

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1260 (Durazo)
Version: March 29, 2022
Hearing Date: May 3, 2022
Fiscal: No
Urgency: No
TSG

SUBJECT

Employment: garment manufacturing

DIGEST

This bill restores statutory penalties for minimum and overtime wage violations in the garment manufacturing industry. Those longstanding penalties -- liquidated damages equal to the wages and overtime withheld -- were inadvertently eliminated from the law during last minute amendments to related legislation enacted last year.

EXECUTIVE SUMMARY

For more than 20 years, California law imposed statutory penalties on garment manufacturers who get caught shorting the wages to which their workers are lawfully entitled. Specifically, in addition to having to make their workers whole, the garment manufacturers had to pay liquidated damages to the worker in an amount equal to the regular and overtime wages that the garment manufacturer failed to pay. Last year, California enacted new legislation intended to strengthen the laws that ensure garment workers receive all of the wages that they earn. During the drafting of last minute amendments to that legislation, the longstanding liquidated damages provision was inadvertently cut from existing law. As no such dramatic deviation from long-established law was intended, this bill has been introduced to fix the error and restore the law regarding liquidated damages clause to its prior state.

The bill is author-sponsored. There is no support or opposition on file. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 3-1. If the bill passes out of this Committee, it will next be heard on the Senate Floor.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines “garment manufacturing” as sewing, cutting, making, processing, repairing, finishing, assembling, dyeing, altering a garment’s design, causing another person to alter a garment’s design, affixing a label to a garment, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for sale or resale by any person or any persons contracting to have those operations performed and other operations and practices in the apparel industry. (Lab. Code § 2673(c).)
- 2) Defines “brand guarantor” as any person contracting for the performance of garment manufacturing as specified. (Lab. Code § 2673(d).)
- 3) Requires brand guarantors, garment manufacturers, and contractors who contract with another person for the performance of garment manufacturing operations to be jointly and severally liable with the manufacturer or contractor for all of the following:
 - a) the full amount of unpaid minimum, regular, overtime, and other premium wages, reimbursement for expenses, and any other compensation, including interest, due to any and all employees who performed the manufacturing operations;
 - b) penalties for the failure to obtain valid worker’s compensation insurance; and
 - c) the employee’s reasonable attorney’s fees and costs. (Lab. Code § 2673.1(a).)
- 4) Entitles employees who have not received at least minimum wage to liquidated damages equal to the amount of the unpaid wages. (Labor Code §1194.2)
- 5) Makes garment manufacturers and contractors liable for the full amount of damages and penalties, including interest, due to any and all employees, for specified violations, but not including liquidated damages for failure to pay minimum wage or overtime rates. (Lab. Code § 2673.1(b).)

This bill:

- 1) Restores the liability of garment manufacturers and contractors for liquidated damages in the amount of any unpaid minimum and overtime wages that a garment worker has earned but has not been paid.

COMMENTS

1. Background on SB 62

During the 2021 legislative year, the Legislature considered SB 62 (Durazo, Ch. 329, Stats. 2021). SB 62 was a response to ongoing reports of wage theft in the garment industry. (*See* Sen. Com. on the Judiciary Analysis of Sen. Bill No. 62 (2021-2022 Reg. Sess.) as introduced Dec. 7, 2020.) At the time, the law on the books spread liability for wage theft in the garment industry beyond just the direct employer of each garment worker. SB 62 proposed a series of provisions intended to strengthen these laws, including expanding liability for unpaid wages to the very top of the supply chains.

2. Longstanding liquidated damages provisions for minimum and overtime wage violations

SB 62 built upon earlier legislative efforts to deal with wage theft in the garment industry. In particular, AB 633 (Steinberg, Ch. 554, Stats. 1999) had created a whole set of specialized statutes to address the problem more than two decades earlier. Among other things, AB 633 contained a provision imposing liquidated damages for failure to pay minimum or overtime wages in the garment industry. (*See* Lab. Code § 2673.1(e) as it read from Jan. 1, 2000 to Dec. 31, 2021: “An employee shall be entitled to recover, from the contractor, liquidated damages in an amount equal to the wages unlawfully withheld, as set forth in Section 1194.2, and liquidated damages in an amount equal to unpaid overtime compensation due.”)

3. Need for this bill

During last minute legislative maneuvers, SB 62 was modified so that only garment manufacturers and contractors would be liable for damages and penalties, not brand guarantors. However, because it referred to violations of “this section” as opposed to violations of “this code,” the language of the amendment accomplishing this change had the inadvertent effect of eliminating the longstanding liability of garment manufacturers and contractors for liquidated damages in the event that a garment worker goes unpaid.

This bill corrects the problem.

4. Arguments in support of the bill

According to the author:

Fashion brands create poverty wages through unrealistic pricing of garment orders, and yet prior to the enacted of Senate Bill 62 (Chapter 329, Statutes of 2021) they had no legal liability. Combined with an archaic system of paying by a piece rate,

minimum wage has been out of reach for these skilled workers – the backbone of California’s fashion industry.

Last year the Legislature passed and the Governor signed into law Senate Bill 62 (Chapter 329, Statutes of 2021). This legislation improved existing law to make clear that a business contracting to have garments made is liable for unpaid wages to the skilled workers who make those garments – regardless of how many layers of contracting that company may use.

End of session amendments to SB 62 resulted in drafting errors and we are seeking to now correct them, so that there are no ambiguities in the law.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 62 (Durazo, Ch. 329, Stats. 2021) required a garment manufacturer who contracts with another person for the performance of garment manufacturing to jointly and individually share all civil legal responsibility and civil liability for all workers in that other person’s employ. Also prohibited the practice of piece-rate compensation for garment manufacturing, except in the case of worksites covered by a valid collective bargaining agreement.

SB 588 (De León, Ch. 803, Stats. 2015) authorized the Labor Commissioner to file a lien or levy on an employer’s property in order to assist the employee in collecting unpaid wages when there is a judgment against the employer.

AB 240 (Bonta, Ch. 272, Stats. 2011) authorized the Labor Commissioner to recover liquidated damages for an employee who brings a complaint alleging payment of less than the minimum wage.

AB 633 (Steinberg, Ch. 554, Stats. 1999) created new regulations for garment manufacturers and their contractors to prevent wage theft within the industry. Among

other things, the bill imposed liquidated damages in an amount equal to the violation on any employer paying less than minimum and overtime wages.

SB 955 (Torres, Ch. 825, Stats. 1991) subjected employers violating the minimum wage to liquidated damages in an amount equal to the unpaid wages.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 3, Noes 1)
