

SUPREME COURT
FILED

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Deputy

Case No. S246711

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

ZB, N.A. and ZIONS BANCORPORATION,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO,

Respondent;

KALETHIA LAWSON,

Real Party In Interest.

After a Decision by the Court of Appeal
Fourth Appellate District, Division One
Case Nos. D071279 & D071376 (Consolidated)

**PETITIONERS' MOTION FOR JUDICIAL NOTICE IN SUPPORT
OF ANSWER TO *AMICUS CURIAE* BRIEF; DECLARATION OF
BRIAN C. SINCLAIR; [PROPOSED] ORDER GRANTING MOTION**

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TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to Rules 8.54, 8.252 and 8.520(g) of the California Rules of Court, as well as Evidence Code Sections 451, 452, 453 and 459, Petitioners move for judicial notice of the following documents:

Exhibit 1: Third Reading, Senate Rules Committee, Assembly Bill 2899 (2015-2016 Reg. Sess.), August 3, 2016, published at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB2899.

Exhibit 2: Legislative Counsel's Digest, Assembly Bill No. 469, October 9, 2011, and text of Assembly Bill No. 469, published at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB469.

Exhibit 3: Assembly Committee on Labor & Employment, Report on AB No. 60 (1999-2000 Reg. Sess.), March 17, 1999, published at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=199920000AB60.

Exhibit 4: Assembly Committee on Appropriations, Report on AB No. 60 (1999-2000 Reg. Sess.), April 21, 1999, published at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=199920000AB60.

Exhibit 5: Assembly Republican Bill Analysis, Assembly Bill No. 60 (1999-2000 Reg. Sess.), March 15, 1999, obtained from Legislative Intent Service, Inc.

Exhibit 6: Third Reading, Senate Rules Committee, on AB 970 (2015-2016 Reg. Sess.), August 26, 2015, published at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB970.

Exhibit 7: Investigation Procedures Overview section of Dept. of Indus. Relations website (last reviewed on 10/4/2018), published at: https://www.dir.ca.gov/dlse/Investigation_Procedures_Overview.html.

Exhibit 8: Report A Labor Violation To The California Labor Commissioner's Bureau Of Field Enforcement brochure, Rev. 06/2014, published at: https://www.dir.ca.gov/dlse/Brochure-BOFE_WEB-EN.pdf.

Petitioners refer to the above-listed documents in their Answer to the Amicus Brief filed by the California Employment Lawyers Association to provide this Court with relevant legislative history. This motion is based on the attached Memorandum of Points and Authorities, the exhibits, and the complete records and files of this Court, as well as the Proposed Order attached hereto.

MEMORANDUM OF POINTS AND AUTHORITIES

Evidence Code § 459 provides reviewing courts the same power to take judicial notice of documents as trial courts under Evidence Code sections 450 *et seq.* (EVID. CODE § 459.) Similarly, California Rules of Court, Rules 8.252 and 8.520, provide that a reviewing court may take judicial notice of documents relevant to the issues under review. (CAL. RULES OF COURT, RULES 8.252(a)(2)(A), 8.520(g).)

In their respective briefs, the parties and amicus curiae dispute whether “underpaid wages” recoverable under Section 558 constitute wages or civil penalties. If this Court decides the “underpaid wages” are, in fact, wages versus penalties, the Court does not need to decide whether the FAA preempts California law when an employee seeks unpaid wages under Section 558 as part of a PAGA claim. Therefore, the legislative history and agency interpretations of Section 558, and related statutes, are relevant to determine the foundational issue of whether underpaid wages under Section 558 constitute a civil penalty or wage restitution.

A reviewing court may take judicial notice of material outside the record, including legislative history, when necessary “to discern legislative intent.” (*Ewing v. Goldstein* (2004) 120 Cal.App.4th 807, 814 and fn. 7 [taking judicial notice of legislative history not in record “to ascertain and effectuate the underlying legislative intent”], *quoting Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal.App.4th 23, 30, fn. 10.)

The documents to be noticed were not presented to the trial court. Petitioners offer these documents to demonstrate that the interpretation of “civil penalties” under Section 558 offered by CELA and Lawson, and the interpretation of Section 558 adopted by the Fourth Appellate District below, is incorrect, as reflected in the legislative history and agency interpretations of Section 558. All of the documents relate to the enactment, interpretation, and enforcement of Section 558, which is relevant to the issue before the Court.

A. The Court should take judicial notice of Exhibits 1-6 because they are official, publicly available reports or analyses of the legislative history of Labor Code § 558.

“In a search to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute.” (*Schmidt*, 14 Cal.App.4th at p. 30, fn. 10.) In the construction of a statute the intention of the Legislature . . . is to be pursued, if possible.” (CODE OF CIVIL PROC. § 1859.) “The court will take judicial notice of the legislative history of a statute in order to ascertain the purpose of and meaning of an ambiguous statute.” (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45 fn. 9.)

Technically, “[a] request for judicial notice of published material is unnecessary. Citation to the material is sufficient.” (*Quelimane*, 19 Cal.4th, at p. 45, fn. 9) A reviewing court may, however, take judicial notice of “reports of

Senate and Assembly committees. . . ., committee reports and analyses or digests of the Legislative Counsel” because it is reasonable to infer that all members of the Legislature considered them when voting on the proposed statute. (*Ibid.*)

Exhibits 1-6 all constitute legislative analysis and committee reports relating to the enactment of Labor Code § 558 and § 1197.1, which includes enforcement provisions applicable to Section 558. Here, Exhibits 1-6 include (1) Assembly Committee reports, which summarize legislation adopting or amending Sections 558 and 1197.1; (2) Legislative Counsel’s Digest, which summarizes an amendment to Section 1197.1; (3) readings of the legislation to the Senate Rules Committee, which summarizes amendments to various Labor Code provisions, including Sections 558 and 1197.1; and (4) the Republican Bill analysis of AB 60, which was provided by Republican Assembly members to understand the bill during the legislative process. All of these materials are properly the subject of judicial notice. (*See Quelimane*, 19 Cal.4th, at p. 45, fn. 9; *see also Hale v. S. Cal. Ipa Medical Group* (2001) 86 Cal.App.4th 919, 927 [“In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute.”]; *People v. Allen* (2001) 88 Cal.App.4th 986, 995 fn. 16 [relying on committee reports and Republican Senate Bill analysis to interpret statute]; *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1153 [explaining that courts should review legislative history

to aid in interpreting a statute]; *Martin v. Szeto* (2004) 32 Cal.4th 445, 450 [reviewing legislative committee bill reports to interpret legislature’s intent].)

Here, Exhibits 1- 6 constitute legislative history of Labor Code §§ 558 and 1197.1, which includes enforcement procedures applicable to Section 558 . Therefore, the Court should take judicial notice of these documents.

B. The Court should take judicial notice of Exhibits 7-8 because they are agency interpretations of Labor Code § 558.

Exhibit 7 is a webpage from the Investigation Procedures Overview section of the Department of Industrial Relations (“DIR”) website. The webpage provides an overview of the DIR’s process for investigating labor law violations and issuing citations when violations are discovered. Exhibit 8 is a brochure issued by the California Labor Commissioner’s Bureau Of Field Enforcement, which provides a more detailed description of the Labor Commissioner’s process for investigating labor law violations and issuing citations.

The Court may take judicial notice these documents, since they constitute a governmental agency’s ““construction of a statutory scheme it is entrusted to administer.”” (*In re Israel O.* (2015) 233 Cal.App.4th 279, 289, quoting *Chevron U.S.A. v. NRDC* (1984) 467 U.S. 837, 844; see also *Etcheverry v. Tri-Ag Service, Inc.* (2000) 22 Cal.4th 316, 330-331 (taking


judicial notice of government agency interpretation of law as an “official act . . . within the meaning of Evidence Code section 452, subdivision (c)”.) Moreover, a court may take judicial notice of information from government agency websites. (*All One God Faith, Inc. v. Organic & Sustainable Industry Standards, Inc.* (2010)183 Cal.App.4th 1186, 1998 fn. 12; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 559 [in interpreting a statute, courts “should certainly take the agency’s interpretation into consideration, having due regard for the agency’s expertise and special competence, as well as any reasons the agency may have proffered in support of its interpretation”].)

Here, Exhibits 7 and 8 reflect the Labor Commissioner’s interpretation of the wage citation process, including its interpretation that civil penalties and unpaid wages are two distinct forms of relief when it engages in field enforcement actions authorized by Labor Code §§ 558 and 1197.1. Therefore, the Court should take judicial notice of these documents.

Respectfully submitted,

Dated: October 9, 2018

RUTAN & TUCKER, LLP
JAMES L. MORRIS
BRIAN C. SINCLAIR
GERARD M. MOONEY

By: 

Brian C. Sinclair
Counsel for Petitioners ZB, N.A.
and ZIONS BANCORPORATION

DECLARATION OF BRIAN C. SINCLAIR

I, Brian C. Sinclair, declare as follows:

1. I am a partner in the law firm of Rutan & Tucker, LLP, counsel of record for petitioners ZB, N.A. and Zions Bancorporation (“Petitioners”) in this action. I am a member in good standing of the State Bar of California and the bar of this Court. I make this Declaration in support of Petitioners’ motion for judicial notice. The following facts are based on my personal knowledge and my review of business records, which are kept in the ordinary course of business. If called as a witness, I could and would testify competently to these facts under oath.

2. Attached as Exhibit 1 is a true and correct copy of the Third Reading, Senate Rules Committee, Assembly Bill 2899 (2015-2016 Reg. Sess.), dated August 3, 201. I downloaded a copy of this document on October 3, 2018, from the California Legislative Information website at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB2899. I downloaded the document from the “08/03/16 – Senate Floor Analyses” link under Bill Analysis. I highlighted relevant excerpts of the document.

3. Attached as Exhibit 2 is a true and correct copy of the Legislative Counsel’s Digest, Assembly Bill No. 469, dated October 9, 2011, and the text of Assembly Bill No. 469. I downloaded a copy of this document on October 3, 2018 from the California Legislative Information website at:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=2011201

20AB469. I highlighted relevant excerpts of the document.

4. Attaches as Exhibit 3 is a true and correct copy of Assembly Committee on Labor & Employment, Report on Assembly Bill No. 60 (1999-2000 Reg. Sess.), dated March 17, 1999. I downloaded a copy of this document on October 3, 2018, from the “03/16/99 – Assembly Committee” link under Bill Analysis on the California Legislative Information website at:

http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=199

920000AB60. I highlighted relevant excerpts of the document.

5. Attached as Exhibit 4 is a true and correct copy of Assembly Committee on Appropriations, Report on Assembly Bill No. 60 (1999-2000 Reg. Sess.), dated April 21, 1999. I downloaded a copy of this document on October 3, 2018 from the “04/20/99 – Assembly Committee” link under Bill Analysis on the California Legislative Information website at:

http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=199

920000AB60. I highlighted relevant excerpts of the document.

6. Attached as Exhibit 5 is a true and correct copy of the Assembly Republican Bill Analysis, Assembly Bill No. 60 (1999-2000 Reg. Sess.), dated March 15, 1999. I obtained a copy of this document from Legislative Intent Service, Inc. I highlighted relevant excerpts of the document.

7. Attached as Exhibit 6 is a true and correct copy of the Third Reading, Senate Rules Committee, on Assembly Bill No. 970 (2015-2016 Reg. Sess.), dated August 26, 2015. I downloaded a copy of this document on October 3, 2018, from the “08/26/15 – Senate Floor Analyses” link under Bill Analysis on the California Legislative Information website: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB970. I highlighted relevant excerpts of the document.

8. Attached as Exhibit 7 is a true and correct copy of the Investigation Procedures Overview section of the Dept. of Ind. Relations website. I downloaded a copy of this document on October 3, 2018, at: https://www.dir.ca.gov/dlse/Investigation_Procedures_Overview.html. I highlighted relevant excerpts of the document.

9. Attached as Exhibit 8 is a true and correct copy of the Report A Labor Violation To The California Labor Commissioner’s Bureau Of Field Enforcement brochure, Rev. 06/2014. I downloaded a copy of this document on October 3, 2018, at: https://www.dir.ca.gov/dlse/Brochure-BOFE_WEB-EN.pdf. I highlighted relevant excerpts of the document.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 9, 2018, at Costa Mesa, California.



Brian C. Sinclair

ORDER

Pursuant to Rules 8.54, 8.252 and 8.520(g) of the California Rules of Court and Evidence Code Sections 452(d) and 459, as well as the Request for Judicial Notice filed by Petitioners ZB N.A. and Zions Bancorporation (“Petitioners”), and good cause appearing therefor, the Court takes judicial notice of the following documents as presented by Petitioners:

Exhibit 1: Third Reading, Senate Rules Committee, Assembly Bill 2899 (2015-2016 Reg. Sess.), August 3, 2016.

Exhibit 2: Legislative Counsel’s Digest, Assembly Bill No. 469, October 9, 2011, and text of Assembly Bill No. 469.

Exhibit 3: Assembly Committee on Labor & Employment, Report on AB No. 60 (1999-2000 Reg. Sess.), March 17, 1999.

Exhibit 4: Assembly Committee on Appropriations, Report on AB No. 60 (1999-2000 Reg. Sess.), April 21, 1999.

Exhibit 5: Assembly Republican Bill Analysis, Assembly Bill No. 60 (1999-2000 Reg. Sess.), March 15, 1999.

Exhibit 6: Third Reading, Senate Rules Committee, on AB 970 (2015-2016 Reg. Sess.), August 26, 2015.

Exhibit 7: Investigation Procedures Overview section of Dept. of Indus. Relations website (last reviewed on 10/4/2018).

Exhibit 8: Report A Labor Violation To The California Labor
Commissioner's Bureau Of Field Enforcement brochure, Rev.
06/2014.

Dated: _____

Justice of the California Supreme Court

THIRD READING

Bill No: AB 2899
Author: Roger Hernández (D)
Amended: 5/4/16 in Assembly
Vote: 21

SENATE LABOR & IND. REL. COMMITTEE: 4-1, 6/29/16
AYES: Mendoza, Jackson, Leno, Mitchell
NOES: Stone

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 52-24, 5/23/16 - See last page for vote

SUBJECT: Minimum wage violations: challenges

SOURCE: Author

DIGEST: This bill requires that, prior to filing an appeal of a decision by the Labor Commissioner (LC) relating to a violation of wage laws, employers must post a bond with the LC which covers the unpaid wages and damages owed to employees.

ANALYSIS:

Existing law:

- 1) Allows employees, who claim that they have not been paid the minimum wage, to file an administrative claim with the LC rather than filing a civil suit. This claim can then be heard in an administrative adjudication hearing (Labor Code §98).
- 2) Allows the decisions of these hearings to be appealed to the Superior Court, but employers who wish to file an appeal in this way must first post a bond with the court that covers the amount owed under the previous decision, order, or award,

only in those circumstances when an employee filed the original claim (Labor Code §98.2).

This bill:

- 1) Creates a wage bond requirement for employer appeals challenging a citation and decision *initiated by the LC, when the LC finds a violation of wage laws.*
- 2) Requires that this bond must be filed with the LC and include the total amount of any minimum wages, liquidated damages, and overtime compensation owed as specified in the citation being challenged. The bond amount would not include amounts for penalties.
- 3) Specifies that the bond shall be issued by a surety duly-authorized to do business in the state, and in favor of unpaid employees, thus ensuring that the employer makes payments owed.

Comments

Need for this bill? According to the author, under current law, an employee may file a wage claim with the LC for unpaid wages. If the LC rules in favor of the employee, the employer may appeal to the Superior Court, but must first file a wage bond for the amount of unpaid wages owed. This preserves the ability of the employee to collect their wages in case the employer shuts down or hides their assets to evade payment of the judgment. However, this same bond requirement and protection does not exist for actions and decisions initiated by the LC involving wage law violations. This bill requires that before appealing a decision by the LC, whether an employee filed the original claim or the LC issued a citation, employers must post a bond to ensure employees receive any payments owed to them.

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

SUPPORT: (Verified 8/2/16)

California Rural Legal Assistance Foundation

OPPOSITION: (Verified 8/2/16)

None received

ARGUMENTS IN SUPPORT: The author states that, under current law, in addition to an employee complaint, the LC can cite an employer for unpaid wages

after an investigation. If the LC rules against the employer, the employer may appeal to the Superior Court. Therefore, this bill would similarly require an employer, prior to filing such an appeal, to post a wage bond for the amount of the unpaid wages. As a result, the author believes that this bill helps bring consistency to the processes and remedies regarding both employee wage claims and LC enforcement actions.

ASSEMBLY FLOOR: 52-24, 5/23/16

AYES: Alejo, Atkins, Baker, Bloom, Bonilla, Bonta, Brown, Burke, Calderon, Campos, Chang, Chau, Chiu, Chu, Cooper, Dababneh, Daly, Dodd, Frazier, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Gray, Roger Hernández, Holden, Irwin, Jones-Sawyer, Levine, Linder, Lopez, Low, McCarty, Medina, Mullin, Nazarian, O'Donnell, Quirk, Ridley-Thomas, Rodriguez, Salas, Santiago, Mark Stone, Thurmond, Ting, Weber, Williams, Wood, Rendon

NOES: Achadjian, Travis Allen, Bigelow, Brough, Chávez, Dahle, Beth Gaines, Gallagher, Grove, Hadley, Harper, Jones, Kim, Lackey, Maienschein, Mathis, Mayes, Melendez, Obernolte, Olsen, Steinorth, Wagner, Waldron, Wilk

NO VOTE RECORDED: Arambula, Cooley, Eggman, Patterson

Prepared by: Brandon Seto / L. & I.R. / (916) 651-1556
8/3/16 18:21:30

**** END ****



AB-469 Employees: wages. (2011-2012)

SHARE THIS:



Assembly Bill No. 469

CHAPTER 655

An act to amend Sections 98, 226, 240, 243, 1174, and 1197.1 of, and to add Sections 200.5, 1194.3, 1197.2, 1206, and 2810.5 to, the Labor Code, relating to employment.

[Approved by Governor October 09, 2011. Filed with Secretary of State
October 09, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 469, Swanson. Employees: wages.

(1) 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.

This bill would provide that in addition to being subject to a civil penalty, 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 shall be subject to paying restitution of wages to the employee.

This bill would make it a misdemeanor if an employer willfully violates specified wage statutes or orders, or willfully fails to pay a final court judgment or final order of the Labor Commissioner for wages due.

(2) Existing law provides that an action by the Division of Labor Standards Enforcement within the Department of Industrial Relations for collection of a statutory penalty or fee must be commenced within one year after the penalty or fee became final.

This bill would extend the period within which the division may commence a collection action, as defined, from one year to 3 years.

(3) Existing law permits the Labor Commissioner to require an employer who has been convicted of a subsequent wage violation or who has failed to satisfy a judgment to post a bond in order to continue business operations.

This bill would extend the time required for a subsequently convicted employer to maintain a bond from 6 months to 2 years and would require that a subsequently convicted employer provide an accounting of assets, as specified, to the Labor Commissioner.

(4) Existing law requires an employer to post specified wage and hour information in a location where it can be viewed by employees.

This bill would require an employer to provide each employee, at the time of hiring, with a notice that specifies the rate and the basis, whether hourly, salary, commission, or otherwise, of the employee's wages and to notify each employee in writing of any changes to the information set forth in the notice within 7 calendar days of the changes unless such changes are reflected on a timely wage statement or another writing, as specified. No notice

would be required for an employee who is employed by the state or any subdivision thereof, exempt from the payment of overtime, or covered by a collective bargaining agreement containing specified information.

(5) In addition to the crime and employer obligations imposed by this bill, the Labor Code provides for other work-related standards and duties that, upon violation, are subject to specified penalties.

This bill would state that the Labor Code establishes minimum penalties for failure to comply with wage-related statutes and regulations.

Because this bill would create a new crime or expand the definition of a crime, it would impose a state-mandated local program.

(6) This bill would incorporate additional changes to Section 98 of the Labor Code proposed by AB 240, that would become operative only if AB 240 and this bill are both enacted, both bills become effective on or before January 1, 2012, and this bill is enacted last.

This bill would also incorporate additional changes to Section 226 of the Labor Code proposed by AB 243, that would become operative only if AB 243 and this bill are both enacted, both bills become effective on or before January 1, 2012, and this bill is enacted last.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the Wage Theft Prevention Act of 2011.

SEC. 2. Section 98 of the Labor Code is amended to read:

98. (a) The Labor Commissioner is authorized to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation properly before the division or the Labor Commissioner, including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. It is within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of the filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute. A party who has received actual notice of a claim before the Labor Commissioner shall, while the matter is before the Labor Commissioner, notify the Labor Commissioner in writing of any change in that party's business or personal address within 10 days after the change in address occurs.

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

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

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

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

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

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

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

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

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

SEC. 2.5. Section 98 of the Labor Code is amended to read:

98. (a) The Labor Commissioner is authorized to investigate employee complaints. The Labor Commissioner may provide for 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 fixed by an order of the Industrial Welfare Commission or by statute, properly before the division or the Labor Commissioner, including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. It is within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of the filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute. A party who has received actual notice of a claim before the Labor Commissioner shall, while the matter is before the Labor Commissioner, notify the Labor Commissioner in writing of any change in that party's business or personal address within 10 days after the change in address occurs.

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

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

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

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

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

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

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

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

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

SEC. 3. Section 200.5 is added to the Labor Code, to read:

200.5. (a) Notwithstanding any provision of this code or Section 340 of the Code of Civil Procedure, to collect a civil penalty, fee, or penalty fee under this division, the Division of Labor Standards Enforcement shall commence an action within three years from the date the penalty or fee became final. Upon commencement of an action, the clerk of the superior court shall enter judgment immediately in conformity therewith.

(b) This section applies only to penalty assessments or fees that became final on or after the effective date of the act adding this section.

(c) For purposes of this section, "commence an action" means to file a request for entry of judgment on a civil penalty or fee with the clerk of the superior court of the relevant county.

(d) For purposes of this section, "final" means the time to appeal has expired and there is no appeal pending.

SEC. 4. Section 226 of the Labor Code is amended to read:

226. (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.