

AMENDED IN ASSEMBLY MAY 31, 2011

AMENDED IN ASSEMBLY MAY 9, 2011

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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~~ *authorize an employer to pay* 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 the payroll card issuer, and includes a person
12 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 an
21 employer with an issuer to provide employees with payroll cards
22 as a means to pay wages.

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

27 (1) The employer has obtained the employee's *voluntary* written
28 consent to receive wages by payroll card. ~~That consent must be~~

1 ~~voluntary and not given as a result of intimidation, coercion, or~~
2 ~~fear of discharge or reprisal for refusal to participate in the payroll~~
3 ~~card program.~~ Prior to obtaining the employee's consent, the
4 employer shall provide the employee, in the language the employer
5 normally uses to communicate employment-related information
6 to the employee, all of the following information:

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

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

14 (C) A list of the services available to the employee pursuant to
15 paragraph (4).

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

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

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

25 (A) The right to make at least two withdrawals per pay period
26 from an automated teller machine (ATM) ~~on the day of and after~~
27 ~~each deposit of wages.~~

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

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

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

- 1 (E) Electronic balance notifications for each day or after each
2 transaction, at the request of the employee.
- 3 (F) An annual notice by postal mail informing the employee of
4 his or her right to request periodic statements, 12-month transaction
5 histories, and electronic balance notifications.
- 6 (5) The payroll card contract does not provide for an employee
7 to be charged the following fees:
- 8 (A) An application, initiation, loading, participation, or other
9 fee to receive wages or to obtain the payroll card.
- 10 (B) A fee for a point-of-sale transaction, unless the fee is charged
11 by a person that accepts credit or debit cards for the transaction
12 and the employee initiated the transaction.
- 13 (C) A fee to withdraw funds from a teller or ATM within the
14 network of the financial institution providing the payroll card
15 account.
- 16 (D) An overdraft, shortage, or low-balance fee.
- 17 (E) A fee for a declined transaction.
- 18 (F) A fee for account inactivity.
- 19 (G) A fee for the first three telephone calls to a live customer
20 service representative per pay period.
- 21 (H) A fee to access balance or other account information online,
22 by an interactive voice response system, or by any other automated
23 system offered in conjunction with the payroll card, or at an ATM
24 in the network of the issuer.
- 25 (I) A fee for a written statement or a transaction history.
- 26 (J) A fee to close the payroll card account or issue payment of
27 the remaining balance by check or other means.
- 28 (K) A fee to provide at least one replacement card each year.
- 29 (L) A fee not expressly identified by type and amount in the
30 contract between the employer and the issuer.
- 31 (M) A fee for using a method, offered by the employer, to
32 withdraw the entire amount of wages for each pay period.
- 33 (6) The funds in the payroll card account do not expire. The
34 payroll card account may be closed for inactivity, with reasonable
35 notice to the employee, provided that the remaining funds in the
36 payroll card account are refunded to the employee at no cost to
37 the employee. If the payroll card has an expiration date, the issuer
38 shall provide a new replacement card to the employee at least 15
39 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 the
5 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 Administration
12 on a passthrough basis to the employee.

13 *(6) The payroll card account complies with all federal law*
14 *applicable to direct deposit, including Section 205 and following*
15 *of Title 12 of the Code of Federal Regulations, promulgated by*
16 *the Federal Reserve.*

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

20 ~~(d)~~

21 (c) Nothing in this section shall relieve the employer of his or
22 her obligations under subdivision (a) of Section 226.

23 *(d) The division is authorized to create and enforce further*
24 *regulations regarding payroll card wage payments that are*
25 *consistent with this section.*

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

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

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

33 225.5. In addition to, and entirely independent and apart from,
34 any other penalty provided in this article, a person who unlawfully
35 withholds wages due an employee in violation of Section 212,
36 213.5, 216, 221, 222, or 223 shall be subject to a civil penalty as
37 follows:

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

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

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

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

16 226. (a) Every employer shall, semimonthly or at the time of
17 each payment of wages, furnish each of his or her employees,
18 either as a detachable part of the check, draft, or voucher paying
19 the employee's wages, or separately when wages are paid by
20 personal check, cash, or payroll card, an accurate itemized
21 statement in writing showing (1) gross wages earned, (2) total
22 hours worked by the employee, except for any employee whose
23 compensation is solely based on a salary and who is exempt from
24 payment of overtime under subdivision (a) of Section 515 or any
25 applicable order of the Industrial Welfare Commission, (3) the
26 number of piece-rate units earned and any applicable piece rate if
27 the employee is paid on a piece-rate basis, (4) all deductions,
28 provided that all deductions made on written orders of the
29 employee may be aggregated and shown as one item, (5) net wages
30 earned, (6) the inclusive dates of the period for which the employee
31 is paid, (7) the name of the employee and his or her social security
32 number, except that by January 1, 2008, only the last four digits
33 of his or her social security number or an employee identification
34 number other than a social security number may be shown on the
35 itemized statement, (8) the name and address of the legal entity
36 that is the employer, and (9) all applicable hourly rates in effect
37 during the pay period and the corresponding number of hours
38 worked at each hourly rate by the employee. The deductions made
39 from payments of wages shall be recorded in ink or other indelible
40 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.