

ASSEMBLY BILL

No. 2613

Introduced by Assembly Member Torres

February 24, 2012

An act to amend Section 98 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2613, as introduced, Torres. Employment: Labor Commissioner: hearings.

Existing law authorizes the Labor Commissioner to investigate employee complaints and hold hearings on those complaints, including complaints regarding payroll checks or drafts returned unpaid, as specified. Existing law specifies the procedures to be used by the Labor Commissioner when conducting those hearings.

This bill would make a nonsubstantive change to that provision of existing law.

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 98 of the Labor Code is amended to read:
- 2 98. (a) The Labor Commissioner is authorized to investigate
- 3 employee complaints. The Labor Commissioner may provide for
- 4 a hearing in any action to recover wages, penalties, and other
- 5 demands for compensation, including liquidated damages if the
- 6 complaint alleges payment of a wage less than the minimum wage
- 7 fixed by an order of the Industrial Welfare Commission or by

1 statute, properly before the division or the Labor Commissioner,
2 including orders of the Industrial Welfare Commission, and shall
3 determine all matters arising under his or her jurisdiction. It is
4 within the jurisdiction of the Labor Commissioner to accept and
5 determine claims from holders of payroll checks or payroll drafts
6 returned unpaid because of insufficient funds, if, after a diligent
7 search, the holder is unable to return the dishonored check or draft
8 to the payee and recover the sums paid out. Within 30 days of the
9 filing of the complaint, the Labor Commissioner shall notify the
10 parties ~~as to~~ whether a hearing will be held, whether action will
11 be taken in accordance with Section 98.3, or whether no further
12 action will be taken on the complaint. If the determination is made
13 by the Labor Commissioner to hold a hearing, the hearing shall
14 be held within 90 days of the date of that determination. However,
15 the Labor Commissioner may postpone or grant additional time
16 before setting a hearing if the Labor Commissioner finds that it
17 would lead to an equitable and just resolution of the dispute. A
18 party who has received actual notice of a claim before the Labor
19 Commissioner shall, while the matter is before the Labor
20 Commissioner, notify the Labor Commissioner in writing of any
21 change in that party's business or personal address within 10 days
22 after the change in address occurs.

23 It is the intent of the Legislature that hearings held pursuant to
24 this section be conducted in an informal setting preserving the
25 rights of the parties.

26 (b) When a hearing is set, a copy of the complaint, which shall
27 include the amount of compensation requested, together with a
28 notice of time and place of the hearing, shall be served on all
29 parties, personally or by certified mail, or in the manner specified
30 in Section 415.20 of the Code of Civil Procedure.

31 (c) Within 10 days after service of the notice and the complaint,
32 a defendant may file an answer with the Labor Commissioner in
33 any form as the Labor Commissioner may prescribe, setting forth
34 the particulars in which the complaint is inaccurate or incomplete
35 and the facts upon which the defendant intends to rely.

36 (d) No pleading other than the complaint and answer of the
37 defendant or defendants shall be required. Both shall be in writing
38 and shall conform to the form and the rules of practice and
39 procedure adopted by the Labor Commissioner.

1 (e) Evidence on matters not pleaded in the answer shall be
2 allowed only on terms and conditions the Labor Commissioner
3 shall impose. In all these cases, the claimant shall be entitled to a
4 continuance for purposes of review of the new evidence.

5 (f) If the defendant fails to appear or answer within the time
6 allowed under this chapter, no default shall be taken against him
7 or her, but the Labor Commissioner shall hear the evidence offered
8 and shall issue an order, decision, or award in accordance with the
9 evidence. A defendant failing to appear or answer, or subsequently
10 contending to be aggrieved in any manner by want of notice of the
11 pendency of the proceedings, may apply to the Labor
12 Commissioner for relief in accordance with Section 473 of the
13 Code of Civil Procedure. The Labor Commissioner may afford
14 this relief. No right to relief, including the claim that the findings
15 or award of the Labor Commissioner or judgment entered thereon
16 are void upon their face, shall accrue to the defendant in any court
17 unless prior application is made to the Labor Commissioner in
18 accordance with this chapter.

19 (g) All hearings conducted pursuant to this chapter are governed
20 by the division and by the rules of practice and procedure adopted
21 by the Labor Commissioner.

22 (h) (1) Whenever a claim is filed under this chapter against a
23 person operating or doing business under a fictitious business
24 name, as defined in Section 17900 of the Business and Professions
25 Code, which relates to the person's business, the division shall
26 inquire at the time of the hearing whether the name of the person
27 is the legal name under which the business or person has been
28 licensed, registered, incorporated, or otherwise authorized to do
29 business.

30 (2) The division may amend an order, decision, or award to
31 conform to the legal name of the business or the person who is the
32 defendant to a wage claim, if it can be shown that proper service
33 was made on the defendant or his or her agent, unless a judgment
34 had been entered on the order, decision, or award pursuant to
35 subdivision (d) of Section 98.2. The Labor Commissioner may
36 apply to the clerk of the superior court to amend a judgment that
37 has been issued pursuant to a final order, decision, or award to

- 1 conform to the legal name of the defendant, if it can be shown that
- 2 proper service was made on the defendant or his or her agent.

O