



## Changes to "Bounty Hunter" Law . . . But the Law Lives On

Recently, the California Legislature passed, and the Governor signed, a bill that amended the Labor Code Private Attorneys General Act of 2004 (also referred to as the "Bounty Hunter" or "Sue Your Boss" law). Generally, these amendments incorporated procedural requirements; allow for judicial discretion to reduce penalties; require court review of settlements; and exempts from coverage under this law (Labor Code Section 2699) minor violations of notice and posting requirements. These new provisions are effective immediately.

These changes significantly reduce the possibility of frivolous claims and provide procedural safeguards. While this comes as good news for employers, these amendments did not change the basic function of the law which allows employees (and former employees) to file suit against their employers for violations of the Labor Code and receive a portion of the penalties plus attorneys' fees for doing so. Therefore, employers are advised to continue to review their policies and practices for potential Labor Code violations. The changes include:

### **Minor violations excepted.**

An action may not be brought for violations of the Labor Code with regard to posting, notice, agency reporting, or filing requirements, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

### **Procedural requirements.**

Generally, the aggrieved employee must notify the Labor and Workforce Development Agency (LWDA) of alleged violations. Within specific timeframes, the LWDA shall investigate (or notify the parties that it does not intend to investigate) the alleged violations. If the LWDA does not conduct an investigation; conducts an investigation but determines that no citation will be issued; or fails to provide timely notification of either of these actions, the "notice and cure" provisions (discussed below) will apply before a civil action may be commenced.

For alleged violations of the Occupational Health and Safety provisions of the Labor Code (with a few exceptions), the aggrieved employee must also notify the Division of Occupational Safety and Health (Cal/OSHA) of the alleged violations. The Division shall conduct an inspection or investigation. An action may not be instituted if a citation is issued and the employee is notified that it has been corrected;

or if no citation is issued and a superior court determines that a citation should have issued and directs the Division to do so.

For certain other violations (not specifically listed in Section 2699.5), the employer must be given "notice" of the alleged violation(s) and the opportunity to "cure" the violation(s) before an action can commence. "Cure" means that (within 33 days of receiving notice) the employer has abated the violation, is in compliance, and has made whole any aggrieved employee. However, the employee can appeal to the Agency to determine whether the violation has been cured, subject to appeal to the superior court by the employer of the Agency's determination. The employer also may only make use of these notice and cure provisions three times in a 12-month period for the same violation(s).

### **Judicial authority.**

The superior court must review and approve any penalties sought as part of a proposed settlement. In any action brought pursuant to the statute, the court also has been given the discretion to reduce the penalties awarded.

### **Anti-retaliation provision.**

Labor Code Section 98.6 has been amended to provide that an employer may not discharge or in any manner discriminate against an employee for having initiated any action under Section 2699.

### **Repeal of filing of application requirement.**

The new amendments include a provision repealing the requirement that employers file a copy of any employment application that requires the signature of an applicant with the Department of Labor Standards Enforcement.

### **Retroactivity.**

This revised provisions may be applied retroactively to any applicable pending proceeding.



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