

AMENDED IN SENATE JUNE 24, 2013

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 and would instead require that the action be commenced 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 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 *only against an employer that failed to pay the prevailing wage to its employees*, 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, shall describe the nature of the violation and the amount
9 of wages, penalties, and forfeitures due, and shall include the basis
10 for the assessment. The assessment shall be served not later than
11 18 months after the filing of a valid notice of completion in the
12 office of the county recorder in each county in which the public
13 work or some part thereof was performed, or not later than 18
14 months after acceptance of the public work, whichever occurs last.
15 Service of the assessment shall be completed pursuant to Section
16 1013 of the Code of Civil Procedure by first-class and certified
17 mail to the contractor, subcontractor, and awarding body. The
18 assessment shall advise the contractor and subcontractor of the
19 procedure for obtaining review of the assessment. The Labor
20 Commissioner shall, to the extent practicable, ascertain the identity
21 of any bonding company issuing a bond that secures the payment
22 of wages covered by the assessment and any surety on a bond, and
23 shall serve a copy of the assessment by certified mail to the bonding
24 company or surety at the same time service is made to the

1 contractor, subcontractor, and awarding body. However, no
 2 bonding company or surety shall be relieved of its responsibilities
 3 because it failed to receive notice from the Labor Commissioner.

4 (b) Interest shall accrue on all due and unpaid wages at the rate
 5 described in subdivision (b) of Section 3289 of the Civil Code.
 6 The interest shall accrue from the date that the wages were due
 7 and payable, as provided in Part 7 (commencing with Section
 8 1720) of Division 2, until the wages are paid.

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

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

16 (3) The list shall be updated at least quarterly, and the
 17 contractor’s or subcontractor’s name shall remain on that list until
 18 the assessment is satisfied, or for a period of three years beginning
 19 from the date of the issuance of the assessment, whichever is later.

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

21 1771.2. (a) A joint labor-management committee established
 22 pursuant to the federal Labor Management Cooperation Act of
 23 1978 (29 U.S.C. Sec. 175a) may bring an action in any court of
 24 competent jurisdiction against an employer that fails to pay the
 25 prevailing wage to its employees, as required by this article. This
 26 action shall be commenced not later than 18 months after the filing
 27 of a valid notice of completion in the office of the county recorder
 28 in each county in which the public work or some part thereof was
 29 performed, or not later than 18 months after acceptance of the
 30 public work, whichever occurs last.

31 (b) (1) In an action brought pursuant to this section, the court
 32 shall award restitution to an employee for unpaid wages, plus
 33 interest, under Section 3289 of the Civil Code from the date that
 34 the wages became due and payable, and liquidated damages equal
 35 to the amount of unpaid wages owed, and may impose civil
 36 penalties, *only against an employer that failed to pay the prevailing*
 37 *wage to its employees*, in accordance with Section 1775, injunctive
 38 relief, or any other appropriate form of equitable relief. The court
 39 shall follow the same standards and have the same discretion in
 40 setting the amount of penalties as are provided by subdivision (a)

1 of Section 1775. The court shall award a prevailing joint
2 labor-management committee its reasonable attorney's fees and
3 costs incurred in maintaining the action, including expert witness
4 fees.

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

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

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

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

24 1776. (a) Each contractor and subcontractor shall keep accurate
25 payroll records, showing the name, address, social security number,
26 work classification, straight time and overtime hours worked each
27 day and week, and the actual per diem wages paid to each
28 journeyman, apprentice, worker, or other employee employed by
29 him or her in connection with the public work. Each payroll record
30 shall contain or be verified by a written declaration that it is made
31 under penalty of perjury, stating both of the following:

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

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

37 (b) The payroll records enumerated under subdivision (a) shall
38 be certified and shall be available for inspection at all reasonable
39 hours at the principal office of the contractor on the following
40 basis:

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

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

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

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

27 (d) A contractor or subcontractor shall file a certified copy of
28 the records enumerated in subdivision (a) with the entity that
29 requested the records within 10 days after receipt of a written
30 request.

31 (e) Except as provided in subdivision (f), any copy of records
32 made available for inspection as copies and furnished upon request
33 to the public or any public agency by the awarding body or the
34 Division of Labor Standards Enforcement shall be marked or
35 obliterated to prevent disclosure of an individual's name, address,
36 and social security number. The name and address of the contractor
37 awarded the contract or the subcontractor performing the contract
38 shall not be marked or obliterated. Any copy of records made
39 available for inspection by, or furnished to, a multiemployer
40 Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests

1 the records for the purposes of allocating contributions to
2 participants shall be marked or obliterated only to prevent
3 disclosure of an individual's full social security number, but shall
4 provide the last four digits of the social security number. Any copy
5 of records made available for inspection by, or furnished to, a joint
6 labor-management committee established pursuant to the federal
7 Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a)
8 shall be marked or obliterated only to prevent disclosure of an
9 individual's social security number.

10 (f) (1) Notwithstanding any other provision of law, agencies
11 that are included in the Joint Enforcement Strike Force on the
12 Underground Economy established pursuant to Section 329 of the
13 Unemployment Insurance Code and other law enforcement
14 agencies investigating violations of law shall, upon request, be
15 provided nonredacted copies of certified payroll records. Any
16 copies of records or certified payroll made available for inspection
17 and furnished upon request to the public by an agency included in
18 the Joint Enforcement Strike Force on the Underground Economy
19 or to a law enforcement agency investigating a violation of law
20 shall be marked or redacted to prevent disclosure of an individual's
21 name, address, and social security number.

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

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

29 (h) The contractor or subcontractor has 10 days in which to
30 comply subsequent to receipt of a written notice requesting the
31 records enumerated in subdivision (a). In the event that the
32 contractor or subcontractor fails to comply within the 10-day
33 period, he or she shall, as a penalty to the state or political
34 subdivision on whose behalf the contract is made or awarded,
35 forfeit one hundred dollars (\$100) for each calendar day, or portion
36 thereof, for each worker, until strict compliance is effectuated.
37 Upon the request of the Division of Labor Standards Enforcement,
38 these penalties shall be withheld from progress payments then due.
39 A contractor is not subject to a penalty assessment pursuant to this

1 section due to the failure of a subcontractor to comply with this
2 section.

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

5 (j) The director shall adopt rules consistent with the California
6 Public Records Act (Chapter 3.5 (commencing with Section 6250)
7 of Division 7 of Title 1 of the Government Code) and the
8 Information Practices Act of 1977 (Title 1.8 (commencing with
9 Section 1798) of Part 4 of Division 3 of the Civil Code) governing
10 the release of these records, including the establishment of
11 reasonable fees to be charged for reproducing copies of records
12 required by this section.

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