

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 648 (Smallwood-Cuevas)
Version: February 20, 2025
Hearing Date: April 22, 2025
Fiscal: Yes
Urgency: No
ID

SUBJECT

Employment: gratuities: enforcement

DIGEST

This bill permits the Labor Commissioner to investigate, issue a citation for, or initiate a civil action for gratuities unlawfully taken or withheld by an employer.

EXECUTIVE SUMMARY

California has some of the strongest protections across the country for workers and for ensuring they can be made whole when they are wronged by their employer. These laws include rules for a minimum wage, for rest and meal breaks, for overtime pay, for the timely payment of wages, and for gratuities. Unlike other states, tipped employees in California must be paid the full minimum wage, and tips cannot be used to meet the minimum wage. Instead, California law specifies that tips are the sole property of employees, and that an employer may not take any part of an employee's tips, nor deduct or credit any tip from the employee's wages. However, laws are only as good as the extent to which they are followed and enforced, and labor law violations continue to be a major problem across the state. When a worker files a wage claim with the Labor Commissioner for a labor violation, the Labor Commissioner will investigate the claim and may hold a hearing to adjudicate the claim, prosecute the labor law violation, or take no further action. The Labor Commissioner may also issue a citation for certain violations of labor law. However, the state's laws regarding workers' tips do not allow the Labor Commissioner to issue a citation for a violation. SB 648 would provide the Labor Commissioner with the authority to investigate a violation of the laws regarding workers' tips, issue a citation, or initiate a civil cause of action therefor. It also would specify that the procedures for issuing, contesting, and enforcing such a citation are those for citations issued for violations of the minimum wage. SB 648 is author-sponsored, and is supported by the California Federation of Labor Unions, AFL-CIO, the California Employment Lawyers Association, and a number of other unions and nonprofits. The Committee has received no timely letters of opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes within the Department of Industrial Relations (DIR) the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner, and empowers the Labor Commissioner to ensure a just day's pay in every work place and to promote justice through the robust enforcement of labor law. Empowers the Labor Commissioner to enforce, among other things, wage and hour law, anti-retaliation provisions, and employer notice requirements (Lab. Code §§ 79 et seq.)
- 2) Specifies certain requirements relating to an employee's compensation, allowable hours of work, overtime work and pay, required rest breaks and days off, and guaranteed time off. (Lab. Code §§ 200-2699.8.)
- 3) Authorizes the Labor Commissioner to investigate employee complaints, conduct hearings, and issue orders, decision, and awards regarding complaints. Requires that the Labor Commissioner notify the parties within 30 days of the filing of a complaint whether a hearing will be held, the Labor Commissioner will prosecute the case, or no further action will be taken. Requires that, if the Labor Commissioner will hold a hearing, that the hearing be held within 90 days of the date of that determination, with the option of postponement as specified. Specifies that the Labor Commissioner is required to provide the parties notice regarding the complaint and the proceeding, and allows a defendant to file an answer within 10 days of service of the notice and complaint. (Lab. Code § 98.)
- 4) Provides that the Labor Commissioner may prosecute any action for the collection of wages, penalties, and demands for any person who the Labor Commissioner determines is financially unable to employ counsel and has valid and enforceable claims. (Lab. Code § 98.3.)
- 5) Establishes a citation process for the Labor Commissioner to enforce violations of the minimum wage that includes, but is not limited to, issuing citations, making and noticing findings as prescribed, and requiring any amounts due after a hearing be due 45 days after notice of the finding. Requires the Labor Commissioner to take all appropriate action to enforce the citation and recover the civil penalty, wages, liquidated damages, and applicable penalties assessed. (Labor Code §§ 1197 et seq.)
 - a) Requires that a citation be in writing and describe the nature of the violation, the statutory provisions violated, and whether contract wages are unpaid. Requires the citation be served upon the employer by personal service, by certified mail with return receipt requested, or by registered mail. (Lab. Code § 1197.1(b).)

- b) Specifies that, if a person wishes to contest a citation or the assessed amount for the citation, they must notify the Labor Commissioner within 15 business days of service of the citation and request an informal hearing. Upon receiving such a request, the Labor Commissioner must hold a hearing within 30 days, after which they must affirm, modify, or dismiss the citation.
 - c) Requires that the Labor Commissioner's decision from the hearing on the citation must consist of a notice of findings, findings, and an order, which must be served on all parties to the hearing within 15 days of the hearing by first-class mail.
 - d) Specifies that a party challenging the findings may take a writ of mandate regarding the findings to the superior court 45 days after service of the findings and order. Requires the party filing for the writ of mandate to first post a bond with the Labor Commissioner equal to the total wages and liquidated damages due as specified in the citation, issued in favor of the unpaid employees.
 - e) Requires the petitioner to pay the amounts owed in a clerk's judgment, or pursuant to the court judgment in the writ of mandate proceeding, or the amounts due in the citation or the Labor Commissioner's findings if the writ of mandate is dismissed or withdrawn, unless the parties reach a settlement. If the employer fails to pay the amount of wages, liquidated damages, or overtime compensation due within 10 days of entry of judgment, dismissal, or withdrawal of the writ of mandate, or the execution of a settlement agreement, a portion of the bond equal to the amount owed will be forfeited by the petitioner to the Labor Commissioner. (Lab. Code § 1197.1(c).)
 - f) Specifies that, if a person issued a citation does not contest the citation, they must pay to the Labor Commissioner the amount due in the citation within 15 days. Requires that, when a party assessed a citation does not contest the citation, a certified copy of the citation may be filed by the Labor Commissioner with the superior court in the county in which the person assessed had or has a place of business, and that the clerk of the court must enter judgment for the state against the person assessed. (Lab. Code § 1197.1(d)-(e).)
- 6) Establishes the Private Attorneys General Act, providing a process through which an aggrieved employee may bring a civil action to recover a civil penalty for labor law violations on behalf of themselves and other current or former employees who suffered similar harm. Provides a specified civil penalty available when the provisions of labor code violated do not specifically provide for a civil penalty. (Lab. Code §§ 2699 et seq.)

This bill:

- 1) Specifies that the Labor Commissioner may investigate and issue a citation, or file a civil action, for gratuities unlawfully taken or withheld by an employer.
- 2) Specifies that, if the Labor Commissioner issues such a citation, the procedures for issuing and contesting the citation, and for enforcing a judgment for a citation, will be the same as those specified for a citation for a minimum wage violation under Labor Code section 1197.1.

COMMENTS

1. Author's statement

According to the author:

Under current law, the Labor Commissioner's Office or LCO, can issue citations for most workplace-wide violations of labor law including wages, overtime, meal periods and rest periods. However, the Labor Commissioner lacks citation authority to recover gratuities taken or withheld from employees. This bill provides the Labor Commissioner the authority to issue citations to recover gratuities taken or withheld from employees.

When the LCO investigates and issues citations for wages, overtime, meal periods and rest periods, the citation cannot include gratuities that are taken or withheld from workers. In order for the LCO to recover these gratuities the LCO must bring a lawsuit under Labor Code section 98.3. Because tip claims cannot be brought in an administrative proceeding, the LCO is forced to bring both an administrative and civil action to address the full range of violations, which is not practically feasible given the LCO's scarce resources.

This bill does not establish new liability for employers. Instead, it creates more efficient and effective enforcement via the workplace wide citation process and allows the Labor Commissioner to recover for workers who may fear coming forward.

2. California's labor laws and their enforcement

California has some of the strongest protections across the country for workers and for ensuring they can be made whole when they are wronged by their employer. These laws include rules for a minimum wage, for rest and meal breaks, for overtime pay, for the timely payment of wages, and for gratuities, and rules against retaliation for an employee asserting their rights. Many of California's labor laws include statutory penalties and fines for employers who violate them. These laws ensure that California's

workforce and economy are the strongest in the world and that workers' rights, fair treatment and pay, and dignity are respected.

However, laws are only as good as the extent to which they are followed and enforced, and labor law violations continue to be a major problem across the state. A 2017 study found that 19.2% of low-wage workers experience minimum wage violations in California each year, with employers stealing almost two billion dollars from California workers every year through minimum wage violations.¹ Another study found even higher losses for California workers: across four metropolitan areas covering Los Angeles, San Diego, and the Bay Area, employers were estimated to have stolen an average of 2.3 to 4.6 billion dollars in earned wages from workers each year between 2014 and 2023.²

Wage theft can include a variety of labor law violations, including when an employer deducts a worker's tips from their wages. However, an employer may also steal a worker's tips just by withholding tips, taking a portion of a worker's tips, purloining tips, or deducting a processing fee from the tip. Some research has demonstrated a prevalence of employers stealing workers' tips in these ways as well. One such study found that 19.2% of respondent workers in Los Angeles had their tips stolen by their employer.³ Another study of restaurant workers in the Chinatown district of San Francisco found that 33.6% of respondents reported their employer keeping some or all of their tips.⁴ When an employer steals their workers' tips, they are robbing the worker of their earned income, and this generally happens in industries in which workers are often reliant on tips for a considerable portion of their income. Tipped workers tend to be some of the lowest paid workers in the state's economy, and stealing workers' tips can have serious consequences for a worker's livelihood and their ability to meet their basic needs.

3. Tips are the sole property of workers

California's laws around tips are incredibly strong. Unlike other states, tipped employees in California must be paid the full minimum wage, and tips cannot be used

¹ David Cooper & Teresa Kroeger, "Employers steal billions from workers' paychecks each year," Economic Policy Institute (May 10, 2017), <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>.

² Jake Barnes et al., Wage Theft in California: Minimum wage violations, 2014-2023, Rutgers School of Mgmt. and Lab. Rel. (May 2024), available at <https://www.smlr.rutgers.edu/news-events/smlr-news/minimum-wage-theft-rises-sharply-california>.

³ Ruth Milkman et al., Wage Theft and Workplace Violations in Los Angeles: the failure of employment and labor law for low-wage workers, UCLA Institute for Research on Labor and Employment, at p. 3 (2010), available at <https://labor.ucla.edu/publications/wage-theft-and-workplace-violations-in-los-angeles/>.

⁴ Meredith Minkler et al., Wage Theft as a Neglected Public Health Problem: An overview and case study from San Francisco's Chinatown district, Am. J. Pub. Health Vol. 104, No. 6, p. 1017 (Jun. 2014), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC4062017/>.

to meet the minimum wage. Instead, California law specifies that tips are the sole property of employees, and that an employer may not take any part of an employee's tips, nor deduct or credit any tip from the employee's wages. (Lab. Code § 351.) An employer also may not deduct a credit card processing charge from any tips paid by credit card.

To help ensure compliance with these rules, California law requires that an employer keep an accurate record of all tips that they have received on behalf of employees. (Lab. Code § 353.) An employer must keep these records for at least three years. (Lab. Code § 2052.) It also provides that an employer who violates any of these provisions relating to an employee's tips is guilty of a misdemeanor punishable by a fine of up to \$1,000, or imprisonment of up to 60 days. (Lab. Code § 354.)

4. The Labor Commissioner's enforcement capacity is limited

When an employer has failed to pay a worker what they are owed under the law, the worker generally must file a wage claim with the Labor Commissioner, sue for damages, or file a representative civil action against the employer through California's Private Attorneys General Act (PAGA). When a worker files a wage claim with the Labor Commissioner, the Labor Commissioner will investigate the claim. The Labor Commissioner must notify both parties within 30 days of the complaint as to whether a hearing is required to adjudicate the claim, whether the Labor Commissioner will prosecute the labor law violation, or whether no further action will be taken. If the Labor Commissioner determines a hearing is needed, it must set the matter for a hearing within 90 days. (Lab. Code § 98.) The Labor Commissioner must file and serve on each party its decision within 15 days after the hearing, after which the parties have 10 days from the date of service to seek review of the Labor Commissioner's decision in the superior court. (Lab. Code §§ 98.1, 98.2.) If no party appeals the Labor Commissioner's decision by this deadline, it is deemed final, and the Labor Commissioner has 10 days to file a copy of the final order with the superior court. (Lab. Code § 98.2(d)-(e).) The superior court then enters a judgment pursuant to the final order that has the same force and effect as a judgment in a civil action.

In certain circumstances, the Labor Commissioner also is empowered to issue citations for labor law violations. For example, the Labor Commissioner is empowered to issue a citation for unlawful retaliation or discrimination against an employee after completing an investigation in response to an employee complaint. (Lab. Code § 98.74.) The Labor Commissioner may also issue a citation to an employer who fails to meet their legal requirements regarding providing employees with appropriate, itemized paystubs. (Lab. Code § 226.4.)

Additionally, the Labor Commissioner may issue a citation for failing to pay workers the minimum wage or for failing to pay workers on time. (Lab. Code §§ 1197.1; 210.) For both of these citations, Labor Code section 1197.1 specifies the procedures that the

Labor Commissioner must follow. The citation must describe the nature of the violation and the specific statutory provisions violated. If an employer wishes to contest a citation, they must notify the Labor Commissioner within 15 days of receiving the citation, and if they do, the Labor Commissioner must hold an informal hearing within 30 days. The Labor Commissioner may affirm, modify, or dismiss the citation, and they must provide their findings and order within 15 days of the informal hearing. From that point, an employer has 45 days to challenge the Labor Commissioner's findings in superior court. If an employer wants to challenge the Labor Commissioner's decision, they must first post a bond in the amount of any wages or liquidated damages due under the Labor Commissioner's decision. If an employer does not contest the Labor Commissioner's citation within the initial 15-day window, they must pay the citation within 15 days of that deadline. The process for a citation is considerably shorter and more informal than the process for the Labor Commissioner to hold a hearing on a complaint, and puts the burden on the party challenging the citation to request a hearing.

Another avenue for enforcing labor law was created by AB 594 (Maienschein, Ch. 659, Stats. 2023) in 2023. AB 594 clarified that public prosecutors, defined to include the Attorney General, a district attorney, a city attorney, a county counsel, or any other city or county prosecutor, can prosecute a civil or criminal violation of specified provisions of the Labor Code. (Lab. Code § 181(b).) AB 594 provided this power independent of the Labor Commissioner's own authority to enforce the labor laws, though AB 594 required that public prosecutors provide a 14-day notice to DLSE before prosecuting an action. (Lab. Code § 181(d).) A public prosecutor is limited to bringing a prosecution related to a labor code violation within the prosecutor's geographic jurisdiction, except for prosecutors with statewide jurisdiction or other specified authority.

5. SB 648 proposes to provide the Labor Commissioner with another, more efficient tool for the enforcement of California's laws around tips

Labor law generally must specify if the Labor Commissioner may issue a citation pursuant to a violation of a particular labor law. California's labor laws regarding gratuities do not provide for such citations. SB 648 would correct this by specifying that the Labor Commissioner may investigate and issue a citation, in addition to filing a civil action, for gratuities that an employer unlawfully takes or withholds from employees. Such a citation may be for the wrongfully taken gratuities, as well as potentially for civil penalties through PAGA's default civil penalty at Labor Code section 2699(f). SB 648 further specifies that, if a citation is issued, the procedures for that citation and contesting the citation are the same as those that exist for citations regarding violations of the minimum wage, as described above.

SB 648 aims to provide the Labor Commissioner with a more efficient way to enforce California's laws regarding tips. Indeed, the process for issuing and contesting citations is less onerous than the process of a civil action in court or the Labor Commissioner's

hearing process between a complainant and their employer under Labor Code section 98, so that providing citation authority will allow the Labor Commissioner to more easily pursue violations regarding workers' tips. Additionally, when an employer violates the laws regarding tips, they often also have a variety of other labor law violations as well, such as for minimum wage or unpaid wages. Violations for not paying workers minimum wage and for nonpayment of wages can both be enforced through a citation. By allowing the Labor Commissioner to enforce the laws regarding workers' tips through a citation, the Labor Commissioner would be able to issue citations for those violations along with citations for any other violations that also allow for a citation by the Labor Commissioner. As SB 648 relies on the citation procedures that are already law for minimum wage violations, the Labor Commissioner would not be required to implement a new process for these citations. Thus, SB 648 would arguably provide the Labor Commissioner with more tools and authority to more effectively enforce violations of the state's laws regarding workers' tips.

6. Arguments in support

According to the California Federation of Labor Unions, AFL-CIO, which supports SB 648:

California law states that employees are the sole owners of tips and gratuities, and that employers cannot take any portion of them. This means that employers cannot take tips or deduct from or credit them against workers' wages. Low-wage workers often depend on tips to make ends meet, especially if they are making at or close to minimum wage.

The Labor Commissioner can issue citations for most violations of labor law including wages, overtime, meal periods, and rest periods, which allows for efficient enforcement of the law. However, the Labor Commissioner lacks citation authority to recover gratuities taken or withheld from employees. Currently, the only procedure for the Labor Commissioner to recover stolen gratuities is through filing an action in court.

Tipped workers have difficulty bringing forward individual claims for unpaid gratuities because the amounts are too small. Because the claims for gratuities cannot be brought in an administrative proceeding, the Labor Commissioner must bring both an administrative and civil action to address the full range of violations in its workplace-wide cases. In most cases, it is impractical to bring a civil lawsuit for such small amounts. Since it is also impractical for workers to bring a separate claim or lawsuit for such small amounts, scofflaw employers have little deterrent to taking workers' tips.

SUPPORT

California Employment Lawyers Association
California Federation of Labor Unions, AFL-CIO
California Teamsters Public Affairs Council
Courage California
End Poverty in California Action Aka Epic Action, a Project of Tides Advocacy
Unite Here International Union, AFL-CIO

OPPOSITION

None received.

RELATED LEGISLATION

Pending Legislation:

SB 261 (Wahab, 2025) requires the Labor Commissioner to post to its website a copy of orders, decisions, or awards filed by the Labor Commissioner and the information of employers with unsatisfied judgments, as specified, and establishes a civil penalty for a final judgment for nonpayment of wages that remains unpaid for 180 days. SB 261 is currently pending before the Senate Appropriations Committee.

AB 1234 (Ortega, 2025) revises the process for the Labor Commissioner to investigate and hear employee complaints, and makes other changes to the process by which a party may appeal an order, decision, or award made by the Labor Commissioner. AB 1234 is currently pending in the Assembly Labor and Employment Committee.

Prior Legislation:

AB 594 (Maienschein, Ch. 659, Stats. 2023) authorized the Attorney General, district attorneys, city attorneys, county counsel, or any other city or county prosecutors to enforce specified provisions of the Labor Code, as specified. AB 594 provided for its provisions to be repealed on January 1, 2029.

SB 796 (Dunn, Ch. 906, Stats. 2004) created the Labor Code Private Attorneys General Act of 2004, providing that an employee may bring a civil action on behalf of themselves and other employees who were subjected to a violation of the labor code by their employer, instead of pursuing their claim through the enforcement agency.

AB 2509 (Steinberg, Ch. 876, Stats. 2000) revised the processes for the Labor Commissioner to conduct administrative hearings and issue orders, decisions, and awards for violations of labor law, and prohibited employers from receiving or deducting gratuities paid by patrons directly to a dancer subject to specified orders of the commission. AB 2509 also required employers to remit to their employees gratuities

paid by credit card, without deduction for credit card fees, not later than the next regular payday following the date the credit card payment is authorized by the patron.

PRIOR VOTES:

Senate Committee on Labor, Public Employment, and Retirement (Ayes 5, Noes 0)
