

AMENDED IN SENATE MAY 19, 2009  
AMENDED IN SENATE APRIL 14, 2009

**SENATE BILL**

**No. 404**

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**Introduced by Senator Benoit**

February 26, 2009

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An act to amend Section 226 of the Labor Code, ~~and to amend Section 19853 of the Revenue and Taxation Code, relating to~~ *relating to* employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 404, as amended, Benoit. Employment: information for employees.

Existing law requires an employer to provide its employees with specified information regarding their wages either semimonthly or at the time of each wage payment. ~~Under existing law, an employer is also required, in connection with the annual wage statement, to notify all of its employees that they may be eligible for the earned income tax credit (EITC).~~

This bill would clarify that the employer may provide the wage information either on a detachable part of the payment made to the employee or on a separate page ~~and would specify that the employer is not required to include the hours worked by employees who are exempt from certain overtime requirements. The bill would limit the EITC notification, requiring the employer to notify only those employees to whom it pays a gross annual salary of \$50,000 or less.~~

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 226 of the Labor Code is amended to  
2 read:

3 226. (a) Every employer shall, semimonthly or at the time of  
4 each payment of wages, furnish each of his or her employees,  
5 either as a detachable part of the check, draft, or voucher paying  
6 the employee’s wages, or on a separate page, an accurate itemized  
7 statement in writing showing the following:

8 (1) Gross wages earned.

9 (2) Total hours worked by the employee, except for any  
10 employee *whose compensation is solely based on a salary and*  
11 *who is exempt from payment of overtime under subdivision (a)*  
12 *of Section 515 or any applicable order of the Industrial Welfare*  
13 *Commission.*

14 (3) The number of piece-rate units earned and any applicable  
15 piece rate if the employee is paid on a piece-rate basis.

16 (4) All deductions, provided that all deductions made on written  
17 orders of the employee may be aggregated and shown as one item.

18 (5) Net wages earned.

19 (6) The inclusive dates of the period for which the employee is  
20 paid.

21 (7) The name of the employee and the last four digits of his or  
22 her social security number or an employee identification number  
23 other than a social security number.

24 (8) The name and address of the legal entity that is the employer.

25 (9) All applicable hourly rates in effect during the pay period  
26 and the corresponding number of hours worked at each hourly rate  
27 by the employee. The deductions made from payments of wages  
28 shall be recorded in ink or other indelible form, properly dated,  
29 showing the month, day, and year, and a copy of the statement or  
30 a record of the deductions shall be kept on file by the employer  
31 for at least three years at the place of employment or at a central  
32 location within the State of California.

33 (b) An employer that is required by this code or any regulation  
34 adopted pursuant to this code to keep the information required by  
35 subdivision (a) shall afford current and former employees the right  
36 to inspect or copy the records pertaining to that current or former  
37 employee, upon reasonable request to the employer. The employer  
38 may take reasonable steps to assure the identity of a current or

1 former employee. If the employer provides copies of the records,  
2 the actual cost of reproduction may be charged to the current or  
3 former employee.

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

14 (d) This section does not apply to an employer of any person  
15 employed by the owner or occupant of a residential dwelling whose  
16 duties are incidental to the ownership, maintenance, or use of the  
17 dwelling, including the care and supervision of children, or whose  
18 duties are personal and not in the course of the trade, business,  
19 profession, or occupation of the owner or occupant.

20 (e) An employee suffering injury as a result of a knowing and  
21 intentional failure by an employer to comply with subdivision (a)  
22 is entitled to recover the greater of all actual damages or fifty  
23 dollars (\$50) for the initial pay period in which a violation occurs  
24 and one hundred dollars (\$100) per employee for each violation  
25 in a subsequent pay period, not exceeding an aggregate penalty of  
26 four thousand dollars (\$4,000), and is entitled to an award of costs  
27 and reasonable attorney's fees.

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

33 (g) An employee may also bring an action for injunctive relief  
34 to ensure compliance with this section, and is entitled to an award  
35 of costs and reasonable attorney's fees.

36 (h) This section does not apply to the state, to any city, county,  
37 city and county, district, or to any other governmental entity, except  
38 that if the state or a city, county, city and county, district, or other  
39 governmental entity furnishes its employees with a check, draft,  
40 or voucher paying the employee's wages, the state or a city, county,

1 city and county, district, or other governmental entity shall use no  
2 more than the last four digits of the employee’s social security  
3 number or shall use an employee identification number other than  
4 the social security number on the itemized statement provided with  
5 the check, draft, or voucher.

6 ~~SEC. 2. Section 19853 of the Revenue and Taxation Code is~~  
7 ~~amended to read:~~

8 ~~19853. (a) An employer shall notify all employees to whom~~  
9 ~~the employer pays a gross annual salary of fifty thousand dollars~~  
10 ~~(\$50,000) or less that they may be eligible for the EITC within~~  
11 ~~one week before or after, or at the same time, that the employer~~  
12 ~~provides an annual wage summary, including, but not limited to,~~  
13 ~~a Form W-2 or a Form 1099, to any employee.~~

14 ~~(b) The employer shall provide the notification required by~~  
15 ~~subdivision (a) by handing directly to the employee or mailing to~~  
16 ~~the employee’s last known address either of the following:~~

17 ~~(1) Instructions on how to obtain any notices available from the~~  
18 ~~Internal Revenue Service for this purpose, including, but not~~  
19 ~~limited to, the IRS Notice 797 and Form W-5, or any successor~~  
20 ~~notice or form.~~

21 ~~(2) Any notice created by the employer, as long as it contains~~  
22 ~~substantially the same language as the notice described in~~  
23 ~~paragraph (1) or in Section 19854.~~

24 ~~(c) The employer shall not satisfy the notification required by~~  
25 ~~subdivision (a) by posting a notice on an employee bulletin board~~  
26 ~~or sending it through office mail. However, these methods of~~  
27 ~~notification are encouraged to help inform all employees of the~~  
28 ~~EITC.~~

29 ~~(d) Every employer shall process, in accordance with federal~~  
30 ~~law, Form W-5 for advance payments of the EITC, upon the~~  
31 ~~request of the employee.~~