

AMENDED IN SENATE AUGUST 16, 2012
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 ~~Sections~~, *repeal, and add Section 226 of, and to amend Section 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, *on and after July 1, 2013*, 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.~~

Existing law requires an employer to provide each employee, at the time of hiring, with a notice that includes specified information, such

as the rate and the basis, whether hourly, salary, commission, or otherwise, of the employee’s wages, and to notify each employee in writing of any changes to the information set forth in the notice within 7 calendar days of the changes unless such changes are reflected on a timely wage statement or another writing, as specified.

This bill would additionally require that, if the employer is a temporary services employer, staffing agency, or professional employer organization, the notice include the name, the physical address of the main office, the mailing address if different from the physical address of the main office, and the telephone number of the legal entity for whom the employee will perform work, and any other information the Labor Commissioner deems material and necessary

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

1 of the period for which the employee is paid, (7) the name of the
2 employee and the last four digits of his or her social security
3 number or an employee identification number other than a social
4 security number, (8) the name and address of the legal entity that
5 is the employer and, if the employer is a farm labor contractor, as
6 defined in subdivision (b) of Section 1682, the name and address
7 of the legal entity that secured the services of the employer, and
8 (9) all applicable hourly rates in effect during the pay period and
9 the corresponding number of hours worked at each hourly rate by
10 the employee. The deductions made from payment of wages shall
11 be recorded in ink or other indelible form, properly dated, showing
12 the month, day, and year, and a copy of the statement and the
13 record of the deductions shall be kept on file by the employer for
14 at least three years at the place of employment or at a central
15 location within the State of California.

16 (b) An employer that is required by this code or any regulation
17 adopted pursuant to this code to keep the information required by
18 subdivision (a) shall afford current and former employees the right
19 to inspect or copy records pertaining to their employment, upon
20 reasonable request to the employer. The employer may take
21 reasonable steps to ensure the identity of a current or former
22 employee. If the employer provides copies of the records, the actual
23 cost of reproduction may be charged to the current or former
24 employee.

25 (c) An employer who receives a written or oral request to inspect
26 or copy records pursuant to subdivision (b) pertaining to a current
27 or former employee shall comply with the request as soon as
28 practicable, but no later than 21 calendar days from the date of the
29 request. A violation of this subdivision is an infraction.
30 Impossibility of performance, not caused by or a result of a
31 violation of law, shall be an affirmative defense for an employer
32 in any action alleging a violation of this subdivision. An employer
33 may designate the person to whom a request under this subdivision
34 will be made.

35 (d) This section does not apply to any employer of any person
36 employed by the owner or occupant of a residential dwelling whose
37 duties are incidental to the ownership, maintenance, or use of the
38 dwelling, including the care and supervision of children, or whose
39 duties are personal and not in the course of the trade, business,
40 profession, or occupation of the owner or occupant.

1 (e) An employee suffering injury as a result of a knowing and
 2 intentional failure by an employer to comply with subdivision (a)
 3 is entitled to recover the greater of all actual damages or fifty
 4 dollars (\$50) for the initial pay period in which a violation occurs
 5 and one hundred dollars (\$100) per employee for each violation
 6 in a subsequent pay period, not exceeding an aggregate penalty of
 7 four thousand dollars (\$4,000), and is entitled to an award of costs
 8 and reasonable attorney’s fees.

9 (f) A failure by an employer to permit a current or former
 10 employee to inspect or copy records within the time set forth in
 11 subdivision (c) entitles the current or former employee or the Labor
 12 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
 13 penalty from the employer.

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

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

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

31 (j) *This section shall become inoperative on July 1, 2013, and,*
 32 *as of January 1, 2014, is repealed.*

33 *SEC. 2. Section 226 is added to the Labor Code, to read:*

34 226. (a) *Every employer shall, semimonthly or at the time of*
 35 *each payment of wages, furnish each of his or her employees,*
 36 *either as a detachable part of the check, draft, or voucher paying*
 37 *the employee’s wages, or separately when wages are paid by*
 38 *personal check or cash, an accurate itemized statement in writing*
 39 *showing (1) gross wages earned, (2) total hours worked by the*
 40 *employee, except for any employee whose compensation is solely*

1 based on a salary and who is exempt from payment of overtime
2 under subdivision (a) of Section 515 or any applicable order of
3 the Industrial Welfare Commission, (3) the number of piece-rate
4 units earned and any applicable piece rate if the employee is paid
5 on a piece-rate basis, (4) all deductions, provided that all
6 deductions made on written orders of the employee may be
7 aggregated and shown as one item, (5) net wages earned, (6) the
8 inclusive dates of the period for which the employee is paid, (7)
9 the name of the employee and the last four digits of his or her
10 social security number or an employee identification number other
11 than a social security number, (8) the name and address of the
12 legal entity that is the employer and, if the employer is a farm
13 labor contractor, as defined in subdivision (b) of Section 1682,
14 the name and address of the legal entity that secured the services
15 of the employer, and (9) all applicable hourly rates in effect during
16 the pay period and the corresponding number of hours worked at
17 each hourly rate by the employee and, if the employer is a
18 temporary services employer as defined in Section 201.3, the rate
19 of pay for each temporary services assignment and the total hours
20 worked for each legal entity. The deductions made from payment
21 of wages shall be recorded in ink or other indelible form, properly
22 dated, showing the month, day, and year, and a copy of the
23 statement and the record of the deductions shall be kept on file by
24 the employer for at least three years at the place of employment
25 or at a central location within the State of California.

26 (b) An employer that is required by this code or any regulation
27 adopted pursuant to this code to keep the information required by
28 subdivision (a) shall afford current and former employees the right
29 to inspect or copy records pertaining to their employment, upon
30 reasonable request to the employer. The employer may take
31 reasonable steps to ensure the identity of a current or former
32 employee. If the employer provides copies of the records, the actual
33 cost of reproduction may be charged to the current or former
34 employee.

35 (c) An employer who receives a written or oral request to inspect
36 or copy records pursuant to subdivision (b) pertaining to a current
37 or former employee shall comply with the request as soon as
38 practicable, but no later than 21 calendar days from the date of
39 the request. A violation of this subdivision is an infraction.
40 Impossibility of performance, not caused by or a result of a

1 violation of law, shall be an affirmative defense for an employer
2 in any action alleging a violation of this subdivision. An employer
3 may designate the person to whom a request under this subdivision
4 will be made.

5 (d) This section does not apply to any employer of any person
6 employed by the owner or occupant of a residential dwelling whose
7 duties are incidental to the ownership, maintenance, or use of the
8 dwelling, including the care and supervision of children, or whose
9 duties are personal and not in the course of the trade, business,
10 profession, or occupation of the owner or occupant.

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

19 (f) A failure by an employer to permit a current or former
20 employee to inspect or copy records within the time set forth in
21 subdivision (c) entitles the current or former employee or the Labor
22 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
23 penalty from the employer.

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

28 (h) An employee may also bring an action for injunctive relief
29 to ensure compliance with this section, and is entitled to an award
30 of costs and reasonable attorney's fees.

31 (i) This section does not apply to the state, to any city, county,
32 city and county, district, or to any other governmental entity, except
33 that if the state or a city, county, city and county, district, or other
34 governmental entity furnishes its employees with a check, draft,
35 or voucher paying the employee's wages, the state or a city, county,
36 city and county, district, or other governmental entity shall use no
37 more than the last four digits of the employee's social security
38 number or shall use an employee identification number other than
39 the social security number on the itemized statement provided with
40 the check, draft, or voucher.

1 (j) *This section shall become operative on July 1, 2013.*

2 SECTION 1. ~~Section 226 of the Labor Code is amended to~~
3 ~~read:~~

4 226. ~~(a) Every employer shall, semimonthly or at the time of~~
5 ~~each payment of wages, furnish each of his or her employees,~~
6 ~~either as a detachable part of the check, draft, or voucher paying~~
7 ~~the employee's wages, or separately when wages are paid by~~
8 ~~personal check or cash, an accurate itemized statement in writing~~
9 ~~showing (1) gross wages earned, (2) total hours worked by the~~
10 ~~employee, except for any employee whose compensation is solely~~
11 ~~based on a salary and who is exempt from payment of overtime~~
12 ~~under subdivision (a) of Section 515 or any applicable order of~~
13 ~~the Industrial Welfare Commission, (3) the number of piece-rate~~
14 ~~units earned and any applicable piece rate if the employee is paid~~
15 ~~on a piece-rate basis, (4) all deductions, provided that all deductions~~
16 ~~made on written orders of the employee may be aggregated and~~
17 ~~shown as one item, (5) net wages earned, (6) the inclusive dates~~
18 ~~of the period for which the employee is paid, (7) the name of the~~
19 ~~employee and the last four digits of his or her social security~~
20 ~~number or an employee identification number other than a social~~
21 ~~security number, (8) the name and address of the legal entity that~~
22 ~~is the employer and, if the employer is a farm labor contractor, as~~
23 ~~defined in subdivision (b) of Section 1682, the name and address~~
24 ~~of the legal entity that secured the services of the employer, (9)~~
25 ~~all applicable hourly rates in effect during the pay period and the~~
26 ~~corresponding number of hours worked at each hourly rate by the~~
27 ~~employee, and (10), if the employer is a temporary services~~
28 ~~employer as defined in Section 201.3, the name and address of the~~
29 ~~legal entities that secured the services of the employer, the rate of~~
30 ~~pay for each temporary services assignment, and total hours worked~~
31 ~~for each legal entity. The information required by item (10) can~~
32 ~~be furnished on an attachment to the wage statement provided the~~
33 ~~attachment includes the employee's name and the last four digits~~
34 ~~of his or her social security number or employee identification~~
35 ~~number. The deductions made from payment of wages shall be~~
36 ~~recorded in ink or other indelible form, properly dated, showing~~
37 ~~the month, day, and year, and a copy of the statement and the~~
38 ~~record of the deductions shall be kept on file by the employer for~~
39 ~~at least three years at the place of employment or at a central~~
40 ~~location within the State of California.~~

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

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

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

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

34 ~~(f) A failure by an employer to permit a current or former~~
35 ~~employee to inspect or copy records within the time set forth in~~
36 ~~subdivision (c) entitles the current or former employee or the Labor~~
37 ~~Commissioner to recover a seven-hundred-fifty-dollar (\$750)~~
38 ~~penalty from the employer.~~

39 ~~(g) The listing by an employer of the name and address of the~~
40 ~~legal entity that secured the services of the employer in the itemized~~

1 statement required by subdivision (a) shall not create any liability
2 on the part of that legal entity.

3 ~~(h) An employee may also bring an action for injunctive relief~~
4 ~~to ensure compliance with this section, and is entitled to an award~~
5 ~~of costs and reasonable attorney's fees.~~

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

16 ~~SEC. 2.~~

17 *SEC. 3.* Section 2810.5 of the Labor Code is amended to read:

18 2810.5. (a) (1) At the time of hiring, an employer shall provide
19 to each employee a written notice, in the language the employer
20 normally uses to communicate employment-related information
21 to the employee, containing the following information:

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

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

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

29 (D) The name of the employer, including any "doing business
30 as" names used by the employer.

31 (E) The physical address of the employer's main office or
32 principal place of business, and a mailing address, if different.

33 (F) The telephone number of the employer.

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

36 (H) Any other information the Labor Commissioner deems
37 material and necessary.

38 (2) The Labor Commissioner shall prepare a template that
39 complies with the requirements of paragraph (1). The template

1 shall be made available to employers in such manner as determined
2 by the Labor Commissioner.

3 (3) *If the employer is a temporary services employer, staffing*
4 *agency, or professional employer organization, the notice*
5 *described in paragraph (1) must also include the name, the*
6 *physical address of the main office, the mailing address if different*
7 *from the physical address of the main office, and the telephone*
8 *number of the legal entity for whom the employee will perform*
9 *work, and any other information the Labor Commissioner deems*
10 *material and necessary.*

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

15 (1) All changes are reflected on a timely wage statement
16 furnished in accordance with Section 226 ~~or, if the employer is a~~
17 ~~temporary services employer as defined in Section 201.3, an~~
18 ~~attachment to that wage statement if the change is to information~~
19 ~~properly reflected on the attachment in accordance with Section~~
20 ~~226.~~

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

23 (c) For purposes of this section, “employee” does not include
24 any of the following:

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

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

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

37 ~~SEC. 3.~~

38 *SEC. 4.* No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

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