



March 18, 2014

The Honorable Donald Wagner
California State Assembly
State Capitol, Room 2158
Sacramento, CA 95814

SUBJECT: AB 2095 (WAGNER) EMPLOYEE COMPENSATION: ITEMIZED STATEMENTS SUPPORT – JOB CREATOR

Dear Assembly Member Wagner:

The California Chamber of Commerce (CalChamber) and the organizations listed below are pleased to **SUPPORT** your **AB 2095** as a **JOB CREATOR**, that will discourage bad faith litigation regarding alleged technical violations of an itemized wage statement that do not harm the employee.

Labor Code Section 226 sets forth eight categories of information that must be included in an itemized wage statement provided to the employee. The intent and purpose of this information is to notify the employee of who his/her employer is, and how their wages were calculated. An employer's failure to include required information in the wage statement can subject the employer to an action for injunction or a representative action under Labor Code Section 2699. Also, if an employee "suffers injury" as defined in Section 226(e)(1), as a result of the error or omission in the wage statement, the employee is entitled to statutory penalties up to \$4,000.

Despite the good intentions of this section, there has been a recent trend by plaintiffs' attorneys to abuse this section and file litigation for "ticky tack" violations that do not actually result in any harm to the employee. A notable example of this abuse is *Elliot v. Spherion Pacific Work, LLC*, 210 WL 675574 (2010), in which an employee alleged a cause of action under Labor Code Section 226 because the employer used a truncated name on the wage statement. Specifically, the employer's name on the wage statement was "Spherion Pacific Work, LLC," instead of Spherion's legal name, "Spherion Pacific Workforce, LLC." The employee did not allege that this truncated version of the employer's name misled her, confused her, or caused her any injury. Although the court ultimately dismissed this cause of action through summary judgment, the employer incurred unnecessary legal costs and attorney's fees to have the cause of action dismissed.

Modeled after SB 462 (Monning) (Stats. 2013, Ch. 142), that was sponsored and supported by the California Employment Lawyers Association as well as labor groups, **AB 2095** seeks to discourage such frivolous litigation by awarding an employer attorney's fees if the employer can prove the litigation was filed in "bad faith." As the former president of the Consumer Attorneys of California stated last year in support of SB 462, "[t]he additional bad faith language echoes [] the 'frivolous, unreasonable, or without foundation' standard under the FEHA fee-shifting provision, which shares with the Labor Code a policy of encouraging private enforcement of its statutes." Similar to SB 462, **AB 2095** will only award attorneys fees to an employer if the lawsuit is proven to be frivolous, unreasonable or without foundation.

While **AB 2095** will not eliminate all cases that lack merit, it will certainly dissuade the filing of some frivolous cases. Any reduction of bad faith litigation will allow employers to devote more financial resources to growing their business and growing their workforce. It will also help reduce the overloaded dockets for courts so that legitimate cases may be resolved in a more efficient manner.

For these reasons, we are pleased to **SUPPORT** your **AB 2095** as a **JOB CREATOR**.

Sincerely,

California Chamber of Commerce
Acclamation Insurance Management Services
Air Conditioning Trade Association
Allied Managed Care
Associated Builders and Contractors of California
Associated Builders and Contractors – San Diego Chapter
Brawley Chamber of Commerce
Brea Chamber of Commerce
California Apartment Association
California Association for Health Services at Home
California Association of Licensed Security Agencies, Guards and Associates

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California Association of Winegrape Growers
California Chapter of American Fence Association
California Employment Law Council
California Farm Bureau Federation
California Fence Contractors' Association
California Hospital Association
California Hotel and Lodging Association
California Independent Grocers Association
California Manufacturers and Technology Association
California Professional Association of Specialty Contractors
California Restaurant Association
California Retailers Association
Chambers of Commerce Alliance of Ventura & Santa Barbara Counties
Civil Justice Association of California
Desert Hot Springs Chamber of Commerce
El Centro Chamber of Commerce
Engineering Contractors' Association
Flasher Barricade Association
Fullerton Chamber of Commerce
Greater Fresno Area Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Marin Builders Association
National Federation of Independent Business
Oxnard Chamber of Commerce
Palm Desert Area Chamber of Commerce
Plumbing-Heating-Cooling Contractors Association of California
Porterville Chamber of Commerce
Redondo Beach Chamber of Commerce
San Diego East County Chamber of Commerce
San Jose Silicon Valley Chamber of Commerce
Santa Barbara Chamber of Commerce
Santa Clara Chamber of Commerce and Convention-Visitors Bureau
Torrance Area Chamber of Commerce
Turlock Chamber of Commerce
Western Electrical Contractors Association

cc: District Office, The Honorable Donald Wagner