

AMENDED IN SENATE AUGUST 29, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 243**

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**Introduced by Assembly Member Alejo**  
*(Coauthor: Assembly Member Davis)*

February 3, 2011

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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.

*This bill would incorporate additional changes to Section 226 of the Labor Code proposed by AB 469, that would become operative only if AB 469 and this bill are both enacted, both bills become effective on or before January 1, 2012, and this bill is enacted last.*

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 the last four digits of his or her social security  
19 number or an employee identification number other than a social  
20 security number, (8) the name and address of the legal entity that  
21 is the employer and, if the employer is a farm labor contractor, as  
22 defined in subdivision (b) of Section 1682, the name and address  
23 of the legal entity that secured the services of the employer, and  
24 (9) all applicable hourly rates in effect during the pay period and  
25 the corresponding number of hours worked at each hourly rate by  
26 the employee. The deductions made from payment of wages shall  
27 be recorded in ink or other indelible form, properly dated, showing  
28 the month, day, and year, and a copy of the statement or a record  
29 of the deductions shall be kept on file by the employer for at least

1 three years at the place of employment or at a central location  
2 within the State of California.

3 (b) An employer that is required by this code or any regulation  
4 adopted pursuant to this code to keep the information required by  
5 subdivision (a) shall afford current and former employees the right  
6 to inspect or copy records pertaining to their employment, upon  
7 reasonable request to the employer. The employer may take  
8 reasonable steps to ensure the identity of a current or former  
9 employee. If the employer provides copies of the records, the actual  
10 cost of reproduction may be charged to the current or former  
11 employee.

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

22 (d) This section does not apply to any employer of any person  
23 employed by the owner or occupant of a residential dwelling whose  
24 duties are incidental to the ownership, maintenance, or use of the  
25 dwelling, including the care and supervision of children, or whose  
26 duties are personal and not in the course of the trade, business,  
27 profession, or occupation of the owner or occupant.

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

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

1 (g) The listing by an employer of the name and address of the  
2 legal entity that secured the services of the employer in the itemized  
3 statement required by subdivision (a) shall not create any liability  
4 on the part of that legal entity.

5 (h) An employee may also bring an action for injunctive relief  
6 to ensure compliance with this section, and is entitled to an award  
7 of costs and reasonable attorney's fees.

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

18 *SEC. 1.5. Section 226 of the Labor Code is amended to read:*

19 226. (a) Every employer shall, semimonthly or at the time of  
20 each payment of wages, furnish each of his or her employees,  
21 either as a detachable part of the check, draft, or voucher paying  
22 the employee's wages, or separately when wages are paid by  
23 personal check or cash, an accurate itemized statement in writing  
24 showing (1) gross wages earned, (2) total hours worked by the  
25 employee, except for any employee whose compensation is solely  
26 based on a salary and who is exempt from payment of overtime  
27 under subdivision (a) of Section 515 or any applicable order of  
28 the Industrial Welfare Commission, (3) the number of piece-rate  
29 units earned and any applicable piece rate if the employee is paid  
30 on a piece-rate basis, (4) all deductions, provided that all deductions  
31 made on written orders of the employee may be aggregated and  
32 shown as one item, (5) net wages earned, (6) the inclusive dates  
33 of the period for which the employee is paid, (7) the name of the  
34 employee and ~~his or her social security number, except that by~~  
35 ~~January 1, 2008, only~~ the last four digits of his or her social security  
36 number or an employee identification number other than a social  
37 security number ~~may be shown on the itemized statement,~~ (8) the  
38 name and address of the legal entity that is the *employer and, if*  
39 *the employer is a farm labor contractor, as defined in subdivision*  
40 *(b) of Section 1682, the name and address of the legal entity that*

1 *secured the services of the* employer, and (9) all applicable hourly  
2 rates in effect during the pay period and the corresponding number  
3 of hours worked at each hourly rate by the employee. The  
4 deductions made from ~~payments~~ *payment* of wages shall be  
5 recorded in ink or other indelible form, properly dated, showing  
6 the month, day, and year, and a copy of the statement ~~or a~~ *and the*  
7 record of the deductions shall be kept on file by the employer for  
8 at least three years at the place of employment or at a central  
9 location within the State of California.

10 (b) An employer that is required by this code or any regulation  
11 adopted pursuant to this code to keep the information required by  
12 subdivision (a) shall afford current and former employees the right  
13 to inspect or copy ~~the records pertaining to that current or former~~  
14 ~~employee~~ *their employment*, upon reasonable request to the  
15 employer. The employer may take reasonable steps to ~~assure~~ *ensure*  
16 the identity of a current or former employee. If the employer  
17 provides copies of the records, the actual cost of reproduction may  
18 be charged to the current or former employee.

19 (c) An employer who receives a written or oral request to inspect  
20 or copy records pursuant to subdivision (b) pertaining to a current  
21 or former employee shall comply with the request as soon as  
22 practicable, but no later than 21 calendar days from the date of the  
23 request. A violation of this subdivision is an infraction.  
24 Impossibility of performance, not caused by or a result of a  
25 violation of law, shall be an affirmative defense for an employer  
26 in any action alleging a violation of this subdivision. An employer  
27 may designate the person to whom a request under this subdivision  
28 will be made.

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

35 (e) An employee suffering injury as a result of a knowing and  
36 intentional failure by an employer to comply with subdivision (a)  
37 is entitled to recover the greater of all actual damages or fifty  
38 dollars (\$50) for the initial pay period in which a violation occurs  
39 and one hundred dollars (\$100) per employee for each violation  
40 in a subsequent pay period, not exceeding an aggregate penalty of

1 four thousand dollars (\$4,000), and is entitled to an award of costs  
 2 and reasonable attorney’s fees.

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

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

12 ~~(g)~~  
 13 (h) An employee may also bring an action for injunctive relief  
 14 to ensure compliance with this section, and is entitled to an award  
 15 of costs and reasonable attorney’s fees.

16 ~~(h)~~  
 17 (i) This section does not apply to the state, to any city, county,  
 18 city and county, district, or to any other governmental entity, except  
 19 that if the state or a city, county, city and county, district, or other  
 20 governmental entity furnishes its employees with a check, draft,  
 21 or voucher paying the employee’s wages, the state or a city, county,  
 22 city and county, district, or other governmental entity shall, ~~by~~  
 23 ~~January 1, 2008,~~ use no more than the last four digits of the  
 24 employee’s social security number or shall use an employee  
 25 identification number other than the social security number on the  
 26 itemized statement provided with the check, draft, or voucher.

27 *SEC. 2. Section 1.5 of this bill incorporates amendments to*  
 28 *Section 226 of the Labor Code proposed by both this bill and*  
 29 *Assembly Bill 469. It shall only become operative if (1) both bills*  
 30 *are enacted and become effective on or before January 1, 2012,*  
 31 *(2) each bill amends Section 226 of the Labor Code, and (3) this*  
 32 *bill is enacted after Assembly Bill 469, in which case Section 1 of*  
 33 *this bill shall not become operative.*

34 ~~SEC. 2.~~  
 35 *SEC. 3.* No reimbursement is required by this act pursuant to  
 36 Section 6 of Article XIII B of the California Constitution because  
 37 the only costs that may be incurred by a local agency or school  
 38 district will be incurred because this act creates a new crime or  
 39 infraction, eliminates a crime or infraction, or changes the penalty  
 40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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