

ASSEMBLY BILL

No. 2461

Introduced by Assembly Member Grove

February 19, 2016

An act to amend Sections 2699 and 2699.3 of, and to repeal Section 2699.5 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2461, as introduced, Grove. Labor Code Private Attorneys General Act of 2004.

The Labor Code Private Attorneys General Act of 2004 authorizes an aggrieved employee to bring a civil action to recover specified civil penalties that would otherwise be assessed and collected by the Labor and Workforce Development Agency on behalf of the employee and other current or former employees for the violation of certain provisions affecting employees. The act requires the employee to follow specified procedures before bringing an action.

This bill would limit the violations for which an aggrieved employee is authorized to bring a civil action under the act and would require the employee to follow specified procedures before bringing an action.

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

1 assessed and collected by the Labor and Workforce Development
2 Agency or any of its departments, divisions, commissions, boards,
3 agencies, or employees, for a violation of ~~this code~~, *provisions*
4 *specified in subdivision (b) of Section 2699.3* may, as an alternative,
5 be recovered through a civil action brought by an aggrieved
6 employee on behalf of himself or herself and other current or
7 former employees pursuant to the procedures specified in Section
8 2699.3.

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

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

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

24 (e)

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

31 ~~(2)~~

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

38 ~~(f) For all provisions of this code provisions specified in~~
39 ~~subdivision (b) of Section 2699.3 except those for which a civil~~

1 penalty is specifically provided, there is established a civil penalty
2 for a violation of these provisions, as follows:

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

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

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

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

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

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

38 (i) Except as provided in subdivision (j), civil penalties
39 recovered by aggrieved employees shall be distributed as follows:
40 75 percent to the Labor and Workforce Development Agency for

1 enforcement of labor laws and education of employers and
2 employees about their rights and responsibilities under this code,
3 to be continuously appropriated to supplement and not supplant
4 the funding to the agency for those purposes; and 25 percent to
5 the aggrieved employees.

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

12 (k) Nothing contained in this part is intended to alter or
13 otherwise affect the exclusive remedy provided by the workers'
14 compensation provisions of this code for liability against an
15 employer for the compensation for any injury to or death of an
16 employee arising out of and in the course of employment.

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

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

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

28 SEC. 2. Section 2699.3 of the Labor Code is amended to read:

29 2699.3. (a) A civil action by an aggrieved employee pursuant
30 to subdivision (a) or (f) of Section 2699 alleging a violation of any
31 provision listed in ~~Section 2699.5~~ *subdivision (b)* shall commence
32 only after the following requirements have been met:

33 (1) The aggrieved employee or representative shall give written
34 notice by certified mail to the Labor and Workforce Development
35 Agency and the employer of the specific provisions of this code
36 alleged to have been violated, including the facts and theories to
37 support the alleged violation.

38 (2) (A) The agency shall notify the employer and the aggrieved
39 employee or representative by certified mail that it does not intend
40 to investigate the alleged violation within 30 calendar days of the

1 postmark date of the notice received pursuant to paragraph (1).
2 Upon receipt of that notice or if no notice is provided within 33
3 calendar days of the postmark date of the notice given pursuant to
4 paragraph (1), the aggrieved employee may commence a civil
5 action pursuant to Section 2699.

6 (B) If the agency intends to investigate the alleged violation, it
7 shall notify the employer and the aggrieved employee or
8 representative by certified mail of its decision within 33 calendar
9 days of the postmark date of the notice received pursuant to
10 paragraph (1). Within 120 calendar days of that decision, the
11 agency may investigate the alleged violation and issue any
12 appropriate citation. If the agency determines that no citation will
13 be issued, it shall notify the employer and aggrieved employee of
14 that decision within five business days thereof by certified mail.
15 Upon receipt of that notice or if no citation is issued by the agency
16 within ~~the~~ *that* 158-day period prescribed by ~~subparagraph (A)~~
17 ~~and this subparagraph~~ or if the agency fails to provide timely or
18 any notification, the aggrieved employee may commence a civil
19 action pursuant to Section 2699.

20 (C) Notwithstanding any other provision of law, a plaintiff may
21 as a matter of right amend an existing complaint to add a cause of
22 action arising under this part at any time within 60 days of the time
23 periods specified in this part.

24 ~~(b) A civil action by an aggrieved employee pursuant to~~
25 ~~subdivision (a) or (f) of Section 2699 alleging a violation of any~~
26 ~~provision of Division 5 (commencing with Section 6300) other~~
27 ~~than those listed in Section 2699.5 shall commence only after the~~
28 ~~following requirements have been met:~~

29 ~~(1) The aggrieved employee or representative shall give notice~~
30 ~~by certified mail to the Division of Occupational Safety and Health~~
31 ~~and the employer, with a copy to the Labor and Workforce~~
32 ~~Development Agency, of the specific provisions of Division 5~~
33 ~~(commencing with Section 6300) alleged to have been violated,~~
34 ~~including the facts and theories to support the alleged violation.~~

35 ~~(2) (A) The division shall inspect or investigate the alleged~~
36 ~~violation pursuant to the procedures specified in Division 5~~
37 ~~(commencing with Section 6300).~~

38 ~~(i) If the division issues a citation, the employee may not~~
39 ~~commence an action pursuant to Section 2699. The division shall~~
40 ~~notify the aggrieved employee and employer in writing within 14~~

~~calendar days of certifying that the employer has corrected the violation.~~

~~(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.~~

~~(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).~~

~~(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.~~

~~(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.~~

~~(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.~~

~~(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.~~

~~(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.~~

~~(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged~~

1 violation. The provisions of the settlement relating to health and
2 safety laws shall be submitted to the division at the same time that
3 they are submitted to the court. This requirement shall be construed
4 to authorize and permit the division to comment on those settlement
5 provisions, and the court shall grant the division's commentary
6 the appropriate weight.

7 (e) ~~A civil action by an aggrieved employee pursuant to~~
8 ~~subdivision (a) or (f) of Section 2699 alleging a violation of any~~
9 ~~provision other than those listed in Section 2699.5 or Division 5~~
10 ~~(commencing with Section 6300) shall commence only after the~~
11 ~~following requirements have been met:~~

12 (1) ~~The aggrieved employee or representative shall give written~~
13 ~~notice by certified mail to the Labor and Workforce Development~~
14 ~~Agency and the employer of the specific provisions of this code~~
15 ~~alleged to have been violated, including the facts and theories to~~
16 ~~support the alleged violation.~~

17 (2) (A) ~~The employer may cure the alleged violation within 33~~
18 ~~calendar days of the postmark date of the notice. The employer~~
19 ~~shall give written notice by certified mail within that period of~~
20 ~~time to the aggrieved employee or representative and the agency~~
21 ~~if the alleged violation is cured, including a description of actions~~
22 ~~taken, and no civil action pursuant to Section 2699 may commence.~~
23 ~~If the alleged violation is not cured within the 33-day period, the~~
24 ~~employee may commence a civil action pursuant to Section 2699.~~

25 (B) (i) ~~Subject to the limitation in clause (ii), no employer may~~
26 ~~avail himself or herself of the notice and cure provisions of this~~
27 ~~subdivision more than three times in a 12-month period for the~~
28 ~~same violation or violations contained in the notice, regardless of~~
29 ~~the location of the worksite.~~

30 (ii) ~~No employer may avail himself or herself of the notice and~~
31 ~~cure provisions of this subdivision with respect to alleged violations~~
32 ~~of paragraph (6) or (8) of subdivision (a) of Section 226 more than~~
33 ~~once in a 12-month period for the same violation or violations~~
34 ~~contained in the notice, regardless of the location of the worksite.~~

35 (3) ~~If the aggrieved employee disputes that the alleged violation~~
36 ~~has been cured, the aggrieved employee or representative shall~~
37 ~~provide written notice by certified mail, including specified~~
38 ~~grounds to support that dispute, to the employer and the agency.~~
39 ~~Within 17 calendar days of the postmark date of that notice, the~~
40 ~~agency shall review the actions taken by the employer to cure the~~

1 ~~alleged violation, and provide written notice of its decision by~~
2 ~~certified mail to the aggrieved employee and the employer. The~~
3 ~~agency may grant the employer three additional business days to~~
4 ~~cure the alleged violation. If the agency determines that the alleged~~
5 ~~violation has not been cured or if the agency fails to provide timely~~
6 ~~or any notification, the employee may proceed with the civil action~~
7 ~~pursuant to Section 2699. If the agency determines that the alleged~~
8 ~~violation has been cured, but the employee still disagrees, the~~
9 ~~employee may appeal that determination to the superior court.~~

10 *(b) The provisions of subdivision (a) apply to any alleged*
11 *violation of the following provisions: Sections 226, 226.7, 510,*
12 *and 512.*

13 ~~(d)~~

14 *(c) The periods specified in this section are not counted as part*
15 *of the time limited for the commencement of the civil action to*
16 *recover penalties under this part.*

17 SEC. 3. Section 2699.5 of the Labor Code is repealed.

18 ~~2699.5. The provisions of subdivision (a) of Section 2699.3~~
19 ~~apply to any alleged violation of the following provisions:~~
20 ~~subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5,~~
21 ~~201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,~~
22 ~~205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section~~
23 ~~213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5),~~
24 ~~inclusive, (7), and (9) of subdivision (a) of Section 226, Sections~~
25 ~~226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8,~~
26 ~~and 231, subdivision (c) of Section 232, subdivision (c) of Section~~
27 ~~232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of~~
28 ~~Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511,~~
29 ~~512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851,~~
30 ~~851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025,~~
31 ~~1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of~~
32 ~~Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198,~~
33 ~~subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290,~~
34 ~~1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301,~~
35 ~~1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392,~~
36 ~~1683, and 1695, subdivision (a) of Section 1695.5, Sections~~
37 ~~1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,~~
38 ~~1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47,~~
39 ~~Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and~~
40 ~~2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800,~~

- 1 ~~2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and~~
- 2 ~~Sections 3095, 6310, 6311, and 6399.7.~~

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