Agenda Item 8b

August 17, 2015

ITEM NAME: Senate Bill 588 (de León) – Wage Theft Recovery

As Amended July 1, 2015

PROGRAM: Legislation

ITEM TYPE: Legislation – Information

EXECUTIVE SUMMARY

Senate Bill (SB) 588 (de León) allows the State Labor Commissioner to file a levy, or in limited cases, a lien on an employer's property to enforce court judgments for unpaid wages and other compensation, penalties, and interest owed to an employee for work performed in this state. This item is being presented as an information item at the request of the Board.

STRATEGIC PLAN

Legislation addressing the enforcement of judgments against employers for non-payment of wages is outside the scope of the CalPERS 2012-17 Strategic Plan.

BACKGROUND

Wage theft is a labor law violation where an employer fails to pay an employee a required minimum wage or overtime, does not pay for off-the-clock work, withholds tips or payment of final wages. When an employer engages in wage theft, the affected employee has the ability to file a claim against the employer with the California Department of Industrial Relations, Division of Labor Standards Enforcement (also known as the Labor Commissioner's Office).

The Labor Commissioner conducts an investigation and holds an administrative conference or hearing with the affected parties to issue a decision. Decisions may be appealed to the appropriate civil court. However, recent studies have shown that when an employee wins a favorable decision, the current process of collecting unpaid wages or other compensation has been difficult and ineffective.

Existing law allows the Labor Commissioner to collect unpaid wages or other compensation on the behalf of an affected employee, and sets forth the processes to issue a lien to collect unpaid wages and other compensation. However, these processes and liens are, generally, specific to laborers who provided supplies for, or performed labor to, real property. Under the current law, service workers, employees who did not perform labor related to construction or making improvements to real property, are not eligible to make use of what are commonly referred to as a "mechanic's lien".

Last year, AB 2416 (Stone, 2014) proposed the California Wage Theft Recovery Act that would have allowed an employee to request that the Labor Commissioner place a pre-judgment lien on an employer's real and personal property at the time of filing a complaint for unpaid wages. AB 2146 failed passage on the Senate Floor. A bill introduced in the year prior that was substantially similar in content, AB 1164 (Lowenthal, 2013), reached the Assembly Floor, but was not voted upon.

ANALYSIS

1. Proposed Changes
   SB 588 allows the Labor Commissioner to enforce judgments against employers who fail to satisfy a final judgment and to collect unpaid wages on the behalf of employees who are not eligible to file a "mechanic's lien" for unpaid wages by:

   - Allowing the Labor Commissioner to mail a notice of levy to all individuals that possess or control any credits, money, or property (excluding real property) belonging to an employer no earlier than 20 days after a judgment for unpaid wages is entered by a court in favor of the Commissioner or employee, and with the consent of the affected employee.

   - Requiring individuals receiving a notice of levy to surrender the credits, money, or property to the Commissioner, or pay to the Commissioner the amount owed, within ten days. Individuals complying with the notice of levy would be discharged from any obligation or liability to the employer, however, those that do not comply would be liable to the Commissioner for an amount equal to the levy.

   - Requiring employers to either cease business operations or obtain and file a surety bond of $150,000 with the Commissioner within 20 days of the deadline to appeal the judgment, if a final judgment against the employer remains unsatisfied and no appeal is pending, subject to specified exceptions.

   - Failure to comply with the bond requirements would subject an employer and individuals acting on its behalf to specified stop orders and civil penalties. Employers receiving a stop order would be required to pay employees up to 10 days lost wages. It would also allow the Commissioner to file a lien on a noncomplying employer's real and personal property for the full amount of wages, interest and penalties owed.

   - Holding individuals, partnerships, corporations, limited liability companies, joint ventures, or associations jointly and severally liable with the employer for liens against real property if the entity has been named a defendant to the extent that the amount is for services performed under specified contracts for property and long-term care services.

- Requiring property and long-term-care services providers to notify parties to their contracts as to any outstanding wage violations or unsatisfied judgments.

- Prohibiting the State Department of Health or the State Department of Social Services from issuing or renewing a license for an employer in the long-term care industry if the employer is conducting business without meeting the surety bond requirement.

2. Arguments in Support
According to the author,

> *"Wage theft keeps workers in poverty and increases inequality. While wage theft affects all low-wage workers, immigrant and women workers are most likely to be exploited. Fully one-half of Latina immigrants make less than minimum wage. (UCLA Labor Center, 2010). If you factor in wage theft, millions of Californians are working below the minimum wage."*
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> *"Wage theft doesn't just hurt workers and their families: it puts honest businesses at risk by creating an uneven playing field. This drives working conditions down for every worker due to unfair competition."*
>
> *California's labor laws are strong, but the Labor Commissioner – who is charged with enforcing California's labor laws - does not have all the tools needed to collect stolen wages…"*
>
> *"Enforcement is made more difficult because so much of the low-wage sector is now structured using layers of contractors and subcontractors, allowing the actual employers of record and beneficiaries of the work provided able to avoid legal responsibility…"*
>
> *"SB 588 gives the Labor Commissioner additional tools to collect from employers who have exhausted all appeals for their non-payment of wages and have final judgments owed."*

The co-sponsors of the bill, the Service Employees International Union, the Koreatown Immigrant Workers Alliance, and the Wage Justice Center state that SB 588: "…gives the Labor Commissioner the authority to hold individual business owners accountable for their debts to workers. This will discourage business owners from rolling up their operations and walking away from their debts to workers and starting a new company."

According to the Assembly Judiciary Committee Analysis, supporters indicate the bill is intended to target the long-term care and property services industries, which are at higher risk for wage theft by "establishing procedures to ensure parties are held individually responsible to ensure that employers can't evade the law through contracting and subcontracting arrangements."

3. Arguments in Opposition
   There is no registered opposition to the bill, however, the Assembly Labor and Employment Committee analysis indicates that several groups, including the California Chamber of Commerce, have expressed concern that particular provisions of SB 588 negatively impact employers that do not operate in the underground economy, including the ones that.

> *"…imposes joint and several liability on employers for "property services" contracts and state that an employer should not be forced to cover the liabilities of another company that the employer had no reasonable opportunity or ability to prevent. Second, they argue that this bill improperly imposes personal liability on lower-level supervisors and managers of a company for wage and hour violations the employer could not prevent. Finally, they argue that the amount of the proposed bond needs to be adjusted to encourage payment of the underlying judgment. They suggest the amount of the bond should be left to the discretion of the Labor Commissioner to take into account the totality of circumstances in order to achieve the necessary balance."*

BUDGET AND FISCAL IMPACTS
Not Applicable.

BENEFITS/RISKS
Not Applicable.

ATTACHMENTS
Attachment 1 – List of Support and Opposition

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