

AMENDED IN ASSEMBLY APRIL 27, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2462

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

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2462, 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 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:

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

3 2699.3. (a) A civil action by an aggrieved employee pursuant
4 to subdivision (a) or (f) of Section 2699 alleging a violation of any
5 provision listed in Section 2699.5 shall commence only after the
6 following requirements have been met:

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

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

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 subparagraph (B)
26 of paragraph (1). Upon receipt of that notice or if no notice is
27 provided within 33 calendar days of the postmark date of the notice
28 given pursuant to subparagraph (B) of paragraph (1), the aggrieved
29 employee may commence a civil 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 subparagraph (B) of paragraph (1). Within 120 calendar days of
35 that decision, the agency may investigate the alleged violation and
36 issue any appropriate citation. If the agency determines that no
37 citation will be issued, it shall notify the employer and aggrieved
38 employee or representative of that decision within five business

1 days thereof by certified mail. Upon receipt of that ~~notice~~ *notice*,
2 or if no citation is issued by the agency within that 158-day period
3 prescribed by this subparagraph or if the agency fails to provide
4 timely or any notification, the aggrieved employee may commence
5 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 the
23 alleged violation is not cured within the 33-day period prescribed
24 in paragraph (2) of subdivision (c), in lieu of commencing a civil
25 action, the employee or representative shall notify by certified mail
26 the Division of Occupational Safety and Health and the employer,
27 with a copy to the Labor and Workforce Development Agency, of
28 the failure to cure or, if the employee disputes that the alleged
29 violation has been cured, the employee or representative shall
30 provide notice pursuant to the procedures of subparagraph (A) of
31 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.

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

10 (iii) A complaint in superior court alleging a violation of
11 Division 5 (commencing with Section 6300) other than those listed
12 in Section 2699.5 shall include therewith a copy of the notices
13 provided to the division and employer pursuant to subparagraphs
14 (A) and (B) of paragraph (1).

15 (iv) The superior court shall not dismiss the action for
16 nonmaterial differences in facts or theories between those contained
17 in the notices provided to the division and employer pursuant to
18 subparagraphs (A) and (B) of paragraph (1) and the complaint
19 filed with the court.

20 (B) If the division fails to inspect or investigate the alleged
21 violation as provided by Section 6309, the aggrieved employee
22 may commence a civil action pursuant to Section 2699.

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

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

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

35 (4) The superior court shall review and approve any proposed
36 settlement of alleged violations of the provisions of Division 5
37 (commencing with Section 6300) to ensure that the settlement
38 provisions are at least as effective as the protections or remedies
39 provided by state and federal law or regulation for the alleged
40 violation. The provisions of the settlement relating to health and

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

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

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

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

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

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

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

38 (B) Within 17 calendar days of the postmark date of that notice,
39 the agency shall review the actions taken by the employer to cure
40 the alleged violation, and provide written notice of its decision by

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

10 (d) 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.