



INDEPENDENT CONTRACTOR RESTRICTIONS

House Bill 4390 (*Rep. Haadsma-44*)

- Changes the definition of an independent contractor from the “Economic Realities Test” to the California “ABC Test”.
 - A – Free from control of the sort exercised over employees (where, when, how the work can be performed).
 - B – Must perform work distinct from employees in the “usual course of business.”
 - C – Worker has “take[n] the usual steps to establish and promote his independent business...”
 - Innocence of any violation is 100% on the employer to prove, instead of on the claimant to prove employer is in the wrong (guilty until proven innocent)
- Increases the financial penalties by 10X if an employer is found guilty, as well as any taxes associated with missed wages.
- Includes the Attorney General in those who can file suit against the employer.
- Currently, no exemptions in the bill except as stated in other statutes (eg: real estate agents).
- Essentially, eliminates independent contractors like independent truck drivers, hair and nail technicians, consultants of any kind of gig worker.
- This is the exact language of the law that was enacted in California, however, it does not currently include exemptions – CA enacted over 109 exemptions since passing this legislation in 2019.
- An employer is liable for all missed wages and taxes for a misclassified employee.
- All contractors who do similar work to that of the business will need to be reclassified as employees, which includes paying employment taxes, unemployment, and workers’ compensation.



- An increase in paperwork, confusing definitions, and penalties – including potential felonies.
- Increased frivolous litigation.

WHISTLEBLOWER PROTECTION ACT EXPANSION

House Bill 4392 (*Rep. Witwer - 76*)

- Adds “press” to the Whistleblower Protection Act.
- Currently, the Act prevents employer retaliation against employees who report their employer is engaging in illegal activity. The Act only included local, state, and government officials.
- By adding press to this act, an employee can make an accusation via “the press,” which could damage an employer’s reputation, even if the violation is false.

House Bill 4396 (*Rep. Edwards – 12*)

- Adds “planned violations” to what an employee can report.
- Adds “prospective employee” to who can report and is covered by the act.
- Adds “independent contractor” to who can report and is covered by the act.
- Allows the “whistleblower” to receive 30% of any funds recovered by the state due to the violation.
- Allows the “whistleblower” to bring a civil action against the employer.
- Increases civil penalties from a max of \$500 total to a max of \$10,000 for each violation.

MASSIVE PENALTY INCREASES FOR WAGE AND HOUR VIOLATIONS

HB 4402 (*Rep. Weiss – 6*) **and HB 4403** (*Rep. Snyder – 87*)

These bills increase penalties for employers failing to pay proper wage and benefits. Current law is a misdemeanor punishable by not more than one year in jail and a maximum of \$1000.



VIOLATION AMOUNT	CRIME	IMPRISONMENT	FINE	IF PREVIOUS VIOLATIONS
Less Than \$200	Misdemeanor	not more than 93 days	\$500 or 3x the amount of the value, whichever is greater	1 or more violations - a fine of \$2000 and not more than 1 year in prison
\$200 > \$1000	Misdemeanor	not more than 1 year	\$2000 or 3x the amount of value, whichever is greater	1 or more violation - felony of not more than 5 years in prison, \$10,000 fine
\$1000 > \$20,000	Felony	not more than 5 years	\$10,000 or 3x the value, whichever is greater	2 or more violations, felony of not more than 10 years, \$15,000 fine
\$20,000 > \$50,000	Felony	not more than 10 years	3x the value	
\$50,000 > \$100,000	Felony	not more than 15 years	3x the value	
<\$100,000	Felony	not more than 20 years	3x the value	

HB 4404 (Rep. Tsernoglou – 75)

Changes penalties for these specific wage and hour laws:

- Frequency of pay
 - Payment of fringe benefits
 - Withholding of payment of compensation due as a fringe benefit at last day worked
 - Payment of compensation upon employee leaving and or being fired
 - Regulations regarding direct deposit, etc.
 - Regulations regarding payroll deductions
 - Prohibition on requirements to make charitable contributions as condition of employment
- Increases penalties from 10% to 100% annually on the wages and fringe benefits due to the employee, beginning at the time the employer is notified that a complaint has been filed and ending when payment is made.
 - Department can order additional damages paid to the employee of from up to 2x to 3x the amount of wage and benefit due to the employee.
 - Increases civil fines from not more than \$1000 to not more than \$10,000.



TAXPAYER DOLLARS FOR THE ATTORNEY GENERAL TO PURSUE BUSINESSES

House Bill 4393 (*Rep. O'Neal - 94*)

This bill appropriates \$5 million to the Attorney General's Office to hire 25 new full-time employees to go after wage and hour violations – including independent contractor misclassifications, unemployment insurance fraud, overtime errors, etc.

ANNONYMITY FOR COMPLAINANTS

House Bills 4394 (*Rep. Hill -109*) and **House Bill 4395** (*Rep. Breen - 21*)

These bills prevent a state department, if requested, from releasing the name of an employee who is making a complaint against the employer for wage and hour and/or minimum wage violations.

The employer is considered guilty until proven innocent, and this legislation would prevent the employer from being able to defend themselves.

NEW WAGE DISCLOSURE RULES

HB 4401 (*Rep. Whitsett - 4*)

This bill would increase penalties for employers who do not allow, prevent, or retaliate against employees in regard to disclosing their wages. Currently violations are a misdemeanor.

The bill increases penalties for employers that have a second or subsequent violation to a felony punishable by imprisonment for not more than 2 years, a fine of not more than \$10,000.00, or both, for each violation.

HB 4406 (*Rep. Farhat - 3*)

- Would require the employer to provide the wages and other compensation of employees who are within the same job classification as the employee requesting the information or whose duties are comparable in skill, effort, responsibility, working conditions, and training to those of the requesting employee.
- This can be requested by both current and prospective employees.
- The employer must respond within 30 days and may redact the names of similarly situated employees but shall provide information about the sex and seniority of the employees.