

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2271**

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**Introduced by Assembly Member Ian Calderon**

February 21, 2014

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An act to ~~amend Section 98 of~~ *add Chapter 3.95 (commencing with Section 1045) to Part 3 of Division 2 of the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2271, as amended, Ian Calderon. ~~Employment:—employee complaints: discrimination: status as unemployed.~~

*Existing law contains provisions that define unlawful discrimination and employment practices by employers and employment agencies.*

*This bill would make it unlawful, unless based on a bona fide occupational qualification or any other provision of law, for an employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state to publish an advertisement or announcement for any job that includes provisions pertaining to an individual's current employment or employment status, as specified.*

*This bill would subject an employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state who violates the above provisions to civil penalties that increase as the number of violations increase. This bill would also provide that no private right of action is authorized for a violation of these provisions.*

~~Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law provides for criminal and civil penalties for~~

violations of statutes and orders of the commission regarding payment of wages.

~~This bill would make technical, nonsubstantive changes to this provision.~~

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

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

1 SECTION 1. Chapter 3.95 (commencing with Section 1045)  
2 is added to Part 3 of Division 2 of the Labor Code, to read:

3  
4 CHAPTER 3.95. EMPLOYMENT DISCRIMINATION ON THE BASIS  
5 OF EMPLOYMENT STATUS

6  
7 1045. For purposes of this chapter, the following definitions  
8 apply:

9 (a) "Employer" means the state or any political or civil  
10 subdivision of the state and any person, as defined in Section 18,  
11 who directly or indirectly, or through an agent or any other person,  
12 employs or exercises control over the wages, hours, or working  
13 conditions of any person.

14 (b) "Employment agency" has the same meaning as defined in  
15 Section 1812.501 of the Civil Code.

16 (c) "Employment status" means an individual's present  
17 unemployment, regardless of the length of time that the individual  
18 has been unemployed.

19 1046. (a) Unless based on a bona fide occupational  
20 qualification, an employer shall not do either of the following:

21 (1) Publish in print, on the Internet or in any other medium, an  
22 advertisement or announcement for any job that includes a  
23 provision stating or indicating that an individual's current  
24 employment is a requirement for the job.

25 (2) Affirmatively ask an applicant for employment to disclose,  
26 orally or in writing, information concerning the applicant's current  
27 employment status until the employer has determined that the  
28 applicant meets the minimum employment qualifications for the  
29 position, as stated in the published notice for the job.

30 (b) Unless based on a bona fide occupational qualification, an  
31 employment agency shall not do any of the following:

1 (1) Publish in print, on the Internet or in any other medium, an  
2 advertisement or announcement for any job that includes a  
3 provision stating or indicating that an individual's current  
4 employment is a requirement for a job.

5 (2) Limit, segregate, or classify an individual in any manner  
6 that may limit that individual's access to information about jobs  
7 or referrals for consideration of jobs because of the individual's  
8 employment status.

9 (3) Affirmatively ask an applicant for employment to disclose,  
10 orally or in writing, information concerning the applicant's current  
11 employment status until the employer has determined that the  
12 applicant meets the minimum employment qualifications for the  
13 position, as stated in the published notice for the job.

14 (c) Unless based on a bona fide occupational qualification, a  
15 person who operates an Internet Web site for posting jobs in this  
16 state shall not publish on that Internet Web site an advertisement  
17 or announcement for any job that includes a provision stating or  
18 indicating that an individual's current employment is a requirement  
19 for a job.

20 1047. Nothing in this chapter shall be construed to prohibit  
21 an employer, employment agency, or a person who operates an  
22 Internet Web site for posting jobs in this state, or an agent,  
23 representative, or designee of that employer, employment agency,  
24 or Internet Web site, from:

25 (a) Publishing in print, on the Internet or in any other medium,  
26 an advertisement or announcement for any job that contains any  
27 provision setting forth qualifications for a job, including:

28 (1) Holding a current and valid professional or occupational  
29 license, certificate, registration, permit, or other credential.

30 (2) Requiring a minimum level of education or training or  
31 professional, occupational, or field experience.

32 (3) Stating that only individuals who are current employees of  
33 the employer will be considered for that job.

34 (b) Setting forth qualifications for any job, including:

35 (1) Holding a current and valid professional or occupational  
36 license, certificate, registration, permit, or other credential.

37 (2) Requiring a minimum level of education or training or  
38 professional, occupational, or field experience.

39 (3) Stating that only individuals who are current employees of  
40 the employer will be considered for that job.

1 (c) Obtaining information regarding an individual's  
2 employment, including recent relevant experience.

3 (d) Having knowledge of a person's employment status.

4 (e) Inquiring as to the reasons for an individual's employment  
5 status.

6 (f) Refusing to offer employment to a person because of the  
7 reasons underlying an individual's employment status.

8 (g) Otherwise making employment decisions pertaining to that  
9 individual.

10 1048. An employer, an employment agency, or a person  
11 operating an Internet Web site for posting jobs shall not do either  
12 of the following:

13 (a) Interfere with, restrain, or deny the exercise of, or the  
14 attempt to exercise, any right provided under this chapter.

15 (b) Discriminate against any individual because the individual:

16 (1) Opposed any practice made unlawful by this chapter.

17 (2) Has instituted, or caused to be instituted, any proceeding  
18 under or related to this chapter.

19 (3) Has provided, or is about to provide, any information in  
20 connection with any inquiry or proceeding relating to any right  
21 provided under this chapter.

22 (4) Has testified, or is about to testify, in any inquiry or  
23 proceeding relating to any right provided under this chapter.

24 1049. An individual aggrieved by a violation of this chapter  
25 may file a complaint with the Labor Commissioner. The Labor  
26 Commissioner may impose a civil penalty against any employer,  
27 employment agency, or person operating an Internet Web site for  
28 posting jobs that the commissioner finds to be in violation of this  
29 chapter. An employer, employment agency, or person operating  
30 an Internet Web site for posting jobs that violates any provision  
31 of this chapter shall be subject to a civil penalty of one thousand  
32 dollars (\$1,000) for the first violation of this chapter, five thousand  
33 dollars (\$5,000) for the second violation, and ten thousand dollars  
34 (\$10,000) for each subsequent violation.

35 1049.5. Notwithstanding any provision of law, nothing in this  
36 chapter shall be construed to create or authorize a private right  
37 of action for a violation of this chapter.

38 SECTION 1. Section 98 of the Labor Code is amended to read:

39 98. (a) The Labor Commissioner is authorized to investigate  
40 employee complaints. The Labor Commissioner may provide for

1 a hearing in an action to recover wages, penalties, and other  
2 demands for compensation, including liquidated damages if the  
3 complaint alleges payment of a wage less than the minimum wage  
4 fixed by an order of the Industrial Welfare Commission or by  
5 statute, properly before the division or the Labor Commissioner,  
6 including orders of the Industrial Welfare Commission, and shall  
7 determine all matters arising under his or her jurisdiction. It is  
8 within the jurisdiction of the Labor Commissioner to accept and  
9 determine claims from holders of payroll checks or payroll drafts  
10 returned unpaid because of insufficient funds, if, after a diligent  
11 search, the holder is unable to return the dishonored check or draft  
12 to the payee and recover the sums paid out. Within 30 days of the  
13 filing of the complaint, the Labor Commissioner shall notify the  
14 parties as to whether a hearing will be held, whether action will  
15 be taken in accordance with Section 98.3, or whether no further  
16 action will be taken on the complaint. If the determination is made  
17 by the Labor Commissioner to hold a hearing, the hearing shall  
18 be held within 90 days of the date of that determination. However,  
19 the Labor Commissioner may postpone or grant additional time  
20 before setting a hearing if the Labor Commissioner finds that it  
21 would lead to an equitable and just resolution of the dispute. A  
22 party who has received actual notice of a claim before the Labor  
23 Commissioner shall, while the matter is before the Labor  
24 Commissioner, notify the Labor Commissioner in writing of a  
25 change in that party's business or personal address within 10 days  
26 after the change in address occurs.

27 It is the intent of the Legislature that hearings held pursuant to  
28 this section be conducted in an informal setting preserving the  
29 rights of the parties.

30 (b) When a hearing is set, a copy of the complaint, which shall  
31 include the amount of compensation requested, together with a  
32 notice of time and place of the hearing, shall be served on all  
33 parties, personally or by certified mail, or in the manner specified  
34 in Section 415.20 of the Code of Civil Procedure.

35 (c) Within 10 days after service of the notice and the complaint,  
36 a defendant may file an answer with the Labor Commissioner in  
37 a form as the Labor Commissioner may prescribe, setting forth  
38 the particulars in which the complaint is inaccurate or incomplete  
39 and the facts upon which the defendant intends to rely.

1 ~~(d) A pleading other than the complaint and answer of the~~  
2 ~~defendant or defendants shall not be required. Both shall be in~~  
3 ~~writing and shall conform to the form and the rules of practice and~~  
4 ~~procedure adopted by the Labor Commissioner.~~

5 ~~(e) Evidence on matters not pleaded in the answer shall be~~  
6 ~~allowed only on terms and conditions the Labor Commissioner~~  
7 ~~shall impose. In all these cases, the claimant shall be entitled to a~~  
8 ~~continuance for purposes of review of the new evidence.~~

9 ~~(f) If the defendant fails to appear or answer within the time~~  
10 ~~allowed under this chapter, a default shall not be taken against him~~  
11 ~~or her, but the Labor Commissioner shall hear the evidence offered~~  
12 ~~and shall issue an order, decision, or award in accordance with the~~  
13 ~~evidence. A defendant failing to appear or answer, or subsequently~~  
14 ~~contending to be aggrieved in a manner by want of notice of the~~  
15 ~~pendency of the proceedings, may apply to the Labor~~  
16 ~~Commissioner for relief in accordance with Section 473 of the~~  
17 ~~Code of Civil Procedure. The Labor Commissioner may afford~~  
18 ~~this relief. A right to relief, including the claim that the findings~~  
19 ~~or award of the Labor Commissioner or judgment entered thereon~~  
20 ~~are void upon their face, shall not accrue to the defendant in any~~  
21 ~~court unless prior application is made to the Labor Commissioner~~  
22 ~~in accordance with this chapter.~~

23 ~~(g) A hearing conducted pursuant to this chapter is governed~~  
24 ~~by the division and by the rules of practice and procedure adopted~~  
25 ~~by the Labor Commissioner.~~

26 ~~(h) (1) Whenever a claim is filed under this chapter against a~~  
27 ~~person operating or doing business under a fictitious business~~  
28 ~~name, as defined in Section 17900 of the Business and Professions~~  
29 ~~Code, which relates to the person's business, the division shall~~  
30 ~~inquire at the time of the hearing whether the name of the person~~  
31 ~~is the legal name under which the business or person has been~~  
32 ~~licensed, registered, incorporated, or otherwise authorized to do~~  
33 ~~business.~~

34 ~~(2) The division may amend an order, decision, or award to~~  
35 ~~conform to the legal name of the business or the person who is the~~  
36 ~~defendant to a wage claim, if it can be shown that proper service~~  
37 ~~was made on the defendant or his or her agent, unless a judgment~~  
38 ~~had been entered on the order, decision, or award pursuant to~~  
39 ~~subdivision (d) of Section 98.2. The Labor Commissioner may~~  
40 ~~apply to the clerk of the superior court to amend a judgment that~~

- 1 ~~has been issued pursuant to a final order, decision, or award to~~
- 2 ~~conform to the legal name of the defendant, if it can be shown that~~
- 3 ~~proper service was made on the defendant or his or her agent.~~

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