

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2363

Introduced by Assembly Member Low

February 18, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2363, as amended, Low. ~~Payment of wages. State employment:~~ *State Bargaining Unit 16: memorandum of understanding.*

Existing law provides that a provision of a memorandum of understanding reached between the state employer and a recognized employee organization representing state civil service employees that requires the expenditure of funds does not become effective unless approved by the Legislature in the annual Budget Act.

This bill would approve provisions of a memorandum of understanding entered into between the state employer and State Bargaining Unit 16 that require the expenditure of funds and would provide that these provisions will become effective if these provisions are approved by the Legislature in legislation other than the annual Budget Act. The bill would provide that provisions of the memorandum of understanding approved by the bill that require the expenditure of funds will not take effect unless funds for those provisions are specifically appropriated by the Legislature and would require the state employer and the employee organization to meet and confer to renegotiate if funds for those provisions are not specifically appropriated by the Legislature.

~~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~~-yes.
State-mandated local program: no.

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

1 *SECTION 1. The Legislature finds and declares that the*
2 *purpose of this act is to approve an agreement pursuant to Section*
3 *3517.5 of the Government Code entered into by the state employer*
4 *and State Bargaining Unit 16.*

5 *SEC. 2. The provisions of the memorandum of understanding*
6 *prepared pursuant to Section 3517.5 of the Government Code and*
7 *entered into by the state employer and Union of American*
8 *Physicians and Dentists, State Bargaining Unit 16, dated _____,*
9 *that require the expenditure of funds are hereby approved for the*
10 *purposes of subdivision (b) of Section 3517.6 of the Government*
11 *Code.*

12 *SEC. 3. The provisions of the memorandum of understanding*
13 *approved by Section 2 of this act that require the expenditure of*
14 *funds shall not take effect unless funds for these provisions are*
15 *specifically appropriated by the Legislature. If funds for these*
16 *provisions are not specifically appropriated by the Legislature,*
17 *the state employer and the affected employee organization shall*
18 *meet and confer to renegotiate the affected provisions.*

19 *SEC. 4. Notwithstanding Section 3517.6 of the Government*
20 *Code, the provisions of the memorandum of understanding included*
21 *in Section 2 that require the expenditure of funds shall become*
22 *effective even if the provisions of the memorandum of*
23 *understanding are approved by the Legislature in legislation other*
24 *than the annual Budget Act.*

25 ~~SECTION 1. Section 201 of the Labor Code is amended to~~
26 ~~read:~~

27 ~~201. (a) If an employer discharges an employee, the wages~~
28 ~~earned and unpaid at the time of discharge are due and payable~~
29 ~~immediately. An employer who lays off a group of employees due~~
30 ~~to the termination of seasonal employment in the curing, canning,~~
31 ~~or drying of any variety of perishable fruit, fish, or vegetables,~~

1 shall be deemed to have made immediate payment when the wages
2 of those employees are paid within a reasonable time as necessary
3 for computation and payment thereof, provided, however, that the
4 reasonable time shall not exceed 72 hours, and further provided
5 that payment shall be made by mail to any employee who so
6 requests and designates a mailing address therefor.

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

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

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

3 ~~(2) Contribute any portion of the deferred payment to his or her~~
4 ~~401(k), 403(b), or 457 plan account and receive cash payment for~~
5 ~~the remaining noncontributed unused leave.~~

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

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