

AMENDED IN ASSEMBLY MAY 26, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1396

**Introduced by Committee on Labor and Employment (Swanson
(Chair), Alejo, Allen, Furutani, and Yamada)**

February 28, 2011

An act to amend Section 2751 of, *and to repeal Section 2752 of*, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1396, as amended, Committee on Labor and Employment. Employment contract requirements.

Existing statutory law, which has been held invalid by existing case law, requires an employer who has no permanent and fixed place of business in the state and who enters into a contract of employment involving commissions as a method of payment with an employee for services to be rendered within the state to put the contract in writing and to set forth the method by which the commissions are required to be computed and paid. An employer who does not comply with those requirements is liable to the employee in a civil action for triple damages.

This bill would, by January 1, 2013, make this contract requirement applicable to all employers entering into a contract of employment involving commissions as a method of payment with an employee for services to be rendered in the state. *In addition, the bill would repeal the provision making an employer who violates this requirement liable in a civil action for triple damages.*

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. The Legislature hereby finds and declares that
2 this bill is enacted in light of the holding in Lett v. Paymentech,
3 Inc. (N.D.Cal. 1999) 81 F.Supp.2d 992 and that the intent of this
4 bill is to restore the employee protections that had been in effect
5 prior to that holding by making ~~Sections 2751 and 2752~~ Section
6 2751 of the Labor Code apply with equal force to employers with
7 a fixed place of business in the state and to employers who do not
8 have a fixed place of business in the state.

9 SEC. 2. Section 2751 of the Labor Code is amended to read:

10 2751. (a) By January 1, 2013, whenever an employer enters
11 into a contract of employment with an employee for services to
12 be rendered within this state and the contemplated method of
13 payment of the employee involves commissions, the contract shall
14 be in writing and shall set forth the method by which the
15 commissions shall be computed and paid.

16 (b) The employer shall give a signed copy of the contract to
17 every employee who is a party thereto and shall obtain a signed
18 receipt for the contract from each employee. In the case of a
19 contract that expires and where the parties nevertheless continue
20 to work under the terms of the expired contract, the contract terms
21 are presumed to remain in full force and effect until the contract
22 is superseded or employment is terminated by either party.

23 (c) As used in this section, “commissions” has the meaning set
24 forth in Section 204.1. “Commissions” does not include short-term
25 productivity bonuses such as are paid to retail clerks; and it does
26 not include bonus and profit-sharing plans, unless there has been
27 an offer by the employer to pay a fixed percentage of sales or
28 profits as compensation for work to be performed.

29 SEC. 3. *Section 2752 of the Labor Code is repealed.*

30 ~~2752. Any employer who does not employ an employee~~
31 ~~pursuant to a written contract as required by Section 2751 shall be~~
32 ~~liable to the employee in a civil action for triple damages.~~

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