

ASSEMBLY BILL

No. 592

Introduced by Assembly Member Dymally

February 21, 2007

An act to amend Sections 203, 203.1, 204, 210, 215, and 220 of, and to add Section 204.5 to, the Labor Code, relating to payment of wages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 592, as introduced, Dymally. Payment of wages

Existing law, with exceptions, requires immediate payment of wages upon discharge.

This bill would exempt temporary employees employed by temporary employment agencies from any requirement of immediate payment, so long as wages are paid weekly.

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: no.

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

1 SECTION 1. Section 203 of the Labor Code is amended to
2 read:

3 203. If an employer willfully fails to pay, without abatement
4 or reduction, in accordance with Sections 201, 201.5, 202, 204.5,
5 and 205.5, any wages of an employee who is discharged or who
6 quits, the wages of the employee shall continue as a penalty from
7 the due date thereof at the same rate until paid or until an action

1 therefor is commenced; but the wages shall not continue for more
 2 than 30 days. An employee who secretes or absents himself or
 3 herself to avoid payment to him or her, or who refuses to receive
 4 the payment when fully tendered to him or her, including any
 5 penalty then accrued under this section, is not entitled to any benefit
 6 under this section for the time during which he or she so avoids
 7 payment.

8 Suit may be filed for these penalties at any time before the
 9 expiration of the statute of limitations on an action for the wages
 10 from which the penalties arise.

11 SEC. 2. Section 203.1 of the Labor Code is amended to read:

12 203.1. If an employer pays an employee in the regular course
 13 of employment or in accordance with Section 201, 201.5, 201.7,
 14 ~~or 202~~, or 204.5, any wages or fringe benefits, or both, by check,
 15 draft or voucher, which check, draft or voucher is subsequently
 16 refused payment because the employer or maker has no account
 17 with the bank, institution, or person on which the instrument is
 18 drawn, or has insufficient funds in the account upon which the
 19 instrument is drawn at the time of its presentation, so long as the
 20 same is presented within 30 days of receipt by the employee of
 21 the check, draft or voucher, those wages or fringe benefits, or both,
 22 shall continue as a penalty from the due date thereof at the same
 23 rate until paid or until an action therefor is commenced. However,
 24 those wages and fringe benefits shall not continue for more than
 25 30 days and this penalty shall not apply if the employer can
 26 establish to the satisfaction of the Labor Commissioner or an
 27 appropriate court of law that the violation of this section was
 28 unintentional. This penalty also shall not apply in any case in which
 29 an employee recovers the service charge authorized by Section
 30 1719 of the Civil Code in an action brought by the employee
 31 thereunder.

32 SEC. 3. Section 204 of the Labor Code is amended to read:

33 204. (a) All wages, other than those mentioned in Section 201,
 34 202, 204.1, ~~or 204.2~~, or 204.5, earned by any person in any
 35 employment are due and payable twice during each calendar month,
 36 on days designated in advance by the employer as the regular
 37 paydays. Labor performed between the 1st and 15th days, inclusive,
 38 of any calendar month shall be paid for between the 16th and the
 39 26th day of the month during which the labor was performed, and
 40 labor performed between the 16th and the last day, inclusive, of

1 any calendar month, shall be paid for between the 1st and 10th
2 day of the following month. However, salaries of executive,
3 administrative, and professional employees of employers covered
4 by the Fair Labor Standards Act, as set forth pursuant to Section
5 13(a)(1) of the Fair Labor Standards Act, as amended through
6 March 1, 1969, in Part 541 of Title 29 of the Code of Federal
7 Regulations, as that part now reads or may be amended to read at
8 any time hereafter, may be paid once a month on or before the
9 26th day of the month during which the labor was performed if
10 the entire month's salaries, including the unearned portion between
11 the date of payment and the last day of the month, are paid at that
12 time.

13 (b) (1) Notwithstanding any other provision of this section, all
14 wages earned for labor in excess of the normal work period shall
15 be paid no later than the payday for the next regular payroll period.

16 (2) An employer is in compliance with the requirements of
17 subdivision (a) of Section 226 relating to total hours worked by
18 the employee, if hours worked in excess of the normal work period
19 during the current pay period are itemized as corrections on the
20 paystub for the next regular pay period. Any corrections set out in
21 a subsequently issued paystub shall state the inclusive dates of the
22 pay period for which the employer is correcting its initial report
23 of hours worked.

24 (c) However, when employees are covered by a collective
25 bargaining agreement that provides different pay arrangements,
26 those arrangements shall apply to the covered employees.

27 (d) The requirements of this section shall be deemed satisfied
28 by the payment of wages for weekly, biweekly, or semimonthly
29 payroll if the wages are paid not more than seven calendar days
30 following the close of the payroll period.

31 SEC. 4. Section 204.5 is added to the Labor Code, to read:

32 204.5. (a) Notwithstanding Sections 201, 202, and 204, or any
33 other provision of law, wages earned by a temporary employee
34 employed by a temporary employment agency to render services
35 on a temporary assignment with another business are timely paid
36 if paid weekly as provided in Section 204b.

37 (b) For purposes of this section, a temporary employment agency
38 is an employer that is engaged in the business of placing temporary
39 employees on a temporary assignments with other businesses and
40 that pays its temporary employees on a weekly basis.

1 SEC. 5. Section 210 of the Labor Code is amended to read:
 2 210. In addition to, and entirely independent and apart from,
 3 any other penalty provided in this article, every person who fails
 4 to pay the wages of each employee as provided in Sections 204,
 5 204b, 204.1, 204.2, 204.5, 205, 205.5, and 1197.5, shall be subject
 6 to a civil penalty as follows:

7 (a) For any initial violation, one hundred dollars (\$100) for each
 8 failure to pay each employee.

9 (b) For each subsequent violation, or any willful or intentional
 10 violation, two hundred dollars (\$200) for each failure to pay each
 11 employee, plus 25 percent of the amount unlawfully withheld.

12 The penalty shall be recovered by the Labor Commissioner as
 13 part of a hearing held to recover unpaid wages and penalties
 14 pursuant to this chapter or in an independent civil action. The
 15 action shall be brought in the name of the people of the State of
 16 California and the Labor Commissioner and the attorneys thereof
 17 may proceed and act for and on behalf of the people in bringing
 18 these actions. Twelve and one-half percent of the penalty recovered
 19 shall be paid into a fund within the Labor and Workforce
 20 Development Agency dedicated to educating employers about
 21 state labor laws, and the remainder shall be paid into the State
 22 Treasury to the credit of the General Fund.

23 SEC. 6. Section 215 of the Labor Code is amended to read:

24 215. Any person, or the agent, manager, superintendent or
 25 officer thereof, who violates any provision of Sections 204, 204b,
 26 204.5, 205, 207, 208, 209, or 212 is guilty of a misdemeanor. Any
 27 failure to keep posted any notice required by Section 207 is prima
 28 facie evidence of a violation of such sections.

29 SEC. 7. Section 220 of the Labor Code is amended to read:

30 220. (a) Sections 201.5, 201.7, 203.1, 203.5, 204, 204a, 204b,
 31 204c, 204.1, 204.5, 205, and 205.5 do not apply to the payment of
 32 wages of employees directly employed by the State of California.
 33 Except as provided in subdivision (b), all other employment is
 34 subject to these provisions.

35 (b) Sections 200 to 211, inclusive, and Sections 215 to 219,
 36 inclusive, do not apply to the payment of wages of employees
 37 directly employed by any county, incorporated city, or town or
 38 other municipal corporation. All other employments are subject
 39 to these provisions.

1 SEC. 8. The Legislature finds and declares that special
2 provision is needed for the payment of wages by a temporary
3 employment agency because temporary employees work on
4 assignments at various locations, which are often located far from
5 the temporary employment agency's principal administrative office
6 and because of the unpredictable days and hours of work of
7 temporary employees. The Legislature further finds and declares
8 that temporary employment agencies serve a vital public purpose
9 by aiding the unemployed in securing employment.

10 SEC. 9. This act is an urgency statute necessary for the
11 immediate preservation of the public peace, health, or safety within
12 the meaning of Article IV of the Constitution and shall go into
13 immediate effect. The facts constituting the necessity are:

14 Temporary employment agencies serve a public purpose by
15 providing temporary employment to millions of persons, including
16 persons who are new entrants to the work force or who have
17 difficulty getting jobs, the unemployed, students, and retirees,
18 among others. Further, temporary employment often leads to
19 permanent employment. Temporary work assignments may be
20 miles from the temporary employment agency, and hours and days
21 of work may be unpredictable. Allowing wages for temporary
22 wages to be paid on a weekly basis allows sufficient time to obtain
23 and verify time worked and to calculate wages. Temporary
24 employment agencies are now besieged by litigation contesting
25 whether temporary employees whose assignments have ended
26 have been discharged, and are thus entitled to penalty provisions
27 if not immediately paid. Urgent enactment of this bill is necessary
28 to protect temporary employment agencies from being forced either
29 to leave the state or into insolvency, which would also hurt
30 temporary employees who would lose a vital employment resource.

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