

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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MILES E. LOCKER, *Chief Counsel*

September 23, 1999

Jill A. Porcaro, Esq.
Epstein Becker & Green
1875 Century Park East
Suite 500
Los Angeles, CA 90067-2501

Re: What Constitutes A Written Contract "For A Definite
Period" Within The Meaning Of *Labor Code Section 202*
In Determining The Applicability of *Section 203* Penalties

Dear Ms. Porcaro:

This is in response to your April 15, 1999, letter requesting an opinion as to whether an employer would be subject to penalties pursuant to *Labor Code Section 203* if an employee with a written agreement to work for a definite period of one year voluntarily quits and is not paid his or her wages within the time specified by *Labor Code Section 202* following the employee's termination. For the reasons discussed below, we do not believe the contract you describe constitutes a contract for a definite period of employment; and thus, we believe that an employee who voluntarily quits his or her employment under such a contract is entitled to payment of final wages in accordance with *Section 202*, and would be entitled to penalties under *Section 203* if the employer willfully fails to pay final wages within the time required by *Section 202*.

As you correctly point out, *Section 202* states in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, . . ." The plain reading of *Section 202* is that its provisions apply only to those employees who do not have a written agreement that provides for a definite period of employment. Because *Labor*

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Code Section 203 is expressly based on a violation of Sections 201, 201.5, 202 or 205.5, an employer cannot be subject to penalties under Section 203 where there is a written employment agreement for a definite period of time.

However, the question you present concerns a written contract that we would not interpret as providing "for a definite period of time." You state that the contracts at issue "contain a provision that allows the employer or employee to terminate the contract at any time by giving ten days written notice to the other party." No cause is necessary for such a termination with notice, as evidenced by another contract provision that allows the employer to terminate an employee for cause without any prior notice. The provision allowing for termination for any reason without cause means that instead of a written contract "for a definite period", we are instead facing a contract for an indefinite period for up to one year.

You also ask whether the final wages of an employee with a written contract for a definite period of employment must be paid in accordance with *Labor Code Section 204*, and whether the failure to pay such final wages in accordance with *Section 204* would subject the employer to penalties under *Section 210*. *Section 204* provides for payment of wages twice each month on designated pay days for those employees that do not fall within the scope of *Sections 201, 202, 204.1 or 204.2*. Since the employees you describe do not have written employment contracts for a definite period of time, *Section 202*, rather than *Section 204*, would govern the payment of final wages following a voluntary quit. On the other hand, an employee covered by a written contract that truly provides for "a definite period" of employment, would not be covered by *Section 202*. Instead, the timing of payments for such an employee's wages would be governed by *Section 204*, and an employer's failure to comply with *Section 204* would subject the employer to penalties under *Section 210*. Again, this is not the situation described in your letter, notwithstanding your characterization of the contracts at issue as "run[ning] for a definite period of one year."

It should also be noted, that if an employee is terminated, as opposed to resigning voluntarily, *Labor Code Section 201* would apply regardless of whether there is a written employment contract for a definite period of time. Under those circumstances, failure of the employer to pay all wages due and owing immediately upon termination would subject the employer to

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penalties under *Labor Code Section 203*.

Thank you for your interest in California labor laws. Please feel free to contact this office with any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Miles E. Locker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Miles E. Locker
Chief Counsel

MEL:bf

cc: Marcy Saunders
Rich Clark
Dan Cornet
Tom Grogan
Roger Miller
Greg Rupp
Nance Steffen
All DLSE Attorneys

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