

AMENDED IN SENATE JULY 5, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1744

Introduced by Assembly Member Bonnie Lowenthal

February 17, 2012

An act to amend ~~Section~~ *Sections 226 and 2810.5* of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1744, as amended, Bonnie Lowenthal. 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 rate of pay for each assignment*, the name and address of the legal entities that secured the services of the employer, and total hours worked for each legal entity. *The bill would provide that this additional information may be furnished as an attachment to the wage statement provided certain identifying information is included. The bill would make conforming changes.*

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, (9)
 24 all applicable hourly rates in effect during the pay period and the
 25 corresponding number of hours worked at each hourly rate by the
 26 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, *the rate of*
 29 *pay for each temporary services assignment*, and total hours
 30 worked for each legal entity. *The information required by item*

1 (10) can be furnished on an attachment to the wage statement
2 provided the attachment includes the employee's name and the
3 last four digits of his or her social security number or employee
4 identification number. The deductions made from payment of
5 wages shall be recorded in ink or other indelible form, properly
6 dated, showing the month, day, and year, and a copy of the
7 statement and the record of the deductions shall be kept on file by
8 the employer for at least three years at the place of employment
9 or at a central 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 records pertaining to their employment, upon
14 reasonable request to the employer. The employer may take
15 reasonable steps to ensure the identity of a current or former
16 employee. If the employer provides copies of the records, the actual
17 cost of reproduction may be charged to the current or former
18 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 (h) An employee may also bring an action for injunctive relief
13 to ensure compliance with this section, and is entitled to an award
14 of costs and reasonable attorney’s fees.

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

25 *SEC. 2. Section 2810.5 of the Labor Code is amended to read:*

26 2810.5. (a) (1) At the time of hiring, an employer shall provide
27 each employee a written notice, in the language the employer
28 normally uses to communicate employment-related information
29 to the employee, containing the following information:

30 (A) The rate or rates of pay and basis thereof, whether paid by
31 the hour, shift, day, week, salary, piece, commission, or otherwise,
32 including any rates for overtime, as applicable.

33 (B) Allowances, if any, claimed as part of the minimum wage,
34 including meal or lodging allowances.

35 (C) The regular payday designated by the employer in
36 accordance with the requirements of this code.

37 (D) The name of the employer, including any “doing business
38 as” names used by the employer.

39 (E) The physical address of the employer’s main office or
40 principal place of business, and a mailing address, if different.

1 (F) The telephone number of the employer.

2 (G) The name, address, and telephone number of the employer's
3 workers' compensation insurance carrier.

4 (H) Any other information the Labor Commissioner deems
5 material and necessary.

6 (2) The Labor Commissioner shall prepare a template that
7 complies with the requirements of paragraph (1). The template
8 shall be made available to employers in such manner as determined
9 by the Labor Commissioner.

10 (b) An employer shall notify his or her employees in writing of
11 any changes to the information set forth in the notice within seven
12 calendar days after the time of the changes, unless one of the
13 following applies:

14 (1) All changes are reflected on a timely wage statement
15 furnished in accordance with Section 226 *or, if the employer is a*
16 *temporary services employer as defined in Section 201.3, an*
17 *attachment to that wage statement if the change is to information*
18 *properly reflected on the attachment in accordance with Section*
19 *226.*

20 (2) Notice of all changes is provided in another writing required
21 by law within seven days of the changes.

22 (c) For purposes of this section, "employee" does not include
23 any of the following:

24 (1) An employee directly employed by the state or any political
25 subdivision thereof, including any city, county, city and county,
26 or special district.

27 (2) An employee who is exempt from the payment of overtime
28 wages by statute or the wage orders of the Industrial Welfare
29 Commission.

30 (3) An employee who is covered by a valid collective bargaining
31 agreement if the agreement expressly provides for the wages, hours
32 of work, and working conditions of the employee, and if the
33 agreement provides premium wage rates for all overtime hours
34 worked and a regular hourly rate of pay for those employees of
35 not less than 30 percent more than the state minimum wage.

36 ~~SEC. 2.~~

37 *SEC. 3.* No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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