

2002 DISCRIMINATION COMPLAINT REPORT (LABOR CODE §98.75)

Labor Code §98.7 which became effective January 1986, establishes the authority of the Labor Commissioner to investigate, process, and resolve employee complaints of discrimination arising under various sections of the Labor Code. The procedures established pursuant to Labor Code §98.7 entail an investigation and or the convening of an investigative hearing after the filing of a complaint alleging discrimination in employment by an employee. In the event that the Labor Commissioner determines that 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 is 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.

In 1986, the Division was charged with enforcing nine statutes prohibiting discrimination in the workplace. In 1990 that number was increased to fifteen.

Currently, the Division is charged with enforcing twenty-eight statutes and regulations prohibiting discrimination in the work place. 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 the Industrial Welfare Commission Orders.

Effective January 1, 2002 the following changes in the Discrimination statutes occurred:

1. AB 25 amended Labor Code Section 233 to require an employer to permit employees to use sick leave to attend to the illness of an employee's child, parent, spouse, or *domestic partner or child of a domestic partner*.
2. AB 1015 amended Labor Code Section 98.6 which prohibits an employer from discriminating against an employee or *applicant* for employment because he or she filed a complaint with the Labor Commissioner or participated in activities protected under the Labor Code, including Labor Code § 96 (k).

In 1999, the number of Discrimination complaints filed with the Division numbered 795, in 2000 the number of Discrimination complaints filed numbered 834, and in 2001 numbered 1,003.

The following data is submitted in accordance with Labor Code §98.75:

In Calendar year 2002 the Division received 1,707 discrimination complaints. Of those received, 608 complaints were dismissed due to lack of jurisdiction. A total of 1099 complaints were opened as detailed in Exhibit "A".

Exhibit "A" shows the number of complaints filed or opened under the various Labor Code Sections in 2002. The Division recorded a total of 1,099 cases filed in 2002. Approximately 67% of all cases opened during the year were complaints filed pursuant to Labor Code Section 98.6, which prohibits retaliation or discrimination in the workplace as a result of filing or intent to file a claim with the Labor Commissioner. These claims numbered 733. The second largest group of complaints of discrimination filed arose from health and safety issues in the workplace. These complaints, numbering 170, involved employees who claimed discrimination due to reporting safety and health violations on the job, which comprised 15% of total complaints filed.

Exhibit "B" shows the disposition of the various discrimination cases that were closed in 2002. Of the total 996 cases closed in 2002, 46 Decisions were in favor of the complainant, 110 cases resulted in voluntary settlements to the satisfaction of both parties, 208 cases were dismissed, 197 were withdrawn by the complainants before a determination was reached, and 419 cases were abandoned by the complainant.

In the calendar year 2002, 18 referrals were made to the DLSE Legal Section to enforce the Decision of the Labor Commissioner finding of retaliation. Of the 18 referrals, 17 civil complaints were filed and 1 case was closed prior to filing. Of the 17 court actions filed, 3 were resolved through judgment or settlement and the other 14 are proceeding with discovery and/or going to trial.

Beginning in 1993 the Division implemented a statewide centralized Discrimination Complaint Investigation (DCI) Unit with five Deputy Labor Commissioners assigned full-time to investigate all discrimination complaints referred to the Division. The Deputies in the DCI Unit, currently eleven full-time investigators, receive ongoing training in investigative techniques and report writing in a effort to ensure they all have a thorough knowledge of the discrimination statutes. The Division will continue to review its procedures to ensure the continuing success of the program.

Respectfully Submitted,

Arthur S. Lujan
Labor Commissioner

Attachments (2)

Date:

1/23/03

EXHIBIT A

CALENDAR YEAR 2002 DISCRIMINATION COMPLAINTS FILED

Discrimination Complaints Labor Code Section	Total Cases Filed in 2002
96 K (Loss of wages due to lawful conduct)	37
96k/98.6 (Loss of wages due to lawful conduct) (Labor Commissioner Complaints)	2
96k/1102.5 (Labor Commissioner Complaints/Whistleblower)	1
98.6 (Labor Commissioner Complaints)	695
98.6/1102.5 (Labor Commissioner Complaints) (Whistleblower)	8
98.6/232 (Labor Commissioner Complaints) (Disclosure of wages)	6
98.6/1197.5 (Labor Commissioner Complaints) (Sex-Based Wage Discrimination)	4
98.6/6310 (Labor Commissioner Complaints) (Safety Complaint Retaliation)	17
98.6/UI 1237 (Labor Commissioner Complaints/Unemployment Ins.)	1
98.6/432.7 (Labor Commissioner Complaints) (Disclosure of criminal record information/retaliation)	1
98.6/2929 (Labor Commissioner Complaints/Garnishment)	1
230(a) (Jury Duty)	16
230(a)/96(k) (Jury Duty/Loss of wages due to lawful conduct)	1
230(b) (Obedience to Subpoena)	4
230(b)/96(k) (Obedience to Subpoena) (Loss of wages due to lawful conduct)	1
230c (Domestic Violence)	6
230.1 (Domestic Violence)	2
230.3 (Emergency Duty) (Firefighter/reserve peace officer/rescue personnel)	1
230.7 (Parents required to appear at pupil's school)	1
230.8 (School Visits)	2
232(a) and (b) (Disclosure of Wages) (Refusal to agree not to disclose)	6

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CALENDAR YEAR 2002 DISCRIMINATION COMPLAINTS FILED**PAGE 2**

232a/98.6/6310 (Labor Commissioner Complaint/Safety Complaint)	1
233 (Sick Leave -Family)	28
432.7 (Disclosure of criminal record information/retaliation)	17
1025-1028 (Alcohol and Drug Rehab)	7
1101/1102 (Political Activity)	3
1102.5 (Whistleblower)	40
1102.5/98.6 (Whistleblower/Labor Commissioner Complaints)	2
1102.5/UI1237 (Whistleblower/Unemployment Insurance Code)	1
1102.5/6310 (Whistleblower) (Safety Complaint Retaliation)	2
1197.5 (Sex-Based Wage Discrimination)	13
2929 (Wage Garnishment)	7
6310 (Safety Complaint Retaliation)	133
6310/6311 (Safety Complaint/Unsafe Conditions)	11
6310/1102.5 (Safety Complaint/Whistleblower)	6
6310/233 (Safety Complaint Retaliation/Sick Leave Family)	1
6311 (Refusal to Work/Unsafe Conditions)	6
1596.881 (Health and Safety Code)	6
1237 (Unemployment Insurance Code)	2
Total Cases Filed	1,099

EXHIBIT B

DIVISION OF LABOR STANDARDS ENFORCEMENT

DISPOSITION OF DISCRIMINATION CASES CALENDAR YEAR 2002

<i>CASES CLOSED</i>	<i>TOTAL</i>
Decisions Issued:	254
Findings for Employees	46
Complaints Dismissed	208
Complaints Withdrawn	197
Complaints Abandoned	419
Compliance Obtained:	
Complaints Settled	110
Investigative Hearings Held	21
Appeals to the Director:	55
Decisions Upheld	43
Decisions Reversed	5