

Employers seek relief on lawsuits – Groups aim to repeal a law extending penalties for workplace violations.

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It's been dubbed the "sue your boss" law, and employer groups say they're already moving to change the statute that's barely 40 days old.

Senate Bill 796, signed into law by Gov. Gray Davis in the waning days of his administration, makes it easier - and potentially more lucrative - for workers to sue employers over labor code violations.

"It hands them a much bigger club," in fighting employers over alleged workplace violations, said James Cahalan, a Sacramento labor law attorney who represents employers.

However, Sacramento lawyer Wendy York, who represents workers in wage-and-hour cases, figures the club is not as big as Cahalan suggests.

Employees already can sue and receive civil court penalties in many wage-and-hour cases, York said, and the new law merely extends that ability to all violations.

The new law also allows all plaintiffs who succeed in court to keep 25 percent of whatever is recovered - something York believes is reasonable for aggrieved workers.

But the California Chamber of Commerce doesn't see things that way. It has submitted draft language to its staff attorneys for a bill to "provide some relief" from the measure, said chamber lobbyist Julianne Broyles.

While she declined to detail the legislation, which is expected to be introduced later this month, Broyles added, "It's fair to portray that ... (the proposed bill) would put some equity in the process."

Matt Tennis, legislative director in Sacramento for the 1,400-member Associated Builders and Contractors, said it is "imperative for the state's business community and for jobs that SB 796 be repealed as soon as humanly possible."

Gov. Arnold Schwarzenegger's administration has told the Legislature that the governor would like the law repealed.

Even with a concerted effort, that's unlikely to happen quickly with the governor and lawmakers focused on problems such as the budget deficit, workers' compensation and unemployment insurance funding.

Labor leaders remain staunchly supportive of the measure introduced last year by Sen. Joseph Dunn, D-Garden Grove. So do many workers' attorneys.

"This law basically privatizes what the state agencies are unable to do because they lack funding," said attorney York. She said the law is one more way "to ensure employers pay workers for all the hours that they work."

The labor commissioner's office counters that it does respond to complaints quickly, but some cases can take months.

"I think there are situations where we are struggling to get supporting documents," explained Dean Fryer, a spokesman for the state labor commissioner.

Testimony last year before the Senate Judiciary Committee showed that the Department of Industrial Relations, which oversees the labor commissioner, has failed to effectively enforce violations.

The new law, which took effect Jan. 1, provides a new source of funding for the state's enforcement efforts. Plaintiffs who win cases keep one-fourth of the civil penalties. Another fourth goes to the labor commissioner's office, and one-half goes to the state general fund.

Previously, employees could collect civil penalties in only some cases.

If a worker files a complaint with the labor commissioner instead of filing a civil lawsuit, the entire amount of any civil penalty would go into the state general fund.

In Merced County, California Rural Legal Assistance has already used the new law in a suit filed last month against a dairy owner. The group asked for civil penalties both for the plaintiff and for co-workers who suffered alleged labor law violations. If successful, the plaintiff could win civil penalties but co-workers would be limited to actual damages, Cahalan said.

"We see a lot of violations in the labor code where traditionally we haven't been able to do anything but file an administrative complaint," said California Rural Legal Assistance attorney Saul Garcia in Modesto. "And a lot of times, because of budget limitations or lack of resources, the department can't act."

York plans to amend a suit in U.S. District Court in San Francisco to take advantage of the penalties allowed under the new law. The suit, filed on behalf of some 10,000 UPS drivers in California, alleges the company has failed to pay for all hours worked, to provide meals for which workers are charged and to provide required rest periods.

Those new penalties are, in part, why employers don't plan to give up the fight to change the law.

"This is a horrible, horrible law," said Tennis of the Associated Builders and Contractors. "It's sadly characteristic of the last legislative season."

But York said the law is just another tool enabling workers to collect what's due.

"This is not plaintiff-lawyer heaven," York said. "California is not going to hell in a hand basket. And Gray Davis did not sell out the state."