



## Changes to the "Sue-Your-Boss" law help employers prevent lawsuits

By Geoffrey Lee

Employers can breathe a little easier now that the California Legislature has scaled back harsh provisions of the Labor Code Private Attorneys General Act, affectionately known as the "Sue-Your-Boss" law. Cal. Lab. Code § 2699. New changes in the law now prohibit employees from suing their employer for a violation of the Labor Code unless they first give the employer an opportunity to cure that violation. Most significantly, employees are now barred from bringing lawsuits against their employer for minor violations of posting, notice, reporting, or filing requirements, unless those requirements relate to mandatory payroll or workplace injuries.

Formerly, any employee could sue his employer for any violation of the Labor Code. Violations as minor as posting notices in the wrong size font could result in a civil penalty of \$100 per employee each pay period. When the California Chamber of Commerce reported the filing of 65 lawsuits for more than \$500 million, legislators finally gave in to constituent efforts to repeal or reform the law.

The following four major changes were approved by Governor Schwarzenegger and take effect immediately rather than at the beginning of 2005:

*First*, Labor Code Section 431 is repealed. Under that section, employers requiring job applicants to sign employment applications were in turn required to file a copy of those applications with the Director of Labor Standards Enforcement.

*Second*, employees may not bring an action for any violation of a posting, notice, agency reporting, or filing requirement, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting. Cal. Lab. Code § 2699(g)(2). The two exceptions remain pitfalls for employers. Accordingly, employers are advised to familiarize themselves with

the Labor Code provisions relating to payroll and workplace injuries.

*Third*, newly enacted section 2699.3 provides several administrative hurdles employees must jump before filing suit. An aggrieved employee must give the employer written notice by certified mail, describe the specific provisions of the labor code allegedly violated, and include the facts and theories to support their claim. Section 2699.3 splits the potential violations into three main classes: (1) violations of codes specifically delineated in newly enacted section 2699.5(a); (2) violations of the safety provisions (OSHA); and (3) all other violations of the Labor Code. Depending on the class of violation alleged, employers must be given either time to cure or opportunity to let a state agency investigate.

*Lastly*, should a lawsuit under section 2699 go forward, the court now has the discretion to award a lesser penalty if, depending on the circumstances, the statutory penalty would be unfair.

The foregoing rules are now in effect to protect employers. The rules also apply retroactively to any alleged Labor Code violations occurring since January 1, 2004. Cal. Lab. Code §2699(b)(2).

### Further Information

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