

ASSEMBLY BILL

No. 2462

Introduced by Assembly Member Grove

February 19, 2016

An act to amend Section 2699.3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2462, 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 provides the employer with the right to cure certain violations before the employee may bring a civil action, as specified. For other violations, the act requires the employee to follow specified procedures before bringing an action.

This bill would provide the employer with the right to cure any violation of the Labor Code covered by the act before the employee may bring a civil action. That right to cure would be provided before, and in addition to, any other specified procedures the employee is required to follow prior to 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:

SECTION 1. Section 2699.3 of the Labor Code is amended to read:

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

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

(B) *The employer may cure the alleged violation according to the procedures described in paragraph (2) of subdivision (c). If the alleged violation is not cured within the 33-day period prescribed in paragraph (2) of subdivision (c), in lieu of commencing a civil action, the employee or representative shall notify by certified mail the Labor and Workforce Development Agency and the employer of the failure to cure or, if the employee disputes that the alleged violation has been cured, the employee or representative shall provide notice pursuant to the procedures of subparagraph (A) of paragraph (3) of subdivision (c).*

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

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 33 calendar days of the postmark date of the notice received pursuant to *subparagraph (B) of paragraph (1)*. Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee *or representative* of that decision within five business

1 days thereof by certified mail. Upon receipt of that notice or if no
2 citation is issued by the agency within ~~the~~ *that* 158-day period
3 prescribed by ~~subparagraph (A) and this subparagraph~~ or if the
4 agency fails to provide timely or any notification, the aggrieved
5 employee may commence a civil action pursuant to Section 2699.

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

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

15 (1) (A) The aggrieved employee or representative shall give
16 notice by certified mail to the Division of Occupational Safety and
17 Health and the employer, with a copy to the Labor and Workforce
18 Development Agency, of the specific provisions of Division 5
19 (commencing with Section 6300) alleged to have been violated,
20 including the facts and theories to support the alleged violation.

21 (B) *The employer may cure the alleged violation according to*
22 *the procedures described in paragraph (2) of subdivision (c). If*
23 *the alleged violation is not cured within the 33-day period*
24 *prescribed in paragraph (2) of subdivision (c), in lieu of*
25 *commencing a civil action, the employee or representative shall*
26 *notify by certified mail the Division of Occupational Safety and*
27 *Health and the employer, with a copy to the Labor and Workforce*
28 *Development Agency, of the failure to cure or, if the employee*
29 *disputes that the alleged violation has been cured, the employee*
30 *or representative shall provide notice pursuant to the procedures*
31 *of subparagraph (A) of paragraph (3) of subdivision (c).*

32 (2) (A) The division shall inspect or investigate the alleged
33 violation pursuant to the procedures specified in Division 5
34 (commencing with Section 6300).

35 (i) If the division issues a citation, the employee may not
36 commence an action pursuant to Section 2699. The division shall
37 notify the aggrieved employee *or representative* and employer in
38 writing within 14 calendar days of certifying that the employer
39 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~~ *notices* provided to the division and employer pursuant to *subparagraphs (A) and (B) of 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~~ *notices* provided to the division and employer pursuant to *subparagraphs (A) and (B) of 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 (e) shall apply to the determination of the alleged violation; the aggrieved employee may commence a civil action pursuant to Section 2699.~~

(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

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

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

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

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

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

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

36 (3) (A) If the aggrieved employee disputes that the alleged
37 violation has been cured, the aggrieved employee or representative
38 shall provide written notice by certified mail, including specified
39 grounds to support that dispute, to the employer and the agency.

40 ~~Within~~

1 (B) Within 17 calendar days of the postmark date of that notice,
2 the agency shall review the actions taken by the employer to cure
3 the alleged violation, and provide written notice of its decision by
4 certified mail to the aggrieved employee *or representative* and the
5 employer. The agency may grant the employer three additional
6 business days to cure the alleged violation. If the agency determines
7 that the alleged violation has not been cured or if the agency fails
8 to provide timely or any notification, the employee may proceed
9 with the civil action pursuant to Section 2699. If the agency
10 determines that the alleged violation has been cured, but the
11 employee still disagrees, the employee may appeal that
12 determination to the superior court.

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