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**AB-520 Employment: public entities.** (2023-2024)

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**Assembly Bill No. 520**

**CHAPTER 656**

An act to amend Section 238.5 of the Labor Code, relating to employment.

[ Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 520, Santiago. Employment: public entities.

Existing law establishes in the Department of Industrial Relations the Division of Labor Standards Enforcement under the direction of the Labor Commissioner. Existing law authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation.

Under existing law, any individual or business entity that contracts for services in the property services or long-term care industries is jointly and severally liable for any unpaid wages, including interest, where the individual or business entity has been provided notice, by any party, of any proceeding or investigation by the Labor Commissioner in which the employer is found liable for those unpaid wages, to the extent the amounts are for services performed under that contract, as provided, and except as specified.

This bill would additionally provide that any public entity, defined as a city, county, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state, is jointly and severally liable for any unpaid wages, as provided in the above paragraph.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

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

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

**SECTION 1.** Section 238.5 of the Labor Code is amended to read:

**238.5.** (a) (1) Any individual, business entity, or public entity, regardless of its form, that, as part of its business, contracts for services in the property services or long-term care industries shall be jointly and severally liable for any unpaid wages, including interest, where the individual, business entity, or public entity has been provided notice, by any party, of any proceeding or investigation by the Labor Commissioner in which the employer is found liable for those unpaid wages, to the extent the amounts are for services performed under that contract.

(2) The issue of joint and several liability under this section shall be determined (A) in a proceeding under Section 98 if the contracting individual, business entity, or public entity is provided notice in the administrative complaint alleging such liability and named a defendant in the course of the Section 98 proceeding, (B) in an administrative proceeding brought by the Labor Commissioner to investigate, prosecute, or recover unpaid wages and interest pursuant to a citation, or in a court action brought by the Labor Commissioner, if the contracting individual, business entity, or public entity is provided preliminary notice by the Labor Commissioner of joint and several liability under this section at least 30 days prior to issuance of a citation, or filing of a court action, or (C) by a court in an action pursuant to Section 98.2. No action for a violation or enforcement of this section shall be brought under Part 13 (commencing with Section 2698) of Division 2.

(b) The joint and several liability provided by this section shall not apply to unpaid wages owed to employees covered by a bona fide collective bargaining agreement, if the agreement expressly provides for wages, hours of work, working conditions, a process to resolve disputes concerning nonpayment of wages, and a waiver of the joint and several liability provided by this section.

(c) An employer that contracts to provide services in the property services or long-term care industries shall, before entering into such a contract, provide written notice to the other party to the prospective contract of any unsatisfied final judgments against the employer for nonpayment of wages. The notice shall also provide the text of this section. The failure of the employer to provide notice under this subdivision shall not be a defense to the joint and several liability provided by this section.

(d) An employer that contracts to provide services in the property services or long-term care industries shall provide, within 30 days of the entry of the judgment, written notice of any unsatisfied final judgments against the employer for nonpayment of wages to any parties with which the employer is presently under contract to provide services in the property services or long-term care industries. The failure of the employer to provide notice under this subdivision shall not be a defense to the joint and several liability provided by this section.

(e) For the purposes of this section, the following definitions apply:

(1) "Property services" means janitorial, security guard, valet parking, landscaping, and gardening services.

(2) "Long-term care" has the same definition as in Section 238.4.

(3) "Public entity" means a city, county, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the state.

(f) This section shall not be interpreted to impose joint liability on an individual or the owner of a home-based business, for any property services, to the extent that the property services are provided at the individual or home-based business owner's primary residence, provided that the primary residence does not have multiple housing units.

**SEC. 2.** (a) The Legislature finds and declares that joint and several liability for unpaid wages is a law of general application that applies to all industries in both the private and public sectors, and therefore does not interfere with a locality's ability to set wages.

(b) The Legislature finds and declares that ensuring the payment of wages to workers is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Section 1 of this act amending Section 238.5 of the Labor Code applies to all cities, including charter cities.