

AMENDED IN ASSEMBLY MARCH 25, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2688**

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**Introduced by Assembly Member Brown**

February 21, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2688, as amended, 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~~, 2019, 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, a published opinion letter~~ or enforcement policy ~~from~~ of the division and had provided true and correct information to the division in seeking the ~~written order, ruling, approval, interpretation, opinion letter~~ or enforcement policy. The bill would require any person ~~that~~ *who* 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 published opinion letter or an~~  
5 enforcement policy of the ~~Division of Labor Standards~~  
6 ~~Enforcement~~ *division that is displayed on the Internet Web site of*  
7 *the division* shall not be liable for costs or subject to punishment,  
8 except for restitution of unpaid wages, for a violation of a statute  
9 or regulation in a judicial or administrative proceeding if the person  
10 pleads and proves to the trier of fact that, at the time the alleged  
11 act or omission occurred, the person, acting in good faith, did all  
12 of the following:

13 (1) Previously sought an applicable ~~written order, ruling,~~  
14 ~~approval, interpretation, opinion letter~~ or enforcement policy from  
15 the ~~Division of Labor Standards Enforcement~~ *division*.

16 (2) Relied upon and conformed to the applicable ~~written order,~~  
17 ~~ruling, approval, interpretation, opinion letter~~ or enforcement  
18 policy ~~issued published~~ by the ~~Division of Labor Standards~~  
19 ~~Enforcement~~ *division*.

20 (3) Provided true and correct information to the ~~Division of~~  
21 ~~Labor Standards Enforcement~~ *division* in seeking the ~~written order,~~  
22 ~~ruling, approval, interpretation, opinion letter~~ or enforcement  
23 policy.

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27 is modified, rescinded, or determined by judicial authority to be  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

29 (2) Subdivision (a) shall not apply if the alleged act or omission  
30 occurred after the ~~order, ruling, approval, interpretation, opinion~~  
31 ~~letter~~ or enforcement policy upon which the person relied is  
32 modified, rescinded, or determined by judicial authority to be  
33 invalid or of no legal effect.

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

36 (d) Any person ~~that who~~ asserts reliance upon a ~~written order,~~  
37 ~~ruling, approval, interpretation, an opinion letter~~ or enforcement  
38 policy of the ~~Division of Labor Standards Enforcement~~ *division*

1 as described in subdivision (a) shall post an undertaking with the  
2 reviewing court or administrative body. The undertaking shall  
3 consist of a bond issued by a licensed surety qualified to do  
4 business in this state or a cash deposit with the court or  
5 administrative body in the amount of the reasonable estimate of  
6 alleged unpaid wages resulting from that reliance. The person shall  
7 provide written notification to all parties of the posting of the  
8 undertaking. The undertaking shall be on the condition that, if any  
9 judgment is entered in favor of the employee, the person shall pay  
10 the amount owed pursuant to the judgment. If the person prevails  
11 or the case is dismissed, withdrawn, or resolved through the  
12 execution of a settlement agreement, the court or administrative  
13 body shall return the undertaking to the person within 10 business  
14 days.

15 (e) Nothing in this section shall be construed to give any greater  
16 legal weight to an ~~order, ruling, approval, interpretation,~~ *opinion*  
17 *letter* or enforcement policy than it would otherwise have in the  
18 absence of this section.

19 (f) Nothing in this section shall be construed to require the  
20 ~~Division of Labor Standards Enforcement~~ *division* to issue an  
21 order, ruling, approval, interpretation, or enforcement policy.

22 (g) Nothing in this section shall be construed to authorize the  
23 ~~Division of Labor Standards Enforcement~~ *division* to issue an  
24 order, ruling, approval, interpretation, or enforcement policy that  
25 is contrary to an existing state statute or regulation.

26 (h) This section shall remain in effect only until January 1,  
27 ~~2021,~~ *2019*, and as of that date is repealed, unless a later enacted  
28 statute, that is enacted before January 1, ~~2021,~~ *2019*, deletes or  
29 extends that date.