

AMENDED IN SENATE JULY 11, 2011

AMENDED IN SENATE JUNE 2, 2011

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 minimum wage fixed by an order of the Industrial Welfare Commission or by statute.

This bill would incorporate additional changes in Section 98 of the Labor Code proposed by AB 469, to be operative only if AB 469 and this bill are both enacted and become effective on or before January 1,

2012, both bills amend Section 98, and this bill is enacted after AB 469. The bill would also incorporate additional changes in Section 1194.2 of the Labor Code proposed by AB 197, to be operative only if AB 197 and this bill are both enacted and become effective on or before January 1, 2012, both bills amend Section 1194.2, and this bill is enacted after AB 197.

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

1 notice of time and place of the hearing, shall be served on all
2 parties, personally or by certified mail, or in the manner specified
3 in Section 415.20 of the Code of Civil Procedure.

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

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

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

17 (f) If the defendant fails to appear or answer within the time
18 allowed under this chapter, no default shall be taken against him
19 or her, but the Labor Commissioner shall hear the evidence offered
20 and shall issue an order, decision, or award in accordance with the
21 evidence. A defendant failing to appear or answer, or subsequently
22 contending to be aggrieved in any manner by want of notice of the
23 pendency of the proceedings, may apply to the Labor
24 Commissioner for relief in accordance with Section 473 of the
25 Code of Civil Procedure. The Labor Commissioner may afford
26 this relief. No right to relief, including the claim that the findings
27 or award of the Labor Commissioner or judgment entered thereon
28 are void upon their face, shall accrue to the defendant in any court
29 unless prior application is made to the Labor Commissioner in
30 accordance with this chapter.

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

34 (h) (1) Whenever a claim is filed under this chapter against a
35 person operating or doing business under a fictitious business
36 name, as defined in Section 17900 of the Business and Professions
37 Code, which relates to the person's business, the division shall
38 inquire at the time of the hearing whether the name of the person
39 is the legal name under which the business or person has been

1 licensed, registered, incorporated, or otherwise authorized to do
2 business.

3 (2) The division may amend an order, decision, or award to
4 conform to the legal name of the business or the person who is the
5 defendant to a wage claim, if it can be shown that proper service
6 was made on the defendant or his or her agent, unless a judgment
7 had been entered on the order, decision, or award pursuant to
8 subdivision (d) of Section 98.2. The Labor Commissioner may
9 apply to the clerk of the superior court to amend a judgment that
10 has been issued pursuant to a final order, decision, or award to
11 conform to the legal name of the defendant, if it can be shown that
12 proper service was made on the defendant or his or her agent.

13 *SEC. 1.5. Section 98 of the Labor Code is amended to read:*

14 98. (a) The Labor Commissioner ~~shall have the authority is~~
15 *authorized* to investigate employee complaints. The Labor
16 Commissioner may provide for a hearing in any action to recover
17 wages, penalties, and other demands for compensation, *including*
18 *liquidated damages if the complaint alleges payment of a wage*
19 *less than the minimum wage fixed by an order of the Industrial*
20 *Welfare Commission or by statute*, properly before the division or
21 the Labor Commissioner, including orders of the Industrial Welfare
22 Commission, and shall determine all matters arising under his or
23 her jurisdiction. ~~It shall be~~ *is* within the jurisdiction of the Labor
24 Commissioner to accept and determine claims from holders of
25 payroll checks or payroll drafts returned unpaid because of
26 insufficient funds, if, after a diligent search, the holder is unable
27 to return the dishonored check or draft to the payee and recover
28 the sums paid out. Within 30 days of the filing of the complaint,
29 the Labor Commissioner shall notify the parties as to whether a
30 hearing will be held, whether action will be taken in accordance
31 with Section 98.3, or whether no further action will be taken on
32 the complaint. If the determination is made by the Labor
33 Commissioner to hold a hearing, the hearing shall be held within
34 90 days of the date of that determination. However, the Labor
35 Commissioner may postpone or grant additional time before setting
36 a hearing if the Labor Commissioner finds that it would lead to an
37 equitable and just resolution of the dispute. *A party who has*
38 *received actual notice of a claim before the Labor Commissioner*
39 *shall, while the matter is before the Labor Commissioner, notify*
40 *the Labor Commissioner in writing of any change in that party's*

1 *business or personal address within 10 days after the change in*
2 *address occurs.*

3 It is the intent of the Legislature that hearings held pursuant to
4 this section be conducted in an informal setting preserving the
5 ~~right~~ *rights* of the parties.

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

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

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

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

24 (f) If the defendant fails to appear or answer within the time
25 allowed under this chapter, no default shall be taken against him
26 or her, but the Labor Commissioner shall hear the evidence offered
27 and shall issue an order, decision, or award in accordance with the
28 evidence. A defendant failing to appear or answer, or subsequently
29 contending to be aggrieved in any manner by want of notice of the
30 pendency of the proceedings, may apply to the Labor
31 Commissioner for relief in accordance with Section 473 of the
32 Code of Civil Procedure. The Labor Commissioner may afford
33 this relief. No right to relief, including the claim that the findings
34 or award of the Labor Commissioner or judgment entered thereon
35 are void upon their face, shall accrue to the defendant in any court
36 unless prior application is made to the Labor Commissioner in
37 accordance with this chapter.

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

1 (h) (1) Whenever a claim is filed under this chapter against a
2 person operating or doing business under a fictitious business
3 name, as defined in Section 17900 of the Business and Professions
4 Code, which relates to the person's business, the division shall
5 inquire at the time of the hearing whether the name of the person
6 is the legal name under which the business or person has been
7 licensed, registered, incorporated, or otherwise authorized to do
8 business.

9 (2) The division may amend an order, decision, or award to
10 conform to the legal name of the business or the person who is the
11 defendant to a wage claim, if it can be shown that proper service
12 was made on the defendant or his or her agent, unless a judgment
13 had been entered on the order, decision, or award pursuant to
14 subdivision (d) of Section 98.2. The Labor Commissioner may
15 apply to the clerk of the superior court to amend a judgment that
16 has been issued pursuant to a final order, decision, or award to
17 conform to the legal name of the defendant, if it can be shown that
18 proper service was made on the defendant or his or her agent.

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

20 1194.2. (a) In any action under Section 98, 1193.6, or 1194
21 to recover wages because of the payment of a wage less than the
22 minimum wage fixed by an order of the commission or by statute,
23 an employee shall be entitled to recover liquidated damages in an
24 amount equal to the wages unlawfully unpaid and interest thereon.
25 Nothing in this subdivision shall be construed to authorize the
26 recovery of liquidated damages for failure to pay overtime
27 compensation.

28 (b) Notwithstanding subdivision (a), if the employer
29 demonstrates to the satisfaction of the court or the Labor
30 Commissioner that the act or omission giving rise to the action
31 was in good faith and that the employer had reasonable grounds
32 for believing that the act or omission was not a violation of any
33 provision of the Labor Code relating to minimum wage, or an order
34 of the commission, the court or the Labor Commissioner may, as
35 a matter of discretion, refuse to award liquidated damages or award
36 any amount of liquidated damages not exceeding the amount
37 specified in subdivision (a).

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

1 SEC. 2.5. Section 1194.2 of the Labor Code is amended to
2 read:

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

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

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

23 SEC. 3. (a) *Section 1.5 of this bill incorporates amendments*
24 *to Section 98 of the Labor Code proposed by both this bill and AB*
25 *469. It shall only become operative if (1) both bills are enacted*
26 *and become effective on or before January 1, 2012, (2) each bill*
27 *amends Section 98 of the Labor Code, and (3) this bill is enacted*
28 *after AB 469, in which case Section 1 of this bill shall not become*
29 *operative.*

30 (b) Section 2.5 of this bill incorporates amendments to Section
31 1194.2 of the Labor Code proposed by both this bill and AB 197.
32 It shall only become operative if (1) both bills are enacted and
33 become effective on or before January 1, 2012, (2) each bill amends
34 Section 1194.2 of the Labor Code, and (3) this bill is enacted after
35 AB 197, in which case Section 2 of this bill shall not become
36 operative.

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