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ASSEMBLY BILL

No. 442

Introduced by Assembly Member Nazarian

February 19, 2013

An act to amend Sections 1194.2 and 1197.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 442, as introduced, Nazarian. Employees: wages.

Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law provides for criminal and civil penalties for violations of statutes and orders of the commission regarding payment of wages. Existing law authorizes the Labor Commissioner to recover liquidated damages for an employee who brings a complaint alleging payment of less than the minimum wage fixed by an order of the commission or by statute.

Existing law subjects any employer, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission or by statute, to a citation that includes a civil penalty and the payment of restitution of wages to the employee.

This bill would expand that penalty and restitution provision for a citation to also subject the employer to payment of liquidated damages to the employee.

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 1194.2 of the Labor Code is amended to
2 read:

3 1194.2. (a) In any action under Section 98, 1193.6, ~~or~~ 1194,
4 *or 1197.1* to recover wages because of the payment of a wage less
5 than the minimum wage fixed by an order of the commission or
6 by statute, an employee shall be entitled to recover liquidated
7 damages in an amount equal to the wages unlawfully unpaid and
8 interest thereon. Nothing in this subdivision shall be construed to
9 authorize the recovery of liquidated damages for failure to pay
10 overtime compensation.

11 (b) Notwithstanding subdivision (a), if the employer
12 demonstrates to the satisfaction of the court or the Labor
13 Commissioner that the act or omission giving rise to the action
14 was in good faith and that the employer had reasonable grounds
15 for believing that the act or omission was not a violation of any
16 provision of the Labor Code relating to minimum wage, or an order
17 of the commission, the court or the Labor Commissioner may, as
18 a matter of discretion, refuse to award liquidated damages or award
19 any amount of liquidated damages not exceeding the amount
20 specified in subdivision (a).

21 (c) This section applies only to civil actions commenced on or
22 after January 1, 1992.

23 SEC. 2. Section 1197.1 of the Labor Code is amended to read:

24 1197.1. (a) Any employer or other person acting either
25 individually or as an officer, agent, or employee of another person,
26 who pays or causes to be paid to any employee a wage less than
27 the minimum fixed by an order of the commission shall be subject
28 to a civil penalty ~~and~~, restitution of wages, *and liquidated damages*
29 payable to the employee, as follows:

30 (1) For any initial violation that is intentionally committed, one
31 hundred dollars (\$100) for each underpaid employee for each pay
32 period for which the employee is underpaid. This amount shall be
33 in addition to an amount sufficient to recover underpaid wages
34 *and liquidated damages pursuant to Section 1194.2.*

35 (2) For each subsequent violation for the same specific offense,
36 two hundred fifty dollars (\$250) for each underpaid employee for
37 each pay period for which the employee is underpaid regardless
38 of whether the initial violation is intentionally committed. This

1 amount shall be in addition to an amount sufficient to recover
2 underpaid wages *and liquidated damages pursuant to Section*
3 *1194.2.*

4 (3) Wages *and liquidated damages* recovered pursuant to this
5 section shall be paid to the affected employee.

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

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

27 ~~The~~

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

1 assessment. The writ shall be taken within 45 days of service of
2 the notice of findings, findings, and order thereon.

3 (d) A person to whom a citation has been issued shall, in lieu
4 of contesting a citation pursuant to this section, transmit to the
5 office of the Labor Commissioner designated on the citation the
6 amount specified for the violation within 15 business days after
7 issuance of the citation.

8 (e) When no petition objecting to a citation or the proposed
9 assessment of a civil penalty ~~and~~, wages, *and liquidated damages*
10 is filed, a certified copy of the citation or proposed civil penalty
11 ~~and~~, wages, *and liquidated damages* may be filed by the Labor
12 Commissioner in the office of the clerk of the superior court in
13 any county in which the person assessed has or had a place of
14 business. The clerk, immediately upon the filing, shall enter
15 judgment for the state against the person assessed in the amount
16 shown on the citation or proposed assessment of a civil penalty
17 ~~and~~, wages, *and liquidated damages*.

18 (f) When findings and the order thereon are made affirming or
19 modifying a citation or proposed assessment of a civil penalty ~~and~~,
20 wages, *and liquidated damages* after hearing, a certified copy of
21 these findings and the order entered thereon may be entered by
22 the Labor Commissioner in the office of the clerk of the superior
23 court in any county in which the person assessed has property or
24 in which the person assessed has or had a place of business. The
25 clerk, immediately upon the filing, shall enter judgment for the
26 state against the person assessed in the amount shown on the
27 certified order.

28 (g) A judgment entered pursuant to this section shall bear the
29 same rate of interest and shall have the same effect as other
30 judgments and be given the same preference allowed by the law
31 on other judgments rendered for claims for taxes. The clerk shall
32 make no charge for the service provided by this section to be
33 performed by him or her.

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

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

O

Date of Hearing: April 10, 2013

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT
Roger Hernández, Chair
AB 442 (Nazarian) - As Introduced: February 19, 2013

SUBJECT : Employees: wages.

SUMMARY : Provides that a citation issued by the Labor Commissioner (LC) for failure to pay minimum wage shall include liquidated damages, as already available under existing law in civil actions or administrative wage claim actions.

EXISTING LAW :

- 1) Provides that an employee who receives less than the minimum wage is entitled to recover in a civil action, the unpaid balance of the full amount of the minimum wage, liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon, reasonable attorney's fees and costs of suit.
- 2) Provides that in a wage claim brought before the LC for failure to pay minimum wage, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unpaid and interest thereon.
- 3) Provides that if the employer demonstrates to the satisfaction of the court or the LC that the failure to pay minimum wage was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of the law, the court or the LC may, as a matter of discretion, refuse to award liquidated damages or reduce the amount of liquidated damages.
- 4) Provides that, in a citation for a minimum wage violation issued by the LC, an employer shall be subject to a specified civil penalty and restitution of wages.

FISCAL EFFECT : Unknown

COMMENTS : This bill is sponsored by the California Rural Legal Assistance Foundation (CRLAF) who argues that it will provide that when the Labor Commissioner, after an inspection or investigation, issues a citation against an employer for failure

to pay minimum wages to his/her employees, the LC is also able to recover for those employees the unpaid minimum wage "liquidated damages" available elsewhere under state law.

Under Labor Code section 1194, an employee who receives less than the minimum wage is entitled to recover in a civil action, the unpaid balance of the full amount of the minimum wage, liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon, reasonable attorney's fees and costs of suit.

AB 240 (Bonilla) of 2011 amended Labor Code sections 1194.2 and 98 to authorize the Labor Commissioner to award unpaid minimum wage liquidated damages in administrative wage claim hearings under the same conditions that existed for allowing a court to award those same damages to workers. CRLAF contends that this bill fills the one remaining gap in the LC's authority to make workers whole in minimum wage violation cases. This bill provides that the LC may also subject the minimum wage violator to payment of "liquidated damages" to the employee. CRLAF argues that this change to the law ensures that regardless of where wage theft is found, employees cheated out of wages will get what the law intends: restitution of the amount of unpaid minimum wages AND an amount equal to the total amount of unpaid minimum wages (as "liquidated damages").

CRLAF contends that the failure to enact this bill will create new costs to the Division of Labor Standards Enforcement (DLSE) and cause delays for workers entitled to liquidated damages. Specifically, they argue that because the award of liquidated damages is mandatory when minimum wages have not been paid, the failure to recover those damages for the worker after a citation is issued will likely result in the worker bringing a separate claim before the LC. This adds unnecessary new costs to DLSE and also adds delays for workers who have been cheated of wages and deserve full compensation.

REGISTERED SUPPORT / OPPOSITION :

Support

California Rural Legal Assistance Foundation (sponsor)

Opposition

None on file.

Analysis Prepared by : Ben Ebbink / L. & E. / (916) 319-2091

Date of Hearing: April 16, 2013

ASSEMBLY COMMITTEE ON JUDICIARY
Bob Wieckowski, Chair
AB 442 (Nazarian) - As Introduced: February 19, 2013

PROPOSED CONSENT

SUBJECT : UNPAID WAGES: LIQUIDATED DAMAGES

KEY ISSUE : SHOULD THE EMPLOYEES OF THOSE FOUND TO BE IN VIOLATION OF MINIMUM WAGE LAWS BY THE LABOR COMMISSIONER BE ENTITLED TO THE SAME DAMAGES ALREADY AVAILABLE THROUGH CIVIL OR ADMINISTRATIVE WAGE CLAIM ACTIONS?

FISCAL EFFECT : As currently in print this bill is keyed fiscal.

SYNOPSIS

This bill seeks to extend the recovery of liquidated damages to the affected employees of employers found by the Labor Commissioner to have violated minimum wage laws. Liquidated damages are already available to employees who have not been paid minimum wage through civil actions and administrative wage hearings before the Labor Commissioner. This bill would extend the authority of the Labor Commissioner to award the payment of liquidated damages to affected employees through the Labor Commissioner citation process, in which the employer not paying minimum wages is subject to a civil penalty and payment of unpaid wages. Supporters argue that this bill fills the one remaining gap in the Labor Commissioner's authority to cite and recover from employers violating minimum wage laws. There is no known opposition.

SUMMARY : Extends the award of liquidated damages to those employees whose employer has been cited by the Labor Commissioner in violation of minimum wage laws. Specifically, this bill adds "liquidated damages" paid to the employee to the list of things that a person who the Labor Commissioner has determined to have paid or caused to be paid a wage less than the minimum wage is subject to.

EXISTING LAW :

1)Provides than an employee who is paid less than the minimum

wage may recover unpaid wages through a civil action or administrative hearing. (Labor Code sections 98, 1193.6 and 1194.)

2) In a civil or administrative action to recover wages because of the payment of a wage less than minimum wage, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. (Labor Code section 1194.2.)

3) Upon inspection or investigation, the Labor Commissioner may issue a citation to a person who is found to have paid or caused to be paid a wage less than the minimum. The cited violator is subject to a civil penalty and restitution of wages payable to the employee. (Labor Code section 1197.1(a) and (b).)

COMMENTS : Under current law, if an employer is found to have paid an employee less than the minimum wage through a civil action or an administrative hearing before the Labor Commissioner, the employee is entitled to recover the unpaid balance of the full amount of the minimum wage and liquidated damages in an amount equal to the wages unpaid and interest thereon. This bill extends the entitlement to liquidated damages to those employees whose employer has been found by the Labor Commissioner, upon inspection or investigation, to have paid an employee less than the minimum wage.

Amendments to the Labor Code in 2011 allowed for the Recovery of Liquidated Damages in both Civil Actions and Administrative Hearings. Labor Code sections 1193.6 and 1194 provide that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of the minimum wage, including the interest. Prior to AB 240 (Bonilla) of 2011, Labor Code section 1194.2 only allowed the recovery of liquidated damages via this civil action code section. AB 240 amended Labor Code section 98 and 1194.2 to authorize the Labor Commissioner to award unpaid minimum wage liquidated damages in administrative wage claim hearings, creating parity of entitlements from the two wage proceedings.

Employers Who Are Found in Violation of Minimum Wage Laws by the Labor Commissioner's Citation Process Are Not Currently Subject to Payment of Liquidated Damages to Affected Employees. After inspection or investigation, if the Labor Commissioner

determines that an employer is paying less than minimum wage the Labor Commissioner may issue a citation to the person in violation. Currently, under section 1197.1, an employer shall be subject to a civil penalty and restitution of wages to the employee. AB 442 adds "liquidated damages" to section 1197.1, closing the gap of damages wronged employees are entitled to between civil actions, administrative hearings, and Labor Commissioner citations. The author states, this bill "ensures that workers have the same monetary relief whether they pursue their claims administratively, by way of the courts, or via the Labor Commissioner's existing authority."

This Bill Does Not Expand The Class Of Employers Who Are Subject To Pay Affected Employees Liquidated Damages.

This bill uses the Labor Commissioner's existing authority to investigate and cite employers paying less than the minimum wage, along with the Labor Commissioner's power to recover the penalties assessed and wages owed to the employee, to provide equal recovery no matter through which process a violation is found. The author contends that this is a more efficient way of awarding damages to affected employees. Specifically, because the award of liquidated damages is mandatory when minimum wages have not been paid, an employee who was awarded unpaid wages after the Labor Commissioner's citation would then commence a civil action or administrative hearing for liquidated damages.

Further, procedures are in place to protect employers from unjust findings of liquidated damages. For example, Section 1197.1 provides a procedure for an alleged minimum wage violator to contest the Labor Commissioner's citation, civil penalty, and wage findings, including filing a writ of mandate. Additionally, this bill subjects the Labor Commissioner's findings of liquidated damages to section 1194.2, which gives the court or the Labor Commissioner discretion to refuse to award liquidated damages.

REGISTERED SUPPORT / OPPOSITION :

Support

California Rural Legal Assistance Foundation (sponsor)

Opposition

None on file

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Date of Hearing: May 1, 2013

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Mike Gatto, Chair

AB 442 (Nazarian) - As Introduced: February 19, 2013

Policy Committee:	Labor and
Employment	7-0
Vote:	
Judiciary	10-0

Urgency:	No	State Mandated Local Program:
No	Reimbursable:	No

SUMMARY

This bill allows an employee to recover liquidated wages for citations issued by the Labor Commissioner (LC) for minimum wage violations, as specified.

FISCAL EFFECT

Minor, absorbable costs to the Department of Industrial Relations (DIR) to implement this measure.

COMMENTS

Purpose . Existing law subjects an employer who pays an employee less than the minimum wage to a civil penalty and restitution, as specified. Statute further authorizes the LC, upon inspection or investigation, to issue a citation to a person who is paying less than the minimum wage. According to DIR, it issued 133 citations for minimum wage violations in the 2011-12 fiscal year.

Current law specifies an employee who is paid less than the minimum wage is entitled to recover the unpaid balance of the full amount of the minimum wage and interest, where applicable. Whether or not the employee is entitled to liquidated damages depends on the manner in which the minimum wage violation was determined (i.e., via a civil action, an administrative wage claim hearing, or a citation issued by the LC). For example, an employee who is paid less than the minimum wage is entitled to recover in a civil action, the unpaid balance of the full amount of the minimum wage, liquidated damages in an amount equal to

the wages unlawfully paid and interest, reasonable attorney's fees and costs of the suit.

AB 240 (Bonilla), Chapter 272, Statutes of 2011, authorized the LC to award liquidated damages to an employee via an administrative wage claim hearing. Chapter 272 established parity to employees in awarding liquidated damages between the two wage proceedings - civil action and administrative hearings.

This bill, sponsored by the California Rural Legal Assistance Foundation, extends this parity to minimum wage violations determined by citations issued by the LC, as specified.

Analysis Prepared by : Kimberly Rodriguez / APPR. / (916)
319-2081

Senate Committee on Labor and Industrial Relations
William W. Monning, Chair

Date of Hearing: June 12, 2013
Session
Consultant: Deanna D. Ping

2013-2014 Regular
Fiscal: Yes
Urgency: No

Bill No: AB 442
Author: Nazarian
As Introduced: February 19, 2013

SUBJECT

Employees: wages

KEY ISSUE

Should the Legislature allow the Labor Commissioner to recover liquidated damages on behalf of a worker when a citation for failure to pay minimum wage has been issued?

ANALYSIS

Existing law sets a minimum wage for all employees in California, with limited exceptions, and prohibits employers, unless specified, from paying less than the state minimum wage.

Existing law provides the Labor Commissioner with the authority to investigate employee complaints and allows the Labor Commissioner to hold a hearing in any action to recover wages, including orders of the Industrial Welfare Commission. The Labor Commissioner may require an award in the amount of the wages owed, plus interest. Existing Civil Code sets the interest rate at 10 percent. (Labor Code §§ 98 & 98.2 and Civil Code § 3289)

Existing law allows the division or department to commence and prosecute a civil action to recover unpaid minimum wages or unpaid overtime compensation, including interest thereon. (Labor Code §1193.6)

Existing law provides that an employee who receives less than

the minimum wage is entitled to recover in a civil action, the

unpaid balance of the full amount of the minimum wage, liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon, reasonable attorney's fees and costs of suit. (Labor Code §1194)

Existing law also requires that if an employee is found to have been paid less than the minimum wage, that employee must be paid liquidated damages in an amount that is equal to the wages unlawfully unpaid, plus interest. Existing Civil Code sets the interest rate at 10 percent. (Labor Code §1194.2 and Civil Code § 3289)

Existing law states that if the employer demonstrates to the satisfaction of the court or the Labor Commissioner that the failure to pay minimum wage was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of the law, the court or the Labor Commissioner may, as a matter of discretion, refuse to award liquidated damages or reduce the amount of liquidated damages. (Labor Code §1194.2)

Existing law provides that, in a citation for a minimum wage violation issued by the Labor Commissioner, an employer shall be subject to a specified civil penalty and restitution of wages. (Labor Code §1197.1)

This bill extends the award of liquidated damages to those employees whose employer has been cited by the Labor Commissioner in violation of minimum wage laws.

Specifically, this bill adds "liquidated damages" paid to the employee to the list of things that a person who the Labor Commissioner has determined to have paid or caused to be paid a wage less than the minimum wage is subject to.

COMMENTS

1. Need for this bill?

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Consultant: Deanna D. Ping

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Senate Committee on Labor and Industrial Relations

Currently, California workers can file a civil action or may file an administrative complaint with the Labor Commissioner to recover unpaid wages. As was discussed above, an employee

who waged a successful civil action to receive unpaid minimum wage balances would be entitled to recover the full amount of the unpaid balance of wages, including interest, reasonable attorney's fees and costs of suit. Liquidated damages could then also be awarded. After AB 240 of 2012 was enacted, a worker can also be awarded liquidated damages through the Labor Commissioner hearing process.

A worker may also recover owed wages as a result from an inspection from the Division of Labor Standards and Enforcement's Bureau of Field Enforcement (BOFE). BOFE conducts inspections of industries to ensure compliance with the Labor Code. While BOFE does not pursue individual wage claims, at times the investigation results in an audit of the employer's time and payroll records. If this occurs, the Division will attempt to collect wages for all employees found to have been underpaid. However, the Division cannot collect liquidated damages, requiring the worker to file an administrative complaint with DLSE to collect liquidated damages.

According to the author's office, AB 442 remedies this issue by expanding the Labor Commissioner's authority to recover unpaid minimum wage liquidated damages after issuing a citation - ensuring that workers have the same monetary relief whether they pursue their claims administratively through the courts or through the Labor Commissioner.

2. Double Referral:

AB 442 has been doubled referred to Senate Judiciary Committee for hearing.

3. Proponent Arguments :

Proponents argue that the bill expands the Labor Commissioner's authority to help low-wage workers in wage
Hearing Date: June 12, 2013 AB 442
Consultant: Deanna D. Ping Page 3

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theft cases, ensuring that workers have the same monetary relief whether they pursue claims through the courts or via the Labor Commissioner's existing authority. Proponents contend that claims made by low-wage workers may not be sufficient enough to attract an attorney, which leaves the

worker with no alternative other than an administrative hearing.

Lastly, proponents contend that the failure to enact this bill will create new costs to the Division of Labor Standards Enforcement (DLSE). Specifically, proponents argue that because the award of liquidated damages is mandatory when minimum wages have not been paid, the failure to recover those damages for the worker after a citation is issued will likely result in the worker bringing a separate claim before the Labor Commissioner - adding unnecessary new costs to DLSE and also adds delays for workers.

4. Opponent Arguments :

The Construction Employer's Association opposes the bill and argues that the bill is problematic because it would expand the current penalties for wage violations to add liquidated damages. Opponents contend that while they support punishing employer that do not follow the wage statutes and regulations, if passed the bill would add liquidated damages to existing civil penalties and restitution, which sets a very bad precedent in California. Additionally, opponents believe that the existing wage protections in California are sufficient to protect workers. Lastly, opponents believe that California's existing labor laws are burdensome and impacts job creation and business expansion and relocation.

5. Prior Legislation :

AB 240 (Bonilla), Chapter 272, Statutes of 2012 - amended Labor Code sections 1194.2 and 98 to authorize the Labor Commissioner to award unpaid minimum wage liquidated damages in administrative wage claim hearings under the same conditions that existed for allowing a court to award those same damages to workers.

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AB 469 (Swanson), Chapter 655, Statutes of 2011 - known as the Wage Theft Prevention Act of 2011, the bill enacted several anti-wage theft initiatives including extending the period within which the division may commence a collection action from one year to three years and in addition to being subject to a civil penalty and makes it a misdemeanor if an employer willfully violates specified wage statutes or orders, among

other provisions.

SUPPORT

California Rural Legal Assistance Foundation (sponsor)
American Federation of State, County, and Municipal Employees,
AFL-CIO
California Federation of Teachers

OPPOSITION

Construction Employer's Association

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Senate Committee on Labor and Industrial Relations

SENATE JUDICIARY COMMITTEE

Senator Noreen Evans, Chair
2013-2014 Regular Session

AB 442 (Nazarian)
As Introduced
Hearing Date: June 25, 2013
Fiscal: Yes
Urgency: No
TMW

SUBJECT

Employees: Wages

DESCRIPTION

This bill would authorize the Labor Commissioner to collect liquidated damages from an employer who pays an employee less than minimum wage.

BACKGROUND

Existing law authorizes an employee, who is paid less than the minimum wage, to recover liquidated damages in an amount equal to the wages unlawfully withheld by an employer. Liquidated damages are monetary compensation awarded for a loss, detriment, or injury to the employee resulting from the employer's failure to pay the minimum wage. The employee may recover liquidated damages in an administrative action before the Labor Commissioner or in a civil action.

Existing law authorizes the Labor Commissioner to collect from an employer, who pays an employee less than minimum wage, a civil penalty and restitution of wages payable to the employee. This bill, sponsored by the California Rural Legal Assistance Foundation, would also authorize the Labor Commissioner to collect liquidated damages from the employer to be paid to the employee.

This bill was heard by the Senate Labor and Industrial Relations Committee on June 12, 2013, and passed out on a vote of 4-0.

CHANGES TO EXISTING LAW

(more)

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Existing law authorizes the Labor Commissioner to adopt

regulations setting a minimum wage for all employees in California. (Lab. Code Sec. 1182.)

Existing law provides that the minimum wage to be paid to employees, with limited exceptions, is not less than \$8.00 per hour. (Lab. Code Sec. 1182.12.)

Existing law authorizes the Labor Commissioner to investigate employee complaints and allows the Labor Commissioner to hold a hearing in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage. (Lab. Code Sec. 98.)

Existing law authorizes an employee receiving less than the legal minimum wage or legal overtime compensation to recover in a civil action the unpaid balance of the full amount of the minimum wage or overtime compensation, including interest, reasonable attorney's fees and costs, and liquidated damages. (Lab. Code Secs. 1194, 1194.2.)

Existing law states that if the employer demonstrates to the satisfaction of the court or the Labor Commissioner that the failure to pay minimum wage was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of the law, the court or the Labor Commissioner may, as a matter of discretion, refuse to award liquidated damages or reduce the amount of liquidated damages. (Lab. Code Sec. 1194.2.)

Existing law provides that an employer, who pays an employee a wage less than the minimum wage, is subject to a civil penalty and restitution of wages payable to the employee. (Lab. Code Sec. 1197.1(a).)

Existing law authorizes the Labor Commissioner to issue a citation to an employer, who has failed to pay an employee minimum wages and allows the Labor Commissioner to enforce the citation and recover the civil penalty and wages payable to the employee pursuant to the citation. (Lab. Code Sec. 1197.1(b).)

Existing law provides the employer with an administrative process through which the employer may contest the citation or proposed assessment of a civil penalty and wages. (Lab. Code

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Sec. 1197.1(c).)

This bill would also authorize the Labor Commissioner to issue a citation for the recovery of liquidated damages associated with

the unpaid minimum wages, payable to the employee.

This bill would also make other conforming revisions.

COMMENT

1. Stated need for the bill

The author writes:

There is substantial evidence of widespread minimum wage violations in California. A UCLA 2010 report, titled "Wage Theft and Workplace Violations in Los Angeles," found that 29.7 [percent] of workers were paid below the state minimum wage. In 2009, the Ford Foundation's "Broken Laws, Unprotected Workers " found that depending on the industry or occupation, between 40 [percent] and 66 [percent] of workers were not paid the minimum wage.

AB 442 expands the Labor Commissioner's authority, after a citation from a field investigation is issued to an employer for failure to pay minimum wages to his/her workers, to also recover and pay to the workers, the unpaid minimum wage liquidated damages.

2. Existence of wage theft problem

As noted by the author, wage theft is on the rise and California workers are not being paid money earned. Wage theft is a term used to describe labor law violations such as not paying an employee minimum wages or overtime, not paying for off-the-clock work, tip stealing, and not paying final wages.

Several high profile wage theft cases have been reported in recent years. In February 2009, the Los Angeles city attorney filed criminal charges against two car wash owners for failing to pay 250 workers the minimum wage and for denying them legally required meal and rest breaks. The filing alleged that, in violation of minimum wage laws, workers were paid a flat rate of \$35.00 to \$40.00 a day for shifts of more than eight hours, that their lunch breaks were as little as fifteen minutes a day, that they received no pay for overtime work, and that no medical care

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was provided for lacerations and acid burns caused by the machinery and chemicals they used on the job. The owners were charged with failing to pay a total of \$450,000.00 in back wages over five years. (Cathcart, Carwashes Accused of Labor Violations (Feb. 11, 2009) New York Times
[as of

June 17, 2013].)

A similar lawsuit against a builder employing residential construction workers in California, Nevada, and Arizona alleged that the company failed to pay employees for hours they worked, did not pay legally required overtime or provide breaks, and kept workers off the clock while they traveled between job sites and awaited materials. The suit was settled in October 2009, providing over \$242,000.00 in unpaid wages to 85 workers. (McDonnell, Builder to Settle with 85 Workers in Overtime Case (Oct. 13, 2009) Los Angeles Times <<http://articles.latimes.com/2009/oct/13/local/me-construction13>> [as of June 14, 2013].)

The problem is not limited to small businesses like car washes or garment subcontractors. In 2008, Wal-Mart announced a settlement of sixty-three cases in forty-two states, which involved charges that the company had forced employees to work off the clock without pay after their official shifts ended. The settlement totaled \$352 million in unpaid wages and involved hundreds of thousands of current and former Wal-Mart hourly employees across the country. In California, a jury ordered Wal-Mart to pay \$172 million for making employees miss meal breaks. (Associated Press, Wal-Mart Settles Workers' Suit for \$54.25M (Feb. 11, 2009) CBS News [as of June 14, 2013].)

According to a 2010 University of California Los Angeles (UCLA) study, 29.7 percent of the more than 1,800 workers surveyed received less than the minimum wage, and 79.2 percent were not paid the legally required overtime rate. (Milkman, González, Narro, Wage Theft and Workplace Violations in Los Angeles, The Failure of Employment and Labor Law for Low-Wage Workers (2010) Institute for Research on Labor and Employment, University of California, Los Angeles <<http://labor.ucla.edu/publications/reports/LAwagetheft.pdf>> [as of June 14, 2013], p. 30.) Front-line workers in low-wage industries lose more than \$26.2 million per week as a result of employment and labor law violations. The study noted the societal ills of wage theft in that "[w]age theft not only depresses the already meager earnings of low-wage workers, it

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also adversely impacts their communities and the local economies of which they are a part. Low-income families spend the bulk of their earnings on basic necessities like food, clothing, and housing. Their expenditures circulate through local economies, supporting businesses and jobs. Wage theft robs local communities of this spending and ultimately limits economic growth." (Id. at p. 58.)

Recent legislation has been enacted to combat wage theft. AB

469 (Swanson, Ch. 655, Stats. 2011) established the Wage Theft Prevention Act of 2011, which provides several anti-wage theft initiatives including extending the period within which the division may commence a collection action from one year to three years and, in addition to being subject to a civil penalty, makes it a misdemeanor if an employer willfully violates specified wage statutes or orders, among other provisions. Additionally, AB 240 (Bonilla, Ch. 272, Stats. 2012) authorized the Labor Commissioner to award unpaid minimum wage liquidated damages in administrative wage claim hearings under the same conditions that exist for allowing a court to award those same damages to workers. This bill seeks to further combat wage theft by authorizing the Labor Commissioner to collect liquidated damages pursuant to a citation on behalf of the employee.

3. Authorizing collection of liquidated damages by Labor Commissioner

This bill would authorize the Labor Commissioner to collect liquidated damages from an employer who pays an employee less than minimum wage. In this way, this bill would extend the existing ability of the Labor Commissioner to collect civil penalties and unpaid wages, payable to the employee, pursuant to a citation issued by the Labor Commissioner to the employer.

The author argues that "[t]his bill ensures the administrative process provides a legal remedy for low-wage workers whose claims may not be sufficient to attract an attorney, which leaves the workers with no alternative other than an administrative hearing." The California Rural Legal Assistance Foundation (CRLAF), sponsor, argues that this bill "simply provides that in any investigation or inspection by the Division of Labor Standards Enforcement [(DLSE)] leading to issuance of a citation for a minimum wage violation, DLSE would also seek recovery of liquidated damages for victimized workers in an amount equal to the total amount of their unpaid minimum wages.

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As you know, these damages are mandatory if a worker succeeds in a minimum wage lawsuit or in a Berman hearing under Section 98."

Additionally, the author argues that this bill would save the DLSE money and prevent delays for workers who are entitled to minimum wage liquidated damages. CRLAF notes that "[b]ecause an award of liquidated damages is otherwise mandatory when there is a minimum wage violation, if DLSE is not given authorization to recover liquidated damages when it cites for a minimum wage violation, workers simply file a claim under the Berman hearing process to recover those damages. These hearings will add

completely unnecessary costs to DLSE, will mean unnecessary delays in workers being made whole after minimum wage violations, and will impose additional burdens on employers which would be avoided if the damages are recovered at the time of the issuance of the minimum wage citation."

In addition to existing civil penalties and recovery of wages, this bill would authorize the Labor Commissioner to recover liquidated damages on behalf of the employee. Notably, the existing citation provisions provide the employer with procedures to challenge a citation issued for civil penalties and wages. By adding the ability to recover liquidated damages to the citation provision, this bill would ensure that an employer may challenge the collection of liquidated damages by the Labor Commissioner. Furthermore, by adding the collection of liquidated damages to the citation provision, this bill would aid workers, who may otherwise be unable to collect liquidated damages, to recover compensation for damages to which they are entitled under existing law.

Support : American Federation of State, County, and Municipal Employees, AFL-CIO; California Federation of Teachers; California Labor Federation

Opposition : None Known

HISTORY

Source : California Rural Legal Assistance Foundation

Related Pending Legislation : None Known

Prior Legislation :

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AB 240 (Bonilla, Ch. 272, Stats. 2012) See Comment 2.

AB 469 (Swanson, Ch. 655, Stats. 2011) See Comment 2.

Prior Vote :

Assembly Committee on Labor and Employment (Ayes 7, Noes 0)
Assembly Committee on Judiciary (Ayes 10, Noes 0)
Assembly Committee on Appropriations (Ayes 17, Noes 0)
Assembly Floor (Ayes 75, Noes 0)
Senate Committee on Labor and Industrial Relations (Ayes 4, Noes 0)

| SENATE RULES COMMITTEE | AB 442 |
| Office of Senate Floor Analyses |
| 1020 N Street, Suite 524 |
| (916) 651-1520 Fax: (916) |
327-4478

THIRD READING

Bill No: AB 442
Author: Nazarian (D)
Amended: As introduced
Vote: 21

SENATE LABOR & INDUSTRIAL RELATIONS COMMITTEE : 4-0, 6/12/13
AYES: Monning, Leno, Padilla, Yee
NO VOTE RECORDED: Wyland

SENATE JUDICIARY COMMITTEE : 5-2, 6/25/13
AYES: Evans, Corbett, Jackson, Leno, Monning
NOES: Walters, Anderson

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 75-0, 5/9/13 (Consent) - See last page for vote

SUBJECT : Employees: wages

SOURCE : California Rural Legal Assistance Foundation

DIGEST : This bill authorizes the Labor Commissioner to collect liquidated damages from an employer who pays an employee less than minimum wage.

ANALYSIS : Existing law sets a minimum wage for all employees in California, with limited exceptions, and prohibits employers, unless specified, from paying less than the state minimum wage.

Existing law provides the Commissioner with the authority to
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investigate employee complaints and allows the Commissioner to hold a hearing in any action to recover wages, including orders

of the Industrial Welfare Commission. The Commissioner may require an award in the amount of the wages owed, plus interest. Existing Civil Code sets the interest rate at 10%.

Existing law allows the division or department to commence and prosecute a civil action to recover unpaid minimum wages or unpaid overtime compensation, including interest thereon.

Existing law provides that an employee who receives less than the minimum wage is entitled to recover in a civil action, the unpaid balance of the full amount of the minimum wage, liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon, reasonable attorney's fees and costs of suit.

Existing law also requires that if an employee is found to have been paid less than the minimum wage, that employee must be paid liquidated damages in an amount that is equal to the wages unlawfully unpaid, plus interest. Existing Civil Code sets the interest rate at 1%.

Existing law states that if the employer demonstrates to the satisfaction of the court or the Commissioner that the failure to pay minimum wage was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of the law, the court or the Commissioner may, as a matter of discretion, refuse to award liquidated damages or reduce the amount of liquidated damages.

Existing law provides that, in a citation for a minimum wage violation issued by the Commissioner, an employer shall be subject to a specified civil penalty and restitution of wages.

This bill authorizes the Labor Commissioner to collect liquidated damages from an employer who pays an employee less than minimum wage.

Prior Legislation

AB 240 (Bonilla, Chapter 272, Statutes of 2012) amended Labor Code sections 1194.2 and 98 to authorize the Commissioner to award unpaid minimum wage liquidated damages in administrative

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wage claim hearings under the same conditions that existed for allowing a court to award those same damages to workers.

AB 469 (Swanson, Chapter 655, Statutes of 2011) known as the

Wage Theft Prevention Act of 2011, the bill enacted several anti-wage theft initiatives including extending the period within which the division may commence a collection action from one year to three years and in addition to being subject to a civil penalty and makes it a misdemeanor if an employer willfully violates specified wage statutes or orders, among other provisions.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

SUPPORT : (Verified 8/12/13)

California Rural Legal Assistance Foundation (source)
AFSCME, AFL-CIO
California Federation of Teachers

ARGUMENTS IN SUPPORT : Proponents argue that this bill expands the Commissioner's authority to help low-wage workers in wage theft cases, ensuring that workers have the same monetary relief whether they pursue claims through the courts or via the Commissioner's existing authority. Proponents contend that claims made by low-wage workers may not be sufficient enough to attract an attorney, which leaves the worker with no alternative other than an administrative hearing.

Lastly, proponents contend that the failure to enact this bill will create new costs to the Division of Labor Standards Enforcement (DLSE). Specifically, proponents argue that because the award of liquidated damages is mandatory when minimum wages have not been paid, the failure to recover those damages for the worker after a citation is issued will likely result in the worker bringing a separate claim before the Commissioner, adding unnecessary new costs to DLSE and also adds delays for workers.

ARGUMENTS IN OPPOSITION : The Construction Employer's Association opposes this bill and argues that this bill is problematic because it expands the current penalties for wage violations to add liquidated damages. Opponents contend that while they support punishing employer that do not follow the

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wage statutes and regulations, if passed the bill would add liquidated damages to existing civil penalties and restitution, which sets a very bad precedent in California. Additionally, opponents believe that the existing wage protections in California are sufficient to protect workers. Lastly, opponents believe that California's existing labor laws are burdensome and

impacts job creation and business expansion and relocation.

ASSEMBLY FLOOR : 75-0, 5/09/13

AYES: Achadjian, Alejo, Allen, Ammiano, Atkins, Bigelow, Bloom, Blumenfield, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dahle, Daly, Dickinson, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gordon, Gorell, Gray, Grove, Hagman, Hall, Harkey, Roger Hernández, Jones, Jones-Sawyer, Levine, Linder, Lowenthal, Maienschein, Mansoor, Medina, Melendez, Mitchell, Morrell, Mullin, Muratsuchi, Nazarian, Nestande, Olsen, Pan, Patterson, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Salas, Skinner, Stone, Ting, Torres, Wagner, Weber, Wieckowski, Wilk, Williams, Yamada, John A. Pérez

NO VOTE RECORDED: Donnelly, Holden, Logue, Waldron, Vacancy

PQ:d 8/13/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

Assembly Bill No. 442

Passed the Assembly May 9, 2013

Chief Clerk of the Assembly

Passed the Senate September 3, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1194.2 and 1197.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST

AB 442, Nazarian. Employees: wages.

Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law provides for criminal and civil penalties for violations of statutes and orders of the commission regarding payment of wages. Existing law authorizes the Labor Commissioner to recover liquidated damages for an employee who brings a complaint alleging payment of less than the minimum wage fixed by an order of the commission or by statute.

Existing law subjects any employer, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission or by statute, to a citation that includes a civil penalty and the payment of restitution of wages to the employee.

This bill would expand that penalty and restitution provision for a citation to also subject the employer to payment of liquidated damages to the employee.

The people of the State of California do enact as follows:

SECTION 1. Section 1194.2 of the Labor Code is amended to read:

1194.2. (a) In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation.

(b) Notwithstanding subdivision (a), if the employer demonstrates to the satisfaction of the court or the Labor Commissioner that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the commission, the court or the Labor Commissioner may, as a matter of discretion, refuse to award liquidated damages or award any amount of liquidated damages not exceeding the amount specified in subdivision (a).

(c) This section applies only to civil actions commenced on or after January 1, 1992.

SEC. 2. Section 1197.1 of the Labor Code is amended to read:

1197.1. (a) 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 an order of the commission shall be subject to a civil penalty, restitution of wages, and liquidated damages payable to the employee, as follows:

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

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

(3) Wages and liquidated damages recovered pursuant to this section shall be paid to the affected employee.

(b) If, upon inspection or investigation, the Labor Commissioner determines that a person has paid or caused to be paid a wage less than the minimum, the Labor Commissioner may issue a citation to the person in violation. The citation may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference

to the statutory provision alleged to have been violated. The Labor Commissioner promptly shall take all appropriate action, in accordance with this section, to enforce the citation and to recover the civil penalty assessed, wages, and liquidated damages in connection with the citation.

(c) (1) If a person desires to contest a citation or the proposed assessment of a civil penalty, wages, and liquidated damages therefor, the person shall, within 15 business days after service of the citation, notify the office of the Labor Commissioner that appears on the citation of his or her request for an informal hearing. The Labor Commissioner or his or her deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty, wages, and liquidated damages shall be affirmed, modified, or dismissed.

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

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

(e) When no petition objecting to a citation or the proposed assessment of a civil penalty, wages, and liquidated damages is filed, a certified copy of the citation or proposed civil penalty, wages, and liquidated damages may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter

judgment for the state against the person assessed in the amount shown on the citation or proposed assessment of a civil penalty, wages, and liquidated damages.

(f) When findings and the order thereon are made affirming or modifying a citation or proposed assessment of a civil penalty, wages, and liquidated damages after hearing, a certified copy of these findings and the order entered thereon may be entered by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

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

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

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

Approved _____, 2013

Governor

Assembly Bill No. 442

CHAPTER 735

An act to amend Sections 1194.2 and 1197.1 of the Labor Code, relating to employment.

[Approved by Governor October 11, 2013. Filed with Secretary of State October 11, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 442, Nazarian. Employees: wages.

Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law provides for criminal and civil penalties for violations of statutes and orders of the commission regarding payment of wages. Existing law authorizes the Labor Commissioner to recover liquidated damages for an employee who brings a complaint alleging payment of less than the minimum wage fixed by an order of the commission or by statute.

Existing law subjects any employer, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission or by statute, to a citation that includes a civil penalty and the payment of restitution of wages to the employee.

This bill would expand that penalty and restitution provision for a citation to also subject the employer to payment of liquidated damages to the employee.

The people of the State of California do enact as follows:

SECTION 1. Section 1194.2 of the Labor Code is amended to read:

1194.2. (a) In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation.

(b) Notwithstanding subdivision (a), if the employer demonstrates to the satisfaction of the court or the Labor Commissioner that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the commission, the court or the Labor Commissioner may, as a matter

of discretion, refuse to award liquidated damages or award any amount of liquidated damages not exceeding the amount specified in subdivision (a).

(c) This section applies only to civil actions commenced on or after January 1, 1992.

SEC. 2. Section 1197.1 of the Labor Code is amended to read:

1197.1. (a) 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 an order of the commission shall be subject to a civil penalty, restitution of wages, and liquidated damages payable to the employee, as follows:

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

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

(3) Wages and liquidated damages recovered pursuant to this section shall be paid to the affected employee.

(b) If, upon inspection or investigation, the Labor Commissioner determines that a person has paid or caused to be paid a wage less than the minimum, the Labor Commissioner may issue a citation to the person in violation. The citation may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated. The Labor Commissioner promptly shall take all appropriate action, in accordance with this section, to enforce the citation and to recover the civil penalty assessed, wages, and liquidated damages in connection with the citation.

(c) (1) If a person desires to contest a citation or the proposed assessment of a civil penalty, wages, and liquidated damages therefor, the person shall, within 15 business days after service of the citation, notify the office of the Labor Commissioner that appears on the citation of his or her request for an informal hearing. The Labor Commissioner or his or her deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty, wages, and liquidated damages shall be affirmed, modified, or dismissed.

(2) The decision of the Labor Commissioner shall consist of a notice of findings, findings, and an order, all of which shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil

Procedure. Any amount found due by the Labor Commissioner as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from this finding to the appropriate superior court. The party shall pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ shall be taken within 45 days of service of the notice of findings, findings, and order thereon.

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

(e) When no petition objecting to a citation or the proposed assessment of a civil penalty, wages, and liquidated damages is filed, a certified copy of the citation or proposed civil penalty, wages, and liquidated damages may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the citation or proposed assessment of a civil penalty, wages, and liquidated damages.

(f) When findings and the order thereon are made affirming or modifying a citation or proposed assessment of a civil penalty, wages, and liquidated damages after hearing, a certified copy of these findings and the order entered thereon may be entered by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

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

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

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