

ASSEMBLY BILL

No. 2465

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 2465, 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. Under the act, an employee is authorized to bring an action for such an alleged violation only after the agency notifies the employer and the aggrieved employee or representative that it does not intend to investigate the alleged violation, if the agency proceeds with an investigation and no citation is issued, or the agency fails to provide notification as prescribed.

This bill would revise those procedural provisions to require the agency, after receiving notification of an alleged violation, to investigate the alleged violation and determine if there is a reasonable basis for a civil action. The bill would authorize an aggrieved employee to commence an action upon receipt of notice from the agency that there is a reasonable basis for a civil action, or if the agency fails to provide the prescribed notification.

Vote: majority. Appropriation: no. Fiscal committee: yes.
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) The aggrieved employee or representative shall give written
8 notice by certified mail to the Labor and Workforce Development
9 Agency and the employer of the specific provisions of this code
10 alleged to have been violated, including the facts and theories to
11 support the alleged violation.

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

20 ~~(B) If the agency intends to investigate the alleged violation, it~~
21 ~~shall notify the employer and the aggrieved employee or~~
22 ~~representative by certified mail of its decision within 33 calendar~~
23 ~~days of the postmark date of the notice received pursuant to~~
24 ~~paragraph (1). Within 120 calendar days of that decision, the~~
25 ~~agency may investigate the alleged violation and issue any~~
26 ~~appropriate citation. If the agency determines that no citation will~~
27 ~~be issued, it shall notify the employer and aggrieved employee of~~
28 ~~that decision within five business days thereof by certified mail.~~
29 ~~Upon receipt of that notice or if no citation is issued by the agency~~
30 ~~within the 158-day period prescribed by subparagraph (A) and this~~
31 ~~subparagraph or if the agency fails to provide timely or any~~
32 ~~notification, the aggrieved employee may commence a civil action~~
33 ~~pursuant to Section 2699.~~

34 (2) (A) *The agency shall investigate the alleged violation and*
35 *determine if there is a reasonable basis for a civil action within*

1 120 calendar days of the postmark date of the notice received
2 pursuant to paragraph (1). Upon making its determination, the
3 agency shall immediately notify the employer and the aggrieved
4 employee or representative by certified mail of its determination.

5 (B) The aggrieved employee may commence a civil action
6 pursuant to Section 2699 upon receipt of notice from the agency
7 that there is a reasonable basis for a civil action pursuant to
8 subparagraph (A), or if the agency fails to provide timely or any
9 notification pursuant to subparagraph (A).

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

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

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

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

28 (i) If the division issues a citation, the employee ~~may~~ shall not
29 commence an action pursuant to Section 2699. The division shall
30 notify the aggrieved employee and employer in writing within 14
31 calendar days of certifying that the employer has corrected the
32 violation.

33 (ii) If by the end of the period for inspection or investigation
34 provided for in Section 6317, the division fails to issue a citation
35 and the aggrieved employee disputes that decision, the employee
36 may challenge that decision in the superior court. In such an action,
37 the superior court shall follow precedents of the Occupational
38 Safety and Health Appeals Board. If the court finds that the division
39 should have issued a citation and orders the division to issue a

1 citation, then the aggrieved employee ~~may~~ *shall* not commence a
2 civil action pursuant to Section 2699.

3 (iii) A complaint in superior court alleging a violation of
4 Division 5 (commencing with Section 6300) other than those listed
5 in Section 2699.5 shall include therewith a copy of the notice of
6 violation provided to the division and employer pursuant to
7 paragraph (1).

8 (iv) The superior court shall not dismiss the action for
9 nonmaterial differences in facts or theories between those contained
10 in the notice of violation provided to the division and employer
11 pursuant to paragraph (1) and the complaint filed with the court.

12 (B) If the division fails to inspect or investigate the alleged
13 violation as provided by Section 6309, ~~the provisions of~~ subdivision
14 (c) shall apply to the determination of the alleged violation.

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

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

24 (C) An employer who has been provided notice pursuant to this
25 section ~~may~~ *shall* not then enter into consultation with the division
26 in order to avoid an action under this section.

27 (4) The superior court shall review and approve any proposed
28 settlement of alleged violations of ~~the provisions of~~ Division 5
29 (commencing with Section 6300) to ensure that the settlement
30 provisions are at least as effective as the protections or remedies
31 provided by state and federal law or regulation for the alleged
32 violation. The provisions of the settlement relating to health and
33 safety laws shall be submitted to the division at the same time that
34 they are submitted to the court. This requirement shall be construed
35 to authorize and permit the division to comment on those settlement
36 provisions, and the court shall grant the division's commentary
37 the appropriate weight.

38 (c) A civil action by an aggrieved employee pursuant to
39 subdivision (a) or (f) of Section 2699 alleging a violation of any
40 provision other than those listed in Section 2699.5 or Division 5

1 (commencing with Section 6300) shall commence only after the
2 following requirements have been met:

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

8 (2) (A) The employer may cure the alleged violation within 33
9 calendar days of the postmark date of the notice. The employer
10 shall give written notice by certified mail within that period of
11 time to the aggrieved employee or representative and the agency
12 if the alleged violation is cured, including a description of actions
13 taken, and no civil action pursuant to Section 2699 may commence.
14 If the alleged violation is not cured within the 33-day period, the
15 employee may commence a civil action pursuant to Section 2699.

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

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

26 (3) If the aggrieved employee disputes that the alleged violation
27 has been cured, the aggrieved employee or representative shall
28 provide written notice by certified mail, including specified
29 grounds to support that dispute, to the employer and the agency.
30 Within 17 calendar days of the postmark date of that notice, the
31 agency shall review the actions taken by the employer to cure the
32 alleged violation, and provide written notice of its decision by
33 certified mail to the aggrieved employee and the employer. The
34 agency may grant the employer three additional business days to
35 cure the alleged violation. If the agency determines that the alleged
36 violation has not been cured or if the agency fails to provide timely
37 or any notification, the employee may proceed with the civil action
38 pursuant to Section 2699. If the agency determines that the alleged
39 violation has been cured, but the employee still disagrees, the
40 employee may appeal that determination to the superior court.

- 1 (d) The periods specified in this section are not counted as part
- 2 of the time limited for the commencement of the civil action to
- 3 recover penalties under this part.

O