

Introduced by Senator Battin

January 19, 2005

An act to amend Section 226 of the Labor Code, relating to employee compensation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 101, as introduced, Battin. Employee compensation.

(1) Existing law requires an employer to furnish each employee with an accurate itemized statement showing, among other things, the name of the employee and his or her social security number, except that, by January 1, 2008, existing law requires the employer to include no more than the last 4 digits of the employee's social security number or an existing employee identification number other than a social security number on any check provided to an employee. Existing law requires the state, or any city, county, city and county, district, or any other governmental entity, if it furnishes its employees with a check, draft, or voucher paying the employee's wages, to, by January 1, 2008, use no more than the last four digits of the employee's social security number or to use an existing employee identification number other than the social security number on that check, draft, or voucher. Existing law provides that a knowing and intentional violation of this provision is a misdemeanor.

This bill would clarify existing law to require that an employer, by January 1, 2008, include on the itemized statement provided to an employee the last 4 digits of the employee's social security number or an existing employee identification number other than a social security number. The bill would further clarify existing law to require, by January 1, 2008, that the state, or any city, county, city and county, district, or any other governmental entity, if it furnishes its employees

with a check, draft, or voucher paying the employee's wages, to use no more than the last four digits of the employee's social security number or to use an existing employee identification number other than the social security number on an itemized statement to accompany the check.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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, semimonthly or at the time of
 4 each payment of wages, furnish each of his or her employees,
 5 either as a detachable part of the check, draft, or voucher paying
 6 the employee's wages, or separately when wages are paid by
 7 personal check or cash, an accurate itemized statement in writing
 8 showing (1) gross wages earned, (2) total hours worked by the
 9 employee, except for any employee whose compensation is
 10 solely based on a salary and who is exempt from payment of
 11 overtime under subdivision (a) of Section 515 or any applicable
 12 order of the Industrial Welfare Commission, (3) the number of
 13 piece-rate units earned and any applicable piece rate if the
 14 employee is paid on a piece-rate basis, (4) all deductions,
 15 provided that all deductions made on written orders of the
 16 employee may be aggregated and shown as one item, (5) net
 17 wages earned, (6) the inclusive dates of the period for which the
 18 employee is paid, (7) the name of the employee and his or her
 19 social security number, except that by January 1, 2008, only the
 20 last four digits of his or her social security number or an existing
 21 employee identification number other than a social security
 22 number may be shown ~~on the check~~, (8) the name and address of

1 the legal entity that is the employer, and (9) all applicable hourly
2 rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.
4 The deductions made from payments of wages shall be recorded
5 in ink or other indelible form, properly dated, showing the
6 month, day, and year, and a copy of the statement or a record of
7 the deductions shall be kept on file by the employer for at least
8 three years at the place of employment or at a central location
9 within the State of California.

10 (b) An employer that is required by this code or any regulation
11 adopted pursuant to this code to keep the information required by
12 subdivision (a) shall afford current and former employees the
13 right to inspect or copy the records pertaining to that current or
14 former employee, upon reasonable request to the employer. The
15 employer may take reasonable steps to assure the identity of a
16 current or former employee. If the employer provides copies of
17 the records, the actual cost of reproduction may be charged to the
18 current or former employee.

19 (c) An employer who receives a written or oral request to
20 inspect or copy records pursuant to subdivision (b) pertaining to
21 a current or former employee shall comply with the request as
22 soon as practicable, but no later than 21 calendar days from the
23 date of the request. A violation of this subdivision is an
24 infraction. Impossibility of performance, not caused by or a result
25 of a violation of law, shall be an affirmative defense for an
26 employer in any action alleging a violation of this subdivision.
27 An employer may designate the person to whom a request under
28 this subdivision will be made.

29 (d) This section does not apply to any employer of any person
30 employed by the owner or occupant of a residential dwelling
31 whose duties are incidental to the ownership, maintenance, or use
32 of the dwelling, including the care and supervision of children, or
33 whose duties are personal and not in the course of the trade,
34 business, profession, or occupation of the owner or occupant.

35 (e) An employee suffering injury as a result of a knowing and
36 intentional failure by an employer to comply with subdivision (a)
37 is entitled to recover the greater of all actual damages or fifty
38 dollars (\$50) for the initial pay period in which a violation occurs
39 and one hundred dollars (\$100) per employee for each violation
40 in a subsequent pay period, not exceeding an aggregate penalty

1 of four thousand dollars (\$4,000), and is entitled to an award of
2 costs and reasonable attorney’s fees.

3 (f) A failure by an employer to permit a current or former
4 employee to inspect or copy records within the time set forth in
5 subdivision (c) entitles the current or former employee or the
6 Labor Commissioner to recover a seven hundred fifty dollar
7 (\$750) penalty from the employer.

8 (g) An employee may also bring an action for injunctive relief
9 to ensure compliance with this section, and is entitled to an
10 award of costs and reasonable attorney’s fees.

11 (h) This section does not apply to the state, to any city, county,
12 city and county, district, or to any other governmental entity,
13 except that if the state or a city, county, city and county, district,
14 or other governmental entity furnishes its employees with a
15 check, draft, or voucher paying the employee’s wages, the state
16 or a city, county, city and county, district, or other governmental
17 entity shall, by January 1, 2008, use no more than the last four
18 digits of the employee’s social security number or shall use an
19 existing employee identification number other than the social
20 security number on ~~that check, draft, or voucher~~ *an itemized*
21 *statement provided to the employee.*

22 SEC. 2. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the
27 penalty for a crime or infraction, within the meaning of Section
28 17556 of the Government Code, or changes the definition of a
29 crime within the meaning of Section 6 of Article XIII B of the
30 California Constitution.

31 SEC. 3. This act is an urgency statute necessary for the
32 immediate preservation of the public peace, health, or safety
33 within the meaning of Article IV of the Constitution and shall go
34 into immediate effect. The facts constituting the necessity are:

35 In order to clarify existing law governing employee
36 compensation, it is necessary that this act take effect
37 immediately.

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