

AMENDED IN ASSEMBLY APRIL 27, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2461**

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**Introduced by Assembly Member Grove**  
*(Coauthor: Senator Anderson)*

February 19, 2016

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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 amended, 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:

1 2699. (a) Notwithstanding any other ~~provision of~~ law, any  
2 provision of this code that provides for a civil penalty to be  
3 assessed and collected by the Labor and Workforce Development  
4 Agency or any of its departments, divisions, commissions, boards,  
5 agencies, or employees, for a violation of provisions specified in  
6 subdivision (b) of Section 2699.3 may, as an alternative, be  
7 recovered through a civil action brought by an aggrieved employee  
8 on behalf of himself or herself and other current or former  
9 employees pursuant to the procedures specified in Section 2699.3.

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

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

15 (d) 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 (e) 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 provisions specified in subdivision (b) of Section 2699.3  
28 except those for which a civil penalty is specifically provided,  
29 there is established a civil penalty for a violation of these  
30 provisions, as follows:

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

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

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

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

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

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

21 (i) Except as provided in subdivision (j), civil penalties  
22 recovered by aggrieved employees shall be distributed as follows:  
23 75 percent to the Labor and Workforce Development Agency for  
24 enforcement of labor laws and education of employers and  
25 employees about their rights and responsibilities under this code,  
26 to be continuously appropriated to supplement and not supplant  
27 the funding to the agency for those purposes; and 25 percent to  
28 the aggrieved employees.

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

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

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

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

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

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

13 2699.3. (a) A civil action by an aggrieved employee pursuant  
14 to subdivision (a) or (f) of Section 2699 alleging a violation of any  
15 provision listed in subdivision (b) shall commence only after the  
16 following requirements have been met:

17 (1) The aggrieved employee or representative shall give written  
18 notice by certified mail to the Labor and Workforce Development  
19 Agency and the employer of the specific provisions of this code  
20 alleged to have been violated, including the facts and theories to  
21 support the alleged violation.

22 (2) (A) The agency shall notify the employer and the aggrieved  
23 employee or representative by certified mail that it does not intend  
24 to investigate the alleged violation within 30 calendar days of the  
25 postmark date of the notice received pursuant to paragraph (1).  
26 Upon receipt of that notice or if no notice is provided within 33  
27 calendar days of the postmark date of the notice given pursuant to  
28 paragraph (1), the aggrieved employee may commence a civil  
29 action pursuant to Section 2699.

30 (B) If the agency intends to investigate the alleged violation, it  
31 shall notify the employer and the aggrieved employee or  
32 representative by certified mail of its decision within 33 calendar  
33 days of the postmark date of the notice received pursuant to  
34 paragraph (1). Within 120 calendar days of that decision, the  
35 agency may investigate the alleged violation and issue any  
36 appropriate citation. If the agency determines that no citation will  
37 be issued, it shall notify the employer and aggrieved employee of  
38 that decision within five business days thereof by certified mail.  
39 Upon receipt of that notice or if no citation is issued by the agency  
40 within that 158-day period prescribed by this subparagraph or if

1 the agency fails to provide timely or any notification, the aggrieved  
2 employee may commence a civil action pursuant to Section 2699.

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

7 (b) The provisions of subdivision (a) apply to any alleged  
8 violation of the following provisions: Sections 226, 226.7, 510,  
9 and 512.

10 (c) The periods specified in this section are not counted as part  
11 of the time limited for the commencement of the civil action to  
12 recover penalties under this part.

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