

## EMPLOYMENT LAW UPDATE

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### ***Governor Schwarzenegger Reforms Labor Code Section 2698 (The “Sue Your Boss” Law).***

*By Jason A. Geller*

The original Section 2698 of the California Labor Code (Senate Bill 796), which became effective this year, permits individual employees to sue for violations of the Labor Code either on their own behalf or on behalf of other aggrieved employees. Employees are permitted to share in any civil penalty that the court awards and the employer must pay the attorneys’ fees of the prevailing plaintiff employee.

Employers have been concerned that this law will encourage employees to sue for trivial, technical violations of the Labor Code.

The Governor recently reformed Section 2698 through Senate Bill 1809, effective immediately. Two revisions apply retroactively to January 1, 2004 and will impact lawsuits filed during the first part of this year. First, the reforms eliminate as a basis for a lawsuit, private enforcement for most technical violations of posting, notice, agency reporting and filing requirements under the Labor Code, with the exception of those items dealing with mandatory payroll or workplace injury reporting. In

addition, the reforms now require that a court must review and approve all penalties provided in any settlement outside of court. This provides courts with discretion to award lower penalties to avoid unfairness.

The reforms also impose procedures with which employees must comply for three categories of alleged violations of the Labor Code before an employee may file a lawsuit. The procedural steps generally require that the employee first notify the employer and the California State Labor and Workforce Development Agency of the alleged violations to provide the Agency with an opportunity to investigate and issue a citation. If the Agency does not issue a citation and closes its file, the employee may then file a lawsuit. The employee may not file a lawsuit if the Agency itself cites the employer. The other procedural steps are similar in that they are intended to encourage a resolution short of costly litigation by requiring the employee to exhaust certain administrative remedies and provide the Agency a chance to resolve the matter

before an employee is permitted to file a lawsuit. The three categories of Labor Code sections to which these procedures apply are as follows: (1) approximately 150 Labor Code sections governing wages, hours, and employment conditions; (2) various sections regulating workplace health and safety; and (3) all other alleged violations of the remaining sections of the Labor Code.

There are additional changes that protect employee rights. While the reforms do not repeal the “sue your boss law,” they attempt to discourage frivolous lawsuits and require that an employee first notify an employer of any alleged violations and allow a California state agency to resolve the matter before an employee may run to court. The reforms also underscore the importance for California employers to review their payroll and personnel practices to ensure that they comply with California law, including the requirement that employers maintain complete personnel and payroll records.

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