

AMENDED IN ASSEMBLY APRIL 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1286**

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**Introduced by Assembly Member Fuentes**

February 18, 2011

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An act to add Section ~~206.8~~ 206.7 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1286, as amended, Fuentes. Wage disputes: waiver of claims.

Existing law requires that in a dispute over wages due between an employee and employer, the employer is required to immediately pay to the employee, without condition, that portion of the wages that is not in dispute, leaving the employee free to pursue his or her lawful remedies for the remainder. Existing law also prohibits an employer from requiring an employee to execute a release of a claim for wages due as a requirement to pay wages, unless all wages claimed are paid. *The existing California Rules of Court provide for procedures for the settlement of class actions.*

This bill would provide that ~~when a dispute exists between an employer and an employee over earned wages that is the subject of a pending certified or uncertified class action or representative action, a waiver, release, or settlement is not valid unless all parties are represented by counsel, a superior court approves the release as a reasonable and good faith resolution of the dispute, as defined, or the Division of Labor Standards Enforcement has negotiated a settlement between the parties. Also, the bill would provide that if an employer seeks court approval of any release, waiver, or settlement with an employee while a class or representative action, as specified, is pending,~~

~~the employer must notify plaintiff’s counsel in the class or representative action unless approval of a settlement or compromise relating to a claim for earned wages is being sought pursuant to the California Rules of Court, an employee’s waiver or release of such a wage claim that is based on a provision of the Labor Code or an order of the Industrial Welfare Commission, or is derivative of such a claim, and is covered by a pending certified or uncertified class action or representative action, shall not be valid or enforceable if that employee is a class member or a putative class member in a pending certified or uncertified class action or is represented or potentially represented in a representative action.~~

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 206.7 is added to the Labor Code, to read:
- 2     206.7. Unless approval of a settlement or compromise relating
- 3     to a claim for earned wages is being sought pursuant to Rule 3.769
- 4     of the California Rules of Court, an employee’s waiver or release
- 5     of such a wage claim that is based on a provision of this code or
- 6     an order of the Industrial Welfare Commission, or is derivative of
- 7     such a claim, and is covered by a pending certified or uncertified
- 8     class action or representative action, shall not be valid or
- 9     enforceable if that employee is a class member or a putative class
- 10    member in a pending certified or uncertified class action or is
- 11    represented or potentially represented in a representative action.
- 12    SECTION 1. Section 206.8 is added to the Labor Code, to
- 13    read:
- 14    206.8.—(a) (1) ~~A waiver or release by an employee of a claim~~
- 15    ~~for earned wages that is the subject of a pending certified class~~
- 16    ~~action, uncertified class action, or representative action shall not~~
- 17    ~~be valid or enforceable unless one or more of the following applies:~~
- 18    (A) ~~All parties are represented by counsel.~~
- 19    (B) ~~The release has been approved by a superior court as a~~
- 20    ~~reasonable and good faith resolution of the dispute.~~
- 21    (C) ~~The Division of Labor Standards Enforcement negotiates~~
- 22    ~~a settlement between the parties.~~

1 ~~(2) If the employee is a putative member of a pending class~~  
2 ~~action or representative action, the release states the pertinent~~  
3 ~~information of the pending action, including the following:~~

4 ~~(A) The full case name, court location, and case number.~~

5 ~~(B) A description of all claims alleged in each such pending~~  
6 ~~action.~~

7 ~~(C) The contact information for all attorneys representing each~~  
8 ~~plaintiff in each such pending action.~~

9 ~~(D) The full potential value of all the claims sought to be~~  
10 ~~approved for release, waiver, or settlement as compared to the~~  
11 ~~value being offered in exchange for the release, waiver, or~~  
12 ~~settlement.~~

13 ~~(E) A statement instructing the employee to contact class or~~  
14 ~~representative counsel in order to be advised of his or her potential~~  
15 ~~rights.~~

16 ~~(b) An attorney representing an employee in a dispute over~~  
17 ~~earned wages pursuant to subdivision (a) shall affirm in writing~~  
18 ~~that he or she has read the release, waiver, or settlement of liability,~~  
19 ~~has reviewed the facts and circumstances of the dispute, has advised~~  
20 ~~the employee of his or her rights, and believes that the agreement~~  
21 ~~is a fair and adequate resolution of the dispute and in the~~  
22 ~~employee's best interest.~~

23 ~~(c) (1) If an employee seeks court approval of a release of his~~  
24 ~~or her rights to earned wages pursuant to subdivision (a), the~~  
25 ~~employer or its agent or representative shall submit a declaration,~~  
26 ~~signed under penalty of perjury, identifying the full potential value~~  
27 ~~of the claims sought to be approved for release, waiver, or~~  
28 ~~settlement as compared to the value being offered in exchange for~~  
29 ~~the release, waiver, or settlement. Notice and determination of the~~  
30 ~~good faith resolution shall follow the guidelines set forth in Section~~  
31 ~~877.6 of the Code of Civil Procedure, except as provided in~~  
32 ~~paragraph (2):~~

33 ~~(2) At least 45 days before presenting a release, settlement, or~~  
34 ~~waiver to the putative class member, the employer is required to~~  
35 ~~notify all parties, including parties to pending class actions~~  
36 ~~asserting similar claims, putative class counsel, court-appointed~~  
37 ~~class counsel, and the court of all the terms of the proposed release,~~  
38 ~~settlement, or waiver and the name and last known residence~~  
39 ~~address and telephone number of each putative class member to~~  
40 ~~whom the employer intends to make the offer.~~

1     ~~(d) If an employee purporting to make a release pursuant to~~  
2     ~~subdivision (a) is not approved by the superior court as set forth~~  
3     ~~herein, or is not represented by counsel, or the Division of Labor~~  
4     ~~Standards Enforcement has not negotiated a settlement between~~  
5     ~~the parties, the release, waiver, or settlement shall not effect a~~  
6     ~~waiver of the employee's rights to any wage claims with that~~  
7     ~~employer. If the employee prevails on an action subsequent to~~  
8     ~~signing a release of liability, all amounts paid by the employer~~  
9     ~~may be a set-off against the final amount of wages owed if the~~  
10    ~~court determines that the parties specifically intended to release~~  
11    ~~such claims in the original agreement. In making this~~  
12    ~~determination, all inferences shall be in favor of the employee and~~  
13    ~~the burden of proof shall be on the employer to prove by clear and~~  
14    ~~convincing evidence that the proposed settlement is fair and~~  
15    ~~reasonable.~~

16    ~~(e) An employee not represented by counsel who waives his or~~  
17    ~~her rights to unknown future claims pursuant to Section 1542 of~~  
18    ~~the Civil Code does not waive his or her rights to any wage claims,~~  
19    ~~including future wage claims.~~

20    ~~(f) If an employer seeks court approval of any release, waiver,~~  
21    ~~or settlement with a current or former employee or employees~~  
22    ~~while a class or representative action pursuant to subdivision (a)~~  
23    ~~is pending, the employer shall notify plaintiff's counsel in the class~~  
24    ~~or representative action pursuant to subdivision (a) no later than~~  
25    ~~16 court days prior to the hearing date on the release, waiver, or~~  
26    ~~settlement. Plaintiff's counsel may file an opposition to the~~  
27    ~~proposed release, waiver, or settlement no later than nine court~~  
28    ~~days prior to the hearing. The court may continue the hearing to~~  
29    ~~allow discovery to be taken regarding the reasonableness of the~~  
30    ~~individual settlements.~~