

**ASSEMBLY BILL**

**No. 1744**

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**Introduced by Assembly Member Bonnie Lowenthal**

February 17, 2012

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An act to amend Section ~~970~~ 226 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1744, as amended, Bonnie Lowenthal. ~~Solicitation of employees: misrepresentation.~~ *Employee compensation: itemized statements.*

*Existing law requires every employer, semimonthly or at the time of each payment of wages, to furnish each employee with an accurate itemized statement in writing showing specified information. Existing law provides that a knowing and intentional violation of this provision is a misdemeanor.*

*This bill would additionally require that the itemized statement include, if the employer is a temporary services employer, the name and address of the legal entities that secured the services of the employer and total hours worked for each legal entity.*

*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.*

~~Existing law prohibits a person from influencing, persuading, or engaging a worker to change from one place to another by knowingly false misrepresentations.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-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, *and (10), if the employer is a temporary services*  
27    *employer as defined in Section 201.3, the name and address of the*  
28    *legal entities that secured the services of the employer and total*  
29    *hours worked for each legal entity. The deductions made from*  
30    payment of wages shall be recorded in ink or other indelible form,

1 properly dated, showing the month, day, and year, and a copy of  
2 the statement and the record of the deductions shall be kept on file  
3 by the employer for at least three years at the place of employment  
4 or at a central location within the State of California.

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

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

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

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

38 (f) A failure by an employer to permit a current or former  
39 employee to inspect or copy records within the time set forth in  
40 subdivision (c) entitles the current or former employee or the Labor

1 Commissioner to recover a seven-hundred-fifty-dollar (\$750)  
2 penalty from the employer.

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

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

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

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

29 ~~SECTION 1. Section 970 of the Labor Code is amended to~~  
30 ~~read:~~

31 ~~970. A person, or agent or officer of that person, directly or~~  
32 ~~indirectly, shall not influence, persuade, or engage any person to~~  
33 ~~change from one place to another in this state or from any place~~  
34 ~~outside to any place within the state, or from any place within the~~  
35 ~~state to any place outside, for the purpose of working in any branch~~  
36 ~~of labor, through knowingly false representations, whether spoken,~~  
37 ~~written, or advertised in printed form, concerning any of the~~  
38 ~~following:~~

39 (a) ~~The kind, character, or existence of the work.~~

- 1     ~~(b) The length of time the work will last, or the compensation~~
- 2     ~~for the work.~~
- 3     ~~(c) The sanitary or housing conditions relating to or surrounding~~
- 4     ~~the work.~~
- 5     ~~(d) The existence or nonexistence of any strike, lockout, or other~~
- 6     ~~labor dispute affecting it and pending between the proposed~~
- 7     ~~employer and the persons then or last engaged in the performance~~
- 8     ~~of the labor for which the employee is sought.~~