



**LEGAL
AID AT
WORK**



AB 673 (Assembly Member Carrillo) Late Paychecks

Summary

This bill would strengthen the penalty structure under Labor Code Section 210 to provide stronger remedies for workers who are not paid on time.

Background

Under current law, all wages are generally due and payable twice during each calendar month on days designated in advance by the employer as the regular paydays. Salaries of executive, administrative, and professional employees may be paid once a month on or before the 26th day of the month during which the labor was performed. (See Labor Code Section 204).

However, current law does not explicitly provide a remedy for employees who are not paid on their designated payday. This can cause extreme financial hardship for the many employees living paycheck to paycheck, who need their wages paid on time so that they can pay for food, rent, and other daily necessities. Moreover, this delay in payment essentially amounts to an interest-free loan from the employee to the employer. In one case in San Francisco, a worker was evicted from his apartment because he was not able to pay his rent on time due to his employer being weeks late in paying him his wages.

Existing Law

Employees who are not paid on time have no clear or effective recourse. At present, an employee could file a lawsuit under the Fair Labor Standards Act (FLSA) to recover the unpaid wages plus an equal amount as liquidated damages, as well as prejudgment interest. (See *Biggs v. Wilson*, 1 F.3d 1537 (9th Cir. 1993)). However, it is unsettled whether an employee can file such a claim for late payments under the equivalent state law provisions.

Under Labor Code section 1194 an employee may recover the unpaid balance of the minimum wages or overtime pay owed. Similarly, Labor Code section 1194.2 provides for liquidated damages for minimum wage violations.

However, both code sections are designed to address an issue – failure to pay *minimum* wage – separate from the problem of late payments.

Other Labor Code penalties for late payments may be available, but only in limited circumstances. For example, Labor Code section 210, which provides penalties for wages that are not paid on time, only allows the Labor Commissioner to recover those penalties as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. In practice, the Labor Commissioner does not currently assess these penalties. Even if the penalties were to be assessed, twelve and one-half percent of the penalty is paid into a fund within the Labor and Workforce Development Agency, and the remainder is paid into the General Fund.

Solution

This bill amends section 210 to provide stronger remedies for employees who are not paid on time. This bill allows employees to enforce this section and recover penalties through an administrative proceeding with the Department of Labor Standards Enforcement (“DLSE”) or a Bureau of Field Enforcement (“BOFE”) action. For the first instance of an employer’s late payment, an employee could recover \$100 penalty. For each subsequent violation, or for a willful or intentional violation, the employee can recover a \$200 penalty plus 25% of the amount unlawfully withheld. An employee will also retain the ability to enforce the civil penalty under Section 210 through the Private Attorneys General Act (“PAGA”).

Sponsors

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