

**Introduced by Senator Wright**February 23, 2012

---

---

An act to amend Section 226 of the Labor Code, relating to employee compensation.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1255, as introduced, Wright. Employee compensation: itemized statements.

Existing law requires every employer, semimonthly or at the time of each payment of wages, to furnish each employee an accurate itemized statement in writing showing specified information, including, among other things, the name of the employee and the last 4 digits of his or her social security number or an employee identification number, the gross wages earned, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, and the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined, the name and address of the legal entity that secured the services of the employer. Existing law provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with this requirement is entitled to recover the greater of all actual damages or a specified sum, not exceeding an aggregate penalty of \$4,000, and is entitled to an award of costs and reasonable attorney's fees.

This bill would provide that an employee is deemed to suffer injury for purposes of the above-referenced penalty if the employer fails to provide a wage statement or fails to provide a wage statement showing the name of the employee and the last 4 digits of his or her social security number or employee identification number. The bill would also provide that an employee is deemed to suffer injury for that penalty

if the employer fails to provide accurate and complete information, as specified, and the employee cannot promptly and easily determine from the wage statement alone the amount and manner in which the employer calculated the gross and net wages paid to the employee during the pay period, the deductions the employer made from the gross wages to determine the net wages paid to the employee during the pay period, and the name and address of the employer or legal entity that secured the services of the employer, as specified.

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 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, and  
24 (9) all applicable hourly rates in effect during the pay period and  
25 the corresponding number of hours worked at each hourly rate by  
26 the employee. The deductions made from payment of wages shall  
27 be recorded in ink or other indelible form, properly dated, showing

1 the month, day, and year, and a copy of the statement and the  
2 record of the deductions shall be kept on file by the employer for  
3 at least three years at the place of employment or at a central  
4 location within the State of California.

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

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

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

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

38 (2) (A) *An employee is deemed to suffer injury for purposes of*  
39 *this subdivision if the employer fails to provide a wage statement*

1 *or if the wage statement fails to comply with item (7) of subdivision*  
2 *(a).*

3 *(B) An employee is deemed to suffer injury for purposes of this*  
4 *subdivision if the employer fails to provide accurate and complete*  
5 *information as required by items (1) to (6), inclusive, (8), and (9)*  
6 *of subdivision (a) and the employee cannot promptly and easily*  
7 *determine from the wage statement alone any of the following:*

8 *(i) The amount of, and the manner in which the employer*  
9 *calculated, the gross wages and net wages paid to the employee*  
10 *during the pay period.*

11 *(ii) Which deductions the employer made from gross wages to*  
12 *determine the net wages paid to the employee during the pay*  
13 *period.*

14 *(iii) The name and address of the employer and, if the employer*  
15 *is a farm labor contractor, as defined in subdivision (b) of Section*  
16 *1682, the name and address of the legal entity that secured the*  
17 *services of the employer during the pay period.*

18 *(C) For purposes of this paragraph, “promptly and easily*  
19 *determine” means to be able to readily ascertain without reference*  
20 *to other documents or information.*

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 (c) 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.

O