

ASSEMBLY BILL

No. 2898

Introduced by Committee on Labor and Employment (Assembly Members Roger Hernández (Chair), Chu, Low, McCarty, and Thurmond)

March 1, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2898, as introduced, Committee on Labor and Employment. 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 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 once in a 12-month period before the employee may bring a civil action, as specified. For other violations, the act requires the aggrieved employee to follow specified procedures before bringing an action.

Under the act, the procedures pertaining to specified violations include an aggrieved employee giving written notice to the Labor and Workforce Development Agency and the employer of the alleged violation and the facts and theories in support thereof, the agency notifying the employer and the aggrieved employee whether it does, or does not, intend to investigate an alleged violation, and, if it does intend to investigate, the agency providing other notices, all within specified time periods.

This bill would extend those time periods by requiring the agency, when it does not intend to investigate an alleged violation, to notify the

employee and the employer within 45 days and by authorizing the aggrieved employee to commence a civil action 48 days after having sent notice of the alleged violation.

The bill would require the agency to send notification within 48 days if it intends to investigate an alleged violation. The bill would authorize an aggrieved employee to commence a civil action after 173 days, if after having received notice of the agency’s intent to investigate, no citation is issued or no further notification is received from the agency.

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~~ 45 calendar days of
15 the 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 48 calendar days of the postmark date of the notice given pursuant
18 to 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~~ 48 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

1 that decision within five business days thereof by certified mail.
2 Upon receipt of that notice or if no citation is issued by the agency
3 within the ~~158-day~~ 173-day period prescribed by subparagraph
4 (A) and this subparagraph or if the agency fails to provide timely
5 or any notification, the aggrieved employee may commence a civil
6 action pursuant to Section 2699.

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

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

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

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

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

30 (ii) If by the end of the period for inspection or investigation
31 provided for in Section 6317, the division fails to issue a citation
32 and the aggrieved employee disputes that decision, the employee
33 may challenge that decision in the superior court. In such an action,
34 the superior court shall follow precedents of the Occupational
35 Safety and Health Appeals Board. If the court finds that the division
36 should have issued a citation and orders the division to issue a
37 citation, then the aggrieved employee may not commence a civil
38 action pursuant to Section 2699.

39 (iii) A complaint in superior court alleging a violation of
40 Division 5 (commencing with Section 6300) other than those listed

1 in Section 2699.5 shall include therewith a copy of the notice of
2 violation provided to the division and employer pursuant to
3 paragraph (1).

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

8 (B) If the division fails to inspect or investigate the alleged
9 violation as provided by Section 6309, the provisions of subdivision
10 (c) shall apply to the determination of the alleged violation.

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

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

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

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

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

39 (1) The aggrieved employee or representative shall give written
40 notice by certified mail to the Labor and Workforce Development

1 Agency and the employer of the specific provisions of this code
2 alleged to have been violated, including the facts and theories to
3 support the alleged violation.

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

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

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

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