

AMENDED IN SENATE JUNE 20, 2007

AMENDED IN ASSEMBLY MAY 25, 2007

AMENDED IN ASSEMBLY APRIL 23, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1710

Introduced by ~~Committee on Labor and Employment (Swanson (Chair), DeSaulnier, Laird, Leno, and Ruskin)~~ Assembly Members Swanson, Davis, and Dymally
(Principal coauthor: Assembly Member Leno)
(Principal coauthor: Senator Yee)

February 28, 2007

An act to amend Sections 203, 203.1, 204, 210, 215, 220, and 2699.5 of, and to add Section 201.3 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1710, as amended, ~~Committee on Labor and Employment Swanson~~. Temporary services employees: wages.

~~This bill would require the Division of Labor Standards Enforcement to conduct a study on issues involving the payment of wages to employees in the temporary services industry and to provide the study to the Legislature by June 1, 2008.~~

Existing law requires that all wages be paid twice during each calendar month, that wages be paid immediately upon discharge, and that wages be paid within 72 hours if an employee quits, with certain exceptions.

This bill would provide that for employees of temporary services employers or leasing employers, as defined, wages shall be paid weekly,

or daily if an employee is assigned to a client, as defined, on a day-to-day basis or to a client engaged in a trade dispute.

Existing law provides that if an employer fails to secure payment of workers' compensation, the employee may sue that employer for damages incurred in the course of employment.

This bill would provide that if an employee of a temporary services employer or leasing employer is assigned to a client, and neither the client nor the temporary services employer or leasing employer has secured payment for workers' compensation, the employee may sue both the client and the temporary services employer or leasing employer.

Existing law imposes civil and criminal penalties on an employer who violates certain wage payment requirements.

This bill would apply these civil and criminal penalties to the wage payment requirements established by this bill. Because the bill would create a new crime, it would impose a state-mandated local program.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: ~~no~~-yes.

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

- 1 SECTION 1. Section 201.3 is added to the Labor Code, to read:
- 2 201.3. (a) For purposes of this section, the following
- 3 definitions apply:
- 4 (1) "Temporary services employer" and "leasing employer"
- 5 have the same meaning as defined in Section 606.5 of the
- 6 Unemployment Insurance Code, except that these terms shall not
- 7 include any of the following:
- 8 (A) A bona fide nonprofit organization that provides temporary
- 9 service employees to clients.
- 10 (B) A farm labor contractor, as defined in subdivision (b) of
- 11 Section 1682.
- 12 (C) A garment manufacturing employer, which, for purposes
- 13 of this section, has the same meaning as "contractor," as defined
- 14 in subdivision (d) of Section 2671.

1 (2) “Client” means the person with whom a temporary services
2 employer or leasing employer has a contractual relationship to
3 provide the services of one or more individuals employed by the
4 temporary services employer or leasing employer.

5 (b) (1) Except as provided in paragraphs (2) to (5), inclusive,
6 if an employee of a temporary services employer or leasing
7 employer is assigned to work for a client, that employee’s wages
8 are due and payable no less frequently than weekly, regardless of
9 when the assignment ends, and work performed during any
10 calendar week shall be due and payable not later than the regular
11 payday of the following calendar week. A temporary services
12 employer or leasing employer shall be deemed to have timely paid
13 wages upon completion of an assignment if wages are paid in
14 compliance with this subdivision.

15 (2) If an employee of a temporary services employer or leasing
16 employer is assigned to work for a client on a day-to-day basis
17 for one day at a time, the employee reports to or assembles at the
18 office of the temporary services employer or leasing employer or
19 other location and is dispatched to a client’s worksite each day
20 and returns to or reports to the office of the temporary services
21 employer or leasing employer or other location upon completion
22 of the assignment, and the work performed is not executive,
23 administrative, or professional, as defined in the wage orders of
24 the Industrial Welfare Commission, and is not clerical, that
25 employee’s wages are due and payable at the end of each day,
26 regardless of when the assignment ends.

27 (3) If an employee of a temporary services employer or leasing
28 employer is assigned to work for a client engaged in a trade
29 dispute, that employee’s wages are due and payable at the end of
30 each day, regardless of when the assignment ends.

31 (4) If an employee of a temporary services employer or leasing
32 employer is assigned to work for a client and is discharged by the
33 temporary services employer or leasing employer, wages are due
34 and payable as provided in Section 201.

35 (5) If an employee of a temporary services employer or leasing
36 employer is assigned to work for a client and quits his or her
37 employment with the temporary services employer or leasing
38 employer, wages are due and payable as provided in Section 202.

39 (c) If a client has not secured the payment of workers’
40 compensation as provided in subdivision (a) of Section 3700 for

1 all employees, including employees of a temporary services
 2 employer or leasing employer assigned to that client, and that
 3 client contracts with a temporary services employer or leasing
 4 employer that has not secured the payment of workers'
 5 compensation as provided in subdivision (a) of Section 3700 for
 6 its employees, both the client and the temporary services employer
 7 or leasing employer shall be jointly and severably liable for
 8 damages suffered in the course of employment by any employee
 9 of a temporary services employer or leasing employer assigned
 10 to work for that client, and that employee may bring an action at
 11 law against both the client and the temporary services employer
 12 or leasing employer, as provided in Section 3706.

13 (d) A violation of this section shall result in civil penalties as
 14 provided in Section 203 and any other penalties available at law.

15 (e) Nothing in this section shall be interpreted to limit any rights
 16 or remedies otherwise available under state or federal law.

17 SEC. 2. Section 203 of the Labor Code is amended to read:

18 203. If an employer willfully fails to pay, without abatement
 19 or reduction, in accordance with Sections 201, 201.3, 201.5, 202,
 20 and 205.5, any wages of an employee who is discharged or who
 21 quits, the wages of the employee shall continue as a penalty from
 22 the due date thereof at the same rate until paid or until an action
 23 therefor is commenced; but the wages shall not continue for more
 24 than 30 days. An employee who secretes or absents himself or
 25 herself to avoid payment to him or her, or who refuses to receive
 26 the payment when fully tendered to him or her, including any
 27 penalty then accrued under this section, is not entitled to any benefit
 28 under this section for the time during which he or she so avoids
 29 payment.

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

33 SEC. 3. Section 203.1 of the Labor Code is amended to read:

34 203.1. If an employer pays an employee in the regular course
 35 of employment or in accordance with Section 201, 201.3, 201.5,
 36 201.7, or 202 any wages or fringe benefits, or both, by check, draft
 37 or voucher, which check, draft or voucher is subsequently refused
 38 payment because the employer or maker has no account with the
 39 bank, institution, or person on which the instrument is drawn, or
 40 has insufficient funds in the account upon which the instrument is

1 drawn at the time of its presentation, so long as the same is
2 presented within 30 days of receipt by the employee of the check,
3 draft or voucher, those wages or fringe benefits, or both, shall
4 continue as a penalty from the due date thereof at the same rate
5 until paid or until an action therefor is commenced. However, those
6 wages and fringe benefits shall not continue for more than 30 days
7 and this penalty shall not apply if the employer can establish to
8 the satisfaction of the Labor Commissioner or an appropriate court
9 of law that the violation of this section was unintentional. This
10 penalty also shall not apply in any case in which an employee
11 recovers the service charge authorized by Section 1719 of the Civil
12 Code in an action brought by the employee thereunder.

13 *SEC. 4. Section 204 of the Labor Code is amended to read:*

14 204. (a) All wages, other than those mentioned in Section 201,
15 201.3, 202, 204.1, or 204.2, earned by any person in any
16 employment are due and payable twice during each calendar month,
17 on days designated in advance by the employer as the regular
18 paydays. Labor performed between the 1st and 15th days, inclusive,
19 of any calendar month shall be paid for between the 16th and the
20 26th day of the month during which the labor was performed, and
21 labor performed between the 16th and the last day, inclusive, of
22 any calendar month, shall be paid for between the 1st and 10th
23 day of the following month. However, salaries of executive,
24 administrative, and professional employees of employers covered
25 by the Fair Labor Standards Act, as set forth pursuant to Section
26 13(a)(1) of the Fair Labor Standards Act, as amended through
27 March 1, 1969, in Part 541 of Title 29 of the Code of Federal
28 Regulations, as that part now reads or may be amended to read at
29 any time hereafter, may be paid once a month on or before the
30 26th day of the month during which the labor was performed if
31 the entire month's salaries, including the unearned portion between
32 the date of payment and the last day of the month, are paid at that
33 time.

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

37 (2) An employer is in compliance with the requirements of
38 subdivision (a) of Section 226 relating to total hours worked by
39 the employee, if hours worked in excess of the normal work period
40 during the current pay period are itemized as corrections on the

1 paystub for the next regular pay period. Any corrections set out in
2 a subsequently issued paystub shall state the inclusive dates of the
3 pay period for which the employer is correcting its initial report
4 of hours worked.

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

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

12 *SEC. 5. Section 210 of the Labor Code is amended to read:*

13 210. (a) In addition to, and entirely independent and apart
14 from, any other penalty provided in this article, every person who
15 fails to pay the wages of each employee as provided in Sections
16 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be
17 subject to a civil penalty as follows:

18 (a)

19 (1) For any initial violation, one hundred dollars (\$100) for each
20 failure to pay each employee.

21 (b)

22 (2) For each subsequent violation, or any willful or intentional
23 violation, two hundred dollars (\$200) for each failure to pay each
24 employee, plus 25 percent of the amount unlawfully withheld.

25 (b) The penalty shall be recovered by the Labor Commissioner
26 as part of a hearing held to recover unpaid wages and penalties
27 pursuant to this chapter or in an independent civil action. The
28 action shall be brought in the name of the people of the State of
29 California and the Labor Commissioner and the attorneys thereof
30 may proceed and act for and on behalf of the people in bringing
31 these actions. Twelve and one-half percent of the penalty recovered
32 shall be paid into a fund within the Labor and Workforce
33 Development Agency dedicated to educating employers about
34 state labor laws, and the remainder shall be paid into the State
35 Treasury to the credit of the General Fund.

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

37 215. Any person, or the agent, manager, superintendent or
38 officer thereof, who violates any provision of ~~Sections~~ *Section*
39 201.3, 204, 204b, 205, 207, 208, 209, or 212 is guilty of a
40 misdemeanor. Any failure to keep posted any notice required by

1 Section 207 is prima facie evidence of a violation of ~~such~~ these
2 sections.

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

4 220. (a) Sections 201.3, 201.5, 201.7, 203.1, 203.5, 204, 204a,
5 204b, 204c, 204.1, 205, and 205.5 do not apply to the payment of
6 wages of employees directly employed by the State of California.
7 Except as provided in subdivision (b), all other employment is
8 subject to these provisions.

9 (b) Sections 200 to 211, inclusive, and Sections 215 to 219,
10 inclusive, do not apply to the payment of wages of employees
11 directly employed by any county, incorporated city, or town or
12 other municipal corporation. All other employments are subject
13 to these provisions.

14 *SEC. 8. Section 2699.5 of the Labor Code is amended to read:*

15 2699.5. The provisions of subdivision (a) of Section 2699.3
16 shall apply to any alleged violation of the following provisions:
17 subdivision (k) of Section 96, Section 98.6, 201, 201.3, 201.5,
18 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
19 205.5, 206, 206.5, 208, 209, or 212, subdivision (d) of Section
20 213, Section 221, 222, 222.5, 223, or 224, subdivision (a) of
21 Section 226, Section 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3,
22 230.4, 230.7, 230.8, or 231, subdivision (c) of Section 232,
23 subdivision (c) of Section 232.5, Section 233, 234, 351, 353, or
24 403, subdivision (b) of Section 404, Section 432.2, 432.5, 432.7,
25 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750,
26 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976,
27 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, or 1153, subdivision
28 (c) or (d) of Section 1174, Section 1194, 1197, 1197.1, 1197.5, or
29 1198, subdivision (b) of Section 1198.3, Section 1199, 1199.5,
30 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298,
31 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2,
32 1392, 1683, or 1695, subdivision (a) of Section 1695.5, Section
33 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,
34 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, or 1700.47,
35 paragraph (1), (2), or (3) of subdivision (a) of or subdivision (e)
36 of Section 1701.4, subdivision (a) of Section 1701.5, Section
37 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811,
38 1815, 2651, or 2673, subdivision (a) of Section 2673.1, Section
39 2695.2, 2800, 2801, 2802, 2806, or 2810, subdivision (b) of Section
40 2929, or Section 3095, 6310, 6311, or 6399.7.

1 *SEC. 9. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

10 ~~SECTION 1. The Division of Labor Standards Enforcement~~
11 ~~shall conduct a study on issues involving the payment of wages~~
12 ~~to employees in the temporary services industry. The study shall~~
13 ~~be forwarded to the Legislature no later than June 1, 2008.~~