

NEW STATE LAW PERMITS PRIVATE BOUNTY HUNTER SUITS AGAINST CALIFORNIA EMPLOYERS

by
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Overview. Effective January 1, 2004, California employees have an extraordinary *new* private right of action to enforce any provision of the California Labor Code, with the exception of the workers compensation exclusivity provisions.

An employee can sue for civil penalties, *and collect attorneys' fees*, for almost any California Labor Code violation which is not cited by a governmental agency. The potential implications are staggering. The law is nothing short of a full employment act for California employment lawyers and announces an open season for bounty hunting on California employers.

California's Labor Code contains the majority of laws governing employment in the state. Among other things, it covers wage and hour obligations (including overtime and minimum wage laws), employee classification issues, drug and alcohol rehabilitation requirements, state laws governing layoffs, public works, occupational safety and health, workers compensation and myriad conditions of employment from A (absences) to Z (zoning and labor camps). (Most California anti-discrimination and anti-harassment statutes are contained in the Government Code, and thus are not directly encompassed by this new law.)

The Law's Main Provisions. An aggrieved employee may now recover a civil penalty through a civil action filed on behalf of himself or herself and others. LABOR CODE § 2699(c). Any employee who prevails in any such action is entitled to an award of attorneys' fees and costs. LABOR CODE § 2699(f). However, there is no right to attorneys' fees for a prevailing employer. This new right of action is *in addition* to any other pre-existing remedies and does not preclude separate or concurrent pursuit of those other remedies. LABOR CODE § 2699(f).

If there is no existing penalty for a particular violation, the bill creates a formula for assessing civil penalties for a violation. "If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) *for each aggrieved employee per pay period* for the initial violation and two hundred dollars (\$200) *for each aggrieved employee per pay period for each subsequent violation.*" LABOR CODE § 2699(e).

Employers Must Now Be On Alert. California employers may now be confronted by a flood of litigation over virtually any alleged Labor Code violation that is not pursued by a governmental agency. As an example, if Cal/OSHA does not cite an employer for a purported safety violation, an employee can apparently now sue and

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obtain attorneys' fees. The same is apparently true for even minor claimed Labor Code violations involving documentation, posting of signs, etc.

The law expressly authorizes employees to file an action on behalf of other employees, but provides no class certification requirements. Whether pre-existing class certification requirements will apply to actions under this new law remains to be seen. Notably, the bill contains no requirements that employees first exhaust their administrative remedies by filing a claim with the appropriate governmental agency. Thus, employees may be free to completely bypass governmental agencies and go directly to court.

What Employers Can Do. To reduce the risk of liability for penalties under the law, proactive employers should:

- Audit, and update as appropriate, all human resources practices and procedures to verify compliance with applicable legal requirements. This is best done under the direction of counsel so that the results of the audit are protected to the maximum extent possible by the attorney-client privilege and work product doctrine to minimize misuse of the audit results against the employer in later legal proceedings.
- Hold training sessions to educate supervisors and managers about California Labor Code traps for the unwary to help avoid unwitting violations of the thousands of rules contained in the Labor Code.

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