

AMENDED IN SENATE AUGUST 15, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2675

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

March 5, 2012

An act to amend ~~Section 1727 of the Labor Code, relating to public contracts~~ *Section 2751 of the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2675, as amended, ~~Committee on Labor and Employment Swanson. Public works: prevailing wage rates: penalty assessment.~~*Employment contract requirements.*

Existing law requires that whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract must be in writing and set forth the method by which the commissions are to be computed and paid.

This bill would exempt from this requirement temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.

~~Existing law regulating public works contracts requires the awarding body of a public works contract to withhold and retain all amounts required to satisfy any civil wage and penalty assessment issued by the Labor Commissioner before making payments to the contractor of money due under the contract.~~

~~This bill would specify that upon receipt of a final order that is no longer subject to judicial review, the retained amounts necessary to satisfy the final order shall be deemed forfeited by the contractor or subcontractor.~~

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

3 2751. (a) ~~By January 1, 2013, whenever~~ *Whenever* an employer
 4 enters into a contract of employment with an employee for services
 5 to be rendered within this state and the contemplated method of
 6 payment of the employee involves commissions, the contract shall
 7 be in writing and shall set forth the method by which the
 8 commissions shall be computed and paid.

9 (b) The employer shall give a signed copy of the contract to
 10 every employee who is a party thereto and shall obtain a signed
 11 receipt for the contract from each employee. In the case of a
 12 contract that expires and where the parties nevertheless continue
 13 to work under the terms of the expired contract, the contract terms
 14 are presumed to remain in full force and effect until the contract
 15 is superseded or employment is terminated by either party.

16 (c) As used in this section, “commissions” has the meaning set
 17 forth in Section 204.1. ~~“Commissions”~~ *For purposes of this section*
 18 *only, “commission” does not include—short-term any of the*
 19 *following:*

20 (1) *Short-term* productivity bonuses such as are paid to retail
 21 clerks; ~~and it does not include bonus.~~

22 (2) *Temporary, variable incentive payments that increase, but*
 23 *do not decrease, payment under the written contract.*

24 (3) *Bonus* and profit-sharing plans, unless there has been an
 25 offer by the employer to pay a fixed percentage of sales or profits
 26 as compensation for work to be performed.

27 ~~SECTION 1. Section 1727 of the Labor Code is amended to~~
 28 read:

29 ~~1727. (a) Before making payments to the contractor of money~~
 30 ~~due under a contract for public work, the awarding body shall~~
 31 ~~withhold and retain therefrom all amounts required to satisfy any~~

1 ~~civil wage and penalty assessment issued by the Labor~~
2 ~~Commissioner under this chapter. The amounts required to satisfy~~
3 ~~a civil wage and penalty assessment shall not be disbursed by the~~
4 ~~awarding body until receipt of a final order that is no longer subject~~
5 ~~to judicial review.~~

6 ~~(b) If the awarding body has not retained sufficient money under~~
7 ~~the contract to satisfy a civil wage and penalty assessment based~~
8 ~~on a subcontractor's violations, the contractor shall, upon the~~
9 ~~request of the Labor Commissioner, withhold sufficient money~~
10 ~~due the subcontractor under the contract to satisfy the assessment~~
11 ~~and transfer the money to the awarding body. These amounts shall~~
12 ~~not be disbursed by the awarding body until receipt of a final order~~
13 ~~that is no longer subject to judicial review.~~

14 ~~(c) Upon receipt of a final order that is no longer subject to~~
15 ~~judicial review, the retained amounts necessary to satisfy the final~~
16 ~~order shall be deemed forfeited by the contractor or subcontractor.~~

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