

DEPARTMENT OF INDUSTRIAL RELATIONS

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Division of Labor Standards Enforcement*

**2020 RETALIATION COMPLAINT REPORT
(LABOR CODE §98.75)**

The Labor Commissioner respectfully submits this report to the Legislature.

BACKGROUND

The mission of the California Labor Commissioner's Office (LCO), also known as the Division of Labor Standards Enforcement, is to ensure a just day's pay in every workplace in the State and to promote economic justice through robust enforcement of labor laws. By combating wage theft, protecting workers from retaliation, and educating the public, we put earned wages into workers' pockets and help level the playing field for law-abiding employers.

California law contains a strong public policy to protect employees from retaliation for exercising their rights. Labor Code section 98.7, enacted in 1986 and amended in 1999, 2001, 2002, 2013, and 2017 establishes procedures for the Labor Commissioner's Office to investigate retaliation complaints and to enforce determinations of unlawful retaliation issued by the Labor Commissioner.

The Retaliation Complaint Investigation (RCI) team within the Labor Commissioner's Office may accept complaints alleging violations of almost four dozen statutes prohibiting retaliation. Following an investigation of the alleged violations, the Labor Commissioner may issue a determination pursuant to Labor Code section 98.7. If the evidence does not establish a finding of retaliation, the determination will explain the findings, and the Labor Commissioner will dismiss and close the case. If the Labor Commissioner determines a violation has occurred, the statute authorizes the Labor Commissioner to direct the violator to cease and desist from committing the violation and may order, where appropriate, rehiring or reinstating the aggrieved employees, reimbursing them for lost wages and interest thereon, paying civil penalties, and posting a notice acknowledging the unlawful treatment of the employees. In the event of an investigative hearing, the Labor Commissioner may order the payment of reasonable attorney's fees associated with the hearing. If the employer does not appeal or comply, the Labor Commissioner is mandated to file an action in court to enforce the determination.

SIGNIFICANT LEGISLATION RELATED TO PROHIBITING RETALIATION

Prior to 2020, the Labor Commissioner's Office experienced a significant growth in the complexity of claims, the number and scope of affected parties, and the ability to return earned wages to California workers due to legislative expansion in enforcement authorities, protections, and increased public awareness of workplace protections. Below is a brief legislative history, encompassing select new authorities and responsibilities.

Citation Authority – Labor Code section 98.74

Section 98.74 was added to the Labor Code in 2018 to grant the Labor Commissioner the authority to issue citations for violations of anti-retaliation laws under its purview. However, the new law required several technical fixes that were addressed through the passage of Senate Bill (SB) 229 in 2019. The amendment allowed the Labor Commissioner to move forward with issuing citations in retaliation cases to provide

remedies more effectively and promptly to workers who face unlawful retaliation. This is a powerful enforcement tool to better enable the RCI unit to achieve its mission of protecting workers who engage in protected activity. The amendments contain the following provisions:

1. Identifies the procedure to enter judgments on final citation amounts
2. Creates a procedure for uncontested citations and a deadline for payments ordered
3. Changes the bond requirements to reflect remedies in retaliation cases
4. Creates procedures to enter judgments on citation decisions after a hearing
5. Imposes consequences for employers who fail to comply with a judgment or settlement
6. Clarifies penalties for employers who fail to comply with final orders for injunctive relief
7. Clarifies interest rate preference and exemption of fees for judgments
8. Amends statute to have enforcement procedures apply to all existing citations in retaliation cases issued at the time of the enactment or January 1, 2020

Reverification of documents – Labor Code sections 1019.2 and 1019.4

SB 112 amended Labor Code section 1019.2 and added Labor Code section 1019.4 to respond to a federal district court decision preliminarily enjoining section 1019.2(a) as preempted by federal immigration law. The amendments clarify the statute does not conflict with federal immigration law by detailing the employer conduct that is not prohibited in the reverification process and defines key terms, such as “reverify” and “reverifying” consistent with federal law.

Labor Code Section 432.3 – Job Applicants: Salary Expectations & Prior Pay

Assembly Bill (AB) 2282 amends Section 432.3 by adding language to allow employers to ask an applicant about the salary expectation for the position the applicant is seeking and prohibiting the use of prior salary to justify any disparity in compensation. The legislation also defines “pay scale,” “reasonable request,” and “applicant” in Section 432.3.

Labor Code Section 1197.5 – Prior Pay and Consideration of Current Employee’s Salary

AB 2282 also amends Section 1197.5 by forbidding employers from relying on prior salary to justify any pay disparity based on sex, race, or ethnicity. The new legislation also amends Section 1197.5 to allow employers to consider a current employee’s existing salary when making a compensation decision, so long as any wage differential resulting from that compensation decision is justified by one or more of the factors listed in the section.

Labor Code 1030-1034 Lactation Accommodations

In addition, AB 1976 and SB 142 amended the state’s lactation accommodations laws (Labor Code sections 1030 to 1034) to provide protections that are more robust for employees who express milk at work. Employees who seek lactation accommodations are protected from retaliation.

Additional Legislation

SB 1412 limits the types of criminal convictions an employer can ask an applicant for employment about to convictions relevant to the position sought by amending Labor Code section 432.7. SB 1412 also specifies when employers may seek or receive an applicant’s criminal history report and clarifies those employers are not prohibited from conducting criminal background checks and restricting employment based on criminal history if required by law.

COVID-19 Related Protections

Labor Code Section 6409.6 – Disclosure of COVID data

AB 685 enacted Labor Code Section 6409.6, which is effective January 1, 2021. This legislation prohibits an employer from disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate.

Labor Code Section 248 – Supplemental and Paid Sick Leave

On April 16, 2020, the Governor issued Executive Order N-51-20 that entitled some workers in the food sector industry to receive supplemental paid sick leave. Effective September 19, 2020, AB 1867 added new Labor Code sections 248 and 248.1, expanding COVID-19 supplemental paid sick leave (“2020 SPSL”) to all employees of employers with 500 or more employees, nationwide. The 2020 SPSL provided under Executive Order N-51-20 and AB 1867 expired on December 31, 2020.

The passage of SB 95, made effective on March 19, 2021, enacted Labor Code section 248.2 to provide employees who work for a private or public employer with more than 25 employees an additional 80 hours of paid sick leave for the period of January 1, 2021 through September 30, 2021.

COVID related protections listed above, provide anti-retaliation protections pursuant to Labor Code 98.7.

HIGHLIGHTS FROM THIS REPORTING PERIOD

COVID-19

In 2020, the Unit received **834** COVID-related complaints and **456** of those were accepted for investigation. To have a cause of action under a retaliation statute the facts must establish that the complainant:

1. Exercised a protection provided by law,
2. The employer had knowledge of protected activity and
3. The employer took an adverse action against the complainant for having exercised a protected activity.

Approximately **54%** of complaints were dismissed due to the following most common reasons:

1. Claimant abandoned or withdrew the complaint,
2. Complaint was outside of the LCO’s jurisdiction, and
3. Insufficient evidence to establish all 4 basic elements¹.

The health and safety-related complaints accounted for **264** of the COVID claims and paid sick leave violations accounted for 95 of the claims.

In 2020, COVID case settlement amounts totaled **\$157,036.68**. Additionally, the Unit had two Cause Findings issued in 2020; one resulted in employer compliance and the other is pending compliance. Five citations were also issued in four cases. The unit continues to track and prioritize these cases.

California Equal Pay Act

The California Equal Pay Act prohibits an employer from paying any of its employees’ wage rates that are less than what it pays employees of the opposite sex, or of another race, or of another ethnicity, for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.

¹ Cases are screened to identify if the merit of the complaint identifies the 4 basic elements required to determine retaliation: 1- protected activity, 2- employer knowledge, 3- an adverse action and 4- causal link.

To investigate these claims, the Labor Commissioner requests descriptions of job duties, and wage rate history for relevant workers from the employer. In addition, the Labor Commissioner requests evidence to determine if a difference in pay for substantially similar work is due to seniority; merit; a system that measures production; and/or a “bona fide factor other than sex, race, or ethnicity.” The investigation requires analysis of comparable jobs to determine if there is substantial similarity and a pay disparity. The investigation may require analysis of the duties for multiple job classifications and compensation for those in the comparative positions. A single complaint can require the analysis of a large number and broad range of employee classifications.

The number of claims filed with the Labor Commissioner’s Officer under the Equal Pay Act remains high. There were 119 Equal Pay Act claims filed in 2020 and 550 cases filed in the last four years (1/1/2017 – 12/31/2020). In 2020, 125 EPA investigations were completed with 59 cases withdrawn and 23 settlements. The remaining cases were closed for other reasons, including abandonment, lack of jurisdiction, and concurrent filing in court. There were no merit findings.

In one EPA case, a well-respected tenured faculty member at a public entity educational institution alleged she was paid lower salary than male professors hired after her. After a full investigation, the case settled for approximately the full amount of pay difference and the worker was given a permanent increase in salary to erase pay disparity moving forward.

Historically, LCO possessed the sole authority under Labor Code section 1197.5 to enforce the EPA. However, effective January 1, 2021, SB 973 gave authority to both LCO and the Department of Fair Employment and Housing (DFEH) to enforce the statute. SB 973 also authorized the DFEH beginning on or before March 31, 2021, to collect pay data from private employers with 100 or more employees who are required to file an annual Employer Information Report under federal law. In preparation for this expansion of the EPA, RCI managers and attorneys in 2020 worked with their counterparts at DFEH to lay the foundation for inter-agency coordination.

Immigration Threat

Immigration threat cases remain a top priority for the Labor Commissioner’s Office. In 2020, there were 32 immigration complaints filed, and 307 immigration complaints have been filed in the last three years. These cases typically involve multiple statutory protections under Labor Code sections 244, 1019, 1019.1, 1028.6 and 2814. In 2020, 75 immigration case investigations were completed, with 12 cause findings, 13 settlements, and 15 withdrawals. The remaining 35 cases were closed for other reasons, including failure to establish a prima facie case, abandonment, and lack of jurisdiction.

In one investigation, an employer made a threat at an employee’s pre-hearing wage-claim conference, saying “tell her that the offer is off the table and to expect the INS at the hearing.” A citation was issued and served on February 13, 2020 for \$1,000 pursuant to Labor Code section 98.6, and an additional \$1,000 pursuant to section 1102.5. The case settled prior to a citation appeal hearing for \$1,000 to the complainant for the section 98.6 penalty and \$500 to the Labor Commissioner’s Office for the section 1102.5 penalty.

In an additional investigation, two cause findings were issued against a restaurant and its owner for violations of Labor Code sections 98.6, 1019, 1019.1 and 1102.5. The investigator determined the owner retaliated against both a father and son by reducing their work hours, making unlawful deductions from their paychecks and ultimately terminating both complainants’ employment. The owner also subjected the father to unlawful immigration practices by attempting to re-verify his immigration status. Both complainants had previously filed workers’ compensation claims and wage claims against the restaurant. Both cases have been referred to the RCI Legal Department for enforcement.

Prospective Retaliation – Cooperation with BOFE on an Enforcement Action

In a case identified and referred by the Bureau of Field Enforcement (BOFE), workers alleged they had to sign and vote for an alternative workweek (AWW) under duress. The employer had not registered the AWW, so they conducted another election. While investigating the case, the investigator did not find evidence of a threat and the workers were satisfied with the election. The investigation resulted in the AWW becoming fully compliant.

OSHA

In 2019, The Department of Industrial Relations and the Labor Commissioner's Office reached an agreement in principle with the federal Department of Labor (DOL) and Occupational Safety and Health Administration (OSHA) to develop a data sync program to synchronize separate databases used by DOL and the LCO. The systems collect similar data but require separate data entry. The first upload of data into the federal database was done on July 28, 2020 and continued to be improved throughout the balance of the year resulting in a seamless transfer of data with very few exception reports. The agreement has eliminated dual entry of data into the RCI program database, and the federal database. As a result, the Unit is seeing significant savings in staff time and the elimination of inconsistencies in reporting. In November alone, approximately 246 hours of staff savings were realized.

The Unit also met its goal with OSHA of increasing employer awareness of activities protected from retaliation. New flyers were created and distributed; employer presentations included newly added material. Investigators made additional efforts to include agreements to a workplace notice posting in settlement agreements resulting in eight employers agreeing to a notice posting as part of their settlement agreements.

As is reflected in the annual reports to the legislature, the number of OSHA related cases has increased over the last few years. In 2019, the Labor Commissioner received 649 new cases claiming violations of Labor Code sections 6310 and 6311. In 2020, these cases were down only slightly to 579. In the last five years, there have been 2,897 new cases.

Fast Tracked Health and Safety related determinations

The investigator found that the employer illegally demoted Complainant after she complained about a faulty front door that created health and safety issues for workers and customers. A cause finding was issued within a year of the filing date. The employer fully complied with the determination and the Complainant received \$10,000.00 in penalties.

In another OSHA case, a registered nurse researched her own California safety standards, as it related to COVID-19. She was terminated after she spoke with management about Cal/OSHA's PPE requirements when working with suspected COVID-19 patients, and for letting management know she had contacted a Cal/OSHA consultant about these issues. The case settled for \$21,000, including the full amount of lost wages, payable to the worker, and a Notice will also be posted for 45 days stating the Labor Commissioner found there was enough evidence to support retaliation.

Big Impact Case-UPS

UPS was using an Attendance Disciplinary policy that was not consistent with California paid sick leave protections. Specifically, they were having a "talk with/record on ee file" with employees who used their first 24 hours/3 days of sick leave. They argued they were exempt pursuant to employees being subject to a

Collective Bargaining Agreement (CBA); thus, allowed to have a progressive discipline policy. The RCI Unit's position was that they were NOT exempt as they did not meet every point under Labor Code section 245.5(a)(1), specifically the requirement that the employees were paid 30 percent more than the state minimum wage rate.

After almost two years of investigating and working with UPS, they finally agreed to eliminate the Attendance Discipline policy, and with the help of the Union, updated the CBA to accurately reflect the appropriate paid sick leave protections required in California. This is a major win for UPS employees in California, who will no longer be disciplined for using their protected sick leave.

McDonald's Cases

In 2020, a Los Angeles McDonald's franchisee unlawfully fired four workers for reporting unsafe working conditions during the COVID-19 pandemic. The employees advised their employer, CalOSHA and the Los Angeles County Health Department about unsafe working conditions that exposed them to COVID-19 infections. They subsequently participated in strikes over safety conditions. This case resulted in citations issued in February 2021 for more than \$125,000 for lost wages, interest and penalties. Additionally, the employer was to reinstate the workers, remove negative references from their personnel files and post information on the citations and violations in the workplace.

Legal Department

The COVID-19 pandemic of 2020 presented unprecedented challenges for RCI Legal. At the start of the pandemic, RCI Legal formed a rapid-response team of attorneys dedicated to advising the program, LCO, DIR, Labor and Workforce Development Agency, the California Legislature and the public on the myriad of new issues posed by COVID-19. As the pandemic continued, *all* members of the RCI Legal team played an integral role in advising LCO on the changing landscape of government orders and public health directives at federal, state, and local levels, and in formulating agency policy on issues specific to COVID, including, an employer's obligation to provide a safe and healthy workplace, and the provision of paid sick leave. Throughout 2020, RCI attorneys were involved in DIR's preparation and publication of 12 COVID-related FAQs and intra-agency Memoranda specific to COVID-19. RCI attorneys advised the program in the development of the Early Intervention Program, an effective means of alerting employers to the law before violations occur. Training of LCO staff and presentations to community-based organizations (CBOs) and the media were crucial to LCO mounting an effective pandemic response. In 2020, RCI attorneys developed and conducted 18 trainings, presentations, and media interviews on COVID-related topics. As the pandemic continues into 2021, RCI attorneys remain in the vanguard of LCO's pandemic response.

In addition to meeting the challenges posed by a global pandemic, RCI attorneys effectively fulfilled their regular duties, including but not limited to, providing counsel and advice to the RCI unit, reviewing, and developing investigations, and prosecuting enforcement actions. In 2020, RCI attorneys filed 25 civil actions in courts throughout California for unlawful retaliation when workers requested unpaid wages, sought meal and rest breaks, reported wage theft, and cooperated with LCO Bureau of Field Enforcement (BOFE) inspections and hearings, and made health and safety complaints at work. RCI Legal closed 31 cases after obtaining settlements or default judgments in them.

Litigation highlights include:

- For the first time, LCO sued a movie production company, its owner and director, and a producer for unlawful retaliation when they terminated a studio teacher after she protested labor law violations against a minor actor. The case resulted in a default judgment for over \$23,000 and affirmative relief. LCO is in the process of enforcing the judgment against defendants.

- LCO appealed a Superior Court’s order staying a LCO retaliation investigation because the worker signed an arbitration agreement with the employer. LCO sought to intervene and challenged the stay on grounds that LCO was not a party to the arbitration agreement, and as an independent enforcement agency, it could not be bound by the agreement. At issue is whether a valid arbitration agreement can bar an independent enforcement agency, such as LCO, from investigating complaints of statutory violations. Oral arguments in this appeal will take place in 2021.
- LCO successfully appealed a dismissal for nonsuit in a case involving the right not to disclose dismissed convictions. The court recognized that for purposes of a claim of wrongful discharge in violation of public policy, an adequate investigation by an employer prior to discharge requires at a minimum that the employee be provided notice of the claimed misconduct and a chance for the employee to respond. The court also adopted a broad construction of what constitutes a “record” of a dismissed conviction. Rather than just criminal history information maintained by governmental agencies, it could potentially include a private background check and an Internet search. Thus, the court interpreted a “record” of a dismissed conviction as “[a]n account, as of information or facts, set down especially in writing as a means of preserving knowledge” or “[i]nformation or data on a particular subject collected and preserved.” The court remanded the case back to Superior Court for a new trial.
- 11 U.S.C. § 523(a)(6) exempts from discharge debts resulting from “willful and malicious injury by the debtor to another entity.” RCI Legal obtained a precedential ruling from the U.S. Bankruptcy Court that an employer debtor’s threats to call the U.S. Immigration and Customs Enforcement and local law enforcement, and having an employee make similar threats at his behest when complainant worker sought unpaid wages satisfied both the “willful” and “malicious” prongs under 11 U.S.C. § 523(a)(6). The Bankruptcy Court found that the employer’s debt owed to the Labor Commissioner from the Superior Court’s default judgment (wholly comprised of civil penalties under Labor Code §§ 98.6 (which prohibits retaliation) and 1019 (which prohibits immigration-related threats in retaliation for protected conduct such as seeking unpaid wages)) was excepted from discharge. The Bankruptcy Court held that the default judgment in Superior Court remained in full force and effect.

Labor Code section 98.74 established an alternate, quicker means by which RCI could enforce LCO’s findings of unlawful retaliation through the issuance of administrative citations. In 2020, RCI Legal broke new ground by filing eight citations against employers who violated the Labor Code – with seven of these citations involving high-priority immigration-related threats. RCI attorneys intensively prepared for and prosecuted four of the citations before hearing officers in administrative hearings. In other citation cases, attorneys reached fair settlements and obtained default judgments. RCI attorneys worked closely with RCI deputy labor commissioners to develop cases for citation and to prosecute cases at hearing. By providing deputies with formal training on the citation process and hands-on experience at all stages of the process, RCI Legal laid the foundation for deputies themselves to prosecute citation cases in the future, and as such, to build greater enforcement capacity for RCI. RCI Legal plans to prosecute even more citations in 2021.

Helping to break down the silos within LCO units and to maximize LCO’s investigatory powers throughout the agency, RCI attorneys in 2020 participated in the Supplemental Paid Sick Leave (SPSL) working group, the Enforcement Coordination Team (ECT), and the BOFE-RCI Protocols working group. RCI attorneys strengthened interagency relationships with the Department of Fair Employment and Housing (DFEH) in coordinating joint Equal Pay Act (EPA) enforcement authority under SB 973. They also reached out to the community by serving as RCI subject matter experts on outreach materials and participating in the BOFE Strategic Enforcement Partnership with community-based organizations.

REPORT OF PERFORMANCE

Labor Code section 98.75 requires the Labor Commissioner to submit a report annually on the following topics: (a) the complaints filed with the Labor Commissioner in the previous calendar year pursuant to Labor Code sections 98.7 and 1197.5;² (b) the number of determinations issued, investigative hearings held, complaints dismissed, and complaints found to be valid, grouped by the year in which the complaints were filed; and (c) the number of cases in which the employer complied or failed to comply with an order to remedy the unlawful discrimination, as well as the number of court actions brought by the Labor Commissioner to remedy unlawful discrimination and the results of those court actions. If any action under Labor Code 98.7 was not brought in court in a timely way, the report must also specify the reasons.

Exhibit A, submitted in accordance with Labor Code section 98.75, shows the number of complaints filed or opened in 2020 under various Labor Code sections and one section each from the Health and Safety Code and Unemployment Insurance Code. In summary:

- Total number of complaints received by the RCI Unit: **5,334**
- Total number of cases accepted for investigation as within LCO jurisdiction: **1,897**
- Total number of violations alleged for all cases accepted for investigation: **4,357**
- The largest group of complaints filed originated from alleged retaliation for filing or threatening to file a claim relating to a right that is under the jurisdiction of the Labor Commissioner (Labor Code section 98.6). There were **1,655** alleged violations of this nature.
- The second largest group of complaints filed originated from alleged retaliation for disclosing violations or noncompliance with local, state or federal law (Labor Code section 1102.5). There were **1,566** such violations alleged and accepted for investigation.

Exhibit B details the disposition of the various retaliation cases for which a determination was issued in 2020 based on the year the complaint was filed. The RCI Unit issued **474** determinations, of which **428** were dismissals and **46** were cases with merit (findings for employees). Additionally, **six** citations were issued on a total of three complaints.

- Of the **46** cases with merit, two cases were resolved by employer compliance with the determination, **five** cases were settled prior to referral for enforcement, **39** cases are pending court filing, and **none** of the cases with 2020 determinations have been filed in court.
- The Labor Commissioner filed **25** cases in Superior Court, settled **23** cases, and obtained judgments in **nine** other cases.

² Labor Code section 1197.5 prohibits an employer from paying its employees at a wage rate that is less than the wage rate it pays to employees of the opposite sex, or of a different race or ethnicity, for substantially similar work done under similar working conditions, when that work is viewed as a composite of skill, effort, and responsibility, unless the employer demonstrates that the difference in wage rate is based on a seniority system, a merit system, a system that measures quantity or quality of production, or a factor other than sex, race or ethnicity, such as education, training or experience. Amendments to this section went into effect in 2016 and 2017.

- Under Labor Code section 98.7(b)(1), the Labor Commissioner may, at her discretion, hold an evidentiary hearing. The RCI Unit did not hold any investigative hearings in 2020.
- In total, the Labor Commissioner closed **6,526** cases in 2020. Closed cases include complaints dismissed after issuance of determination, settlements, and cases withdrawn or abandoned by the complainants.

Exhibit C reports statistics over a six-year period for comparative purposes and to highlight the growth in the number of statutes enforced, new claims submitted, total cases accepted, violations alleged among other things. This chart helps establish trends versus a one- or two-year anomaly.

OTHER ACCOMPLISHMENTS IN 2020

Not included in the exhibits are the following details related to merit findings, settlements, and judgments.

- The **46** merit findings ordered payment of **\$1,149,683.06** in lost wages, **\$245,900.55** in interest on the lost wages, **\$787,429** in penalties payable to the worker, and **\$526,000** in penalties payable to the state.
- In 2020, RCI Program and Legal developed and implemented RCI citation procedures, trained key staff on the additional evidentiary considerations for citations, guidelines for recommending citations and procedures on how to issue citations. As of 12/3/2020, four citations were issued totaling **\$62,933.29** in amounts payable to employees with an additional **\$21,000** in penalties due the state. Payments of **\$9,250.00** have so far been received. RCI has an additional **15** citations that are pending issuance.
- The RCI program unit was also able to reach **382** settlements prior to issuance of determinations for a total of **\$2,161,922.91**, payable to the individuals who filed the claims. (These figures include cases filed in prior years.)
- The RCI legal unit obtained **\$668,308.74** obtained in court judgments and **\$396,515** in settlements. This amount includes statutory penalties, and attorneys' fees and costs to the Labor Commissioner's Office. Legal also obtained significant injunctive relief in addition to monetary amounts, including posting notices to employees, training, purging negative information from the complainants' files, reference letters, and cease and desist orders.

The RCI unit continues to work to find innovative approaches to ensuring a just and fair workplace for all Californians.

Respectfully submitted,

Lilia García-Brower
Labor Commissioner

EXHIBIT A
Division of Labor Standards Enforcement
Calendar Year 2020 Retaliation Violations Alleged per LC 98.75(a)

Labor Code	Description of Violations Alleged	Total Allegations
98(k)	For loss of wages as a result of engaging in lawful conduct during nonworking hours	1
98.6	For filing or threatening to file a claim with the Labor Commissioner	1,655
230(a)	For taking time off to serve on a jury or appear as a witness in court	1
230(c)	For taking time off to seek medical help as a victim of domestic violence, sexual assault, or stalking	4
230(e)	Protection based on employee's status as a victim of domestic violence, sexual assault, and/or stalking	15
230(f)	Protects victims of domestic violence, sexual assault, and/or stalking who request reasonable accommodations	5
230.1	For employers with 25 or more employees, protects employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work to obtain injunctive relief	2
230.2(b)	Protects employees or family members of employees who are victims of a crime to take time off work to attend judicial proceedings	2
230.3	Protects employees who take time off to perform services as a volunteer first responder	3
230.7	For taking time off from work to appear at a pupil's school at the request of the pupil's teacher, if the employee gives reasonable notice	1
230.8	For employers with 25 or more employees, protects employee who participates in school activities	5
232(a) & (b)	Protects employees who discuss or disclose wages or refuse to agree not to disclose wages	10
232.5	Protects employee's right to discuss employer's working conditions	3
233	Protects employee's ability to use sick leave to attend to illness of a family member	14
244	Prohibits employer from reporting or threatening to report an employee's citizenship or immigration status to a state, federal, or local agency because the employee exercises a right under the Labor Code, the Government Code, or the Civil Code. This protection also extends to former and prospective employees and their family members.	16
245-249	Prohibits paid sick leave retaliation	255
432.3	Prohibits employer from relying on prior salary history as a factor in a job offer. Employer must provide pay scale upon request.	2
432.6	Prohibits employer from conditioning employment on waiver of rights under the Labor Code or the Fair Employment and Housing Act	1
432.7	Prohibits employer from asking applicant to disclose information on arrest or detention that did not result in conviction or referral to/participation in any diversion program or juvenile court	1
1019	Protects employees engaging in activities protected by the Labor Code from unfair immigration-related practices	17
1019.1	Prohibits an employer from requiring applicants and employees to provide new or different documents to satisfy section 1324a(b) of Title 8 of US Code to prove eligibility for employment	4
1024.6	Protects employees who update or attempt to update their personal information	2

EXHIBIT A
Division of Labor Standards Enforcement
Calendar Year 2020 Retaliation Violations Alleged per LC 98.75(a)

Labor Code	Description of Violations Alleged	Total Allegations
1030-1033	Protects employees who request lactation accommodations	4
1101	Prohibits employer from preventing employees from engaging in politics or running for public office	1
1102	Prohibits employer from coercing, influencing or attempting to coerce/influence employees political action or activity	1
1102.5	Protects employee's right to report violations or noncompliance with a state or federal statute	1,566
1197.5	Protects employees from retaliation based on sex-, race-, or ethnicity-based wage discrimination	119
a	-Claims alleging sex-based wage discrimination: 34	
a & b	-Claims alleging sex-based and race- or ethnicity-based wage discrimination: 43	
a, b, & k	-Claims alleging sex-based and race- or ethnicity-based wage discrimination and retaliation: 3	
a & k	-Claims alleging sex-based discrimination and retaliation: 5	
b	-Claims alleging race- or ethnicity-based discrimination: 33	
b & k	-Claims alleging race- or ethnicity-based wage discrimination and retaliation: 0	
k	-Claims alleging retaliation based on sex-based wage discrimination: 1	
k	-Claims alleging retaliation based on race- or ethnicity-based wage discrimination: 0	
k	-Claims alleging retaliation based on sex-, race-, or ethnicity-based wage discrimination: 0	
1198.3	Prohibits retaliation against an employee who refuses to work hours in excess of those permitted by the Industrial Welfare Commission Orders	0
1311.5	Provides for treble damages when an individual is retaliated against as a minor	1
2814	Prohibits an employer from using E-Verify to check the status of an existing employee or applicant who has not been offered employment	0
2929(b)	Protects employees whose wages are garnished for payment of one judgment	0
2930	Protects employees who are disciplined or discharged based on a shopping investigator's report; employer must provide a copy of the report before the discipline or discharge occurs	0
6310	Protects employees who complain about or initiate proceedings related to workplace safety or health conditions	570
(a)(4)	-Claims alleging retaliation after report of workplace injury included above (not retaliation after workplace safety complaints): 25	
6311	Protects employees who refuse to perform work in an environment that is hazardous to the employee or co-workers	59
6403.5	Protects an employee who refuses to lift, reposition or transfer a patient due to concerns about patient or worker safety or because of the lack of trained lift team personnel or equipment	0
Other	Other Code sections under the jurisdiction of the Labor Commissioner's Office	
1596.881	Health and Safety Code, regarding licensing of child-care facilities	1

EXHIBIT A
Division of Labor Standards Enforcement
Calendar Year 2020 Retaliation Violations Alleged per LC 98.75(a)

Labor Code	Description of Violations Alleged	Total Allegations
1237	Unemployment Insurance Code, protects employee's right to seek information on unemployment insurance	15
IWC- Alternative workweek elections	Protects an employee who express an opinion regarding an alternative workweek election	1
	Total Number of Complaints Received by RCI Unit¹	5,334
	Total Cases Accepted for Investigations: Accepted Cases²	1,897
	Total Violations Alleged in Cases Accepted for Investigation	4,357

¹ This is the number of new complaints received in 2020 prior to screening. Of the 5,334 new complaints, 3,546 were received through the online filing system, and 1,788 were filed by mail, email, phone or referral.

² After filing, each case must be screened prior to acceptance. To screen cases, RCI staff conduct an interview of the complainant and provide additional time to submit information to establish a prima facie case of retaliation.

EXHIBIT A
Division of Labor Standards Enforcement
Calendar Year 2020 Retaliation Violations Alleged per LC 98.75(a)

COVID-Related Complaints³

Labor Code	Description of Violations Alleged	Total Allegations
98.6	For filing or threatening to file a claim with the Labor Commissioner	421
230(e)	Protection based on employee's status as a victim of domestic violence, sexual assault, and/or stalking	1
230(f)	Protects victims of domestic violence, sexual assault, and/or stalking who request reasonable accommodations	1
233	Protects employee's ability to use sick leave to attend to illness of a family member	2
245-249	Prohibits paid sick leave retaliation	95
1102.5	Protects employee's right to report violations or noncompliance with a state or federal statute	338
6310	Protects employees who complain about or initiate proceedings related to workplace safety or health conditions	244
(a)(4)	-Claims alleging retaliation after report of workplace injury included above (not retaliation after workplace safety complaints): 3	
6311	Protects employees who refuse to perform work in an environment that is hazardous to the employee or co-workers	50
Other	Other Code sections under the jurisdiction of the Labor Commissioner's Office	
1237	Unemployment Insurance Code, protects employee's right to seek information on unemployment insurance	7
	Total Number of COVID-Related Complaints Received by RCI Unit	834
	Total COVID-Related Cases Accepted for Investigations: Accepted Cases	456
	Total COVID-Related Violations Alleged in Cases Accepted for Investigation	1,159

³ COVID-Related Complaints and Violations Alleged in this table are included in table above.

EXHIBIT B
Labor Commissioner's Office
2020 Retaliation Unit Legislative Report
Calendar Year 2020 Disposition of Retaliation Cases per Labor Code 98.75 (b)

Disposition	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
Determinations issued	1	1	3	8	14	28	46	137	178	58	474
Cases with merit			1	1	1	3	5	19	14	2	46
Cases dismissed	1	1	2	7	13	25	41	118	164	56	428
Citations issued										6 ¹	6
Investigative hearing held											0

Results of cases with merit	
Compliance	2
Settlements prior to referral for enforcement	5
Pending settlement prior to referral for enforcement	
Noncompliance	
Referred for enforcement (awaiting court filing)	39
Court filings for 2020 determinations	0
Legal Activity	
Court Filings	25
Settlements	22
Judgments	9
Cases closed in 2020	6,526

¹ Six citations on a total of three complaints.

EXHIBIT C
Labor Commissioner's Office
2020 Retaliation Unit Legislative Report
Six-Year Statistics

Legislative Report Statistics	2015	2016	2017	2018	2019	2020
Retaliation statutes enforced	45	46	46	48	48	52
Total number of complaints received	3,629	4,211	4,178	5,633	6,515	5,334
Total cases accepted	1,998	2,441	2,526	2,590	2,336	1,897
Total violations alleged in cases Accepted	3,928	4,300	5,220	5,664	5,327	4,357
Cases closed	1,520	1,627	2,897	2,588	2,483	6,526
Unassigned or backlogged cases:	1,024	1,532	4	642	732	2,822
Positive outcomes for complainants: Cause findings + settlements + citations	504	459	498	580	548	435