

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 51

Introduced by ~~Assembly Member~~ *Assembly Members Yamada and Carter*

December 6, 2010

An act to amend Sections 215, 225.5, and 226 of, and to add Section 213.5 to, the Labor Code, relating to payroll cards.

LEGISLATIVE COUNSEL'S DIGEST

AB 51, as amended, Yamada. Payroll cards.

(1) Existing law prohibits an employer from issuing in payment of wages due certain instruments, including an order, check, draft, note, memorandum, scrip, coupon, card, or other acknowledgment of indebtedness or redeemable instrument, unless specified requirements are satisfied.

This bill would provide that this proscription does not prohibit an employer from paying an employee's wages by means of a payroll card, as defined, provided that specified requirements are satisfied. In addition, the bill would make a violation of its provisions a misdemeanor and would subject a violator to specified civil penalties. By creating new crimes, this bill would impose a state-mandated local program.

(2) Existing law requires an employer to provide employees, at the time wages are paid, with an itemized statement containing specified items regarding the wages earned. This bill would extend the requirement for an itemized statement of wages to an employer who pays his or her employees via payroll cards.

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.

~~Existing law prohibits a person from issuing certain instruments in payment of wages due unless specified circumstances are met.~~

~~This bill would state that it is the intent of the Legislature to enact legislation to define “payroll card” and that would impose restrictions on the use of those cards by an employer to pay his or her employees’ wages.~~

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

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

- 1 SECTION 1. Section 213.5 is added to the Labor Code, to read:
- 2 213.5. (a) For purposes of this section, the following
- 3 definitions apply:
- 4 (1) “Employer” means a person, partnership firm, corporation,
- 5 limited liability company, association, or other entity that employs
- 6 a person or persons to perform services for a wage or salary, and
- 7 includes a person, partnership firm, corporation, limited liability
- 8 company, association, or other entity acting as an agent of an
- 9 employer, directly or indirectly.
- 10 (2) “Issuer” means a payroll card issuer, and includes a person
- 11 acting as an agent of an issuer, directly or indirectly.
- 12 (3) “Payroll card” means an access mechanism, including a
- 13 prepaid card, code, or other device, issued to an employee by an
- 14 employer, or by another entity by arrangement with the employer,
- 15 through which the employer provides the employee access to his
- 16 or her wages.
- 17 (4) “Payroll card account” means an account that holds funds
- 18 drawn upon by a payroll card.
- 19 (b) Nothing in Section 212 prohibits an employer from paying
- 20 an employee’s wages through a payroll card program, provided
- 21 that all of the following requirements are satisfied:
- 22 (1) The employer has obtained the employee’s written consent
- 23 to receive wages by payroll card. That consent must be voluntary
- 24 and not given as a result of intimidation, coercion, or fear of
- 25 discharge or reprisal for refusal to participate in the payroll card

1 *program. Prior to obtaining the employee's consent, the employer*
2 *shall provide the employee, in the language the employer normally*
3 *uses to communicate employment-related information to the*
4 *employee, all of the following information:*

5 *(A) A description, stated in plain language, of the employee's*
6 *options for receiving wages.*

7 *(B) The terms and conditions of the payroll card account,*
8 *including a clear, conspicuous, and complete itemized list, in a*
9 *form the employee may retain for his or her records, of any fees*
10 *that may be deducted from the employee's payroll card account*
11 *by the issuer. The list shall state the dollar amount of each fee.*

12 *(C) A list of the services available to the employee pursuant to*
13 *paragraph (4).*

14 *(D) All of the information required by subparagraphs (A), (B),*
15 *and (C), made available in a clear and conspicuous manner on*
16 *the employer's Internet Web site or on an Internet Web site*
17 *maintained by the issuer with a clear link from the employer's*
18 *Internet Web site.*

19 *(2) The employer has not made participation in the payroll card*
20 *program a condition of hire or continued employment.*

21 *(3) The employer has offered the employee, and the employee*
22 *has declined, both the option of receiving his or her wages by*
23 *direct deposit to a depository account of the employee's choosing*
24 *and the option of receiving payment by paper check.*

25 *(4) The contract the employer has entered into with the issuer*
26 *requires that the issuer provide the employee, at no cost to the*
27 *employee, all of the following:*

28 *(A) The right to make at least two withdrawals per pay period*
29 *from an automated teller machine (ATM) on the day of and after*
30 *each deposit of wages. Withdrawals may be limited to ATMs in a*
31 *designated network, if the network provides reasonably convenient*
32 *proximity and access in relation to the employee's place of*
33 *employment or place of residence.*

34 *(B) At least one method to withdraw the entire amount of wages*
35 *for each pay period.*

36 *(C) A periodic statement at least once each month, or at least*
37 *once every three months if there is a balance on the payroll card*
38 *but no activity on the payroll card account. The employee may*
39 *choose to receive electronic or paper statements. Each statement*
40 *shall include all transactions during the statement period, including*

1 *deposits, withdrawals, fees charged, and other transactions*
2 *affecting the payroll card account. The employee may choose to*
3 *decline to receive statements.*

4 *(D) A transaction history for the 12-month period preceding*
5 *the request, at the request of the employee.*

6 *(E) Electronic balance notifications for each day or after each*
7 *transaction, at the request of the employee.*

8 *(F) An annual notice by postal mail informing the employee of*
9 *his or her right to request periodic statements, 12-month*
10 *transaction histories, and electronic balance notifications.*

11 *(5) The issuer or employer does not charge the employee any*
12 *of the following:*

13 *(A) An application, initiation, loading, participation, or other*
14 *fee to receive wages or to obtain the payroll card.*

15 *(B) A fee for a point-of-sale transaction.*

16 *(C) A fee to withdraw funds from a teller or ATM within the*
17 *network of the financial institution providing the payroll card*
18 *account.*

19 *(D) An overdraft, shortage, or low-balance fee.*

20 *(E) A fee for a declined transaction.*

21 *(F) A fee for account inactivity.*

22 *(G) A fee for the first three telephone calls to a live customer*
23 *service representative per pay period.*

24 *(H) A fee to access balance or other account information online,*
25 *by an interactive voice response system, or by any other automated*
26 *system offered in conjunction with the payroll card, or at an ATM*
27 *in the network of the issuer.*

28 *(I) A fee for a written statement or a transaction history.*

29 *(J) A fee to close the payroll card account or issue payment of*
30 *the remaining balance by check or other means.*

31 *(K) A fee to provide at least one replacement card each year.*

32 *(L) A fee not expressly identified by type and amount in the*
33 *contract between the employer and the issuer.*

34 *(6) The funds in the payroll card account do not expire. The*
35 *payroll card account may be closed for inactivity, with reasonable*
36 *notice to the employee, provided that the remaining funds in the*
37 *payroll card account are refunded to the employee at no cost to*
38 *the employee. If the payroll card has an expiration date, the issuer*
39 *shall provide a new replacement card to the employee at least 15*
40 *days before the expiration date at no charge to the employee.*

1 (7) *The payroll card account is not linked to any form of credit,*
2 *including a loan against future wages or a cash advance on future*
3 *wages. This paragraph does not prohibit an issuer from honoring*
4 *an inadvertent overdraft transaction at no additional charge to*
5 *the employee.*

6 (8) *The employer honors a request by the employee to change*
7 *the method of receiving wages from the payroll card account to*
8 *another method that is allowed by law, within two pay periods*
9 *from the time of the request.*

10 (9) *The payroll card account is insured by the Federal Deposit*
11 *Insurance Corporation or the National Credit Union*
12 *Administration on a pass-through basis to the employee.*

13 (c) *An employer or issuer shall not engage in unfair, deceptive,*
14 *or abusive practices in connection with offering or administering*
15 *a payroll card program.*

16 (d) *Any wages paid using a payroll card program that does not*
17 *meet the requirements of this section are considered unpaid wages*
18 *for purposes of Section 225.5.*

19 (e) *Nothing in this section shall relieve the employer of his or*
20 *her obligations under subdivision (a) of Section 226.*

21 *SEC. 2. Section 215 of the Labor Code is amended to read:*

22 215. ~~Any~~ *A person, or the agent, manager, superintendent, or*
23 *officer thereof, who violates any provision of Section 201.3, 204,*
24 *204b, 205, 207, 208, 209, ~~or~~ 212, or 213.5 is guilty of a*
25 *misdemeanor. ~~Any~~ A failure to keep posted any notice required*
26 *by Section 207 is prima facie evidence of a violation of these*
27 *sections.*

28 *SEC. 3. Section 225.5 of the Labor Code is amended to read:*

29 225.5. *In addition to, and entirely independent and apart from,*
30 *any other penalty provided in this article, ~~every~~ a person who*
31 *unlawfully withholds wages due ~~any~~ an employee in violation of*
32 *Section 212, 213.5, 216, 221, 222, or 223 shall be subject to a civil*
33 *penalty as follows:*

34 (a) *For ~~any~~ an initial violation, one hundred dollars (\$100) for*
35 *each failure to pay each employee.*

36 (b) *For each subsequent violation, or any willful or intentional*
37 *violation, two hundred dollars (\$200) for each failure to pay each*
38 *employee, plus 25 percent of the amount unlawfully withheld.*

39 *The penalty shall be recovered by the Labor Commissioner as*
40 *part of a hearing held to recover unpaid wages and penalties or in*

1 an independent civil action. The action shall be brought in the
2 name of the people of the State of California and the Labor
3 Commissioner and attorneys thereof may proceed and act for and
4 on behalf of the people in bringing the action. Twelve and one-half
5 percent of the penalty recovered shall be paid into a fund within
6 the Labor and Workforce Development Agency dedicated to
7 educating employers about state labor laws, and the remainder
8 shall be paid into the State Treasury to the credit of the General
9 Fund.

10 *SEC. 4. Section 226 of the Labor Code is amended to read:*

11 226. (a) Every employer shall, semimonthly or at the time of
12 each payment of wages, furnish each of his or her employees,
13 either as a detachable part of the check, draft, or voucher paying
14 the employee's wages, or separately when wages are paid by
15 personal check ~~or~~, cash, *or payroll card*, an accurate itemized
16 statement in writing showing (1) gross wages earned, (2) total
17 hours worked by the employee, except for any employee whose
18 compensation is solely based on a salary and who is exempt from
19 payment of overtime under subdivision (a) of Section 515 or any
20 applicable order of the Industrial Welfare Commission, (3) the
21 number of piece-rate units earned and any applicable piece rate if
22 the employee is paid on a piece-rate basis, (4) all deductions,
23 provided that all deductions made on written orders of the
24 employee may be aggregated and shown as one item, (5) net wages
25 earned, (6) the inclusive dates of the period for which the employee
26 is paid, (7) the name of the employee and his or her social security
27 number, except that by January 1, 2008, only the last four digits
28 of his or her social security number or an employee identification
29 number other than a social security number may be shown on the
30 itemized statement, (8) the name and address of the legal entity
31 that is the employer, and (9) all applicable hourly rates in effect
32 during the pay period and the corresponding number of hours
33 worked at each hourly rate by the employee. The deductions made
34 from payments of wages shall be recorded in ink or other indelible
35 form, properly dated, showing the month, day, and year, and a
36 copy of the statement or a record of the deductions shall be kept
37 on file by the employer for at least three years at the place of
38 employment or at a central location within the State of California.

39 (b) An employer that is required by this code or any regulation
40 adopted pursuant to this code to keep the information required by

1 subdivision (a) shall afford current and former employees the right
2 to inspect or copy the records pertaining to that current or former
3 employee, upon reasonable request to the employer. The employer
4 may take reasonable steps to assure the identity of a current or
5 former employee. If the employer provides copies of the records,
6 the actual cost of reproduction may be charged to the current or
7 former employee.

8 (c) An employer who receives a written or oral request to inspect
9 or copy records pursuant to subdivision (b) pertaining to a current
10 or former employee shall comply with the request as soon as
11 practicable, but no later than 21 calendar days from the date of the
12 request. A violation of this subdivision is an infraction.
13 Impossibility of performance, not caused by or a result of a
14 violation of law, shall be an affirmative defense for an employer
15 in any action alleging a violation of this subdivision. An employer
16 may designate the person to whom a request under this subdivision
17 will be made.

18 (d) This section does not apply to any employer of any person
19 employed by the owner or occupant of a residential dwelling whose
20 duties are incidental to the ownership, maintenance, or use of the
21 dwelling, including the care and supervision of children, or whose
22 duties are personal and not in the course of the trade, business,
23 profession, or occupation of the owner or occupant.

24 (e) An employee suffering injury as a result of a knowing and
25 intentional failure by an employer to comply with subdivision (a)
26 is entitled to recover the greater of all actual damages or fifty
27 dollars (\$50) for the initial pay period in which a violation occurs
28 and one hundred dollars (\$100) per employee for each violation
29 in a subsequent pay period, not exceeding an aggregate penalty of
30 four thousand dollars (\$4,000), and is entitled to an award of costs
31 and reasonable attorney's fees.

32 (f) A failure by an employer to permit a current or former
33 employee to inspect or copy records within the time set forth in
34 subdivision (c) entitles the current or former employee or the Labor
35 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
36 penalty from the employer.

37 (g) An employee may also bring an action for injunctive relief
38 to ensure compliance with this section, and is entitled to an award
39 of costs and reasonable attorney's fees.

1 (h) This section does not apply to the state, to any city, county,
 2 city and county, district, or to any other governmental entity, except
 3 that if the state or a city, county, city and county, district, or other
 4 governmental entity furnishes its employees with a check, draft,
 5 or voucher paying the employee’s wages, the state or a city, county,
 6 city and county, district, or other governmental entity shall, by
 7 January 1, 2008, use no more than the last four digits of the
 8 employee’s social security number or shall use an employee
 9 identification number other than the social security number on the
 10 itemized statement provided with the check, draft, or voucher.

11 *SEC. 5. No reimbursement is required by this act pursuant to*
 12 *Section 6 of Article XIII B of the California Constitution because*
 13 *the only costs that may be incurred by a local agency or school*
 14 *district will be incurred because this act creates a new crime or*
 15 *infraction, eliminates a crime or infraction, or changes the penalty*
 16 *for a crime or infraction, within the meaning of Section 17556 of*
 17 *the Government Code, or changes the definition of a crime within*
 18 *the meaning of Section 6 of Article XIII B of the California*
 19 *Constitution.*

20 ~~SECTION 1. It is the intent of the Legislature to enact~~
 21 ~~legislation to define “payroll card” and to impose restrictions on~~
 22 ~~the use of those cards by an employer to pay his or her employees’~~
 23 ~~wages.~~