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 violated that provision before.
The people of the State of California do enact as follows:

SECTION 1. Section 226.3 of the Labor Code is amended to read:

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

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

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

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

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

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

(a) Class “A” violations are violations of Section 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1308, 1308.1, or 1392, and any other violations that the director determines present an imminent danger to minor employees or a substantial probability that death or serious physical harm would result therefrom. The violation of Section 1391 for the third or subsequent time shall also constitute a class “A” violation. A physical condition or one or more practices, means, methods, or operations in use in a place of employment may constitute a violation. A class “A” violation
is subject to a civil penalty in an amount not less than five thousand
dollars ($5,000) and not exceeding ten thousand dollars ($10,000)
for each and every violation. Willful or repeated violations shall
receive higher civil penalties than those imposed for comparable
nonwillful or first violations, not to exceed ten thousand dollars
($10,000).
(b) (1) Class “B” violations are violations of Section 1299 or
1308.5, or a violation of Section 1391 for the first and second time,
and those other violations that the director determines have a direct
or immediate relationship to the health, safety, or security of minor
employees, other than class “A” violations. A class “B” violation
is subject to a civil penalty in an amount not less than five hundred
dollars ($500) and not to exceed one thousand dollars ($1,000) for
each and every violation. Willful or repeated violations shall
receive higher civil penalties than those imposed for comparable
nonwillful or first previous violations. A second violation of
Section 1391 shall be subject to a civil penalty of one thousand
dollars ($1,000).
(2) Any penalty ordered pursuant to this subdivision shall be
waived if all of the following circumstances exist:
(A) The employer employs 15 or fewer employees.
(B) The employer has never previously violated any of the
sections listed in paragraph (1).
(C) The employer provides the director proof of compliance
with the provisions of the relevant section listed in paragraph (1)
within 48 hours of the issuance of the citation.
(c) Nothing in this section precludes the imposition of criminal penalties provided for in this chapter.

SEC. 3. Section 1391 of the Labor Code is amended to read:
1391. (a) Except as provided in Sections 1297, 1298, and
1308.7:
(1) No employer shall employ a minor 15 years of age or
younger for more than eight hours in one day of 24 hours, or more
than 40 hours in one week, or before 7 a.m. or after 7 p.m., except
that from June 1 through Labor Day, a minor 15 years of age or
younger may be employed for the hours authorized by this section
until 9 p.m., in the evening.
(2) Notwithstanding paragraph (1), while school is in session,
no employer shall employ a minor 14 or 15 years of age for more
than three hours in any schoolday, nor more than 18 hours in any
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. § 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) 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 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 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.
(d) Nothing in this section shall apply to any minor employed to deliver newspapers to consumers.

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

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

(a) The employer employs 15 or fewer employees.

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

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