

ASSEMBLY BILL

No. 2688

Introduced by Assembly Member Brown

February 21, 2014

An act to add and repeal Section 98.73 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2688, as introduced, Brown. Employment: violations: good faith defense.

The Division of Labor Standards Enforcement of the Department of Industrial Relations is generally charged with enforcing employment statutes and regulations, either in administrative actions or through litigation. Under existing law an employer may face administrative sanctions, civil fines and penalties, and criminal penalties for violations of employment statutes or regulations.

This bill, until January 1, 2021, would permit a person to raise as an affirmative defense that, at the time of an alleged violation of statute or regulation in a judicial or administrative proceeding, the person was acting in good faith, had sought, relied upon, and conformed with an applicable written order, ruling, approval, interpretation, or enforcement policy from the division and had provided true and correct information to the division in seeking the written order, ruling, approval, interpretation, or enforcement policy. The bill would require any person that asserts the affirmative defense to post a bond as prescribed.

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 98.73 is added to the Labor Code, to
2 read:

3 98.73. (a) Any person who relies upon a written order, ruling,
4 approval, interpretation, or enforcement policy of the Division of
5 Labor Standards Enforcement shall not be liable for costs or subject
6 to punishment, except for restitution of unpaid wages, for a
7 violation of a statute or regulation in a judicial or administrative
8 proceeding if the person pleads and proves to the trier of fact that,
9 at the time the alleged act or omission occurred, the person, acting
10 in good faith, did all of the following:

11 (1) Previously sought an applicable written order, ruling,
12 approval, interpretation, or enforcement policy from the Division
13 of Labor Standards Enforcement.

14 (2) Relied upon and conformed to the applicable written order,
15 ruling, approval, interpretation, or enforcement policy issued by
16 the Division of Labor Standards Enforcement.

17 (3) Provided true and correct information to the Division of
18 Labor Standards Enforcement in seeking the written order, ruling,
19 approval, interpretation, or enforcement policy.

20 (b) (1) Subdivision (a) shall apply even if, after the alleged act
21 or omission occurred, the order, ruling, approval, interpretation,
22 or enforcement policy upon which the person relied is modified,
23 rescinded, or determined by judicial authority to be invalid or of
24 no legal effect.

25 (2) Subdivision (a) shall not apply if the alleged act or omission
26 occurred after the order, ruling, approval, interpretation, or
27 enforcement policy upon which the person relied is modified,
28 rescinded, or determined by judicial authority to be invalid or of
29 no legal effect.

30 (c) This section applies to all actions and proceedings that
31 commence on or after January 1, 2015.

32 (d) Any person that asserts reliance upon a written order, ruling,
33 approval, interpretation, or enforcement policy of the Division of
34 Labor Standards Enforcement as described in subdivision (a) shall
35 post an undertaking with the reviewing court or administrative
36 body. The undertaking shall consist of a bond issued by a licensed
37 surety qualified to do business in this state or a cash deposit with
38 the court or administrative body in the amount of the reasonable

1 estimate of alleged unpaid wages resulting from that reliance. The
2 person shall provide written notification to all parties of the posting
3 of the undertaking. The undertaking shall be on the condition that,
4 if any judgment is entered in favor of the employee, the person
5 shall pay the amount owed pursuant to the judgment. If the person
6 prevails or the case is dismissed, withdrawn, or resolved through
7 the execution of a settlement agreement, the court or administrative
8 body shall return the undertaking to the person within 10 business
9 days.

10 (e) Nothing in this section shall be construed to give any greater
11 legal weight to an order, ruling, approval, interpretation, or
12 enforcement policy than it would otherwise have in the absence
13 of this section.

14 (f) Nothing in this section shall be construed to require the
15 Division of Labor Standards Enforcement to issue an order, ruling,
16 approval, interpretation, or enforcement policy.

17 (g) Nothing in this section shall be construed to authorize the
18 Division of Labor Standards Enforcement to issue an order, ruling,
19 approval, interpretation, or enforcement policy that is contrary to
20 an existing state statute or regulation.

21 (h) This section shall remain in effect only until January 1, 2021,
22 and as of that date is repealed, unless a later enacted statute, that
23 is enacted before January 1, 2021, deletes or extends that date.