
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Dave Cortese, Chair

2021 - 2022 Regular

Bill No: SB 1260

Hearing Date:

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Urgency: No

Fiscal: No

Consultant: Jake Ferrera

SUBJECT: Employment: garment manufacturing.

KEY ISSUE

Should the Legislature add liquidated damages equal to wages unlawfully withheld and liquidated damages equal to unpaid overtime compensation to the existing penalties applied to garment manufacturers for failure to compensate workers in accordance with the Labor Code?

ANALYSIS

Existing law:

- 1) Requires Brand Guarantors, as defined, to keep accurate records of the following for 4 years, **in addition to any other record-keeping requirements:**
 - a) Contract worksheets indicating the price per unit agreed to between the brand guarantor and any contractors.
 - b) All contracts, invoices, purchase orders, work or job orders, and style or cut sheets.
 - c) A copy of the garment license of every person with whom the brand manufacturer has entered into a contract for garment manufacturing.

(Labor Code §2673)
- 2) Requires all garment manufacturing employers to keep records for 4 years of all contracts, invoices, purchase orders, work orders, style or cut sheets, a copy of the garment license of every person with whom the employer has entered into a garment manufacturing contract and any other documentation pursuant to which work was, or is being, performed. This documentation must include the names and contact information of the contracting parties.

(Labor Code §2673)
- 3) Requires a person engaged in garment manufacturing who contracts with another person for the performance of garment manufacturing operations to be jointly and severally liable for with any manufacturer or contractor for all of the following:
 - a) The full amount of unpaid minimum, regular, overtime, and other premium wages, reimbursement for expenses, any other compensation, damages, and penalties due to any and all employees.
 - b) The employee's reasonable attorney's fees and costs.
 - c) Penalties for the failure to obtain valid worker's compensation insurance.

- d) Additionally, garment manufacturers and contractors are liable for the full amount of damages and penalties, including interest, for a violation of this section of labor code.

(Labor Code §2673.1)

- 4) Establishes a procedure by which an employee seeking to recover wages from an employer for specified violations of minimum wage law is entitled to liquidated damages equal to the wages unlawfully withheld. (Labor Code §1194.2)
- 5) Establishes a procedure by which the Labor Commissioner dispenses with claims filed for unpaid wages or overtime payments. This includes notification to involved parties, the calling of a meet-and-confer conference and an issuance of judgment by the Labor Commissioner. (Labor Code §2673.1)

This bill:

- 1) Adds a penalty of liquidated damages equal to the wages unlawfully withheld or unpaid overtime compensation to any garment manufacturer employer, as defined, for violations of existing minimum wage and overtime law.

COMMENTS

1. Need for this bill?

A) Background

Garment manufacturing continues to be one of the largest employment sectors in California and across the country. This has historically led to certain abuses of workers including wage theft, unsafe working conditions and the use of undocumented immigrant labor. In late 1999, AB 633 (Steinberg), also known as the Garment Worker Protection Act, was chaptered and attempted to curb some of the more abusive practices within the garment manufacturing industry. Under this law, garment workers who are not paid for their work may file claims against the contractor who hired them, as well as the manufacturers whose garments they produced. In some cases, retailers may also be responsible for garment workers' unpaid wages. The law designated these manufacturers and retailers as "guarantors" and ordered that they be responsible for guaranteeing that garment workers receive their wages. AB 633 also created a special account funded by garment manufacturer registration fees that could pay out to workers who were denied their wages and benefits.

While the new law gave much needed and deserved relief to low-wage garment workers, it also faced challenges in enforcement. In a report written 6 years later entitled "Reinforcing the Seams: Guaranteeing the Promise of California's Landmark Anti-Sweatshop Law", several nonprofits found that "poor implementation of AB 633 by DLSE and flagrant disregard of the law by many apparel companies effectively strip AB 633 of its power." The report noted that the number of wage claims by garment workers had sharply increased to nearly 2,300 between 2001-2004, compared to just 565 from 1995-1998. However, this increase still only encompassed a tiny fraction of the potential stolen wages, since reports in 1999 found that nearly 70% of the roughly 45,000 garment workers in California were denied minimum wage and overtime payments.

Wage theft on such a scale hurts workers in the immediate sense, but also contributes to an insidious feedback loop. In a later 2010 study entitled “Wage Theft and Workplace Violations in Los Angeles” it was estimated that wage and benefit theft amounted to a loss of nearly \$2 billion dollars in earnings in the Los Angeles area. Furthermore, only 10% of penalties issued for minimum wage and overtime violations were actually paid. These stolen dollars rob local economies of needed revenue and fail to make it into budgetary general funds, further starving enforcement agencies of necessary funds and furthering the cycle of theft as future violations are even less likely to be enforced.

In the years following the passage of AB 633, the average amount recovered per claimant tripled and guarantors that had been ordered to pay workers by the DLSE in previous years finally began honoring those obligations. Even though these claims were a drop in the bucket compared to the total amount of stolen wages, many considered this a qualified success in beginning to hold bad actors accountable.

B) Recent Challenges and Legislation

Unfortunately, years later the plight of many garment workers remains unchanged. A 2016 study by the UCLA Labor Center found that garment workers in Southern California made an average of only \$5.15 per hour, less than half the minimum wage. The report further noted, “60% [of workers] reported excessive heat and dust accumulation due to poor ventilation that rendered it difficult to work, and even to breathe.” Additional studies at the federal level seem to confirm these trends. A 2016 Department of Labor survey found that 85% of garment shops in Southern California failed to pay minimum wage and, in 2019, Labor Department investigators recovered more than 2 million dollars for Southern California garment workers.

Ostensibly these wage claims would be covered by funds from the special account created by the Garment Worker Protection Act. Regrettably, for most of the account’s history, the wage claims outnumbered the registration fees and workers faced a years-long waiting list for restitution. To help temporarily shore up the account, Governor Newsom included more than \$16 million in the 2019 state budget to clear the wait list. Future claims, however, remain in question as these funds were only included as a one-time payment.

To address these continuing problems within the garment manufacturing industry, SB 62 (Durazo, 2021) was signed into law by Governor Newsom. The law modernized enforcement mechanisms and regulatory infrastructure, to more precisely target endemic problems within the garment manufacturing industry. The law focused on casting a wider regulatory net by, among other things, requiring employers to share liability with their subcontractors for penalties related to wage and benefits theft. Prior to SB 62, garment manufacturers had every incentive to utilize subcontractors, which operate with enough autonomy to shield garment manufacturers from liability and could simply dissolve as a corporate entity once workers attempted to bring claims against them. By forcing garment manufacturers to be financially responsible for claims from workers within their supply chains, SB 62 created new incentives for large manufacturers to actively monitor their subcontractors and cease business relationships with violators.

C) Minimum Wage Penalties and SB 1260

Despite the bill containing numerous advancements for garment worker protections, it unfortunately contained a change that disrupts longstanding practice around minimum wage penalties. Minimum wage workers are placed in an inherently vulnerable position; wage theft is extraordinarily common in low wages industries, as are workplace hazards. Despite this, many low wage employees cannot afford to leave their employment, no matter what conditions are present and even less can afford legal representation if their employer violates the law. For this reason, penalties for violations of minimum wage and overtime laws are correspondingly severe and include liquidated damages equal to the wages or overtime premiums withheld, as established by Labor Code §1194.2. SB 62 contained language that would have applied these liquidated damages clauses to garment manufacturers' violations of minimum wage law, but late in the legislative process Assembly amendments stripped these provisions out of the bill.

SB 1260 would correct that change by adding liquidated damages equal to the wages unlawfully withheld and liquidated damages equal to unpaid overtime compensation due to penalties applied to garment manufacturers or their subcontractors for failure to compensate workers. The addition of these penalties establishes parity between violations in the garment manufacturing industry with virtually all other industries. Notably, the penalties contained within SB 1260 are unlikely to create new compliance burdens, as they only apply to violations of existing law that employers are already subject to.

2. Proponent Arguments

None received.

3. Opponent Arguments:

None received.

4. Prior Legislation:

SB 62 (Durazo) Chapter 329, Statutes of 2021: required a garment manufacturer who contracts with another person for the performance of garment manufacturing to jointly and individually share all civil legal responsibility and civil liability for all workers in that other person's employ. Also prohibited the practice of piece-rate compensation for garment manufacturing, except in the case of worksites covered by a valid collective bargaining agreement.

SB 588 (De León) Chapter 803, Statutes of 2015: allowed the Labor Commissioner to file a lien or levy on an employer's property in order to assist the employee in collecting unpaid wages when there is a judgment against the employer.

AB 240 (Bonta) Chapter 272, Statutes of 2011: authorized the Labor Commissioner to recover liquidated damages for an employee who brings a complaint alleging payment of less than the minimum wage.

AB 633 (Steinberg) Chapter 554, Statutes of 1999: created new regulations for garment manufacturers and their contractors to prevent wage theft within the industry. Created a

special fund using money from garment manufacturer's registration fees to cover unpaid wage claims brought against an employer or contractor in the garment industry in cases where the claim cannot be paid by the violator.

5. Double Referral

Should SB 1260 be passed out of the Senate Labor, Public Employment and Retirement Committee, the bill will be sent to the Senate Judiciary Committee for hearing.

SUPPORT

None on file.

OPPOSITION

None on file.

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