

ASSEMBLY BILL

No. 2772

**Introduced by Committee on Labor and Employment (Monning
(Chair), Eng, Furutani, Ma, and Portantino)**

March 1, 2010

An act to amend Section 98.2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2772, as introduced, Committee on Labor and Employment. Labor Commissioner: appeals.

Existing law authorizes the Labor Commissioner to investigate employee complaints and hold administrative hearings to decide disputes over unpaid wages and other issues between employers and employees. Existing law also permits a party who loses at an administrative hearing conducted by the Labor Commissioner to file an appeal in the superior court. An employer filing an appeal must post a bond with the court in the amount of the judgment rendered in the administrative hearing.

This bill would expressly state that an employer wishing to appeal an administrative judgment must first post a bond.

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

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

- 1 SECTION 1. Section 98.2 of the Labor Code is amended to
- 2 read:
- 3 98.2. (a) Within 10 days after service of notice of an order,
- 4 decision, or award the parties may seek review by filing an appeal

1 to the superior court, where the appeal shall be heard de novo. The
2 court shall charge the first paper filing fee under Section 70611 of
3 the Government Code to the party seeking review. The fee shall
4 be distributed as provided in Section 68085.3 of the Government
5 Code. A copy of the appeal request shall be served upon the Labor
6 Commissioner by the appellant. For purposes of computing the
7 10-day period after service, Section 1013 of the Code of Civil
8 Procedure is applicable.

9 (b) ~~Whenever an employer files an appeal pursuant to this~~
10 ~~section, the~~ *As a condition to filing an appeal pursuant to this*
11 *section, an employer shall first post an undertaking with the*
12 *reviewing court in the amount of the order, decision, or award.*
13 *The undertaking shall consist of an appeal bond issued by a*
14 *licensed surety or a cash deposit with the court in the amount of*
15 *the order, decision, or award. The employer shall provide written*
16 *notification to the other parties and the Labor Commissioner of*
17 *the posting of the undertaking. The undertaking shall be on the*
18 *condition that, if any judgment is entered in favor of the employee,*
19 *the employer shall pay the amount owed pursuant to the judgment,*
20 *and if the appeal is withdrawn or dismissed without entry of*
21 *judgment, the employer shall pay the amount owed pursuant to*
22 *the order, decision, or award of the Labor Commissioner unless*
23 *the parties have executed a settlement agreement for payment of*
24 *some other amount, in which case the employer shall pay the*
25 *amount that the employer is obligated to pay under the terms of*
26 *the settlement agreement. If the employer fails to pay the amount*
27 *owed within 10 days of entry of the judgment, dismissal, or*
28 *withdrawal of the appeal, or the execution of a settlement*
29 *agreement, a portion of the undertaking equal to the amount owed,*
30 *or the entire undertaking if the amount owed exceeds the*
31 *undertaking, is forfeited to the employee.*

32 (c) If the party seeking review by filing an appeal to the superior
33 court is unsuccessful in the appeal, the court shall determine the
34 costs and reasonable attorney's fees incurred by the other parties
35 to the appeal, and assess that amount as a cost upon the party filing
36 the appeal. An employee is successful if the court awards an
37 amount greater than zero.

38 (d) If no notice of appeal of the order, decision, or award is filed
39 within the period set forth in subdivision (a), the order, decision,
40 or award shall, in the absence of fraud, be deemed the final order.

1 (e) The Labor Commissioner shall file, within 10 days of the
2 order becoming final pursuant to subdivision (d), a certified copy
3 of the final order with the clerk of the superior court of the
4 appropriate county unless a settlement has been reached by the
5 parties and approved by the Labor Commissioner. Judgment shall
6 be entered immediately by the court clerk in conformity therewith.
7 The judgment so entered has the same force and effect as, and is
8 subject to all of the provisions of law relating to, a judgment in a
9 civil action, and may be enforced in the same manner as any other
10 judgment of the court in which it is entered. Enforcement of the
11 judgment shall receive court priority.

12 (f) (1) In order to ensure that judgments are satisfied, the Labor
13 Commissioner may serve upon the judgment debtor, personally
14 or by first-class mail at the last known address of the judgment
15 debtor listed with the division, a form similar to, and requiring the
16 reporting of the same information as, the form approved or adopted
17 by the Judicial Council for purposes of subdivision (a) of Section
18 116.830 of the Code of Civil Procedure to assist in identifying the
19 nature and location of any assets of the judgment debtor.

20 (2) The judgment debtor shall complete the form and cause it
21 to be delivered to the division at the address listed on the form
22 within 35 days after the form has been served on the judgment
23 debtor, unless the judgment has been satisfied. In case of willful
24 failure by the judgment debtor to comply with this subdivision,
25 the division or the judgment creditor may request the court to apply
26 the sanctions provided in Section 708.170 of the Code of Civil
27 Procedure.

28 (g) Notwithstanding subdivision (e), the Labor Commissioner
29 may stay execution of any judgment entered upon an order,
30 decision, or award that has become final upon good cause appearing
31 therefor and may impose the terms and conditions of the stay of
32 execution. A certified copy of the stay of execution shall be filed
33 with the clerk entering the judgment.

34 (h) When a judgment is satisfied in fact, other than by execution,
35 the Labor Commissioner may, upon the motion of either party or
36 on its own motion, order entry of satisfaction of judgment. The
37 clerk of the court shall enter a satisfaction of judgment upon the
38 filing of a certified copy of the order.

39 (i) The Labor Commissioner shall make every reasonable effort
40 to ensure that judgments are satisfied, including taking all

1 appropriate legal action and requiring the employer to deposit a
2 bond as provided in Section 240.
3 (j) The judgment creditor, or the Labor Commissioner as
4 assignee of the judgment creditor, is entitled to court costs and
5 reasonable attorney's fees for enforcing the judgment that is
6 rendered pursuant to this section.

O