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SENATE BILL 796: FREE REIGN FOR PRIVATE BOUNTY-HUNTER SUITS

On October 13, 2003, Governor Davis signed Senate Bill 796, a bonanza for frivolous litigation which will dramatically drive up costs to businesses.

Senate Bill 796, effective January 1, 2004, creates two significant issues for employers. First, Senate Bill 796 establishes a civil penalty for any and all violations of the California Labor Code (for which there was not already a specific penalty) as follows: One hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Until now, only specific provisions of the Labor Code provided for civil penalties for a violation.

Secondly, an aggrieved employee is empowered as a “private attorney general” to file a lawsuit for any alleged violation of the California Labor Code to recover civil penalties on behalf of himself or herself and all fellow workers. In addition, if the employee prevails in such an action he or she is entitled to an award of attorney's fees and costs. The lawsuit may not be brought if the Labor and Workforce Development Agency, or any of its departments, cites the employer or initiates a civil action for the violation.

As a result, Senate Bill 796 transforms minor Labor Code violations into a windfall for trial lawyers and disgruntled employees. The Bill incentivizes lawsuits as only employees can recover attorney's fees and costs. Any such lawsuit may include duplicate claims under the provisions of this Bill and Business and Professions Code Section 17200 – California's much-maligned and highly abused Unfair Competition Law– thereby expanding the liability for employers for the same conduct.

Therefore, in order to avoid paying substantial penalties under Senate Bill 796, employers must ensure that they are in full compliance with all provisions of the Labor Code.

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