

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 196

Introduced by Assembly Member ~~Carter Alejo~~

January 27, 2011

An act to amend ~~Sections 213 and 226~~ *Section 1182.12* of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 196, as amended, ~~Carter Alejo~~. **Employment: compensation.** *Minimum wage: annual adjustment.*

Existing law requires that, on and after January 1, 2008, the minimum wage for all industries be not less than \$8.00 per hour.

This bill would increase the minimum wage, as of January 1, 2013, to not less than \$8.50 per hour.

This bill would provide for an adjustment to the hourly minimum wage on January 1, 2014, and annually thereafter, to maintain employee purchasing power. The automatically adjusted minimum wage would be calculated using the California Consumer Price Index, as specified. The bill would prohibit the Industrial Welfare Commission from adjusting the minimum wage downward and from adjusting the minimum wage upward if the average percentage of inflation for the previous year was negative. The bill would require the Industrial Welfare Commission to publicize the automatically adjusted minimum wage.

This bill would provide that the commission may increase the minimum wage in an amount greater than the formula would provide.

~~Existing law authorizes employers in certain circumstances to deposit an employee's wages or advance on wages in a bank, savings and loan association, or credit union of the employee's choice.~~

~~This bill would also authorize an employer to deposit an employee's wages or advance on wages in an industrial bank or a trust company. In addition, this bill would permit an employer to transfer an employee's wages or advance on wages to a card issued by a specified financial institution, if the employee voluntarily authorizes the transfer and the card can be used to access funds at an automated teller machine in California, provided the employee is entitled to at least one pay card transaction without charge per pay period. The bill would also refer to a savings association instead of a savings and loan association.~~

~~Existing law also requires every employer, at the time of each payment of wages, to furnish his or her employees with an accurate itemized statement in writing showing specified information.~~

~~This bill would authorize the employer to provide the accurate itemized statement electronically, provided that the electronic statement contains all required information and the employer provides the employee with electronic access in a confidential setting during normal business hours to print the statement.~~

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 1182.12 of the Labor Code is amended
2 to read:

3 1182.12. (a) Notwithstanding any other provision of this part,
4 on and after January 1, ~~2007~~ 2013, the minimum wage for all
5 industries shall be not less than seven dollars and fifty cents (\$7.50)
6 per hour, and on and after January 1, 2008, the minimum wage for
7 all industries shall be not less than eight dollars ~~(\$8.00)~~ eight
8 dollars and fifty cents (\$8.50) per hour.

9 (b) (1) Except as provided in paragraph (3), the minimum wage
10 shall be automatically adjusted on January 1 of each year,
11 commencing on January 1, 2014, to maintain employee purchasing
12 power diminished by the rate of inflation that occurred during the
13 previous year.

14 (2) The minimum wage adjustment shall be made by multiplying
15 the minimum wage in effect on December 31 of the previous year
16 by the percentage of inflation that occurred during that year, and
17 by adding the product to the wage in effect during that year. The
18 resulting total shall be rounded off to the nearest five cents (\$0.05).

1 *The Industrial Welfare Commission shall publicize the*
2 *automatically adjusted minimum wage.*

3 *(3) The Industrial Welfare Commission shall not adjust the*
4 *minimum wage pursuant to this subdivision if the average*
5 *percentage of inflation for the previous year was negative.*

6 *(4) For purposes of this subdivision, the following terms have*
7 *the following meanings:*

8 *(A) "Percentage of inflation" means the percentage of inflation*
9 *specified in the California Consumer Price Index for All Urban*
10 *Consumers, as published by the Department of Industrial Relations,*
11 *Division of Labor Statistics and Research, or its successor index.*

12 *(B) "Previous year" means the 12-month period that ends on*
13 *August 31 of the calendar year prior to the adjustment.*

14 *(c) The Industrial Welfare Commission shall not reduce the*
15 *minimum wage prescribed by this section.*

16 *(d) Except as provided by paragraph (3) of subdivision (b), the*
17 *Industrial Welfare Commission may increase the minimum wage*
18 *in an amount greater than the rate calculated pursuant to*
19 *subdivision (b).*

20 ~~SECTION 1. Section 213 of the Labor Code is amended to~~
21 ~~read:~~

22 ~~213. Nothing contained in Section 212 shall:~~

23 ~~(a) Prohibit an employer from guaranteeing the payment of bills~~
24 ~~incurred by an employee for the necessities of life or for the tools~~
25 ~~and implements used by the employee in the performance of his~~
26 ~~or her duties.~~

27 ~~(b) Apply to counties, municipal corporations, quasi-municipal~~
28 ~~corporations, or school districts.~~

29 ~~(c) Apply to students of nonprofit schools, colleges, universities,~~
30 ~~and other nonprofit educational institutions.~~

31 ~~(d) Prohibit an employer, if voluntarily authorized by an~~
32 ~~employee, from depositing wages due or to become due or an~~
33 ~~advance on wages to be earned in an account in any bank, industrial~~
34 ~~bank, trust company, savings association, or credit union of the~~
35 ~~employee's choice in this state. If an employer discharges an~~
36 ~~employee or the employee quits, the employee's voluntary~~
37 ~~authorization for deposit shall be deemed terminated and the~~
38 ~~provisions of this article relating to payment of wages upon~~
39 ~~termination of employment shall apply.~~

1 ~~(e) Prohibit an employer, if voluntarily authorized by an~~
 2 ~~employee, from transferring wages due or to become due or an~~
 3 ~~advance on wages to be earned to a card issued to the employee~~
 4 ~~by a bank, industrial bank, trust company, savings association, or~~
 5 ~~credit union of the employee's choice that can be used to access~~
 6 ~~funds at an automated teller machine in this state, provided that~~
 7 ~~the employee is entitled to at least one pay card transaction without~~
 8 ~~charge per pay period.~~

9 SEC. 2. Section 226 of the Labor Code is amended to read:

10 226. (a) Every employer shall, semimonthly or at the time of
 11 each payment of wages, furnish each of his or her employees,
 12 either as a detachable part of the check, draft, or voucher paying
 13 the employee's wages, or separately when wages are paid by
 14 personal check or cash, an accurate itemized statement either
 15 electronically, as provided in subdivision (d), or in writing showing
 16 all of the following:

- 17 (1) ~~Gross wages earned.~~
- 18 (2) ~~Total hours worked by the employee, except for any~~
 19 ~~employee whose compensation is solely based on a salary and who~~
 20 ~~is exempt from payment of overtime under subdivision (a) of~~
 21 ~~Section 515 or any applicable order of the Industrial Welfare~~
 22 ~~Commission.~~
- 23 (3) ~~The number of piece-rate units earned and any applicable~~
 24 ~~piece rate if the employee is paid on a piece-rate basis.~~
- 25 (4) ~~All deductions, provided that all deductions made on written~~
 26 ~~orders of the employee may be aggregated and shown as one item.~~
 27 ~~The deductions made from payments of wages shall be recorded~~
 28 ~~in ink or other indelible form, properly dated, showing the month,~~
 29 ~~day, and year, and a copy of the statement or a record of the~~
 30 ~~deductions shall be kept on file by the employer for at least three~~
 31 ~~years at the place of employment or at a central location within~~
 32 ~~the State of California.~~
- 33 (5) ~~Net wages earned.~~
- 34 (6) ~~The inclusive dates of the period for which the employee is~~
 35 ~~paid.~~
- 36 (7) ~~The name of the employee and his or her social security~~
 37 ~~number, except that only the last four digits of his or her social~~
 38 ~~security number or an existing employee identification number~~
 39 ~~other than a social security number may be shown on the check.~~
- 40 (8) ~~The name and address of the legal entity that is the employer.~~

1 ~~(9) All applicable hourly rates in effect during the pay period~~
2 ~~and the corresponding number of hours worked at each hourly rate~~
3 ~~by the employee.~~

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) Notwithstanding any other provision of law, an employer~~
24 ~~may furnish the itemized statement required by subdivision (a) in~~
25 ~~an electronic format, provided that the electronic record contains~~
26 ~~all the information required by this section and the employer,~~
27 ~~during normal business hours, provides the employee with~~
28 ~~electronic access in a confidential setting to print the itemized~~
29 ~~statement.~~

30 ~~(e) This section does not apply to any employer of any person~~
31 ~~employed by the owner or occupant of a residential dwelling whose~~
32 ~~duties are incidental to the ownership, maintenance, or use of the~~
33 ~~dwelling, including the care and supervision of children, or whose~~
34 ~~duties are personal and not in the course of the trade, business,~~
35 ~~profession, or occupation of the owner or occupant.~~

36 ~~(f) An employee suffering injury as a result of a knowing and~~
37 ~~intentional failure by an employer to comply with subdivision (a)~~
38 ~~is entitled to recover the greater of all actual damages or fifty~~
39 ~~dollars (\$50) for the initial pay period in which a violation occurs~~
40 ~~and one hundred dollars (\$100) per employee for each violation~~

1 in a subsequent pay period, not exceeding an aggregate penalty of
2 four thousand dollars (\$4,000), and is entitled to an award of costs
3 and reasonable attorney's fees.
4 (g) A failure by an employer to permit a current or former
5 employee to inspect or copy records within the time set forth in
6 subdivision (c) entitles the current or former employee or the Labor
7 Commissioner to recover a seven hundred fifty dollar (\$750)
8 penalty from the employer.
9 (h) An employee may also bring an action for injunctive relief
10 to ensure compliance with this section, and is entitled to an award
11 of costs and reasonable attorney's fees.
12 (i) This section does not apply to the state, to any city, county,
13 city and county, district, or to any other governmental entity, except
14 that if the state or a city, county, city and county, district, or other
15 governmental entity furnishes its employees with a check, draft,
16 or voucher paying the employee's wages, the state or a city, county,
17 city and county, district, or other governmental entity shall, by
18 January 1, 2008, use no more than the last four digits of the
19 employee's social security number or shall use an employee
20 identification number other than the social security number on that
21 check, draft, voucher, or electronic itemized statement.

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