

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1978**

---

---

**Introduced by Assembly Member Gonzalez**

February 16, 2016

---

---

An act to amend Section ~~2802~~ 90.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1978, as amended, Gonzalez. ~~Employee indemnification.~~  
*Employment: Department of Industrial Relations: wage claims and retaliation complaints.*

*Existing law establishes within the Department of Industrial Relations the Division of Labor Standards Enforcement, which is vested with the general duty of enforcing labor laws, including those relating to wage claims and employer retaliation. Existing law requires the Labor Commissioner, defined as the Chief of the Division of Labor Standards Enforcement, to establish and maintain a field enforcement unit in order to ensure that minimum labor standards are met. Existing law requires the commissioner to report annually to the Legislature, not later than March 1, concerning the effectiveness of the field enforcement unit, as specified.*

*This bill would require the Labor Commissioner to include in the commissioner's report to the Legislature, as described above, specified information on the status of wage claims and retaliation complaints, including the average amount of time it takes for a wage claim to receive a preliminary hearing and the current backlog of claims and complaints.*

~~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 and authorizes the Labor Commissioner to enforce these provisions by issuing citations and penalties to employers for violations of this requirement, as specified. Existing law provides for interest on awards by the court or the Division of Labor Standards Enforcement for reimbursement.~~

~~This bill would make nonsubstantive changes to those interest provisions.~~

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

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

1     SECTION 1. Section 90.5 of the Labor Code is amended to  
2 read:  
3     90.5. (a) It is the policy of this state to vigorously enforce  
4 minimum labor standards in order to ensure employees are not  
5 required or permitted to work under substandard unlawful  
6 conditions or for employers that have not secured the payment of  
7 compensation, and to protect employers who comply with the law  
8 from those who attempt to gain a competitive advantage at the  
9 expense of their workers by failing to comply with minimum labor  
10 standards.  
11     (b) In order to ensure that minimum labor standards are  
12 adequately enforced, the Labor Commissioner shall establish and  
13 maintain a field enforcement unit, which shall be administratively  
14 and physically separate from offices of the division that accept  
15 and determine individual employee complaints. The unit shall have  
16 offices in Los Angeles, San Francisco, San Jose, San Diego,  
17 Sacramento, and any other locations that the Labor Commissioner  
18 deems appropriate. The unit shall have primary responsibility for  
19 administering and enforcing those statutes and regulations most  
20 effectively enforced through field investigations, including Sections  
21 226, 1021, 1021.5, 1193.5, 1193.6, 1194.5, 1197, 1198, 1771,  
22 1776, 1777.5, 2651, 2673, 2675, and 3700, in accordance with the  
23 plan adopted by the Labor Commissioner pursuant to subdivision  
24 (c). Nothing in this section shall be construed to limit the authority

1 of this unit in enforcing any statute or regulation in the course of  
2 its investigations.

3 (c) The Labor Commissioner shall adopt an enforcement plan  
4 for the field enforcement unit. The plan shall identify priorities for  
5 investigations to be undertaken by the unit that ensure the available  
6 resources will be concentrated in industries, occupations, and areas  
7 in which employees are relatively low paid and unskilled, and  
8 those in which there has been a history of violations of the statutes  
9 cited in subdivision (b), and those with high rates of noncompliance  
10 with Section 3700.

11 (d) The Labor Commissioner shall annually report to the  
12 Legislature, not later than March 1, concerning the ~~effectiveness~~  
13 *following*:

14 (1) ~~The effectiveness~~ of the field enforcement unit. ~~The This~~  
15 *part of the report shall include, but not be limited to, all of the*  
16 *following*:

17 (1)

18 (A) The enforcement plan adopted by the Labor Commissioner  
19 pursuant to subdivision (c), and the rationale for the priorities  
20 identified in the plan.

21 (2)

22 (B) The number of establishments investigated by the unit, and  
23 the number of types of violations found.

24 (3)

25 (C) The amount of wages found to be unlawfully withheld from  
26 workers, and the amount of unpaid wages recovered for workers.

27 (4)

28 (D) The amount of penalties and unpaid wages transferred to  
29 the General Fund as a result of the efforts of the unit.

30 (2) *The status of wage claims and retaliation complaints. This*  
31 *part of the report shall include, but not be limited to, all of the*  
32 *following*:

33 (A) *The average amount of time it takes for a wage claim to*  
34 *receive a preliminary hearing.*

35 (B) *The number of determinations issued, the number of*  
36 *investigative hearings held, the number of complaints dismissed,*  
37 *and the number of complaints found valid, grouped by the year in*  
38 *which the complaints were filed.*

39 (C) *An update on the division's current backlog of wage claims*  
40 *and retaliation complaints.*

1 (e) The report required by subdivision (d) shall be provided in  
2 compliance with Section 9795 of the Government Code.

3 SECTION 1. Section 2802 of the Labor Code is amended to  
4 read:

5 2802. (a) An employer shall indemnify his or her employee  
6 for all necessary expenditures or losses incurred by the employee  
7 in direct consequence of the discharge of his or her duties, or of  
8 his or her obedience to the directions of the employer, even though  
9 unlawful, unless the employee, at the time of obeying the  
10 directions, believed them to be unlawful.

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

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

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