

ASSEMBLY BILL

No. 1336

Introduced by Assembly Member Frazier

February 22, 2013

An act to amend Sections 1771.2 and 1776 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 1336, as introduced, Frazier. Prevailing wages: payroll records.

Existing law requires contractors engaged in public works to pay employees the prevailing wage, as determined by the Director of Industrial Relations, and to comply with requirements relating to recordkeeping and employee work schedules. A joint labor-management committee, established pursuant to a specified provision of federal law, is authorized to bring an action against any employer who fails to pay prevailing wages as required by state law. The action is required to be commenced not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work, or some part thereof, was performed, or not later than 180 days after acceptance of the public work, whichever occurs last.

This bill would delete the requirement that the action be commenced not later than 180 days after the filing of a valid notice of completion, as prescribed, or not later than 180 days after acceptance of the public work, whichever occurs last, and would instead require that the action be commenced not later than 3 years after the wages were due. The bill would authorize a joint labor-management committee, through its employees or designated representatives, to visit any public works project site to monitor compliance with applicable statutes by any contractor or subcontractor performing work on the site, as long as

employees or representatives of the committee comply with reasonable safety rules and do not disrupt performance of the work. The bill would also require, among other things, the court, in an action on prevailing wages, to award restitution to an employee for unpaid wages, plus interest, from the date the wages became payable, and would authorize the imposition of civil penalties, injunctive relief, or any other appropriate equitable relief.

Existing law requires each contractor and subcontractor to keep accurate payroll records showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee is required to be marked or obliterated only to prevent disclosure of an individual’s name and social security number.

This bill would instead require that any copy of payroll records made available for inspection by, or furnished to, a joint labor-management committee, established pursuant to federal law, is required to be marked or obliterated only to prevent disclosure of an individual’s social security number. The bill would also require that any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund that requests the records for the purposes of allocating contributions to participants be marked or obliterated only to prevent disclosure of an individual’s full social security number, but provide the last 4 digits of the social security number.

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

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

- 1 SECTION 1. Section 1771.2 of the Labor Code is amended to
- 2 read:
- 3 1771.2. (a) A joint labor-management committee established
- 4 pursuant to the federal Labor Management Cooperation Act of
- 5 1978 (~~Section 175a of Title 29 of the United States Code~~) (29
- 6 *U.S.C. Sec. 175a*) may bring an action in any court of competent
- 7 jurisdiction against an employer that fails to pay the prevailing
- 8 wage to its employees, as required by this article. This action shall
- 9 be commenced not later than ~~180 days after the filing of a valid~~

1 ~~notice of completion in the office of the county recorder in each~~
2 ~~county in which the public work or some part thereof was~~
3 ~~performed, or not later than 180 days after acceptance of the public~~
4 ~~work, whichever last occurs three years after the wages were due.~~

5 (b) A joint labor-management committee established pursuant
6 to the federal Labor Management Cooperation Act of 1978 (29
7 U.S.C. Sec. 175a), through its employees or designated
8 representatives, may visit any public works project site to monitor
9 compliance with this chapter by any contractor or subcontractor
10 performing work on the site, provided that employees or
11 representatives of the committee comply with reasonable safety
12 rules and do not disrupt the performance of work.

13 (c) (1) In an action brought pursuant to this section, the court
14 shall award restitution to an employee for unpaid wages, plus
15 interest, under Section 3289 of the Civil Code from the date that
16 the wages became due and payable, and liquidated damages equal
17 to the amount of unpaid wages owed, and may impose civil
18 penalties in accordance with Section 1775, injunctive relief, or
19 any other appropriate form of equitable relief. The court shall
20 award a prevailing joint labor management committee its
21 reasonable attorney's fees and costs incurred in maintaining the
22 action, including expert witness fees.

23 (2) An action pursuant to this section shall not be based on the
24 employer's misclassification of the craft of a worker in its certified
25 payroll records.

26 (3) This subdivision does not limit any other available remedies
27 for a violation of this chapter.

28 SEC. 2. Section 1776 of the Labor Code is amended to read:

29 1776. (a) Each contractor and subcontractor shall keep accurate
30 payroll records, showing the name, address, social security number,
31 work classification, straight time and overtime hours worked each
32 day and week, and the actual per diem wages paid to each
33 journeyman, apprentice, worker, or other employee employed by
34 him or her in connection with the public work. Each payroll record
35 shall contain or be verified by a written declaration that it is made
36 under penalty of perjury, stating both of the following:

37 (1) The information contained in the payroll record is true and
38 correct.

1 (2) The employer has complied with the requirements of
2 Sections 1771, 1811, and 1815 for any work performed by his or
3 her employees on the public works project.

4 (b) The payroll records enumerated under subdivision (a) shall
5 be certified and shall be available for inspection at all reasonable
6 hours at the principal office of the contractor on the following
7 basis:

8 (1) A certified copy of an employee’s payroll record shall be
9 made available for inspection or furnished to the employee or his
10 or her authorized representative on request.

11 (2) A certified copy of all payroll records enumerated in
12 subdivision (a) shall be made available for inspection or furnished
13 upon request to a representative of the body awarding the contract
14 and the Division of Labor Standards Enforcement of the
15 Department of Industrial Relations.

16 (3) A certified copy of all payroll records enumerated in
17 subdivision (a) shall be made available upon request by the public
18 for inspection or for copies thereof. However, a request by the
19 public shall be made through either the body awarding the contract
20 or the Division of Labor Standards Enforcement. If the requested
21 payroll records have not been provided pursuant to paragraph (2),
22 the requesting party shall, prior to being provided the records,
23 reimburse the costs of preparation by the contractor, subcontractors,
24 and the entity through which the request was made. The public
25 may not be given access to the records at the principal office of
26 the contractor.

27 (c) The certified payroll records shall be on forms provided by
28 the Division of Labor Standards Enforcement or shall contain the
29 same information as the forms provided by the division. The
30 payroll records may consist of printouts of payroll data that are
31 maintained as computer records, if the printouts contain the same
32 information as the forms provided by the division and the printouts
33 are verified in the manner specified in subdivision (a).

34 (d) A contractor or subcontractor shall file a certified copy of
35 the records enumerated in subdivision (a) with the entity that
36 requested the records within 10 days after receipt of a written
37 request.

38 (e) Except as provided in subdivision (f), any copy of records
39 made available for inspection as copies and furnished upon request
40 to the public or any public agency by the awarding body or the

1 Division of Labor Standards Enforcement shall be marked or
2 obliterated to prevent disclosure of an individual's name, address,
3 and social security number. The name and address of the contractor
4 awarded the contract or the subcontractor performing the contract
5 shall not be marked or obliterated. *Any copy of records made*
6 *available for inspection by, or furnished to, a multiemployer*
7 *Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests*
8 *the records for the purposes of allocating contributions to*
9 *participants shall be marked or obliterated only to prevent*
10 *disclosure of an individual's full social security number, but shall*
11 *provide the last four digits of the social security number.* Any copy
12 of records made available for inspection by, or furnished to, a joint
13 labor-management committee established pursuant to the federal
14 Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a)
15 shall be marked or obliterated only to prevent disclosure of an
16 individual's ~~name and~~ social security number. A joint labor
17 management committee may maintain an action in a court of
18 competent jurisdiction against an employer who fails to comply
19 with Section 1774. The court may award restitution to an employee
20 for unpaid wages and may award the joint labor management
21 committee reasonable attorney's fees and costs incurred in
22 maintaining the action. An action under this subdivision may not
23 be based on the employer's misclassification of the craft of a
24 worker on its certified payroll records. Nothing in this subdivision
25 limits any other available remedies for a violation of this chapter.

26 (f) (1) Notwithstanding any other provision of law, agencies
27 that are included in the Joint Enforcement Strike Force on the
28 Underground Economy established pursuant to Section 329 of the
29 Unemployment Insurance Code and other law enforcement
30 agencies investigating violations of law shall, upon request, be
31 provided nonredacted copies of certified payroll records. Any
32 copies of records or certified payroll made available for inspection
33 and furnished upon request to the public by an agency included in
34 the Joint Enforcement Strike Force on the Underground Economy
35 or to a law enforcement agency investigating a violation of law
36 shall be marked or redacted to prevent disclosure of an individual's
37 name, address, and social security number.

38 (2) An employer shall not be liable for damages in a civil action
39 for any reasonable act or omission taken in good faith in
40 compliance with this subdivision.

- 1 (g) The contractor shall inform the body awarding the contract
- 2 of the location of the records enumerated under subdivision (a),
- 3 including the street address, city, and county, and shall, within five
- 4 working days, provide a notice of a change of location and address.
- 5 (h) The contractor or subcontractor has 10 days in which to
- 6 comply subsequent to receipt of a written notice requesting the
- 7 records enumerated in subdivision (a). In the event that the
- 8 contractor or subcontractor fails to comply within the 10-day
- 9 period, he or she shall, as a penalty to the state or political
- 10 subdivision on whose behalf the contract is made or awarded,
- 11 forfeit one hundred dollars (\$100) for each calendar day, or portion
- 12 thereof, for each worker, until strict compliance is effectuated.
- 13 Upon the request of the Division of Labor Standards Enforcement,
- 14 these penalties shall be withheld from progress payments then due.
- 15 A contractor is not subject to a penalty assessment pursuant to this
- 16 section due to the failure of a subcontractor to comply with this
- 17 section.
- 18 (i) The body awarding the contract shall cause to be inserted in
- 19 the contract stipulations to effectuate this section.
- 20 (j) The director shall adopt rules consistent with the California
- 21 Public Records Act (Chapter 3.5 (commencing with Section 6250)
- 22 of Division 7 of Title 1 of the Government Code) and the
- 23 Information Practices Act of 1977 (Title 1.8 (commencing with
- 24 Section 1798) of Part 4 of Division 3 of the Civil Code) governing
- 25 the release of these records, including the establishment of
- 26 reasonable fees to be charged for reproducing copies of records
- 27 required by this section.