

**ASSEMBLY BILL**

**No. 2463**

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**Introduced by Assembly Member Grove**

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2463, as introduced, Grove. Labor Code Private Attorneys General Act of 2004: penalty cap.

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.

The act authorizes a court, in an action by an aggrieved employee seeking recovery of a civil penalty, as specified, to award a lesser amount than the maximum civil penalty if that penalty would be unjust, arbitrary and oppressive, or confiscatory.

This bill would establish a cap on that penalty of \$1,000 for each aggrieved employee.

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 of the Labor Code is amended to read:

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides 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 this code, 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 the procedures specified in Section 2699.3.

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

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

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

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

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. *In no event*

1 *shall the total amount of that penalty equal more than one thousand*  
2 *dollars (\$1,000) for each aggrieved employee.*

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

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

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

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

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

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

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

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

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

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

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

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

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