

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2677**

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

March 5, 2012

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An act to amend ~~Section 351 of Section 1773.1 of, and to add Section 1773.8 to,~~ the Labor Code, relating to ~~employment~~ prevailing wages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2677, as amended, ~~Committee on Labor and Employment Swanson. Compensation: gratuities. Public works: wages: fringe benefit contributions.~~

*Existing law requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations, as specified, be paid to workers employed on public works projects. Existing law deems per diem wages to include specified employer payments and provides that employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. Existing law, however, provides that credits for employer payments do not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing.*

*This bill would provide that an increased fringe benefit contribution that results in a lower hourly straight time or overtime wage is not considered to be a violation of the applicable prevailing wage determination so long as specified conditions are met.*

*This bill would provide that an increased fringe benefit contribution that results in a lower taxable wage is not a violation of the applicable prevailing wage determination if specified conditions are met.*

~~Existing law prohibits an employer or agent from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Existing law declares that every gratuity is the sole property of the employee or employees to whom it was paid, given, or left for.~~

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 1773.1 of the Labor Code is amended to
- 2     read:
- 3     1773.1. (a) Per diem wages, when the term is used in this
- 4     chapter or in any other statute applicable to public works, shall be
- 5     deemed to include employer payments for the following:
- 6         (1) Health and welfare.
- 7         (2) Pension.
- 8         (3) Vacation.
- 9         (4) Travel.
- 10        (5) Subsistence.
- 11        (6) Apprenticeship or other training programs authorized by
- 12     Section 3093, so long as the cost of training is reasonably related
- 13     to the amount of the contributions.
- 14        (7) Worker protection and assistance programs or committees
- 15     established under the federal Labor Management Cooperation Act
- 16     of 1978 (Section 175a of Title 29 of the United States Code), to
- 17     the extent that the activities of the programs or committees are
- 18     directed to the monitoring and enforcement of laws related to
- 19     public works.
- 20        (8) Industry advancement and collective bargaining agreements
- 21     administrative fees, provided that these payments are required
- 22     under a collective bargaining agreement pertaining to the particular

1 craft, classification, or type of work within the locality or the  
2 nearest labor market area at issue.

3 (9) Other purposes similar to those specified in paragraphs (1)  
4 to (8), inclusive.

5 (b) Employer payments include all of the following:

6 (1) The rate of contribution irrevocably made by the employer  
7 to a trustee or third person pursuant to a plan, fund, or program.

8 (2) The rate of actual costs to the employer reasonably  
9 anticipated in providing benefits to workers pursuant to an  
10 enforceable commitment to carry out a financially responsible plan  
11 or program communicated in writing to the workers affected.

12 (3) Payments to the California Apprenticeship Council pursuant  
13 to Section 1777.5.

14 (c) Employer payments are a credit against the obligation to  
15 pay the general prevailing rate of per diem wages. However, no  
16 credit shall be granted for benefits required to be provided by other  
17 state or federal law. Credits for employer payments also shall not  
18 reduce the obligation to pay the hourly straight time or overtime  
19 wages found to be prevailing. *However, an increased fringe benefit*  
20 *contribution that results in a lower hourly straight time or overtime*  
21 *wage shall not be considered a violation of the applicable*  
22 *prevailing wage determination so long as all of following*  
23 *conditions are met:*

24 (1) *The increased fringe benefit is made pursuant to criteria set*  
25 *forth in a collective bargaining agreement.*

26 (2) *The increased fringe benefit and hourly straight time and*  
27 *overtime wage combined are no less than the general prevailing*  
28 *rate of per diem wages.*

29 (3) *The fringe benefit contribution is irrevocable unless made*  
30 *in error.*

31 (d) The credit for employer payments shall be computed on an  
32 annualized basis where the employer seeks credit for employer  
33 payments that are higher for public works projects than for private  
34 construction performed by the same employer, except where one  
35 or more of the following occur:

36 (1) The employer has an enforceable obligation to make the  
37 higher rate of payments on future private construction performed  
38 by the employer.

39 (2) The higher rate of payments is required by a project labor  
40 agreement.

1 (3) The payments are made to the California Apprenticeship  
2 Council pursuant to Section 1777.5.

3 (4) The director determines that annualization would not serve  
4 the purposes of this chapter.

5 (e) (1) For the purpose of determining those per diem wages  
6 for contracts, the representative of any craft, classification, or type  
7 of worker needed to execute contracts shall file with the  
8 Department of Industrial Relations fully executed copies of the  
9 collective bargaining agreements for the particular craft,  
10 classification, or type of work involved. The collective bargaining  
11 agreements shall be filed after their execution and thereafter may  
12 be taken into consideration pursuant to Section 1773 whenever  
13 filed 30 days prior to the call for bids. If the collective bargaining  
14 agreement has not been formalized, a typescript of the final draft  
15 may be filed temporarily, accompanied by a statement under  
16 penalty of perjury as to its effective date.

17 (2) Where a copy of the collective bargaining agreement has  
18 previously been filed, fully executed copies of all modifications  
19 and extensions of the agreement that affect per diem wages or  
20 holidays shall be filed.

21 (3) The failure to comply with filing requirements of this  
22 subdivision shall not be grounds for setting aside a prevailing wage  
23 determination if the information taken into consideration is correct.

24 *SEC. 2. Section 1773.8 is added to the Labor Code, to read:*

25 *1773.8. An increased fringe benefit contribution that results*  
26 *in a lower taxable wage shall not be considered a violation of the*  
27 *applicable prevailing wage determination so long as all of the*  
28 *following conditions are met:*

29 *(a) The increased fringe benefit is made pursuant to criteria set*  
30 *forth in a collective bargaining agreement.*

31 *(b) The increased fringe benefit and hourly straight time and*  
32 *overtime wage combined are no less than the general prevailing*  
33 *rate of per diem wages.*

34 *(c) The fringe benefit contribution is irrevocable unless made*  
35 *in error.*

36 ~~SECTION 1. Section 351 of the Labor Code is amended to~~  
37 ~~read:~~

38 ~~351. An employer or agent shall not collect, take, or receive~~  
39 ~~any gratuity or a part thereof that is paid, given to, or left for an~~  
40 ~~employee by a patron, or deduct any amount from wages due an~~

1 employee on account of a gratuity, or require an employee to credit  
2 the amount, or any part thereof, of a gratuity against and as a part  
3 of the wages due the employee from the employer. Every gratuity  
4 is hereby declared to be the sole property of the employee or  
5 employees to whom it was paid, given, or left for. An employer  
6 that permits patrons to pay gratuities by credit card shall pay the  
7 employee the full amount of the gratuity that the patron indicated  
8 on the credit card slip, without any deductions for any credit card  
9 payment processing fees or costs that may be charged to the  
10 employer by the credit card company. Payment of gratuities made  
11 by patrons using credit cards shall be made to the employee not  
12 later than the next regular payday following the date the patron  
13 authorized the credit card payment.

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