

**ASSEMBLY BILL**

**No. 2363**

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**Introduced by Assembly Member Low**

February 18, 2016

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An act to amend Section 201 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2363, as introduced, Low. Payment of wages.

Under existing law, an employer who discharges or lays off employees must pay wages earned but unpaid within specified time limits.

This bill would make technical, nonsubstantive changes to that provision.

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

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

1     SECTION 1. Section 201 of the Labor Code is amended to  
2     read:  
3     201. (a) If an employer discharges an employee, the wages  
4     earned and unpaid at the time of discharge are due and payable  
5     immediately. An employer who lays off a group of employees ~~by~~  
6     ~~reason of due to~~ the termination of seasonal employment in the  
7     curing, canning, or drying of any variety of perishable fruit, fish,  
8     or vegetables, shall be deemed to have made immediate payment  
9     when the wages of ~~said those~~ employees are paid within a  
10    reasonable time as necessary for computation and payment ~~thereof~~;  
11    ~~thereof~~, provided, however, that the reasonable time shall not

1 exceed 72 hours, and further provided that payment shall be made  
2 by mail to any employee who so requests and designates a mailing  
3 address therefor.

4 (b) Notwithstanding any other provision of law, the state  
5 employer shall be deemed to have made an immediate payment  
6 of wages under this section for any unused or accumulated  
7 vacation, annual leave, holiday leave, or time off to which the  
8 employee is entitled by reason of previous overtime work where  
9 compensating time off was given by the appointing power,  
10 provided; *that* at least five workdays prior to his or her final day  
11 of employment, the employee submits a written election to his or  
12 her appointing power authorizing the state employer to tender  
13 payment for any or all leave to be contributed on a pretax basis to  
14 the employee's account in a state-sponsored supplemental  
15 retirement plan as described under ~~Sections~~ *Section* 401(k), 403(b),  
16 or 457 of the Internal Revenue Code ~~provided, if~~ the plan allows  
17 those contributions. The contribution shall be tendered for payment  
18 to the employee's 401(k), 403(b), or 457 plan account no later than  
19 45 days after the employee's discharge from employment. Nothing  
20 in this section is intended to authorize contributions in excess of  
21 the annual deferral limits imposed under federal and state law or  
22 the provisions of the supplemental retirement plan itself.

23 (c) Notwithstanding any other provision of law, when the state  
24 employer discharges an employee, the employee may, at least five  
25 workdays prior to his or her final day of employment, submit a  
26 written election to his or her appointing power authorizing the  
27 state employer to defer into the next calendar year payment of any  
28 or all of the employee's unused or accumulated vacation, annual  
29 leave, holiday leave, or time off to which the employee is entitled  
30 by reason of previous overtime work where compensating time  
31 off was given by the appointing power. To qualify for the deferral  
32 of payment under this section, only that portion of leave that  
33 extends past the November pay period for state employees shall  
34 be deferred into the next calendar year. An employee electing to  
35 defer payment into the next calendar year under this section may  
36 do any of the following:

37 (1) Contribute the entire payment to his or her 401(k), 403(b),  
38 or 457 plan account.

1     (2) Contribute any portion of the deferred payment to his or her  
2     401(k), 403(b), or 457 plan account and receive cash payment for  
3     the remaining noncontributed unused leave.

4     (3) Receive a lump-sum payment for all of the deferred unused  
5     leave as described above.

6     Payments shall be tendered under this section no later than  
7     February 1 in the year following the employee's last day of  
8     employment. Nothing in this section is intended to authorize  
9     contributions in excess of the annual deferral limits imposed under  
10    federal and state law or the provisions of the supplemental  
11    retirement plan itself.

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