

"BOUNTY HUNTER" BILL BECOMES LAW

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Employment Law Reporter, Ervin Cohen & Jessup LLP

In the frenzy of last minute bill signing, at the end of October, Governor Gray Davis quietly signed SB 796 into law. Business leaders have referred to this new law as the "Sue Your Boss Bill" and the "Bounty Hunter Law" because it provides powerful new incentives for employees to bring class action type claims against California employers. While current law permits only certain agencies to enforce wage/hour laws and recover civil penalties against employers, as of January 1, 2004, employees will be able to sue employers for violations of these laws if the applicable state agency fails or refuses to do so.

The new law, "The Labor Code Private Attorneys General Act of 2004," provides a private cause of action allowing any person employed by an "alleged violator" to bring a lawsuit for any alleged violation of the Labor Code. Because the new law allows such actions to be brought on behalf of current or former employees, there are now incentives for employees to bring lawsuits against employers for Labor Code violations, as well as for unfair competition under Business and Professions Code §17200. Under this new law, the private plaintiffs who bring these lawsuits will be allowed to share in 25% of the state penalties assessed against the employers (the rest of the penalty gets distributed to the state's General Fund and to the Labor and Workforce Development Agency). The new law also allows the employee to recover attorneys' fees for bringing these actions. These provisions will encourage both employees and their lawyers to bring these cases.

Civil Penalties Available Under Labor Code SB 796

As noted above, the Labor Code has long provided civil penalties for various wage and hour violations, but has limited recovery of these penalties to actions brought by the Division of Labor Standards Enforcement. The "Sue Your Boss Bill" has changed all that. The civil penalties now available to employees under SB 796 are as follows:

1. Unpaid Overtime and Failure to Provide Meal Periods. Violations regarding unpaid overtime or meal periods under Labor Code Section 558 in the amount of \$50 for each employee for each pay period in which the employee was underpaid and \$100 per employee per pay period for each subsequent violation.

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2. Failure to Pay Wages to Current Employees When Due. Under Labor Code Section 210, the employer is required to pay each current employee \$50 for failure to pay wages when due or for paying for the same work at lesser rates based on the individual's gender and \$100 for failure to pay each employee, plus 25% of the amount "unlawfully withheld."

3. Failure to Accurately Itemize Wage Statements to Employees and Failure to Keep Payroll Records. Every employer is required to give its employees itemized wage statements. Under current Labor Code Section 226, employers are required to pay \$50 per employee for the initial violation of this law and \$100 per employee for each subsequent pay period in which there is a violation. Under the new law, employees may now seek penalties of \$250 per employee for the initial violation and \$1,000 per employee for each subsequent violation.

4. Failure to Provide Notice of Plant Closing. Labor Code Section 1403 requires advance notice of any termination due to plant closure. Failure to provide the requisite notice results in a \$500 fine per day per violation.

This statute revision will have a dramatic impact on California employers. As Assembly Member Tom Harmon recognized, "[i]f a minor Labor Code violation occurs over a period of one year in a small business of 40 employees, the civil penalties could total more than \$400,000. The \$200.00 civil penalty will first be multiplied by 40 (the number of employees) and then again by 52 (the number of pay periods over one year). What is also disturbing is that these are minor violations that until now have been resolved under administrative procedure designed to protect workers without putting employers out of business." Under SB 796, individuals are empowered as "private attorneys general" with authority to take even minor grievances directly to civil court. The bill promotes lawsuits as a largely risk-free venture for employees with plaintiffs' attorneys being able to recover their attorneys' fees and only limited rights of recovery for a wrongful suit filed against an employer.

What Can be Done?

1. Now, more than ever, it is imperative that employers reexamine their wage and hour practices to insure that they comply with not only the spirit, but also the letter of California law.

2. Employers should review their employee handbooks to insure they comply with both California and federal law.

3. Investigate whether your meal period practices protect against liability for unpaid wages, missed meal period premiums and civil penalties. Employers should have a strongly-worded policy that makes it mandatory that all non-exempt employees take at least a 30-minute lunch, and should keep accurate time records which establish the times these employees actually leave and return from lunch. These records must be monitored periodically to insure that the employees have been complying with these requirements.

4. Conduct a detailed audit to make sure that all employees are properly classified for overtime purposes. Indeed, this is an activity that should be periodically performed as jobs and job functions change over time.

5. Conduct an audit to ascertain whether your policies and procedures insure that all wages are paid when due

and that no employees are receiving different compensation based on gender or some other inappropriate distinction.

Conclusion

The new law provides substantial incentives for employees and their lawyers to sue their employers for minor “technical” violations of the Labor Code, as well as Business and Professions Code §17200. Under these circumstances, it is imperative that all California employers review their policies and procedures to limit their exposure to these actions. Further, in view of the substantial incentive for employees to sue and the potential for increased recovery against employers, employers would be well advised to consult with legal counsel to insure complete compliance with California labor law.