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September 8, 2000

The Honorable Gray Davis
Governor, State of California
State Capitol
Sacramento, CA 95814

Dear Governor Davis:

I am writing to respectfully request that you sign AB 2509, a bill designed to ensure that workers receive the pay that they have *earned and may collect* unpaid wages in a fair and timely manner.

AB 2509 does not raise the minimum wage, change overtime law, or establish new employee rights with respect to wages, hours, or working conditions. It is designed solely to enforce the existing laws in a fair manner to protect the rights of workers, legitimate employers, and taxpayers. This bill is sponsored by the California Labor Federation, AFL-CIO and a host of member unions.

AB 2509 began as an omnibus bill to amend numerous wage and hour laws, but has now been pruned way back to remove the most controversial provisions and amend other provisions in response to opposition concerns. AB 2509 does the following:

1. Clarifies method to calculate interest rates on unpaid wages.

Current law establishes the legal rate of interest on wages (10%) in labor commissioner hearings and court cases. This bill replaces outdated code sections in current law and cites the correct code sections for interest.

2. Requires posting of an appeal bond to guarantee that wages will be paid.

Under current law, a worker may file a wage claim for unpaid wages with the Labor Commissioner (Commissioner), who holds a hearing on the matter. An employer who appeals the Commissioner's final decision to court is entitled to a de novo trial, which delays a final decision for a long period of time. During that period, the employer may disappear or declare bankruptcy. The bill requires an employer who appeals the Commissioner's final decision to post an undertaking. This assures that the worker will

be paid if the worker ultimately prevails in court. A similar provision applies to the garment industry under AB 633, Chapter 554, Statutes of 1999.

3. Includes all workers in protection from intentionally-issued bounced payroll checks.

This section was amended and limited in response to your veto message of AB 1652 last year. As amended, this section now provides that the employee cannot collect the penalty for a bounced payroll check, even if the employer's action is intentional, if the employee elects to sue and collects a penalty under existing section 1719 of the Civil Code. The amendment protects employers from being penalized twice. The penalty does not apply if the employer's failure was unintentional, is limited to a maximum of 30 days, and stops if the employer pays the worker before that time.

4. Codifies case law regarding attorney's fees under two Labor Code sections.

Labor Code 1194 provides that in minimum wage and overtime cases a prevailing employee may collect attorney's fees. Labor Code section 218.5 provides for prevailing party attorney's fee in other wage cases. The bill amending section 1194 to establish the employee's right and protect the employee from defense fees in minimum wage and overtime cases only was signed into law by Governor Wilson. This bill codifies the holding of the Court in *Early v. Superior Court* which upheld this distinction.

5. Includes piece rate and hourly wage information in itemized wage statements.

Current law requires employers to issue itemized wage statements to employees, and contains penalties if they violate the law. This bill includes "piece rate" and "hourly wage" information, where applicable, in the itemized wage statement and increases the penalties for those employers who "knowingly and intentionally" violate the law. Over the past two years, the Labor and Employment Committee has looked into underground economy activities in several industries. In each of these industries, piece rate pay was common to employers who were not paying minimum wages. This bill does not impose a significant burden on legitimate employers who pay by piece rate since they already track piece rate by employee in order to issue the proper paycheck.

6. Codifies regulations establishing penalty for violation of meal and rest breaks.

As amended, this bill codifies the actions of the IWC establishing a penalty for an employer who violates the law requiring meal and break periods. Some have questioned the legal authority of the IWC to adopt this penalty. AB 2509, by codifying the IWC's penalty level, serves the goals of the sponsors of this measure by providing a remedy for a violation of the law (previously there was none) and ensuring that the IWC's actions will be legally sustainable. The bill as introduced had higher penalties, but has been amended to conform to the IWC levels.

7. Protects the right of employees to retain their tips.

The current law protects the right of employees to keep tips. This bill closes existing loopholes under which some employers in restaurants and dance clubs have been taking tips or portions of tips from employees.

I respectfully request that you sign this modest reform measure into law. If you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Darrell Steinberg".

DARRELL STEINBERG

DS/bkh

Existing law entitles an employee who performs work for more than five hours to a mandatory meal period of at least thirty minutes, unless waived under specified conditions by the mutual consent of the employer and employee. Additionally, an employee who works for a period of more than 10 hours must be given a second meal period of the same length of time, unless waived [Labor Code § 512].

Section 11 of every order of the IWC contains regulations governing meal periods. Neither Labor Code § 512 nor the IWC orders contain penalties for violation of these provisions. Labor Code § 558 provides for the imposition of penalties against an employer who violates a section of the chapter containing § 512, however, the penalties specified apply to the underpayment of wages and not to meal or rest period violations.

This bill prohibits an employer from requiring an employee to work during a meal or rest period prescribed by the IWC. Any employer who violates this provision is required to compensate an employee with one additional hour's pay at the regular rate for each day that a meal or rest period was denied.

DLSE has found that the fact the employers must pay employees their regular wages for working during a meal period is insufficient to discourage noncompliance (since regular wages must be paid for any time worked) and does little to protect the mandatory character of the off-duty meal period. Currently, the means of enforcing meal period requirements consists of filing an action for injunctive relief to compel prospective compliance with the law. Of course, an injunction does nothing to remedy past noncompliance.

FISCAL IMPACT:

This provision is not expected to have a fiscal impact for DLSE's enforcement programs.

ECONOMIC IMPACT:

None

PRO:

The IWC has acknowledged that duty-free meal periods are important to the health and safety of employees. Adding a penalty component to the Labor Code will support the underlying purpose of meal periods by encouraging employers to comply with the meal period provisions. Without the proposed provisions there is no effective enforcement of current law.

CON:

Opponents point out that rest periods are paid time while meal periods are not. They question the fairness of an employer being penalized and required to pay wages to the employee for rest periods—time that had already been paid by the employer.