

AMENDED IN ASSEMBLY MARCH 25, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1744

Introduced by Assembly Member Portantino

February 8, 2010

~~An act to amend Section 706.011 of the Code of Civil Procedure, relating to earnings withholding orders. An act to amend Section 19635 of, and to add Chapter 10.4 (commencing with Section 3524.1) to Division 4 of Title 1 of, the Government Code, relating to public employees.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1744, as amended, Portantino. ~~Earnings withholding orders. Public employees: rights.~~

The existing Bill of Rights for State Excluded Employees prescribes various rights and terms and conditions of employment for excluded employees, defined as certain supervisory, managerial, and confidential state employees.

This bill would enact the Public Employees' Bill of Rights Act that would apply to state employees other than excluded employees. The stated purpose of this act would be to inform public employees of their rights and terms of employment in order to promote harmonious personnel relations between public employees and their employers. This bill would, among other things, provide that state employees shall be entitled to full salary and benefits earned for work performed even when the annual Budget Act is not timely enacted. This bill would also authorize the formation of peer review committees for professional staff to provide input regarding workplace operations.

Existing law requires notice of any adverse action against any state employee for any cause for discipline based on any civil service law to be served within 3 years after the cause for discipline, upon which the notice is based, first arose. Existing law declares adverse action based on fraud, embezzlement, or the falsification of records valid, if notice of the adverse action is served within 3 years after the discovery of the fraud, embezzlement, or falsification.

This bill would require notice of the adverse action to be served and the investigation to be completed within one year after the cause for discipline first arose in order for an adverse action to be valid against any state employee for any cause for discipline based on any civil service law of this state.

~~Existing law provides procedures for the enforcement of monetary judgments, including the issuance of an earnings withholding order. Existing law provides various definitions for these purposes.~~

~~This bill would make technical, nonsubstantive changes to these 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. Chapter 10.4 (commencing with Section 3524.1)
2 is added to Division 4 of Title 1 of the Government Code, to read:

3
4 CHAPTER 10.4. PUBLIC EMPLOYEES' BILL OF RIGHTS ACT

5
6 3524.1. This chapter shall be known as the Public Employees'
7 Bill of Rights Act.

8 3524.2. The Legislature hereby finds and declares that the
9 rights and protections provided to public employees under this
10 chapter constitute a matter of important concern. The Legislature
11 further finds and declares that the efficient and effective
12 administration of public programs depends upon the maintenance
13 of high morale and the objective consideration of issues between
14 public employees and their employer.

15 3524.3. The purpose of this chapter is to inform public
16 employees of their rights and terms of employment, and to inspire
17 dedicated service and promote harmonious personnel relations
18 between public employees and their employer.

1 3524.4. For purposes of this chapter:

2 (a) “Contractor” means any person, other than a civil service
3 employee, who contracts to perform services for a state agency.

4 (b) “Employee” means a civil service employee, other than an
5 excluded employee, of the State of California.

6 (c) “Employer” includes all state agencies, boards and
7 commissions as may be designated by law that employ civil service
8 employees, with the exception of the University of California.

9 (d) “Excluded employee” means any of those employees
10 described in subdivision (b) of Section 3527.

11 (e) “Professional employee” means an employee described in
12 Section 3521.5.

13 3524.5. (a) The employer shall provide to each employee at
14 the onset of his or her employment and at reasonable intervals, a
15 current, detailed, and accurate job description, including a
16 complete description of the scope of his or her duties, salary, and
17 benefits information.

18 (b) The work of the employee shall not be standardized in
19 relation to a given period of time, nor shall unreasonable quotas
20 be imposed on an employee.

21 (c) The employer shall not unreasonably prevent the employee
22 from using his or her daily rest and lunch periods as well as his
23 or her annual, vacation, sick, or other earned leaves. An employee
24 shall be paid a salary proportionate to the time base he or she is
25 scheduled to work.

26 (d) An employee may not be compelled to perform extra work,
27 including work caused by vacancies, furloughs, or layoffs, without
28 fair compensation.

29 (e) An employee shall enjoy priority in filling permanent,
30 overtime, and on call positions over excluded employees and
31 contractors.

32 (f) County employees shall earn one and one-half times the
33 regular rate pay for overtime hours worked, upon approval by the
34 board of supervisors.

35 3524.6. Each employee shall have the right to a safe and
36 healthy working environment. Grievances relating to this right
37 shall be given a priority status.

38 3524.7. (a) Neither the employer, nor any of its excluded
39 employees or contractors, shall unlawfully discriminate against
40 an employee on the basis of age, sex, race, religion, creed, color,

1 national origin, ancestry, marital status, physical handicap, or
2 sexual orientation.

3 (b) There shall be no reprisals for any employee actions
4 involving exercise of rights under this section, in addition to the
5 protections afforded in the Ralph C. Dills Act (Chapter 10.3
6 (commencing with Section 3512)) and the California Whistleblower
7 Protection Act (Chapter 6.5 (commencing with Section 8547) of
8 Division 1 of Title 2). Employees shall be provided with a
9 confidential hotline to report waste, abuse of authority, and
10 violation of law or threat to public safety.

11 (c) An employee shall have the right to sue the employer for
12 damages for violations of the Americans with Disabilities Act, the
13 federal Age Discrimination in Employment Act, the federal Family
14 and Medical Leave Act, the California Family Rights Act, and the
15 federal Fair Labor Standards Act.

16 3524.8. (a) An employee is entitled to be fairly and
17 progressively disciplined for any deficient or inappropriate
18 behavior or job performance. The employer shall ensure that
19 preventive and corrective actions are taken before any adverse
20 action is administered in accordance with the current "Guide to
21 Employee Conduct and Discipline," or any successor publication,
22 distributed by the Department of Personnel Administration.

23 (b) Employers shall adhere to strict due process and periodic
24 written notice procedures while investigating employees. Those
25 investigations shall not ordinarily exceed the timeframe contained
26 in the original notice.

27 3524.9. (a) The employer shall ensure that full salary and
28 benefits will be paid to an employee for work done, even when the
29 Legislature has not timely passed the annual Budget Act for the
30 fiscal year in which the work is performed. The employer shall
31 honor the contractual pension arrangement made with the
32 employee when he or she leaves state service, regardless of the
33 fiscal status of the state agency for which the employee performed
34 the work.

35 (b) An employee shall have the right to pursue employment
36 outside of state service.

37 3524.10. The employer shall honor the Memorandum of
38 Understanding (MOU) under which each employee is covered.
39 The employee is entitled to receive timely responses from the
40 employer in all areas covered by the MOU, especially in response

1 to complaints and grievances. Any grievance filed by an employee
2 shall be considered to have been resolved in favor of the employee
3 if any of the contractual timelines are violated by the employer.

4 3524.11. (a) This section shall apply to an employee who is
5 required to maintain a professional license to perform his or her
6 work.

7 (b) An employee's professional judgment related to his or her
8 work and work product shall not be interfered with nor infringed
9 upon by nonprofessional or unlicensed employees or supervisors.
10 An employee shall not be required to perform work that could put
11 his or her professional license in jeopardy.

12 (c) Performance and merit evaluations shall include significant
13 input from a management or supervisory peer who has the same
14 or a higher professional status or license, as applicable, as that
15 held by the employee.

16 (d) If there are no professional staff employed by the employer,
17 a peer review committee shall be formed and authorized to have
18 regular input regarding the operation of the workplace.

19 (e) Professional staff and the respective bylaws of the
20 professional staff shall be recognized by the employer. Professional
21 staff shall have regular input regarding the operation of the
22 workplace.

23 (f) Professional employees named in lawsuits as codefendants
24 along with the employer and the state shall have the right to
25 representation. These employees shall enjoy all the same rights
26 afforded to all legal clients, including the right to be informed of
27 a settlement by the state. If there is a conflict of interest between
28 the employee and the state as codefendants, the state shall provide
29 independent counsel for the employee.

30 SEC. 2. Section 19635 of the Government Code is amended to
31 read:

32 19635. No adverse action shall be valid against any state
33 employee for any cause for discipline based on any civil service
34 law of this state, unless notice of the adverse action is served *and*
35 *the investigation is completed* within ~~three years~~ one year after the
36 cause for discipline, upon which the notice is based, first arose.
37 ~~Adverse action based on fraud, embezzlement, or the falsification~~
38 ~~of records shall be valid, if notice of the adverse action is served~~
39 ~~within three years after the discovery of the fraud, embezzlement,~~
40 ~~or falsification.~~

1 SECTION 1. ~~Section 706.011 of the Code of Civil Procedure~~
2 ~~is amended to read:~~

3 ~~706.011. As used in this chapter:~~

4 ~~(a) “Earnings” means compensation payable by an employer to~~
5 ~~an employee for personal services performed by the employee,~~
6 ~~whether denominated as wages, salary, commission, bonus, or~~
7 ~~otherwise.~~

8 ~~(b) “Earnings assignment order for support” means an order,~~
9 ~~made pursuant to Chapter 8 (commencing with Section 5200) of~~
10 ~~Part 5 of Division 9 of the Family Code or Section 3088 of the~~
11 ~~Probate Code, which requires an employer to withhold earnings~~
12 ~~for support.~~

13 ~~(c) “Employee” means a public officer and any individual who~~
14 ~~performs services subject to the right of the employer to control~~
15 ~~both what shall be done and how it shall be done.~~

16 ~~(d) “Employer” means a person for whom an individual~~
17 ~~performs services as an employee.~~

18 ~~(e) “Judgment creditor,” as applied to the state, means the~~
19 ~~specific state agency seeking to collect a judgment or tax liability.~~

20 ~~(f) “Judgment debtor” includes a person from whom the state~~
21 ~~is seeking to collect a tax liability under Article 4 (commencing~~
22 ~~with Section 706.070), whether or not a judgment has been~~
23 ~~obtained on that tax liability.~~

24 ~~(g) “Person” includes an individual, a corporation, a partnership~~
25 ~~or other unincorporated association, a limited liability company,~~
26 ~~and a public entity.~~