

AMENDED IN ASSEMBLY MARCH 8, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 240

Introduced by Assembly Member Bonilla

February 3, 2011

An act to amend Sections 98 and 1194.2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 240, as amended, Bonilla. Compensation recovery actions: liquidated damages.

Existing law authorizes the Labor Commissioner, who is the Chief of the Division of Labor Standards Enforcement, to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation properly before the commissioner or the division and to determine all matters arising under his or her jurisdiction.

Existing law permits an employee to recover liquidated damages in a court action alleging payment of less than the state minimum wage.

This bill would permit an employee to recover liquidated damages pursuant to a complaint brought before the Labor Commissioner alleging payment of less than the state minimum wage *fixed by an order of the Industrial Welfare Commission or by statute*.

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

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

1 SECTION 1. Section 98 of the Labor Code is amended to read:

1 98. (a) The Labor Commissioner is authorized to investigate
2 employee complaints. The Labor Commissioner may provide for
3 a hearing in any action to recover wages, penalties, and other
4 demands for compensation, including liquidated damages if the
5 complaint alleges payment of a wage less than the minimum wage
6 fixed by an order of the Industrial Welfare Commission *or by*
7 *statute*, properly before the division or the Labor Commissioner,
8 including orders of the Industrial Welfare Commission, and shall
9 determine all matters arising under his or her jurisdiction. It is
10 within the jurisdiction of the Labor Commissioner to accept and
11 determine claims from holders of payroll checks or payroll drafts
12 returned unpaid because of insufficient funds, if, after a diligent
13 search, the holder is unable to return the dishonored check or draft
14 to the payee and recover the sums paid out. Within 30 days of the
15 filing of the complaint, the Labor Commissioner shall notify the
16 parties as to whether a hearing will be held, whether action will
17 be taken in accordance with Section 98.3, or whether no further
18 action will be taken on the complaint. If the determination is made
19 by the Labor Commissioner to hold a hearing, the hearing shall
20 be held within 90 days of the date of that determination. However,
21 the Labor Commissioner may postpone or grant additional time
22 before setting a hearing if the Labor Commissioner finds that it
23 would lead to an equitable and just resolution of the dispute.

24 It is the intent of the Legislature that hearings held pursuant to
25 this section be conducted in an informal setting preserving the
26 right of the parties.

27 (b) When a hearing is set, a copy of the complaint, which shall
28 include the amount of compensation requested, together with a
29 notice of time and place of the hearing, shall be served on all
30 parties, personally or by certified mail, or in the manner specified
31 in Section 415.20 of the Code of Civil Procedure.

32 (c) Within 10 days after service of the notice and the complaint,
33 a defendant may file an answer with the Labor Commissioner in
34 any form as the Labor Commissioner may prescribe, setting forth
35 the particulars in which the complaint is inaccurate or incomplete
36 and the facts upon which the defendant intends to rely.

37 (d) No pleading other than the complaint and answer of the
38 defendant or defendants shall be required. Both shall be in writing
39 and shall conform to the form and the rules of practice and
40 procedure adopted by the Labor Commissioner.

1 (e) Evidence on matters not pleaded in the answer shall be
2 allowed only on terms and conditions the Labor Commissioner
3 shall impose. In all these cases, the claimant shall be entitled to a
4 continuance for purposes of review of the new evidence.

5 (f) If the defendant fails to appear or answer within the time
6 allowed under this chapter, no default shall be taken against him
7 or her, but the Labor Commissioner shall hear the evidence offered
8 and shall issue an order, decision, or award in accordance with the
9 evidence. A defendant failing to appear or answer, or subsequently
10 contending to be aggrieved in any manner by want of notice of the
11 pendency of the proceedings, may apply to the Labor
12 Commissioner for relief in accordance with Section 473 of the
13 Code of Civil Procedure. The Labor Commissioner may afford
14 this relief. No right to relief, including the claim that the findings
15 or award of the Labor Commissioner or judgment entered thereon
16 are void upon their face, shall accrue to the defendant in any court
17 unless prior application is made to the Labor Commissioner in
18 accordance with this chapter.

19 (g) All hearings conducted pursuant to this chapter are governed
20 by the division and by the rules of practice and procedure adopted
21 by the Labor Commissioner.

22 (h) (1) Whenever a claim is filed under this chapter against a
23 person operating or doing business under a fictitious business
24 name, as defined in Section 17900 of the Business and Professions
25 Code, which relates to the person's business, the division shall
26 inquire at the time of the hearing whether the name of the person
27 is the legal name under which the business or person has been
28 licensed, registered, incorporated, or otherwise authorized to do
29 business.

30 (2) The division may amend an order, decision, or award to
31 conform to the legal name of the business or the person who is the
32 defendant to a wage claim, if it can be shown that proper service
33 was made on the defendant or his or her agent, unless a judgment
34 had been entered on the order, decision, or award pursuant to
35 subdivision (d) of Section 98.2. The Labor Commissioner may
36 apply to the clerk of the superior court to amend a judgment that
37 has been issued pursuant to a final order, decision, or award to
38 conform to the legal name of the defendant, if it can be shown that
39 proper service was made on the defendant or his or her agent.

40 SEC. 2. Section 1194.2 of the Labor Code is amended to read:

1 1194.2. (a) In any action under Section 98, 1193.6, or 1194
2 to recover wages because of the payment of a wage less than the
3 minimum wage fixed by an order of the commission *or by statute*,
4 an employee shall be entitled to recover liquidated damages in an
5 amount equal to the wages unlawfully unpaid and interest thereon.
6 Nothing in this subdivision shall be construed to authorize the
7 recovery of liquidated damages for failure to pay overtime
8 compensation.

9 (b) Notwithstanding subdivision (a), if the employer
10 demonstrates to the satisfaction of the court or the Labor
11 Commissioner that the act or omission giving rise to the action
12 was in good faith and that the employer had reasonable grounds
13 for believing that the act or omission was not a violation of any
14 provision of the Labor Code relating to minimum wage, or an order
15 of the commission, the court or the Labor Commissioner may, as
16 a matter of discretion, refuse to award liquidated damages or award
17 any amount of liquidated damages not exceeding the amount
18 specified in subdivision (a).

19 (c) This section applies only to civil actions commenced on or
20 after January 1, 1992.