



California's "Sue Your Boss" Law Still Lives

Insights

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Last month, as part of the state budget compromise, the California Legislature amended, but did not eliminate, the "Labor Code Private Attorneys General Act," also known as the "California Bounty-Hunter Law," or the "Sue Your Boss" statute. This law authorizes employees (or disgruntled former employees) to sue their employers for violations of the California Labor Code, and it imposes a penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each subsequent violation where no penalty is provided by statute. One employee can sue and collect penalties for *all* employees who were affected by a violation. The employee can also recover attorneys' fees, which provides a strong incentive for attorneys to file these lawsuits.

An important amendment to the law requires an employee to provide written notice of a statutory violation to the employer and to the state enforcement agency prior to filing a lawsuit. For certain alleged violations, the state agency responsible for enforcing the statute is given an opportunity to conduct its own investigation. If the state agency issues its own citation, no employee lawsuit is permitted. For other alleged violations, the employer is given a chance to cure the violation before a lawsuit may proceed. If a lawsuit is filed, the court has the discretion to award a lesser penalty if it finds that awarding the maximum penalty would be "unjust, arbitrary and oppressive, or confiscatory" under the circumstances. The court must also review and approve all settlement agreements. Seventy-five percent of the penalties recovered in these lawsuits must be turned over to the state to help fund enforcement and education programs, and 25% of the penalties go to the affected employees.

Another important amendment to the law is that technical notice and posting requirements (except for payroll notices and workplace injury reporting) can no longer be the basis for bounty hunter lawsuits. As this amendment is retroactive to January 1st of this year, it will eliminate lawsuits against employers for failing to display posters or for posting notices printed in the wrong font size. This new law also repeals Labor Code section 431, which required that employers file a copy of their employment application with the Division of Labor Standards Enforcement.

In spite of these changes, this "Sue Your Boss" law will still pose a substantial challenge to California employers. More class action lawsuits are likely to be filed over misclassification of employees as exempt from overtime, failure to provide meal and break periods, improper hiring and pay practices, and health and safety violations.

In the meantime, smart employers will review their overtime and pay practices, and their employment application forms and employment contracts, to ensure compliance with the Labor Code. They will see that their employees are taking their required breaks, and that all workplace health and safety standards are being observed. The only way to avoid being the target of a bounty hunter lawsuit is by mounting an aggressive and diligent effort to comply with California's many state labor laws.