

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

SB 1316 (Smallwood-Cuevas)

Version: March 25, 2026

Hearing Date: April 21, 2026

Fiscal: Yes

Urgency: No

ID

SUBJECT

Employment

DIGEST

This bill permits a lien on an employer's real property for the satisfaction of a final order relating to a violation of labor law to be extended for an additional period of 10 years, as specified, and expands the requirement that an employer be precluded from using at a proceeding contesting a citation or writ by the Commissioner any books, documents, or records that the employer failed to provide to the Commissioner within specified time limits of a request for such documents, as specified.

EXECUTIVE SUMMARY

When an employee believes their employer has violated the labor laws, they may file a complaint with the Labor Commissioner (Commissioner). The Commissioner may hold a hearing regarding the complaint, and if they do, they must issue an order, decision, or award regarding the complaint within 15 days of the hearing. Parties to the case may then appeal the Commissioner's decision within 10 days. If no appeal is filed, the decision becomes final, and will be entered into the superior court to become a final judgment. The Commissioner may create a lien on the real property of the employer for the amount of the judgment by recording a certificate of lien. This lien expires after 10 years. In addition, if the Commissioner requests specified books, documents, or records from an employer in an investigation and the employer fails to provide those books, documents, or records within a specified time, the employer may be precluded from using those books, documents, or records in their defense in an administrative proceeding challenging the Commissioner's citation or writ, as specified. SB 1316 specifies that a lien on an employer's real property for the satisfaction of a final order may be extended for additional 10-year period if a renewal certificate of lien or renewed judgement is recorded before the lien expires. In addition, SB 1316 expands the preclusion rule to cover more types of documents and citations of the Commission, and creates a similar preclusion rule for the public works context.

SB 1316 is author-sponsored, and the Committee has received no timely letters of support or opposition. SB 1316 previously passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 5 to 0.

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 Commissioner, and empowers the 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 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 Commissioner to investigate employee complaints, conduct hearings, and issue orders, decisions, and awards regarding complaints. Requires that the Commissioner notify the parties within 30 days of the filing of a complaint whether a hearing will be held, the Commissioner will prosecute the case, or whether no further action will be taken. Requires that, if the 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 required notice that the Commissioner 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.)
- 4) Requires that the LCO file their order, decision, or award within 15 days after the hearing, and requires that the LCO serve a copy of the decision on the parties. Requires that the LCO's decision must notify the parties of their right to appeal, and that failing to appeal within the prescribed period for appeals will result in the decision becoming final. Specifies that all awards granted by the LCO pursuant to a hearing shall accrue interest, as specified. (Lab. Code § 98.1.)
- 5) Specifies that, within 10 days after the service of a notice of an order, decision, or award by the LCO, either party may appeal the decision to the superior court, which will hear the appeal de novo. Specifies that, if no notice of appeal is filed within the 10-day period, the order, decision, or award is deemed a final order. Specifies that, as a condition to appeal, an employer appealing the decision must post a bond with the court in the amount of the order, decision, or award. (Lab. Code § 98.2.)

- 6) Specifies that, as an alternative to a judgement lien, the Commissioner may create a lien on the real property of an employer to satisfy a final order by recording a certificate of lien for the amounts due under the final order with the county recorder of any county in which the employer's real property is located, at the Commissioner's discretion and depending upon information the Commissioner obtains concerning the employer's assets. Specifies that the lien attaches to all interest in real property of the employer located in the county where the lien is created, and requires the Commissioner to issue a certificate of release for the lien upon payment of the amount due under the final order. Specifies that, unless the lien is satisfied or released, the lien continues for 10 years from the date of its creation. (Lab. Code § 98.2(g).)
- 7) Requires an employer or other entity who may be liable for a violation of the labor code to be precluded from introducing as evidence, or in any other way using or relying on as evidence, including to impeach a witness, in an administrative proceeding to contest a citation or writ issued by the Commissioner under specified provisions of the Labor Code any books, documents, or records, as defined, not provided to the Commissioner pursuant to a duly written request within the time requested, as specified.
 - a) Specifies that this provision applies when the Commissioner provides for no less than 15 days to respond to the request, or for less than 15 days if the Commissioner determines that circumstances exist that make it necessary to require a shorter period, and makes a statement in its request indicating as such.
 - b) Specifies that this provision does not apply when the person or entity subject to the request opposes the Commissioner's request in court, and the court determines that a production of the books, documents, or records requested is not required.
 - c) Specifies that these provisions do not apply when the failure to produce the requested books, documents, or records within the time required was due to inadvertent error, as defined, provided that the error is corrected and the books, documents, or records are produced within 20 days from the date originally requested.
 - d) Requires the Commissioner to take into consideration a reasonable request for an extension on time for the production of the books, documents, or records, requires the Commissioner to determine the reasonableness of the request, and permits the Commissioner to admit and consider late books, documents, or records, as specified.
 - e) Provides that a person who provides a timely good faith response that more time is needed to gather requested books, documents, or records, shall be provided an automatic extension of 15 days. (Lab. Code § 1174.1.)
- 8) Defines a "public work" as construction, alteration, demolition, installation, or repair work done under contract and paid in part or in whole out of public funds,

except for work done directly by a public utility company pursuant to the Public Utilities Commission or another public authority. Includes work done for irrigation, utility, reclamation, improvement districts and other similar districts, street, sewer, or other improvement work, laying of carpet in specified circumstances, tree removal work, and public transportation demonstration projects. (Lab. Code § 1720.)

- 9) Requires contractors and subcontractors to register with the DIR, as specified, to be qualified to bid on, be listed in a bid proposal for, or engage in the performance of any public work contract. Requires contractors and subcontractors on public works projects to follow various rules relating to the employment of workers and the payment of prevailing wages to those workers for public works projects. (Lab. Code §§ 1720 et seq.)

This bill:

- 1) Permits a lien on the real property of an employer for a final order by the Commissioner to be renewed for additional periods of 10 years by recording a renewal of certificate of lien or a copy of a renewed judgement, at any time before the expiration of the lien.
- 2) Prohibits an employer, or other person or entity, who fails to provide the Commissioner with specified books, documents, or records related to payroll and employment within certain timelines to rely upon or use those documents as evidence, including to impeach a witness, in any administrative proceeding contesting a citation writ, as specified.
- 3) Extends this prohibition to any administrative proceeding contesting a citation regarding retaliation or discrimination.
- 4) Includes within the definition of books, documents, or records: the job title and wage rate history for each employee; records of wages and wage rates, job classifications, and other terms and conditions of employment for its employees; and employee performance, education and training, or grievance records.
- 5) Includes within the exemption for when the employer opposes the Commissioner's request in court prior to the issuance of any citation, and when the court determines that such books, documents, or records are not required to be produced, any citation related to claims of retaliation or discrimination.
- 6) Precludes a contractor or subcontractor from introducing as evidence, or in any other way using or replying on as evidence, including to impeach a witness, at a hearing regarding a civil wage and penalty assessment (CWPA), any books, documents, or records that the contractor or subcontractor fails to provide to the Commissioner pursuant to a request of the Commissioner, as specified:

- a) When the Commissioner provides for at least 10 days to respond to the request; or
 - b) When the Commissioner provides less than 10 days to respond, if the Commissioner determines that circumstances exist that make it necessary to require a shorter period of production of the documents, and includes a statement of that determination in the request.
- 7) Makes inapplicable the provisions described in 6) when the contractor or subcontractor opposes the Commissioner's request for records, documents, or books in court prior to the issuance of the CWPA, and the court determines that the books, documents, or records are not required to be produced.
- 8) Makes inapplicable the provisions described in 6) when the failure to produce the books, documents, or records within 10 days was due to an inadvertent error, provided that the error is corrected and the books, documents, or records are produced no later than 20 days from the date originally requested. Defines "inadvertent error" as any clerical mistake causing an unintended delay in production of the requested books, documents, or records.
- 9) Requires the Commissioner to take into account, for the purposes of 6), any reasonable request from the contractor or subcontractor for an extension of time to produce the requested documents, books, or records. Requires the Commissioner to determine the reasonableness of the request, and permits them to consider, among other things, the location of the books, documents, or records, and the volume of production. Prohibits any extension of time for the production of certified payroll records.
- 10) Permits the Commissioner to admit and consider, in their discretion, books, documents, or records that are produced beyond the time limits provided, upon a finding that:
 - a) The contractor or subcontractor cooperated with the underlying investigation and substantially complied with the request within the time limit prescribed; and
 - b) The contractor or subcontractor made good faith efforts to comply with the request, including discovery of the late-produced books, documents, or records.
- 11) Provides an automatic extension of 15 days to a contractor or subcontractor that provides a timely good faith response to the Commissioner's request stating that additional time is needed to gather the books, documents, or records, except for in the case of certified payroll records.

- 12) Exempts from the requirements described in 4) through 9) a contractor or subcontractor's obligation to provide certified payroll records to the Commissioner pursuant to Labor Code section 1776.

COMMENTS

1. Author's statement

According to the author:

Too many workers in California are still fighting just to recover the wages they have already earned. Outdated statutes can slow labor investigations and weaken the Labor Commissioner's ability to collect unpaid wages and penalties, delaying justice for vulnerable workers. SB 1316 strengthens the Labor Commissioner's authority to hold bad actors accountable and ensures workers can recover the wages they are legally owed.

2. Wage theft is a major issue in California

California has some of the strongest protections across the country for workers and 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 through 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 2014 and 2023.² Furthermore, the number of underpaid workers has more than doubled

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>.

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 and the United States than all other forms of theft.⁴

3. Various state laws help workers recover when they are wronged by their employer

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 (Commissioner), 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).)

When a worker files a wage claim with the Commissioner, the Commissioner will investigate the claim. The Commissioner must notify both parties within 30 days of the complaint as to whether a hearing is required to adjudicate the claim, whether the Commissioner will prosecute the labor law violation, or whether no further action will be taken. If the Commissioner determines a hearing is needed, it must set the matter for a hearing within 90 days, except that it may postpone the hearing or grant additional time if doing so would lead to an equitable solution. (Lab. Code § 98.) Hearings before the Labor Commissioner 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.)

After the hearing, the Commissioner must file and serve on each party its decision within 15 days, after which the parties have 10 days from the date of service to seek review of the Commissioner's decision in the superior court. (Lab. Code §§ 98.1, 98.2.) If no party appeals the Commissioner's decision by this deadline, it is deemed final, and the 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, and the Commissioner or the employee can take action to enforce that judgment.

The Labor Code currently provides for a variety of other mechanisms to ensure the employer satisfies a final judgment. After 20 days from when a judgment is entered in favor of the Commissioner or in favor of an employee after a hearing before the Commissioner, the Commissioner may collect the outstanding amount of the judgment with the consent of the aggrieved employee by placing a levy on the employer's assets

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/>.

and property. (Lab. Code § 96.8.) Under Labor Code section 238, if a final judgment for unpaid wages remains unsatisfied after 30 days or more from the time to appeal the judgment and no appeal is pending on the judgment, the employer is prohibited from conducting any business in the state, unless it obtains a specified bond or has reached an accord with the holder of the judgment for payment. (Lab. Code § 238.) In addition, the Commissioner may place a lien on the real property of the employer for the amount due. (Lab. Code § 98.2(g).) The lien attaches to all interests in real property of the employer that is located in the county where the lien is created, as specified. If the employer pays the amount due, the Commissioner must issue a certificate of release for the lien. (Lab. Code § 98.2(g)(4).) The lien otherwise continues for 10 years from the date of its creation. (Lab. Code §98.2(g)(5).)

4. Public works laws and their enforcement by the Labor Commissioner

When a state or local agency completes any construction, demolition, installation, alteration, or repair work, or work on any irrigation, utility, or street, sewer, public transportation, or other infrastructure project through the use of public funds, it is considered a “public works” project. (Lab. Code § 1720.) When a California state or local agency initiates a public works project, the agency often lacks the staff and expertise to carry out the project itself. Instead, it turns to contractors to which it awards funds and a contract to complete the project for the agency.

Every contractor or subcontractor on a public works project must be registered with the Department of Industrial Relations (DIR). (Lab. Code § 1725.5.) In order to be registered, a contractor or subcontractor must: submit an application with an application fee of \$800; have workers’ compensation coverage for its workers; be licensed with the Contractors State Licensing Board, if applicable; not have any delinquent liability to an employee or the state for previous final wage theft judgments; not be debarred from working on public works projects for violations of the public works laws; and must not have worked on any public works projects in the past year while not registered. (Lab. Code § 1725.5.) All workers employed on a public works project must be paid a prevailing wage for the locality, as determined by the Director of DIR. (Lab. Code § 1771.) The prevailing wage is based on the standard wages for a particular work or position, and is often based on the rate in local collective bargaining agreements. In addition, contractors and subcontractors on public works must follow a variety of other requirements regarding their employees, including regarding overtime, the hiring of a specified number of apprentices, and the maintenance of payroll records. These payroll records must be made available for inspection to an employee, a representative of the public agency that awarded the public works contract, or the public through the awarding agency or the Division of Labor Standards Enforcement of DIR, upon request, within 10 days of the request. (Lab. Code § 1776(b).)

When there has been a violation of any of these public works laws, the Labor Commissioner may conduct an investigation. If after that investigation, they determine

that there has been a violation, the Labor Commissioner issues a civil wage and penalty assessment (CWPA) for wages due, plus interest, and the penalties specified in statute, such as those described above. If a contractor wishes to contest the CWPA, they may make a written request within 60 days after service of the CWPA. (Lab. Code § 1742.) Upon the contractor's request, the Director of DIR will appoint an impartial hearing officer to hold a hearing on the CWPA within 90 days of the request for review. In this hearing, the contractor bears the burden of proving that the basis for the CWPA is incorrect. Within 45 days after the conclusion of the hearing, the Director must issue a written decision affirming, modifying, or dismissing the CWPA. If the contractor still contests the CWPA, they may further appeal it in court.

5. SB 1316 allows the extension of expiring liens for unpaid judgements

SB 1316 would permit a lien on the real property of an employer for an unpaid judgement for labor law violations to be renewed beyond the current 10-year period of validity. Under the current law, after this 10-year period runs, the lien expires and can no longer be enforced to force the employer to pay the judgement. SB 1316 would permit the lien to be renewed in 10-year periods, as long as it is renewed through the recording of a renewal of certificate of lien or a copy of a renewed judgment prior to the expiration of the lien.

6. SB 1316 expands the instances in which an employer can be precluded from using documents it failed to provide the Labor Commissioner in a hearing regarding labor law violations

Under labor law, the Commissioner may request certain documents from an employer pursuant to an investigation into a claim of a violation of labor law. When the Commissioner requests documents related to payroll and various other employment records that the Labor Code requires to be maintained, and the employer fails to produce those documents within 15 days of the request, the law precludes the employer from using or relying upon those documents in any proceeding in which they contest the citation or finding of the Commissioner. (Lab. Code § 1174.1.) The purpose of this preclusion is to encourage employers to cooperate with the Commissioner in their investigation, and to prevent employers from withholding documents from the Commissioner only to use those documents in their appeal. While this can be a harsh consequence for failing to provide documents within specified deadlines, the law also creates an exception for when the failure is due to an inadvertent error and provides an employer an automatic 15-day extension for any deadline when they submit a timely good faith response that more time is needed. (Lab. Code § 1174.1(d), (g).)

This preclusion applies to a variety of types of documents and a variety of administrative proceedings. SB 1316 would extend its applicability to additional documents and administrative proceedings. Specifically, it would extend its applicability to an administrative proceeding contesting a citation regarding retaliation

or discrimination. It would also expand the covered documents to include: records of job title and wage rate history for the employer's employees, in relation to rules regarding applications for employment; records of wages and wage rates, job classifications, and other terms and conditions of employment for its employees; and employee performance, education and training, or grievance records.

In addition, SB 1316 creates a similar preclusion of the use of documents in an administrative proceeding for appeals of Commissioner orders and citations relating to public works. This preclusion is substantially similar in its design to the existing preclusion for all other labor law violations; it includes exceptions for when the failure to produce documents is the result of inadvertent error, or for when the employer contests the request for documents before the issuance of a CWPA and a court determines that such documents are not required to be produced. It likewise permits the Commissioner to accept documents provided late, requires the Commissioner to consider reasonable requests for extensions of time, and provides an automatic 15-day extension for employers who provide a timely good faith response that additional time is needed to gather the documents. It exempts from its provisions certified payroll documents and the statutory requirement that an employer provide such documents within 10 days of a request. This preclusion would apply both to an appeal of the Commissioner's CWPA that is heard before the Director of DIR, as well as to an appeal of the Director's decision in superior court.

7. Considerations in precluding the use of evidence for a party's defense

The Due Process Clause of the Fourteenth Amendment guarantees every litigant the right to present their case and have its merits fairly judged.⁵ Procedural due process provides an individual the right to a process that is fair and ensures they are afforded the ability to defend themselves or make their case. However, the right to present evidence is not absolute, and there are a variety of evidentiary rules that can exclude otherwise relevant evidence from a court trial.

Here, the exclusion from evidence of documents an employer has failed to provide the Commissioner could prejudice the employer in their appeal. The state's interest in the exclusion of those documents is based upon its interest in ensuring that employers comply with labor investigations by the Commissioner. Moreover, if an employer withholds documents only to provide them in defense at trial, it denies the Commissioner the ability to fully and fairly adjudicate the claim. These interests must be balanced with the employer's interest in providing a defense and all relevant evidence. SB 1316 attempts to provide a balance by creating a number of exceptions and extensions of time for employers who work in good faith to comply with the Commissioner's request or successfully challenge the request for documents itself.

⁵ *Logan v. Zimmerman Brush Co.* (1982) 455 U.S. 422, 433.

SUPPORT

None received

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 261 (Wahab, Ch. 747, Stats. 2025) permitted a public prosecutor, as assignee of the judgement creditor, to be awarded court costs and reasonable attorney's fees for enforcing a final judgement regarding a violation of labor law.

SB 62 (Durazo, Ch. 329, Stats. 2022) prohibited the practice of piece-rate compensation for garment manufacturing, except as specified, and precluded the introduction or use of records relating to the payment of wages for garment manufacturing from administrative proceedings contesting an order of the Commissioner when those records were not provided to the Commissioner upon request.

SB 96 (Committee on Budget and Fiscal Review, Ch. 28, Stats. 2017) among other things, prohibited any employer from introducing as evidence in an administrative proceeding contesting a citation or writ under certain provisions of law, books, documents, or records that are not provided pursuant to a duly served written request by the commissioner, as specified.

SB 588 (De Leon, Ch. 803, Stats. 2015) permitted the Commissioner to file a lien or levy on an employer's property to satisfy a final judgment relating to a violation of labor law.

AB 1386 (Committee on Labor and Employment, Ch. 750, Stats. 2013) provided for the creation of a lien upon an order of the Commissioner becoming final, permitted the Commissioner to record a certificate of lien to attach to an employer's property for the satisfaction of the final judgement, and specified that this lien would continue for ten years, or until satisfied or released before expiration.

PRIOR VOTES:

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