

AMENDED IN ASSEMBLY MAY 9, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 51

Introduced by 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: 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
2 read:

3 213.5. (a) For purposes of this section, the following
4 definitions apply:

5 (1) "Employer" means a person, partnership firm, corporation,
6 limited liability company, association, or other entity that employs
7 a person or persons to perform services for a wage or salary, and
8 includes a person, partnership firm, corporation, limited liability
9 company, association, or other entity acting as an agent of an
10 employer, directly or indirectly.

11 (2) "Issuer" means ~~a~~ *the* payroll card issuer, and includes a
12 person acting as an agent of an issuer, directly or indirectly.

13 (3) "Payroll card" means an access mechanism, including a
14 prepaid card, code, or other device, issued to an employee by an
15 employer, or by another entity by arrangement with the employer,
16 through which the employer provides the employee access to his
17 or her wages.

18 (4) "Payroll card account" means an account that holds funds
19 drawn upon by a payroll card.

20 (5) "*Payroll card contract*" means *a contract entered into by*
21 *an employer with an issuer to provide employees with payroll*
22 *cards as a means to pay wages.*

23 (b) Nothing in Section 212 prohibits an employer from paying
24 an employee's wages through a payroll card program, provided
25 that all of the following requirements are satisfied:

26 (1) The employer has obtained the employee's written consent
27 to receive wages by payroll card. That consent must be voluntary
28 and not given as a result of intimidation, coercion, or fear of
29 discharge or reprisal for refusal to participate in the payroll card
30 program. Prior to obtaining the employee's consent, the employer

1 shall provide the employee, in the language the employer normally
2 uses to communicate employment-related information to the
3 employee, all of the following information:

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

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

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

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

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

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

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

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

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

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

1 the payroll card account. The employee may choose to decline to
2 receive statements.

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

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

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

10 ~~(5) The issuer or employer does not charge the employee any~~
11 ~~of the following: payroll card contract does not provide for an~~
12 ~~employee to be charged the following fees:~~

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, *unless the fee is*
16 *charged by a person that accepts credit or debit cards for the*
17 *transaction and the employee initiated the transaction.*

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

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

22 (E) A fee for a declined transaction.

23 (F) A fee for account inactivity.

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

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

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

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

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

34 (L) A fee not expressly identified by type and amount in the
35 contract between the employer and the issuer.

36 *(M) A fee for using a method, offered by the employer, to*
37 *withdraw the entire amount of wages for each pay period.*

38 (6) The funds in the payroll card account do not expire. The
39 payroll card account may be closed for inactivity, with reasonable
40 notice to the employee, provided that the remaining funds in the

1 payroll card account are refunded to the employee at no cost to
2 the employee. If the payroll card has an expiration date, the issuer
3 shall provide a new replacement card to the employee at least 15
4 days before the expiration date at no charge to the employee.

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

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

14 (9) The payroll card account is insured by the Federal Deposit
15 Insurance Corporation or the National Credit Union Administration
16 on a ~~pass-through~~ *passthrough* basis to the employee.

17 ~~(c) An employer or issuer shall not engage in unfair, deceptive,~~
18 ~~or abusive practices in connection with offering or administering~~
19 ~~a payroll card program.~~

20 ~~(d)~~

21 (c) Any wages paid using a payroll card program that does not
22 meet the requirements of this section are considered unpaid wages
23 for purposes of Section 225.5.

24 ~~(e)~~

25 (d) Nothing in this section shall relieve the employer of his or
26 her obligations under subdivision (a) of Section 226.

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

28 215. A person, or the agent, manager, superintendent, or officer
29 thereof, who violates any provision of Section 201.3, 204, 204b,
30 205, 207, 208, 209, 212, or 213.5 is guilty of a misdemeanor. A
31 failure to keep posted any notice required by Section 207 is *prima*
32 *facie* evidence of a violation of these sections.

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

34 225.5. In addition to, and entirely independent and apart from,
35 any other penalty provided in this article, a person who unlawfully
36 withholds wages due an employee in violation of Section 212,
37 213.5, 216, 221, 222, or 223 shall be subject to a civil penalty as
38 follows:

39 (a) For an initial violation, one hundred dollars (\$100) for each
40 failure to pay each employee.

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

The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

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

226. (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check, cash, or payroll card, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a

1 copy of the statement or a record of the deductions shall be kept
2 on file by the employer for at least three years at the place of
3 employment or at a central location within the State of California.

4 (b) An employer that is required by this code or any regulation
5 adopted pursuant to this code to keep the information required by
6 subdivision (a) shall afford current and former employees the right
7 to inspect or copy the records pertaining to that current or former
8 employee, upon reasonable request to the employer. The employer
9 may take reasonable steps to assure the identity of a current or
10 former employee. If the employer provides copies of the records,
11 the actual cost of reproduction may be charged to the current or
12 former employee.

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

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

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

37 (f) A failure by an employer to permit a current or former
38 employee to inspect or copy records within the time set forth in
39 subdivision (c) entitles the current or former employee or the Labor

1 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
2 penalty from the employer.

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

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

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