

SB 1809

Labor Code Private Attorneys General Act of 2004, **Effective – See below**

This controversial bill was introduced last year and became known as the “Sue Your Boss” bill. The bill allowed individual employees and their attorneys to sue for alleged violations to any labor law – no matter how minor. There was no requirement to appeal first to an enforcing agency. The bill created monetary penalties for laws that did not have monetary penalties. The awarding of attorney fees was allowed under this bill and the result was an abundance of trivial lawsuits – in the first six months of 2004 there were \$556,000,000 in lawsuits filed.

The revised law went into effect on August 12, 2004. Two provisions are retroactive to 1/1/04. Those are:

- Lawsuits for violations of posting, notice, agency reporting or filing requirements are now excluded from private enforcement (except those relating to mandatory payroll or workplace injury reporting);
- A court must review and approve penalties in connection with any settlement agreement.

This bill also repealed Labor Code section 431 which required all employers to file a sample of their employment application with the Division of Labor Standards Enforcement.

NEW PROCEDURES – CONDITIONS OF EMPLOYMENT VIOLATIONS

While penalties are not repealed, the courts have the discretion to award lesser penalties to avoid unjust results. New procedures are also required for three categories of Labor Code violations before an employee can file a lawsuit. Those procedures are as follows.

Notification

The employee must first notify the employer and the Labor and Workforce Development Agency. The Agency must then notify the employer and employee within 33 calendar days as to whether it intends to investigate the allegation. If the Agency decides to investigate the allegation, it has up to 120 days to complete the investigation.

The notice must include the specific code provisions that are alleged to be in violation and the facts that support the contention that a violation has occurred. Any time limits run from the postmark date on the notice.

Filing a Lawsuit

If the Agency determines that it will not investigate an allegation OR does not notify the employer/employee within the 33 day time period, the employee may file a lawsuit. Similarly, if the agency decides to investigate an allegation and does not issue a citation within 158 calendar days.

The employee may not file a lawsuit if the Labor and Workforce Development Agency plans to cite the employer. If the agency will cite the employer, the agency must notify the employer and employee within five working days of its decision.

The categories of the Labor Code to which these procedures apply are:

1. Setting and paying wages and salaries;
2. Regulating hours of work and breaks;
3. Employment of minors
4. Employment under state and public works contracts
5. Protection of whistleblowers
6. Other sections regulating conditions of employment

NEW PROCEDURES – SAFETY VIOLATIONS

Any alleged violations concerning occupational health and safety will require the following procedures:

Notification

The employee must first notify the employer and the Division of Occupational Safety and Health (DOSH). A copy of the notice must be sent to the Labor and Workforce Development Agency.

DOSH will determine if and when to investigate. The time limit is 3 days for a serious violation and 14 days for non-serious violations. If DOSH issues a citation, no lawsuit may be filed. DOSH must notify the employer and the employee within 14 days of certifying that a violation has been corrected. If it is determined that the complaint is filed only to harass the employer, the agency may disregard the complaint.

The employer is not permitted to take advantage of the notice and “cure” provision more than three times in any 12-month period.

Filing a Lawsuit

If DOSH does not issue a citation within the inspection deadline time frame, the employee may challenge the decision in court. If the court directs DOSH to issue a citation, the employee is prohibited from filing further lawsuit.

If DOSH fails to inspect or investigate, the employee must notify the Labor and Workforce Development Agency and the employer. The employer has 33 days to correct the violation. If the violation is not corrected, the employee may file a lawsuit.

No private lawsuit can be filed where the employer and DOSH are already parties to an agreement for long-term abatement of conditions, or where they have previously entered into a consultation agreement with regard to a condition at a particular work site. However, a consultation agreement entered into after receipt of an employee's notice prevent this process from continuing.

NEW PROCEDURES – OTHER ALLEGED VIOLATIONS

For any violations not identified above (and safety/health violations that DOSH fails to investigate), the procedures are as follows.

Notification

The employee must first notify the employer and the Labor and Workforce Development Agency. The notice must include the specific code provisions that are alleged to be in violation and the facts that support the contention that a violation has occurred. Any time limits run from the postmark date on the notice.

The employer has 33 calendar days to correct the violation. This correction would require becoming compliant with the law and/or providing restitution to the employee to make him/her “whole” for any loss that may have been suffered, if any. If the employer makes a correction, the employer must notify the employee and the Agency of the actions taken.

If the employee feels that the employer action did not correct the violation, the employee may notify the Agency which can take the Agency up to 17 days to investigate and grant the employer and additional three business days to make the correction. If the Agency determines that a violation has been corrected, but the employee disagrees, the employee may appeal the Agency’s decision.

Filing a Lawsuit

If the Agency determines that the violation has not been corrected, the employee may file a lawsuit. The superior court must review and approve any settlement.

PENALTIES

Under the current law, any penalties granted by a lawsuit were split with 50% going to the General Fund, 25% to the Labor and Workforce Development Agency, and 25% to the employee. Under the revised rules, 75% goes to the Labor and Workforce Development Agency specifically designated for enforcement and education of employers and employees of their rights and obligations under the Labor Code. 25% of the penalties goes to the employee along with attorney fees.

While penalties for trivial violations have been removed, there can still be significant penalties for violations – such as \$100/\$200 per employee times the number of pay periods during which the violation occurs.

RETALIATION PROHIBITION

Employers are prohibited from retaliating against an employee for filing a notice with the Labor and Workforce Development Agency or the Division of Occupational Safety and Health (DOSH). Employees are also protected if they file a lawsuit for a violation of the Labor Code. Similarly, protection is provided to any employee who testifies in connection with a notice or a claim whether the notice/claim is filed on behalf of the employee or another employee.

Protection to employees extends to:

- Employment
- Termination or threat of termination
- Demotion
- Suspension
- Alteration in the terms and conditions of employment
- Training opportunities

View more information about this law

http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1801-1850/sb_1809_bill_20040811_chaptered.html