

2011

2011 Legislative Summary

Assembly Committee on Labor and Employment

Follow this and additional works at: http://digitalcommons.law.ggu.edu/caldocs_assembly



Part of the [Legislation Commons](#)

Recommended Citation

Assembly Committee on Labor and Employment, "2011 Legislative Summary" (2011). *California Assembly*. Paper 435.
http://digitalcommons.law.ggu.edu/caldocs_assembly/435

This Committee Report is brought to you for free and open access by the California Documents at GGU Law Digital Commons. It has been accepted for inclusion in California Assembly by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.



STATE DEPOSITORY

JAN 26 2012

GOLDEN GATE UNIVERSITY
LAW LIBRARY

Assembly Committee on Labor and Employment

SANDRÉ R. SWANSON, CHAIR



KFC
556
.A3692
C34
2011

2011
LEGISLATIVE SUMMARY

Assembly
California Legislature



BEN EBBINK
CHIEF CONSULTANT
LORIE ERICKSON
ASSOCIATE CONSULTANT

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT
SANDRÉ R. SWANSON, CHAIR
ASSEMBLYMEMBER, SIXTEENTH DISTRICT

October 2011

Dear Friends:

As Chair of the Assembly Committee on Labor and Employment, I am proud to submit this annual report summarizing legislation the Committee heard and voted on during the 2011 legislative session. I am extremely appreciative of the work the Committee conducted this year to advance the interests of employees, working families, and businesses.

We are all very aware that these are tough economic times, both at the state and federal level. These economic conditions are having a tremendous impact on working families, with the unemployment rate in California reaching the highest level in decades. It is in this environment that the Committee considered several items designed to improve the lives of California's working families.

Towards this end, several important pieces of legislation were signed by Governor Brown in 2011.

The Governor signed three important measures to crack down on the underground economy:

- Assembly Bill 469 (Swanson) makes a number of important changes to existing law and the enforcement tools used by state agencies. Most significantly, the bill requires employers to provide each employee (at the time of hire) with a written notice that specifies basic terms, such as rate of pay, method of pay, and regular paydays.
- Senate Bill 459 (Corbett) establishes significant civil penalties for those employers in the underground economy who willfully misclassify their employees as "independent contractors."
- Assembly Bill 766 (Monning) improves communication among enforcement agencies by allowing them to access nonredacted copies of certified payroll records.

In addition, after nearly five years of work legislation was passed to make significant changes to the Agricultural Labor Relations Act. Among other things, Senate Bill 126 (Steinberg) provides that if the ALRB sets aside an election because of employer misconduct, the labor organization shall be certified as the bargaining representative of the employees.

Enactment of this bill follows previous unsuccessful legislative attempts to provide for election of union representation by a "majority sign-up" process.

In this down economy, this witnessed much legislative attention on job training programs and the Workforce Investment Act (WIA) system. Two major bills were signed by Governor Brown in 2011. The first measure, Senate Bill 734 (DeSaulnier), establishes minimum thresholds for the percentage of WIA dollars that must be spent on job training. The second measure, Senate Bill 698 (Lieu) requires the establishment of standards and incentives for "high-performance" local workforce investment boards.

On a related note, in March the Committee conducted an important oversight hearing on the status of expenditures of WIA funding awarded as part of the American Recovery and Reinvestment Act (ARRA). In addition to a base funding of \$497 million, the ARRA provided an additional \$488 million for California's workforce system in 2009-10. Combining the base and ARRA funds, the state received a total of \$985 million for workforce development programs. The purpose of the oversight hearing was to ensure that the state was on track to expend this additional WIA funding by the federal June 30, 2011 deadline.

Other important measures signed by the Governor in 2011 include the following:

- Assembly Bill 22 (Mendoza) – Prohibits the use of credit reports for employment purposes, except as specified.
- Assembly Bill 240 (Bonilla) – Authorizes the Labor Commissioner to recover liquidated damages for employee claims for unpaid minimum wages.
- Assembly Bill 243 (Alejo) – Requires farm labor contractors to disclose the name of the grower or other entity that hired them on employee paystubs.
- Assembly Bill 436 (Solorio) – Makes changes to existing law related to a prevailing wage compliance mechanism within the Department of Industrial Relations.
- Assembly Bill 1136 (Swanson) – Requires hospitals to maintain a "safe patient handling policy" that provides trained lift teams or other staff trained in safe patient lifting techniques.
- Assembly Bill 1236 (Fong) – Prohibits the state or local governments from mandating the use of E-Verify, except as required by federal law.
- Assembly Bill 1396 (Labor Committee) – Requires commission pay contracts to be provided to employees in writing.
- Senate Bill 56 (Corbett) – Streamlines auditing requirements of apprenticeship programs.
- Senate Bill 299 (Evans) – Prohibits employers from refusing to maintain health insurance coverage for employees on maternity leave.

This report briefly describes the bills heard by the Committee in 2011. I have also included for your information the Governor's veto messages. For the full text of all versions of any bill, committee analyses, and history including votes, please go to the Assembly's web page at www.assembly.ca.gov and click on "legislation." If you need additional information, please contact me or the Committee staff at (916) 319-2091.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sandré R. Swanson", followed by a long horizontal flourish.

SANDRÉ R. SWANSON, Chair
Assembly Committee on Labor and Employment

2011 Legislative Report

Assembly Bills

AB 10 Alejo

Minimum wage; annual adjustment

This bill increases the state's minimum wage from its current rate of \$8.00 per hour to \$8.50 per hour, as of January 1, 2012 and provides for the automatic adjustment of the minimum wage each year by the percentage of inflation as measured by the California Consumer Price Index (CPI), beginning January 1, 2013.

Status: Held under submission, Assembly Appropriations Committee.

AB 15 V. M. Perez

CA Renewable Energy Workforce Readiness Initiative

This bill would require the California Workforce Investment Board (CWIB), by July 1, 2012, in consultation with the Green Collar Jobs Council (GCJC), to establish the California Renewable Energy Workforce Readiness Initiative to ensure green collar career placement and advancement opportunities within California's renewable energy generation, manufacturing, construction, installation, maintenance, and operation sectors that is targeted toward specified populations. The bill would require that the initiative provide guidance to local workforce investment boards on how to establish comprehensive green collar job assessment, training, and placement programs that reflect the local and regional economies, as prescribed. The bill would require the CWIB, in developing the initiative, to assist the local workforce investment boards in collecting and analyzing specified labor market data, in order to assess accurately the workforce development and training needs of local or regional industry clusters. The CWIB would be required to submit to the Legislature, by January 1, 2014, a report on the implementation of the initiative. The bill would require that the board only implement the initiative established pursuant to provisions of the bill if the Director of Finance determines that there are sufficient funds made available to the state for expenditure for the initiative pursuant to the federal American Recovery and Reinvestment Act of 2009, the federal Workforce Investment Act of 1998, or other federal law, or from other non-General Fund sources, and would require that the initiative terminate at such time that the director determines that there are no longer sufficient funds available for the initiative.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 22 Mendoza**Employment; credit reports**

This bill would prohibit an employer or prospective employer, with the exception of certain financial institutions, from obtaining a consumer credit report, as defined, for employment purposes unless the position of the person for whom the report is sought is (1) a position in the state Department of Justice, (2) a managerial position, as defined, (3) that of a sworn peace officer or other law enforcement position, (4) a position for which the information contained in the report is required by law to be disclosed or obtained, (5) a position that involves regular access to specified personal information for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, (6) a position in which the person is or would be a named signatory on the employer's bank or credit card account, or authorized to transfer money or enter into financial contracts on the employer's behalf, (7) a position that involves access to confidential or proprietary information, as specified, or (8) a position that involves regular access to \$10,000 or more of cash, as specified. This bill would also require the written notice informing the person for whom a consumer credit report is sought for employment purposes to also inform the person of the specific reason for obtaining the report, as specified.

Status: Chapter # 724, Statutes of 2011.

AB 51 Yamada**Payroll cards**

Authorizes employers to pay employee wages by means of payroll cards that meet certain specified conditions.

Status: Two-year bill, Senate Banking and Finance Committee.

AB 59 Swanson**Family medical leave**

This bill amends the California Family Rights Act (CFRA) by expanding permissible family and medical leave to cover care for an independent adult child, sibling, grandparent, grandchild, domestic partner, or parent-in-law with a serious health condition.

Status: Held under submission, Assembly Appropriations Committee.

AB 101 J. Perez/Steinberg**Child care; right to representation**

This bill (1) authorizes family child care providers, as defined, to choose whether to be represented by a single provider organization, as defined, that would be designated pursuant to a specified petition and election process overseen by the Public Employment Relations Board or a neutral 3rd party designated by the board, (2) requires the State Department of Social Services and the State Department of Education, with assistance of specified state departments and agencies, and their contractors and subcontractors, to make specified information regarding individual family child care providers available to provider organizations and would require the provider organization requesting the information to bear the costs of collecting the information, and (3) authorizes a certified provider organization to perform various functions, including meeting with state regulatory agencies and engaging in various types of negotiation

on matters within a specified scope of representation with the Department of Personnel Administration, in consultation with the Superintendent of Public Instruction and other state agencies that administer programs of publicly funded child care. The bill prohibits provider organizations from calling strikes and from interfering with, intimidating, restraining, coercing, or discriminating against a family child care provider because the family child care provider joins or refuses to join a provider organization. The state, as defined, also would be subject to the latter prohibition. *Status: Vetoed by Governor Brown.*

AB 132 Logue

Car washes; regulations; civil penalties

Revises the civil penalty provisions for an employer engaged in the business of car washing and polishing that fails to register with the Division of Labor Standards Enforcement (DLSE).

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 196 Carter

Employment compensation

Existing law authorizes employers in certain circumstances to deposit an employee's wages or advance on wages in a bank, savings and loan association, or credit union of the employee's choice. This bill would also authorize an employer to deposit an employee's wages or advance on wages in an industrial bank or a trust company. In addition, this bill would permit an employer to transfer an employee's wages or advance on wages to a card issued by a specified financial institution, if the employee voluntarily authorizes the transfer and the card can be used to access funds at an automated teller machine in California, provided the employee is entitled to at least one pay card transaction without charge per pay period. The bill would also refer to a savings association instead of a savings and loan association. Existing law also requires every employer, at the time of each payment of wages, to furnish his or her employees with an accurate itemized statement in writing showing specified information. This bill would authorize the employer to provide the accurate itemized statement electronically, provided that the electronic statement contains all required information and the employer provides the employee with electronic access in a confidential setting during normal business hours to print the statement.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 197 Monning

Recovery of wages; liquidated damages

This bill increases the amount of liquidated damages that may be awarded to an employee when an employer fails to pay minimum wage to two times the wages unlawfully unpaid, plus interest.

Status: Two-year bill, Assembly Floor.

AB 217 Carter**Workplace smoking; long-term health facilities**

Restricts smoking in long-term health care facilities by only allowing smoking in a designated patient smoking area that is outdoors, in an area that reasonably prevents smoke from entering the facility or patient rooms, and that is not located in a patient's room

Status: Two-year bill, Senate Health Committee.

AB 240 Bonilla**Compensation recovery; liquidated damages**

This bill authorizes the Labor Commissioner to recover liquidated damages for an employee who brings a complaint alleging payment of less than the minimum wage, and also provides that if an employer demonstrates to the satisfaction of the Labor Commissioner that the failure to pay the minimum wage was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of minimum wage law or regulations, the Labor Commissioner may, in its discretion, refuse to award liquidated damages or award a lesser amount of liquidated damages to the employee.

Status: Chapter # 272, Statutes of 2011.

AB 243 Alejo**Labor contractors**

This bill requires an employer who is a farm labor contractor (FLC) to disclose on the itemized payroll statement furnished to employees the name and address of the grower or other FLCs that secured the employer's services. This bill provides that the listing by the FLC of the name and address of the legal entity that secured the services of the employer on the itemized payroll statement shall not create any liability on the part of that legal entity.

Status: Chapter # 671, Statutes of 2011.

AB 267 Swanson**Employment contracts**

This bill makes void and unenforceable as against public policy any provision in an employment contract that requires an employee, as a condition of obtaining or continuing employment, to use a forum other than California, or to agree to a choice of law other than California law, to resolve any dispute with an employer regarding employment-related issues that arise in California, and makes related changes.

Status: Vetoed by Governor Brown.

AB 276 Alejo**Agricultural labor relations**

Extends a provision of current law related to mandatory mediation for agricultural employees to all contract negotiations, not just first contract negotiations. The amendments taken in the Senate delete the previous contents of the bill and instead repeal the provision in current law specifying the conditions necessary for making a demand for mandatory mediation and instead provide that such a declaration may be filed 180 days after any request to bargain.

Status: Two-year bill, Senate Rules Committee.

AB 302 Garrick**Garment manufacturing; alteration of appearance**

Exempts specified activity from provisions of current law regulating garment manufacturing. Specifically, this bill provides that the law does not apply to a person who, by any means or method, engages solely in the alteration of the appearance of garments previously shipped by a garment manufacturer as ready-to-wear apparel.

Status: Failed, reconsideration granted, Assembly Committee on Labor and Employment.

AB 311 Cook**Employment; labor standards; consultation unit**

This bill would establish in the division the Labor Standards Consultation Unit for the purpose of providing consulting services to an employer or employee regarding compliance with labor standards. The bill would state the intent of the Legislature that the unit ultimately be self-supporting and, to further that end, would authorize the Unit to charge a requester a fee for consulting services provided, not to exceed the actual cost to the unit, and to further fund its operation from grants obtained from for-profit or not-for-profit nongovernmental and governmental entities. The bill would prohibit the division from citing an employer for a violation of any labor standard, order, or regulation discovered as a result of an employer requesting or accepting services from the unit pursuant to the bill if the employer remedies the violation within 30 days and the employer is not the subject of an ongoing investigation by the division.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 325 B. Lowenthal**Employee's right to bereavement leave**

This bill prohibits an employer from refusing to grant a request by any employee to take up to three days off for bereavement leave or to interfere with or restrain an employee from doing so. This bill authorizes an employee who has been discharged, disciplined, or discriminated against for exercising his/her right to bereavement leave to bring a civil action against his/her employer for reinstatement, specified damages, and attorney's fees. The provisions of this bill do not apply to an employee who is covered by a valid collective bargaining agreement that provides for bereavement leave and other specified working conditions.

Status: Vetoed by Governor Brown.

AB 350 Solorio**Displaced Janitor Opportunity Act**

This bill renames the Displaced Janitor Opportunity Act as the Displaced Property Service Employee Opportunity Act and make the provisions of the act applicable to property services, which would consist of licensed security, window cleaning, food cafeteria and dietary services, janitorial services and building maintenance services, and excludes from the definitions of contractor and subcontractor specified types of food service providers.

Status: Failed passage, Senate Floor.

AB 391 Pan**EDD; employment services**

AB 391 would require the Employment Development Department (EDD), commencing by July 1, 2012, to provide unemployment insurance (UI) benefits assistance in comprehensive one-stop career centers in five workforce investment areas. This bill would require that the unemployment benefit assistance services required to be provided at these comprehensive one-stop career centers be funded with existing money available to the department for the administration of the UI program. The provisions of this bill would sunset on December 31, 2015.

Status: The labor provisions were subsequently deleted.

AB 394 Silva**Employment regulation; volunteers**

This bill would exempt an individual who renders services as a volunteer from those provisions. The bill would define the term "volunteer" for those purposes as an individual who, without promise or expectation of compensation, but solely for his or her personal purpose or pleasure, performs work for an organization that is exempt from taxation pursuant to a specified provision of federal law or for a resource conservation district formed pursuant to specified state statutory provisions.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 400 Ma**Employment; paid sick leave**

This bill requires employees, who meet certain criteria, to be paid sick days, as specified.

Status: Held under submission, Assembly Appropriations Committee.

AB 436 Solorio**Public works; labor compliance**

This bill makes changes to existing law related to the prevailing wage enforcement mechanism within the Department of Industrial Relations in order to address potential legal questions about the funding method of that process.

Status: Chapter # 378, Statutes of 2011.

AB 469 Swanson**Employee; wages**

This bill (1) provides that in addition to being subject to a civil penalty, any employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the Labor Commissioner (LC) shall be subject to paying restitution of wages to the employee; (2) makes it a misdemeanor if an employer willfully violates specified wage statutes or orders, or willfully fails to pay a final court judgment or final order of the LC for wages due; (3) extends the period within which the division may commence a collection action, as defined, from one year to three years; (4) extends the time required for a subsequently convicted employer to maintain a bond from six months to two years and requires that a subsequently convicted employer provide an accounting of assets, as specified, to the LC; (5) requires an employer to provide each employee, at the time of hiring, with a notice that specifies the rate and the basis,

Status: Chapter # 655, Statutes of 2011.

Status: Two-year bill, Senate Appropriations Committee

Status: Chapter # 676, Statutes of 2011.

Status: Chapter # 677, Statutes of 2011.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 553 Monning**Employment safety; hazardous materials**

This bill requires the Occupational Safety and Health Standards Board (Standards Board) to adopt standards specifying permissible exposure limits (PELs) for workplace hazardous substances, using existing quantitative risk assessments determined by state and federal agencies, as specified.

Status: Held under submission, Assembly Appropriations Committee.

AB 554 Atkins**Employment; workforce services**

This bill directs the state and local Workforce Investment Boards to ensure that programs and services funded by the Work Investment Act (WIA) are conducted in coordination with apprenticeship programs and would encourage collaboration between community colleges and apprenticeship programs. Specifically, this bill: (1) requires the California Workforce Investment Board (CWIB) and each local board to ensure that programs and services funded by WIA and directed to apprenticeable occupations, including preapprenticeship training, are conducted to the maximum extent feasible, in coordination with apprenticeship programs approved by Division of Apprenticeship Standards for the occupation and geographic area; and (2) requires the CWIB and each local board to develop a policy of fostering collaboration between community colleges and approved apprenticeship programs in their respective geographic areas to provide pre-apprenticeship training, apprenticeship training, and continuing education in apprenticeable occupations through approved apprenticeship programs.

Status: Chapter # 499, Statutes of 2011.

AB 587 Gordon**Public works; volunteers**

This bill extends the sunset on the exemption for volunteers on public works project out five years, from January 1, 2012 to January 1, 2017, and also makes findings and declarations on the intent of the Legislature to not undermine the wage base of a community, as well as several non-substantive amendments.

Status: Chapter # 219, Statutes of 2011.

AB 592 Lara**Employment leave; interference**

This bill clarifies that it is an unlawful employment practice to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under the California Family Rights Act (CFRA) or due to disability by pregnancy, childbirth, or related medical conditions. This bill also declares that this clarification is declarative of existing law.

Status: Chapter # 678, Statutes of 2011.

AB 735 Mitchell**Intern/student assistants; hiring preference**

This bill (1) requires state agencies, when hiring for internships and student assistant positions, to give preference to qualified applicants who are, or have been, dependent children in foster care; (2) requires the preference to be granted to applicants up to 26 years of age; (3) requires the county welfare department to provide dependent children with information notifying them that they may be eligible for this preference; and (4) defines "preference" to mean, priority over similarly qualified applicants for placement in the position.

Status: Chapter # 464, Statutes of 2011.

AB 766 Monning**Public works; payroll records**

This bill gives enforcement agencies that are a part of the Joint Enforcement Strike Force on the Underground Economy (JESF), access to nonredacted copies of certified payroll records on public works projects in order to target the underground economy. This bill requires any copies of records or certified payroll made available for inspection and furnished upon request to the public by these agencies to be marked or redacted to prevent disclosure of an individual's name, address, and social security number. The bill also provides that an employer is not liable in a civil action for any reasonable act or omission taken in good faith in compliance with these requirements.

Status: Chapter # 481, Statutes of 2011.

AB 830 Olsen**Employment; flexible work schedules**

Authorizes individual employees to request flexible work schedules, as specified. 1) Permits an employee to work up to ten hours per workday without overtime if the employee requests such a schedule in writing and the employer approves the request. 2) Requires the employer, where such a schedule is adopted, to pay overtime for all hours worked over 40 in a workweek or over ten in a workday. 3) Authorizes an employer to inform its employees that it is willing to consider employee requests to work flexible work schedules, but prohibits an employer from inducing a request by promising an employment benefit or "threatening an employment detriment." 4) Authorizes an employee or employer to discontinue a flexible work schedule at any time by giving written notice to the other party.

Status: Failed passaged, Assembly Committee on Labor and Employment.

AB 848 Campos**Apprenticeship programs**

AB 848 requires programs receiving state apprenticeship funding through the Department of Education (CDE) or the California Community Colleges (CCC) for building and trade programs to report specified outcome data annually.

Status: Held under submission, Senate Appropriations Committee.

AB 889 Ammiano/ V.M. Perez Domestic workers

Would regulate the wages, hours, and working conditions of domestic work employees, provide a private right of action for domestic work employees, including liquidated damages, and would provide an overtime compensation rate for domestic work employees. This bill would require domestic work employers of persons engaged in household domestic service to provide employees with information regarding their wages either semimonthly or at the time of each wage payment, and remove an exclusion for domestic work employers to secure workers' compensation coverage for certain employees thereby requiring all employers to secure the payment of workers' compensation.

Status: Held under submission, Senate Appropriations Committee.

AB 923 Fong Lifelong Learning Accounts Initiative Program

This bill establishes The Lifelong Learning Accounts (LLA) Initiative program within the Employment Development Department (EDD), for the purpose of providing grants to employers and employees to establish individual lifelong learning accounts for the deposit of funds for lifelong education and training.

Status: Two-year bill, Assembly Appropriations Committee.

AB 950 J. Perez/Swanson Employment; drayage truck operators

Deems drayage truck operators to be statutory employees for employment purposes, as specified. Provides that for purposes of state employment law (including workers' compensation, occupational safety and health, and retaliation or discrimination) a drayage truck operator is an employee of the entity or person who arranges for or engages the services of the operator. Defines "drayage truck operator" as the driver of any vehicle with a specified gross vehicle weight rating operating or transgressing through port or intermodal rail yard property for the purpose of loading, unloading, or transporting cargo. Specifies that these provisions shall not be construed to deem a public agency the employer of a drayage truck operator without the consent of the public agency.

Status: Two-year bill, Assembly Floor.

AB 975 Ma Professional employer organizations

Establishes specified regulatory requirements for professional employer organizations (PEOs).

Status: Two-year bill, Senate Labor and Industrial Relations Committee.

AB 987 Grove**Public works; prevailing wages**

This bill would specify that workers must be employed directly at the site of the work to be deemed employed upon public work. The bill would exempt from the prevailing wage requirements public projects of less than \$100,000. The bill would also exempt from the prevailing wage requirements the governing board of a school district with regard to the construction, reconstruction, or rehabilitation of school facilities, any fabrication or prefabrication work done at a permanent offsite facilities of a contractor, a public work project of a local agency that adopts a resolution or ordinance, as specified, workers employed on a hospital seismic retrofitting project. The bill would also exempt from the definition of "public works," for purposes of the prevailing wage requirements, work performed during the design and preconstruction phases of construction, including inspection and land surveying work and would delete provisions of existing law specifying that "public works" includes the hauling of refuse from a public works site to an outside disposal location. This bill would delete from existing law exclusions from the requirements of public works and prevailing wage laws for work done on certain private development projects, affordable housing units for low- or moderate-income persons, privately-owned residential projects, qualified residential rental projects, single-family residential projects, and low-income housing projects, among other things.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 988 Grove**Prevailing wages**

This bill would revise the manner in which the director determines the rate of general prevailing wages, including deleting the requirement that he or she consider the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works, and deleting the requirement that the director consider further data from labor organizations and employers or employer associations and concerns where the rates do not constitute the rates actually paid in the locality. The bill would also revise the methodology that the director is required to use in determining the general prevailing rate of per diem wages in the locality in which the public work is to be performed, including deleting certain requirement, and requiring the director to conduct a survey of the wages paid for work performed in each locality in which the public work is to be performed. This bill would require the holiday rates to be paid on all specified holidays, and would delete the authorization that they be paid instead on those dates recognized in a collective bargaining agreement. The bill would delete the provision stating that awarding bodies are not required to specify holidays in the contract for public work. This bill would delete these categories of employer payments from per diem wages for purposes of public works.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 1106 Achadjian**OSHA; local public entities; penalty money; grants**

This bill allows any county, city, special district, public authority, public agency, or joint powers authority to apply for a refund of civil penalties assessed for violations of occupational safety and health laws if the conditions have been corrected.

Status: Held under submission, Assembly Appropriations Committee.

AB 1115 Lara**Workforce development training**

To establish minimum statewide standards for determining the eligibility of a training provider to receive federal funds and be placed on the states eligible provider list.

Status: Two-year bill, Senate Appropriations Committee.

AB 1136 Swanson**Employment safety; health facilities**

This bill requires all general acute care hospitals to maintain a safe patient handling policy and provide trained lift teams or other support staff trained in safe lifting techniques. The bill requires employers to adopt a patient protection and health care worker back and musculoskeletal injury prevention plan as part of the injury and illness prevention programs required by existing state regulations.

Status: Chapter # 554, Statutes of 2011.

AB 1179 Mansoor**Labor organizations; union dues; political activities**

Enacts the California Voluntary Contributions Act to place limitations on expenditures for political activities made by labor organizations.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 1224 Veterans Committee**ETP; 3 yr plan; veterans training**

Expands the Employment Training Panel (ETP) 3-year plan to include projects that support veterans and members of the California National Guard.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 1236 Fong**Employment; E-Verify**

This bill creates the Employment Acceleration Act of 2011 to enact provisions of law related to the use by employers of specified federal electronic employment verification systems.

Specifically, this bill: (1) except as required by federal law or as a condition of receiving federal funds, prohibits the state, a city, county, city and county, or special district from requiring an employer to use an electronic employment verification system, including under the following circumstances: (a) as a condition of receiving a government contract; (b) as a condition of applying for or maintaining a business license; and, (c) as a penalty for violating licensing or other similar laws, (2) defines an "electronic employment verification system" as a system that

allows employers to electronically verify workers' employment authorization with the federal government, including the Basic Pilot (renamed in 2007 as E-Verify) Program. However, this term does not include the I-9 Employment Eligibility Verification form or any other employment verification systems that are required by federal law, and (3) makes several findings and declarations pertaining to the deficiencies of electronic employment verification programs.
Status: Chapter # 691, Statutes of 2011.

AB 1286 Fuentes

Wage disputes; waiver of claims

This bill would provide unless approval of a settlement or compromise relating to a claim for earned wages is being sought pursuant to the California Rules of Court, an employee's waiver or release of such a wage claim that is based on a provision of the Labor Code or an order of the Industrial Welfare Commission, or is derivative of such a claim, and is covered by a pending certified or uncertified class action or representative action, shall not be valid or enforceable if that employee is a class member or a putative class member in a pending certified or uncertified class action or is represented or potentially represented in a representative action.
Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 1310 Furutani

Career technical education/workforce development

Requires the Secretary of California Labor and Workforce Development Agency (LWDA), in conjunction with the California Workforce Investment Board, the California Community Colleges (CCC) Office of the Chancellor, the State Department of Education, and the California Postsecondary Education Commission, to develop a strategic plan, to include specified elements, for connecting the delivery of education and workforce development in the state.
Status: Vetoed by Governor Brown.

AB 1313 Allen

Overtime wages; ag. Workers

This bill removes the exemption for agricultural employees and creates a state-mandated local program by including agricultural employees as a class of employees protected by criminal penalties under existing law.
Status: Two-year bill, Senate Floor.

AB 1346 Atkins

DAS; certification of electricians

This bill requires individuals desiring to be certified as an electrician must submit an application for certification and examination that includes an employment history report from the Social Security Administration. The individual may redact his/her social security number from the employment history report before it is submitted. This bill also makes several non-substantive changes to clarify existing law.
Status: Chapter # 693, Statutes of 2011.

AB 1364 Campos**Employment; talent agencies; representation**

Prohibits any talent agency licensee to refuse to represent any artist because of that artist's sex, race, color, religion, ancestry, national origin, disability, marital status, or sexual orientation.

Status: Two-year bill, Senate Labor and Industrial Relations.

AB 1393 Perea**Employment**

This bill would provide that, notwithstanding any other law, if the Franchise Tax Board determines there is a lack of work for a seasonal clerk employed by the board, the board may (1) pay the clerk a lump-sum payment for accumulated vacation or annual leave credit; (2) by mutual agreement between the board and the clerk, schedule the clerk for vacation or annual leave; (3) allow the clerk to retain his or her vacation or annual leave credit; or (4) effect any combination of the above.

Status: Senate Rules Committee.

AB 1396 Labor Committee**Employment contract requirements**

This bill requires that all employers provide a written contract to employees who are paid commission. Specifically, (1) declares legislative intent of this bill, in light of the Federal District Court (Northern District) decision of Lett v. Paymentech, to restore the employee protections that had been in effect by making Labor Code Section 2751 apply equally to employers with a fixed place of business in the state and to employers who do not have a fixed place of business in the state; (2) requires all employers, by January 1, 2013, to provide a written contract, with specified details, to employees who are paid commission; (3) adds when a contract expires and where the parties continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party; and (4) repeals the provision of law which states that an employer shall be liable to the employee in a civil action for treble damages when an employer does not provide a written commission contract, as specified.

Status: Chapter # 556, Statutes of 2011.

AB 1397 Swanson**Working hours**

This bill would allow an employee driver of a charter-party carrier licensed by the California Public Utilities Commission to take an on-duty meal period if specified conditions are met.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 1398 Chesbro**Employment minors; Ag. packing plants**

This bill (1) extends, from January 1, 2012 to January 2017, the authority of the Labor Commissioner to allow minors 16 or 17 years of age who reside in Lake County to work in agricultural packing plants up to 60 hours per week during peak harvest season; (2) changes the written reporting requirements of affected employers to require a written report regarding

payroll to be filed annually without a specific reporting date; (3) changes the requirements for the Labor Commissioner to issue instead of annual report, a single written report on the working conditions of minors employed in the agricultural packing industry, which is to be filed by November 1, 2016, and cover the previous five-and one-half year period from March 1, 2011 to October 1, 2016.

Status: Chapter # 489, Statutes of 2011.

AB 1399 Labor Committee Employment records; inspection

This bill amends provisions of existing law related to an employee's right to inspect or copy personnel records.

Status: Held under submission, Assembly Appropriations Committee.

AB 1401 Arts Committee Employment; minors

This bill establishes an Internet Web site permit process to be administered by the Division of Labor Standards Enforcement for the issuance of temporary work permits for minors working in the entertainment industry. The temporary work permit issued under this bill would enable a parent or guardian of a minor to establish a Coogan Trust Account for the benefit of the minor. This bill requires the Labor Commissioner to place fees received for a temporary minor's entertainment work permit into an Entertainment Work Permit Fund, which funds would pay for the costs of administration of the Internet Web site created under this bill.

Status: Chapter # 557, Statutes of 2011.

HR 11 Ammiano/V.M. Perez Domestic workers

Recognizes March 30th as International Domestic Workers' Day.

Status: Adopted, Assembly Floor.

Senate Bills

SB 56 Corbett

Apprenticeship oversight

This bill streamlines auditing requirements of the California Apprenticeship Council.

Status: Chapter # 696, Statutes of 2011.

SB 104 Steinberg

Ag. Labor representatives; elections

This bill permits agricultural employees, as an alternative procedure, to select their labor representatives by submitting a petition to the Agricultural Labor Relations Board (ALRB) accompanied by representation cards signed by a majority of the bargaining unit. This bill also extends existing prohibitions and penalties to employers who engage in unfair labor practices with regard to a majority signup election.

Status: Vetoed by Governor Brown.

SB 126 Steinberg

Agricultural labor relations

This bill makes a number of changes to the Agricultural Labor Relations Act. Specifically, this bill provides that if the Agricultural Labor Relations Board (ALRB) sets aside an election because of employer misconduct that (in addition to affecting the outcome of an election) would render slight the chances of a new election reflecting the free and fair choice of employees, the labor organization shall be certified as the exclusive bargaining representative for the bargaining unit. Imposes time limits to certain ALRB proceedings as specified. Shortens the time under current law for a request for mandatory mediation from 180 days to 90 days after an initial request to bargain. Provides that a party may also request mandatory mediation in the specified circumstances. Provides that the mandatory mediation proceedings of current law shall not be stayed on the grounds that a specified petition for review of an ALRB order related to unfair labor practice charges have been filed. Expands existing law related to judicial injunctions to provide that the court shall also consider the indirect effect upon protected rights of all agricultural employees of the employer in determining whether temporary relief is just and proper. Provides that when the alleged unfair labor practice is such that, by its nature, it would interfere with employee free choice, appropriate temporary relief or a restraining order shall issue on a showing that reasonable cause exists to believe that the unfair labor practice has occurred. The order shall remain in effect until an election has been held or for 30 days, whichever occurs first. Provides that temporary relief or restraining orders shall not be stayed pending appeal.

Status: Chapter # 697, Statutes of 2011.

SB 136 Leno**Public contracts; prevailing wages**

This bill provides that specified "energy services contracts" entered into pursuant to existing law are public works projects and subject to applicable prevailing wage laws.

Status: Chapter # 698, Statutes of 2011.

SB 272 DeSaulnier**Leave of absence; organ donation**

This bill clarifies the Michelle Maykin Memorial Donation Protection Act to assist employer compliance with a leave of absence for an organ donation.

Status: Chapter # 147, Statutes of 2011.

SB 299 Evans**Employment; pregnancy/childbirth leave**

This bill prohibits employers from refusing to maintain and pay for insurance coverage, as specified, for the duration of maternity leave up to four months, as specified. This bill authorizes employers to recover insurance premiums from the employee if the employee fails to return from maternity leave provided that the employee's failure to return from maternity leave is not due to leave taken under the Moore-Brown-Roberti Family Rights Act, for a health condition that entitles the employee leave, or for another circumstance beyond the control of the employee. This bill requires the collective bargaining agreements of state agencies govern maternity coverage specified in this bill.

Status: Chapter # 510, Statutes of 2011.

SB 432 De Leon**Workplace safety; lodging; housekeeping**

This bill requires the Occupational Safety and Health Standards Board (OSHSB), no later than December 1, 2012, to adopt occupational safety and health standards for lodging establishment housekeeping that includes the use of a fitted bed sheet, instead of a flat sheet, and the use of long-handled tools in order to eliminate the need for housekeepers to work in a stooped, kneeled, or squatting position, as specified. Further requires these provisions to be operative September 1, 2013 with full compliance required no later than December 31, 2015.

Status: Assembly Appropriations Committee, suspense file.

SB 459 Corbett**Employment; independent contractors**

This bill (1) prohibits willful misclassification, as defined, of individuals as independent contractors; (2) prohibits charging individuals who have been mischaracterized as independent contractors a fee or making deductions from compensation, as specified, where those acts would have violated the law if the individuals had not been mischaracterized; (3) authorizes the Labor and Workforce Development Agency (Agency) to assess specified civil damages against, and requires the Agency to take other specified disciplinary actions against, persons or employers violating these prohibitions; (4) requires the Agency to notify the Contractors' State License Board (CSLB) of a violator that is a licensed contractor, and requires the CSLB to initiate

an action against the licensee; (5) authorizes an individual to file a complaint, as specified, to request the Labor Commissioner to issue a determination that a person or employer has violated these prohibitions with regard to the individual filing the complaint; (6) authorizes the Labor Commissioner to assess civil and liquidated damages against a person or employer based on a determination that the person or employer has violated these prohibitions; (7) provides that a person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for the individual shall be jointly and severally liable with the employer if the individual is not found to be an independent contractor; and (8) exempts from the provisions regarding joint and several liability a person who provides advice to his/her employer or an attorney who provides legal advice in the course of practicing law.

Status: Chapter # 706, Statutes of 2011.

SB 575 DeSaulnier

Smoking in the workplace

Expands the prohibition of smoking in a place of employment to include an owner-operated business, and eliminates most of the specified exemptions that permit smoking in certain work environments, as specified.

Status: Held without recommendation, Assembly Governmental Organization Committee.

SB 698 Lieu

Workforce development; high performance boards

Requires the establishment of standards and incentives for "high-performance" local workforce investment boards.

Status: Chapter # 497, Statutes of 2011.

SB 734 DeSaulnier

State and local workforce investment boards; funding

This bill imposes requirements related to the expenditure of Workforce Investment Act funds on job training programs.

Status: Chapter # 498, Statutes of 2011.

SB 776 DeSaulnier

State and local workforce investment boards; funding

This bill requires specified minimum amounts of federal Workforce Investment Act (WIA) funds provided to local WIA (LWIA) boards to be spent on workforce training programs, as specified.

Status: Failed passage, Assembly Appropriations Committee.

SB 829 DeSaulnier

DOSH; Occupational Safety and Health Appeals Board

Revises various provisions of law related to the issuance and adjudication of citations for alleged violation of occupational safety and health laws.

Status: Assembly Appropriations Committee.

SB 931 Evans**Payroll cards**

This bill authorizes employers to pay employee wages by means of payroll card programs that meet certain specified conditions.

Status: Vetoed by Governor Brown.

Veto Messages

AB 101 J. Perez

To the Members of the California State Assembly:

Maintaining the quality and affordability of childcare is a very important goal. So too is making sure that working conditions are decent and fair for those who take care of our children. Balancing these objectives, however, as this bill attempts to do, is not easy or free from dispute.

Today California, like the nation itself, is facing huge budget challenges. Given that reality, I am reluctant to embark on a program of this magnitude and potential cost.

I am returning Assembly Bill 101 without my signature.

Sincerely,

Edmund G. Brown Jr.

AB 267 Swanson

To the Members of the California State Assembly:

I am returning Assembly Bill 267 without my signature.

This measure would prohibit employment contracts that require California employees to agree to the use of legal forums and laws of other states.

Current law prohibits California employees from being subjected to laws or forums that substantially diminish their rights under our laws and I have not seen convincing evidence that these protections are insufficient to protect employees in California.

Finally, I would note that imposing this burden could deter out of state companies from hiring Californians - something we can ill afford at this time of high unemployment.

Sincerely,

Edmund G. Brown Jr.

AB 325 B. Lowenthal

To the Members of the California State Assembly:

I am returning Assembly Bill 325 without my signature.

Granting bereavement leave when a close family member dies is the moral and decent thing to do and I believe that the vast majority of employers voluntarily make such an accommodation for the loss of a loved one.

I am also concerned that this measure adds a more far reaching private right to sue than is contained in related statutes.

Sincerely,

Edmund G. Brown Jr.

SB 104 Steinberg

To the Members of the California State Senate:

In 1975, it was my privilege to sign into law our nation's first agricultural labor relations act, the "ALRA." This monumental achievement came only after a decade of intense conflict and violence in the fields.

The movement created by the United Farm Workers provided the political basis for the legislative process that made the ALRA possible. In previous years, all attempts at passing a farm labor bill had failed, caught in the cross pressures generated by the profound differences that divided the Teamsters, the growers and the UFW. The final bill was not the product of one side but a hard fought compromise. It came after months of meetings and the participation of literally thousands of people. I personally spent hundreds of hours-often late into the night-listening and arguing with lawyers and representatives of all the sides.

Thirty-six years later, the ALRA is still recognized as the best labor relations act in the country. Under its protections, tens of thousands of agricultural workers have voted for unionization or otherwise expressed their choice as to how their interests should be advanced.

Yet, the disputes never quite stopped and today there are serious complaints that workers are deprived of their rights through a variety of unfair, improper and illegal acts. The proponents of SB 104 argue that the ALRA no longer works and must be drastically changed.

SB 104 is indeed a drastic change and I appreciate the frustrations that have given rise to it. But, I am not yet convinced that the far reaching proposals of this bill--which alter in a significant

way the guiding assumptions of the ALRA-are justified. Before restructuring California's carefully crafted agricultural labor law, it is only right that the legislature consider legal provisions that more faithfully track its original framework. The process should include all those who are affected by the ALRA.

I am deeply committed to the success of the ALRA and stand ready to engage in whatever discussions-public and private-that will accomplish the appropriate changes.

As at the beginning, all parties must be heard and, before any product emerges, a wide array of opinions and experiences should be fairly considered. Besides being personally involved, I will direct my Labor and Agricultural Secretaries to reach out to all those who can help us achieve a fair and just result.

I am returning Senate Bill 104 without my signature.

Sincerely,

Edmund G. Brown Jr.

SB 931 Evans

To the Members of the California State Senate:

I am returning Senate Bill 931 without my signature.

Pay cards provide workers without bank accounts a way of avoiding high check cashing fees. They are now used by thousands of California employees and employers. This bill seeks to contain costs for workers who choose to accept pay cards, a goal with which I agree.

Unfortunately, this bill goes too far. It would impose numerous and costly new requirements on pay card providers. A likely result of these mandates is that banks and employers may simply stop offering this service, injuring the very workers this bill aims to protect.

I strongly believe that reasonable protections are needed for those who use pay cards. I will work with the bill's proponents and the financial institutions to forge a better solution that I can sign into law.

Sincerely,

Edmund G. Brown Jr.