

ASSEMBLY BILL

No. 2997

Introduced by Assembly Member Houston

February 24, 2006

An act to amend Section 2699 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2997, as introduced, Houston. Employment: Labor Code Private Attorneys General Act of 2004.

Existing law, the Labor Code Private Attorneys General Act of 2004, authorizes aggrieved employees to bring civil actions to recover specified civil penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its subsidiaries do not do so. In cases in which an employer employs one or more persons, civil penalties recovered under the act are distributed 75% to the agency and 25% to aggrieved employees.

This bill would require the court to award the agency reasonable attorney's fees and costs in any proceeding in which the agency is adjudged to be entitled to penalties under the act, and would prohibit the award of attorney's fees and costs against the agency.

Under existing law, if penalties are sought as part of a proposed settlement agreement under the act, the superior court is required to review and approve the penalties.

This bill would require parties seeking court approval of a settlement to serve the agency notice of the request for court approval.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2699 of the Labor Code is amended to
2 read:

3 2699. (a) Notwithstanding any other provision of law, any
4 provision of this code that provides for a civil penalty to be
5 assessed and collected by the Labor and Workforce Development
6 Agency or any of its departments, divisions, commissions,
7 boards, agencies, or employees, for a violation of this code, may,
8 as an alternative, be recovered through a civil action brought by
9 an aggrieved employee on behalf of himself or herself and other
10 current or former employees pursuant to the procedures specified
11 in Section 2699.3.

12 (b) For purposes of this part, “person” has the same meaning
13 as defined in Section 18.

14 (c) For purposes of this part, “aggrieved employee” means any
15 person who was employed by the alleged violator and against
16 whom one or more of the alleged violations was committed.

17 (d) For purposes of this part, “cure” means that the employer
18 abates each violation alleged by any aggrieved employee, the
19 employer is in compliance with the underlying statutes as
20 specified in the notice required by this part, and any aggrieved
21 employee is made whole.

22 (e) (1) For purposes of this part, whenever the Labor and
23 Workforce Development Agency, or any of its departments,
24 divisions, commissions, boards, agencies, or employees, has
25 discretion to assess a civil penalty, a court is authorized to
26 exercise the same discretion, subject to the same limitations and
27 conditions, to assess a civil penalty.

28 (2) In any action by an aggrieved employee seeking recovery
29 of a civil penalty available under *either* subdivision (a) or (f), a
30 court may award a lesser amount than the maximum civil penalty
31 amount specified by this part if, based on the facts and
32 circumstances of the particular case, to do otherwise would result
33 in an award that is unjust, arbitrary and oppressive, or
34 confiscatory.

35 (f) For all provisions of this code except those for which a
36 civil penalty is specifically provided, there is established a civil
37 penalty for a violation of these provisions, as follows:

1 (1) If, at the time of the alleged violation, the person does not
2 employ one or more employees, the civil penalty is five hundred
3 dollars (\$500).

4 (2) If, at the time of the alleged violation, the person employs
5 one or more employees, the civil penalty is one hundred dollars
6 (\$100) for each aggrieved employee per pay period for the initial
7 violation and two hundred dollars (\$200) for each aggrieved
8 employee per pay period for each subsequent violation.

9 (3) If the alleged violation is a failure to act by the Labor and
10 Workplace Development Agency, or any of its departments,
11 divisions, commissions, boards, agencies, or employees, there
12 shall be no civil penalty.

13 (g) (1) Except as provided in paragraph (2), an aggrieved
14 employee may recover the civil penalty described in subdivision
15 (f) in a civil action, pursuant to the procedures specified in
16 Section 2699.3, filed on behalf of himself or herself and other
17 current or former employees against whom one or more of the
18 alleged violations was committed. Any employee who prevails in
19 any action shall be entitled to an award of reasonable attorney's
20 fees and costs. Nothing in this part shall operate to limit an
21 employee's right to pursue or recover other remedies available
22 under state or federal law, either separately or concurrently, with
23 an action taken under this part.

24 (2) No action shall be brought under this part for any violation
25 of a posting, notice, agency reporting, or filing requirement of
26 this code, except where the filing or reporting requirement
27 involves mandatory payroll or workplace injury reporting.

28 (h) No action may be brought under this section by an
29 aggrieved employee if the agency or any of its departments,
30 divisions, commissions, boards, agencies, or employees, on the
31 same facts and theories, cites a person within the timeframes set
32 forth in Section 2699.3 for a violation of the same section or
33 sections of the Labor Code under which the aggrieved employee
34 is attempting to recover a civil penalty on behalf of himself or
35 herself or others, or initiates a proceeding pursuant to Section
36 98.3.

37 (i) (I) Except as provided in subdivision (j), civil penalties
38 recovered by aggrieved employees shall be distributed as
39 follows:-75

1 (A) *Seventy-five* percent to the Labor and Workforce
2 Development Agency for enforcement of labor laws and
3 education of employers and employees about their rights and
4 responsibilities under this code, to be continuously appropriated
5 to supplement and not supplant the funding to the agency for
6 those purposes; ~~and 25.~~

7 (B) *Twenty-five* percent to the aggrieved employees.

8 (2) *The court shall award the Labor and Workforce*
9 *Development Agency reasonable attorney's fees and costs in any*
10 *proceeding in which the agency is adjudged to be entitled to*
11 *penalties under this part. No attorney's fees or costs shall be*
12 *awarded against the agency.*

13 (j) Civil penalties recovered under paragraph (1) of
14 subdivision (f) shall be distributed to the Labor and Workforce
15 Development Agency for enforcement of labor laws and
16 education of employers and employees about their rights and
17 responsibilities under this code, to be continuously appropriated
18 to supplement and not supplant the funding to the agency for
19 those purposes.

20 (k) Nothing contained in this part is intended to alter or
21 otherwise affect the exclusive remedy provided by the workers'
22 compensation provisions of this code for liability against an
23 employer for the compensation for any injury to, or death of, an
24 employee arising out of and in the course of employment.

25 (l) (1) The superior court shall review and approve any
26 penalties sought as part of a proposed settlement agreement
27 pursuant to this part.

28 (2) *The parties seeking court approval of a settlement*
29 *pursuant to this subdivision shall serve the Labor and Workforce*
30 *Development Agency notice of the request for court approval not*
31 *less than 20 calendar days prior to filing the request for approval*
32 *in the superior court.*

33 (m) This section shall not apply to the recovery of
34 administrative and civil penalties in connection with the workers'
35 compensation law as contained in Division 1 (commencing with
36 Section 50) and Division 4 (commencing with Section 3200),
37 including, but not limited to, Sections 129.5 and 132a.

1 (n) The agency or any of its departments, divisions,
2 commissions, boards, or agencies may promulgate regulations to
3 implement ~~the provisions of~~ this part.

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