

AMENDED IN ASSEMBLY APRIL 13, 2023

AMENDED IN ASSEMBLY MARCH 16, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

## ASSEMBLY BILL

**No. 594**

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**Introduced by Assembly Member Maienschein**

February 9, 2023

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An act to amend Section 218 of, to add Section 226.9 to, and to add Chapter 8 (commencing with Section 180) to Division 1 of, the Labor Code, relating to employment.

### LEGISLATIVE COUNSEL'S DIGEST

AB 594, as amended, Maienschein. Labor Code: alternative enforcement.

(1) Existing law establishes the Department of Industrial Relations in the Labor and Workforce Development Agency, administered by the Director of Industrial Relations, and vests it with various powers and duties to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. Existing law establishes within the department, among other entities, the Division of Labor Standards Enforcement, the Division of Workers' Compensation, and the Division of Occupational Safety and Health, with enforcement duties and powers, as prescribed.

Existing law authorizes the Division of Labor Standards Enforcement, the head of which is the Labor Commissioner, to enforce 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. Existing law relating to payment of wages for general occupations provides that

nothing in those provisions limits the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations or to enforce those provisions independently and without specific direction of the Division of Labor Standards Enforcement.

~~Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment.~~

~~Existing law, the California Occupational Safety and Health Act of 1973, requires employers to comply with certain standards ensuring healthy and safe working conditions, as specified. The act charges the Division of Occupational Safety and Health with enforcement of the act, subject to oversight by the Chief of the Division of Occupational Safety and Health.~~

This bill would authorize a public prosecutor, as defined, to prosecute an action, either civil or criminal, for a violation of *specified provisions* of the Labor Code or to enforce ~~the Labor Code~~ *those provisions* independently and without specific direction of the applicable division. The bill, except as specified, would limit the action of a public prosecutor under the bill to redressing violations occurring within the public prosecutor's geographic jurisdiction. The bill would authorize a public prosecutor, in addition to any other remedies available, to seek injunctive relief to prevent continued ~~violations of the Labor Code~~ *violations*.

This bill would provide that, in any action initiated by a public prosecutor to enforce the Labor Code, any agreement between a worker and employer that purports to limit representative actions or to mandate private arbitration shall have no effect on the proceedings or on the authority of the public prosecutor to enforce the code. The bill would further provide that any ~~motion or other court filing that seeks to compel a public prosecutor to arbitrate a claim due to any agreement between a worker and employer shall be deemed frivolous and any subsequent appeal of the denial of any motion or other court filing to impose such restrictions on a public prosecutor~~ shall not stay the trial court proceedings, notwithstanding specified law.

(2) Existing law prohibits any person or employer from engaging in willful misclassification, as defined, of an individual as an independent contractor instead of an employee and in specified acts relating to the misclassified individual's compensation. Existing law, if the Labor and

Workforce Development Agency or a court makes one of several prescribed determinations regarding the violation of those prohibitions, subjects the violator to specified civil penalties.

*Existing law, 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. Existing law generally requires the employee to follow prescribed procedures before bringing an action and establishes alternate procedures for specific categories of violations.*

This bill, ~~as an alternative in addition to those civil penalties, penalties for misclassification,~~ would authorize the Labor Commissioner to issue a determination that a person or employer has violated a prohibition for recovery pursuant to specified recovery provisions as a civil penalty, through the issuance of a citation. The bill would prescribe the procedures for issuing, contesting, and enforcing judgments for citations issued under the bill. 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 ~~the Labor Code Private Attorneys General Act of 2004: PAGA.~~ The bill would authorize the Labor Commissioner to enforce these provisions by informal hearing or in a civil suit.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Wage theft is widespread in California, and is particularly
- 4 egregious in low-wage industries, disproportionately impacting
- 5 the most vulnerable workers.
- 6 (b) Companies continue to develop more sophisticated ways to
- 7 evade accountability for labor law violations, including complex
- 8 layers of contracting, the use of fictitious LLC and franchise
- 9 agreements, reliance on app-based dispatch, and ~~nearly ubiquitous~~
- 10 ~~use of mandatory arbitration as a condition of employment: the~~
- 11 *widespread use of compulsory waiver of rights agreements.*

(c) Wage theft can take many forms, ranging from pay practices like group piece-rate *rate*, to standard misclassification and cash pay *pay*, to requiring workers to clock out before working overtime hours or *to* falsify timesheets.

(d) Existing resources are insufficient to protect workers or to incentivize legal compliance by employers.

(e) Wage theft and practices like misclassification do not only harm workers, they also create unfair competition for responsible employers who follow the law.

(f) The State of California and localities are also harmed when labor laws are not enforced because more workers fall into poverty, the safety net is eroded, workers increasingly rely upon public resources, and payroll taxes are not paid.

(g) It is essential that we maximize the tools available to public enforcement agencies to give workers access to justice, hold companies that break the law accountable, and secure our public safety net.

SEC. 2. Chapter 8 (commencing with Section 180) is added to Division 1 of the Labor Code, to read:

#### CHAPTER 8. ALTERNATIVE ENFORCEMENT

180. As used in this chapter, “public prosecutor” means a district attorney, a city attorney, a county counsel, or any other city or county prosecutor.

181. (a) A public prosecutor may prosecute an action, either civil or criminal, for a violation of *this division, Division 2 (commencing with Section 200), or Division 3 (commencing with Section 2700) of this code* or to enforce ~~the~~ *those* provisions of this code independently and without specific direction of the Division of Labor Standards Enforcement, the Division of Workers’ Compensation, or the Division of Occupational Safety and Health, as applicable. ~~Unless otherwise authorized to enforce statewide, an~~ *An action of a public prosecutor under this chapter shall be limited to redressing violations occurring within the public prosecutor’s geographic jurisdiction, unless the public prosecutor is in a city with a population in excess of 750,000 or is otherwise authorized to enforce this code statewide.*

(b) In addition to any other remedies available, a public prosecutor may seek injunctive relief to prevent continued

1 violations of *this division, Division 2 (commencing with Section*  
2 *200), or Division 3 (commencing with Section 2700) of this code.*

3 (c) The court shall award a prevailing plaintiff in that action its  
4 reasonable attorney's fees and costs, including expert witness fees.

5 182. In any action initiated by a public prosecutor to enforce  
6 this code, any agreement between a worker and employer that  
7 purports to limit representative actions or to mandate private  
8 arbitration shall have no effect on the proceedings or on the  
9 authority of the public prosecutor to enforce the code. ~~Any motion~~  
10 ~~or other court filing that seeks to compel a public prosecutor to~~  
11 ~~arbitrate a claim due to any agreement between a worker and~~  
12 ~~employer shall be deemed frivolous and any subsequent appeal of~~  
13 ~~the denial of any motion or other court filing to impose such~~  
14 ~~restrictions on a public prosecutor shall not stay the trial court~~  
15 ~~proceedings, notwithstanding Section 916 of the Code of Civil~~  
16 ~~Procedure.~~

17 SEC. 3. Section 218 of the Labor Code is amended to read:

18 218. Nothing in this article shall limit the right of any wage  
19 claimant to sue directly or through an assignee for any wages or  
20 penalty due them under this article.

21 SEC. 4. Section 226.9 is added to the Labor Code, to read:

22 226.9. (a) ~~As an alternative~~ *In addition* to the process set forth  
23 in Section 226.8, the Labor Commissioner may issue a  
24 determination that a person or employer has violated subdivision  
25 (a) of Section 226.8 for recovery pursuant to Section 98.3 as a civil  
26 penalty through the issuance of a citation. The procedures for  
27 issuing, contesting, and enforcing judgments for citations issued  
28 by the Labor Commissioner under this section shall be the same  
29 as those set forth in subdivisions (b) to ~~(k)~~, (j), inclusive, of Section  
30 1197.1.

31 (b) An employee is entitled to only one of the following for the  
32 same violation:

33 (1) The statutory penalty provided for in this section.

34 (2) To enforce a civil penalty pursuant to Part 13 (commencing  
35 with Section 2698).

36 (c) The Labor Commissioner may enforce this section pursuant  
37 to Section 98 or in a civil suit.

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