



**FREEMAN FREEMAN &
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**EMPLOYMENT LAW
BULLETIN**

January 5, 2016

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THE NEW YEAR BRINGS NEW CALIFORNIA EMPLOYMENT LAWS

(Part One)

January 1st always brings a new rash of California employment laws, and 2016 is no exception. This year, employers with California employees become subject to potentially enhanced Labor Commissioner enforcement authority.

The sweeping changes:

- (1) overturn judicial precedent and imposing personal liability to the same extent as the employer on any natural person who is an owner, director, officer, or managing agent of the employer who violates or causes to be violated any provision regulating minimum wages or hours and days of work in any of the Industrial Welfare Commission wage orders, or violates any of the following:
 - waiting time penalties (section 203);
 - itemized wage statements (section 226);
 - providing rest, meal and recovery periods (section 226.7);
 - unpaid minimum wages and overtime (sections 1193.6 and 1194); and
 - expense reimbursements (section 2802).
- (2) give the Labor Commissioner new authority to:
 - require that bonds be posted;
 - shut the employer down;
 - impose a levy on property; and
 - impose a lien on property

Potentially enhanced Labor Commissioner authority to enforce unpaid wage judgments

SB 588 amends section 98 and adds sections 690.020, et seq., 96.8, 238, 238.1 through 238.5 and 558.1 to the Labor Code.

1. Individual liability

Judicial precedent interpreting state wage and hour laws did not impose personal liability for violations.



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Beginning January 1, 2016, the employer as well as any natural person who is an owner, director, officer, or managing agent of the employer who violates or causes to be violated any provision regulating minimum wages or hours and days of work in any of the Industrial Welfare Commission wage orders, or violates any of the following, is liable to the same extent as the employer:

- waiting time penalties (section 203);
- itemized wage statements (section 226);
- providing rest, meal and recovery periods (section 226.7);
- unpaid minimum wages and overtime (sections 1193.6 and 1194); and
- expense reimbursements (section 2802).

2. Cessation of Operations: Bonds

If a final judgment against an employer arising from the employer's nonpayment of wages for work performed in California remains unsatisfied following 30 days after the time to appeal has expired and no appeal is pending, the law now prohibits that employer from continuing to conduct business in California (including conducting business using the labor of another business, contractor, or subcontractor instead of using its own employees), unless the employer has obtained a bond from a surety company and has filed a copy of that bond with the Labor Commissioner. Employers with a collective bargaining agreement that meets certain requirements are exempt from the bond requirement.

The bond requirement ranges from \$50,000 to \$150,000, depending upon the amount of the unsatisfied portion of the judgment.

As an alternative to the bond requirement, the employer can provide the Labor Commissioner with a notarized copy of an accord reached with an individual holding an unsatisfied final judgment.

Any employer and "any other person acting on behalf of the employer" conducting business without satisfying the bond requirement is subject to a civil penalty of \$2,500. An employer that has previously been assessed and failed to pay a penalty is subject to an additional penalty of \$100 *for each calendar day* that the violation occurs, up to a maximum of \$100,000.

3. Cessation of Operations: Stop Work Orders

If an employer conducts business in violation of the bond requirement, the Labor Commissioner is now authorized to issue and serve a stop order prohibiting the use of employee labor by the employer until the employer complies with the bond requirement



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(provided that the stop order would not compromise or imperil public safety or the life, health, and care of vulnerable individuals). The employer must pay employees affected by any ordered work stoppage for up to 10 days' lost time. An employer, owner, director, officer, or managing agent of the employer who fails to observe a stop order is guilty of a misdemeanor.

4. Levies

The new law has special provisions for the enforcement of judgments against an employer arising from the employer's nonpayment of wages for work performed in this state: the Labor Commissioner is now authorized to:

- (a) use any of the existing remedies available to a judgment creditor and to act as a levying officer when enforcing a judgment pursuant to a writ of execution, as provided; and
- (b) to issue a notice of levy, as specified, if the levy is for a deposit, credits, money, or property in the possession or under the control of a bank or savings and loan association or for an account receivable or other general intangible owed to the judgment debtor by an account debtor.

The new law authorizes the Labor Commissioner to, beginning 20 days after a judgment is entered by a court of competent jurisdiction in favor of the Labor Commissioner, or in favor of any employee pursuant to an appeal, with the consent of any employee in whose favor the judgment is entered, to collect any outstanding amount of the judgment by mailing a notice of levy upon all persons having in their possession, or who will have in their possession or under their control, any credits, money, or property, belonging to the judgment debtor, or who owe any debt to the judgment debtor at the time they receive the notice of levy.

Any person noticed with a levy who fails or refuses to surrender any credits, money, or property or pay any debts owed to the judgment debtor liable in his or her own person or estate to the Labor Commissioner in an amount equal to the value of the credits, money, or property or in the amount of the levy, as provided.

5. Liens on real and personal property

Subject to required prior notice to the employer, the Labor Commissioner is authorized to create a lien on any real or personal property in California of an employer or a successor employer with respect to real property, as described, that is conducting business without satisfying the bond requirement for the full amount of any wages, interest, and penalties claimed to be owed to an employee, as specified.

6. Special provisions for employers in the long-term care industry



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If a final judgment against an employer arising from the employer's nonpayment of wages remains unsatisfied after the time to appeal has expired and there is no pending appeal and an employer in the long-term care industry, as specified, is found to be conducting business without obtaining a bond or reaching an accord with an individual holding an unsatisfied judgment, the new law authorizes those departments to deny a new license or the renewal of an existing license. It also authorizes the Labor Commissioner to notify those departments of such a violation. The new law requires any individual or business entity that contracts for services in the property services or long-term care industries to be jointly and severally liable for any unpaid wages where the individual or business entity has been provided notice, by any party, of any proceeding or investigation by the Labor Commissioner in which the employer is found liable for those unpaid wages, to the extent the amounts are for services performed under that contract, as provided.

Written by **Teresa R. Tracy**

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