

AMENDED IN ASSEMBLY MAY 4, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2899**

---

---

**Introduced by Assembly Member Roger Hernández**

March 1, 2016

---

---

An act to amend Section 1197.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2899, as amended, Roger Hernández. Minimum wage violations: challenges.

Under existing law, any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by applicable state or local law or an order of the Industrial Welfare Commission, is subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable specified penalties, as provided. Existing law provides notice and hearing requirements under which a person against whom a citation has been issued, can request a hearing to contest proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties. Existing law further provides that after a hearing with the Labor Commissioner, a person contesting a citation may file a writ of mandate, within 45 days, with the appropriate superior court.

This bill would require a person seeking a writ of mandate contesting the Labor Commissioner's ruling, to post a bond with the Labor

Commissioner as specified, in an amount equal to the unpaid wages assessed under the citation, excluding penalties. The bill would require that the bond be issued in favor of the unpaid employees, and ensure that the person seeking the writ makes prescribed payments pursuant to the proceedings. *The bill would provide that the proceeds of the bond, sufficient to cover the amount owed, would be forfeited to the employee if the employer fails to pay the amounts owed within 10 days from the conclusion of the proceedings, as specified.*

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 1197.1 of the Labor Code is amended to  
 2 read:

3 1197.1. (a) Any employer or other person acting either  
 4 individually or as an officer, agent, or employee of another person,  
 5 who pays or causes to be paid to any employee a wage less than  
 6 the minimum fixed by an applicable state or local law, or by an  
 7 order of the commission shall be subject to a civil penalty,  
 8 restitution of wages, liquidated damages payable to the employee,  
 9 and any applicable penalties imposed pursuant to Section 203 as  
 10 follows:

11 (1) For any initial violation that is intentionally committed, one  
 12 hundred dollars (\$100) for each underpaid employee for each pay  
 13 period for which the employee is underpaid. This amount shall be  
 14 in addition to an amount sufficient to recover underpaid wages,  
 15 liquidated damages pursuant to Section 1194.2, and any applicable  
 16 penalties imposed pursuant to Section 203.

17 (2) For each subsequent violation for the same specific offense,  
 18 two hundred fifty dollars (\$250) for each underpaid employee for  
 19 each pay period for which the employee is underpaid regardless  
 20 of whether the initial violation is intentionally committed. This  
 21 amount shall be in addition to an amount sufficient to recover  
 22 underpaid wages, liquidated damages pursuant to Section 1194.2,  
 23 and any applicable penalties imposed pursuant to Section 203.

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

1 (b) If, upon inspection or investigation, the Labor Commissioner  
2 determines that a person has paid or caused to be paid a wage less  
3 than the minimum under applicable law, the Labor Commissioner  
4 may issue a citation to the person in violation. The citation may  
5 be served personally or by registered mail in accordance with  
6 subdivision (c) of Section 11505 of the Government Code. Each  
7 citation shall be in writing and shall describe the nature of the  
8 violation, including reference to the statutory provision alleged to  
9 have been violated. The Labor Commissioner shall promptly take  
10 all appropriate action, in accordance with this section, to enforce  
11 the citation and to recover the civil penalty assessed, wages,  
12 liquidated damages, and any applicable penalties imposed pursuant  
13 to Section 203 in connection with the citation.

14 (c) (1) If a person desires to contest a citation or the proposed  
15 assessment of a civil penalty, wages, liquidated damages, and any  
16 applicable penalties imposed pursuant to Section 203 therefor, the  
17 person shall, within 15 business days after service of the citation,  
18 notify the office of the Labor Commissioner that appears on the  
19 citation of his or her appeal by a request for an informal hearing.  
20 The Labor Commissioner or his or her deputy or agent shall, within  
21 30 days, hold a hearing at the conclusion of which the citation or  
22 proposed assessment of a civil penalty, wages, liquidated damages,  
23 and any applicable penalties imposed pursuant to Section 203 shall  
24 be affirmed, modified, or dismissed.

25 (2) The decision of the Labor Commissioner shall consist of a  
26 notice of findings, findings, and an order, all of which shall be  
27 served on all parties to the hearing within 15 days after the hearing  
28 by regular first-class mail at the last known address of the party  
29 on file with the Labor Commissioner. Service shall be completed  
30 pursuant to Section 1013 of the Code of Civil Procedure. Any  
31 amount found due by the Labor Commissioner as a result of a  
32 hearing shall become due and payable 45 days after notice of the  
33 findings and written findings and order have been mailed to the  
34 party assessed. A writ of mandate may be taken from this finding  
35 to the appropriate superior court. The party shall pay any judgment  
36 and costs ultimately rendered by the court against the party for the  
37 assessment. The writ shall be taken within 45 days of service of  
38 the notice of findings, findings, and order thereon.

39 (3) As a condition to filing a petition for a writ of mandate, the  
40 petitioner seeking the writ shall first post a bond with the Labor

1 Commissioner equal to the total amount of any minimum wages,  
2 liquidated damages, and overtime compensation that are due and  
3 owing as determined pursuant to subdivision (b) of Section 558,  
4 as specified in the citation being challenged. The bond amount  
5 shall not include amounts for penalties. The bond shall be issued  
6 by a surety duly authorized to do business in this state, shall be  
7 issued in favor of unpaid employees, and shall ensure that the  
8 petitioner makes payments as set forth in this paragraph. If a  
9 decision is entered which affirms or modifies the amounts for  
10 minimum wages, liquidated damages, or overtime compensation,  
11 the petitioner shall pay the amounts owed for the specified items  
12 included in a clerk's judgment entered under subdivision (f) based  
13 on the decision, or pursuant to a court judgment in a writ of  
14 mandate proceeding under paragraph (2). If the request for a writ  
15 is withdrawn or dismissed without entry of judgment, the petitioner  
16 shall pay the amounts owed for the specified items pursuant to the  
17 citation, or the administrative decision if a pending writ of mandate  
18 is dismissed prior to a court decision, unless the parties have  
19 executed a settlement agreement for payment of some other  
20 amount. In the case of a settlement agreement, the petitioner shall  
21 pay the amount he or she is obligated to pay under the terms of  
22 the settlement.

23 *(4) If the employer fails to pay the amount of minimum wages,*  
24 *liquidated damages, or overtime compensation owed within 10*  
25 *days of the entry of judgment, dismissal or withdrawal of writ, or*  
26 *the execution of a settlement agreement, a portion of the*  
27 *undertaking, described in paragraph (3), equal to the amount*  
28 *owed, or the entire undertaking if the amount owed exceeds the*  
29 *undertaking, shall be forfeited to the employee.*

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

35 (e) When no petition objecting to a citation or the proposed  
36 assessment of a civil penalty, wages, liquidated damages, and any  
37 applicable penalties imposed pursuant to Section 203 is filed, a  
38 certified copy of the citation or proposed civil penalty, wages,  
39 liquidated damages, and any applicable penalties imposed pursuant  
40 to Section 203 may be filed by the Labor Commissioner in the

1 office of the clerk of the superior court in any county in which the  
2 person assessed has or had a place of business. The clerk,  
3 immediately upon the filing, shall enter judgment for the state  
4 against the person assessed in the amount shown on the citation  
5 or proposed assessment of a civil penalty, wages, liquidated  
6 damages, and any applicable penalties imposed pursuant to Section  
7 203.

8 (f) When findings and the order thereon are made affirming or  
9 modifying a citation or proposed assessment of a civil penalty,  
10 wages, liquidated damages, and any applicable penalties imposed  
11 pursuant to Section 203 after hearing, a certified copy of these  
12 findings and the order entered thereon may be entered by the Labor  
13 Commissioner in the office of the clerk of the superior court in  
14 any county in which the person assessed has property or in which  
15 the person assessed has or had a place of business. The clerk,  
16 immediately upon the filing, shall enter judgment for the state  
17 against the person assessed in the amount shown on the certified  
18 order.

19 (g) A judgment entered pursuant to this section shall bear the  
20 same rate of interest and shall have the same effect as other  
21 judgments and be given the same preference allowed by the law  
22 on other judgments rendered for claims for taxes. The clerk shall  
23 make no charge for the service provided by this section to be  
24 performed by him or her.

25 (h) In a jurisdiction where a local entity has the legal authority  
26 to issue a citation against an employer for a violation of any  
27 applicable local minimum wage law, the Labor Commissioner,  
28 pursuant to a request from the local entity, may issue a citation  
29 against an employer for a violation of any applicable local  
30 minimum wage law if the local entity has not cited the employer  
31 for the same violation. If the Labor Commissioner issues a citation,  
32 the local entity shall not cite the employer for the same violation.

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

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

37 (k) This section does not change the applicability of local  
38 minimum wage laws to any entity.

O