

Introduced by Senator Wyland

February 12, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

SB 242, as introduced, Wyland. Employees: civil penalties.

Under existing law, the Labor Code Private Attorneys General Act of 2004, a provision providing 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 certain provisions affecting employees, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to specified procedures.

This bill would make nonsubstantive changes to the provision referenced above.

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~~ *providing* for a civil penalty
- 5 to be assessed and collected by the Labor and Workforce
- 6 Development Agency or any of its departments, divisions,
- 7 commissions, boards, agencies, or employees, for a violation of

1 this code, may, as an alternative, be recovered through a civil action
2 brought by an aggrieved employee on behalf of himself or herself
3 and other current or former employees pursuant to the procedures
4 specified in Section 2699.3.

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

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

10 (d) For purposes of this part, “cure” means that the employer
11 abates each violation alleged by any aggrieved employee, the
12 employer is in compliance with the underlying statutes as specified
13 in the notice required by this part, and any aggrieved employee is
14 made whole.

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

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

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

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

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

38 (3) If the alleged violation is a failure to act by the Labor and
39 Workplace Development Agency, or any of its departments,

1 divisions, commissions, boards, agencies, or employees, there shall
2 be no civil penalty.

3 (g) (1) Except as provided in paragraph (2), an aggrieved
4 employee may recover the civil penalty described in subdivision
5 (f) in a civil action pursuant to the procedures specified in Section
6 2699.3 filed on behalf of himself or herself and other current or
7 former employees against whom one or more of the alleged
8 violations was committed. Any employee who prevails in any
9 action shall be entitled to an award of reasonable attorney's fees
10 and costs. ~~Nothing in this~~ *This part shall not* operate to limit an
11 employee's right to pursue or recover other remedies available
12 under state or federal law, either separately or concurrently with
13 an action taken under this part.

14 (2) ~~No~~ *An* action shall *not* be brought under this part for any
15 violation of a posting, notice, agency reporting, or filing
16 requirement of this code, except where the filing or reporting
17 requirement involves mandatory payroll or workplace injury
18 reporting.

19 (h) ~~No~~ *An* action ~~may~~ *shall not* be brought under this section
20 by an aggrieved employee if the agency or any of its departments,
21 divisions, commissions, boards, agencies, or employees, on the
22 same facts and theories, cites a person within the timeframes set
23 forth in Section 2699.3 for a violation of the same section or
24 sections of the Labor Code under which the aggrieved employee
25 is attempting to recover a civil penalty on behalf of himself or
26 herself or others or initiates a proceeding pursuant to Section 98.3.

27 (i) Except as provided in subdivision (j), civil penalties
28 recovered by aggrieved employees shall be distributed as follows:
29 75 percent to the Labor and Workforce Development Agency for
30 enforcement of labor laws and education of employers and
31 employees about their rights and responsibilities under this code,
32 to be continuously appropriated to supplement and not supplant
33 the funding to the agency for those purposes; and 25 percent to
34 the aggrieved employees.

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

1 (k) ~~Nothing contained in this part is~~ *This part is not* intended
2 to alter or otherwise affect the exclusive remedy provided by the
3 workers' compensation provisions of this code for liability against
4 an employer for the compensation for any injury to or death of an
5 employee arising out of and in the course of employment.

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

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

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