

AMENDED IN SENATE FEBRUARY 20, 2014

AMENDED IN ASSEMBLY MAY 29, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 155**

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**Introduced by Assembly Member Alejo**

January 22, 2013

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~~An act to amend Section 226 of the Labor Code, relating to employment. An act to add Section 87 to the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), relating to water.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 155, as amended, Alejo. ~~Employment: payroll records: right to inspect.~~ *Monterey County Water Resources Agency: Salinas River Management Program.*

*Existing law, the Monterey County Water Resources Agency Act, establishes the Monterey County Water Resources Agency as a flood control and water agency within the County of Monterey.*

*This bill would require the agency to establish a multiobjective, multibenefit consensus-based comprehensive Salinas River Management Program and would require the agency to establish a steering committee to develop the program. By requiring the agency to establish a new program, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

~~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. Under existing law, if the employer provides copies of the records, the employer is authorized to charge any actual 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 and would require the employer to comply with that election. The bill would entitle a former employee terminated for workplace violence or harassment only to receive a copy of the records, without any charge by the employer. The bill would define “actual cost of reproduction” to mean only the per page cost to the employer for the physical duplication of the records. The bill would also declare the Legislature’s intent in this regard.~~

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

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

- 1     *SECTION 1. Section 87 is added to the Monterey County Water*
- 2     *Resources Agency Act (Chapter 1159 of the Statutes of 1990), to*
- 3     *read:*
- 4     *87. (a) The Legislature hereby finds and declares all of the*
- 5     *following:*
- 6     *(1) The Salinas River watershed consists of 4,200 square miles*
- 7     *of land. Much of the watershed is prime agricultural and*
- 8     *rangeland, providing a strong base for the region’s economy.*
- 9     *Much of the land within the watershed provides housing,*
- 10    *employment, recreation, and education opportunities for central*
- 11    *coast residents and visitors from throughout the state, nation, and*
- 12    *world.*

1 (2) *The Salinas River watershed includes portions of the*  
2 *Counties of Monterey and San Luis Obispo and each of those*  
3 *counties is concerned about the ability of its communities to sustain*  
4 *a high quality of life with regard to agriculture, housing,*  
5 *commerce, education, and environmental protection.*

6 (3) *The Salinas River watershed includes numerous streams,*  
7 *creeks, rivers, wetlands, and estuaries that form the natural*  
8 *drainage system that directs rainwater to the ocean. The Salinas*  
9 *River watershed also includes numerous manmade water*  
10 *collection, drainage, and water disposal projects and systems that*  
11 *also direct rainwater to the ocean.*

12 (4) *The Salinas River watershed includes millions of square feet*  
13 *of impervious surfaces, such as roads, parking lots, homes,*  
14 *commercial and agricultural structures, schools, and playgrounds,*  
15 *all of which reduce the amount of natural groundwater recharge*  
16 *that would otherwise be available to reduce rainwater runoff.*

17 (5) *The Salinas River watershed includes flood control structures*  
18 *that were designed and constructed many years ago. Those flood*  
19 *control structures are now proving to be inadequate to protect the*  
20 *area's agricultural lands, commercial, residential, and public*  
21 *sector buildings, and environmental resources.*

22 (6) *Recent floods along the Salinas River watershed have*  
23 *resulted in significant physical and economic loss. The severe*  
24 *floods of 1995 damaged approximately 30,000 acres of agricultural*  
25 *land, resulted in the permanent loss of 1,100 acres of prime*  
26 *farmland to erosion, flood-related losses were estimated at two*  
27 *hundred forty million dollars (\$240,000,000), and virtually all the*  
28 *flood control levees along the Salinas River were destroyed or*  
29 *severely damaged. In 1998, flooding caused 50 roads and highways*  
30 *to be closed, with 29,000 acres of farmland damaged, and created*  
31 *agricultural losses of over seven million dollars (\$7,000,000). In*  
32 *2011, the reported agricultural losses from flooding included*  
33 *approximately four million dollars (\$4,000,000) in lost gross*  
34 *production value and approximately one million five hundred*  
35 *thousand dollars (\$1,500,000) in cleanup and ranch repair.*

36 (7) *The Salinas River flows through and irrigates some of the*  
37 *richest and most fertile agricultural lands in the state and even*  
38 *the world. The crops grown here are shipped to almost every*  
39 *corner of the globe. If a disastrous flood is to occur, the impact*

1 *will be felt worldwide and have serious consequences on our state*  
2 *and national economy.*

3 *(8) The County of Monterey agriculture sector generates nearly*  
4 *eight billion two hundred million dollars (\$8,200,000,000) annually*  
5 *and supports more than 73,000 jobs, including, but not limited to,*  
6 *farm workers, packing house employees, truck drivers, and*  
7 *warehouse personnel. According to a Department of Food and*  
8 *Agriculture report, the County of Monterey is the fourth largest*  
9 *agricultural producing county in the state representing almost 10*  
10 *percent of the state's annual agricultural production. The County*  
11 *of Monterey grows more than 50 crops with an annual gross*  
12 *production of over one million dollars (\$1,000,000), including,*  
13 *but not limited to, strawberries, lettuce, broccoli, celery, and wine*  
14 *grapes.*

15 *(9) There is a need for a local, intergovernmental, and*  
16 *cooperative governance structure, with public-private partnership*  
17 *involvement, for the Salinas River watershed in order to develop*  
18 *and implement a systemic, rational, and cost-effective program of*  
19 *flood control and watershed management.*

20 *(10) It is the intent of the Legislature, through the enactment of*  
21 *this section, to enable the local governments and local residents*  
22 *of the Salinas River watershed to exercise appropriate powers to*  
23 *ensure that the human, economic, and environmental resources*  
24 *of the watershed are preserved, protected, and enhanced in terms*  
25 *of watershed management and flood protection.*

26 *(b) The agency shall establish a multiobjective, multibenefit*  
27 *consensus-based comprehensive Salinas River Management*  
28 *Program. The program shall address the long-term management*  
29 *of the Salinas River to protect the unique environmental, cultural,*  
30 *and agricultural resources within the Salinas Valley.*

31 *(c) The agency shall establish a steering committee that shall*  
32 *develop the program. The steering committee shall include*  
33 *representatives from all major interested parties, including, but*  
34 *not limited to, landowners, regulatory agencies, environmental*  
35 *organizations, the agency, and local governments, including, but*  
36 *not limited to, the County of Monterey.*

37 *SEC. 2. If the Commission on State Mandates determines that*  
38 *this act contains costs mandated by the state, reimbursement to*  
39 *local agencies and school districts for those costs shall be made*

1 *pursuant to Part 7 (commencing with Section 17500) of Division*  
2 *4 of Title 2 of the Government Code.*

3 ~~SECTION 1. The Legislature finds and declares all of the~~  
4 ~~following:~~

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

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

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

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

33 ~~(e) The Department of Industrial Relations, in its August 26,~~  
34 ~~1988, Enrolled Bill Report recommending that the Governor sign~~  
35 ~~the bill, stated: "This bill would require an employer, who is~~  
36 ~~mandated by law to keep wage deduction records, to allow~~  
37 ~~employees to inspect and/or copy such records. [The bill also]~~  
38 ~~permits employers to charge employees for the actual costs of~~  
39 ~~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, semimonthly or at the time of each~~  
32 ~~payment of wages, shall 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 all of the following: (1) gross wages earned, (2) total~~  
37 ~~hours worked by the employee, except for any employee whose~~  
38 ~~compensation is solely based on a salary and who is exempt from~~  
39 ~~payment of overtime under subdivision (a) of Section 515 or any~~  
40 ~~applicable order of the Industrial Welfare Commission, (3) the~~

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

27 (b) An employer that is required by this code or any regulation  
28 adopted pursuant to this code to keep the information required by  
29 subdivision (a) shall afford current and former employees the right  
30 to inspect or copy records pertaining to their employment, upon  
31 reasonable request to the employer, except that a former employee  
32 terminated for workplace violence or harassment shall be entitled  
33 only to receive a copy of the records, without any charge by the  
34 employer. The employer may take reasonable steps to ensure the  
35 identity of a current or former employee. In making a request under  
36 this subdivision, an employee shall elect to inspect or copy the  
37 records, or to receive a copy of the records, or any combination  
38 thereof. If the employer provides copies of the records, the  
39 employer may charge the actual cost of reproduction to the current  
40 or former employee. For purposes of this subdivision, "actual cost

1 of production” means only the per page cost to the employer for  
2 the physical duplication of the records.

3 (e) ~~An employer who receives a written or oral request to inspect  
4 or copy records, or to receive a copy of the records, or any  
5 combination thereof, as specified by the employee pursuant to  
6 subdivision (b) pertaining to a current or former employee shall  
7 comply with the request as soon as practicable, but no later than  
8 21 calendar days from the date of the request. A violation of this  
9 subdivision is an infraction. Impossibility of performance, not  
10 caused by or a result of a violation of law, shall be an affirmative  
11 defense for an employer in any action alleging a violation of this  
12 subdivision. An employer may designate the person to whom a  
13 request under this subdivision will be made.~~

14 (d) ~~This section does not apply to any employer of any person  
15 employed by the owner or occupant of a residential dwelling whose  
16 duties are incidental to the ownership, maintenance, or use of the  
17 dwelling, including the care and supervision of children, or whose  
18 duties are personal and not in the course of the trade, business,  
19 profession, or occupation of the owner or occupant.~~

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

28 (2) (A) ~~An employee is deemed to suffer injury for purposes  
29 of this subdivision if the employer fails to provide a wage  
30 statement.~~

31 (B) ~~An employee is deemed to suffer injury for purposes of this  
32 subdivision if the employer fails to provide accurate and complete  
33 information as required by any one or more of items (1) to (9),  
34 inclusive, of subdivision (a) and the employee cannot promptly  
35 and easily determine from the wage statement alone one or more  
36 of the following:~~

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

1     ~~(ii) Which deductions the employer made from gross wages to~~  
2 ~~determine the net wages paid to the employee during the pay~~  
3 ~~period. Nothing in this subdivision alters the ability of the employer~~  
4 ~~to aggregate deductions consistent with the requirements of item~~  
5 ~~(4) of subdivision (a):~~

6     ~~(iii) The name and address of the employer and, if the employer~~  
7 ~~is a farm labor contractor, as defined in subdivision (b) of Section~~  
8 ~~1682, the name and address of the legal entity that secured the~~  
9 ~~services of the employer during the pay period:~~

10     ~~(iv) The name of the employee and only the last four digits of~~  
11 ~~his or her social security number or an employee identification~~  
12 ~~number other than a social security number.~~

13     ~~(C) For purposes of this paragraph, “promptly and easily~~  
14 ~~determine” means a reasonable person would be able to readily~~  
15 ~~ascertain the information without reference to other documents or~~  
16 ~~information.~~

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

24     ~~(f) A failure by an employer to permit a current or former~~  
25 ~~employee to inspect or copy records, or to receive a copy of the~~  
26 ~~records, or any combination thereof, as specified by the employee~~  
27 ~~pursuant to subdivision (b) within the time set forth in subdivision~~  
28 ~~(e) entitles the current or former employee or the Labor~~  
29 ~~Commissioner to recover a seven-hundred-fifty-dollar (\$750)~~  
30 ~~penalty from the employer.~~

31     ~~(g) The listing by an employer of the name and address of the~~  
32 ~~legal entity that secured the services of the employer in the itemized~~  
33 ~~statement required by subdivision (a) shall not create any liability~~  
34 ~~on the part of that legal entity.~~

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

38     ~~(i) This section does not apply to the state, to any city, county,~~  
39 ~~city and county, district, or to any other governmental entity, except~~  
40 ~~that if the state or a city, county, city and county, district, or other~~

1 governmental entity furnishes its employees with a check, draft,  
2 or voucher paying the employee's wages, the state or a city, county,  
3 city and county, district, or other governmental entity shall use no  
4 more than the last four digits of the employee's social security  
5 number or shall use an employee identification number other than  
6 the social security number on the itemized statement provided with  
7 the check, draft, or voucher.

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