

Date of Hearing: July 1, 2025

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
SB 648 (Smallwood-Cuevas) – As Introduced February 20, 2025

PROPOSED CONSENT

SENATE VOTE: 38-0

SUBJECT: EMPLOYMENT: GRATUITIES: ENFORCEMENT

KEY ISSUE: SHOULD THE LABOR COMMISSIONER BE AUTHORIZED TO (1) INVESTIGATE CLAIMS THAT AN EMPLOYER WITHHELD TIPS OR GRATUITIES IN VIOLATION OF THE LABOR CODE; AND (2) ISSUE CITATIONS OR FILE A CIVIL CLAIM TO ENFORCE AGAINST SUCH VIOLATIONS?

SYNOPSIS

Under the Labor Code, an employer engages in wage theft any time they withhold any amount of money owed to a worker, including withholding tips. Existing law authorizes the Labor Commissioner to investigate claims of wage theft, including allegations of withheld tips. However, the Labor Commissioner is not currently authorized to issue and recover a citation against an employer who withholds their workers' tips, nor file a civil claim in court for the same.

In an attempt to close this gap and further strengthen California's laws against wage theft, this bill would explicitly authorize the Labor Commissioner to investigate claims that an employer withheld tips in violation of the Labor Code, and to issue citations or file an action against employers who engage in wage theft via withholding tips. This author-sponsored bill is supported by a number of labor unions and workers' rights advocacy organizations. It was previously approved by the Assembly Committee on Labor and Employment on Consent.

SUMMARY: Authorizes the Labor Commissioner to investigate and issue citations or file a civil action for enforcement of existing law prohibiting employers from withholding gratuities from employees. Specifically, **this bill:**

- 1) Authorizes the Labor Commissioner to investigate and issue a citation or file a civil action for gratuities taken or withheld in violation of Section 351 of the Labor Code.
- 2) Requires, if a citation is issued, the procedures for issuing, contesting, and enforcing judgements for citations and civil penalties issued by the Labor Commissioner be the same as those set out in Section 1197.1 of the Labor Code, as appropriate.

EXISTING LAW:

- 1) Establishes within the Department of Industrial Relations (DIR) the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner, and empowers the Labor Commissioner to ensure a just day's pay in every work place and to promote justice through the robust enforcement of labor law. Empowers the Labor Commissioner to enforce, among other things, wage and hour law, anti-retaliation provisions,

and employer notice requirements. (Labor Code Section 79 *et seq.* All further statutory references are to the Labor Code, unless otherwise noted.)

- 2) Authorizes the Labor Commissioner to investigate employee complaints, conduct hearings, and issue orders, decisions, and awards regarding complaints. Requires that the Labor Commissioner notify the parties within 30 days of the filing of a complaint whether a hearing will be held, the Labor Commissioner will prosecute the case, or no further action will be taken. Requires that, if the Labor Commissioner will hold a hearing, that the hearing be held within 90 days of the date of that determination, with the option of postponement as specified. Specifies that the Labor Commissioner is required to provide the parties notice regarding the complaint and the proceeding, and allows a defendant to file an answer within 10 days of service of the notice and complaint. (Section 98.)
- 3) Provides that the Labor Commissioner may prosecute any action for the collection of wages, penalties, and demands for any person who the Labor Commissioner determines is financially unable to employ counsel and has valid and enforceable claims. (Section 98.3.)
- 4) Establishes a citation process for the Labor Commissioner to enforce violations of the minimum wage that includes, but is not limited to, issuing citations, conducting investigations, and recovering restitution as well as penalties and liquidated damages. Requires the Labor Commissioner to take all appropriate action to enforce the citation and recover the civil penalty, wages, liquidated damages, and applicable penalties assessed. (Section 1197.1.)
- 5) Establishes the Labor Code Private Attorneys General Act (PAGA) of 2004. (Section 2698.)
- 6) Authorizes a provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the Labor Code, to be alternatively recovered through a civil action brought by an aggrieved employee on behalf of themselves and other current or former employees pursuant to specified procedures. (Section 2699 (a).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Under the Labor Code, an employer engages in wage theft anytime they withhold any amount of money owed to a worker, including withholding tips. (Labor Code Section 351.) California workers suffer from high rates of wage theft, particularly those in the restaurant and hospitality industries. According to the most recent report issued by the Bureau of Field Enforcement, the Department of Industrial Relations (DIR) issued nearly \$57 million in wage assessments across all industries during the 2020 – 2021 fiscal year. (Department of Industrial Relations California Labor Commissioner’s Office, *2020 – 2021 Bureau of Field Enforcement Fiscal Year Report*, p. 4 available at: https://www.dir.ca.gov/dlse/BOFE_LegReport2021.pdf.)

Studies have shown tip and gratuity withholding is a significant source of financial strain on service industry workers, who often rely on tips to make ends meet. In one 2010 study, the Labor Center at the University of California at Los Angeles found that nearly 20% of the city’s tipped workforce suffered wage theft in the form of tip withholding. Tipped workers, such as restaurant servers, are already some of the lowest income workers, earning an average of \$43,200 annually

in California. (U.S. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2023, Employment of waiters and waitresses, by state, May 2023* available at: <https://www.bls.gov/oes/2023/may/oes353031.htm#st.>)

According to the author:

SB 648 strengthens California's labor enforcement by empowering the Labor Commissioner with the authority to investigate and issue citations for violations of workers' tip protections. Under current law, tip theft is not explicitly subject to citation, meaning workers must rely solely on lengthy civil court actions to recover stolen gratuities. SB 648 corrects this gap by explicitly granting the Labor Commissioner the ability to issue citations against employers who unlawfully take or withhold tips, alongside the existing option of pursuing a civil cause of action.

The bill ensures that citation procedures mirror those used for minimum wage violations, preventing the need for new enforcement mechanisms and allowing for efficient implementation. By providing a straightforward legal tool for addressing tip theft, SB 648 bolsters enforcement and deterrence, ensuring that workers especially low-income, tipped employees are properly protected against wage theft. The inclusion of civil penalties under Private Attorneys General Act (PAGA) default provisions further strengthens the bill's impact, discouraging employers from exploiting gratuities and reinforcing California's commitment to fair labor practices.

There are a number of ways in which employers can be held legally accountable for wage theft. Labor Code Section 98 authorizes the Labor Commissioner (LC) to investigate and issue determinations for wage claims submitted by aggrieved workers. Additionally, workers can bring a civil claim in court on their own behalf to recover unpaid wages. However, the Labor Commissioner can only issue *citations* for violations of the Labor Code when explicitly authorized in statute. Labor Code Section 351, which prohibits employers from withholding tips and gratuities, does not include such authorization.

In order to better equip the Labor Commissioner and workers to hold employers accountable for withholding tips, **this bill** explicitly authorizes the Labor Commissioner to investigate claims of wage theft of withheld tips and to issue a citation or file a civil claim against the employer. The process for issuance, contestation, and enforcement of a citation issued under Section 351 would be the same as any wage theft citation under existing law specified under Labor Code Section 1197.1.

This bill seems an overwhelmingly reasonable way to ensure tipped workers receive their full pay and further equip the Labor Commissioner to curb wage theft.

ARGUMENTS IN SUPPORT: This bill is supported by a number of labor unions and workers' rights advocates. In support of the bill the California Federation of Labor Unions submits the following:

California law states that employees are the sole owners of tips and gratuities, and that employers cannot take any portion of them. This means that employers cannot take tips or deduct from or credit them against workers' wages. Low-wage workers often depend on tips to make ends meet, especially if they are making at or close to minimum wage.

The Labor Commissioner can issue citations for most violations of labor law including wages, overtime, meal periods, and rest periods, which allows for efficient enforcement of the law. However, the Labor Commissioner lacks citation authority to recover gratuities taken or withheld from employees. Currently, the only procedure for the Labor Commissioner to recover stolen gratuities is through filing an action in court.

Tipped workers have difficulty bringing forward individual claims for unpaid gratuities because the amounts are too small. Because the claims for gratuities cannot be brought in an administrative proceeding, the Labor Commissioner must bring both an administrative and civil action to address the full range of violations in its workplace-wide cases. In most cases, it is impractical to bring a civil lawsuit for such small amounts. Since it is also impractical for workers to bring a separate claim or lawsuit for such small amounts, scofflaw employers have little deterrent to taking workers' tips.

Administrative citation is the most direct and efficient way of recovering taken or withheld gratuities for the workers who depend on tips for their livelihood.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coalition for Worker Power
California Employment Lawyers Association
California Federation of Labor Unions, AFL-CIO
California Teamsters Public Affairs Council
Church State Council
Courage California
End Poverty in California Action Aka Epic Action, a Project of Tides Advocacy
UFCW - Western States Council
Unite Here International Union, AFL-CIO

Opposition

None on file

Analysis Prepared by: Manuela Boucher-de la Cadena / JUD. / (916) 319-2334