



AGGRIEVED EMPLOYEES CAN NOW SUE EMPLOYERS DIRECTLY FOR LABOR CODE VIOLATIONS

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Question. Which new law may eventually be looked upon as the most costly in recent memory for California employers? The answer is the Labor Code Private Attorneys General Act of 2004, which provides that an employee may file suit on behalf of himself or herself *or other current or former employees* directly against his or her employer for Labor Code violations. That type of enforcement was previously within the sole purview of the State. The legislation was introduced as Senate Bill 796, which added Sections 2698 and 2699 to the Labor Code, effective January 1, 2004.

Prior law. As recently as December 2003, the State's Labor and Workforce Development Agency (LWDA) and its various departments and divisions were the only authorized assessors and collectors of penalties for Labor Code violations. This new law adds a private component to the system by allowing an "aggrieved" employee to file a suit directly against his employer on behalf of that employee and all fellow workers. No action will be allowed by the employee if a labor law enforcement agency cites the employer for the violation.

Potential Impact. The financial impact of the bill might be dramatic. By way of example, an employee may sue to collect a \$200 civil penalty, multiplied by the number of pay periods at issue (52), and multiplied again by the number of employees (40). The result would be civil penalties of \$416,000. *In addition*, the employee can recover attorneys fees and costs. Furthermore, for any violation of the Code for which no civil penalty is presently established, the bill would establish a penalty. Any business employing one or more employees would be subject to this bill.

Opponents. Some have dubbed the new law 'Son of 17200', noting the similarities to California's much-maligned and abused Unfair Competition Law codified in Business and Professions Code Section 17200. In addition, the aggrieved employees receive only 25% of the recovery. 50% of the recovery would be applied to the General Fund and 25% to the LWDA. It is also possible that a plaintiff could file duplicate grievances, one under SB 796 and one pursuant to Unfair Competition Law, thereby duplicating liability for the same conduct. In some respects, the law essentially allows for maintenance of a class action suit without having to meet the requirements for class certification.

Proponents. Proponents of the law say their intent was to create adequate financing of labor enforcement to achieve compliance with existing state laws. The resources dedicated to enforcement of labor law in California have not kept pace with the growth of the economy in California. Evidence of the enforcement problems is apparent in the Los Angeles garment industry which employs over 100,000 workers. In that industry the Department of Industrial Relations (DIR) estimated the existence of over 33,000 serious and ongoing wage violations.

Potential issues. Once litigation ensues, there will be a number of issues. In order to file suit, one must fall within the statutory definition of an "aggrieved employee". The statute defines such an individual as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." There are no minimum service time requirements. The extent to which the aggrieved employee can file suit for present and past coworkers may present a more difficult issue. Parties

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will also wrestle with the question of the applicable statute of limitations, which could arguably be one year.

The Workplace. Employers must promptly engage in risk assessment to determine the extent of present Labor Code violations, if any, in order to

stem the anticipated tide of litigation. However, this assessment should be carried out in a reasoned manner which is subject to appropriate protections. Regardless of one's perspective, it is certain that the law will open the door to a variety of different types of claims, depending on the underlying Labor Code violations.

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