
Introduced by Senator Stone

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1468, as introduced, Stone. Employment: private enforcement. The Labor Code Private Attorneys General Act of 2004 provides that a civil penalty for a violation of the Labor Code may be recovered through a civil action brought by an aggrieved employee, as specified.

This bill would make nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no. 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, boards,
7 agencies, or employees, for a violation of this code, ~~may~~, as an
8 alternative, *may* be recovered through a civil action brought by an
9 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.

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

4 (d) For purposes of this part, “cure” means that the employer
5 abates each violation alleged by any aggrieved employee, the
6 employer is in compliance with the underlying statutes as specified
7 in the notice required by this part, and any aggrieved employee is
8 made whole. A violation of paragraph (6) or (8) of subdivision (a)
9 of Section 226 shall only be considered cured upon a showing that
10 the employer has provided a fully compliant, itemized wage
11 statement to each aggrieved employee for each pay period for the
12 three-year period prior to the date of the written notice sent
13 pursuant to paragraph (1) of subdivision (c) of Section 2699.3.

14 (e) (1) For purposes of this part, whenever the Labor and
15 Workforce Development Agency, or any of its departments,
16 divisions, commissions, boards, agencies, or employees, has
17 discretion to assess a civil penalty, a court is authorized to exercise
18 the same discretion, subject to the same limitations and conditions,
19 to assess a civil penalty.

20 (2) In any action by an aggrieved employee seeking recovery
21 of a civil penalty available under subdivision (a) or (f), a court
22 may award a lesser amount than the maximum civil penalty amount
23 specified by this part if, based on the facts and circumstances of
24 the particular case, to do otherwise would result in an award that
25 is unjust, arbitrary and oppressive, or confiscatory.

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

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

32 (2) If, at the time of the alleged violation, the person employs
33 one or more employees, the civil penalty is one hundred dollars
34 (\$100) for each aggrieved employee per pay period for the initial
35 violation and two hundred dollars (\$200) for each aggrieved
36 employee per pay period for each subsequent violation.

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

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

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

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

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

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

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an

1 employer for the compensation for any injury to or death of an
2 employee arising out of and in the course of employment.

3 (l) The superior court shall review and approve any penalties
4 sought as part of a proposed settlement agreement pursuant to this
5 part.

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

11 (n) The agency or any of its departments, divisions,
12 commissions, boards, or agencies may promulgate regulations to
13 implement the provisions of this part.