

Assembly Bill No. 2288

CHAPTER 44

An act to amend Section 2699 of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 1, 2024. Filed with Secretary of State July 1, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2288, Kalra. Labor Code Private Attorneys General Act of 2004.

Existing law, the Labor Code Private Attorneys General Act of 2004 (PAGA), authorizes an aggrieved employee, as defined, to bring a civil action, on behalf of that employee and other current or former employees, to enforce a violation of any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees pursuant to certain notice and cure provisions, as prescribed.

This bill would, among other things, instead authorize an aggrieved employee to bring a civil action as described above on behalf of the employee and other current or former employees against whom a violation of the same provision was committed.

With respect to a violation by a person of a provision that does not provide for a civil penalty, PAGA makes that person liable for a civil penalty of \$500 if, at the time of the alleged violation, the person does not employ one or more employees. If, at the time of the alleged violation, the person employed one or more employees, PAGA makes that person liable for a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. PAGA requires 75% of civil penalties recovered by aggrieved employees to be distributed to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under the Labor Code, as specified, and requires 25% of civil penalties recovered by aggrieved employees to be distributed to the aggrieved employees, except as prescribed.

This bill would instead, if, at the time of the alleged violation, the person employed one or more employees, make that person liable for a civil penalty of \$100 for each aggrieved employee per pay period, except if certain mitigating factors apply, including that the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or 4 consecutive pay periods, in which case the bill would make the civil penalty \$25 or \$50, except as provided. The bill would,

subject to an exception, also reduce the civil penalties prescribed by PAGA by 15% or 30%, as specified, if a person accused of a violation has taken all reasonable steps to comply with the provisions alleged to have been violated in the required notice provided by the aggrieved employee, as prescribed.

This bill would apply its provisions to a civil action brought on or after June 19, 2024, except as specified.

This bill would become operative only if SB 92 of the 2023–24 Regular Session is enacted and takes effect on or before January 1, 2025.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 2699 of the Labor Code is amended to read:

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of the employee and other current or former employees against whom a violation of the same provision was committed pursuant to the procedures specified in Section 2699.3.

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

(c) (1) For purposes of this part, “aggrieved employee” means any person who was employed by the alleged violator and personally suffered each of the violations alleged during the period prescribed under Section 340 of the Code of Civil Procedure, except that for purposes of actions brought pursuant to paragraph (2), “aggrieved employee” means any person who was employed by the alleged violator against whom one or more of the alleged violations was committed within the period prescribed under Section 340 of the Code of Civil Procedure.

(2) Notwithstanding paragraph (1), a nonprofit legal aid organization that has obtained Section 501(c)(3) tax-exempt status, is a qualified legal services project or qualified support center, as defined in Section 6213 of the Business and Professions Code, and has served as counsel of record in civil actions under this part for at least five years prior to January 1, 2025, may file a civil action pursuant to this part as counsel of record for an aggrieved employee on behalf of the employee and one or more current or former employees against whom one or more of the alleged violations was committed. Nothing in this provision establishes standing for the nonprofit legal aid organization as a party in the civil action.

(d) (1) For purposes of subdivisions (c) and (f) of Section 2699.3, and except for violations of subdivision (a) of Section 226, “cure” means that the employer corrects the violation alleged by the aggrieved employee, is

in compliance with the underlying statutes specified in the notice required by this part, and each aggrieved employee is made whole. An employee who is owed wages is made whole when the employee has received an amount sufficient to recover any owed unpaid wages due under the underlying statutes specified in the notice dating back three years from the date of the notice, plus 7 percent interest, any liquidated damages as required by statute, and reasonable lodestar attorney's fees and costs to be determined by the agency or the court. In case of a dispute over the amount of unpaid wages due, nothing in this part prohibits an employer from curing the alleged violations by paying amounts sufficient to cover any unpaid wages that the agency or court determine could reasonably be owed to the aggrieved employees based on the violations alleged in notice.

(2) (A) A violation of paragraph (8) of subdivision (a) of Section 226 shall be considered cured only upon a showing that the employer has provided written notice of the correct information to each aggrieved employee. Such notice may be provided in summary form but shall identify correct information for each pay period in which a violation occurred.

(B) A violation of paragraphs (1) to (7), inclusive, and (9) of subdivision (a) of Section 226 shall be considered cured only upon a showing that the employer has provided, at no cost to the employee, a fully compliant, itemized wage statement or, if such information is customarily provided in digital form, reasonable access to a digital or computer-generated record or records maintained in the ordinary course of business containing the same information required on a fully compliant, itemized wage statement, to each aggrieved employee for each pay period during which the violation occurred during the three years prior to the date of the notice. Nothing in this subdivision will impact any right the employee has to request copies of employment records pursuant to Sections 226, 432, and 1198.5.

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

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part, including the penalty amounts in subdivisions (g) and (h), or may, notwithstanding the limitations set forth in subdivisions (g) and (h) exceed the limitations set forth in those subdivisions, if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

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

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

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is as follows:

(A) One hundred dollars (\$100) for each aggrieved employee per pay period, except that:

(i) If, at the time of the alleged violation, the person employs one or more employees, and the alleged violation is a violation of paragraphs (1) to (7), inclusive, or paragraph (9) of subdivision (a) of Section 226, the only civil penalty applicable under this part is twenty-five dollars (\$25) for each aggrieved employee per pay period if the employee could promptly and easily determine from the wage statement alone the accurate information specified by subdivision (a) of Section 226. If the alleged violation is a violation of paragraph (8) of subdivision (a) of Section 226, the civil penalty applicable under this part for the violation is twenty-five dollars (\$25) for each aggrieved employee per pay period if the employee would not be confused or misled about the correct identity of their employer or, if their employer is a farm labor contractor, the legal entity that secured the services of that employer. This subdivision does not apply if the employer has failed to provide an itemized payroll statement during any of the pay periods at issue.

(ii) The civil penalty is fifty (\$50) for each aggrieved employee per pay period if the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.

(B) The civil penalty is two hundred dollars (\$200) for each aggrieved employee per pay period if either of the following are met:

(i) Within the five years preceding the alleged violation, the agency or any court issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful.

(ii) The court determines that the employer's conduct giving rise to the violation was malicious, fraudulent, or oppressive.

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

(g) (1) In any civil action under this part for an alleged violation of this code, if, prior to receiving the notice of violation required by Section 2699.3, or prior to receiving a request for records pursuant to Section 226, 432, or 1198.5 from the aggrieved employee or the employee's counsel, the person alleged to have committed the noticed violation has taken all reasonable steps to be in compliance with all provisions identified in the notice, the civil penalty that may be recovered in a civil action pursuant to this part shall not be more than 15 percent of the penalty sought under subdivision (a) or (f).

(2) For purposes of paragraph (1), "all reasonable steps" may include, but are not limited to, any of the following: conducted periodic payroll audits and took action in response to the results of the audit, disseminated lawful written policies, trained supervisors on applicable Labor Code and wage order compliance, or took appropriate corrective action with regard

to supervisors. Whether the employer's conduct was reasonable shall be evaluated by the totality of the circumstances and take into consideration the size and resources available to the employer, and the nature, severity and duration of the alleged violations. The existence of a violation, despite the steps taken, is insufficient to establish that an employer failed to take all reasonable steps.

(3) Paragraph (1) does not apply if the civil penalty recovered is recovered pursuant to subparagraph (B) of paragraph (2) of subdivision (f).

(h) (1) In any civil action under this part for an alleged violation of this code, if within 60 days after receiving the notice of violation required by Section 2699.3, the person alleged to have committed the noticed violation has taken all reasonable steps to prospectively be in compliance with all provisions identified in the notice, the civil penalty that may be recovered in a civil action under this part shall not be more than 30 percent of the penalty sought under subdivision (a) or (f).

(2) For purposes of paragraph (1), "all reasonable steps" may include, but are not limited to, taking an action to initiate any of the following: conduct an audit of the alleged violations and take action in response to the results of the audit, disseminate lawful written policies as to the alleged violations, train supervisors on applicable Labor Code and wage order compliance, or take appropriate corrective action with regard to supervisors. Whether the employer's conduct was reasonable shall be evaluated by the totality of the circumstances and take into consideration the size and resources available to the employer, and the nature, severity and duration of the alleged violations. The existence of a violation, despite the steps taken, is insufficient to establish that an employer failed to take all reasonable steps.

(3) Paragraph (1) does not apply if the civil penalty recovered is recovered pursuant to subparagraph (B) of paragraph (2) of subdivision (f).

(i) An aggrieved employee shall not collect a civil penalty for any violation of Sections 201, 202, 203, of the Labor Code, or for a violation of Section 204 that is neither willful or intentional, or a violation of Section 226 that is neither knowing or intentional nor a failure to provide a wage statement, that is in addition to the civil penalty collected by that aggrieved employee for the underlying unpaid wage violation. Nothing in this part or in paragraph (2) of subdivision (e) shall prevent a court, in awarding a civil penalty, from reducing the penalty for any alleged violation if the same conduct or omission resulted in multiple violations of this code.

(j) An employer who satisfies subdivision (g) or (h) and cures a violation shall not be required to pay a civil penalty for that violation. An employer who cures a violation of subdivision (a) of Section 226 as set forth above shall not be required to pay a civil penalty for that violation. Any other employer shall pay a civil penalty of no more than fifteen dollars (\$15) per employee per pay period for the statute of limitations set forth in Section 340 of the Code of Civil Procedure for any violations that the employer cures.

(k) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) and may be awarded injunctive relief in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of the employee and other current or former employees against whom a violation of the same provision was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

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

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

(m) Except as provided in subdivision (n), civil penalties recovered by aggrieved employees shall be distributed as follows: 65 percent to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 35 percent to the aggrieved employees.

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

(o) For purposes of this section, the penalty recovered pursuant to this part shall be reduced by one-half if the employees' regular pay period is weekly rather than biweekly or semimonthly.

(p) The superior court may limit the evidence to be presented at trial or otherwise limit the scope of any claim filed pursuant to this part to ensure that the claim can be effectively tried.

(q) Nothing in this part shall prevent a court from consolidating or coordinating civil actions filed pursuant to this part alleging legally or factually overlapping violations against the same employer.

(r) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions

of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

(s) (1) For cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action pursuant to this part, provide the Labor and Workforce Development Agency with a file-stamped copy of the complaint that includes the case number assigned by the court.

(2) The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.

(3) A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order.

(4) Items required to be submitted to the Labor and Workforce Development Agency under this subdivision or to the Division of Occupational Safety and Health pursuant to paragraph (4) of subdivision (b) of Section 2699.3, shall be transmitted online through the same system established for the filing of notices and requests under subdivisions (a) and (c) of Section 2699.3.

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

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

(v) (1) Except as provided in paragraph (2), the amendments made to this section by the act adding this subdivision shall apply to a civil action brought on or after June 19, 2024.

(2) The amendments made to this section by the act adding this subdivision shall not apply to a civil action with respect to which the notice required by subparagraph (A) of paragraph (1) of subdivision (a), paragraph (1) of subdivision (b), or subparagraph (A) of paragraph (1) of subdivision (c) of Section 2699.3 was filed before June 19, 2024.

SEC. 2. This act shall become operative only if Senate Bill 92 of the 2023–24 Regular Session is enacted and takes effect on or before January 1, 2025.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to further the purpose and intent of the Labor Code Private Attorneys General Act of 2004 to protect workers from labor violations and

address a pending ballot measure, it is necessary for this statute to take effect immediately.

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