

Introduced by Senator Harman

February 19, 2008

An act to amend Section 201 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1283, as introduced, Harman. Employment: wages: discharged employee.

Existing law provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

This bill would expressly permit an employer, if the employer's accounting unit responsible for the drawing of payroll checks is not regularly scheduled to be operational at the time the employee is discharged, to make wages available to the employee no later than 6 hours after the start of the unit's next regular workday, or if the accounting unit is located off the work site, to deliver the wages no later than 24 hours after the start of the unit's next regular workday.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 201 of the Labor Code is amended to
2 read:
3 201. (a) (1) If an employer discharges an employee, the wages
4 earned and unpaid at the time of discharge are due and payable
5 immediately. *If at the time the employee is discharged, the*
6 *employer's accounting unit responsible for the drawing of payroll*

1 *checks is not regularly scheduled to be operational, the wages due*
2 *to the discharged employee shall be made available to the employee*
3 *no later than six hours after the start of the accounting unit's next*
4 *regular workday. If the accounting unit is located off the work site,*
5 *the employer shall deliver the check for wages due to the*
6 *discharged employee no later than 24 hours after the start of the*
7 *accounting unit's next regular workday to the work site, the*
8 *employer's local office, or the employee's last-known mailing*
9 *address.* ~~At~~

10 (2) An employer who lays off a group of employees by reason
11 of the termination of seasonal employment in the curing, canning,
12 or drying of any variety of perishable fruit, fish, or vegetables,
13 shall be deemed to have made immediate payment when the wages
14 of ~~said~~ *these* employees are paid within a reasonable time as
15 necessary for *the* computation and payment ~~thereof; provided,~~
16 ~~however, that~~ *of the wages. However,* the reasonable time shall
17 not exceed 72 hours; and ~~further provided that~~ payment shall be
18 made by mail to any employee who so requests and designates a
19 mailing address therefor.

20 (b) Notwithstanding any other provision of law, ~~the~~ a state
21 employer shall be deemed to have made an immediate payment
22 of wages under this section for any unused or accumulated
23 vacation, annual leave, holiday leave, or time off to which the
24 employee is entitled by reason of previous overtime work where
25 compensating time off was given by the appointing power;
26 ~~provided, if~~ at least five workdays prior to his or her final day of
27 employment, the employee submits a written election to his or her
28 appointing power authorizing the state employer to tender payment
29 for any or all leave to be contributed on a pretax basis to the
30 employee's account in a state-sponsored supplemental retirement
31 plan as described under Sections 401(k), 403(b), or 457 of the
32 Internal Revenue Code ~~provided if~~ the plan allows those
33 contributions. The contribution shall be tendered for payment to
34 the employee's 401(k), 403(b), or 457 plan account no later than
35 45 days after the employee's discharge from employment. Nothing
36 in this section is intended to authorize contributions in excess of
37 the annual deferral limits imposed under federal and state law or
38 the provisions of the supplemental retirement plan itself.

39 (c) Notwithstanding any other provision of law, when the state
40 employer discharges an employee, the employee may, at least five

1 workdays prior to his or her final day of employment, submit a
2 written election to his or her appointing power authorizing the
3 state employer to defer into the next calendar year payment of any
4 or all of the employee's unused or accumulated vacation, annual
5 leave, holiday leave, or time off to which the employee is entitled
6 by reason of previous overtime work where compensating time
7 off was given by the appointing power. To qualify for the deferral
8 of payment under this section, only that portion of leave that
9 extends past the November pay period for state employees shall
10 be deferred into the next calendar year. An employee electing to
11 defer payment into the next calendar year under this section may
12 do any of the following:

13 (1) Contribute the entire payment to his or her 401(k), 403(b),
14 or 457 plan account.

15 (2) Contribute any portion of the deferred payment to his or her
16 401(k), 403(b), or 457 plan account and receive cash payment for
17 the remaining noncontributed unused leave.

18 (3) Receive a lump-sum payment for all of the deferred unused
19 leave as described above.

20 (d) Payments shall be tendered under this section no later than
21 February 1 in the year following the employee's last day of
22 employment. Nothing in this section is intended to authorize
23 contributions in excess of the annual deferral limits imposed under
24 federal and state law or the provisions of the supplemental
25 retirement plan itself.