

AMENDED IN SENATE AUGUST 2, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2898**

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

March 1, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2898, as amended, ~~Committee on Labor and Employment~~ Roger Hernández. 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 procedures pertaining to specified violations that include an aggrieved employee giving written notice by online filing with the Labor and Workforce Development Agency and by certified mail to 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. Existing law authorizes a plaintiff as a matter of right to amend an existing complaint to add a cause of action arising under the act at any time within 60 days of the specified time periods.*

*This bill would extend the time to add a cause of action to any time within 90 days of the specified time periods.*

~~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-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, as amended*  
2     *by Section 190 of Chapter 31 of the Statutes of 2016, is amended*  
3     *to read:*

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

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

6 (B) A notice filed with the Labor and Workforce Development  
7 Agency pursuant to subparagraph (A) and any employer response  
8 to that notice shall be accompanied by a filing fee of seventy-five  
9 dollars (\$75). The fees required by this subparagraph are subject  
10 to waiver in accordance with the requirements of Sections 68632  
11 and 68633 of the Government Code.

12 (C) The fees paid pursuant to subparagraph (B) shall be paid  
13 into the Labor and Workforce Development Fund and used for the  
14 purposes specified in subdivision (j) of Section 2699.

15 (2) (A) The agency shall notify the employer and the aggrieved  
16 employee or representative by certified mail that it does not intend  
17 to investigate the alleged violation within 60 calendar days of the  
18 postmark date of the notice received pursuant to paragraph (1).  
19 Upon receipt of that notice or if no notice is provided within 65  
20 calendar days of the postmark date of the notice given pursuant to  
21 paragraph (1), the aggrieved employee may commence a civil  
22 action pursuant to Section 2699.

23 (B) If the agency intends to investigate the alleged violation, it  
24 shall notify the employer and the aggrieved employee or  
25 representative by certified mail of its decision within 65 calendar  
26 days of the postmark date of the notice received pursuant to  
27 paragraph (1). Within 120 calendar days of that decision, the  
28 agency may investigate the alleged violation and issue any  
29 appropriate citation. If the agency, during the course of its  
30 investigation, determines that additional time is necessary to  
31 complete the investigation, it may extend the time by not more  
32 than 60 additional calendar days and shall issue a notice of the  
33 extension. If the agency determines that no citation will be issued,  
34 it shall notify the employer and aggrieved employee of that decision  
35 within five business days thereof by certified mail. Upon receipt  
36 of that notice or if no citation is issued by the agency within the  
37 time limits prescribed by subparagraph (A) and this subparagraph  
38 or if the agency fails to provide timely or any notification, the  
39 aggrieved employee may commence a civil action pursuant to  
40 Section 2699.

1 (C) Notwithstanding any other provision of law, a plaintiff may  
2 as a matter of right amend an existing complaint to add a cause of  
3 action arising under this part at any time within ~~60~~ 90 days of the  
4 time periods specified in this part.

5 (D) The time limits prescribed by this paragraph shall only apply  
6 if the notice required by paragraph (1) is filed with the agency on  
7 or after July 1, 2016. For notices submitted prior to July 1, 2016,  
8 the time limits in effect on the postmark date of the notice shall  
9 apply.

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

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

4 (B) A notice filed with the Labor and Workforce Development  
5 Agency pursuant to subparagraph (A) and any employer response  
6 to that notice shall be accompanied by a filing fee of seventy-five  
7 dollars (\$75). The fees required by this subparagraph are subject  
8 to waiver in accordance with the requirements of Sections 68632  
9 and 68633 of the Government Code.

10 (C) The fees paid pursuant to subparagraph (B) shall be paid  
11 into the Labor and Workforce Development Fund and used for the  
12 purposes specified in subdivision (j) of Section 2699.

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

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

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

33 (3) If the aggrieved employee disputes that the alleged violation  
34 has been cured, the aggrieved employee or representative shall  
35 provide written notice by online filing with the agency and by  
36 certified mail to the employer, including specified grounds to  
37 support that dispute, to the employer and the agency. Within 17  
38 calendar days of the receipt of that notice, the agency shall review  
39 the actions taken by the employer to cure the alleged violation,  
40 and provide written notice of its decision by certified mail to the

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

9 (d) The periods specified in this section are not counted as part  
10 of the time limited for the commencement of the civil action to  
11 recover penalties under this part.

12 (e) This section shall remain in effect only until July 1, 2021,  
13 and as of that date is repealed, unless a later enacted statute, that  
14 is enacted before July 1, 2021, deletes or extends that date.

15 *SEC. 2. Section 2699.3 of the Labor Code, as added by Section*  
16 *191 of Chapter 31 of the Statutes of 2016, is amended to read:*

17 2699.3. (a) A civil action by an aggrieved employee pursuant  
18 to subdivision (a) or (f) of Section 2699 alleging a violation of any  
19 provision listed in Section 2699.5 shall commence only after the  
20 following requirements have been met:

21 (1) (A) The aggrieved employee or representative shall give  
22 written notice by online filing with the Labor and Workforce  
23 Development Agency and by certified mail to the employer of the  
24 specific provisions of this code alleged to have been violated,  
25 including the facts and theories to support the alleged violation.

26 (B) A notice filed with the Labor and Workforce Development  
27 Agency pursuant to subparagraph (A) and any employer response  
28 to that notice shall be accompanied by a filing fee of seventy-five  
29 dollars (\$75). The fees required by this subparagraph are subject  
30 to waiver in accordance with the requirements of Sections 68632  
31 and 68633 of the Government Code.

32 (C) The fees paid pursuant to subparagraph (B) shall be paid  
33 into the Labor and Workforce Development Fund and used for the  
34 purposes specified in subdivision (j) of Section 2699.

35 (2) (A) The agency shall notify the employer and the aggrieved  
36 employee or representative by certified mail that it does not intend  
37 to investigate the alleged violation within 60 calendar days of the  
38 postmark date of the notice received pursuant to paragraph (1).  
39 Upon receipt of that notice or if no notice is provided within 65  
40 calendar days of the postmark date of the notice given pursuant to

1 paragraph (1), the aggrieved employee may commence a civil  
2 action pursuant to Section 2699.

3 (B) If the agency intends to investigate the alleged violation, it  
4 shall notify the employer and the aggrieved employee or  
5 representative by certified mail of its decision within 65 calendar  
6 days of the postmark date of the notice received pursuant to  
7 paragraph (1). Within 120 calendar days of that decision, the  
8 agency may investigate the alleged violation and issue any  
9 appropriate citation. If the agency determines that no citation will  
10 be issued, it shall notify the employer and aggrieved employee of  
11 that decision within five business days thereof by certified mail.  
12 Upon receipt of that notice or if no citation is issued by the agency  
13 within the time limits prescribed by subparagraph (A) and this  
14 subparagraph or if the agency fails to provide timely or any  
15 notification, the aggrieved employee may commence a civil action  
16 pursuant to Section 2699.

17 (C) Notwithstanding any other provision of law, a plaintiff may  
18 as a matter of right amend an existing complaint to add a cause of  
19 action arising under this part at any time within ~~60~~ 90 days of the  
20 time periods specified in this part.

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

26 (1) The aggrieved employee or representative shall give notice  
27 by online filing with the Division of Occupational Safety and  
28 Health and by certified mail to the employer, with a copy to the  
29 Labor and Workforce Development Agency, of the specific  
30 provisions of Division 5 (commencing with Section 6300) alleged  
31 to have been violated, including the facts and theories to support  
32 the alleged violation.

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

36 (i) If the division issues a citation, the employee may not  
37 commence an action pursuant to Section 2699. The division shall  
38 notify the aggrieved employee and employer in writing within 14  
39 calendar days of certifying that the employer has corrected the  
40 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 notice of  
13 violation provided to the division and employer pursuant to  
14 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 notice of violation provided to the division and employer  
18 pursuant to paragraph (1) and the complaint filed with the court.

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

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

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

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

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

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

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

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

15 (B) A notice filed with the Labor and Workforce Development  
16 Agency pursuant to subparagraph (A) and any employer response  
17 to that notice shall be accompanied by a filing fee of seventy-five  
18 dollars (\$75). The fees required by this subparagraph are subject  
19 to waiver in accordance with the requirements of Sections 68632  
20 and 68633 of the Government Code.

21 (C) The fees paid pursuant to subparagraph (B) shall be paid  
22 into the Labor and Workforce Development Fund and used for the  
23 purposes specified in subdivision (j) of Section 2699.

24 (2) (A) The employer may cure the alleged violation within 33  
25 calendar days of the postmark date of the notice sent by the  
26 aggrieved employee or representative. The employer shall give  
27 written notice within that period of time by certified mail to the  
28 aggrieved employee or representative and by online filing with  
29 the agency if the alleged violation is cured, including a description  
30 of actions taken, and no civil action pursuant to Section 2699 may  
31 commence. If the alleged violation is not cured within the 33-day  
32 period, the employee may commence a civil action pursuant to  
33 Section 2699.

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

39 (ii) No employer may avail himself or herself of the notice and  
40 cure provisions of this subdivision with respect to alleged violations

1 of paragraph (6) or (8) of subdivision (a) of Section 226 more than  
2 once in a 12-month period for the same violation or violations  
3 contained in the notice, regardless of the location of the worksite.

4 (3) If the aggrieved employee disputes that the alleged violation  
5 has been cured, the aggrieved employee or representative shall  
6 provide written notice by online filing with the agency and by  
7 certified mail to the employer, including specified grounds to  
8 support that dispute, to the employer and the agency. Within 17  
9 calendar days of the receipt of that notice, the agency shall review  
10 the actions taken by the employer to cure the alleged violation,  
11 and provide written notice of its decision by certified mail to the  
12 aggrieved employee and the employer. The agency may grant the  
13 employer three additional business days to cure the alleged  
14 violation. If the agency determines that the alleged violation has  
15 not been cured or if the agency fails to provide timely or any  
16 notification, the employee may proceed with the civil action  
17 pursuant to Section 2699. If the agency determines that the alleged  
18 violation has been cured, but the employee still disagrees, the  
19 employee may appeal that determination to the superior court.

20 (d) The periods specified in this section are not counted as part  
21 of the time limited for the commencement of the civil action to  
22 recover penalties under this part.

23 (e) This section shall become operative on July 1, 2021.

24 ~~SECTION 1. Section 2699.3 of the Labor Code is amended to~~  
25 ~~read:~~

26 ~~2699.3. (a) A civil action by an aggrieved employee pursuant~~  
27 ~~to subdivision (a) or (f) of Section 2699 alleging a violation of any~~  
28 ~~provision listed in Section 2699.5 shall commence only after the~~  
29 ~~following requirements have been met:~~

30 ~~(1) The aggrieved employee or representative shall give written~~  
31 ~~notice by certified mail to the Labor and Workforce Development~~  
32 ~~Agency and the employer of the specific provisions of this code~~  
33 ~~alleged to have been violated, including the facts and theories to~~  
34 ~~support the alleged violation.~~

35 ~~(2) (A) The agency shall notify the employer and the aggrieved~~  
36 ~~employee or representative by certified mail that it does not intend~~  
37 ~~to investigate the alleged violation within 45 calendar days of the~~  
38 ~~postmark date of the notice received pursuant to paragraph (1).~~  
39 ~~Upon receipt of that notice or if no notice is provided within 48~~  
40 ~~calendar days of the postmark date of the notice given pursuant to~~

1 paragraph (1), the aggrieved employee may commence a civil  
2 action pursuant to Section 2699.

3 (B) If the agency intends to investigate the alleged violation, it  
4 shall notify the employer and the aggrieved employee or  
5 representative by certified mail of its decision within 48 calendar  
6 days of the postmark date of the notice received pursuant to  
7 paragraph (1). Within 120 calendar days of that decision, the  
8 agency may investigate the alleged violation and issue any  
9 appropriate citation. If the agency determines that no citation will  
10 be issued, it shall notify the employer and aggrieved employee of  
11 that decision within five business days thereof by certified mail.  
12 Upon receipt of that notice or if no citation is issued by the agency  
13 within the 173-day period prescribed by subparagraph (A) and this  
14 subparagraph or if the agency fails to provide timely or any  
15 notification, the aggrieved employee may commence a civil action  
16 pursuant to Section 2699.

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

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

26 (1) The aggrieved employee or representative shall give notice  
27 by certified mail to the Division of Occupational Safety and Health  
28 and the employer, with a copy to the Labor and Workforce  
29 Development Agency, of the specific provisions of Division 5  
30 (commencing with Section 6300) alleged to have been violated,  
31 including the facts and theories to support the alleged violation.

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 and employer in writing within 14  
38 calendar days of certifying that the employer has corrected the  
39 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 notice of~~  
13 ~~violation provided to the division and employer pursuant to~~  
14 ~~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 notice of violation provided to the division and employer~~  
18 ~~pursuant to paragraph (1) and the complaint filed with the court.~~

19 ~~(B) If the division fails to inspect or investigate the alleged~~  
20 ~~violation as provided by Section 6309, the provisions of subdivision~~  
21 ~~(e) shall apply to the determination of the alleged violation.~~

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

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

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

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

1 they are submitted to the court. This requirement shall be construed  
2 to authorize and permit the division to comment on those settlement  
3 provisions, and the court shall grant the division’s commentary  
4 the appropriate weight.

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

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

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

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

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

33 (3) If the aggrieved employee disputes that the alleged violation  
34 has been cured, the aggrieved employee or representative shall  
35 provide written notice by certified mail, including specified  
36 grounds to support that dispute, to the employer and the agency.  
37 Within 17 calendar days of the postmark date of that notice, the  
38 agency shall review the actions taken by the employer to cure the  
39 alleged violation, and provide written notice of its decision by  
40 certified mail to the aggrieved employee and the employer. The

1 ~~agency may grant the employer three additional business days to~~  
2 ~~cure the alleged violation. If the agency determines that the alleged~~  
3 ~~violation has not been cured or if the agency fails to provide timely~~  
4 ~~or any notification, the employee may proceed with the civil action~~  
5 ~~pursuant to Section 2699. If the agency determines that the alleged~~  
6 ~~violation has been cured, but the employee still disagrees, the~~  
7 ~~employee may appeal that determination to the superior court.~~  
8 ~~(d) The periods specified in this section are not counted as part~~  
9 ~~of the time limited for the commencement of the civil action to~~  
10 ~~recover penalties under this part.~~

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