

AMENDED IN SENATE AUGUST 20, 2012

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, ~~repeal, and add Section 226 of, and to amend Section 2810.5 of, 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, 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 and total hours worked for each legal entity.

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
 17 of the period for which the employee is paid, (7) the name of the

1 employee and the last four digits of his or her social security
2 number or an employee identification number other than a social
3 security number, (8) the name and address of the legal entity that
4 is the employer and, if the employer is a farm labor contractor, as
5 defined in subdivision (b) of Section 1682, the name and address
6 of the legal entity that secured the services of the employer, and
7 (9) all applicable hourly rates in effect during the pay period and
8 the corresponding number of hours worked at each hourly rate by
9 the employee *and, beginning July 1, 2013, if the employer is a*
10 *temporary services employer as defined in Section 201.3, the rate*
11 *of pay for each temporary services assignment and the total hours*
12 *worked for each legal entity. The deductions made from payment*
13 *of wages shall be recorded in ink or other indelible form, properly*
14 *dated, showing the month, day, and year, and a copy of the*
15 *statement and the record of the deductions shall be kept on file by*
16 *the employer for at least three years at the place of employment*
17 *or at a central location within the State of California.*

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

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

37 (d) This section does not apply to any employer of any person
38 employed by the owner or occupant of a residential dwelling whose
39 duties are incidental to the ownership, maintenance, or use of the
40 dwelling, including the care and supervision of children, or whose

1 duties are personal and not in the course of the trade, business,
2 profession, or occupation of the owner or occupant.

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

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

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

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

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

33 ~~(j) This section shall become inoperative on July 1, 2013, and,~~
34 ~~as of January 1, 2014, is repealed.~~

35 ~~SEC. 2.~~ Section 226 is added to the Labor Code, to read:

36 ~~226. (a) Every employer shall, semimonthly or at the time of~~
37 ~~each payment of wages, furnish each of his or her employees,~~
38 ~~either as a detachable part of the check, draft, or voucher paying~~
39 ~~the employee’s wages, or separately when wages are paid by~~
40 ~~personal check or cash, an accurate itemized statement in writing~~

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

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

37 (c) An employer who receives a written or oral request to inspect
38 or copy records pursuant to subdivision (b) pertaining to a current
39 or former employee shall comply with the request as soon as
40 practicable, but no later than 21 calendar days from the date of the

1 request. A violation of this subdivision is an infraction.
 2 Impossibility of performance, not caused by or a result of a
 3 violation of law, shall be an affirmative defense for an employer
 4 in any action alleging a violation of this subdivision. An employer
 5 may designate the person to whom a request under this subdivision
 6 will be made.

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

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

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

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

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

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

1 the social security number on the itemized statement provided with
2 the check, draft, or voucher.

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

4 ~~SEC. 3.~~

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

6 2810.5. (a) (1) At the time of hiring, an employer shall provide
7 to each employee a written notice, in the language the employer
8 normally uses to communicate employment-related information
9 to the employee, containing the following information:

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

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

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

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

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

21 (F) The telephone number of the employer.

22 (G) The name, address, and telephone number of the employer’s
23 workers’ compensation insurance carrier.

24 (H) Any other information the Labor Commissioner deems
25 material and necessary.

26 (2) The Labor Commissioner shall prepare a template that
27 complies with the requirements of paragraph (1). The template
28 shall be made available to employers in such manner as determined
29 by the Labor Commissioner.

30 (3) If the employer is a temporary services employer, staffing
31 agency, or professional employer organization, the notice described
32 in paragraph (1) must also include the name, the physical address
33 of the main office, the mailing address if different from the physical
34 address of the main office, and the telephone number of the legal
35 entity for whom the employee will perform work, and any other
36 information the Labor Commissioner deems material and
37 necessary.

38 (b) An employer shall notify his or her employees in writing of
39 any changes to the information set forth in the notice within seven

1 calendar days after the time of the changes, unless one of the
2 following applies:

3 (1) All changes are reflected on a timely wage statement
4 furnished in accordance with Section 226.

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

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

9 (1) An employee directly employed by the state or any political
10 subdivision thereof, including any city, county, city and county,
11 or special district.

12 (2) An employee who is exempt from the payment of overtime
13 wages by statute or the wage orders of the Industrial Welfare
14 Commission.

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

21 ~~SEC. 4.~~

22 *SEC. 3.* No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.