

AMENDED IN SENATE AUGUST 24, 2015

AMENDED IN SENATE JULY 14, 2015

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**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 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 has already issued a citation 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.

1 (b) If upon inspection or investigation the Labor Commissioner  
2 determines that a person had paid or caused to be paid a wage for  
3 overtime work in violation of any provision of this chapter, any  
4 provision regulating hours and days of work in any order of the  
5 Industrial Welfare Commission, or any applicable local overtime  
6 law, the Labor Commissioner may issue a citation. The procedures  
7 for issuing, contesting, and enforcing judgments for citations or  
8 civil penalties issued by the Labor Commissioner for a violation  
9 of this chapter shall be the same as those set out in Section 1197.1.

10 (c) In a jurisdiction where a local entity has the legal authority  
11 to issue a citation against an employer for a violation of any  
12 applicable local overtime law, the Labor Commissioner, pursuant  
13 to a request from the local entity, may issue a citation against an  
14 employer for a violation of any applicable local overtime law if  
15 the local entity has not cited the employer for the same violation.  
16 If the Labor Commissioner issues a citation, the local entity shall  
17 not cite the employer for 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 (e) ~~Nothing in this~~ *This section addresses does not change the*  
21 *applicability of local overtime wage laws to a state agency. to any*  
22 *entity.*

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

24 1197. The minimum wage for employees fixed by the  
25 commission or by any applicable state or local law, is the minimum  
26 wage to be paid to employees, and the payment of a lower wage  
27 than the minimum so fixed is unlawful. ~~Nothing in this~~ *This section*  
28 *addresses does not change the applicability of local minimum*  
29 *wage laws to a state agency. to any entity.*

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

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

39 (1) For any initial violation that is intentionally committed, one  
40 hundred dollars (\$100) for each underpaid employee for each pay

1 period for which the employee is underpaid. This amount shall be  
2 in addition to an amount sufficient to recover underpaid wages,  
3 liquidated damages pursuant to Section 1194.2, and any applicable  
4 penalties imposed pursuant to Section 203.

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

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

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

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

39 (2) The decision of the Labor Commissioner shall consist of a  
40 notice of findings, findings, and an order, all of which shall be

1 served on all parties to the hearing within 15 days after the hearing  
2 by regular first-class mail at the last known address of the party  
3 on file with the Labor Commissioner. Service shall be completed  
4 pursuant to Section 1013 of the Code of Civil Procedure. Any  
5 amount found due by the Labor Commissioner as a result of a  
6 hearing shall become due and payable 45 days after notice of the  
7 findings and written findings and order have been mailed to the  
8 party assessed. A writ of mandate may be taken from this finding  
9 to the appropriate superior court. The party shall pay any judgment  
10 and costs ultimately rendered by the court against the party for the  
11 assessment. The writ shall be taken within 45 days of service of  
12 the notice of findings, findings, and order thereon.

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

18 (e) When no petition objecting to a citation or the proposed  
19 assessment of a civil penalty, wages, liquidated damages, and any  
20 applicable penalties imposed pursuant to Section 203 is filed, a  
21 certified copy of the citation or proposed civil penalty, wages,  
22 liquidated damages, and any applicable penalties imposed pursuant  
23 to Section 203 may be filed by the Labor Commissioner in the  
24 office of the clerk of the superior court in any county in which the  
25 person assessed has or had a place of business. The clerk,  
26 immediately upon the filing, shall enter judgment for the state  
27 against the person assessed in the amount shown on the citation  
28 or proposed assessment of a civil penalty, wages, liquidated  
29 damages, and any applicable penalties imposed pursuant to Section  
30 203.

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

1 against the person assessed in the amount shown on the certified  
 2 order.

3 (g) A judgment entered pursuant to this section shall bear the  
 4 same rate of interest and shall have the same effect as other  
 5 judgments and be given the same preference allowed by the law  
 6 on other judgments rendered for claims for taxes. The clerk shall  
 7 make no charge for the service provided by this section to be  
 8 performed by him or her.

9 (h) In a jurisdiction where a local entity has the legal authority  
 10 to issue a citation against an employer for a violation of any  
 11 applicable local minimum wage law, the Labor Commissioner,  
 12 pursuant to a request from the local entity, may issue a citation  
 13 against an employer for a violation of any applicable local  
 14 minimum wage law if the local entity has not cited the employer  
 15 for the same violation. If the Labor Commissioner issues a citation,  
 16 the local entity shall not cite the employer for the same violation.

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

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

21 (k) ~~Nothing in this~~ *This section addresses does not change the*  
 22 *applicability of local minimum wage laws to a state agency; to any*  
 23 *entity.*

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

25 2802. (a) An employer shall indemnify his or her employee  
 26 for all necessary expenditures or losses incurred by the employee  
 27 in direct consequence of the discharge of his or her duties, or of  
 28 his or her obedience to the directions of the employer, even though  
 29 unlawful, unless the employee, at the time of obeying the  
 30 directions, believed them to be unlawful.

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

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

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

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