

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 594 (Maienschein)
Version: May 18, 2023
Hearing Date: July 11, 2023
Fiscal: Yes
Urgency: No
ID

SUBJECT

Labor Code: alternative enforcement

DIGEST

Clarifies and expands public prosecutors' authority to prosecute civil and criminal actions for certain violations of the California labor code.

EXECUTIVE SUMMARY

Violations of California's labor laws are a major issue throughout the state. Despite California's strong labor laws that protect the rights and dignity of workers, enforcement of those laws through the current enforcement agency cannot meet the need for actions redressing wrongs and preventing further violations. In this context, violations of workers' rights and theft of their wages continues unabated. To help address the need for enforcement, this bill clarifies and strengthens district attorneys', city attorneys', county counsels', or any other city or county prosecutors' authority to independently enforce California's labor laws in their jurisdictions through prosecuting civil and criminal actions for violations of specified sections of the labor law in their jurisdictions. This bill clarifies who has this authority, that the authority is limited to the prosecutor's geographic jurisdiction except for in specified circumstances, and makes other changes relating to enforcement of the labor laws.

AB 594 is sponsored by the California Labor Federation AFL-CIO, and is supported by a coalition of labor unions and employees' associations representing employees throughout the state. It is opposed by a business coalition, including builders' and contractors' associations, the farm bureau, and the California Chamber of Commerce. This bill passed out of the Senate Committee on Labor, Public Employment and Retirement on a vote of 4 to 1.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency (LWDA), and vests it with authority 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. (Labor Code § 50.5.)
- 2) Establishes within the DIR various entities, including the Labor Commissioner (LC), the Division of Workers Compensation (DWC), and the California Division of Occupational Safety and Health. (Labor Code § 56.)
- 3) Authorizes the Labor Commissioner and their deputies and representatives, upon the filing of a claim by an employee, as specified, to, among other things, take assignments of and enforce the labor code related to:
 - a) wage claims and incidental expense accounts and advances;
 - b) mechanics' and other liens of employees;
 - c) claims based on "stop orders" for wages and on bonds for labor;
 - d) claims for damages for misrepresentations of conditions of employment;
 - e) claims for penalties for nonpayment of wages;
 - f) claims for vacation, severance, or other supplemental compensation, as specified;
 - g) claims for loss of wages as the result of discharge from employment for the garnishment of wages; and
 - h) claims for loss of wages as the result of demotion, suspension, or discharge from employment for lawful conduct occurring during nonworking hours away from the employer's premises. (Labor Code §§ 95-96.)
- 4) Specifies that nothing in the payment of wages provisions of the Labor Code 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 Labor Commissioner. (Labor Code § 218.)
- 5) Specifies certain requirements relating to an employee's compensation, allowable hours of work, overtime work and pay, required rest breaks and days off, and guaranteed time off. (Labor Code §§ 200-2699.8.)
- 6) Prohibits any person or employer from engaging in willful misclassification, as defined, of an individual as an independent contractor instead of an employee, and prohibits specified acts relating to the misclassified individual's compensation. (Labor Code § 226.8.)

- 7) Provides that if the agency or a court issues a determination that a person or employer has engaged in any of the prohibited acts relating to employee classification, the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law. (Labor Code § 226.8(b).)
- 8) Establishes a citation process for the Labor Commissioner to enforce violations of the minimum wage that includes, but is not limited to, issuing citations, make and notice findings as prescribed, requiring any amounts due after a hearing be due 45 days after notice of the finding, and taking all appropriate action to enforce the citation and recover a civil penalty assessed. (Labor Code § 1197 et seq.)

This bill:

- 1) Makes various findings and declarations regarding the pervasiveness of wage theft in California, its impact on local communities and the state at large, and the role of public enforcement agencies in curbing the practice.
- 2) Defines “public prosecutor” to mean a district attorney, a city attorney, a county counsel, or any other city or county prosecutor.
- 3) Authorizes a public prosecutor to prosecute an action, either civil or criminal, for a violation of Divisions One, Two or Three of the Labor Code or to enforce those sections 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.
- 4) Limits the authority of a public prosecutor to enforcing 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 the Labor Code statewide.
- 5) Authorizes a public prosecutor to seek injunctive relief, in addition to any other remedies available, for continued violations of the specified sections of the Labor Code.
- 6) Requires a court to award a prevailing plaintiff reasonable attorney’s fees and costs, including expert witness fees.
- 7) Makes any agreement between a worker and employer that purports to limit representative actions or to mandate private arbitration ineffective on the proceedings or on the authority of the public prosecutor, a division in the Department of Labor, or the Department of Justice to enforce the labor code.

Clarifies that an individual agreement under this section shall not include a collective bargaining agreement.

- 8) States that any subsequent appeal of the denial of any motion or other court filing to impose a restriction on representative action or to impose arbitration on a public prosecutor, a division of the department, or the Department of Justice shall not stay the trial court proceedings, subject to existing law.
- 9) States that nothing in the article relating to wages shall limit the right of any wage violation claimant to sue directly or through an assignee for any wages or penalty due to them.
- 10) Authorizes that the penalties for violations of the laws on classification of employees may be recovered by the employee as a statutory penalty, or by the Labor Commissioner as a civil penalty through the issuing of a citation or other specified procedures, and clarifies that the procedures for issuing, contesting, and enforcing judgements for citations by the Labor Commissioner relating to violations of the classification of employees laws shall be the same as those in section 1197.1 relating to violations of the minimum wage.
- 11) Limits recovery by an employee to only the statutory penalty provided for in section 226.9, or the civil penalty through the Labor Code Private Attorneys General Act, but not both.
- 12) Authorizes enforcement by the Labor Commissioner in either a civil suit or existing administrative investigative procedures.

COMMENTS

1. California's Labor Laws are only as good as their enforcement mechanisms

Over the years, California has enacted a variety of laws aimed at protecting employees in the state and ensuring they can be made whole when they are wronged by their employer. These laws ensure that California's workforce is the strongest in the World and that their rights, fair treatment and pay, and dignity are respected.

However, laws are only as good as the extent to which they are enforced, and labor law violations continue to be a major problem across the state. Between 2017 and 2020, over \$221 million in unpaid wages were recovered in actions by both the Department of Industrial Relations (DIR) and the Office of the Attorney General (AG).¹ Such violations

¹ (Ilhna Mangundayao et al, "More than 3 billion in stolen wages recovered for workers between 2017 and 2020" Economic Policy Institute 7 (Dec. 22, 2021), available at <https://files.epi.org/uploads/240542.pdf>.

are often in the form of wage theft, when an employer steals from an employee's wages by not paying for the full time worked or by not paying appropriate overtime. They also can occur through misclassification of workers, in which an employer incorrectly classifies an employee as an independent contractor. When an employer classifies an employee as an independent contractor, they can deny that employee the wage and hour, overtime, and other protections that classification as an employee provides. In addition, it allows employers to unlawfully charge employees for the tools required for their job. One study found that 90 percent of businesses inspected by the state were out of compliance with worker classification laws.²

Despite these serious and pervasive violations of labor law, employees and the public have limited options to ensure compliance. The main public enforcement agency for the labor code is chronically backlogged with cases. The Labor Commissioner, the office that hears and adjudicates labor law violations, received 19,000 complaints in 2021 alone, and has been continually dealing with staffing and funding shortages.³ In light of those issues, cases typically take on average 505 days to be adjudicated. With such long processing times, many simply give up and withdraw their claims.

Non-enforcement causes serious harm. When an employer violates labor law, it places law-abiding employers at a disadvantage, and if violations are not enforced, it incentivizes a race to the bottom as employers try to compete with their competitors in the market. Moreover, those employees wronged by violations or who have their wages stolen lose thousands of dollars every year, hurting their pocketbooks and livelihoods. Thus, enforcement is essential to ensuring California's strong labor laws actually protect workers and society from harm. AB 594 aims to increase enforcement of the labor laws by clarifying and strengthening the avenue through which public prosecutors can engage in enforcement.

2. AB 594 clarifies current law that public prosecutors can enforce certain provisions of the Labor Code

Currently, labor law specifies that nothing in the labor code limits the authority of district attorneys or a county or prosecuting attorney from prosecuting any actions for violations of the labor code. (Labor Code § 218.) However, beyond this provision, the current labor code is lacking direction for how and when district attorneys can enforce the labor laws. The author notes that many local district or city attorneys have expressed uncertainty over whether they do have authority to enforce labor laws. Therefore, AB 594 is not creating an entirely new opportunity for public enforcement,

² Policy Brief: *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, National Employment Law Project, 3 (Oct. 2020).

³ Jeanne Kuang, "Agency battling wage theft in California is too short-staffed to do its job," CalMatters (Oct. 17, 2022), available at <https://calmatters.org/california-divide/2022/10/agency-battling-wage-theft/?series=unpaid-wages-california-workers>.

but rather clarifies public prosecutors' authority to enforce labor laws, and expands and strengthens their ability to do so.

It does so by specifying that a public prosecutor may prosecute any action, either civil or criminal, for a violation of the first three divisions of the labor code. Those divisions relate to wages and hours rules, supervision and employment regulation, industry-specific laws, the obligations of employers, termination of employment, and employee misclassification. It states that a public prosecutor can do so independently and without specific direction of the Division of Labor Standards Enforcement, thereby clarifying that this authority is one that public prosecutors can exercise, and can do so on their own. AB 594 also clarifies who is considered a "public prosecutor" for the purposes of its sections, so that it is clear who can utilize the authority provided through the bill. It allows district attorneys, city attorneys, a county counsel, or any other city or county prosecutor to prosecute the labor code violations in their jurisdictions.

3. Public prosecutors will be limited to redressing violations occurring within their jurisdiction

AB 594 does not allow a public prosecutor to enforce any violation of the specified labor codes; rather, it specifies the scope of a public prosecutor's power. It provides for authority over any claim arising from a violation within the prosecutor's geographic jurisdiction, unless they are a prosecutor in a city of more than 750,000 people or are otherwise authorized to enforce the labor code statewide. Such a provision also makes sense. AB 594 is not providing a district attorney in Shasta the power to prosecute a labor violation that wholly occurred in Ventura, for example. But it would empower local prosecutors to enforce the labor laws in their jurisdictions, providing much-needed additional enforcement throughout the state.

4. AB 594 allows public prosecutors to recover for employees and prevent further labor law violations

AB 594 allows for the recovery of any remedies available in the labor code, as well as for injunctive relief. This means that public prosecutors will be able to recover as various labor codes allow for violations, as if the employee was bringing the suit themselves. By allowing for injunctive relief, AB 594 provides public prosecutors with the authority to prevent recurrent and future violations by the employer, thereby correcting a social wrong and enforcing compliance with the labor codes. As public prosecutors are public officers charged with protecting the interests and good of the people, it makes sense they would have the authority to request and obtain injunctions in such cases. While they would be acting on behalf of wronged employees in prosecutions under AB 594, they would also be fulfilling their public duties of representing the interests of the public in having the labor laws enforced, and therefore should have wide authority to prevent future wrongs of the same type.

5. That public prosecutors may have a personal incentive to prosecute labor cases is not a sufficient reason to decline additional enforcement

The bill also requires reasonable attorney's fees and costs to be awarded to a prevailing plaintiff. By requiring attorney's fees and costs, AB 594 ensures that public prosecutors will be able to take on such labor cases without concern that it will drain their department of its resources. With limited resources and a variety of other cases which public prosecutors are required to take, public prosecutors may be hesitant to wade into labor code violation prosecutions without the ability to offset some of their costs for prosecuting the case. Thus, contrary to the arguments made by the opposition, including a provision allowing for reasonable attorney's fees and costs is a necessary part of ensuring that public prosecutors will be able to take on labor cases under AB 594. Requiring the court to award prevailing plaintiff attorney's fees and costs would not be a boon for public prosecutors or their offices; they still need to manage their other caseloads, manage and train staff, and conserve their resources. Requiring for reasonable attorney's fees and costs will simply lessen the strain that taking on labor law prosecutions would otherwise place on their limited resources. The purpose of the bill is to encourage public prosecutors to prosecute cases where employers are violating worker rights. In order to be awarded attorney's fees and costs, the public prosecutor has to prevail. This means that the court found that the employer engaged in wrong doing, such as stealing worker wages or denying workers rest. Regardless of whatever aspirations may be possible to make about the motivations of public prosecutors in response to AB 594, it cannot be denied the result of public prosecutors taking on labor code violations is that the codes will be more enforced.

One concern that has been raised regarding this bill is the risk that, because public prosecutors regularly contract out cases for a variety of reasons, there could arise an issue of pay-to-play. A pay-to-play issue could arise where a bad-actor public prosecutor contracts out cases to a private attorney who contributes to the public prosecutor's campaign. This issue has been brought to light recently by the scandals of Tom Girardi. However, this issue appears to be resolved since the Levine Act (Government Code section 84308) was amended by AB 1439 (Glazer, Ch. 848, Stats. 2022) in 2022 to extend to local government agencies. The Levine Act prohibits an officer from accepting or soliciting campaign contributions from a party or participant who has a financial interest in a proceeding pending or recently decided before the agency. Public prosecutors under this bill would fall under the limits of the Levine Act, such that they are similarly limited from contracting out cases under the cause of actions created by AB 594 to individuals who contribute to their campaigns.

6. AB 594 ensures that the labor laws can be enforced even when employers try to foreclose individual employees from doing so

As labor code violations are an issue of the public good, AB 594 also allows a public prosecutor, Attorney General, or Labor Commissioner to enforce violations on behalf of

a worker even if that worker has entered into an agreement with their employer mandating disputes be resolved through private arbitration. A 2018 study by the Economic Policy Institute found that approximately 56% of private-sector, non-union employees were subjected to mandatory arbitration agreements.⁴ Thus, if public prosecutors were barred from prosecuting labor violations by these mandatory arbitration agreements, agreements that they did not sign or could be considered a party to, it could effectively preclude a large percentage of the cases otherwise triable by the public prosecutor. Moreover, it would offend traditional notions of fairness to insist that the actions of the employer and employee could bind a public prosecutor. The public prosecutor must be allowed to enforce the law, not just for the wronged employee, but also for the public interest of enforcing the labor code. AB 594 ensures such enforcement can take place by making clear that such mandatory arbitration clauses will not preclude prosecution by the public prosecutor, the Labor Commissioner, or the Attorney General.

7. AB 594 will help deter employee misclassification

One of the common ways in which California's labor laws are violated is through employee misclassification. As previously mentioned, misclassification is a serious and pervasive problem in California.

AB 594 allows that, when a misclassification has occurred for which the labor code's statutory penalties as set forth in section 226.8 apply, those penalties may either be recovered by the employee as a statutory penalty or by the Labor Commissioner as a civil penalty pursuant to the authority already given the Commissioner to do this. By specifying both avenues, AB 594 allows employees to enforce the labor codes on misclassification and recover the statutory penalties when they or a public prosecutor through this bill does so. Allowing this will help deter and punish misclassification by ensuring the provisions designed to do so can be enforced both by the Labor Commissioner and by the employee or public prosecutor.

8. Employees will be allowed to recover through this statute or through PAGA, but not both

Opposition has claimed that AB 594 could allow for an employee to "double-dip" on recovery for the labor violations they suffered because a public prosecutor could pursue a claim on their behalf through AB 594's process and the employee could also pursue a claim separately through Section 2699 (the Private Attorneys' General Act). To address the opposition's stated concern, AB 594 now includes a provision expressly stating that

⁴ Alexander J.S. Colbin, "The growing use of mandatory arbitration: Access to the courts is now barred for more than 60 million American workers," Economic Policy Institute (April 6, 2018), available at <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/>.

an employee is only entitled to recover one or the other for one misclassification violation.

9. AB 594 will result in more enforcement, not inconsistent enforcement

Opposition has also attempted to argue that AB 594 will result in inconsistent enforcement across the state. Yet this is already the current landscape for labor law enforcement. This is because section 218 already provides city attorneys with authority to enforce the labor laws, yet only some are actually utilizing this authority amid the ambiguity and lack of clarity over the breadth of that authority. AB 594 is only creating more consistency by clarifying this authority and enabling public prosecutors to utilize it. Moreover, nothing in the exercise of that authority necessarily prevents public prosecutors from collaborating or coordinating on cases with other jurisdictions or the statewide agencies when individual cases across the state involve the same bad actor. When the alternative to potential “inconsistent” enforcement is simply insufficient enforcement, the inconsistent enforcement is certainly the preferable option. Enforcement of the laws is a necessary and vital part to the effectiveness of the laws themselves, and AB 594 is a useful step toward ensuring California’s labor laws can be enforced.

SUPPORT

California Labor Federation, AFL-CIO (sponsor)
California-Nevada Conference of Operating Engineers
California State Legislative Board of Sheet Metal, Air, Rail and Transportation Workers
– Transportation Division (SMART-TD)
California School Employees Association

OPPOSITION

California Chamber of Commerce
Acclamation Insurance Management Services (AIMS)
Allied Managed Care (AMC)
Associated Builders and Contractors of California
Associated General Contractors of California
Associated General Contractors San Diego
California Association for Health Services at Home
California Association of Joint Power Authorities (CAJPA)
California Association of Sheet Metal and Air Conditioning Contractors National
Association
California Association of Winegrape Growers
California Attractions and Parks Association
California Bankers Association (CBA)

California Building Industry Association (CBIA)
California Business Roundtable (CBRT)
California Farm Bureau
California League of Food Producers
California Manufactures & Technology Association (CMTA)
California New Car Dealers Association
California Restaurant Association
California Retailers Association
California Trucking Association
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Family Business Association of California
Flasher Barricade Association (FBA)
National Federation for Independent Business (NFIB)
Western Growers Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 459 (Corbett, Ch. 706, Stats. 2011) prohibits willful misclassification, as defined, of individuals as independent contractors. The bill also prohibits charging individuals who have been mischaracterized as independent contractors a fee or making deductions from compensation, as specified, where those acts would have violated the law if the individuals had not been mischaracterized.

SB 796 (Dunn, Ch. 906, Stats. 2004) created the Labor Code Private Attorneys General Act of 2004, providing that an employee may bring a civil action on behalf of themselves and other employees who were subjected to a violation of the labor code by their employer, instead of pursuing their claim through the enforcement agency.

PRIOR VOTES:

Assembly Floor (Ayes 52, Noes 17)
Assembly Appropriations Committee (Ayes 11, Noes 4)
Assembly Judiciary Committee (Ayes 8, Noes 3)
Assembly Labor and Employment Committee (Ayes 5, Noes 2)
