

AMENDED IN SENATE JUNE 29, 2015

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 *investigate and, upon a request from the local entity, to enforce local laws regarding overtime hours or minimum wage provisions and to issue citations and penalties for 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. The bill would prohibit a local entity from issuing a citation to the employer if the Labor Commissioner has already issued a citation to that 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

1 overtime work in violation of any provision of this chapter, any
2 provision regulating hours and days of work in any order of the
3 Industrial Welfare Commission, or any applicable local overtime
4 law, the Labor Commissioner may issue a citation. The procedures
5 for issuing, contesting, and enforcing judgments for citations or
6 civil penalties issued by the Labor Commissioner for a violation
7 of this chapter shall be the same as those set out in Section 1197.1.

8 ~~The Labor Commissioner shall not~~ *In a jurisdiction where*
9 *a local entity has the legal authority to issue a citation against an*
10 *employer for a violation of any applicable local overtime law, the*
11 *Labor Commissioner, pursuant to a request from the local entity,*
12 *may issue a citation against an employer for a violation of any*
13 *applicable local overtime law if the local entity with jurisdiction*
14 *in the matter has not cited or has initiated an investigation against*
15 *the employer for the same violation. If the Labor Commissioner*
16 *issues a citation, the local entity shall not cite the employer for*
17 *the same violation.*

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

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

21 1197. The minimum wage for employees fixed by the
22 commission or by any applicable state or local law, is the minimum
23 wage to be paid to employees, and the payment of a less wage than
24 the minimum so fixed is unlawful.

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

26 1197.1. (a) Any employer or other person acting either
27 individually or as an officer, agent, or employee of another person,
28 who pays or causes to be paid to any employee a wage less than
29 the minimum fixed by an applicable state or local law, or by an
30 order of the commission shall be subject to a civil penalty,
31 restitution of wages, liquidated damages payable to the employee,
32 and any applicable penalties imposed pursuant to Section 203 as
33 follows:

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

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

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

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

24 (c) (1) If a person desires to contest a citation or the proposed
25 assessment of a civil penalty, wages, liquidated damages, and any
26 applicable penalties imposed pursuant to Section 203 therefor, the
27 person shall, within 15 business days after service of the citation,
28 notify the office of the Labor Commissioner that appears on the
29 citation of his or her request for an informal hearing. The Labor
30 Commissioner or his or her deputy or agent shall, within 30 days,
31 hold a hearing at the conclusion of which the citation or proposed
32 assessment of a civil penalty, wages, liquidated damages, and any
33 applicable penalties imposed pursuant to Section 203 shall be
34 affirmed, modified, or dismissed.

35 (2) The decision of the Labor Commissioner shall consist of a
36 notice of findings, findings, and an order, all of which shall be
37 served on all parties to the hearing within 15 days after the hearing
38 by regular first-class mail at the last known address of the party
39 on file with the Labor Commissioner. Service shall be completed
40 pursuant to Section 1013 of the Code of Civil Procedure. Any

1 amount found due by the Labor Commissioner as a result of a
2 hearing shall become due and payable 45 days after notice of the
3 findings and written findings and order have been mailed to the
4 party assessed. A writ of mandate may be taken from this finding
5 to the appropriate superior court. The party shall pay any judgment
6 and costs ultimately rendered by the court against the party for the
7 assessment. The writ shall be taken within 45 days of service of
8 the notice of findings, findings, and order thereon.

9 (d) A person to whom a citation has been issued shall, in lieu
10 of contesting a citation pursuant to this section, transmit to the
11 office of the Labor Commissioner designated on the citation the
12 amount specified for the violation within 15 business days after
13 issuance of the citation.

14 (e) When no petition objecting to a citation or the proposed
15 assessment of a civil penalty, wages, liquidated damages, and any
16 applicable penalties imposed pursuant to Section 203 is filed, a
17 certified copy of the citation or proposed civil penalty, wages,
18 liquidated damages, and any applicable penalties imposed pursuant
19 to Section 203 may be filed by the Labor Commissioner in the
20 office of the clerk of the superior court in any county in which the
21 person assessed has or had a place of business. The clerk,
22 immediately upon the filing, shall enter judgment for the state
23 against the person assessed in the amount shown on the citation
24 or proposed assessment of a civil penalty, wages, liquidated
25 damages, and any applicable penalties imposed pursuant to Section
26 203.

27 (f) When findings and the order thereon are made affirming or
28 modifying a citation or proposed assessment of a civil penalty,
29 wages, liquidated damages, and any applicable penalties imposed
30 pursuant to Section 203 after hearing, a certified copy of these
31 findings and the order entered thereon may be entered by the Labor
32 Commissioner in the office of the clerk of the superior court in
33 any county in which the person assessed has property or in which
34 the person assessed has or had a place of business. The clerk,
35 immediately upon the filing, shall enter judgment for the state
36 against the person assessed in the amount shown on the certified
37 order.

38 (g) A judgment entered pursuant to this section shall bear the
39 same rate of interest and shall have the same effect as other
40 judgments and be given the same preference allowed by the law

1 on other judgments rendered for claims for taxes. The clerk shall
 2 make no charge for the service provided by this section to be
 3 performed by him or her.

4 (h) ~~The Labor Commissioner shall not~~ *In a jurisdiction where*
 5 *a local entity has the legal authority to issue a citation against an*
 6 *employer for a violation of any applicable local minimum wage*
 7 *law, the Labor Commissioner, pursuant to a request from the local*
 8 *entity, may issue a citation against an employer for a violation of*
 9 *any applicable local minimum wage law if the local entity with*
 10 ~~jurisdiction in the matter has not cited or has initiated an~~
 11 ~~investigation against the employer for the same violation. If the~~
 12 *Labor Commissioner issues a citation, the local entity shall not*
 13 *cite the employer for the same violation.*

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

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

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

19 2802. (a) An employer shall indemnify his or her employee
 20 for all necessary expenditures or losses incurred by the employee
 21 in direct consequence of the discharge of his or her duties, or of
 22 his or her obedience to the directions of the employer, even though
 23 unlawful, unless the employee, at the time of obeying the
 24 directions, believed them to be unlawful.

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

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

34 (d) In addition to recovery of penalties under this section in a
 35 court action or proceedings pursuant to Section 98, the
 36 commissioner may issue a citation against an employer or other
 37 person acting on behalf of the employer who violates
 38 reimbursement obligations for an amount determined to be due to
 39 an employee under this section. The procedures for issuing,
 40 contesting, and enforcing judgments for citations or civil penalties

1 issued by the commissioner shall be the same as those set forth in
2 Section 1197.1. Amounts recovered pursuant to this section shall
3 be paid to the affected employee.

4 SEC. 5. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.