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*California Labor Commissioner
Division of Labor Standards Enforcement*

**2013 RETALIATION COMPLAINT REPORT
(LABOR CODE §98.75)**

The Labor Commissioner respectfully submits this report to the Legislature.

BACKGROUND

California law contains a strong public policy to protect employees from retaliation for exercising their rights. Labor Code section 98.7, effective in 1986 and amended in 1999, 2001, 2002, and 2013, provides that any person who believes he or she has been discharged or otherwise discriminated against in violation of any law under the jurisdiction of the Labor Commissioner may file a complaint with the division within six months after the occurrence of the violation. Through this Code section, the Labor Commissioner has jurisdiction to resolve disputes arising from nearly three dozen statutes and regulations.

The Labor Commissioner's office, also known as the Division of Labor Standards Enforcement (DLSE), investigates complaints of retaliation and makes a determination. If the Labor Commissioner determines a violation has occurred, the statute authorizes the Labor Commissioner to direct the violator to cease and desist from the violation and to take such action as deemed necessary to remedy the violation including, where appropriate, rehiring or reinstatement of the aggrieved employee, reimbursement of lost wages and interest thereon, and/or payment of reasonable attorney's fees associated with any investigative hearing by the Labor Commissioner. If the employer does not appeal or comply, the Labor Commissioner is mandated to promptly file an action in court to enforce the determination.

HIGHLIGHTS FROM THIS REPORTING PERIOD

DLSE provided additional training to staff in 2013 as part of our continued efforts to streamline the investigative process and improve efficiencies in completing more accurate, timely retaliation investigations. DLSE has also developed a fast-track letter that is sent to any employer who discharges or otherwise retaliates against an employee or group of employees after a BOFE investigation. The employer is directed to immediately reinstate the employee(s) and cease and desist from any further retaliation as a result of their cooperation with BOFE investigators. This new process has resulted in cases where the employee (or employee) were immediately offered their jobs back and where threats of termination for cooperating with our investigation stopped. Our new approach not only makes the anti-retaliation provisions of the Labor Code meaningful, it strengthens all of our other enforcement efforts, protects honest employers, and builds worker trust in state enforcement. No employee should be put in harm's way for cooperating with the government.

As noted above, DLSE is charged with enforcing 33 statutes and regulations prohibiting retaliation in the workplace. While the majority of these statutes are contained in the Labor Code, the Division also enforces statutes contained in the Health and Safety Code, the Unemployment Insurance Code and Orders of the Industrial Welfare Commission. In addition to dissemination of information to the public through all of its District Offices, the Division maintains a section of its website <http://www.dir.ca.gov/dlse/dlseDiscrimination.html> devoted to information available to both employers and employees on their rights and responsibilities pursuant to these various statutes and regulations. This section contains the following information:

- Instructions on how and where to file a complaint (the complaint form itself was modified and improved in 2012)
- The *Summary of Procedures* required by Labor Code section 98.7, provided in English, Spanish, Chinese, and Korean (these were also modified and reflect streamlined and improved investigative procedures)
- An information sheet, available in English, Spanish, and Korean, titled *Assurances of Participation without Retaliation*, providing information specific to the right of an employee to speak to a representative of the Division without fear of retaliation (Labor Code section 1102.5)
- An information sheet, available in English and Spanish, titled *Filing a Retaliation/Discrimination Complaint*, providing information on timelines within which to file a complaint and a list of explanations for all Code sections under the jurisdiction of the Labor Commissioner.

REPORT OF PERFORMANCE

Labor Code section 98.75 requires that the Labor Commissioner submit a report annually on (a) the complaints filed with the Labor Commissioner in the previous calendar year pursuant to Labor Code sections 98.7 and 1197.5¹; (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 with an order to remedy the unlawful discrimination, failed to comply, as well as the number of court actions brought by the Labor Commissioner to remedy unlawful discrimination and the results of those court actions. The report must also specify the reasons for not bringing action in court if the action was not brought timely under Labor Code 98.7.

The following data is submitted in accordance with Labor Code section 98.75 for 2013:

- Complaints received: 3,514²

¹ Labor Code Section 1197.5 provides that no employer shall pay any individual in the employer's employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of work production, or differential based on any bona fide factor other than sex.

² This number represents the total number of complaints /received by the Retaliation Complaint Investigation (RCI) Unit.

- Accepted for investigation as within DLSE jurisdiction: 1,605 cases³
- **Exhibit A** shows the number of complaints filed or opened in 2013 under various Labor Code sections listed, and one section each from the Health and Safety Code and Unemployment Insurance Code.⁴
 - The largest group of complaints filed originated from alleged retaliation for filing or threatening to file a claim relating to a right within the jurisdiction of the Labor Commissioner (Labor Code section 98.6). There were 1,068 complaints of this nature, representing over half of the alleged violations and over 65% of all cases opened during the year.
 - The second largest group of complaints filed originated from alleged retaliation for disclosing violations or non-compliance with state or federal law (Labor Code section 1102.5). There were **409** complaints of this nature comprising approximately **25%** of alleged violations accepted for investigation for the year.
 - At the end of calendar year 2013, **408** cases remain unassigned (25 percent of the 1,605 complaints accepted), primarily due to the continued increase in the number of complaints filed each year and the workload associated with the thorough investigation of a complaint. DLSE accepted 165 more cases in 2013 than in 2012.⁵ Further, the cases accepted for investigation in 2013 alleged 105 more violations than in calendar year 2012,⁶ and consequently, it took more time to investigate each case. Finally, the furloughs of one (1) day per month continued through June 30, 2013 for the investigators and support staff, leaving them with less time to work on the cases.
- **Exhibit B** details the disposition of the various retaliation cases where a Determination was issued in 2013. The RCI Unit issued a total of **232** Determinations, of which **166** were dismissals and **66** were findings for employees. Of the 66 cause findings, 3 were resolved by employer compliance with the Determination; 20 actions have been filed in court with 13 pending court filing; 21 were settled; and 9 are in settlement discussions. If the cases do not result in settlements, they will also be filed in court.
 - Of the cases that were filed in court, four resulted in default judgments, one case was settled for \$30,000, and the others are still being litigated.
- Of the cases where investigations were completed in this reporting period, thirteen cases have not been filed in court due to resource limitations. The number of

³ An accepted case may allege multiple violations, hence the number of alleged violations is larger than the total number of cases accepted for investigation in Exhibit A. "Total Violations Alleged" in Exhibit A describes the number of allegations contained *within* the total cases accepted for investigation.

⁴ Exhibit A reflects *only* the violations associated with the complaints filed *and* accepted for investigation in 2013. As mentioned in the previous footnote, because a complaint may contain multiple alleged violations, the total number of alleged violations is higher than the total number of cases accepted for investigation.

⁵ In 2012, there were 1,440 cases accepted for investigation.

⁶ The 1,440 cases accepted for investigation in 2012 alleged 1,794 violations.

determinations finding retaliation has risen.⁷ However, DLSE needs to file actions in court when the employer fails to comply. When this Administration began in 2011, the legal unit had 140 pending determinations requiring action referred in prior years. One case was filed in 2011. We have worked to recover from this backlog and filed nine RCI cases in court in 2012. As of December 2013, there are 130 cases in the legal unit requiring action. An attorney was hired in December 2013 to assist with the backlog of retaliation cases requiring action.

- There were two investigative hearings held in 2013, for health and safety complaints. We also laid the groundwork for utilizing administrative law judges to conduct investigative hearings and are currently conducting training for this purpose.
- DLSE closed 1,270 cases. Closed cases include complaints dismissed after issuance of determinations, settlements, as well as cases withdrawn or abandoned by the complainants.⁸

Respectfully Submitted,



Julie A. Su
Labor Commissioner

⁷ In 2011 there were 31 cause finding determinations issued and 59 in 2012.

⁸ The RCI Unit closed 1,206 cases in 2012.