Summary:
SB 1252 amends provisions of California’s 30 year old itemized wage statement law to clarify that a worker’s right to “inspect or copy” his/her pay stubs means a right to “inspect or receive a copy”. The bill states that this technical change is declaratory of existing law.

Background:
Labor Code Section 226 was amended in 1988 (SB 2155 (Petris)) to address problems workers were having in applying for legalization under the 1986 Immigration Control and Reform Act (IRCA). Some of the provisions of IRCA required workers to establish a prior work history in agriculture to qualify for legal status. However, Labor Code 226 at that time only allowed workers to “inspect” their pay stub records, while copies of those records were needed to satisfy the proof requirements of IRCA.

In 1987, CRLA, Inc. contacted Sen. Petris for assistance in adding a right to obtain a copy of these records to the statute, and learned he had also been contacted by immigration attorneys representing other workers around the state. These lawyers had also reached the conclusion that the statute failed to clearly articulate a worker’s right to obtain a copy for IRCA purposes.

To remedy this, CRLA, Inc. ultimately drafted and sponsored legislation which Sen. Petris successfully carried in 1988 to change the statutory language in LC 226 to “inspect or copy”.

The legislative history of SB 2155 makes abundantly clear that the legislation was intended to provide workers with a right to obtain a copy of their pay stubs. Sen. Petris affirmed this in his presentations to all committees and in his letter to the Governor, as did the Department of Industrial Relations (DIR) in recommending a signature.

The Problem:
Over the years, some rural legal services programs representing workers in wage theft cases have been told by unscrupulous employers that the “or copy” language means the worker must bring his/her own copy machine into the employer’s offices and make their own copy. We have also learned this practice may be common in some restaurants.

Recently, the CRLA Foundation learned that one legal services office gets told this so often that they have purchased a scanner to take to employers’ offices in order to make copies of their clients’ pay records.

Clearly, this was not the intent of the Legislature in enacting SB 2155. Rather, it is an opportunistic and deliberate misreading of the statute to frustrate and delay prosecution of wage theft cases.

The Solution:
Virtually all California employers since 1988 have interpreted the “or copy” language in LC 226 to mean provide the worker with a copy of his/her pay stubs upon request. However, there is no case law on the issue; and no clear regulatory guidance from DIR.

Amending the “or copy” language to mean “receive a copy” is consistent with the legislative history of SB 2155, as well as with another recent enactment providing workers with the right to receive a copy of their personnel records under Labor Code Section 1198.5 (AB 2674; 2012).

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