

Introduced by Senator AanestadFebruary 19, 2010

An act to amend Sections 226.3, 1288, and 1391 of, and to add Section 3723 to, the Labor Code, relating to labor violations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1267, as introduced, Aanestad. Labor violations: penalties: exceptions.

Existing law provides penalties for violating certain requirements relating to employment, specifically including the requirement for an employer to provide wage deduction statements, the requirement for an employer to carry workers' compensation insurance, and requirements relating to the employment of minors.

This bill would provide that the penalties must be waived if the employer employs fewer than 15 employees, has never violated the specified requirement before, and shows proof of compliance with the requirement, as specified.

Existing law makes it a misdemeanor for a person to employ a minor for more than a specified period of time during a workday or a workweek.

This bill would make it an infraction for a person to employ a minor for more than a specified period of time during a workday or a workweek if the employer employs 5 or fewer employees and has never violation that provision before.

Vote: majority. 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 226.3 of the Labor Code is amended to
 2 read:

3 226.3. (a) Any employer who violates subdivision (a) of
 4 Section 226 shall be subject to a civil penalty in the amount of two
 5 hundred fifty dollars (\$250) per employee per violation in an initial
 6 citation and one thousand dollars (\$1,000) per employee for each
 7 violation in a subsequent citation, for which the employer fails to
 8 provide the employee a wage deduction statement or fails to keep
 9 the records required in subdivision (a) of Section 226. The civil
 10 penalties provided for in this section are in addition to any other
 11 penalty provided by law. ~~It~~

12 (b) *In enforcing this section, the Labor Commissioner shall take*
 13 *into consideration whether the violation was inadvertent, and in*
 14 *his or her discretion, may decide not to penalize an employer for*
 15 *a first violation when that violation was due to a clerical error or*
 16 *inadvertent mistake.*

17 (c) *Notwithstanding subdivision (b), the Labor Commissioner*
 18 *shall not assess a civil penalty if all of the following circumstances*
 19 *exist:*

- 20 (1) *The employer employs 15 or fewer employees.*
- 21 (2) *The employer has not previously violated subdivision (a) of*
 22 *Section 226.*
- 23 (3) *The employer provides the Labor Commissioner proof of*
 24 *compliance with subdivision (a) of Section 226 within 48 hours of*
 25 *the issuance of a citation issued pursuant to Section 226.4.*

26 SEC. 2. Section 1288 of the Labor Code is amended to read:

27 1288. Citations issued pursuant to this article shall be classified
 28 according to the nature of the violation, and shall indicate the
 29 classification on the face thereof, as follows:

30 (a) Class “A” violations are violations of Section 1290, 1292,
 31 1293, 1293.1, 1294, 1294.1, 1294.5, 1308, 1308.1, or 1392, and
 32 any other violations that the director determines present an
 33 imminent danger to minor employees or a substantial probability
 34 that death or serious physical harm would result therefrom. The
 35 violation of Section 1391 for the third or subsequent time shall
 36 also constitute a class “A” violation. A physical condition or one
 37 or more practices, means, methods, or operations in use in a place
 38 of employment may constitute a violation. A class “A” violation

1 is subject to a civil penalty in an amount not less than five thousand
2 dollars (\$5,000) and not exceeding ten thousand dollars (\$10,000)
3 for each and every violation. Willful or repeated violations shall
4 receive higher civil penalties than those imposed for comparable
5 nonwillful or first violations, not to exceed ten thousand dollars
6 (\$10,000).

7 (b) (1) Class “B” violations are violations of Section 1299 or
8 1308.5, or a violation of Section 1391 for the first and second time,
9 and those other violations that the director determines have a direct
10 or immediate relationship to the health, safety, or security of minor
11 employees, other than class “A” violations. A class “B” violation
12 is subject to a civil penalty in an amount not less than five hundred
13 dollars (\$500) and not to exceed one thousand dollars (\$1,000) for
14 each and every violation. Willful or repeated violations shall
15 receive higher civil penalties than those imposed for comparable
16 nonwillful or ~~first~~ *previous* violations. A second violation of
17 Section 1391 shall be subject to a civil penalty of one thousand
18 dollars (\$1,000).

19 (2) *Any penalty ordered pursuant to this subdivision shall be*
20 *waived if all of the following circumstances exist:*

21 (A) *The employer employs 15 or fewer employees.*

22 (B) *The employer has never previously violated any of the*
23 *sections listed in paragraph (1).*

24 (C) *The employer provides the director proof of compliance*
25 *with the provisions of the relevant section listed in paragraph (1)*
26 *within 48 hours of the issuance of the citation.*

27 (c) Nothing in this section ~~shall preclude~~ *precludes* the
28 imposition of criminal penalties provided for in this chapter.

29 SEC. 3. Section 1391 of the Labor Code is amended to read:

30 1391. (a) Except as provided in Sections 1297, 1298, and
31 1308.7:

32 (1) No employer shall employ a minor 15 years of age or
33 younger for more than eight hours in one day of 24 hours, or more
34 than 40 hours in one week, or before 7 a.m. or after 7 p.m., except
35 that from June 1 through Labor Day, a minor 15 years of age or
36 younger may be employed for the hours authorized by this section
37 until 9 p.m. ~~in the evening~~.

38 (2) Notwithstanding paragraph (1), while school is in session,
39 no employer shall employ a minor 14 or 15 years of age for more
40 than three hours in any schoolday, nor more than 18 hours in any

1 week, nor during school hours, except that a minor enrolled in and employed pursuant to a school-supervised and school-administered work experience and career exploration program may be employed for no more than 23 hours, any portion of which may be during school hours.

(3) No employer shall employ a minor 16 or 17 years of age for more than eight hours in one day of 24 hours or more than 48 hours in one week, or before 5 a.m., or after 10 p.m. on any day preceding a schoolday. However, a minor 16 or 17 years of age may be employed for the hours authorized by this section during any evening preceding a nonschoolday until 12:30 a.m. of the nonschoolday.

(4) Notwithstanding paragraph (3), while school is in session, no employer shall employ a minor 16 or 17 years of age for more than four hours in any schoolday, except as follows:

(A) The minor is employed in personal attendant occupations, as defined in the Industrial Welfare Commission Minimum Wage Order No. 15 (8 Cal. Code Regs. ~~See~~ 11150), school-approved work experience, or cooperative vocational education programs.

(B) The minor has been issued a permit to work pursuant to subdivision (c) of Section 49112 and is employed in accordance with the provisions of that permit.

(b) For purposes of this section, “schoolday” means any day in which a minor is required to attend school for 240 minutes or more.

(c) ~~Any~~ *Except as provided in subdivision (d), any person or the agent or officer thereof, or any parent or guardian, who directly or indirectly violates or causes or suffers the violation of this section is guilty of a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or imprisonment in the a county jail for not more than 60 days, or both. Any person who willfully violates this section shall, upon conviction, be subject to a fine of not more than ten thousand dollars (\$10,000) or to imprisonment in the a county jail for not more than six months, or both that fine and imprisonment. The first violation of this section by a person who employs five or fewer employees is an infraction, punishable by a fine of not more than one hundred dollars (\$100).* No person shall be imprisoned under this section, except for an offense committed after the conviction of that person for a prior offense under this article.

1 (d) Nothing in this section shall apply to any minor employed
2 to deliver newspapers to consumers.

3 SEC. 4. Section 3723 is added to the Labor Code, to read:

4 3723. A penalty assessment order issued pursuant to Section
5 3722 shall be waived if all of the following circumstances exist:

6 (a) The employer employs 15 or fewer employees.

7 (b) The employer has never previously failed to secure the
8 payment of compensation as required by Section 3700.

9 (c) The employer provides the director proof of the purchase of
10 workers' compensation insurance coverage within 48 hours of the
11 issuance of the order.

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