

June 7, 2004

Are Bounty Hunters Coming for You?

By **Brian C. Sinclair**

Companies doing business in California are heavily regulated by both the federal and state governments, particularly when it comes to relationships with their employees. For small and mid-sized employers, many of whom do not have access to a full-time, experienced human resources professional, the burden of compliance with complex employment laws can be daunting. Even for those employers who have taken steps to implement an employment law compliance program, the multitude of labor laws on the books and their constantly evolving nature present challenges for even the most vigilant of businesses. The stakes for failing to comply with California employment laws just got a lot higher.

As most business leaders are aware, the Labor Code Private Attorneys General Act of 2004 (the "Act") became effective on January 1, 2004. This Act is more commonly referred to in business and legal circles as the "Bounty Hunter" or "Sue Your Boss" law because it allows employees to sue their employers directly for civil penalties for alleged violations of most Labor Code provisions. To make matters worse, the Act allows employees to file lawsuits not only on behalf of themselves but also on behalf of "other current or former employees."

Before enactment of the Bounty Hunter Law, the California Labor and Workforce Development Agency, which is comprised of a number of governmental agencies, was

responsible for enforcing most Labor Code provisions. According to legislative history accompanying the Act, the staffing levels for these agencies cannot keep pace with the growth of the labor market. Hence, although these agencies retain authority to bring enforcement actions for employer violations of the Labor Code, the Bounty Hunter Law for all practical purposes transfers that authority to employees and their attorneys.

While most businesses leaders are aware of the passage of the Act, many do not appreciate its scope. The Labor Code contains the majority of the laws governing the employment relationship in California, including wage-and-hour laws, laws regulating vacation and sick leave, laws regulating hiring practices, laws regulating layoffs, laws regulating employee privacy, laws regulating record keeping practices, and laws regulating a multitude of other matters pertaining to the employer-employee relationship.

The following Labor Code provisions, which are often overlooked, illustrate just a few potential legal landmines facing California employers:

- § Labor Code Section 232 prohibits employers from requiring employees to refrain from discussing the amount of their wages.
- § Labor Code Section 431 requires employers to file with the Division of

Labor Standards Enforcement a copy of any employment application form that employees or applicants are required to sign.

- § Labor Code Sections 432.7 and 432.8 prohibit employers from asking applicants certain questions about arrests and convictions.
- § Labor Code Sections 551 and 552 generally require an employer to provide employees with at least one day off a week.
- § Labor Code Section 1041 requires employers with 25 or more employees to reasonably accommodate and assist any employee who reveals an illiteracy problem and requests employer assistance.
- § Labor Code Section 1102.8 requires employers to prominently display, in lettering larger than size 14 pica type, a list of employees' rights and responsibilities under whistleblower laws, and the poster must include the telephone number of the state whistleblower hotline.

If your business is violating any of the above statutes, or any one of the hundreds of other Labor Code provisions, bounty hunters may soon be paying your company a visit. And, the penalties these bounty hunters will be seeking could be exorbitant.

For the majority of Labor Code violations, employees may sue their employers for civil penalties of \$100 *per pay period for each aggrieved employee* for first-time violations and \$200 *per pay period for each aggrieved employee* for subsequent violations. A simple example demonstrates how quickly the penalties can multiply. If a company has 100 employees, and the employer fails to post a notice required by the Labor Code for a period that covers ten pay periods, the penalties would amount to \$190,000 (\$100 x 100 employees equals \$10,000 for the first violation, plus \$200 x 100 x

9 equals \$180,000 for the nine subsequent pay-period violations). While only 25% of the civil penalties goes directly to the aggrieved employee, these penalties are in addition to any actual damages suffered by the employee. In addition, the Act also allows for the recovery of attorneys' fees and costs.

One would expect that if employers promptly put their employment affairs in order, the potential liability would be nominal. This may not be true. Although the Act only became effective on January 1, 2004, lawsuits under the Bounty Hunter Law frequently seek to recover penalties dating back several years. As a result, plaintiffs and their attorneys often claim millions of dollars in civil penalties and attorneys' fees for violations preceding January 1, 2004. This results in high-stakes litigation that is costly to defend, even if the infractions were trivial or resulted in no actual damages to the aggrieved employees.

In light of the potentially huge financial rewards under the Bounty Hunter Law, it did not take long for plaintiffs' lawyers to add this powerful weapon to their already bursting arsenal. Lawsuits under the Bounty Hunter Law began popping up instantly after the law went into effect in January. For example, on January 9, 2004, two employees filed a lawsuit in Los Angeles County against a local casino on behalf of themselves and "other current and former aggrieved employees" under the Bounty Hunter Law. Since then, numerous lawsuits have been filed throughout the state against employers for various violations of the Labor Code, including lawsuits alleging that employers provided incomplete wage statements, failed to post required notices, improperly collected tips paid to employees, failed to provide required meal and rest periods, failed to pay required overtime, and failed to pay wages in a timely manner.

In fact, a daily review of court filings shows that these lawsuits continue to pour in, often with the same plaintiff and the same attorney filing multiple lawsuits on the same day. For example, on May 25, 2004, two lawsuits seeking penalties under the Bounty Hunter Law were filed in Los Angeles County

by the same plaintiff, represented by the same attorneys, against two different employers. There is no end in sight.

Naturally, the Bounty Hunter Law has resulted in great division and debate in the Legislature. This division was illustrated by the competing viewpoints of Assemblyman John Campbell and Senator Joseph Dunn in the May 24th edition of the Orange County Business Journal. In fact, several bills have been introduced in the Legislature to repeal or modify the Act. To date, however, legislative policy committees have rejected all of these bills.

Opponents of the Bounty Hunter Law claim that the Act encourages legalized extortion, and results in lawsuits that are frequently based on trivial or technical violations of Labor Code provisions. Opponents also note that the Act does not require employees to show that they actually suffered any real damages. Proponents of the Act, on the other hand, claim that the law is necessary to deter unlawful conduct by employers and to achieve maximum compliance with Labor Code provisions. Proponents also argue that staffing cutbacks in the agencies responsible for enforcing the Labor Code have made it necessary to allow aggrieved employees to directly pursue civil penalties against employers who violate the Labor Code. But even some proponents acknowledge that the Act has resulted in frivolous lawsuits, and that something must be done to tighten up the language of the Act.

Whichever side is correct, one thing is certain: Employers must take immediate action to avoid being caught by bounty-hunter employees and their attorneys. First, employers should become familiar with the provisions of the Labor Code. Second, employers should conduct audits of their employment policies and practices to ensure compliance with the Labor Code. Third, until the Bounty Hunter Law is repealed, employers must remain updated regarding any additions or changes to the Labor Code to ensure that they do not innocently open themselves up to litigation under the Act.

No doubt, you will be hearing more about the Bounty Hunter Law in the months ahead. Hopefully, it will not be because of a lawsuit filed against your business.

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