AB 1234 (ORTEGA) – OPPOSE/COST DRIVER

COST DRIVER

April 14, 2025

TO: Members, Assembly Judiciary Committee

SUBJECT: AB 1234 (ORTEGA) EMPLOYMENT: NONPAYMENT OF WAGES: COMPLAINTS OPPOSE/COST DRIVER – AS INTRODUCED FEBRUARY 21, 2025

The California Chamber of Commerce and organizations listed below are **OPPOSED** to **AB 1234 (Ortega)**, as a **COST DRIVER,** which penalizes defendants for exercising their right to a hearing on the merits. We support the goal of expediting claims through the Labor Commissioner's office, especially in circumstances where the employer does not take the claim seriously. However, we have some concerns about the proposed procedural changes and cannot support a new, automatic thirty percent penalty that would apply regardless of whether the defendant acted in good faith.

AB 1234's Thirty Percent "Administrative Fee" is a Penalty

AB 1234 imposes a thirty percent "administrative fee" on every single order, decision, or award issued by the Labor Commissioner.[1] This is a penalty by another name. It is an automatic thirty percent increase of whatever amount is found owed by the employer, which may already include penalties.

That penalty applies regardless of the type of violation, whether the violation was willful or not, whether the employer appeared at the hearing or not, whether penalties were already assessed under other provisions of the Labor Code, and regardless of the size of the employer. It also applies to any ODA where the defendant is an individual person, which is a possibility under Labor Code section 588.1.

This new, automatic penalty is not only excessive, but it also conflicts with established public policy. As the California Supreme Court reminded us just last year:

> [T]he purpose of imposing civil penalties is typically, as with punitive damages, not primarily to compensate, but to deter and punish . . . Those who proceed on a reasonable, good faith belief that they have conformed their conduct to the law's requirements do not need to be deterred from repeating their mistake, nor do they reflect the sort of disregard of the requirements of the law and respect for others' rights that penalty provisions are frequently designed to punish.

Naranjo v. Spectrum Security Services, Inc., 15 Cal.5th 1056, 1075 (2024).

AB 1234 penalizes employers who exercise their right to a hearing, especially in cases where legitimate, good faith disputes exist. For example, disputes over reimbursements or whether specific managers provided timely rest breaks often arise without clear documentation or with fact-specific issues. Automatically imposing a penalty on an employer for exercising their right to a hearing is unjust, particularly when they are seeking a resolution to a genuine dispute.

A Defendant's Answer Should Still Be Due After the Informal Conference

Another concern with **AB 1234** is that it would mandate a detailed answer be filed prior to the initial informal conference. Wage claims brought before the Labor Commissioner's office are often filed by employees who, at least initially, are not represented by counsel. Consequently, the initial complaint may lack sufficient detail. The initial conference presents an opportunity for both parties to meet with the Labor Commissioner's

[1] That "fee" would go to a fund for purposes of Labor Commissioner office staffing. All employers presently already fund the Labor Commissioner's office through their annual workers compensation assessments.

office (and often each other) to flesh out the claim. The Labor Commissioner's office often helps the claimant add potential claims or requested penalties to the claim based on those conversations. If settlement is not reached, an answer then makes sense at that stage. Otherwise, to require the answer earlier will result in many answers simply stating the employer has insufficient knowledge to address the claim. The bill is also unclear about whether it applies to claims presently pending before the Labor Commissioner and how timing would work in those claims at various stages of the process.

Further, if a defendant is added during the process, we believe the Labor Commissioner should have the ability to call another conference if that would prove beneficial. In certain industries such as the entertainment industry, it is not uncommon to have the claim name an entity that is not the correct employer and to have another entity added later. Proposed section (c)(1) would require the claimant to approve any further conferences, and we believe the Labor Commissioner should have sole discretion to determine whether a conference is needed.

The Labor Commissioner Should Enter Judgments Based on Evidence

Proposed section 98(a)(4) provides that if the defendant fails to submit an answer on time, the Labor Commissioner "shall" issue the ODA in the amount alleged due in the claim. Sections 98(d)(4) and (c)(1) provide that if the defendant fails to appear at the hearing or at the settlement conference, the Labor Commissioner "may" issue the ODA in the amount alleged due in the claim.

Presently, if the defendant does not appear or answer on time, the Labor Commissioner may issue an ODA "in accordance with the evidence." That current law mirrors what happens in civil court where there is a default: the plaintiff must provide a declaration laying out the evidence after a default is issued. The court may then request a hearing if there are questions about the declaration prior to entering a default judgment. **AB 1234** provides that the Labor Commissioner must enter ODA in the full amount requested even if there is no evidence other than the complaint where there is no answer, and that it can do the same if the defendant is not present at the conference or hearing. We believe that the Labor Commissioner, like the courts, should consider the evidence presented and have the right to request testimony or further evidence from the claimant. Otherwise, simply being late in filing an answer would *automatically* result in an ODA in the full amount claimed, regardless of whether the claimant was accurate or truthful. While we understand the goal of expediting claims against non-responsive employers, we believe the Labor Commissioner should be able to review the evidence and request further testimony, if needed, to ensure the allegations are accurate.

Courts Should Have Discretion Regarding Consolidation

Proposed section 98.2(f) provides that a court may not consolidate any action filed for appeal with any other action that does not arise out of the wage claim covered by the ODA. Courts should have discretion to manage their own dockets to enable the just and efficient resolution of cases. *See, e.g.*, CRC Standard No. 2.1. If there is a situation in which consolidating one action with another would achieve those goals, the same rules as in other cases should apply. That principle also makes sense in conjunction with proposed 98.2(e), which says that the court shall have jurisdiction over claims not stated in the underlying wage claim.

Appeals Procedures

Proposed section 98.2(a) provides that all appeals to the superior court shall be classified as an unlimited civil case. There are already thresholds surrounding when a case is classified as unlimited. If the amount in controversy does not exceed $25,000, the case is "limited" because there is a streamlined judicial process for faster resolution. We believe whether a case is classified as unlimited or limited should fall under the same demand thresholds.

Proposed 98(f) provides that while a defendant may seek relief from the Labor Commissioner under Code of Civil Procedure section 473 (which allows defaults to be set aside), the power for the Labor Commissioner to grant that relief terminates if an appeal is filed. Parties only have ten days to appeal. A party would

effectively always be forced to file for an appeal instead of waiting to see if the Labor Commissioner grants relief under section 473.

Proposed 98.2(b) would require every defendant appealing to post their own bond. So, if three defendants are jointly liable for $1,000, then a bond must be posted for $3,000 because each defendant needs to post a bond. Where two defendants are the same entity, (e.g., a company and a managing agent), this is a higher hurdle to be able to appeal.

For these and other reasons, we **OPPOSE AB 1234 (Ortega)** as a **COST DRIVER**.

Sincerely,

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Senior Policy Advocate
California Chamber of Commerce

Acclamation Insurance Management Services (AIMS)
Agricultural Council of California
Allied Managed Care (AMC)
Anaheim Chamber of Commerce
Associated General Contractors of California
Associated General Contractors – San Diego Chapter
Brea Chamber of Commerce
California Alliance of Family-Owned Businesses (CAFOB)
California Apartment Association
California Association of Sheet Metal and Air Conditioning Contractors National Association
California Chamber of Commerce
California Farm Bureau
California Hotel and Loding Association
California League of Food Producers
California Retailers Association
California State Council of the Society for Human Resource Management
California Trucking Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Coalition of Small and Disabled Veteran Businesses
Colusa County Chamber of Commerce
Corona Chamber of Commerce
Elk Grove Chamber of Commerce
Flasher Barricade Association (FBA)
Gateway Chambers Alliance
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Housing Contractors of California
La Cañada Flintridge Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation of Independent Business
Newport Beach Chamber of Commerce
Norwalk Chamber of Commerce
Oceanside Chamber of Commerce

Orange County Business Council
Palos Verdes Peninsula Chamber of Commerce
Paso Robles and Templeton Chamber of Commerce
Rancho Cucamonga Chamber of Commerce
Rancho Mirage Chamber of Commerce
Roseville Area Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Simi Valley Chamber of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Valley Industry & Commerce Association
West Ventura County Business Alliance
Western Electrical Contractors Association (WECA)
Western Growers Association
Wine Institute

cc: Legislative Affairs, Office of the Governor
Stephanie Gerstle, Office of Assemblymember Ortega
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