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AB-3231 Employment: public works: apprenticeship. (2017-2018)

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Assembly Bill No. 3231

CHAPTER 682

An act to amend Sections 1771.2 and 3073.5 of the Labor Code, relating to employment.

[Approved by Governor September 22, 2018. Filed with Secretary of State September 22, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3231, Gray. Employment: public works: apprenticeship.

Existing law requires each contractor and subcontractor to keep accurate payroll records showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Existing law provides that a joint labor-management committee, established pursuant to a specified provision of federal law, is authorized to bring an action against any employer who fails to pay prevailing wages as required by state law. Existing law requires that copies of payroll records on public works projects be made available for inspection as specified, including a limit on redactions if made available for inspection by, or furnished to, a joint labor management committee.

This bill would authorize a joint labor-management committee to also bring an action against an employer who fails to provide payroll records under the same provisions for bringing an action against an employer for failure to pay prevailing wage.

Existing law provides for apprenticeship programs within the Division of Apprenticeship Standards within the Department of Industrial Relations, sponsored by specific entities and employers, and requires the Chief of the Division of Apprenticeship Standards to perform various functions with respect to apprenticeship programs and the welfare of apprentices.

Existing law also establishes the California Apprenticeship Council within the Division of Apprenticeship Standards, and requires the council to aid the director in formulating policies with respect to apprentice regulation.

Existing law requires the Chief of the Division of Apprenticeship Standards and the California Apprenticeship Council to report annually through the Director of Industrial Relations on the activities of the division and the council, and further requires that the report include specified information with respect to apprenticeship programs in this state.

This bill would require the report to include an analysis of any apprenticeship standards or regulations that were proposed or adopted in the previous year.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 1771.2 of the Labor Code is amended to read:

1771.2. (a) A joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) may bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees, as required by this article, or that fails to provide payroll records as required by Section 1776. This action shall be commenced not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last.

(b) (1) In an action brought pursuant to this section, the court shall award restitution to an employee for unpaid wages, plus interest, under Section 3289 of the Civil Code from the date that the wages became due and payable, and liquidated damages equal to the amount of unpaid wages owed, and may impose civil penalties, only against an employer that failed to pay the prevailing wage to its employees, in accordance with Section 1775, injunctive relief, or any other appropriate form of equitable relief. The court shall follow the same standards and have the same discretion in setting the amount of penalties as are provided by subdivision (a) of Section 1775. The court shall award a prevailing joint labor-management committee its reasonable attorney's fees and costs incurred in maintaining the action, including expert witness fees.

(2) An action pursuant to this section shall not be based on the employer's misclassification of the craft of a worker in its certified payroll records.

(3) Liquidated damages shall be awarded only if the complaint alleges with specificity the wages due and unpaid to the individual workers, including how that amount was calculated, and the defendant fails to pay the wages, deposit that amount with the court to be held in escrow, or provide proof to the court of an adequate surety bond to cover the wages, within 60 days of service of the complaint. Liquidated damages shall be awarded only on the wages found to be due and unpaid. Additionally, if the defendant demonstrates to the satisfaction of the court that the defendant had substantial grounds for contesting that a portion of the allegedly unpaid wages were owed, the court may exercise its discretion to waive the payment of the liquidated damages with respect to that portion of the unpaid wages.

(4) This subdivision does not limit any other available remedies for a violation of this chapter.

SEC. 2. Section 3073.5 of the Labor Code is amended to read:

3073.5. The Chief of the Division of Apprenticeship Standards and the California Apprenticeship Council shall annually report through the Director of Industrial Relations to the Legislature and the public on the activities of the division and the council. The report shall contain information including, but not limited to, analyses of the following:

(a) (1) The number of individuals, including numbers of women and minorities, registered in apprenticeship programs in this state for the current year and each of the previous five years.

(2) For construction trade apprenticeship programs, the report shall include demographic data detailing the racial, ethnic, and gender makeup of those participants for the annual reporting period.

(b) The number and percentage of apprentices, including numbers and percentages of minorities and women, registered in each apprenticeship program having five or more apprentices, and the percentage of those apprentices who have completed their programs successfully in the current year and each of the previous five years.

(c) Remedial actions taken by the division to assist those apprenticeship programs having difficulty in achieving affirmative action goals or having very low completion rates.

(d) The number of disputed issues with respect to individual apprenticeship agreements submitted to the Administrator of Apprenticeship for determination and the number of those issues resolved by the council on appeal.

(e) The number of apprenticeship program applications received by the division, the number approved, the number denied and the reason for those denials, the number being reviewed, and deficiencies, if any, with respect to those program applications being reviewed.

(f) The number of apprenticeship programs, approved by the Division of Apprenticeship Standards, that are disapproved by the California Apprenticeship Council, and the reasons for those disapprovals.

(g) Any apprenticeship standards or regulations that were proposed or adopted in the previous year.