



Featured News

ALERT

Proposed Bill Would Provide an Alternative Enforcement Mechanism Under the Labor Code

Background

Existing law establishes, among other entities, the Division of Labor Standards Enforcement (“DLSE”), the Division of Workers’ Compensation (“DWC”), and the Division of Occupational Safety and Health (“Cal-OSHA”), with different enforcement duties and powers.

Specifically, Cal-OSHA is in charge of assuring safe and healthful working conditions for employees, while the DLSE, the head of which is the Labor Commissioner, enforces the Labor Code and all labor laws of the state the enforcement of which is not specifically vested in any other officer, board, or commission. With specific regard to the payment of wages, district attorneys or prosecuting city attorneys can prosecute actions, either civil or criminal, for violations or enforce those provisions independently and without specific direction of the DLSE.

Furthermore, the Labor Code Private Attorneys General Act of 2004 (“PAGA”), authorizes an aggrieved employee to bring a civil action to recover specified civil penalties that would otherwise be assessed and collected by the Labor and Workforce Development Agency on behalf of the employee and other current or former employees for the violation of certain provisions affecting employees.

In February 2023, Assembly member Brian Maienschein introduced a bill that, if passed, would amend the Government Code to provide an alternative enforcement mechanism under the Labor Code. The bill would amend Labor Code Section 218, add Section 226.9, and add Chapter 8.

What Is AB 594?

The bill would authorize public prosecutors to prosecute violations of the Labor Code independently and without direction from the DLSE, the DWC or Cal-OSHA within their geographic jurisdictions, make available prevailing party attorneys’ fees, costs, and injunctive relief



in order to prevent continued Labor Code violations, and exempt these actions from any arbitration agreement between the employer and employee.

Section 1 of the bill makes seven (7) legislative findings and declarations, including that wage theft is widespread in California, and is particularly egregious in low-wage industries, disproportionately impacting the most vulnerable workers, such that it is essential to maximize the tools available to public enforcement agencies to give workers access to justice, hold companies that break the law accountable, and secure California's public safety net.

Section 2 of the bill would add Chapter 8, titled "Alternative Enforcement," to Division 1 of the Labor Code. A public prosecutor would be authorized to prosecute an action, either civil or criminal, for a violation of the Labor Code or to enforce the provisions of the Labor Code independently and without specific direction of the DLSE, the DWC, or Cal-OSHA, including seeking injunctive relief. A court would be required to award a prevailing plaintiff in that action its reasonable attorney's fees and costs, including expert witness fees.

In any such action, an agreement between a worker and his/her employer limiting representative actions or mandating private arbitration would have no effect on the proceedings or on the authority of the public prosecutor to enforce the Labor Code. Any attempt by an employer to compel a local prosecutor to arbitrate a claim would be deemed frivolous, and any appeal of a judge's denial of arbitration would not stay the underlying action.

The Labor Commissioner would also be authorized to issue citations to employers found to have willfully misclassified their workers. The bill would entitle an employee, for the same violation, to either recovery under the bill or by enforcement of a civil penalty pursuant to PAGA.

Section 3 of the bill would amend Labor Code Section 218 to repeal the provisions related to the authority of the district attorney, which would be expanded.

Section 4 of the bill would add Labor Code Section 226.9 to provide that, as an alternative to the existing process, the Labor Commissioner may issue a determination that a person or employer has violated existing law and may issue a citation by the Labor Commissioner. In addition, an employee would be entitled to either a statutory penalty or enforcement of a civil penalty for the same violation.

The rationale for the bill is the alleged need for an increase in state enforcement of labor laws by giving all local prosecutors the right to enforce the entire Labor Code.

The bill passed out of the Labor Committee on a party-line vote with Democrats in support. The bill now moves to the Assembly Judiciary Committee, which Assembly member Maienschein chairs.

Why This Bill Would Hurt Employers

Assembly member Maienschein told the Assembly Labor and Employment Committee that his legislation is an attempt to "beef up" a labor law enforcement system that "is inadequate for California's enormous workforce."

Critics of the bill, which include numerous business organizations, say that it could lead to wildly

varying indicial decisions and uneven enforcement across jurisdictions on issues ranging from paystub information to meal-and-rest breaks.

The California Chamber of Commerce opposes this bill, noting that it could also allow for double litigation and double recovery. “If a prosecutor was to successfully seek wages or penalties from a business, or if they were to settle a case on behalf of certain employees, there’s really nothing in the bill that would actually prohibit that same employee who signed a release or was part of that settlement from bringing a “PAGA suit,” a Policy Advocate for the California Chamber of Commerce said.

Brothers Smith Analysis

Public prosecutors are already permitted, under Labor Code section 218, to prosecute a number of wage and hour violations, and intentionally withholding wages is also already a crime for which employers may be prosecuted in a criminal action. Giving broader authority to public prosecutors will likely result in inconsistent enforcement throughout the state.

Furthermore, workers’ compensation and health and safety claims are specialized in nature and should continue to be handled by the Workers’ Compensation Appeals Board and by Cal-OSHA, respectively.

Finally, the bill leaves the door open to double recovery, and it will increase litigation extensively. The bill is silent as to its interaction with PAGA, such that even if the employee recovers money for their individual claims or their claims have expired under the statute of limitations, they may still later serve as a PAGA plaintiff.

You may wish to consider contacting your elected officials in regard to this proposed legislation.



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