

## **Assembly Bill No. 1093**

### **CHAPTER 149**

An act to amend Sections 213 and 515.5 of the Labor Code, relating to employment.

[Approved by Governor August 30, 2005. Filed with  
Secretary of State August 30, 2005.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 1093, Matthews. Employment: wages.**

Existing law prohibits any person from issuing in payment of wages due or to become due, as an advance on wages to be earned, any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless negotiable and payable on demand without discount at some established place of business in the state. Existing law provides that provision shall not prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account on any bank, savings and loan association, or credit union of the employee's choice in this state, provided the employee has voluntarily authorized the deposit, and provides that if an employee is discharged or quits, the voluntary authorization for deposit shall be deemed terminated and existing law relating to payment of wages upon termination of employment shall apply.

This bill would instead provide that the employer may deposit the wages or advance on wages in an account in any bank, savings and loan association, or credit union of the employee's choice that has a place of business in this state. This bill would additionally modify existing law to provide that if an employee is discharged or quits, the employer may pay the wages earned and unpaid at the time the employee is discharged or quits by depositing that sum into the account authorized by the employee, and would provide that existing law relating to the payment of wages upon termination or quitting of employment shall continue to apply.

Existing law requires that an employee in the computer software field be exempt from the requirement that an overtime rate of compensation be paid if certain conditions are met, including a requirement the employee's hourly rate of pay is not less than \$41.

This bill would instead provide that requirement be that the employee's hourly rate of pay is not less than \$41 or the annualized full-time salary equivalent of that rate, provided that all the other requirements for exemption are met and that in each workweek the employee receives not less than \$41 per hour worked.

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

SECTION 1. Section 213 of the Labor Code is amended to read:

213. Nothing contained in Section 212 shall:

(a) Prohibit an employer from guaranteeing the payment of bills incurred by an employee for the necessities of life or for the tools and implements used by the employee in the performance of his or her duties.

(b) Apply to counties, municipal corporations, quasi-municipal corporations, or school districts.

(c) Apply to students of nonprofit schools, colleges, universities, and other nonprofit educational institutions.

(d) Prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, or credit union of the employee's choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit. If an employer discharges an employee or the employee quits, the employer may pay the wages earned and unpaid at the time the employee is discharged or quits by making a deposit authorized pursuant to this subdivision, provided that the employer complies with the provisions of this article relating to the payment of wages upon termination or quitting of employment.

SEC. 2. Section 515.5 of the Labor Code is amended to read:

515.5. (a) Except as provided in subdivision (b), an employee in the computer software field shall be exempt from the requirement that an overtime rate of compensation be paid pursuant to Section 510 if all of the following apply:

(1) The employee is primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment.

(2) The employee is primarily engaged in duties that consist of one or more of the following:

(A) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

(B) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.

(C) The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

(3) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of this exemption.

(4) The employee's hourly rate of pay is not less than forty-one dollars (\$41.00), or the annualized full-time salary equivalent of that rate, provided that all other requirements of this section are met and that in each

workweek the employee receives not less than forty-one dollars (\$41.00) per hour worked. The Division of Labor Statistics and Research shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

(b) The exemption provided in subdivision (a) does not apply to an employee if any of the following apply:

(1) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

(2) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.

(3) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

(4) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not in a computer systems analysis or programming occupation.

(5) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for onscreen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.

(6) The employee is engaged in any of the activities set forth in subdivision (a) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.