

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 970

Introduced by Assembly Member Nazarian

February 26, 2015

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 amended, 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~~ *violations, except when the local entity with jurisdiction in the matter has already issued a citation or has initiated an investigation against an employer for the same violation*. 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, 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

1 civil penalties issued by the Labor Commissioner for a violation
2 of this chapter shall be the same as those set out in Section 1197.1.

3 (c) *The Labor Commissioner shall not issue a citation against*
4 *an employer for a violation of any applicable local overtime law*
5 *if the local entity with jurisdiction in the matter has cited or has*
6 *initiated an investigation against the employer for the same*
7 *violation.*

8 (e)

9 (d) The civil penalties provided for in this section are in addition
10 to any other civil or criminal penalty provided by law.

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

12 1197. The minimum wage for employees fixed by the
13 commission or by any applicable state or local law, is the minimum
14 wage to be paid to employees, and the payment of a less wage than
15 the minimum so fixed is unlawful.

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

17 1197.1. (a) Any employer or other person acting either
18 individually or as an officer, agent, or employee of another person,
19 who pays or causes to be paid to any employee a wage less than
20 the minimum fixed by an applicable state or local law, or by an
21 order of the commission shall be subject to a civil penalty,
22 restitution of wages, liquidated damages payable to the employee,
23 and any applicable penalties imposed pursuant to Section 203 as
24 follows:

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

31 (2) For each subsequent violation for the same specific offense,
32 two hundred fifty dollars (\$250) for each underpaid employee for
33 each pay period for which the employee is underpaid regardless
34 of whether the initial violation is intentionally committed. This
35 amount shall be in addition to an amount sufficient to recover
36 underpaid wages, liquidated damages pursuant to Section 1194.2,
37 and any applicable penalties imposed pursuant to Section 203.

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

1 (b) If, upon inspection or investigation, the Labor Commissioner
2 determines that a person has paid or caused to be paid a wage less
3 than the minimum under applicable law, the Labor Commissioner
4 may issue a citation to the person in violation. The citation may
5 be served personally or by registered mail in accordance with
6 subdivision (c) of Section 11505 of the Government Code. Each
7 citation shall be in writing and shall describe the nature of the
8 violation, including reference to the statutory provision alleged to
9 have been violated. The Labor Commissioner promptly shall take
10 all appropriate action, in accordance with this section, to enforce
11 the citation and to recover the civil penalty assessed, wages,
12 liquidated damages, and any applicable penalties imposed pursuant
13 to Section 203 in connection with the citation.

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

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

39 (d) A person to whom a citation has been issued shall, in lieu
40 of contesting a citation pursuant to this section, transmit to the

1 office of the Labor Commissioner designated on the citation the
2 amount specified for the violation within 15 business days after
3 issuance of the citation.

4 (e) When no petition objecting to a citation or the proposed
5 assessment of a civil penalty, wages, liquidated damages, and any
6 applicable penalties imposed pursuant to Section 203 is filed, a
7 certified copy of the citation or proposed civil penalty, wages,
8 liquidated damages, and any applicable penalties imposed pursuant
9 to Section 203 may be filed by the Labor Commissioner in the
10 office of the clerk of the superior court in any county in which the
11 person assessed has or had a place of business. The clerk,
12 immediately upon the filing, shall enter judgment for the state
13 against the person assessed in the amount shown on the citation
14 or proposed assessment of a civil penalty, wages, liquidated
15 damages, and any applicable penalties imposed pursuant to Section
16 203.

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

28 (g) A judgment entered pursuant to this section shall bear the
29 same rate of interest and shall have the same effect as other
30 judgments and be given the same preference allowed by the law
31 on other judgments rendered for claims for taxes. The clerk shall
32 make no charge for the service provided by this section to be
33 performed by him or her.

34 (h) *The Labor Commissioner shall not issue a citation against*
35 *an employer for a violation of any applicable local minimum wage*
36 *law if the local entity with jurisdiction in the matter has cited or*
37 *has initiated an investigation against the employer for the same*
38 *violation.*

39 (~~h~~)

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

3 (i)

4 (j) This section shall not apply to any order of the commission
5 relating to household occupations.

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

7 2802. (a) An employer shall indemnify his or her employee
8 for all necessary expenditures or losses incurred by the employee
9 in direct consequence of the discharge of his or her duties, or of
10 his or her obedience to the directions of the employer, even though
11 unlawful, unless the employee, at the time of obeying the
12 directions, believed them to be unlawful.

13 (b) All awards made by a court or by the Division of Labor
14 Standards Enforcement for reimbursement of necessary
15 expenditures under this section shall carry interest at the same rate
16 as judgments in civil actions. Interest shall accrue from the date
17 on which the employee incurred the necessary expenditure or loss.

18 (c) For purposes of this section, the term “necessary expenditures
19 or losses” shall include all reasonable costs, including, but not
20 limited to, attorney’s fees incurred by the employee enforcing the
21 rights granted by this section.

22 (d) In addition to recovery of penalties under this section in a
23 court action or proceedings pursuant to Section 98, the
24 commissioner may issue a citation against an employer or other
25 person acting on behalf of the employer who violates
26 reimbursement obligations for an amount determined to be due to
27 an employee under this section. The procedures for issuing,
28 contesting, and enforcing judgments for citations or civil penalties
29 issued by the commissioner shall be the same as those set forth in
30 Section 1197.1. Amounts recovered pursuant to this section shall
31 be paid to the affected employee.

32 SEC. 5. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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