

AMENDED IN ASSEMBLY APRIL 25, 2016

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2535**

---

---

**Introduced by Assembly Member Ridley-Thomas**

February 19, 2016

---

---

An act to amend Section 226 of the Labor Code, relating to wages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2535, as amended, Ridley-Thomas. Employment: wages: itemized statements.

Existing law requires an employer to provide his or her employee an accurate itemized statement in writing containing specified information, either semimonthly or at the time the employer pays the employee his or her wages. That specified information includes showing total hours worked by the employee, unless the employee's compensation is solely based on a salary and the employee is exempt from payment of overtime under a specified statute or any applicable order of the Industrial Welfare Commission.

This bill would additionally exempt from that requirement for information on total work hours an employee exempt from payment of minimum wage and overtime ~~whose compensation is not based in whole or in part on hours worked~~; *under specified statutes or any applicable order of the Industrial Welfare Commission.*

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

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

1 SECTION 1. Section 226 of the Labor Code is amended to  
2 read:

3 226. (a) An employer, semimonthly or at the time of each  
4 payment of wages, shall furnish to his or her employee, either as  
5 a detachable part of the check, draft, or voucher paying the  
6 employee's wages, or separately if wages are paid by personal  
7 check or cash, an accurate itemized statement in writing showing  
8 (1) gross wages earned, (2) total hours worked by the employee,  
9 ~~unless the employee is exempt from payment of minimum wage~~  
10 ~~and overtime and the employee's compensation is not based in~~  
11 ~~whole or in part on hours worked or the employee's compensation~~  
12 ~~is solely based on a salary and the employee is exempt from~~  
13 ~~payment of overtime under subdivision (a) of Section 515 or any~~  
14 ~~applicable order of the Industrial Welfare Commission, except as~~  
15 ~~provided in subdivision (j),~~ (3) the number of piece-rate units  
16 earned and any applicable piece rate if the employee is paid on a  
17 piece-rate basis, (4) all deductions, provided that all deductions  
18 made on written orders of the employee may be aggregated and  
19 shown as one item, (5) net wages earned, (6) the inclusive dates  
20 of the period for which the employee is paid, (7) the name of the  
21 employee and only the last four digits of his or her social security  
22 number or an employee identification number other than a social  
23 security number, (8) the name and address of the legal entity that  
24 is the employer and, if the employer is a farm labor contractor, as  
25 defined in subdivision (b) of Section 1682, the name and address  
26 of the legal entity that secured the services of the employer, and  
27 (9) all applicable hourly rates in effect during the pay period and  
28 the corresponding number of hours worked at each hourly rate by  
29 the employee and, beginning July 1, 2013, if the employer is a  
30 temporary services employer as defined in Section 201.3, the rate  
31 of pay and the total hours worked for each temporary services  
32 assignment. The deductions made from payment of wages shall  
33 be recorded in ink or other indelible form, properly dated, showing  
34 the month, day, and year, and a copy of the statement and the  
35 record of the deductions shall be kept on file by the employer for  
36 at least three years at the place of employment or at a central  
37 location within the State of California. For purposes of this  
38 subdivision, "copy" includes a duplicate of the itemized statement

1 provided to an employee or a computer-generated record that  
2 accurately shows all of the information required by this subdivision.

3 (b) An employer that is required by this code or any regulation  
4 adopted pursuant to this code to keep the information required by  
5 subdivision (a) shall afford current and former employees the right  
6 to inspect or copy records pertaining to their employment, upon  
7 reasonable request to the employer. The employer may take  
8 reasonable steps to ensure the identity of a current or former  
9 employee. If the employer provides copies of the records, the actual  
10 cost of reproduction may be charged to the current or former  
11 employee.

12 (c) An employer who receives a written or oral request to inspect  
13 or copy records pursuant to subdivision (b) pertaining to a current  
14 or former employee shall comply with the request as soon as  
15 practicable, but no later than 21 calendar days from the date of the  
16 request. A violation of this subdivision is an infraction.  
17 Impossibility of performance, not caused by or a result of a  
18 violation of law, shall be an affirmative defense for an employer  
19 in any action alleging a violation of this subdivision. An employer  
20 may designate the person to whom a request under this subdivision  
21 will be made.

22 (d) This section does not apply to any employer of any person  
23 employed by the owner or occupant of a residential dwelling whose  
24 duties are incidental to the ownership, maintenance, or use of the  
25 dwelling, including the care and supervision of children, or whose  
26 duties are personal and not in the course of the trade, business,  
27 profession, or occupation of the owner or occupant.

28 (e) (1) An employee suffering injury as a result of a knowing  
29 and intentional failure by an employer to comply with subdivision  
30 (a) is entitled to recover the greater of all actual damages or fifty  
31 dollars (\$50) for the initial pay period in which a violation occurs  
32 and one hundred dollars (\$100) per employee for each violation  
33 in a subsequent pay period, not to exceed an aggregate penalty of  
34 four thousand dollars (\$4,000), and is entitled to an award of costs  
35 and reasonable attorney's fees.

36 (2) (A) An employee is deemed to suffer injury for purposes  
37 of this subdivision if the employer fails to provide a wage  
38 statement.

39 (B) An employee is deemed to suffer injury for purposes of this  
40 subdivision if the employer fails to provide accurate and complete

1 information as required by any one or more of items (1) to (9),  
2 inclusive, of subdivision (a) and the employee cannot promptly  
3 and easily determine from the wage statement alone one or more  
4 of the following:

5 (i) The amount of the gross wages or net wages paid to the  
6 employee during the pay period or any of the other information  
7 required to be provided on the itemized wage statement pursuant  
8 to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

9 (ii) Which deductions the employer made from gross wages to  
10 determine the net wages paid to the employee during the pay  
11 period. Nothing in this subdivision alters the ability of the employer  
12 to aggregate deductions consistent with the requirements of item  
13 (4) of subdivision (a).

14 (iii) The name and address of the employer and, if the employer  
15 is a farm labor contractor, as defined in subdivision (b) of Section  
16 1682, the name and address of the legal entity that secured the  
17 services of the employer during the pay period.

18 (iv) The name of the employee and only the last four digits of  
19 his or her social security number or an employee identification  
20 number other than a social security number.

21 (C) For purposes of this paragraph, “promptly and easily  
22 determine” means a reasonable person would be able to readily  
23 ascertain the information without reference to other documents or  
24 information.

25 (3) For purposes of this subdivision, a “knowing and intentional  
26 failure” does not include an isolated and unintentional payroll error  
27 due to a clerical or inadvertent mistake. In reviewing for  
28 compliance with this section, the factfinder may consider as a  
29 relevant factor whether the employer, prior to an alleged violation,  
30 has adopted and is in compliance with a set of policies, procedures,  
31 and practices that fully comply with this section.

32 (f) A failure by an employer to permit a current or former  
33 employee to inspect or copy records within the time set forth in  
34 subdivision (c) entitles the current or former employee or the Labor  
35 Commissioner to recover a seven-hundred-fifty-dollar (\$750)  
36 penalty from the employer.

37 (g) The listing by an employer of the name and address of the  
38 legal entity that secured the services of the employer in the itemized  
39 statement required by subdivision (a) shall not create any liability  
40 on the part of that legal entity.

1 (h) An employee may also bring an action for injunctive relief  
2 to ensure compliance with this section, and is entitled to an award  
3 of costs and reasonable attorney's fees.

4 (i) This section does not apply to the state, to any city, county,  
5 city and county, district, or to any other governmental entity, except  
6 that if the state or a city, county, city and county, district, or other  
7 governmental entity furnishes its employees with a check, draft,  
8 or voucher paying the employee's wages, the state or a city, county,  
9 city and county, district, or other governmental entity shall use no  
10 more than the last four digits of the employee's social security  
11 number or shall use an employee identification number other than  
12 the social security number on the itemized statement provided with  
13 the check, draft, or voucher.

14 (j) *An itemized wage statement furnished by an employer*  
15 *pursuant to subdivision (a) shall not be required to show total*  
16 *hours worked by the employee if any of the following apply:*

17 (1) *The employee's compensation is solely based on salary and*  
18 *the employee is exempt from payment of overtime under subdivision*  
19 *(a) of Section 515 or any applicable order of the Industrial Welfare*  
20 *Commission.*

21 (2) *The employee is exempt from the payment of minimum wage*  
22 *and overtime under any of the following:*

23 (A) *The exemption for persons employed in an executive,*  
24 *administrative, or professional capacity provided in any applicable*  
25 *order of the Industrial Welfare Commission.*

26 (B) *The exemption for outside salespersons provided in any*  
27 *applicable order of the Industrial Welfare Commission.*

28 (C) *The overtime exemption for computer software professionals*  
29 *paid on a salaried basis provided in Section 515.5.*

30 (D) *The exemption for individuals who are the parent, spouse,*  
31 *child, or legally adopted child of the employer provided in any*  
32 *applicable order of the Industrial Welfare Commission.*

33 (E) *The exemption for participants, director, and staff of a live-in*  
34 *alternative to incarceration rehabilitation program with special*  
35 *focus on substance abusers provided in Section 8002 of the Penal*  
36 *Code.*

37 (F) *The exemption for any crew member employed on a*  
38 *commercial passenger fishing boat licensed pursuant to Article 5*  
39 *(commencing with Section 7920) of Chapter 1 of Part 3 of Division*

- 1 *6 of the Fish and Game Code provided in any applicable order of*
- 2 *the Industrial Welfare Commission.*
- 3 *(G) The exemption for any individual participating in a national*
- 4 *service program provided in any applicable order of the Industrial*
- 5 *Welfare Commission.*

O