



## California Labor Code

### *Penalties for Misclassification of Independent Contractors*

SECTION	DESCRIPTION	POSSIBLE PENALTY OR CONSEQUENCE
§ 2698	Private Attorneys General Act (PAGA)	<p>Authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for Labor Code violations.</p> <p>These can easily turn into class actions and provide for the award of penalties and attorneys fees.</p>
§ 226.8	<p>(a) It is unlawful for any person or employer to engage in any of the following activities:</p> <ul style="list-style-type: none"><li>• (1) Willful misclassification of an individual as an independent contractor.</li><li>• (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.</li></ul>	<p>"Willful misclassification" means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.</p> <p>The concern is that a mistake can be construed as "willful."</p>
	<p>(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer <b>has engaged</b> in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil</p>	<p>Each violation can be between \$5,000 and \$15,000 for the employer.</p> <p>This is in addition to any other penalties or fines permitted by law.</p>

	<p>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</p>	
	<p>(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in <b><i>a pattern or practice of these violations</i></b>, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law</p>	<p>If it appears that the employer is misclassifying workers regularly, an additional civil fine can be anywhere between \$10,000 and \$25,000.</p> <p>Simultaneous mistakes of misclassifying several employees can be a pattern or practice?</p>
	<p>(e) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has violated subdivision (a), the agency or court, <b><i>in addition to any other remedy that has been ordered</i></b>, shall order the person or employer to display prominently on its Internet Web site, in an area which is accessible to all employees and the general public, or, if the person or employer does not have an Internet Web site, to display prominently in an area that is accessible to all employees and the general public at each location where a violation of subdivision (a) occurred, a notice that sets forth all of the following:</p> <ul style="list-style-type: none"> <li>• (1) That the Labor and Workforce Development Agency or a court, as applicable, has found that the person or</li> </ul>	<p>If an employer violates this section by misclassifying worker, the employer must display on its website, or if it does not have one, display in an area accessible to all employees and the public at each location of the violation, a notice that says:</p> <ol style="list-style-type: none"> <li>1. Employer has misclassified employees</li> <li>2. The employer has changed practices to avoid further misclassifications</li> <li>3. That a worker who feels misclassified as an independent contractor can contact Labor and Workforce Development and list all contact information.</li> <li>4. And that the notice is being posted because of state order.</li> </ol>

	<p>employer has committed a serious violation of the law by engaging in the willful misclassification of employees.</p> <ul style="list-style-type: none"> <li>• (2) That the person or employer has changed its business practices in order to avoid committing further violations of this section.</li> <li>• (3) That any employee who believes that he or she is being misclassified as an independent contractor may contact the Labor and Workforce Development Agency. The notice shall include the mailing address, email address, and telephone number of the agency.</li> <li>• (4) That the notice is being posted pursuant to a state order.</li> </ul>	
	<p>(f) In addition to including the information specified in subdivision (e), a person or employer also shall satisfy the following requirements in preparing the notice:</p> <ul style="list-style-type: none"> <li>• (1) An officer shall sign the notice.</li> <li>• (2) It shall post the notice for one year commencing with the date of the final decision and order.</li> </ul>	<p>Notice required above must be signed by an officer and shall remain posted for one year after the order or decision.</p>
	<p>(g)</p> <ul style="list-style-type: none"> <li>• (1) In accordance with the procedures specified in Sections 98 to 98.2, inclusive, the Labor Commissioner may issue a determination that a person or employer has violated subdivision (a).</li> <li>• (2) If, upon inspection or investigation, the Labor Commissioner determines that a person or employer has violated</li> </ul>	<p>The Labor Commissioner is authorized to investigate employee complaints and may determine if an employer has violated this statute by misclassifying workers.</p> <p>The Labor Commissioner can issue a citation in addition to any other penalties allowed by law.</p>

	<p>subdivision (a), the Labor Commissioner <b>may issue a citation</b> to assess penalties set forth in subdivisions (b) and (c) <b>in addition to any other penalties or damages that are otherwise available at law</b>. The procedures for issuing, contesting, and enforcing judgments shall be the same as those set forth in Section 1197.1.</p> <ul style="list-style-type: none"> <li>• (3) The Labor Commissioner may enforce this section pursuant to Section 98 or in a civil suit.</li> </ul>	
	<p>(h) Any administrative or civil penalty pursuant to subdivision (b) or (c) or disciplinary action pursuant to subdivision (d) or (e) <b>shall remain in effect against any successor</b> corporation, owner, or business entity that satisfies both of the following:</p> <ul style="list-style-type: none"> <li>• (1) Has one or more of the same principals or officers as the person or employer subject to the penalty or action.</li> <li>• (2) Is engaged in the same or a similar business as the person or employer subject to the penalty or action.</li> </ul>	<p>Administrative, civil, or disciplinary action shall stay effective against any successor or change in ownership if at least one person or employer was subject to penalty in that action and it's the same business or similar business.</p>
	<p>(i) For purposes of this section, the following definitions apply:</p> <p>(1) "Determination" means an order, decision, award, or citation issued by an agency or a court of competent jurisdiction for which the time to appeal has expired and for which no appeal is pending.</p> <p>(2) "Labor and Workforce Development Agency" means the Labor and Workforce Development</p>	

	<p>Agency or any of its departments, divisions, commissions, boards, or agencies.</p> <p>(3) "Officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, or any other officer of the corporation who performs a policymaking function. If the employer is a partnership, "officer" means a partner. If the employer is a sole proprietor, "officer" means the owner.</p> <p>(4) "Willful misclassification" means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.</p>	
<b>§ 1194</b>	<p>(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.</p>	<p>If it is found that misclassification occurred an employee would be able to recover overtime.</p>
<b>§ 2753</b>	<p>(a) A person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual shall be jointly and severally liable with the employer if the individual is found not to be an independent contractor.</p> <p>(b) This section does not apply to the following persons:</p>	<p>Anyone who advises another to misclassify can also be found jointly and severally liable with the employer.</p>

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|  | <ul style="list-style-type: none"><li>• (1) A person who provides advice to his or her employer.</li><li>• (2) An attorney authorized to practice law in California or another United States jurisdiction who provides legal advice in the course of the practice of law.</li></ul> |  |
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