

ASSEMBLY BILL

No. 2464

Introduced by Assembly Member Grove

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2464, 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 authorizes a court to exercise the same discretion to assess a civil penalty as the agency, subject to the same limitations and conditions. The act also authorizes a court, in any action by an aggrieved employee seeking recovery of a civil penalty, to award a lesser amount than the maximum civil penalty amount specified by the act 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.

This bill would authorize a court to dismiss an action as to an aggrieved employee seeking recovery of a civil penalty, if, after notice and hearing, the court finds that the aggrieved employee suffered no appreciable physical or economic harm.

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

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

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

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

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

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

1 (3) *In any action by an aggrieved employee seeking recovery*
2 *of a civil penalty available under subdivision (a) or (f), if, after*
3 *notice and hearing, the court finds that an employee suffered no*
4 *appreciable physical or economic harm, the court may dismiss the*
5 *action as to that employee.*

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

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

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

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

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

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

36 (h) No action may be brought under this section by an aggrieved
37 employee if the agency or any of its departments, divisions,
38 commissions, boards, agencies, or employees, on the same facts
39 and theories, cites a person within the timeframes set forth in
40 Section 2699.3 for a violation of the same section or sections of

1 the Labor Code under which the aggrieved employee is attempting
2 to recover a civil penalty on behalf of himself or herself or others
3 or initiates a proceeding pursuant to Section 98.3.

4 (i) Except as provided in subdivision (j), civil penalties
5 recovered by aggrieved employees shall be distributed as follows:
6 75 percent to the Labor and Workforce Development Agency for
7 enforcement of labor laws and education of employers and
8 employees about their rights and responsibilities under this code,
9 to be continuously appropriated to supplement and not supplant
10 the funding to the agency for those purposes; and 25 percent to
11 the aggrieved employees.

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

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

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

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

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