

AMENDED IN SENATE JUNE 14, 2013

AMENDED IN ASSEMBLY APRIL 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1336

Introduced by Assembly Member Frazier

February 22, 2013

An act to amend Sections 1741, 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 the Labor Commissioner, if the commissioner or his or her designee determines after an investigation that there has been a violation of the public works provisions, to issue a civil wage and penalty assessment to the contractor or subcontractor, or both. The assessment is required to be in writing, describe the nature of the violation and the amount of wages, penalties, and forfeitures due, and include the basis for the assessment. The assessment is required to be served 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. If the assessment is served after the expiration of the 180-day period, but before the expiration of an additional 180 days, and the awarding body has not yet made full payment to the contractor, the assessment is valid up to the amount of the funds retained.

This bill would change the deadline for service of the assessment to not later than 18 months 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 18 months after acceptance of the public work, whichever occurs last. The bill would delete the provisions with regard to an assessment served after the expiration of the 180-day period.

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 *180-day* 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 ~~24 months~~ *18 months 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 18 months after acceptance of the public work, whichever occurs last.* The bill would 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 liquidated damages equal to the amount of unpaid wages owed,* 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. *The bill would make other technical, nonsubstantive changes to these provisions.*

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 1741 of the Labor Code is amended to
2 read:

3 1741. (a) If the Labor Commissioner or his or her designee
4 determines after an investigation that there has been a violation of
5 this chapter, the Labor Commissioner shall with reasonable
6 promptness issue a civil wage and penalty assessment to the
7 contractor or subcontractor, or both. The assessment shall be in
8 writing ~~and~~, shall describe the nature of the violation and the
9 amount of wages, penalties, and forfeitures due, and shall include
10 the basis for the assessment. The assessment shall be served not
11 later than ~~180 days~~ 18 months after the filing of a valid notice of
12 completion in the office of the county recorder in each county in
13 which the public work or some part thereof was performed, or not
14 later than ~~180 days~~ 18 months after acceptance of the public work,
15 whichever occurs last. ~~However, if the assessment is served after~~
16 ~~the expiration of this 180-day period, but before the expiration of~~
17 ~~an additional 180 days, and the awarding body has not yet made~~
18 ~~full payment to the contractor, the assessment is valid up to the~~
19 ~~amount of the funds retained.~~ Service of the assessment shall be
20 completed pursuant to Section 1013 of the Code of Civil Procedure
21 by first-class and certified mail to the contractor, subcontractor,
22 and awarding body. The assessment shall advise the contractor
23 and subcontractor of the procedure for obtaining review of the
24 assessment. The Labor Commissioner shall, to the extent

1 practicable, ascertain the identity of any bonding company issuing
 2 a bond that secures the payment of wages covered by the
 3 assessment and any surety on a bond, and shall serve a copy of the
 4 assessment by certified mail to the bonding company or surety at
 5 the same time service is made to the contractor, subcontractor, and
 6 awarding body. However, no bonding company or surety shall be
 7 relieved of its responsibilities because it failed to receive notice
 8 from the Labor Commissioner.

9 (b) Interest shall accrue on all due and unpaid wages at the rate
 10 described in subdivision (b) of Section 3289 of the Civil Code.
 11 The interest shall accrue from the date that the wages were due
 12 and payable, as provided in Part 7 (commencing with Section
 13 1720) of Division 2, until the wages are paid.

14 (c) (1) The Labor Commissioner shall maintain a public list of
 15 the names of each contractor and subcontractor who has been found
 16 to have committed a willful violation of Section 1775 or to whom
 17 a final order, which is no longer subject to judicial review, has
 18 been issued.

19 (2) The list shall include the date of each assessment, the amount
 20 of wages and penalties assessed, and the amount collected.

21 (3) The list shall be updated at least quarterly, and the
 22 contractor's or subcontractor's name shall remain on that list until
 23 the assessment is satisfied, or for a period of three years beginning
 24 from the date of the issuance of the assessment, whichever is later.

25 **SECTION 1.**

26 *SEC. 2.* Section 1771.2 of the Labor Code is amended to read:

27 1771.2. (a) A joint labor-management committee established
 28 pursuant to the federal Labor Management Cooperation Act of
 29 1978 (29 U.S.C. Sec. 175a) may bring an action in any court of
 30 competent jurisdiction against an employer that fails to pay the
 31 prevailing wage to its employees, as required by this article. This
 32 action shall be commenced not later than ~~24 months after the wages~~
 33 ~~were due.~~ *18 months after the filing of a valid notice of completion*
 34 *in the office of the county recorder in each county in which the*
 35 *public work or some part thereof was performed, or not later than*
 36 *18 months after acceptance of the public work, whichever occurs*
 37 *last.*

38 (b) (1) In an action brought pursuant to this section, the court
 39 shall award restitution to an employee for unpaid wages, plus
 40 interest, under Section 3289 of the Civil Code from the date that

1 the wages became due and payable, and liquidated damages equal
 2 to the amount of unpaid wages owed, and may impose civil
 3 penalties in accordance with Section 1775, injunctive relief, or
 4 any other appropriate form of equitable relief. *The court shall*
 5 *follow the same standards and have the same discretion in setting*
 6 *the amount of penalties as are provided by subdivision (a) of*
 7 *Section 1775. The court shall award a prevailing joint-labor*
 8 ~~management~~ *labor-management committee its reasonable*
 9 *attorney’s fees and costs incurred in maintaining the action,*
 10 *including expert witness fees.*

11 (2) An action pursuant to this section shall not be based on the
 12 employer’s misclassification of the craft of a worker in its certified
 13 payroll records.

14 (3) *Liquidated damages shall be awarded only if the complaint*
 15 *alleges with specificity the wages due and unpaid to the individual*
 16 *workers, including how that amount was calculated, and the*
 17 *defendant fails to pay the wages, deposit that amount with the*
 18 *court to be held in escrow, or provide proof to the court of an*
 19 *adequate surety bond to cover the wages, within 60 days of service*
 20 *of the complaint. Liquidated damages shall be awarded only on*
 21 *the wages found to be due and unpaid. Additionally, if the*
 22 *defendant demonstrates to the satisfaction of the court that the*
 23 *defendant had substantial grounds for contesting that a portion*
 24 *of the allegedly unpaid wages were owed, the court may exercise*
 25 *its discretion to waive the payment of the liquidated damages with*
 26 *respect to that portion of the unpaid wages.*

27 ~~(3)~~

28 (4) This subdivision does not limit any other available remedies
 29 for a violation of this chapter.

30 ~~SEC. 2.~~

31 SEC. 3. Section 1776 of the Labor Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

4 (g) The contractor shall inform the body awarding the contract
5 of the location of the records enumerated under subdivision (a),
6 including the street address, city, and county, and shall, within five
7 working days, provide a notice of a change of location and address.

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

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

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