

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2772**

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

March 1, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2772, as amended, 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:

1 98.2. (a) Within 10 days after service of notice of an order,  
2 decision, or award the parties may seek review by filing an appeal  
3 to the superior court, where the appeal shall be heard de novo. The  
4 court shall charge the first paper filing fee under Section 70611 of  
5 the Government Code to the party seeking review. The fee shall  
6 be distributed as provided in Section 68085.3 of the Government  
7 Code. A copy of the appeal request shall be served upon the Labor  
8 Commissioner by the appellant. For purposes of computing the  
9 10-day period after service, Section 1013 of the Code of Civil  
10 Procedure is applicable.

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21 appeal is withdrawn or dismissed without entry of judgment, the  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

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

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

4 (e) The Labor Commissioner shall file, within 10 days of the  
5 order becoming final pursuant to subdivision (d), a certified copy  
6 of the final order with the clerk of the superior court of the  
7 appropriate county unless a settlement has been reached by the  
8 parties and approved by the Labor Commissioner. Judgment shall  
9 be entered immediately by the court clerk in conformity therewith.

10 The judgment so entered has the same force and effect as, and is  
11 subject to all of the provisions of law relating to, a judgment in a  
12 civil action, and may be enforced in the same manner as any other  
13 judgment of the court in which it is entered. Enforcement of the  
14 judgment shall receive court priority.

15 (f) (1) In order to ensure that judgments are satisfied, the Labor  
16 Commissioner may serve upon the judgment debtor, personally  
17 or by first-class mail at the last known address of the judgment  
18 debtor listed with the division, a form similar to, and requiring the  
19 reporting of the same information as, the form approved or adopted  
20 by the Judicial Council for purposes of subdivision (a) of Section  
21 116.830 of the Code of Civil Procedure to assist in identifying the  
22 nature and location of any assets of the judgment debtor.

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

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

37 (h) When a judgment is satisfied in fact, other than by execution,  
38 the Labor Commissioner may, upon the motion of either party or  
39 on its own motion, order entry of satisfaction of judgment. The

1 clerk of the court shall enter a satisfaction of judgment upon the  
2 filing of a certified copy of the order.

3 (i) The Labor Commissioner shall make every reasonable effort  
4 to ensure that judgments are satisfied, including taking all  
5 appropriate legal action and requiring the employer to deposit a  
6 bond as provided in Section 240.

7 (j) The judgment creditor, or the Labor Commissioner as  
8 assignee of the judgment creditor, is entitled to court costs and  
9 reasonable attorney's fees for enforcing the judgment that is  
10 rendered pursuant to this section.

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