

AMENDED IN ASSEMBLY APRIL 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1336**

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**Introduced by Assembly Member Frazier**

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1336, as amended, 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~~ *24 months* 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 (29 U.S.C. Sec. 175a) may bring an action in any court of
- 6 competent jurisdiction against an employer that fails to pay the
- 7 prevailing wage to its employees, as required by this article. This

1 action shall be commenced not later than ~~three years~~ *24 months*  
2 after the wages were due.

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

11 (e)

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

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

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

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

28 1776. (a) Each contractor and subcontractor shall keep accurate  
29 payroll records, showing the name, address, social security number,  
30 work classification, straight time and overtime hours worked each  
31 day and week, and the actual per diem wages paid to each  
32 journeyman, apprentice, worker, or other employee employed by  
33 him or her in connection with the public work. Each payroll record  
34 shall contain or be verified by a written declaration that it is made  
35 under penalty of perjury, stating both of the following:

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

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

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

5 (1) A certified copy of an employee's payroll record shall be  
6 made available for inspection or furnished to the employee or his  
7 or her authorized representative on request.

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

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

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

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

35 (e) Except as provided in subdivision (f), any copy of records  
36 made available for inspection as copies and furnished upon request  
37 to the public or any public agency by the awarding body or the  
38 Division of Labor Standards Enforcement shall be marked or  
39 obliterated to prevent disclosure of an individual's name, address,  
40 and social security number. The name and address of the contractor

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

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

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

38 (g) The contractor shall inform the body awarding the contract  
39 of the location of the records enumerated under subdivision (a),

1 including the street address, city, and county, and shall, within five  
2 working days, provide a notice of a change of location and address.

3 (h) The contractor or subcontractor has 10 days in which to  
4 comply subsequent to receipt of a written notice requesting the  
5 records enumerated in subdivision (a). In the event that the  
6 contractor or subcontractor fails to comply within the 10-day  
7 period, he or she shall, as a penalty to the state or political  
8 subdivision on whose behalf the contract is made or awarded,  
9 forfeit one hundred dollars (\$100) for each calendar day, or portion  
10 thereof, for each worker, until strict compliance is effectuated.  
11 Upon the request of the Division of Labor Standards Enforcement,  
12 these penalties shall be withheld from progress payments then due.  
13 A contractor is not subject to a penalty assessment pursuant to this  
14 section due to the failure of a subcontractor to comply with this  
15 section.

16 (i) The body awarding the contract shall cause to be inserted in  
17 the contract stipulations to effectuate this section.

18 (j) The director shall adopt rules consistent with the California  
19 Public Records Act (Chapter 3.5 (commencing with Section 6250)  
20 of Division 7 of Title 1 of the Government Code) and the  
21 Information Practices Act of 1977 (Title 1.8 (commencing with  
22 Section 1798) of Part 4 of Division 3 of the Civil Code) governing  
23 the release of these records, including the establishment of  
24 reasonable fees to be charged for reproducing copies of records  
25 required by this section.