgment of the court in which
28 it is entered. Enforcement of the judgment shall receive
29 court priority.

30 (e) In order to ensure judgments are satisfied, the
31 Labor Commissioner may serve upon the judgment
32 debtor personally or by first-class mail at the last known
33 address of the judgment debtor listed with the division,
34 a form similar to, and requiring the reporting of the same
35 information as, the form approved or adopted by the
36 Judicial Council for purposes of subdivision (b) of Section
37 117.19 of the Code of Civil Procedure to assist in
38 identifying the nature and location of any assets of the
39 judgment debtor.



1 The judgment debtor shall complete the form and
2 cause it to be delivered to the division at the address listed
3 on the form within 35 days after the form has been served
4 on the judgment debtor, unless the judgment has been
5 satisfied. In case of willful failure by the judgment debtor
6 to comply with this subdivision, the division or the
7 judgment creditor may request the court to apply the
8 sanctions provided in Section 708.170 of the Code of Civil
9 Procedure.

10 (f) Notwithstanding subdivision (d), the Labor
11 Commissioner may stay execution of any judgment
12 entered upon an order, decision, or award which has
13 become final upon good cause appearing therefore and
14 may impose the terms and conditions of the stay of
15 execution. A certified copy of the stay of execution shall
16 be filed with the clerk entering the judgment.

17 (g) When a judgment is satisfied in fact, otherwise
18 than by execution, the Labor Commissioner may, upon
19 the motion of either party or on its own motion, order
20 entry of satisfaction of judgment. The clerk of the court
21 shall enter a satisfaction of judgment upon the filing of a
22 certified copy of the order.

23 (h) The Labor Commissioner shall make every
24 reasonable effort to ensure that judgments are satisfied,
25 including taking all appropriate legal action and
26 requiring the employer to deposit a bond as provided in
27 Section 240.

28 (i) The judgment creditor, or the Labor
29 Commissioner as assignee of the judgment creditor, shall
30 be entitled to court costs and reasonable attorney fees for
31 enforcing the judgment which is rendered pursuant to
32 this section.

33 *SEC. 3. Section 226.7 is added to the Labor Code, to*
34 *read:*

35 *226.7. (a) No employer shall require any employee to*
36 *work during any meal or rest period mandated by an*
37 *applicable order of the Industrial Welfare Commission.*

38 *(b) An employer that violates this section shall be*
39 *subject to both of the following:*



1 (1) A civil penalty of fifty dollars (\$50) per employee
2 per violation.

3 (2) Payment to the aggrieved employee of an amount
4 equal to twice his or her average hourly rate of
5 compensation for the full length of the meal or rest
6 periods during which the employee was required to
7 perform any work. An employee paid on a piecework
8 basis shall be entitled to an amount equal to twice the
9 amount of piecework units earned during those periods,
10 but in no event shall the amount be less than the
11 applicable state minimum wage for the full length of
12 those time periods during which any work was
13 performed.

14 (c) Any employee aggrieved by a violation of this
15 section may do either of the following:

16 (1) Seek recovery of payments under paragraph (2) of
17 subdivision (b) through a complaint filed pursuant to
18 subdivision (a) of Section 98.

19 (2) Seek recovery of payments under paragraph (2) of
20 subdivision (b) in a civil action. The court shall award a
21 prevailing plaintiff in such an action reasonable
22 attorney's fees.

23 SEC. 4. Section 245 is added to the Labor Code, to
24 read:

25 245. Whenever the Labor Commissioner makes an
26 award against an employer pursuant to this chapter, upon
27 finding that the employer has engaged in a pattern and
28 practice of violating wage and hours laws, the Labor
29 Commissioner shall also make an order requiring the
30 employer to post a notice at the place of employment
31 where the affected employees are or were employed
32 containing a description of the nature of the violation, a
33 declaration by the employer stating that it will not engage
34 in those unlawful acts in the future, and the address and
35 telephone number of the Labor Commissioner. The
36 notice, on a form approved by the Labor Commissioner,
37 shall be posted conspicuously by the employer for a
38 period of not less than 60 days. The notice shall bear the
39 seal of the State of California and of the Labor
40 Commissioner and the signature of the employer or a



1 representative or agent of the employer. The cost of
2 producing and posting the notice shall be paid by the
3 employer. The failure or refusal of an employer to post
4 the notice in accordance with this section shall subject the
5 employer to a civil penalty, to be assessed and collected
6 by the Labor Commissioner, in the amount of five
7 hundred dollars (\$500) for each instance in which the
8 employer fails or refuses to post a notice as required by
9 this section, and the employer shall be required to
10 properly post the notice.

11 SEC. 5. Section 1174.5 of the Labor Code is amended
12 to read:

13 1174.5. (a) Any person employing labor who willfully
14 fails to maintain the records required by subdivision (c)
15 of Section 1174 or accurate and complete records
16 required by subdivision (d) of Section 1174 or by the
17 applicable wage orders of the Industrial Welfare
18 Commission, or to allow any member of the commission
19 or employees of the division to inspect records pursuant
20 to subdivision (b) of Section 1174, shall be subject to a civil
21 penalty of ~~five~~ one hundred dollars ~~(\$500)~~ (\$100) per
22 employee for each payroll period during which the
23 violation occurs, up to a maximum period of two years.

24 SEC. 6. Section 1194.2 of the Labor Code is amended
25 to read:

26 1194.2. (a) In any proceeding before the Labor
27 Commissioner, or any action under Section 1193.6 or
28 ~~Section~~ 1194, to recover wages because of the payment of
29 a wage less than the minimum wage fixed by an order of
30 the commission, an employee shall be entitled
31 additionally to recover liquidated damages in an amount
32 equal to the wages unlawfully unpaid and interest
33 thereon. Nothing in this subdivision shall be construed to
34 authorize the recovery of liquidated damages for failure
35 to pay overtime compensation.

36 (b) Notwithstanding subdivision (a), if the employer
37 demonstrates to the satisfaction of the Labor
38 Commissioner or the court that the act or omission giving
39 rise to the action was in good faith and that the employer
40 had reasonable grounds for believing that the act or



1 omission was not a violation of any provision of the Labor
2 Code relating to minimum wage, or an order of the
3 commission, the *Labor Commissioner or the court* may,
4 in ~~its~~ *the discretion of the Labor Commissioner or the*
5 *court as the case may be*, refuse to award liquidated
6 damages or award any amount of liquidated damages not
7 exceeding the amount specified in subdivision (a).

8 (c) This section only ~~shall apply~~ *applies* to civil actions
9 commenced on or after January 1, 1992.

10 *SEC. 7. Section 1197.1 of the Labor Code is amended*
11 *to read:*

12 1197.1. (a) Any employer or other person, acting
13 either individually or as an officer, agent, or employee of
14 another person, who pays or causes to be paid to any
15 employee a wage less than the minimum fixed by an
16 order of the commission shall be subject to a civil penalty
17 *and restitution* as follows:

18 (1) For any initial violation that is intentionally
19 committed, fifty dollars (\$50) for each underpaid
20 employee for each pay period for which the employee is
21 underpaid, *in addition to an amount sufficient to recover,*
22 *on behalf of the affected employees, all underpaid wages,*
23 *any owed interest thereon, and statutory liquidated*
24 *damages.*

25 (2) For each subsequent violation for the same specific
26 offense, two hundred fifty dollars (\$250) for each
27 underpaid employee for each pay period for which the
28 employee is underpaid, regardless of whether the initial
29 violation is intentionally committed, *in addition to an*
30 *amount sufficient to recover, on behalf of the affected*
31 *employees, all underpaid wages, any interest owed*
32 *thereon, and statutory liquidated damages.*

33 (b) If, upon inspection or investigation, the Labor
34 Commissioner determines that a person has paid or
35 caused to be paid a wage less than the minimum, the
36 Labor Commissioner may issue a citation to the person in
37 violation. The citation may be served personally or by
38 registered mail in accordance with subdivision (c) of
39 Section 11505 of the Government Code. Each citation
40 shall be in writing and shall describe the nature of the



1 violation, including reference to the statutory provision
2 alleged to have been violated. The Labor Commissioner
3 promptly shall take all appropriate action, in accordance
4 with this section, to enforce the citation and to recover
5 the civil penalty *and restitution* assessed in connection
6 with the citation.

7 (c) If a person desires to contest a citation or the
8 proposed assessment of a civil penalty *or restitution*
9 therefor, the person shall, within 15 business days after
10 service of the citation, notify the office of the Labor
11 Commissioner that appears on the citation of his or her
12 request for an informal hearing. The Labor
13 Commissioner or his or her deputy or agent shall, within
14 30 days, hold a hearing at the conclusion of which the
15 citation or proposed assessment of a civil penalty *and*
16 *restitution* shall be affirmed, modified, or dismissed.

17 The decision of the Labor Commissioner shall consist of
18 a notice of findings, findings, and an order, all of which
19 shall be served on all parties to the hearing within 15 days
20 after the hearing by regular first-class mail at the last
21 known address of the party on file with the Labor
22 Commissioner. Service shall be completed pursuant to
23 Section 1013 of the Code of Civil Procedure. Any amount
24 found due by the Labor Commissioner as a result of a
25 hearing shall become due and payable 45 days after notice
26 of the findings and written findings and order have been
27 mailed to the party assessed. A writ of mandate may be
28 taken from this finding to the appropriate superior court.
29 The party shall pay any judgment and costs ultimately
30 rendered by the court against the party for the
31 assessment. The writ shall be taken within 45 days of
32 service of the notice of findings, findings, and order
33 thereon.

34 (d) A person to whom a citation has been issued ~~shall~~
35 *may*, in lieu of contesting a citation pursuant to this
36 section, transmit to the office of the Labor Commissioner
37 designated on the citation the amount *of the civil penalty*
38 *and restitution* specified for the violation within 15
39 business days after issuance of the citation.



1 (e) When no petition objecting to a citation or the
2 proposed assessment of a civil penalty *and restitution* is
3 filed, a certified copy of the citation or proposed civil
4 penalty *and restitution* may be filed by the Labor
5 Commissioner in the office of the clerk of the superior
6 court in any county in which the person assessed has or
7 had a place of business. The clerk, immediately upon the
8 filing, shall enter judgment for the state against the
9 person assessed in the amount shown on the citation or
10 proposed assessment of a civil penalty *and restitution*.

11 (f) When findings and the order thereon are made
12 affirming or modifying a citation or proposed assessment
13 of a civil penalty *and restitution* after hearing, a certified
14 copy of these findings and the order entered thereon may
15 be entered by the Labor Commissioner in the office of the
16 clerk of the superior court in any county in which the
17 person assessed has property or in which the person
18 assessed has or had a place of business. The clerk,
19 immediately upon the filing, shall enter judgment for the
20 state against the person assessed in the amount shown on
21 the certified order.

22 (g) A judgment entered pursuant to this section shall
23 bear the same rate of interest and shall have the same
24 effect as other judgments and be given the same
25 preference allowed by the law on other judgments
26 rendered for claims for taxes. The clerk shall make no
27 charge for the service provided by this section to be
28 performed by him or her.

29 (h) The civil penalties *and restitution* provided for in
30 this section are in addition to any other penalty *or remedy*
31 provided by law.

32 (i) This section shall not apply to any order of the
33 commission relating to household occupations.

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