

AMENDED IN SENATE SEPTEMBER 8, 2023

AMENDED IN ASSEMBLY MAY 18, 2023

AMENDED IN ASSEMBLY APRIL 13, 2023

AMENDED IN ASSEMBLY MARCH 16, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 594

**Introduced by Assembly Member Maienschein
(Coauthor: Assembly Member Kalra)**

February 9, 2023

An act to amend ~~Section 218~~ *Sections 218 and 226.8* of, to add ~~Section 226.9~~ to, and to add Chapter 8 (commencing with Section 180) to Division 1 of, *and to repeal Section 181 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.

~~This bill~~ *bill, until January 1, 2029*, 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 those provisions ~~independently and without specific direction of the Division of Labor Standards Enforcement.~~ *independently. The bill would require moneys recovered by public prosecutors under the Labor Code to be applied first to payments due to affected workers. The bill would also require all civil penalties recovered pursuant to those provisions to be paid to the General Fund of the state, unless otherwise specified.* 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.

This bill would provide that, in any action initiated by a public prosecutor, ~~a division within the department, or the Department of Justice prosecutor or the Labor Commissioner~~ to enforce the Labor Code, any individual 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, the division, or the Department of Justice prosecutor or the Labor Commissioner~~ to enforce the code. The bill would further provide that any subsequent appeal of the denial of any motion or other court filing to impose such restrictions on a public prosecutor, a division, or the Department of Justice 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 also authorizes the Labor Commissioner to determine such a violation through investigation and informal hearing and, on making that determination, to issue a citation to assess those civil penalties pursuant to prescribed procedures for issuing, contesting, and enforcing judgments.

~~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 would authorize the recovery of willful misclassification penalties by the employee as a statutory penalty pursuant to the informal hearing provisions or by the Labor Commissioner as a civil penalty through the issuance of a citation or pursuant to existing law that authorizes action on behalf of a person financially unable to employ counsel. The bill would authorize an employee to either recover statutory penalties under these provisions or to enforce civil penalties under a specified provision of PAGA, but not both, for the same violation.~~

This bill would authorize the Labor Commissioner or a public prosecutor, as defined, to enforce these willful misclassification provisions through specified methods, including by investigating an alleged violation, ordering temporary relief, issuance of a citation, and filing a civil action. The bill would also permit specified employees, the Labor Commissioner, or a public prosecutor to alternatively recover certain penalties as damages payable to the employee.

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:

1 (a) Wage theft is widespread in California, and is particularly
2 egregious in low-wage industries, disproportionately impacting
3 the most vulnerable workers.

4 ~~(b) Companies continue to develop more sophisticated ways to~~
5 ~~evade accountability for labor law violations, including complex~~
6 ~~layers of contracting, the use of fictitious LLC and franchise~~
7 ~~agreements, reliance on app-based dispatch, and the widespread~~
8 ~~use of compulsory waiver of rights agreements.~~

9 (e)
10 (b) Wage theft can take many forms, ranging from pay practices
11 like group piece rate, to standard misclassification and cash pay,
12 to requiring workers to clock out before working overtime hours
13 or to falsify timesheets.

14 ~~(d)~~
15 (c) Existing resources are insufficient to protect workers or to
16 incentivize legal compliance by employers.

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

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

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

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

33
34 CHAPTER 8. ALTERNATIVE ENFORCEMENT
35

36 180. As used in this chapter, “public prosecutor” means *the*
37 *Attorney General*, a district attorney, a city attorney, a county
38 counsel, or any other city or county prosecutor.

39 181. (a) ~~A~~*In addition to any other remedies available, a public*
40 *prosecutor may prosecute an action, either civil or criminal, for a*

1 violation of ~~this division~~, Division 2 (commencing with Section
2 200), *but excluding Part 3.5 (commencing with Section 1140) and*
3 *Part 13 (commencing with Section 2698)*, or Division 3
4 (commencing with Section ~~2700~~) of this code 2700), *but excluding*
5 *Chapter 4 (commencing with Section 3070)*, or to enforce those
6 provisions of this code ~~independently and without specific direction~~
7 ~~of the Division of Labor Standards Enforcement~~. *independently.*
8 *Moneys recovered by public prosecutors under this code shall be*
9 *applied first to payments, such as wages, damages, and other*
10 *penalties, due to affected workers. All civil penalties recovered by*
11 *a public prosecutor pursuant to this chapter shall be paid to the*
12 *General Fund of this state, unless otherwise specified by this code.*
13 An action of a public prosecutor under this chapter shall be limited
14 to redressing violations occurring within the public prosecutor's
15 geographic jurisdiction, unless the public prosecutor ~~is in a city~~
16 ~~with a population in excess of 750,000 or is otherwise authorized~~
17 ~~to enforce this code statewide~~. *has statewide authority or has*
18 *enforcement authority pursuant to Section 17204 of the Business*
19 *and Professions Code. Nothing in this section shall divest the*
20 *division of its authority to enforce this code and all labor laws of*
21 *the state for the purposes of Section 95. Nothing in this chapter*
22 *shall be read to limit or restrict a public prosecutor's existing*
23 *authority pursuant to Section 17204 of the Business and*
24 *Professions Code.*

25 (b) In addition to any other remedies available, a public
26 prosecutor may seek injunctive relief to prevent continued
27 violations of ~~this division~~, Division 2 (commencing with Section
28 200), *but excluding Part 3.5 (commencing with Section 1140) and*
29 *Part 13 (commencing with Section 2698)*, or Division 3
30 (commencing with Section ~~2700~~) of this code. 2700), *but excluding*
31 *Chapter 4 (commencing with Section 3070).*

32 (c) The court ~~shall~~ may award a prevailing plaintiff in that action
33 its reasonable attorney's fees and costs, including expert witness
34 fees. *fees and costs to the extent the Labor Commissioner would*
35 *be entitled to such fees in an action under Section 98.3.*

36 (d) (1) A public prosecutor shall provide a 14-day notice to the
37 Division of Labor Standards Enforcement prior to prosecuting an
38 action under this section. A public prosecutor's failure to provide
39 this notice shall not constitute a defense to the action.

1 (2) *The Division of Labor Standards Enforcement shall have*
 2 *the right to intervene in any court proceedings brought pursuant*
 3 *to this section by a public prosecutor unless the public prosecutor*
 4 *has statewide authority or has enforcement authority pursuant to*
 5 *Section 17204 of the Business and Professions Code, in which*
 6 *case intervention in a proceeding brought pursuant to this section*
 7 *shall be permissive.*

8 (e) *This section shall remain in effect only until January 1, 2029,*
 9 *and as of that date is repealed. This subdivision shall not apply to*
 10 *any action initiated in court by a public prosecutor prior to*
 11 *January 1, 2029.*

12 182. In any action initiated by a public ~~prosecutor, a division~~
 13 ~~in the department, or the Department of Justice~~ *prosecutor or the*
 14 *Labor Commissioner* to enforce this code, any individual agreement
 15 between a worker and employer that purports to limit representative
 16 actions or to mandate private arbitration shall have no effect ~~on~~
 17 ~~the proceedings or on the authority of the public prosecutor, the~~
 18 ~~division, or the Department of Justice~~ *prosecutor or the Labor*
 19 *Commissioner* to enforce the code. Any subsequent appeal of the
 20 denial of any motion or other court filing to impose such
 21 restrictions on a public ~~prosecutor, a division, or the Department~~
 22 ~~of Justice~~ *prosecutor or the Labor Commissioner* shall not stay
 23 the trial court proceedings, notwithstanding Section 916 of the
 24 Code of Civil Procedure. An individual agreement does not include
 25 a collective bargaining agreement.

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

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

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

31 ~~226.9. (a) The penalties set forth in subdivisions (b) and (c)~~
 32 ~~of Section 226.8 may alternatively be recovered by the employee~~
 33 ~~as a statutory penalty pursuant to Section 98 or by the Labor~~
 34 ~~Commissioner as a civil penalty through the issuance of a citation~~
 35 ~~or pursuant to Section 98.3. The procedures for issuing, contesting,~~
 36 ~~and enforcing judgments for citations issued by the Labor~~
 37 ~~Commissioner under this section shall be the same as those set~~
 38 ~~forth in subdivisions (b) to (k), inclusive, of Section 1197.1.~~

39 (b) ~~An employee is only entitled to either recover the statutory~~
 40 ~~penalty as provided for in this section or to enforce a civil penalty~~

1 as set forth in subdivision (a) of Section 2699, but not both, for
2 the same violation.

3 *SEC. 4. Section 226.8 of the Labor Code is amended to read:*

4 226.8. (a) It is unlawful for any person or employer to engage
5 in any of the following activities:

6 (1) Willful misclassification of an individual as an independent
7 contractor.

8 (2) Charging an individual who has been willfully misclassified
9 as an independent contractor a fee, or making any deductions from
10 compensation, for any purpose, including for goods, materials,
11 space rental, services, government licenses, repairs, equipment
12 maintenance, or fines arising from the individual's employment
13 where any of the acts described in this paragraph would have
14 violated the law if the individual had not been misclassified.

15 (b) If the Labor and Workforce Development Agency or a court
16 issues a determination that a person or employer has engaged in
17 any of the enumerated violations of subdivision (a), the person or
18 employer shall be subject to a civil penalty of not less than five
19 thousand dollars (\$5,000) and not more than fifteen thousand
20 dollars (\$15,000) for each violation, in addition to any other
21 penalties or fines permitted by law.

22 (c) If the Labor and Workforce Development Agency or a court
23 issues a determination that a person or employer has engaged in
24 any of the enumerated violations of subdivision (a) and the person
25 or employer has engaged in or is engaging in a pattern or practice
26 of these violations, the person or employer shall be subject to a
27 civil penalty of not less than ten thousand dollars (\$10,000) and
28 not more than twenty-five thousand dollars (\$25,000) for each
29 violation, in addition to any other penalties or fines permitted by
30 law.

31 (d) (1) If the Labor and Workforce Development Agency or a
32 court issues a determination that a person or employer that is a
33 licensed contractor pursuant to the Contractors' State License Law
34 has violated subdivision (a), the agency, in addition to any other
35 remedy that has been ordered, shall transmit a certified copy of
36 the order to the Contractors' State License Board.

37 (2) The registrar of the Contractors' State License Board shall
38 initiate disciplinary action against a licensee within 30 days of
39 receiving a certified copy of an agency or court order that resulted
40 in disbarment pursuant to paragraph (1).

1 (e) If the Labor and Workforce Development Agency or a court
2 issues a determination that a person or employer has violated
3 subdivision (a), the agency or court, in addition to any other remedy
4 that has been ordered, shall order the person or employer to display
5 prominently on its ~~Internet Web site, internet website~~, in an area
6 which is accessible to all employees and the general public, or, if
7 the person or employer does not have an ~~Internet Web site, internet~~
8 ~~website~~, to display prominently in an area that is accessible to all
9 employees and the general public at each location where a violation
10 of subdivision (a) occurred, a notice that sets forth all of the
11 following:

12 (1) That the Labor and Workforce Development Agency or a
13 court, as applicable, has found that the person or employer has
14 committed a serious violation of the law by engaging in the willful
15 misclassification of employees.

16 (2) That the person or employer has changed its business
17 practices in order to avoid committing further violations of this
18 section.

19 (3) That any employee who believes that ~~he or she is~~ *they are*
20 being misclassified as an independent contractor may contact the
21 Labor and Workforce Development Agency. The notice shall
22 include the mailing address, email address, and telephone number
23 of the agency.

24 (4) That the notice is being posted pursuant to a state order.

25 (f) In addition to including the information specified in
26 subdivision (e), a person or employer also shall satisfy the
27 following requirements in preparing the notice:

28 (1) An officer shall sign the notice.

29 (2) It shall post the notice for one year commencing with the
30 date of the final decision and order.

31 ~~(g) (1) In accordance with the procedures specified in Sections~~
32 ~~98 to 98.2, inclusive, the Labor Commissioner may issue a~~
33 ~~determination that a person or employer has violated subdivision~~
34 ~~(a):~~

35 ~~(2) If, upon inspection or investigation, the Labor Commissioner~~
36 ~~determines that a person or employer has violated subdivision (a),~~
37 ~~the Labor Commissioner may issue a citation to assess penalties~~
38 ~~set forth in subdivisions (b) and (c) in addition to any other~~
39 ~~penalties or damages that are otherwise available at law. The~~

1 ~~procedures for issuing, contesting, and enforcing judgments shall~~
2 ~~be the same as those set forth in Section 1197.1.~~

3 ~~(3) The Labor Commissioner may enforce this section pursuant~~
4 ~~to Section 98 or in a civil suit.~~

5 *(g) (1) In accordance with the procedures set forth in Sections*
6 *98, 98.1, 98.2, 98.3, 98.7, 98.74, or 1197.1, the Labor*
7 *Commissioner may enforce this section and issue a determination*
8 *that a person or employer has violated subdivision (a). This*
9 *enforcement of this section may include investigating an alleged*
10 *violation of subdivision (a), ordering appropriate temporary relief*
11 *to mitigate the violation or to maintain the status quo pending the*
12 *completion of a investigation or hearing, issuance of a citation*
13 *against an employer who violates subdivision (a), and filing a civil*
14 *action. If a citation is issued, the procedures for issuing, contesting,*
15 *and enforcing judgments for citations and civil penalties issued*
16 *by the Labor Commissioner shall be the same as those set out in*
17 *Section 98.74 or 1197.1, as appropriate. A public prosecutor, as*
18 *defined in subdivision (a) of Section 181, may also enforce this*
19 *section by seeking the damages described in paragraph (2).*

20 *(2) In any enforcement pursuant to this subdivision, for each*
21 *employee subject to Sections 98 to 98.2, inclusive, the Labor*
22 *Commissioner under Section 98.3, 98.7, 98.74, or 1197.1, or a*
23 *public prosecutor, as defined in subdivision (a) of Section 181,*
24 *may alternatively recover the penalties set forth in subdivisions*
25 *(b) and (c) as damages payable to the employee. An employee is*
26 *entitled to either recover the damages as provided for in this*
27 *section or to enforce a civil penalty, as set forth in subdivision (a)*
28 *of Section 2699, but not both, for the same violation. Except as*
29 *specified in this section, the remedy provided by this section is*
30 *cumulative and does not limit the availability of any other remedy*
31 *available to the employee.*

32 ~~(h) Any administrative or civil penalty, damages, or~~
33 ~~disciplinary action pursuant to subdivision (b) or (c) or disciplinary~~
34 ~~action pursuant to subdivision (d) or (e) this section shall remain~~
35 ~~in effect against any successor corporation, owner, or business~~
36 ~~entity that satisfies both of the following:~~

37 (1) Has one or more of the same principals or officers as the
38 person or employer subject to the penalty or action.

39 (2) Is engaged in the same or a similar business as the person
40 or employer subject to the penalty or action.

1 (i) For purposes of this section, the following definitions apply:

2 (1) “Determination” means an order, decision, award, or citation
3 issued by an agency or a court of competent jurisdiction for which
4 the time to appeal has expired and for which no appeal is pending.

5 (2) “Labor and Workforce Development Agency” means the
6 Labor and Workforce Development Agency or any of its
7 departments, divisions, commissions, boards, or agencies.

8 (3) “Officer” means the chief executive officer, president, any
9 vice president in charge of a principal business unit, division, or
10 function, or any other officer of the corporation who performs a
11 policymaking function. If the employer is a partnership, “officer”
12 means a partner. If the employer is a sole proprietor, “officer”
13 means the owner.

14 (4) “Willful misclassification” means avoiding employee status
15 for an individual by voluntarily and knowingly misclassifying that
16 individual as an independent contractor.

17 (j) Nothing in this section is intended to limit any rights or
18 remedies otherwise available at law.

19 *SEC. 5. The provisions of this act are severable. If any*
20 *provision of this act or its application is held invalid, that invalidity*
21 *shall not affect other provisions or applications that can be given*
22 *effect without the invalid provision or application.*