

AMENDED IN SENATE JUNE 29, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 854

Introduced by Assembly Member Arambula

February 26, 2009

An act to add Section 273 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 854, as amended, Arambula. Employment regulation and supervision: unpaid wages.

Existing law provides for the regulation of farm labor contractors and of garment manufacturers by the Labor Commissioner and for their licensure and registration, respectively, by the commissioner.

This bill would require an applicant for licensure as a farm labor contractor, for registration as a garment manufacturer, for renewal or reinstatement of the license or registration, and for a change in key personnel, to submit a statement under penalty of perjury as to whether he or she has satisfied all requirements involving unpaid wages in a final court judgment, as defined, a final order issued by the commissioner, or an accord. The bill would require the commissioner to deny the application if the statement shows unpaid wages, unless the applicant submits a bond or cash deposit to guarantee payment of the wages or a notarized accord demonstrating satisfaction of the obligation. The bill would require the commissioner to suspend the license or registration of a farm labor contractor or a garment manufacturer who made a false representation in the statement and would make

reinstatement contingent on the applicant demonstrating compliance with the unpaid wages requirements or submitting an accord showing satisfaction of that obligation. The bill would require a licensee or registrant to notify the commissioner within 90 days of a final court judgment, final order issued by the commissioner, or an accord imposing requirements relating to unpaid wages and submit with the notice security, as previously described, for the unpaid wages. The bill would prohibit a licensee or registrant from having a person who is a named judgment debtor in a final court order or order issued by the commissioner for unpaid wages serving in a key personnel capacity and would require the commissioner to suspend the license or registration of a person who violates this prohibition. The bill would require a licensee or registrant to pay to the Labor Commissioner all reasonable costs incurred in suspension activities, *as defined*, under its provisions.

Because the bill would require representations in the statement by the applicant to be made under penalty of perjury, it would impose a state-mandated local program by expanding the crime of perjury.

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: yes.

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

- 1 SECTION 1. Section 273 is added to the Labor Code, to read:
- 2 273. (a) The following definitions apply for purposes of this
- 3 section:
- 4 (1) “All activities relating to the suspension” includes any of
- 5 the following which occur as a result of a failure to comply with
- 6 this section:
- 7 (A) Denial of a new application or a renewal application for
- 8 licensure or registration.
- 9 (B) Denial of reinstatement of a license or registration.
- 10 (C) Suspension of a license or registration.
- 11 (H)

1 (2) “Farm labor contractor” has the same meaning as set forth
2 in Section 1682.

3 ~~(2)~~

4 (3) “Final judgment issued by a court” means a judgment with
5 respect to which all possibility of a direct attack, by way of appeal,
6 motion for a new trial, or motion pursuant to Section 663 of the
7 Code of Civil Procedure to vacate the judgment, has been
8 exhausted and also includes any final arbitration award where the
9 time to file a petition for a trial de novo or a petition to vacate or
10 correct the arbitration award has expired, and no petition is
11 pending.

12 ~~(3)~~

13 (4) “Garment manufacturer” means a person engaged in garment
14 manufacturing as described in Section 2671.

15 ~~(4)~~

16 (5) “Involving unpaid wages” means all amounts required to
17 be paid by a final judgment, order, or accord involving a failure
18 of the licensee or registrant to pay required wages.

19 ~~(5)~~

20 (6) “Licensee” has the same meaning as set forth in Section
21 1682.

22 ~~(6)~~

23 (7) “Registrant” means a person who holds a valid and
24 unrevoked garment manufacturer registration.

25 (b) The Labor Commissioner shall require an applicant for any
26 of the following to submit a statement under penalty of perjury as
27 to whether the applicant has satisfied all requirements imposed by
28 a final judgment issued by a court or by a final order issued by the
29 Labor Commissioner or by an accord involving unpaid wages:

30 (1) Licensure as a farm labor contractor.

31 (2) Registration as a garment manufacturer.

32 (3) Renewal or reinstatement of a farm labor contractor license
33 or a garment manufacturer registration.

34 (4) A change in the persons identified pursuant to Section 1689
35 or subparagraph (B) of paragraph (1) of subdivision (a) of Section
36 2675.

37 (c) Notwithstanding any other provision of law, the Labor
38 Commissioner shall not approve an application described in
39 subdivision (b) if the statement submitted with it shows that the
40 applicant has failed to satisfy all requirements imposed by a final

1 judgment issued by a court or by a final order issued by the Labor
2 Commissioner or by an accord involving unpaid wages, as
3 described in subdivision (b), unless the applicant submits either
4 of the following to the Labor Commissioner:

5 (1) A bond or a cash deposit, in addition to any required by
6 Section 240, 1684, 1688, 2675, or 2679, in an amount sufficient
7 to guarantee payment of all amounts due under a final judgment
8 issued by a court or by a final order issued by the Labor
9 Commissioner involving unpaid wages.

10 (2) A notarized accord between the applicant and the other
11 parties to the judgment, order, or accord demonstrating that the
12 applicant has satisfied all requirements imposed by the judgment,
13 order, or accord involving unpaid wages.

14 (d) Notwithstanding any other provision of law, if the Labor
15 Commissioner determines after granting an application described
16 in subdivision (b), that the applicant made a false representation
17 on the statement he or she submitted, the Labor Commissioner
18 shall suspend the farm labor contractor license or garment
19 manufacturer registration effective on the date of its issuance,
20 renewal, or reinstatement. The license or registration shall remain
21 suspended until the applicant satisfies either of the following
22 requirements:

23 (1) Documents to the satisfaction of the Labor Commissioner
24 that he or she has satisfied all requirements imposed by a final
25 judgment issued by a court or by a final order of the Labor
26 Commissioner or by an accord involving unpaid wages.

27 (2) Files with the Labor Commissioner a notarized accord as
28 described in paragraph (2) of subdivision (c).

29 (e) (1) A licensee or registrant shall notify the Labor
30 Commissioner in writing within 90 days of the date of a final
31 judgment issued by a court, a final order issued by the Labor
32 Commissioner, or an accord that imposes on the licensee or
33 registrant requirements involving unpaid wages. If the licensee or
34 registrant fails to comply with this notification requirement, the
35 Labor Commissioner shall suspend the license or registration on
36 the date that the Labor Commissioner is informed, or is made
37 aware of, the judgment, order, or accord. The suspension shall
38 remain in effect until the licensee or registrant satisfies either of
39 the requirements described in subdivision (d).

1 (2) A licensee or registrant who notifies the Labor Commissioner
2 of a judgment, order, or accord pursuant to paragraph (1), shall
3 file with the notice a bond or a cash deposit meeting the criteria
4 of paragraph (1) of subdivision (c).

5 (f) (1) The Labor Commissioner may reduce the amount of a
6 bond or cash deposit required by this section upon proof, to the
7 satisfaction of the Labor Commissioner, of partial satisfaction of
8 the requirements imposed by a final judgment issued by a court,
9 a final order issued by the Labor Commissioner, or an accord
10 involving unpaid wages. The Labor Commissioner shall not reduce
11 the bond or cash deposit amount below the balance of the entire
12 amount involving unpaid wages. Upon full satisfaction of the
13 requirements involving unpaid wages, the Labor Commissioner
14 may terminate the bond or cash deposit requirement.

15 (2) Notwithstanding paragraph (1), within one year from the
16 date of filing the bond or cash deposit pursuant to paragraph (1)
17 of subdivision (c) or paragraph (2) of subdivision (e), ~~the applicant~~
18 *a licensee or registrant* shall submit a notarized accord between
19 ~~the applicant licensee or registrant~~ and the other parties to the
20 judgment, order, or accord demonstrating ~~that he or she has~~
21 *satisfied satisfaction of* all requirements imposed by the judgment,
22 order, or accord involving unpaid wages. The Labor Commissioner
23 shall suspend the license or registration of a person who fails to
24 file the notarized accord within that timeframe. Notwithstanding
25 paragraph (1) of subdivision (c), a person who has failed to file a
26 notarized accord within the timeframe required by ~~subdivision (f)~~
27 *this subdivision* shall have his or her license or registration
28 reinstated only after demonstrating that he or she has satisfied all
29 requirements imposed by a final judgment, order, or accord
30 involving unpaid wages. As an alternative to payment in full of
31 all debts involving unpaid wages, a person may submit a notarized
32 copy of an accord between the licensee or registrant and the other
33 parties to the accord.

34 (g) The failure of a licensee or registrant to maintain a bond
35 required by this section or to abide by all requirements imposed
36 on a licensee or registrant by an accord involving unpaid wages
37 between the licensee or registrant and the other parties to the accord
38 shall result in the automatic suspension of his or her license or
39 registration.

1 (h) (1) A licensee or registrant shall not allow a person who is
 2 a judgment debtor in a final judgment issued by a court or in a
 3 final order issued by the Labor Commissioner involving unpaid
 4 wages that imposes requirements that have not been satisfied in
 5 their entirety to serve in a capacity described in Section 1689 or
 6 subparagraph (B) of paragraph (1) of subdivision (a) of Section
 7 2675.

8 (2) The Labor Commissioner shall suspend the license of a farm
 9 labor contractor or the registration of a garment manufacturer who
 10 violates the provisions of paragraph (1). The Labor Commissioner
 11 shall reinstate the license or registration upon the resignation of
 12 the person named as a judgment debtor or complete satisfaction
 13 of the unpaid wages requirements.

14 (i) A person whose license or registration is suspended pursuant
 15 to this section shall pay to the Labor Commissioner all reasonable
 16 costs incurred by the Labor Commissioner in all activities relating
 17 to the suspension, *commencing with the first notice issued by the*
 18 *Labor Commissioner that he or she has taken any adverse action*
 19 *under this section relative to a license or registration.* The Labor
 20 Commissioner shall not reinstate a license or registration unless
 21 the person has paid all costs assessed by the Labor Commissioner
 22 or has entered into an accord with the Labor Commissioner that
 23 establishes a payment plan.

24 (j) This section shall not apply to an applicant for a farm labor
 25 contractor license or a garment manufacturer registration or to a
 26 licensee or registrant when the unpaid wages, as described by this
 27 section, have been discharged in a bankruptcy proceeding.

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

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