

ASSEMBLY BILL

No. 155

Introduced by Assembly Member Alejo

January 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 155, as introduced, Alejo. Employment: payroll records: right to inspect.

Existing law requires an employer to furnish each employee with an accurate itemized statement showing, among other things, the gross and net wages earned, the inclusive dates of the pay period, and all deductions. Existing law requires the employer to keep on file a copy of the statement for at least 3 years at a specified location. Existing law affords current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Existing law authorizes the employer to charge any costs of reproduction of the employee's records to the current or former employee.

This bill would require the employee to elect to inspect or copy, or receive a copy of, or any combination thereof, his or her employment records. The bill would also declare the Legislature's intent in this regard.

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. The Legislature finds and declares all of the
2 following:

3 (a) In 1988, the Legislature passed, and the Governor signed
4 into law Senate Bill 2155 that amended employees’ preexisting
5 statutory right to inspect their itemized pay records under Section
6 226 of the Labor Code and extended to them a new right to receive
7 a copy of these basic pay records upon reasonable request to their
8 employer.

9 (b) Senate Bill 2155 was sponsored by California Rural Legal
10 Assistance, Inc., and was supported by the Alien Legalization
11 Program for Agriculture (whose membership included the
12 California Farm Bureau Federation and the Western Growers
13 Association), the California Labor Federation, and others. There
14 was no opposition to Senate Bill 2155, which passed by 37 “Aye”
15 and no “No” votes in the Senate and by 70 “Aye” and 1 “No” votes
16 in the Assembly.

17 (c) According to the Senate Committee on Labor and Industrial
18 Relations March 1988 analysis of Senate Bill 2155, as introduced,
19 the bill’s proponents contended that Senate Bill 2155 was
20 “necessary to ensure that workers have the right to obtain copies
21 of their payroll records, especially in the case of undocumented
22 workers who are applying for amnesty under the federal
23 Immigration Reform and Control Act of 1986 (IRCA).”

24 (d) The Senate Rules Committee’s August 11, 1988, Senate
25 Floor Analysis (for final passage of the bill as amended in the
26 Assembly) stated: “This bill would permit current or former
27 employees to copy payroll deduction records that are maintained
28 by the employer. ... Employers would be empowered to charge
29 former and current employees for the actual costs of reproducing
30 the records.”

31 (e) The Department of Industrial Relations, in its August 26,
32 1988, Enrolled Bill Report recommending that the Governor sign
33 the bill, stated: “This bill would require an employer, who is
34 mandated by law to keep wage deduction records, to allow
35 employees to inspect and/or copy such records. [The bill also]
36 permits employers to charge employees for the actual costs of
37 reproducing the records.”

1 (f) The Department of Finance, in its August 29, 1988, Bill
2 Analysis recommending that the Governor sign the bill, stated:
3 “[Senate Bill] 2155 gives employees or former employees the right
4 to copy these records and allows the employer to take reasonable
5 steps to verify the identity of the employee and to charge for the
6 reproduction of the records.”

7 (g) The author of the bill, Senator Nicolas C. Petris, in his
8 September 6, 1988, letter urging Governor Deukmejian to sign
9 Senate Bill 2155 into law, stated “Senate Bill 2155 clarifies current
10 law by spelling out that when employers are required to make basic
11 pay records ‘available’ to workers, that means they are required
12 to provide a copy, upon reasonable request.”

13 (h) Despite more than 20 years of consistent interpretation of
14 these provisions of the Labor Code, the California Superior Court
15 in the County of Riverside determined, in *Esteban v. JSO, Inc.*
16 d.b.a. *America’s Labor Supply, Inc.*, Docket No. INC-1104544,
17 that the Labor Code provisions enacted by Senate Bill 2155 do not
18 obligate an employer to make copies: “If the Legislature wanted
19 to require an employer to copy records on request, it could easily
20 have said so.”

21 (i) The amendments made by this bill to provisions of Section
22 226 of the Labor Code enacted by Senate Bill 2155 are expressly
23 intended to overturn *Esteban v. JSO, Inc.*, and are further intended
24 to make clear that these provisions afforded a current or former
25 employee the right to inspect or copy, or receive copies of, his or
26 her payroll records, or any combination thereof; that it was solely
27 the employee, and not the employer, who was authorized to make
28 that election under the statute; and that the amendments to these
29 provisions made by this bill are declaratory of existing law.

30 SEC. 2. Section 226 of the Labor Code is amended to read:

31 226. (a) Every employer shall, semimonthly or at the time of
32 each payment of wages, furnish each of his or her employees,
33 either as a detachable part of the check, draft, or voucher paying
34 the employee’s wages, or separately when wages are paid by
35 personal check or cash, an accurate itemized statement in writing
36 showing (1) gross wages earned, (2) total hours worked by the
37 employee, except for any employee whose compensation is solely
38 based on a salary and who is exempt from payment of overtime
39 under subdivision (a) of Section 515 or any applicable order of
40 the Industrial Welfare Commission, (3) the number of piece-rate

1 units earned and any applicable piece rate if the employee is paid
2 on a piece-rate basis, (4) all deductions, provided that all deductions
3 made on written orders of the employee may be aggregated and
4 shown as one item, (5) net wages earned, (6) the inclusive dates
5 of the period for which the employee is paid, (7) the name of the
6 employee and only the last four digits of his or her social security
7 number or an employee identification number other than a social
8 security number, (8) the name and address of the legal entity that
9 is the employer and, if the employer is a farm labor contractor, as
10 defined in subdivision (b) of Section 1682, the name and address
11 of the legal entity that secured the services of the employer, and
12 (9) all applicable hourly rates in effect during the pay period and
13 the corresponding number of hours worked at each hourly rate by
14 the employee and, beginning July 1, 2013, if the employer is a
15 temporary services employer as defined in Section 201.3, the rate
16 of pay and the total hours worked for each temporary services
17 assignment. The deductions made from payment of wages shall
18 be recorded in ink or other indelible form, properly dated, showing
19 the month, day, and year, and a copy of the statement and the
20 record of the deductions shall be kept on file by the employer for
21 at least three years at the place of employment or at a central
22 location within the State of California. For purposes of this
23 subdivision, “copy” includes a duplicate of the itemized statement
24 provided to an employee or a computer-generated record that
25 accurately shows all of the information required by this subdivision.

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. *In making a request under this subdivision, an employee*
33 *shall elect to inspect or copy the records, or to receive a copy of*
34 *the records, or any combination thereof.* If the employer provides
35 copies of the records, the actual cost of reproduction may be
36 charged to the current or former employee.

37 (c) An employer who receives a written or oral request to inspect
38 or copy records, *or to receive a copy of the records, or any*
39 *combination thereof, as specified by the employee* pursuant to
40 subdivision (b) pertaining to a current or former employee shall

1 comply with the request as soon as practicable, but no later than
2 21 calendar days from the date of the request. A violation of this
3 subdivision is an infraction. Impossibility of performance, not
4 caused by or a result of a violation of law, shall be an affirmative
5 defense for an employer in any action alleging a violation of this
6 subdivision. An employer may designate the person to whom a
7 request under this subdivision will be made.

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

14 (e) (1) An employee suffering injury as a result of a knowing
15 and intentional failure by an employer to comply with subdivision
16 (a) is entitled to recover the greater of all actual damages or fifty
17 dollars (\$50) for the initial pay period in which a violation occurs
18 and one hundred dollars (\$100) per employee for each violation
19 in a subsequent pay period, not to exceed an aggregate penalty of
20 four thousand dollars (\$4,000), and is entitled to an award of costs
21 and reasonable attorney's fees.

22 (2) (A) An employee is deemed to suffer injury for purposes
23 of this subdivision if the employer fails to provide a wage
24 statement.

25 (B) An employee is deemed to suffer injury for purposes of this
26 subdivision if the employer fails to provide accurate and complete
27 information as required by any one or more of items (1) to (9),
28 inclusive, of subdivision (a) and the employee cannot promptly
29 and easily determine from the wage statement alone one or more
30 of the following:

31 (i) The amount of the gross wages or net wages paid to the
32 employee during the pay period or any of the other information
33 required to be provided on the itemized wage statement pursuant
34 to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

35 (ii) Which deductions the employer made from gross wages to
36 determine the net wages paid to the employee during the pay
37 period. Nothing in this subdivision alters the ability of the employer
38 to aggregate deductions consistent with the requirements of item
39 (4) of subdivision (a).

1 (iii) The name and address of the employer and, if the employer
 2 is a farm labor contractor, as defined in subdivision (b) of Section
 3 1682, the name and address of the legal entity that secured the
 4 services of the employer during the pay period.

5 (iv) The name of the employee and only the last four digits of
 6 his or her social security number or an employee identification
 7 number other than a social security number.

8 (C) For purposes of this paragraph, “promptly and easily
 9 determine” means a reasonable person would be able to readily
 10 ascertain the information without reference to other documents or
 11 information.

12 (3) For purposes of this subdivision, a “knowing and intentional
 13 failure” does not include an isolated and unintentional payroll error
 14 due to a clerical or inadvertent mistake. In reviewing for
 15 compliance with this section, the factfinder may consider as a
 16 relevant factor whether the employer, prior to an alleged violation,
 17 has adopted and is in compliance with a set of policies, procedures,
 18 and practices that fully comply with this section.

19 (f) A failure by an employer to permit a current or former
 20 employee to inspect or copy records, *or to receive a copy of the*
 21 *records, or any combination thereof, as specified by the employee*
 22 *pursuant to subdivision (b)* within the time set forth in subdivision
 23 (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.

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