

Introduced by Senator StoneFebruary 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 771, as introduced, Stone. Employment.

The Labor Code Private Attorneys General Act of 2004 provides that a civil penalty for a violation of the Labor Code may be recovered through a civil action brought by an aggrieved employee, as specified.

This bill would make a technical, nonsubstantive change to that provision.

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.

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

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

6 (d) For purposes of this part, “cure” means that the employer
7 abates each violation alleged by any aggrieved employee, the
8 employer is in compliance with the underlying statutes as specified
9 in the notice required by this part, and any aggrieved employee is
10 made whole.

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

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

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

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

29 (2) If, at the time of the alleged violation, the person employs
30 one or more employees, the civil penalty is one hundred dollars
31 (\$100) for each aggrieved employee per pay period for the initial
32 violation and two hundred dollars (\$200) for each aggrieved
33 employee per pay period for each subsequent violation.

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

38 (g) (1) Except as provided in paragraph (2), an aggrieved
39 employee may recover the civil penalty described in subdivision
40 (f) in a civil action pursuant to the procedures specified in Section

1 2699.3 filed on behalf of himself or herself and other current or
2 former employees against whom one or more of the alleged
3 violations was committed. Any employee who prevails in any
4 action shall be entitled to an award of reasonable attorney's fees
5 and costs. Nothing in this part shall operate to limit an employee's
6 right to pursue or recover other remedies available under state or
7 federal law, either separately or concurrently with an action taken
8 under this part.

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

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

21 (i) Except as provided in subdivision (j), civil penalties
22 recovered by aggrieved employees shall be distributed as follows:
23 75 percent to the Labor and Workforce Development Agency for
24 enforcement of labor laws and education of employers and
25 employees about their rights and responsibilities under this code,
26 to be continuously appropriated to supplement and not supplant
27 the funding to the agency for those purposes; and 25 percent to
28 the aggrieved employees.

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

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

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

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

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