



FENWICK & WEST LLP

Fenwick Employment Brief

Special Update Re: Private Attorney General Act Developments

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California employers and business groups appear to have secured an important victory in their efforts to scale back the Private Attorney General Act (aka the “Sue Your Boss” law) enacted in the final weeks of Governor Davis’ administration.

The “Sue Your Boss” law amended the California Labor Code to permit employees to sue current or former employers to recover a percentage of penalties for any violation of the Labor Code (previously, most penalties could only be recovered by the State). The law opened the door to individual and class action lawsuits for failure by an employer to, for example, post a workplace bulletin board notice in a timely fashion, among other Labor Code violations.

During budget negotiations this week, state legislators and the Governor agreed in principle to modify the law in at least the following three (3) respects:

1. Employees may not sue to recover penalties for workplace posting or notice violations.
2. Before employees may commence a lawsuit to recover penalties for any Labor Code violation, they must first give written notice of the purported violation to both the state Labor Department *and* the employer, after which the employer will have an opportunity to correct any violation.

3. Courts will have discretion to award less than the maximum penalties specified in the original law if, based on the facts and circumstances of a particular case, a maximum penalty would be unjust, arbitrary and/or oppressive. (The original law *required* courts to impose a \$100 penalty against employers for *each* aggrieved employee *per* pay period for an initial Labor Code violation, and a \$200 penalty for *each* aggrieved employee *per* pay period for *each* subsequent violation.)

Although published reports suggest the amendment will receive the necessary approval from both the legislature and the Governor’s office, its precise wording is not yet certain.

The amendment, if it becomes law, will not eliminate employer duties under the Labor Code, nor will it restrict the State’s ability to pursue penalties of any kind. However, the amendment represents a victory for the business community, which lobbied hard to reign in what was widely perceived as a tool for frivolous and wasteful litigation.

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