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

AB 1234 (Ortega)
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SUBJECT

Employment: nonpayment of wages: complaints

DIGEST

This bill revises the process by which the Labor Commissioner investigates and adjudicates employee complaints of wage claims, including by requiring an employer to file an answer to a complaint, issuing a formal complaint, and holding a hearing, as specified, and requires the Labor Commissioner to impose an administrative fee with any order, decision or award, as specified.

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, rest and meal breaks, overtime pay, and the timely payment of wages, and rules against retaliation for an employee asserting their rights. Yet 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 an employee is not paid the wages they are owed, they can file a complaint with the Labor Commissioner's office, which will investigate the claim and can decide to adjudicate the claim through a hearing, issue a citation for certain violations of labor law, prosecute the case, or close their complaint without taking further action. However, complaints before the Labor Commissioner often take an incredibly long time to be resolved, and even workers who receive an order, decision, or award in their favor from the Labor Commissioner struggle to collect what they are due from their employer.

In order to make the process more efficient and promote employers' participation in the claim process of the Labor Commissioner, AB 1234 revises the process by which the Labor Commissioner investigates, adjudicates, and resolves employee complaints. It creates a specified timeline by which employers must respond to complaints, requires the Labor Commissioner to issue decisions in favor of an employee when the employer

fails to provide an answer to the complaint, requires the Labor Commissioner to issue formal complaints after an investigation and hold a hearing within 90 days of that complaint, and requires that the Labor Commissioner, except when waived as specified, impose a 30 percent administrative fee with any order, decision, or award. AB 1234 also makes a variety of changes to the appeal process.

AB 1234 is sponsored by the California Federation of Labor Unions, AFL-CIO, the Center for Workers' Rights, and Bet Tzedek, and is supported by a number of other labor groups. It is opposed by the California Chamber of Commerce and a coalition of regional chambers of commerce, contractors and subcontractors' associations, and business groups. It previously passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4 to 1.

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's Office (LCO), and empowers the LCO to ensure a just day's pay in every work place and to promote justice through the robust enforcement of labor law. Empowers the LCO to enforce, among other things, wage and hour law, anti-retaliation provisions, and employer notice requirements (Lab. Code §§ 79 et seq.)

2) Authorizes the LCO to investigate employee complaints, conduct hearings, and issue orders, decisions, and awards regarding complaints. Requires that the LCO notify the parties within 30 days of the filing of a complaint whether a hearing will be held, the LCO will prosecute the case, or no further action will be taken. Requires that, if the LCO will hold a hearing, the hearing be held within 90 days of the date of that determination, with the option of postponement, as specified. Specifies the required notice that the LCO must provide the parties 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.)

3) Requires the LCO, within 15 days after the hearing is concluded, to file in the office of the division, and serve upon the parties, a copy of the order, decision, or award (ODA). The ODA shall include a summary of the hearing and the reasons for the decision. Requires that the ODA include any sums found owing, damages proved, and any penalties awarded pursuant to the Labor Code, including interest on all due and unpaid wages, as specified. (Lab. Code §98.1.)

4) Permits a party to appeal the ODA to a superior court within 10 days of being served the ODA, and requires the superior court to hear the case de novo. Requires a party appealing an ODA to post a bond in the amount of the ODA with the court.

Specifies that, if an appealing party is unsuccessful, the court must determine the costs and reasonable attorney's fees incurred by the other parties to the appeal, and assess that amount to the losing party. Specifies that an employee is successful if the court awards an amount greater than zero. (Lab. Code § 98.2.)

5) Specifies that, if no appeal of the ODA is filed within the period specified, the ODA shall, in the absence of fraud, be deemed the final order. Requires the LCO to file, within 10 days of the ODA becoming final, a certified copy of the final order with the clerk of the superior court of the appropriate county, unless a settlement has been reached by the parties and approved by the LCO. Requires that judgment be entered immediately by the court clerk in conformity therewith. (Lab. Code § 98.2.)

6) Permits the LCO to prosecute all actions for the collection of wages, penalties, and demands of persons whom the LCO judges to be financially unable to employ counsel, if the LCO believes the claims are valid and enforceable. (Lab. Code § 98.3.)

7) Establishes a citation process for the LCO to enforce violations of the minimum wage that includes, but is not limited to, issuing citations, making and noticing findings as prescribed, requiring that any amounts due after a hearing be due 45 days after notice of the finding, and taking all appropriate actions to enforce the citation and recover an assessed civil penalty. Permits a person to contest the citation within 15 business days after service of the citation, and requires the LCO to hold an informal hearing on the citation within 30 days of receiving a request to contest the citation. (Lab. Code §§ 1197.1.)

8) Authorizes, until January 1, 2029, a public prosecutor, defined as the Attorney General, a district attorney, a city attorney, a county counsel, or any other city or county prosecutor, to prosecute an action, either civil or criminal, for a violation of certain provisions of the Labor Code. Specifies that such an action by a public prosecutor must be limited to redressing violations that occur within the public prosecutor's geographic jurisdiction, unless the public prosecutor has statewide authority. Requires the court to award a prevailing plaintiff in actions brought by a public prosecutor reasonable attorney's fees and costs, including expert witness fees and costs. (Lab. Code §§ 180, 181.)

9) Establishes the Private Attorney's General Act (PAGA), 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 through an employee's action when the provisions of the Labor Code violated do not specifically provide for a civil penalty. (Lab. Code §§ 2699 et seq.)

10) Specifies that, if an employer willfully fails to pay, without abatement or reduction, the wages of an employee who is discharged or quits, the wages of the employee are

continued as a penalty from the date they are due until they are paid, or until an action is commenced to recover them, for no more than 30 days. (Lab. Code § 203.)

11) Requires an employer to discontinue business in this state, unless the employer has obtained a bond from a surety company admitted to do business in this state and has filed a copy of that bond with the Labor Commissioner, if a final judgment against an employer arising from the employer's nonpayment of wages for work performed in this state remains unsatisfied after a period of 30 days after the time to appeal therefrom has expired and no appeal therefrom is pending. (Lab. Code § 238.)

12) Specifies that, in any action for the nonpayment of wages, the court must award interest on all due and unpaid wages, to accrue from the date that the wages were due and payable, and at a rate as specified. (Lab. Code § 218.6.)

This bill:

1) Specifies that, for the purposes of calculating the statute of limitations for any employee complaint investigated by the LCO, the action commences upon the employee's filing of their complaint.

2) Specifies that, if the LCO determines that no further action will be taken on an employee complaint, the LCO must notify the complainant of that determination within 30 days of receipt of the complaint, and specifies that, in this case, the employee may pursue any other remedies available to them, with the tolling of any statute of limitations based on the date when the employee filed their complaint with the LCO, as long as the subsequent action is commenced within one year of the date of this notice.

3) Specifies that, if the LCO does not determine to take no further action pursuant to (2), the LCO must notify all parties to the complaint within 60 days of receipt of the complaint. Specifies that this notice must contain the allegations asserted in the complaint, including the total amount of wages, penalties, and other demands for compensation alleged, and that, if the complaint did not include a total amount owed, the LCO may calculate a value based on the allegations and any investigation it has conducted. Specifies that this notice must also identify the section of the Labor Code under which liability is asserted.

4) Requires defendants to respond to a complaint within 30 days of its transmittal, by either paying in full the amount due or by filing an answer that includes whether the defendant admits employing the complainant during the relevant period, and whether the defendant admits or denies any of the amounts owed. Specifies that, if the defendant admits to any amount owed, the LCO may issue an ODA for that amount, which may be appealed, and that the LCO may continue investigating any

claims not admitted. Requires the defendant to set forth how the complaint is inaccurate or incomplete and the facts upon which it relies when the defendant denies an allegation.

5) Specifies that, if a defendant fails to answer the complaint within 30 days, the LCO must issue an ODA in the amount stated in the notice, which may be appealed, and specifies that, if the defendant's answer is insufficient, the LCO may permit the defendant an additional 15 days to submit a revised answer. Specifies that, after 15 days, if the defendant still fails to provide an answer, the LCO must issue an ODA in the amount stated in the notice, which may be appealed.

6) Permits the LCO to request an answer from any new party that is added to the complaint at any point in the investigation by issuing a notice of claim to that new employer within 60 days of when the employer is added to the complaint, and requires this notice to include information on the allegations, amount alleged due, and the section of the Labor Code alleged to have been violated.

7) Specifies that, if the LCO determines to prosecute the claim or to not take further action, it must notify all parties of that determination within 30 days of receipt of the employer's answer. Specifies that, if the LCO declines to continue to investigate the complaint, the claimant may pursue remedies through any alternative forum available, with the tolling of the statute of limitations based on the date the employee filed their complaint, so long as the subsequent action is commenced within one year of the date of the notice.

8) Requires the LCO to conduct an investigation of the complaint if it does not determine to prosecute the claim or take no further action, and to make an estimated appraisal of the amount of wages, damages, penalties, expenses, and other compensation owed and determine all parties who are liable for the assessment. Requires these actions be made within 90 days of the receipt of the employer's answer.

9) Permits the LCO to hold a mandatory investigatory and settlement conference, and specifies that the LCO may dismiss the complaint if the complainant fails to attend, or to issue an ODA if the defendant fails to attend, without good cause. Upon agreement of the claimant, permits the LCO to hold additional mandatory investigatory and settlement conferences if additional defendants are identified during the investigation.

10) Permits the LCO to issue a subpoena requesting copies of records for the employee during the claim period, and permits the LCO to issue a subpoena for all records required to be maintained by the relevant wage order, or to any other parties or for any other information, as determined by the LCO.

11) Requires the LCO to issue a formal complaint that includes the allegations in the employee complaint concerning the time period of the claim, the laws violated, and all parties liable, and the amount of compensation requested, any applicable interest, and administrative fees.

12) Requires the LCO to set a hearing date within 90 days of the issuance of the formal complaint, and serve a copy of the formal complaint on all parties with a notice of the hearing. Permits the LCO to conduct the hearing in person, over the phone, or by video conference.

13) Specifies that, if a defendant fails to appear, the LCO may issue an ODA in the amount stated in the formal complaint, which may be appealed, as provided.

14) Specifies that, if a defendant's records are inaccurate or inadequate as to the precise extent of work completed and compensated by the claimant, the claimant has carried out their burden of proof if they prove that they have in fact performed work for which they were improperly compensated and produce sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.

15) Specifies that a hearing conducted pursuant to these provisions is governed by the division and by the rules of practice and procedure adopted by the LCO.

16) Specifies that the LCO's authority to amend an order or relieve a defendant from the ODA when the employer fails to appear or answer terminates when the defendant files an appeal with the superior court.

17) Specifies that the LCO's authority to investigate a claim or issue an ODA does not terminate upon the expiration of the deadlines provided in these provisions.

18) Requires the LCO to file in the office of the division a copy of the ODA and serve the ODA on the parties, as specified, when an ODA is issued upon a failure of the defendant to answer or appear, and permits service to take place by any manner that a party agrees to accept, including electronic service.

19) Requires the ODA to include a description of the interest accrued and the reasons for the decision, and specifies that an ODA shall be deemed a determination of the defendant's liability for the unpaid wages specified.

20) Specifies that an ODA must impose an administrative fee of 30 percent of the ODA, which must be deposited into a Wage Recovery Fund for disbursement by the LCO only to persons determined by the LCO to have been damaged by the failure to pay wages and penalties and for other damages by an employer. Specifies that any disbursement must be made pursuant to a claim for recovery from the fund made in

accordance with procedures prescribed by the LCO, and that any disbursed funds subsequently recovered by the LCO from a liable party pursuant to an assignment of the claim to the LCO must be returned to the fund.

21) Requires the LCO to waive the administrative fee if requested by the defendant at the hearing, if:
    a) The ODA does not impose liability for penalties pursuant to Labor Code section 203;
    b) The defendant attests in writing that they do not have a prior ODA issued against them within the past 10 years for engaging in illegal conduct related to a dispute over wages or other violations over which the LCO has jurisdiction; and
    c) The defendant attests in writing that they have not entered into any settlement agreement within the past 10 years concerning prior illegal conduct related to a dispute over wages or other violations within the LCO's jurisdiction, except for any payment pursuant to admissions to a complaint.

22) Specifies that an appeal of an ODA must be classified as an unlimited civil case.

23) Specifies that a party seeking appeal is unsuccessful if they withdraw their appeal without a judgment, and an employee is successful if the defendant voluntarily pays an amount greater than zero, for the purposes of provisions that require the court to determine and award costs and reasonable attorney's fees against a party that filed for appeal.

24) Specifies that a court hearing an action filed to appeal an ODA has jurisdiction over the entire wage dispute, including related wage claims not raised before the LCO.

25) Specifies that a court may not consolidate an action filed to appeal an ODA with any other action that did not arise out of, or is related to the wage claim covered by the underlying ODA, absent an executed agreement in writing by all parties.

26) Requires a court to grant an application filed by the LCO to vacate a judgment deemed final upon the LCO's granting of relief from an ODA entered because of the failure of the employer to appear.

COMMENTS

1. Author's statement

According to the author:

> The [Labor Commissioner] wage claim process is broken. It involves significant delays, often taking two or more years before a first hearing is scheduled. Employers are not required to engage and can fail to appear or respond to claims, dragging out the process and hindering workers' ability to recover unpaid wages.
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> AB 1234 speeds up the process by compelling employer participation, thus avoiding unnecessary delays and reducing the LC Office's wage theft backlog. It also strengthens the procedural requirements for employers that challenge claims, including requiring documentation and evidence for disputes over claim amounts. These procedural enhancements will shorten the time it takes to resolve claims and help workers recover a greater percentage of the money owed to them.

2. Wage theft and labor law violations are a major issue in California

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, rest and meal breaks, overtime pay, and the timely payment of wages, and rules against retaliation for an employee asserting their rights. Many of California's labor laws include statutory or civil 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 though minimum wage violations.[1] Another study found even higher losses for California workers: across three 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

[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/.

2014 and 2023.[2] Furthermore, the number of underpaid workers has more than doubled since 2014, with a dramatic increase of 56 percent from 2022 to 2023.[3] This wage theft disproportionately affects African American, Latinx, noncitizen, and women workers. Given these statistics, wage theft remains a bigger problem of theft in California than all other forms of theft.[4]

3. Labor law and the options available to aggrieved workers

The Labor Code outlines the minimum pay, rest and meal breaks, overtime pay, paid sick leave, and other rights and minimum requirements due to workers in California. When an employer does not comply with these requirements, it can result in an unpaid wage claim. Examples include when an employer pays an employee less than the minimum wage, fails to pay the employee for their overtime work, prohibits an employee from taking meal or rest breaks or their paid sick leave, or makes unauthorized deductions from an employee's pay. In addition, some employers must pay workers their wages twice each calendar month on days designated in advance as regular paydays. (Lab. Code § 204.) When a worker is fired or terminated, an employer generally must pay the worker their final due wages immediately. (Lab. Code §§ 201-203.) When an employer fails to timely pay its workers, the worker can also bring a claim for nonpayment of wages. The Labor Code provides for various statutory and civil penalties for violations of its provisions, and also provides that, in an action for the nonpayment of wages, the court must award interest on all due and unpaid wages. (Lab. Code § 218.6.)

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 (LCO), sue for damages, or file a representative civil action against the employer through California's Private Attorneys General Act (PAGA). A public prosecutor, which includes 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).)

4. The Labor Commissioner is currently unable to provide workers adequate relief

When a worker files a wage claim with the LCO, the LCO can investigate and adjudicate the claim, issue a citation for certain labor law violations, or prosecute the claim themselves. (Lab. Code §§ 98, 1197, 98.3.) After receiving a complaint on unpaid

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[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] *Id.*

[4] Ross Eisenbrey & Brady Meixell, "Wage theft is a much bigger problem than other forms of theft – but workers remain mostly unprotected," Economic Policy Institute (Sept. 18, 2014), https://www.epi.org/publication/wage-theft-bigger-problem-forms-theft-workers/.

wages and similar claims, the LCO may provide for a hearing to adjudicate the claim. Under current law, the LCO must notify the parties to the complaint within 30 days of the filing of the complaint whether it will hold a hearing on the complaint, prosecute the complaint itself, or close the complaint without taking any further action. (Lab. Code § 98(a).) If the LCO is to hold a hearing, it must do so within 90 days of the determination that a hearing is needed, except that it may postpone the hearing or grant additional time if doing so would lead to an equitable solution. LCO hearings are informal hearings in which the rules of evidence are relaxed, though both parties are able to call, examine, and cross examine witnesses and introduce exhibits. (Lab. Code § 98(a); Cal. Code Regs. §§ 13502, 13505.)

The LCO must serve a copy of the complaint with a notice of the hearing on all parties once a hearing is set. (Lab. Code § 98(b).) Within 10 days of this service, a defendant may file an answer that sets forth the particular facts or arguments upon which the defendant is challenging the complaint. (Lab. Code § 98(c).) This answer is generally the scope of what the defendant may argue in the hearing; evidence on an issue not raised in the answer is generally only allowed under terms and conditions set by the LCO, and the complainant is allowed a continuance to review any such new evidence. (Lab. Code § 98(e).) If the defendant fails to appear at the hearing or answer the complaint, the LCO is not currently permitted to make a default judgment. (Lab. Code § 98(f).) Instead, the LCO must hear the evidence and issue an order, decision, or award (ODA) in accordance with the evidence before it.

Unfortunately, the LCO process currently fails to provide many workers timely adjudication of their claims or actual redress. The LCO has experienced chronic staffing and funding shortages for many years, resulting in cases taking 505 days to be adjudicated on average.[5] A Legislative Analyst's Office analysis found that about 33,000 workers file wage claims with the LCO every year, with workers reporting collecting less than 20 percent of unpaid wages owed.[6] Even when workers win at an LCO hearing, the report found that only about 50 percent manage to recover the awarded damages and penalties. The Legislative Analyst's Office suggested increasing hiring at the LCO, streamlining the wage claim process, and having the LCO take a more active role in collections in order to address these issues.[7]

Moreover, a state audit of the LCO in 2024 found that the LCO had a backlog of 47,000 cases at the end of 2023, with more than 2,800 claims that had been open for five years

[5] Jeanne Kuang, "Agency battling wage theft in California is too short-staffed to do its job," CalMatters (Oct. 17, 2022), https://calmatters.org/california-divide/2022/10/agency-battling-wage-theft/?series=unpaid-wages-california-workers.
[6] Legislative Analyst's Office, "The 2020-2021 Budget: Improving the State's Unpaid Wage Claim Process," (Feb. 19, 2020), https://lao.ca.gov/Publications/Report/4165.
[7] *Id.*

or more, collectively worth $63.9 million in unpaid wages.[8] The State Auditor also found that, between 2018 and 2023, about 28 percent of employers liable for wage theft failed to make payments ordered by the LCO. With such long processing times in cases before the LCO and such low rates of recovery even after the LCO finds for the employee, many workers simply give up and withdraw their claims, or decide to settle for considerably less than the amount of wages they are owed. This ultimately favors employers, who can delay the process such that the claim is ultimately dropped, settle for much less than they owe a worker, or avoid having to pay altogether even after being found liable.

5. AB 1234 proposes to restructure the Labor Commissioner to provide a more robust process for resolving wage claims

AB 1234 proposes to revise the process by which the LCO conducts hearings and issues ODAs in order to help address these issues and provide workers with faster, more effective redress when their employers steal their wages. It replaces the current timeline with one that requires the involvement and response of the employer earlier, and provides more specific requirements for an LCO hearing. It would require the LCO, upon receiving a complaint, to determine whether to continue with an investigation and adjudication of the complaint, prosecute the claim itself, or to close the complaint without taking further action. If the LCO decides not to take any further action on a complaint, AB 1234 would require the LCO to make that determination within 30 days and notify the complainant. If the LCO does not close the complaint without further action, it must notify the parties to the complaint of the allegations within 60 days of receiving the complaint. This notice must include a description of the allegations, amounts alleged due to the worker, and the Labor Code sections relevant to the claims.

The defendant would then have 30 days to respond to the complaint, either by paying the amounts alleged due in the complaint, or by filing an answer with the LCO. This answer would need to address whether the defendant admits to the complainant being their employee and whether the defendant admits or denies any of the claims regarding wages owed to the complainant. If the defendant admits to owing any wages claimed in the complaint, the LCO would be required to issue an ODA for the amounts admitted, and the employer would be required to pay these amounts. If the defendant denies the claims, they would need to set forth in their answer the facts and reasons upon which their denial rests. The LCO may provide the defendant an extra 15 days to submit a revised answer if their original answer was insufficient. If the employer fails to provide an answer to the complaint, AB 1234 would require the LCO to issue an ODA in the amount stated in the notice of the complaint.

[8] California State Auditor, "2023-104 The California Labor Commissioner's Office: Inadequate staffing and poor oversight have weakened protections for workers," Report No. 2023-104 (May 29, 2024), https://www.auditor.ca.gov/reports/2023-104/.

Upon receiving the employer's response, AB 1234 would require the LCO to again decide whether to close the complaint without further action, prosecute the case themselves, or continue with an investigation and hearing. If the LCO plans to close the complaint or prosecute it themselves, they must notify the parties within 30 days of receiving the employer's answer. If the LCO does not take either of those actions, it must investigate the complaint and issue a formal complaint within 90 days. The LCO may conduct a mandatory investigatory settlement conference with the parties, and may issue an ODA if either party fails to appear without good cause. The LCO also would be permitted to issue subpoenas to request copies of records relating to the employee and their wages.

Once the LCO has issued the formal complaint, they would have another 90 days to set a hearing date for the complaint. The employer may file another answer or a revised answer within 10 days of receiving notice of the hearing. The hearing would be limited to evidence on matters pleaded in the complaint and answer, except under terms and conditions imposed by the LCO, and if new evidence is introduced, the complainant would be able to continue the hearing in order to review it. If the employer fails to appear at the hearing, the LCO may issue an ODA for the amount in the formal complaint, though the LCO would be permitted to amend or strike the ODA, or provide an employer relief from the ODA when the employer requests such an action after failing to appear.

AB 1234 includes a number of provisions regarding the appeal process and that codify various court decisions. It includes provisions that toll the statute of limitations on any wage claim on the date that the employee files their complaint with the LCO, as long as the employee pursues a civil action on that claim within one year. This change codifies the decision of the California Supreme Court in the case *Cuadra v. Millan*, which found that the LCO had the implied authority to toll the statute of limitations and calculate wage claims from the date of the filing of the complaint. (*Cuadra v. Millan* (1998) 17 Cal. 4th 855.) AB 1234 also codifies two other cases relating to appeals of the LCO's ODAs: *Arneson v. Royal Pacific Funding Corp., Inc.* and *Murphy v. Kenneth Cole Productions, Inc.* The first change clarifies that, if a party seeking appeal is unsuccessful in their appeal, the court must award costs and reasonable attorney's fees. AB 1234 codifies the clarification in *Arneson v. Royal Pacific Funding Corp., Inc.* that a party seeking appeal is considered unsuccessful if they withdraw their appeal without judgment, and that an employee is successful even if the court awards a smaller amount than what the LCO had awarded, or the defendant voluntarily pays. (*Arneson v. Royal Pacific Funding Corp., Inc.* (239 Cal. App. 4th 1275, 1280.) Lastly, AB 1234 codifies the rule in *Murphy v. Kenneth Cole Productions, Inc.* that a reviewing court may review the entire wage dispute, including related wage claims that were not raised before the LCO. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094.) AB 1234 also specifies that any appeal of an ODA by the LCO is to be an unlimited civil action.

6. AB 1234 provides for an administrative fee meant to support aggrieved workers

AB 1234 also requires an ODA issued by the LCO to include an administrative fee of 30 percent of the amount of the ODA. It requires this fee to be deposited into a Wage Recovery Fund for the purposes of disbursement to individuals determined by the LCO to have been damaged by the failure of any employer to pay wages and penalties and other damages. However, a defendant would be able to request that the administrative fee be waived at the LCO hearing, and the LCO would be required to waive it if the employer demonstrates that: the ODA does not impose a liability for the failure to timely pay a worker their wages upon the termination of their employment; the defendant attests in writing that they have not had a prior ODA issued against them in the previous 10 years; and that they have not entered into any settlement agreement for a labor law violation within the past 10 years.

7. Opposition's concerns

The opposition argues that the administrative fee created by AB 1234 is effectively an excessive penalty. They argue that it could harm employers who do not commit willful violations of the labor laws, and regardless of whether they engage in the LCO process. They further assert that the provisions for waiver of the fee are too restrictive and would not apply to any employers.

The sponsors assert that the administrative fee is meant to act as a disincentive for employers to delay the LCO process, ostensibly by providing a sizeable added cost to any ODA that is issued because the employer does not engage in the process or loses at the hearing. Indeed, the fee would act to discourage employers from disregarding the process or any ODA issued against them, as the amount owed would be considerably larger with the 30 percent fee. Moreover, while it is true that the fee would apply regardless of the labor code violation at issue or whether the violation was "willful," it only applies when the LCO has issued an ODA – as in, only when the employer has lost or has failed to answer the complaint or appear at the hearing. Thus, the employer has either failed to engage in the LCO process, or has been found to violate labor law. It is difficult to differentiate between "willful" and "accidental" violations of law; employers are required to follow the law, and whether an employer "accidentally" failed to do so or knowingly did so is irrelevant. When an individual violates any other law, unless *mens rea* is a required element of the offense, it typically matters little whether they knew they were breaking the law or not. Ignorance of the law is no defense.

While the sponsors assert that the administrative fee will act as a deterrent to bad behavior by employers, the funds collected will themselves be used to help make workers whole. These funds would help workers who have been unable to recover from their employers to still receive the compensation they deserve. Thus, the administrative fee would address one of the continued issues with the current remedies for workers: that many are unable to recover even when they win before the LCO or at court.

The opposition also argues that AB 1234's requirement that the LCO issue an ODA for the employee when the employer fails to respond to the complaint is overly harsh. While they refer to the current processes for default judgments in civil court, in which the court may still review the evidence before issuing a default judgment, that is not always the case. In unlawful detainer cases, for example, when a tenant fails to appear to answer the unlawful detainer complaint, a landlord may request a default judgment, and the court *must* grant the default. (Code Civ. Proc. § 1169.) It is also worth noting that AB 1234 still permits an employer to request that the LCO amend or strike a party or relieve the employer from the ODA if the employer fails to answer the complaint or appear.

8. Amendments

The author has accepted amendments that make the administrative fee permissive up to 30 percent of the total amount of the ODA, based on the circumstances giving rise to the claim and the facts presented during the hearing. A full mock up of these amendments is attached at the end of this analysis.

9. Arguments in support

According to the California Federation of Labor Unions, AFL-CIO, the Center of Workers' Rights, and Bet Tzedek, who are the sponsors of AB 1234:

> Wage theft ends up costing workers billions of dollars in stolen wages. 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 though minimum wage violations. Widespread wage theft puts law-abiding employers at a disadvantage, costs taxpayers, and deprives the state of needed revenue. Wage theft has a disproportionate impact on disadvantaged and immigrant communities, increasing inequality. People of color, especially Black and Latino workers, are overrepresented in low-wage industries with higher rates of wage theft, including agriculture, construction, garment, and hospitality.
>
> Despite the best efforts of the Labor Commissioner and other enforcement agencies, state-level enforcement of labor law violations is inadequate. The agencies are underfunded and understaffed with the vacancy rate at the Labor Commissioner's Office (LCO) above 30%. Even when fully funded and staffed, there are millions of employers and workplaces in California, and wage theft is pervasive with about 33,000 workers filing wage claims with the Labor Commissioner every year.
>
> Current procedures for processing wage claims involve significant delays, often taking two or more years before a hearing is scheduled. Employers are not

required to engage in the wage claim process and can fail to appear or respond to claims, refuse to communicate with the LCO, or otherwise deliberately delay the process leading to prolonged resolution times and hindering workers' ability to recover unpaid wages.

AB 1234 puts in place procedures to reduce the backlog at the Labor Commissioner's Office by focusing on employer failure to respond to wage theft claims that unnecessarily drag out cases. The bill requires the LCO to promptly notify employers when a worker files a wage claim and requires a full response in a reasonable amount of time. It allows the LCO to issue an Order, Decision, or Award (ODA) based on the worker's claim if the employer fails to respond or appear, creating a disincentive for employers to delay or ignore the process. It also strengthens the procedural requirements for employers that challenge claims, including requiring documentation of specific facts and evidence for disputes over the amount of the claim, The bill will clarify the appeals process to conform with current case law and provide for efficient processing of appeals to the wage claim.

The bill also includes an administrative fee to create a disincentive for employers to intentionally starve out workers by delaying the process for years. Workers who have lost wages have to sacrifice pay and time to pursue wage claim cases and scofflaw employers can exploit that by waiting out wage claims. The fee ensures employers participate in wage cases and do not intentionally drag out meritorious cases. The LCO is required to waive some or all the fee for first-time offenders.

10. Arguments in opposition

According to the California Chamber of Commerce, which is opposed to AB 1234:

> **AB 1234** imposes a thirty percent "administrative fee" on every single order, decision, or award issued by the Labor Commissioner.1 This is a penalty by another name. It is an automatic thirty percent increase of whatever amount is found owed by the employer, which may already include penalties.
>
> That penalty applies regardless of the type of violation, whether the violation was willful or not, whether the employer appeared at the hearing or not, whether penalties were already assessed under other provisions of the Labor Code, and regardless of the size of the employer. It also applies to any ODA where the defendant is an individual person, which is a possibility under Labor Code section 588.1.

This new, automatic penalty is not only excessive, but it also conflicts with established public policy. As the California Supreme Court reminded us just last year:

> [T]he purpose of imposing civil penalties is typically, as with punitive damages, not primarily to compensate, but to deter and punish . . . Those who proceed on a reasonable, good faith belief that they have conformed their conduct to the law's requirements do not need to be deterred from repeating their mistake, nor do they reflect the sort of disregard of the requirements of the law and respect for others' rights that penalty provisions are frequently designed to punish. (*Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th 1056, 1075 (2024).)

AB 1234 penalizes employers who exercise their right to a hearing, especially in cases where legitimate, good faith disputes exist. For example, disputes over reimbursements or whether specific managers provided timely rest breaks often arise without clear documentation or with fact-specific issues. Automatically imposing a penalty on an employer for exercising their right to a hearing is unjust, particularly when they are seeking a resolution to a genuine dispute.

Recent amendments do not address this concern. The language provides that the fee shall be waived where an employer establishes several criteria. However, those criteria include that 1) the employer has never settled any wage disagreement with an employee over the last ten years and 2) the employer has never received an adverse order from the Labor Commissioner within the last yen years, regardless of the circumstances or facts.

Practically speaking, this "waiver" will apply to no one. Virtually no employer will be able to attest that they have never settled any disagreement with an employee in the last ten years. Any additional "fee" should solely be tied to scenarios where an employer fails to comply with the wage claim process, which is the stated intent of the bill and aligns with the analysis from the Assembly Committee on the Judiciary:

> . . . . the opponents raise an interesting point: The fee under this bill applies to all awards, regardless of whether or not the employer engaged in the process by answering in a timely manner and participating in any hearing or settlement conference. *If the purpose of this bill is to encourage employers to engage in process, then the author may wish to consider if the 30% fee/penalty should be reserved for employers who refuse to participate or otherwise attempt to unreasonably delay the process*. (page 6)

Another concern with AB 1234 is that it would mandate a detailed answer be filed prior to the initial informal conference. Wage claims brought before the Labor Commissioner's office are often filed by employees who, at least initially,

are not represented by counsel. Consequently, the initial complaint may lack sufficient detail. The initial conference presents an opportunity for both parties to meet with the Labor Commissioner's office (and often each other) to flesh out the claim. The Labor Commissioner's office often helps the claimant add potential claims or requested penalties to the claim based on those conversations. If settlement is not reached, an answer then makes sense at that stage. Otherwise, to require the answer earlier will result in many answers simply stating the employer has insufficient knowledge to address the claim. At the very least, if the answer were required earlier, the law should allow for a general denial like in state court. The bill is also unclear about whether it applies to claims presently pending before the Labor Commissioner and how timing would work in those claims at various stages of the process. […]

Presently, if the defendant does not appear or answer on time, the Labor Commissioner may issue an ODA "in accordance with the evidence." That current law mirrors what happens in civil court where there is a default: the plaintiff must provide a declaration laying out the evidence after a default is issued. The court may then request a hearing if there are questions about the declaration prior to entering a default judgment. **AB 1234** provides that the Labor Commissioner must enter ODA in the full amount requested even if there is no evidence other than the complaint where there is no answer, and that it can do the same if the defendant is not present at the conference or hearing. We believe that the Labor Commissioner, like the courts, should consider the evidence presented and have the right to request testimony or further evidence from the claimant. Otherwise, simply being late in filing an answer would *automatically* result in an ODA in the full amount claimed, regardless of whether the claimant was accurate or truthful. While we understand the goal of expediting claims against non-responsive employers, we believe the Labor Commissioner should be able to review the evidence and request further testimony, if needed, to ensure the allegations are accurate.

Proposed section 98.2(f) provides that a court may not consolidate any action filed for appeal with any other action that does not arise out of the wage claim covered by the ODA. Courts should have discretion to manage their own dockets to enable the just and efficient resolution of cases. *See, e.g.*, CRC Standard No. 2.1. If there is a situation in which consolidating one action with another would achieve those goals, the same rules as in other cases should apply. That principle also makes sense in conjunction with proposed 98.2(e), which says that the court shall have jurisdiction over claims not stated in the underlying wage claim.

Proposed section 98.2(a) provides that all appeals to the superior court shall be classified as an unlimited civil case. There are already thresholds surrounding when a case is classified as unlimited. If the amount in controversy does not exceed $25,000, the case is "limited" because there is a streamlined judicial

process for faster resolution. We believe whether a case is classified as unlimited or limited should fall under the same demand thresholds.

Proposed 98(f) provides that while a defendant may seek relief from the Labor Commissioner under Code of Civil Procedure section 473 (which allows defaults to be set aside), the power for the Labor Commissioner to grant that relief terminates if an appeal is filed. Parties only have ten days to appeal. A party would effectively always be forced to file for an appeal instead of waiting to see if the Labor Commissioner grants relief under section 473.

Proposed 98.2(b) would require every defendant appealing to post their own bond. So, if three defendants are jointly liable for $1,000, then a bond must be posted for $3,000 because each defendant needs to post a bond. Where two defendants are the same entity, (e.g., a company and a managing agent), this is a higher hurdle to be able to appeal.

SUPPORT

Bet Tzedek (sponsor)
California Labor Federation, AFL-CIO (sponsor)
Center for Workers' Rights (sponsor)
California Immigrant Policy Center
California Nurses Association
California Rural Legal Assistance Foundation, Inc.
California Safety and Legislative Board, Smart – Transportation Division (smart – Td)
California State Association of Electrical Workers
California State Pipe Trades Council
Equal Rights Advocates
Garment Worker Center
Inland Empire Labor Council, AFL-CIO
Loyola Law School, the Sunita Jain Anti-trafficking Initiative
North Valley Labor Federation
Pilipino Workers Center
Western States Council Sheet Metal, Air, Rail and Transportation
Worksafe

OPPOSITION

Acclamation Insurance Management Services
Agricultural Council of California
Allied Managed Care
American Subcontractors Association-California
Anaheim Chamber of Commerce
Associated General Contractors

Associated General Contractors-San Diego Chapter
Brea Chamber of Commerce
California Alliance of Family Owned Businesses
California Apartment Association
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Chamber of Commerce
California Farm Bureau
California Hotel & Lodging Association
California Landscape Contractors Association
California League of Food Producers
California Manufacturers and Technology Association
California Retailers Association
California State Council of the Society for Human Resource Management (CALSHRM)
California Trucking Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Coalition of Small and Disabled Veteran Businesses
Colusa County Chamber of Commerce
Corona Chamber of Commerce
Elk Grove Chamber of Commerce
Flasher Barricade Association
Gateway Chambers Alliance
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Housing Contractors of California
LA Canada Flintridge Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Federation of Independent Business (NFIB)
Newport Beach Chamber of Commerce
Norwalk Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Palos Verdes Peninsula Chamber of Commerce
Paso Robles and Templeton Chamber of Commerce
Rancho Cucamonga Chamber of Commerce
Rancho Mirage Chamber of Commerce
Roseville Area Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Simi Valley Chamber of Commerce
Southwest California Legislative Council

Torrance Area Chamber of Commerce
Valley Industry and Commerce Association
West Ventura County Business Alliance
Western Car Wash Association
Western Electrical Contractors Association
Western Growers Association
Wine Institute

RELATED LEGISLATION

Pending Legislation:

SB 648 (Smallwood-Cuevas, 2025) authorizes the Labor Commissioner to investigate and issue a citation or initiate a civil action for a violation of state laws regarding tips, and specifies the procedures for issuing, contesting, or enforcing judgments for any such citation. SB 648 is currently pending before the Assembly Appropriations Committee.

SB 355 (Pérez, 2025) requires, if a judgment debtor to an order, decision, or award made by the Labor Commissioner fails to provide specified documentation to the Labor Commissioner within 60 days that the order, decision, or award becomes final, that the Department of Motor Vehicles must suspend the judgment debtor's driver's license within 90 days of a notice of the unsatisfied judgment, and provides for a civil penalty. SB 355 is currently pending before the Assembly Appropriations Committee.

SB 310 (Wiener, 2025) provides that, for certain penalties associated with failure to pay wages, the civil penalties may be collected by the worker through an independent civil action. SB 310 is currently on the Senate inactive file.

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 Assembly Judiciary Committee.

Prior Legislation:

AB 594 (Maienschein, Ch. 659, Stats. 2023) authorized the Attorney General, district attorneys, city attorneys, county counsel, or any other city prosecutors to enforce specified provisions of the Labor Code. 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 LCO.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 1)
Assembly Floor (Ayes 50, Noes 14)
Assembly Appropriations Committee (Ayes 11, Noes 1)
Assembly Judiciary Committee (Ayes 8, Noes 2)
Assembly Labor and Employment Committee (Ayes 4, Noes 0)

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Amendments Mock-up for AB-1234 (Ortega (A))

(Amendments may be subject to technical changes by Legislative Counsel)

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

SECTION 1. Section 98 of the Labor Code is amended to read:

98. (a) (1) (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 employee 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 the Labor Commissioner's jurisdiction.

(B) The Labor Commissioner may also provide for a hearing to recover civil penalties due pursuant to Section 558 against any employer or other person acting on behalf of an employer, including, but not limited to, an individual liable pursuant to Section 558.1.

(C) 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.

(D) For the purpose of calculating the statute of limitations for any employee complaint investigated under this section, the action shall commence upon the filing of the employee complaint.

(2) If the Labor Commissioner determines that no further action will be taken on the employee complaint, the Labor Commissioner shall, within 30 days of the receipt of an employee complaint, notify the complainant of the determination. If the Labor Commissioner declines to continue to investigate an employee complaint, the claimant may pursue remedies through any alternative forum available with the tolling of the statute of limitations based on the date the employee complaint was made, so long as the subsequent action is commenced within one year of the date the notice was provided pursuant to this subdivision.

(3) If the Labor Commissioner does not make a determination pursuant to paragraph (2) that no further action will be taken, the Labor Commissioner shall, within 60 days of receipt of an employee complaint, notify all parties against which the employee complaint has been filed of the allegations asserted in the complaint, including the total amount of wages, penalties, and other demands for compensation alleged due. If the employee complaint did not include the complainant's best estimate of wages and

penalties owed, the Labor Commissioner may calculate a monetary value based on the complainant's allegations and any investigation it has conducted within the time period allowed. The notice shall identify the Labor Code section under which the claimant asserts the defendant's liability if it is ascertainable from the employee's complaint or if it is ascertainable from other available information within the time period allowed.

(4) Within 30 days of transmittal of the notice described in paragraph (3), the defendants shall respond by either paying the full amount due as described in the notice or by filing an answer with the Labor Commissioner. An answer shall, at a minimum, include both of the following:

(A) Whether the defendant admits to employing the complainant during any period alleged in the notice.

(i) If the defendant denies an employment relationship based on a worker's classification as an independent contractor, the defendant shall provide facts to demonstrate that the classification meets the requirements in Article 1.5 (commencing with Section 2775) of Chapter 2 of Division 3.

(ii) If the defendant denies an employment relationship for a reason other than as specified in clause (i), the defendant shall name any and all known employers of the complainant or other parties potentially liable for the violations during the claim period, and shall include their contact information.

(B) Whether the defendant admits or denies owing any amount to the complainant.

(i) For any admission of an amount owed, the Labor Commissioner may issue an order, decision, or award for that amount as set forth in Section 98.1. The order, decision, or award may be appealed under Section 98.2. The Labor Commissioner may continue to investigate any claims for which the defendant did not admit to owing.

(ii) For any denial of liability for wages, penalties, and other demands for compensation alleged, the defendants shall set forth the particulars in which the employee complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

(5) If the defendant fails to provide an answer within 30 days of transmittal of the notice described in paragraph (3), the Labor Commissioner shall issue an order, decision, or award in the amount stated in the notice, as set forth in Section 98.1. The order, decision, or award may be appealed under Section 98.2. If the defendant provides an answer, but the answer does not meet the requirements of this section, the Labor Commissioner may provide the defendant with 15 additional days to submit a revised answer. After the 15 days, if the defendant fails to provide an answer within the requirements of this section, the Labor Commissioner shall issue an order, decision, or

award in the amount stated in the notice described in paragraph (3), as set forth in Section 98.1. The order, decision, or award may be appealed under Section 98.2.

(6) The Labor Commissioner may request an answer from any new party added to the employee complaint at any point in the investigation by issuing a notice of claim to that employer within 60 days of the employer being added to the employee complaint. The notice of claim shall include the information specified in paragraph (3). The employer's response to the notice of claim shall be governed by paragraphs (4) and (5).

(b) If the Labor Commissioner determines to take action in accordance with Section 98.3 or determines that no further action will be taken on the employee complaint, the Labor Commissioner shall, within 30 days of the receipt of the answer, notify all parties of the determination. If the Labor Commissioner declines to continue to investigate an employee complaint, the claimant may pursue remedies through any alternative forum available with the tolling of the statute of limitations based on the date the employee complaint was made, so long as the subsequent action is commenced within one year of the date the notice was provided pursuant to this subdivision.

(c) If the Labor Commissioner does not make a determination pursuant to subdivision (b), the Labor Commissioner shall conduct an investigation of the employee complaint. The Labor Commissioner shall make an estimated appraisal of the amount of wages, damages, penalties, expenses, and other compensation owed and shall determine all the parties liable for the assessment. The investigation, assessment, and determination of liability shall be made within 90 days of the receipt of the answer described in paragraph (4) of subdivision (a), and shall be made through the following process:

(1) The Labor Commissioner may decide to hold a mandatory investigatory and settlement conference upon providing notice of the conference to the parties. If the claimant fails to attend the conference, the employee complaint may be dismissed unless a claimant can provide a good cause reason for their nonappearance. If the defendant fails to attend the settlement conference and does not provide a good cause reason for their nonappearance, the Labor Commissioner may issue an order, decision, or award in the amount stated in the notice provided by paragraph (3) of subdivision (a). The order, decision, or award shall be issued as set forth in Section 98.1 and may be appealed under Section 98.2. Upon agreement of the claimant, the Labor Commissioner may hold additional mandatory investigatory and settlement conferences if additional defendants are identified during the investigation of the employee complaint.

(2) The Labor Commissioner may issue a subpoena pursuant to Section 92 to a defendant requesting copies of records for the employee, as described in Section 226, during the claim period. The Labor Commissioner may also issue a subpoena pursuant to Section 92 for all records required to be maintained by the relevant wage order, and to any other parties or for any other information as determined by the Labor Commissioner.

(3) The Labor Commissioner shall issue a formal complaint that includes the allegations in the employee complaint concerning the time period of the claim, the laws violated, and all parties liable, and the amount of compensation requested, applicable interest, and administrative fees available under Section 98.1.

(d) Within 90 days of the issuance of the formal complaint described in paragraph (3) of subdivision (c), the Labor Commissioner shall set a hearing date and serve a copy of the formal complaint on all parties, along with a notice of the date, time, and place of the hearing. The Labor Commissioner may conduct the hearing in person, over the telephone, or via video conference.

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

(2) No pleading other than the formal 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.

(3) Evidence on matters not pleaded in the answer or produced in response to a subpoena issued by the Labor Commissioner 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.

(4) If a defendant fails to appear, the Labor Commissioner may issue an order, decision, or award in the amount stated in the formal complaint issued pursuant to paragraph (3) of subdivision (c). The order, decision, or award shall be issued as set forth in Section 98.1, and may be appealed under Section 98.2.

(5) If a defendant's records are inaccurate or inadequate as to the precise extent of work completed and compensated by the claimant, the claimant has carried out their burden of proof if they prove that they have in fact performed work for which they were improperly compensated and produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.

(e) A hearing conducted pursuant to this chapter is governed by the division and by the rules of practice and procedure adopted by the Labor Commissioner. 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.

(f) 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. The Labor Commissioner's authority to grant relief under this subdivision terminates upon the defendant's filing of an appeal under Section 98.2. Absent an appeal under Section 98.2, 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) (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 any point during the procedures set forth in this section 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 the defendant's 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 the defendant's agent.

(h) 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.

(i) The Labor Commissioner's authority to investigate a claim or issue an order, decision, or award does not terminate upon the expiration of the deadlines set forth in this section.

(j) A notice required to be given pursuant to this section shall be given by personal service, first-class mail, certified mail, registered mail, in the manner specified in Section 415.20 of the Code of Civil Procedure, or by any manner that the party agrees to accept service, including, but not limited to, electronic service.

SEC. 2. Section 98.1 of the Labor Code is amended to read:

98.1. (a) Within 15 days after the hearing described in Section 98 is concluded, or upon a failure to answer or appear as described in Section 98, the Labor Commissioner shall file in the office of the division a copy of the order, decision, or award. Upon filing of the

order, decision, or award, the Labor Commissioner shall serve a copy of the decision on the parties by personal service, first-class mail, certified mail, or registered mail, in the manner specified in Section 415.20 of the Code of Civil Procedure, or by any manner that a party agrees to accept service, including, but not limited to, electronic service. The notice shall also advise the parties of their right to appeal the decision or award and further advise the parties that failure to do so within the period prescribed by this chapter shall result in the decision or award becoming final and enforceable as a judgment by the superior court.

(b) For the purpose of this section, an order, decision, or award shall include any sums found owing, damages proved, interest accrued, any penalties awarded pursuant to this code, and the reasons for the decision. An order, decision, or award issued under this section shall be deemed a determination of the defendant's liability for the unpaid wages specified in the order, decision, or award.

(c) All awards granted pursuant to a hearing under this chapter shall accrue interest on all due and unpaid wages at the same rate as prescribed by subdivision (b) of Section 3289 of the Civil Code. The interest shall accrue until the wages are paid from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

(d) (1) ***In an order, decision, or award granted under this chapter, the Labor Commissioner may impose an administrative fee of up to 30 percent of the amount awarded, based on the circumstances giving rise to the claim and the facts as presented during the investigation or hearing of the claim. In exercising this discretion, the Labor Commissioner shall not request, receive, or consider additional evidence beyond that necessary to determine the merits of the wage claim. The administrative fee shall be deposited into the Wage Recovery Fund, which is hereby created. If a party appeals the order pursuant to Section 98.2, the amount of the administrative fee shall be adjusted proportionally to the final award, but the court shall not alter the percentage of the administrative fee as determined by the Labor Commissioner.*** ~~An order, decision, or award granted under this chapter shall impose an administrative fee payable in the amount of 30 percent of the order, decision, or award. The administrative fee shall be deposited into the Wage Recovery Fund, which is hereby created.~~

(2) Upon appropriation by the Legislature for this express purpose, all money in the Wage Recovery Fund shall be disbursed by the Labor Commissioner only to persons determined by the Labor Commissioner to have been damaged by the failure to pay wages and penalties and for other damages by an employer.

(3) Any disbursement shall be made pursuant to a claim for recovery from the fund in accordance with procedures prescribed by the Labor Commissioner.

(4) Any disbursed funds subsequently recovered by the Labor Commissioner from a liable party pursuant to an assignment of the claim to the Labor Commissioner for recovery of due amounts shall be returned to the fund.

(5) Upon a request by a defendant at a hearing held pursuant to subdivision (d) of Section 98, the Labor Commissioner shall waive any or all of the administrative fee, provided that all of the following are satisfied:

(A) The order, decision, or award issued under this chapter does not impose liability for penalties pursuant to Section 203.

(B) The defendant shall attest in writing that they do not have a prior order, decision, award, or judgment issued against them within the past 10 years for engaging in illegal conduct related to a dispute over wages or other violations under the jurisdiction of the Labor Commissioner.

(C) The defendant shall attest in writing that they have not entered into a settlement agreement within the past 10 years concerning prior illegal conduct related to a dispute over wages or other violations under the jurisdiction of the Labor Commissioner. A payment made pursuant to paragraph (4) of subdivision (a) of Section 98 does not constitute a settlement agreement for purposes of this subparagraph.

SEC. 3. Section 98.2 of the Labor Code is amended to read:

98.2. (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the superior court, where the appeal shall be heard de novo. The court shall charge the first paper filing fee under Section 70611 of the Government Code to the party seeking review. The fee shall be distributed as provided in Section 68085.3 of the Government Code. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure is applicable. An appeal filed under this section shall be classified as an unlimited civil case.

(b) As a condition to filing an appeal pursuant to this section, each appealing defendant shall first post an undertaking with the reviewing court in the amount of the order, decision, or award. The undertaking shall consist of an appeal bond issued by a licensed surety or a cash deposit with the court in the amount of the order, decision, or award. The appealing defendant shall provide written notification to the other parties and the Labor Commissioner of the posting of the undertaking. The undertaking shall be on the condition that, if any judgment is entered in favor of the employee, the appealing defendant shall pay the amount owed pursuant to the judgment, and if the appeal is withdrawn or dismissed without entry of judgment, the appealing defendant shall pay the amount owed pursuant to the order, decision, or award of the Labor Commissioner

unless the parties have executed a settlement agreement for payment of some other amount, in which case the appealing defendant shall pay the amount that the appealing defendant is obligated to pay under the terms of the settlement agreement. If the appealing defendant fails to pay the amount owed within 10 days of entry of the judgment, dismissal, or withdrawal of the appeal, or the execution of a settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, is forfeited to the employee.

(c) If the party seeking review by filing an appeal to the superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal. A party seeking appeal is unsuccessful if they withdraw their appeal without a judgment. An employee is successful if the court awards, or a defendant voluntarily pays, an amount greater than zero.

(d) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

(e) A court hearing an action filed under this section has jurisdiction over the entire wage dispute, including related wage claims not raised in front of the Labor Commissioner.

(f) A court shall not consolidate an action filed under this section with any other action not arising out of, or related to, the wage claim covered by underlying order, decision, or award absent an executed agreement in writing by all parties.

(g) (1) The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (d), a certified copy of the final order with the clerk of the superior court of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.

(2) Notwithstanding paragraph (1), a court shall grant an application filed by the Labor Commissioner to vacate a judgment deemed final under paragraph (1) upon the Labor Commissioner's granting of relief under subdivision (f) of Section 98.

(h) (1) In order to ensure that judgments are satisfied, the Labor Commissioner may serve upon the judgment debtor, personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form similar to, and requiring

the reporting of the same information as, the form approved or adopted by the Judicial Council for purposes of subdivision (a) of Section 116.830 of the Code of Civil Procedure to assist in identifying the nature and location of any assets of the judgment debtor.

(2) The judgment debtor shall complete the form and cause it to be delivered to the division at the address listed on the form within 35 days after the form has been served on the judgment debtor, unless the judgment has been satisfied. In case of willful failure by the judgment debtor to comply with this subdivision, the division or the judgment creditor may request the court to apply the sanctions provided in Section 708.170 of the Code of Civil Procedure.

(i) (1) As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.

(2) The certificate of lien shall include information as prescribed by Section 27288.1 of the Government Code.

(3) The recorder shall accept and record the certificate of lien and shall index it as prescribed by law.

(4) Upon payment of the amount due under the final order, the Labor Commissioner shall issue a certificate of release, releasing the lien created under paragraph (1). The certificate of release may be recorded by the employer at the employer's expense.

(5) Unless the lien is satisfied or released, a lien under this section shall continue until 10 years from the date of its creation.

(j) Notwithstanding subdivision (g), the Labor Commissioner may stay execution of any judgment entered upon an order, decision, or award that has become final upon good cause appearing therefor and may impose the terms and conditions of the stay of execution. A certified copy of the stay of execution shall be filed with the clerk entering the judgment.

(k) When a judgment is satisfied in fact, other than by execution, the Labor Commissioner may, upon the motion of either party or on its own motion, order entry

of satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment upon the filing of a certified copy of the order.

(l) The Labor Commissioner shall make every reasonable effort to ensure that judgments are satisfied, including taking all appropriate legal action and requiring the employer to deposit a bond as provided in Section 240.

(m) The judgment creditor, or the Labor Commissioner as assignee of the judgment creditor, is entitled to court costs and reasonable attorney's fees for enforcing the judgment that is rendered pursuant to this section.