

ASSEMBLY BILL

No. 2461

Introduced by Assembly Member Morrell

February 21, 2014

An act to amend Section 226 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2461, as introduced, Morrell. Employment: payroll records: right to inspect.

Existing law requires an employer to furnish each employee with an accurate itemized statement showing, among other things, the gross and net wages earned, the inclusive dates of the pay period, and all deductions. Existing law requires the employer to keep on file a copy of the statement for at least 3 years at a specified location. Existing law affords current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Under existing law, if the employer provides copies of the records, the employer is authorized to charge any actual costs of reproduction of the employee's records to the current or former employee.

This bill would make a technical, nonsubstantive change to these provisions.

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

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

1 SECTION 1. Section 226 of the Labor Code is amended to
2 read:

1 226. (a) Every ~~employer shall~~, *employer*, semimonthly or at
2 the time of each payment of wages, *shall* furnish each of his or
3 her employees, either as a detachable part of the check, draft, or
4 voucher paying the employee's wages, or separately when wages
5 are paid by personal check or cash, an accurate itemized statement
6 in writing showing (1) gross wages earned, (2) total hours worked
7 by the employee, except for any employee whose compensation
8 is solely based on a salary and who is exempt from payment of
9 overtime under subdivision (a) of Section 515 or any applicable
10 order of the Industrial Welfare Commission, (3) the number of
11 piece-rate units earned and any applicable piece rate if the
12 employee is paid on a piece-rate basis, (4) all deductions, provided
13 that all deductions made on written orders of the employee may
14 be aggregated and shown as one item, (5) net wages earned, (6)
15 the inclusive dates of the period for which the employee is paid,
16 (7) the name of the employee and only the last four digits of his
17 or her social security number or an employee identification number
18 other than a social security number, (8) the name and address of
19 the legal entity that is the employer and, if the employer is a farm
20 labor contractor, as defined in subdivision (b) of Section 1682, the
21 name and address of the legal entity that secured the services of
22 the employer, and (9) all applicable hourly rates in effect during
23 the pay period and the corresponding number of hours worked at
24 each hourly rate by the employee and, beginning July 1, 2013, if
25 the employer is a temporary services employer as defined in
26 Section 201.3, the rate of pay and the total hours worked for each
27 temporary services assignment. The deductions made from payment
28 of wages shall be recorded in ink or other indelible form, properly
29 dated, showing the month, day, and year, and a copy of the
30 statement and the record of the deductions shall be kept on file by
31 the employer for at least three years at the place of employment
32 or at a central location within the State of California. For purposes
33 of this subdivision, "copy" includes a duplicate of the itemized
34 statement provided to an employee or a computer-generated record
35 that accurately shows all of the information required by this
36 subdivision.

37 (b) An employer that is required by this code or any regulation
38 adopted pursuant to this code to keep the information required by
39 subdivision (a) shall afford current and former employees the right
40 to inspect or copy records pertaining to their employment, upon

1 reasonable request to the employer. The employer may take
2 reasonable steps to ensure the identity of a current or former
3 employee. If the employer provides copies of the records, the actual
4 cost of reproduction may be charged to the current or former
5 employee.

6 (c) An employer who receives a written or oral request to inspect
7 or copy records pursuant to subdivision (b) pertaining to a current
8 or former employee shall comply with the request as soon as
9 practicable, but no later than 21 calendar days from the date of the
10 request. A violation of this subdivision is an infraction.
11 Impossibility of performance, not caused by or a result of a
12 violation of law, shall be an affirmative defense for an employer
13 in any action alleging a violation of this subdivision. An employer
14 may designate the person to whom a request under this subdivision
15 will be made.

16 (d) This section does not apply to any employer of any person
17 employed by the owner or occupant of a residential dwelling whose
18 duties are incidental to the ownership, maintenance, or use of the
19 dwelling, including the care and supervision of children, or whose
20 duties are personal and not in the course of the trade, business,
21 profession, or occupation of the owner or occupant.

22 (e) (1) An employee suffering injury as a result of a knowing
23 and intentional failure by an employer to comply with subdivision
24 (a) is entitled to recover the greater of all actual damages or fifty
25 dollars (\$50) for the initial pay period in which a violation occurs
26 and one hundred dollars (\$100) per employee for each violation
27 in a subsequent pay period, not to exceed an aggregate penalty of
28 four thousand dollars (\$4,000), and is entitled to an award of costs
29 and reasonable attorney's fees.

30 (2) (A) An employee is deemed to suffer injury for purposes
31 of this subdivision if the employer fails to provide a wage
32 statement.

33 (B) An employee is deemed to suffer injury for purposes of this
34 subdivision if the employer fails to provide accurate and complete
35 information as required by any one or more of items (1) to (9),
36 inclusive, of subdivision (a) and the employee cannot promptly
37 and easily determine from the wage statement alone one or more
38 of the following:

39 (i) The amount of the gross wages or net wages paid to the
40 employee during the pay period or any of the other information

1 required to be provided on the itemized wage statement pursuant
2 to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

3 (ii) Which deductions the employer made from gross wages to
4 determine the net wages paid to the employee during the pay
5 period. Nothing in this subdivision alters the ability of the employer
6 to aggregate deductions consistent with the requirements of item
7 (4) of subdivision (a).

8 (iii) The name and address of the employer and, if the employer
9 is a farm labor contractor, as defined in subdivision (b) of Section
10 1682, the name and address of the legal entity that secured the
11 services of the employer during the pay period.

12 (iv) The name of the employee and only the last four digits of
13 his or her social security number or an employee identification
14 number other than a social security number.

15 (C) For purposes of this paragraph, “promptly and easily
16 determine” means a reasonable person would be able to readily
17 ascertain the information without reference to other documents or
18 information.

19 (3) For purposes of this subdivision, a “knowing and intentional
20 failure” does not include an isolated and unintentional payroll error
21 due to a clerical or inadvertent mistake. In reviewing for
22 compliance with this section, the factfinder may consider as a
23 relevant factor whether the employer, prior to an alleged violation,
24 has adopted and is in compliance with a set of policies, procedures,
25 and practices that fully comply with this section.

26 (f) A failure by an employer to permit a current or former
27 employee to inspect or copy records within the time set forth in
28 subdivision (c) entitles the current or former employee or the Labor
29 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
30 penalty from the employer.

31 (g) The listing by an employer of the name and address of the
32 legal entity that secured the services of the employer in the itemized
33 statement required by subdivision (a) shall not create any liability
34 on the part of that legal entity.

35 (h) An employee may also bring an action for injunctive relief
36 to ensure compliance with this section, and is entitled to an award
37 of costs and reasonable attorney’s fees.

38 (i) This section does not apply to the state, to any city, county,
39 city and county, district, or to any other governmental entity, except
40 that if the state or a city, county, city and county, district, or other

1 governmental entity furnishes its employees with a check, draft,
2 or voucher paying the employee's wages, the state or a city, county,
3 city and county, district, or other governmental entity shall use no
4 more than the last four digits of the employee's social security
5 number or shall use an employee identification number other than
6 the social security number on the itemized statement provided with
7 the check, draft, or voucher.

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