

ASSEMBLY BILL

No. 1286

Introduced by Assembly Member Fuentes

February 18, 2011

An act to add Section 206.8 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1286, as introduced, Fuentes. Wage disputes: waiver of claims.

Existing law requires that in a dispute over wages due between an employee and employer, the employer is required to immediately pay to the employee, without condition, that portion of the wages that is not in dispute, leaving the employee free to pursue his or her lawful remedies for the remainder. Existing law also prohibits an employer from requiring an employee to execute a release of a claim for wages due as a requirement to pay wages, unless all wages claimed are paid.

This bill would provide that when a dispute exists between an employer and an employee over earned wages that is the subject of a pending certified or uncertified class action or representative action, a waiver, release, or settlement is not valid unless all parties are represented by counsel, a superior court approves the release as a reasonable and good faith resolution of the dispute, as defined, or the Division of Labor Standards Enforcement has negotiated a settlement between the parties. Also, the bill would provide that if an employer seeks court approval of any release, waiver, or settlement with an employee while a class or representative action, as specified, is pending, the employer must notify plaintiff's counsel in the class or representative action.

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 206.8 is added to the Labor Code, to
2 read:

3 206.8. (a) (1) A waiver or release by an employee of a claim
4 for earned wages that is the subject of a pending certified class
5 action, uncertified class action, or representative action shall not
6 be valid or enforceable unless one or more of the following applies:

7 (A) All parties are represented by counsel.
8 (B) The release has been approved by a superior court as a
9 reasonable and good faith resolution of the dispute.

10 (C) The Division of Labor Standards Enforcement negotiates
11 a settlement between the parties.

12 (2) If the employee is a putative member of a pending class
13 action or representative action, the release states the pertinent
14 information of the pending action, including the following:

15 (A) The full case name, court location, and case number.
16 (B) A description of all claims alleged in each such pending
17 action.
18 (C) The contact information for all attorneys representing each
19 plaintiff in each such pending action.
20 (D) The full potential value of all the claims sought to be
21 approved for release, waiver, or settlement as compared to the
22 value being offered in exchange for the release, waiver, or
23 settlement.
24 (E) A statement instructing the employee to contact class or
25 representative counsel in order to be advised of his or her potential
26 rights.

27 (b) An attorney representing an employee in a dispute over
28 earned wages pursuant to subdivision (a) shall affirm in writing
29 that he or she has read the release, waiver, or settlement of liability,
30 has reviewed the facts and circumstances of the dispute, has advised
31 the employee of his or her rights, and believes that the agreement
32 is a fair and adequate resolution of the dispute and in the
33 employee’s best interest.

34 (c) (1) If an employee seeks court approval of a release of his
35 or her rights to earned wages pursuant to subdivision (a), the

1 employer or its agent or representative shall submit a declaration,
2 signed under penalty of perjury, identifying the full potential value
3 of the claims sought to be approved for release, waiver, or
4 settlement as compared to the value being offered in exchange for
5 the release, waiver, or settlement. Notice and determination of the
6 good faith resolution shall follow the guidelines set forth in Section
7 877.6 of the Code of Civil Procedure, except as provided in
8 paragraph (2).

9 (2) At least 45 days before presenting a release, settlement, or
10 waiver to the putative class member, the employer is required to
11 notify all parties, including parties to pending class actions
12 asserting similar claims, putative class counsel, court-appointed
13 class counsel, and the court of all the terms of the proposed release,
14 settlement, or waiver and the name and last known residence
15 address and telephone number of each putative class member to
16 whom the employer intends to make the offer.

17 (d) If an employee purporting to make a release pursuant to
18 subdivision (a) is not approved by the superior court as set forth
19 herein, or is not represented by counsel, or the Division of Labor
20 Standards Enforcement has not negotiated a settlement between
21 the parties, the release, waiver, or settlement shall not effect a
22 waiver of the employee's rights to any wage claims with that
23 employer. If the employee prevails on an action subsequent to
24 signing a release of liability, all amounts paid by the employer
25 may be a set-off against the final amount of wages owed if the
26 court determines that the parties specifically intended to release
27 such claims in the original agreement. In making this
28 determination, all inferences shall be in favor of the employee and
29 the burden of proof shall be on the employer to prove by clear and
30 convincing evidence that the proposed settlement is fair and
31 reasonable.

32 (e) An employee not represented by counsel who waives his or
33 her rights to unknown future claims pursuant to Section 1542 of
34 the Civil Code does not waive his or her rights to any wage claims,
35 including future wage claims.

36 (f) If an employer seeks court approval of any release, waiver,
37 or settlement with a current or former employee or employees
38 while a class or representative action pursuant to subdivision (a)
39 is pending, the employer shall notify plaintiff's counsel in the class
40 or representative action pursuant to subdivision (a) no later than

1 16 court days prior to the hearing date on the release, waiver, or
2 settlement. Plaintiff's counsel may file an opposition to the
3 proposed release, waiver, or settlement no later than nine court
4 days prior to the hearing. The court may continue the hearing to
5 allow discovery to be taken regarding the reasonableness of the
6 individual settlements.

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