

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 243

Introduced by Assembly Member Alejo

February 3, 2011

An act to amend Section 226 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 243, as amended, Alejo. Labor contractors.

Existing law requires an employer to furnish each employee with an accurate itemized statement showing, among other things, the name and address of the legal entity that is the employer. Existing law provides that a knowing and intentional violation of this provision is a misdemeanor.

This bill would require an employer who is a farm labor contractor, as defined, to disclose in the itemized statement the name and address of the legal entity that secured the employer's services.

Because a willful violation of the bill's provisions would be a crime, this bill would impose a state-mandated local program.

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 226 of the Labor Code is amended to
2 read:

3 226. (a) Every employer shall, semimonthly or at the time of
4 each payment of wages, furnish each of his or her employees,
5 either as a detachable part of the check, draft, or voucher paying
6 the employee's wages, or separately when wages are paid by
7 personal check or cash, an accurate itemized statement in writing
8 showing (1) gross wages earned, (2) total hours worked by the
9 employee, except for any employee whose compensation is solely
10 based on a salary and who is exempt from payment of overtime
11 under subdivision (a) of Section 515 or any applicable order of
12 the Industrial Welfare Commission, (3) the number of piece-rate
13 units earned and any applicable piece rate if the employee is paid
14 on a piece-rate basis, (4) all deductions, provided that all deductions
15 made on written orders of the employee may be aggregated and
16 shown as one item, (5) net wages earned, (6) the inclusive dates
17 of the period for which the employee is paid, (7) the name of the
18 employee and ~~his or her social security number, except that by~~
19 ~~January 1, 2008, only~~ the last four digits of his or her social security
20 number or an employee identification number other than a social
21 security number ~~may be shown on the itemized statement~~, (8) the
22 name and address of the legal entity that is the employer and, if
23 the employer is a farm labor contractor, as defined in subdivision
24 (b) of Section 1682, the name and address of the legal entity that
25 secured the services of the employer, and (9) all applicable hourly
26 rates in effect during the pay period and the corresponding number
27 of hours worked at each hourly rate by the employee. The
28 deductions made from payment of wages shall be recorded in ink
29 or other indelible form, properly dated, showing the month, day,
30 and year, and a copy of the statement or a record of the deductions
31 shall be kept on file by the employer for at least three years at the
32 place of employment or at a central location within the State of
33 California.

34 (b) An employer that is required by this code or any regulation
35 adopted pursuant to this code to keep the information required by
36 subdivision (a) shall afford current and former employees the right
37 to inspect or copy records pertaining to their employment, upon
38 reasonable request to the employer. The employer may take

1 reasonable steps to ~~assure~~ *ensure* the identity of a current or former
2 employee. If the employer provides copies of the records, the actual
3 cost of reproduction may be charged to the current or former
4 employee.

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

15 (d) This section does not apply to any employer of any person
16 employed by the owner or occupant of a residential dwelling whose
17 duties are incidental to the ownership, maintenance, or use of the
18 dwelling, including the care and supervision of children, or whose
19 duties are personal and not in the course of the trade, business,
20 profession, or occupation of the owner or occupant.

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

29 (f) A failure by an employer to permit a current or former
30 employee to inspect or copy records within the time set forth in
31 subdivision (c) entitles the current or former employee or the Labor
32 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
33 penalty from the employer.

34 (g) *The listing by an employer of the name and address of the*
35 *legal entity that secured the services of the employer in the itemized*
36 *statement required by subdivision (a) shall not create any liability*
37 *on the part of that legal entity.*

38 (~~g~~)

1 (h) An employee may also bring an action for injunctive relief
2 to ensure compliance with this section, and is entitled to an award
3 of costs and reasonable attorney’s fees.

4 ~~(h)~~

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

15 SEC. 2. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.