

ASSEMBLY BILL

No. 514

Introduced by Assembly Member Roger Hernández

February 15, 2011

An act to amend Section 98 of the Labor Code, relating to the Labor Commissioner.

LEGISLATIVE COUNSEL'S DIGEST

AB 514, as introduced, Roger Hernández. Employment: Labor Commissioner: hearings.

Existing law authorizes the Labor Commissioner to investigate employee complaints and hold hearings on those complaints, including complaints regarding payroll checks or drafts returned unpaid, as specified. Existing law specifies the procedures to be used by the Labor Commissioner when conducting those hearings.

This bill would make a nonsubstantive change to that provision of existing law.

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 shall have the authority to
- 3 investigate employee complaints. The Labor Commissioner may
- 4 provide for a hearing in any action to recover wages, penalties,
- 5 and other demands for compensation properly before the division
- 6 or the Labor Commissioner, including orders of the Industrial
- 7 Welfare Commission, and shall determine all matters arising under

1 his or her jurisdiction. It shall be within the jurisdiction of the
2 Labor Commissioner to accept and determine claims from holders
3 of payroll checks or payroll drafts returned unpaid because of
4 insufficient funds, if, after a diligent search, the holder is unable
5 to return the dishonored check or draft to the payee and recover
6 the sums paid out. Within 30 days of the filing of the complaint,
7 the Labor Commissioner shall notify the parties as to whether a
8 hearing will be held, whether action will be taken in accordance
9 with Section 98.3, or whether no further action will be taken on
10 the complaint. If the determination is made by the Labor
11 Commissioner to hold a hearing, the hearing shall be held within
12 90 days of the date of that determination. However, the Labor
13 Commissioner may postpone or grant additional time before setting
14 a hearing if the Labor Commissioner finds that it would lead to an
15 equitable and just resolution of the dispute.

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

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

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

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

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

37 (f) If the defendant fails to appear or answer within the time
38 allowed under this chapter, no default shall be taken against him
39 or her, but the Labor Commissioner shall hear the evidence offered
40 and shall issue an order, decision, or award in accordance with the

1 evidence. A defendant failing to appear or answer, or subsequently
2 contending to be aggrieved in any manner by want of notice of the
3 pendency of the proceedings, may apply to the Labor
4 Commissioner for relief in accordance with Section 473 of the
5 Code of Civil Procedure. The Labor Commissioner may afford
6 this relief. No right to relief, including the claim that the findings
7 or award of the Labor Commissioner or judgment entered thereon
8 are void upon their face, shall accrue to the defendant in any court
9 unless prior application is made to the Labor Commissioner in
10 accordance with this chapter.

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

14 (h) (1) Whenever a claim is filed under this chapter against a
15 person operating or doing business under a fictitious business
16 name, as defined in Section 17900 of the Business and Professions
17 Code, which relates to the person's business, the division shall
18 inquire at the time of the hearing whether the name of the person
19 is the legal name under which the business or person has been
20 licensed, registered, incorporated, or otherwise authorized to do
21 business.

22 (2) The division may amend an order, decision, or award to
23 conform to the legal name of the business or the person who is the
24 defendant to a wage claim, if it can be shown that proper service
25 was made on the defendant or his or her agent, unless a judgment
26 had been entered on the order, decision, or award pursuant to
27 subdivision (d) of Section 98.2. The Labor Commissioner may
28 apply to the clerk of the superior court to amend a judgment that
29 has been issued pursuant to a final order, decision, or award to
30 conform to the legal name of the defendant, if it can be shown that
31 proper service was made on the defendant or his or her agent.

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