

TITLE 8. DIVISION OF LABOR STANDARDS ENFORCEMENT

Title 8, California Code of Regulations Division 1, Chapter 6, Subchapter 8 Sections 13630 through 13659

NOTICE OF PROPOSED RULEMAKING

The Labor Commissioner of the State of California ("Commissioner") proposes to amend and adopt regulations to implement and interpret the provisions of AB 633 (Stats. 1999, Chapter 554) and other statutes (Division 2, Part 11, Chapters 1 and 2 of the Labor Code, commencing with section 2670) governing the enforcement of minimum wage and overtime requirements in the garment industry, and the registration of persons engaged in garment manufacturing. The Commissioner proposes to amend certain regulations related to garment manufacturing (Title 8, California Code of Regulations, Division 1, Chapter 6, Subchapter 8, sections 13630-13654), and to adopt certain new regulations necessitated by AB 633 (included within the above-referenced subchapter, sections 13655-13659) after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARINGS, WRITTEN COMMENT PERIOD, AND AGENCY CONTACTS

Public Hearings:

Public Hearings will be held on the proposed regulations as follows:

October 4, 2001 from 10:00 am to 5:00 pm
Hiram Johnson Building
Auditorium, Basement Level
455 Golden Gate Avenue
San Francisco, California

October 12, 2001 from 10:00 am to 5:00 pm
Ronald Reagan State Building
Auditorium
300 South Spring Street
Los Angeles, California

The auditoriums are wheelchair accessible. At the hearings, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The Commissioner requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

Written Comment Period:

Any person or authorized representative may submit written comments relevant to the proposed regulatory action to the contact person listed below. The written comment period closes on October 12, 2001 at 5:00 pm, and the Commissioner will only consider comments received by that deadline. Written comments received after that deadline will not be considered. Written comments may be submitted in person at one of the hearings, or by letter, facsimile, or e-mail as follows:

AB 633 Comments
Division of Labor Standards Enforcement -- Legal Section
P.O. Box 420603
San Francisco, CA 94142
Facsimile: (415) 703-4806
E-mail: AB633comments@dir.ca.gov

Agency Contacts:

Inquiries concerning the procedures governing the consideration and adoption of these regulations may be directed to:

Pat Johnson or
Kathleen Llemos (backup)
Division of Labor Standards Enforcement
P.O. Box 420603
San Francisco, CA 94142
(415) 703-4810

Inquiries concerning the substance of the proposed regulations may be directed to:

Miles E. Locker
Division of Labor Standards Enforcement -- Legal Section
P.O. Box 420603
San Francisco, CA 94142
(415) 703-4863

or to:

Anne Stevason
Division of Labor Standards Enforcement -- Legal Section
320 W. 4th Street, Suite 430
Los Angeles, CA 90013
(213) 897-1511

AUTHORITY AND REFERENCE

Labor Code section 2672 authorizes the Commissioner to promulgate all regulations and rules necessary to carry out the provisions of Part 11 of Division 2 of the Labor Code, commencing with section 2670. Also, Labor Code section 2671(b) authorizes the Department of Industrial Relations to adopt and amend regulations to clarify and refine the definition of "garment manufacturing." The Commissioner is the chief of the Division of Labor Standards Enforcement, a division of the Department of Industrial Relations. (Labor Code §79) Thus, Labor Code sections 2671(b) and 2672 authorize the Commissioner to adopt or amend the proposed regulations dealing with the enforcement of minimum wage and overtime requirements in the garment industry, and the registration of persons engaged in garment manufacturing.

Additionally, Labor Code section 95 authorizes the Commissioner to enforce the provisions of the Labor Code and all state labor laws the enforcement of which is not specifically vested in any other officer, board, or commission. Many of these laws apply to workers employed in the garment industry, and as such, these

proposed regulations implement certain labor laws of general application as they pertain to employees of employers engaged in garment manufacturing.

Also, Labor Code section 2666 authorizes the Commissioner to make rules and regulations as are reasonably necessary to carry out the provisions of Part 10 of Division 2 of the Labor Code, commencing with section 2650. These provisions include the prohibition of manufacturing garments through industrial homework, the authorization to confiscate goods that are evidence of unlawful industrial homework, and the requirement that such goods be disposed of in accordance with duly promulgated regulations. Insofar as industrial homework confiscations are designed to accomplish the same purpose of confiscations of garments manufactured by unregistered contractors or manufacturers, the provision in these proposed regulations dealing with the disposition of confiscated goods derives authority from both Labor Code sections 2666 and 2672.

The proposed regulations implement, interpret, or make specific the following sections of the Labor Code: 92, 98, 98.1, 98.2, 203, 226, 226.7, 1185, 1193.6, 1194.2, 1194.5, 1195.5, 2651, 2658.7, 2664, 2671, 2672, 2673, 2673.1, 2674.1, 2675, 2675.5, 2677, 2678, 2679, 2680, 2681, and 2802.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commissioner is responsible for enforcing laws governing the payment of minimum wages, overtime, and other compensation, including laws specific to the garment industry. These laws are enforced through the Commissioner's exercise of quasi-adjudicatory authority to hold hearings and issue decisions on employee claims for unpaid wages, penalties, and other amounts owed by an employer; through the Commissioner's exercise of prosecutorial authority to conduct investigations and prosecute court actions for unpaid wages, penalties, and other amounts owed to employees; and in the garment industry, through the Commissioner's authority to issue or revoke or suspend certificates of registration to garment contractors or manufacturers engaged in garment manufacturing. The existing regulations were adopted during the 1980's to implement the statutes then in effect dealing with labor law enforcement and registration requirements in the garment industry.

In 1999, in response to widely publicized reports of ongoing abuses in the garment industry, the Legislature enacted AB 633 (Stats. 1999, Ch 554), which substantially revised the existing laws governing garment manufacturing. The primary change brought about by AB 633 was the creation of a "wage guarantee," under which garment manufacturers are now liable for guaranteeing payment of minimum wages and overtime compensation to employees of their contractors. A manufacturer's liability for the wage guarantee is limited to its proportionate share of the work performed at a contractor's worksite during the pay period in which minimum wages and overtime compensation are owed. However, AB 633 did not establish any new record keeping requirements, and the various recordkeeping obligations on the part of garment manufacturers and contractors pre-dated the enactment of AB 633 are insufficient to enable the Commissioner to make determinations as to a manufacturer's proportionate share of liability for the wage guarantee. Nor did AB 633 set out any methodologies for determining proportionality with respect to the manufacturer's wage guarantee. These proposed regulations address these gaps in AB 633, by defining the methodologies that may be used by the Commissioner to determine proportionality, and by creating certain new record keeping requirements to enable the Commissioner, using these methodologies, to determine the identity and proportionate liability of any manufacturers for unpaid minimum and overtime wages owed to the employees of a garment contractor.

AB 633 also established a claims procedure by which an aggrieved employee may enforce a claim for unpaid wages against a garment contractor and the manufacturer(s) contracting with the contractor. This procedure, though based upon the wage adjudication process set out at Labor Code section 98 that governs

all other wage claims heard by the Commissioner, contains certain provisions that differ from the general wage adjudication process. Under AB 633, the Commissioner is mandated to commence an investigation of the wage claim within ten business days after the claim is filed, and to complete this investigation, and present the investigator's findings as to the amount of wages owed, and the identity and proportionate liability of any guarantor(s) at a "meet-and-confer" conference, held within 60 days of the date the claim is filed. Failure to resolve this case at the meet-and-confer conference will result in the claim being scheduled for a section 98(a) wage adjudication hearing, and subjects the contractor and manufacturer(s) to liability for the claimant's attorney's fees if the claimant prevails in this hearing. Following this hearing, in order to file a de novo court appeal from the Commissioner's decision, the contractor or manufacturer(s) must post a bond with the Commissioner (rather than with the court, as in all other employer appeals of wage adjudication hearings) in an amount equal to one and a half times the Commissioner's award. These proposed regulations are designed to implement and interpret these unique statutory provisions by clarifying the nature of the amounts that must be included in the investigator's findings and in the Commissioner's decision following a hearing, and the basis upon which attorney's fees (both as to liability and amount) are determined. The proposed regulations also establish the procedure to be followed for depositing an appeal bond with the Commissioner, which includes a written acknowledgment of the posting of the bond so as to enable the contractor or manufacturer to thereafter file an appeal with the appropriate court.

AB 633 also increased the annual registration fee for businesses engaged in garment manufacturing, creating a minimum fee of \$250 for both contractors and manufacturers, and a maximum fee of \$1,000 for contractors and \$2,500 for manufacturers, with the exact amounts payable by each applicant to be determined by the Commissioner, and "based on the applicant's annual volume," so that when aggregated, the collected fees would be sufficient to recover the Commissioner's costs of administration of the laws governing garment manufacturing. The proposed regulations define the term "annual volume" as gross sales receipts, and establishes a fee scale, within the statutory range, to ensure that based on the anticipated number of registrants at each level of the scale, the Commissioner will collect sufficient amounts to defray the costs of administering the garment manufacturing laws.

AB 633 defines "garment manufacturing," to include both the performance of garment manufacturing operations (such as sewing, cutting, finishing, or assembling garments) and the act of contracting to have those operations performed. AB 633 further defines "contractors" as persons who are primarily engaged in the performance of garment manufacturing operations. AB 633 does not contain an express definition of a "manufacturer." Under AB 633, all persons engaged in "garment manufacturing" must be registered, and manufacturers are subject to a higher registration fee than contractors. In order to clarify who is a manufacturer, both for purposes of determining the amount of the registration fee and for determining liability for the wage guarantee, these proposed regulations define "manufacturers" as persons who are engaged in "garment manufacturing," within the meaning of the law, but who are not contractors.

Since 1981, provisions in the Labor Code have prohibited the Commissioner from granting any application for registration unless the Commissioner, after investigation, is satisfied as to the applicant's character, competency and responsibility. Furthermore, the Commissioner is authorized to revoke any registration for good cause. AB 633 expressly provides that the Commissioner may revoke the registration of any registrant that fails to timely pay a final award of unpaid wages. The existing regulations do not adequately set out the procedures for revocation hearings, and fail to set out any procedures for hearings on the denial of an application. The proposed regulations set out a detailed procedure that is modeled after provisions in the Government Code designed to ensure adequate due process, for the initiation and conduct of hearings to deny an application or to revoke or suspend a registration. The proposed regulations also expand on the sort of information that an applicant for registration must provide to the Commissioner, to ensure that the Commissioner has the necessary information to determine whether the applicant has the requisite character, competency and responsibility.

Finally, AB 633 gives the Commissioner the authority to enforce the wage guarantee with or without a claim having been filed by any employee, by authorizing the Commissioner to conduct investigations as to whether garment workers are being paid the minimum wage and required overtime compensation, and to file civil actions to enforce the wage guarantee. However, prior to filing such a civil action under AB 633, the Commissioner must provide each guarantor and employee with notice of the Commissioner's investigation and findings, an opportunity for a meet-and-confer conference, and an opportunity for a hearing. The proposed regulations establish the procedures that the Commissioner must follow prior to the filing of a civil action to enforce the wage guarantee.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commissioner has made the following initial determinations with respect to these proposals. The Commissioner notes that these proposals implement Labor Code section 2672's duty to adopt regulations necessary to carry out the provisions of Labor Code section 2670, *et seq.*, which includes the recently enacted provisions of AB 633. The Commissioner invites further comment on these specific impacts.

Mandates on Local Agencies or School Districts:

The proposals do not impose mandates on local agencies or school districts.

Costs or Savings to State Agencies:

By requiring the Commissioner to undertake expedited and comprehensive investigations and hearings of garment workers' claims for unpaid minimum wages and overtime compensation, including the obligation to ascertain the identity of potential wage guarantors, and to determine each guarantor's proportionate liability, AB 633 imposed sharply increased costs on the Division of Labor Standards Enforcement (DLSE). These proposed regulations do not create any savings for DLSE nor do they create either costs or savings for other state agencies.

Reimbursable Costs Imposed on Local Agencies or School Districts:

None.

Other Nondiscretionary Costs or Savings to Local Agencies:

None.

Costs or Savings in Federal Funding to the State:

None.

Initial Determination of Economic Impact on Business:

The Labor Commissioner has made an initial determination that these proposals will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

The proposed regulations establish certain new recordkeeping requirements, to enable the Commissioner to

determine the identities and proportionate liability of any wage guarantors, and new reporting requirements on applications for registration as a garment manufacturer or contractor to enable the Commissioner to carry out the statutorily mandated duty of determining whether such applicants possess the requisite character, competency and responsibility. These new requirements will have no more than an insignificant economic impact on affected businesses.

Known Cost Impacts on Representative Private Person or Business:

The proposed regulations create certain recordkeeping and reporting requirements. Compliance with these requirements entails insignificant costs. Otherwise, this agency is not aware of any cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action.

Creation, Elimination, or Expansion of Jobs or Businesses (Result of Assessment Under Government Code section 11346.3(b):

The Commissioner has made the initial determination that the proposed regulations will neither affect nor have any impact on: (1) the creation or elimination of jobs in California, (2) the creation of new businesses or the elimination of existing businesses in California, and (3) the expansion of businesses currently doing business in California.

Reporting Requirements [Finding Under Government Code section 11346.3(c):

None required

Effect on Housing Costs:

These proposals have no effect on housing costs.

Effect on Small Business:

Small businesses that engage in garment manufacturing, typically as contractors, will be affected by these proposals. AB 633 gave the Commissioner the authority to increase annual fees for registration of garment contractors and manufacturers within a prescribed range (\$250 to \$1,000 for contractors, and \$250 to \$2,500 for manufacturers) based on the applicant's annual volume. The proposed regulations minimize the impact on small businesses by placing them on the lower end of the registration fee schedule. Additionally, the proposed requirement that all contracts between garment manufacturers and contractors for the performance of garment manufacturing operations be in writing is expected to have little or no impact on small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commissioner must determine that no reasonable alternative considered by the Commissioner or that otherwise has been identified and brought to the Commissioner's attention would either be more effective in carrying out the purpose for which the action is proposed or be as effective and less burdensome to affected private persons than the proposed action.

During the period since the enactment of AB 633, the Commissioner has solicited the input of interested persons and organizations representing garment workers, contractors, manufacturers and retailers, in an

effort to maximize public participation prior to the initiation of the formal rule-making process, to help the Commissioner identify alternative proposals to implement the provisions of AB 633, and to allow the Commissioner to make reasoned choices as to which alternatives would best implement the law in the least burdensome way. To the maximum extent possible, these proposed regulations reflect a consensus among the affected parties. As to those few provisions where a consensus could not be reached, the Commissioner has made the initial determination that the rejected alternatives would be less effective than the proposed regulations in carrying out the purpose for which these regulations are proposed.

The Commissioner invites interested persons to comment with respect to alternatives to the proposed regulations at the scheduled hearings or during the written comment period.

OTHER MATTERS AS PRESCRIBED BY STATUTE:

No statutory or other notice and public comment requirements other than those that appear in Chapter 3.5 of the Administrative Procedure Act, commencing at Government Code section 11340, apply to the adoption of these proposed regulations.

AVAILABILITY OF INFORMATION PERTAINING TO THE PROPOSED ACTION

The Commissioner will have the rulemaking file available for inspection and copying throughout the rulemaking process. Initially, the file will consist of this notice, the initial statement of reasons, and the text of the proposed regulations.

Website:

The text of the proposed regulations may be accessed through the [Division of Labor Standards Enforcement's](http://www.dir.ca.gov) internet website at www.dir.ca.gov

Availability of Changed or Modified Text:

After holding the hearings and considering all timely and relevant comments received, the Commissioner may adopt the proposed regulations substantially as described in this notice. If the Commissioner makes modifications which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days before the Commissioner adopts the regulations as revised. Any such modifications will also be posted on the Division's website. Please send requests for copies of any modified regulations to the attention of the contact person listed above. The Commissioner will accept written comments on the modified regulations for 15 days after the date they are made available.

Availability of the Final Statement of Reasons

Upon completion, the final statement of reasons will be available and may be obtained from contact persons named in this notice.