

**ASSEMBLY BILL**

**No. 970**

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**Introduced by Assembly Member Nazarian**

February 26, 2015

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An act to amend Sections 558, 1197, 1197.1, and 2802 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 970, as introduced, Nazarian. Labor Commissioner: enforcement of employee claims.

(1) 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, in addition, authorize the Labor Commissioner to enforce local laws regarding overtime hours or minimum wage provisions and to issue citations and penalties for violations. This bill also would make related conforming changes. By expanding the definition of a crime, this bill would create a state-mandated local program.

(2) Existing law requires an employer to indemnify his or her employees for all that the employee necessarily expends or loses in direct consequence of the discharge of the employee's duties or as a result of obeying the employer's directions. Existing law provides an aggrieved employee with a private right of action to recover these expenditures.

This bill would, additionally, authorize the Labor Commissioner to enforce these provisions by issuing citations and penalties to employers for violations of this requirement, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 558 of the Labor Code is amended to  
2 read:

3 558. (a) Any employer or other person acting on behalf of an  
4 employer who violates, or causes to be violated, a section of this  
5 chapter or any provision regulating hours and days of work in any  
6 order of the Industrial Welfare Commission shall be subject to a  
7 civil penalty as follows:

8 (1) For any initial violation, fifty dollars (\$50) for each  
9 underpaid employee for each pay period for which the employee  
10 was underpaid in addition to an amount sufficient to recover  
11 underpaid wages.

12 (2) For each subsequent violation, one hundred dollars (\$100)  
13 for each underpaid employee for each pay period for which the  
14 employee was underpaid in addition to an amount sufficient to  
15 recover underpaid wages.

16 (3) Wages recovered pursuant to this section shall be paid to  
17 the affected employee.

18 (b) If upon inspection or investigation the Labor Commissioner  
19 determines that a person had paid or caused to be paid a wage for  
20 overtime work in violation of any provision of this chapter, ~~or any~~  
21 provision regulating hours and days of work in any order of the  
22 Industrial Welfare Commission, *or any applicable local overtime*  
23 *law*, the Labor Commissioner may issue a citation. The procedures  
24 for issuing, contesting, and enforcing judgments for citations or  
25 civil penalties issued by the Labor Commissioner for a violation  
26 of this chapter shall be the same as those set out in Section 1197.1.

1 (c) The civil penalties provided for in this section are in addition  
2 to any other civil or criminal penalty provided by law.

3 SEC. 2. Section 1197 of the Labor Code is amended to read:

4 1197. The minimum wage for employees fixed by the  
5 commission *or by any applicable state or local law*, is the  
6 minimum wage to be paid to employees, and the payment of a less  
7 wage than the minimum so fixed is unlawful.

8 SEC. 3. Section 1197.1 of the Labor Code is amended to read:

9 1197.1. (a) Any employer or other person acting either  
10 individually or as an officer, agent, or employee of another person,  
11 who pays or causes to be paid to any employee a wage less than  
12 the minimum fixed by *an applicable state or local law, or by an*  
13 *order of the commission* shall be subject to a civil penalty,  
14 restitution of wages, liquidated damages payable to the employee,  
15 and any applicable penalties imposed pursuant to Section 203 as  
16 follows:

17 (1) For any initial violation that is intentionally committed, one  
18 hundred dollars (\$100) for each underpaid employee for each pay  
19 period for which the employee is underpaid. This amount shall be  
20 in addition to an amount sufficient to recover underpaid wages,  
21 liquidated damages pursuant to Section 1194.2, and any applicable  
22 penalties imposed pursuant to Section 203.

23 (2) For each subsequent violation for the same specific offense,  
24 two hundred fifty dollars (\$250) for each underpaid employee for  
25 each pay period for which the employee is underpaid regardless  
26 of whether the initial violation is intentionally committed. This  
27 amount shall be in addition to an amount sufficient to recover  
28 underpaid wages, liquidated damages pursuant to Section 1194.2,  
29 and any applicable penalties imposed pursuant to Section 203.

30 (3) Wages, liquidated damages, and any applicable penalties  
31 imposed pursuant to Section 203, recovered pursuant to this section  
32 shall be paid to the affected employee.

33 (b) If, upon inspection or investigation, the Labor Commissioner  
34 determines that a person has paid or caused to be paid a wage less  
35 than the ~~minimum~~, *minimum under applicable law*, the Labor  
36 Commissioner may issue a citation to the person in violation. The  
37 citation may be served personally or by registered mail in  
38 accordance with subdivision (c) of Section 11505 of the  
39 Government Code. Each citation shall be in writing and shall  
40 describe the nature of the violation, including reference to the

1 statutory provision alleged to have been violated. The Labor  
2 Commissioner promptly shall take all appropriate action, in  
3 accordance with this section, to enforce the citation and to recover  
4 the civil penalty assessed, wages, liquidated damages, and any  
5 applicable penalties imposed pursuant to Section 203 in connection  
6 with the citation.

7 (c) (1) If a person desires to contest a citation or the proposed  
8 assessment of a civil penalty, wages, liquidated damages, and any  
9 applicable penalties imposed pursuant to Section 203 therefor, the  
10 person shall, within 15 business days after service of the citation,  
11 notify the office of the Labor Commissioner that appears on the  
12 citation of his or her request for an informal hearing. The Labor  
13 Commissioner or his or her deputy or agent shall, within 30 days,  
14 hold a hearing at the conclusion of which the citation or proposed  
15 assessment of a civil penalty, wages, liquidated damages, and any  
16 applicable penalties imposed pursuant to Section 203 shall be  
17 affirmed, modified, or dismissed.

18 (2) The decision of the Labor Commissioner shall consist of a  
19 notice of findings, findings, and an order, all of which shall be  
20 served on all parties to the hearing within 15 days after the hearing  
21 by regular first-class mail at the last known address of the party  
22 on file with the Labor Commissioner. Service shall be completed  
23 pursuant to Section 1013 of the Code of Civil Procedure. Any  
24 amount found due by the Labor Commissioner as a result of a  
25 hearing shall become due and payable 45 days after notice of the  
26 findings and written findings and order have been mailed to the  
27 party assessed. A writ of mandate may be taken from this finding  
28 to the appropriate superior court. The party shall pay any judgment  
29 and costs ultimately rendered by the court against the party for the  
30 assessment. The writ shall be taken within 45 days of service of  
31 the notice of findings, findings, and order thereon.

32 (d) A person to whom a citation has been issued shall, in lieu  
33 of contesting a citation pursuant to this section, transmit to the  
34 office of the Labor Commissioner designated on the citation the  
35 amount specified for the violation within 15 business days after  
36 issuance of the citation.

37 (e) When no petition objecting to a citation or the proposed  
38 assessment of a civil penalty, wages, liquidated damages, and any  
39 applicable penalties imposed pursuant to Section 203 is filed, a  
40 certified copy of the citation or proposed civil penalty, wages,

1 liquidated damages, and any applicable penalties imposed pursuant  
2 to Section 203 may be filed by the Labor Commissioner in the  
3 office of the clerk of the superior court in any county in which the  
4 person assessed has or had a place of business. The clerk,  
5 immediately upon the filing, shall enter judgment for the state  
6 against the person assessed in the amount shown on the citation  
7 or proposed assessment of a civil penalty, wages, liquidated  
8 damages, and any applicable penalties imposed pursuant to Section  
9 203.

10 (f) When findings and the order thereon are made affirming or  
11 modifying a citation or proposed assessment of a civil penalty,  
12 wages, liquidated damages, and any applicable penalties imposed  
13 pursuant to Section 203 after hearing, a certified copy of these  
14 findings and the order entered thereon may be entered by the Labor  
15 Commissioner in the office of the clerk of the superior court in  
16 any county in which the person assessed has property or in which  
17 the person assessed has or had a place of business. The clerk,  
18 immediately upon the filing, shall enter judgment for the state  
19 against the person assessed in the amount shown on the certified  
20 order.

21 (g) A judgment entered pursuant to this section shall bear the  
22 same rate of interest and shall have the same effect as other  
23 judgments and be given the same preference allowed by the law  
24 on other judgments rendered for claims for taxes. The clerk shall  
25 make no charge for the service provided by this section to be  
26 performed by him or her.

27 (h) The civil penalties provided for in this section are in addition  
28 to any other penalty provided by law.

29 (i) This section shall not apply to any order of the commission  
30 relating to household occupations.

31 SEC. 4. Section 2802 of the Labor Code is amended to read:

32 2802. (a) An employer shall indemnify his or her employee  
33 for all necessary expenditures or losses incurred by the employee  
34 in direct consequence of the discharge of his or her duties, or of  
35 his or her obedience to the directions of the employer, even though  
36 unlawful, unless the employee, at the time of obeying the  
37 directions, believed them to be unlawful.

38 (b) All awards made by a court or by the Division of Labor  
39 Standards Enforcement for reimbursement of necessary  
40 expenditures under this section shall carry interest at the same rate

1 as judgments in civil actions. Interest shall accrue from the date  
2 on which the employee incurred the necessary expenditure or loss.  
3 (c) For purposes of this section, the term “necessary expenditures  
4 or losses” shall include all reasonable costs, including, but not  
5 limited to, attorney’s fees incurred by the employee enforcing the  
6 rights granted by this section.

7 (d) *In addition to recovery of penalties under this section in a*  
8 *court action or proceedings pursuant to Section 98, the*  
9 *commissioner may issue a citation against an employer or other*  
10 *person acting on behalf of the employer who violates*  
11 *reimbursement obligations for an amount determined to be due to*  
12 *an employee under this section. The procedures for issuing,*  
13 *contesting, and enforcing judgments for citations or civil penalties*  
14 *issued by the commissioner shall be the same as those set forth in*  
15 *Section 1197.1. Amounts recovered pursuant to this section shall*  
16 *be paid to the affected employee.*

17 SEC. 5. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.