

**2004 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 of Labor Standards Enforcement (DLSE) 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 thirty 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, 2004 the following changes in the Discrimination statutes occurred:

SB 478 added Labor Code Sections 230.2 that requires an employer to allow an employee who is a victim of a crime, an immediate family member of a victim, a registered domestic partner of a victim, or the child of a registered domestic partner of a victim to take time off from work in order to attend judicial proceedings related to that crime. (The complaint must be filed within one year from the date of occurrence of the violation).

In 1999, the number of complaints assigned for investigation numbered 795, in 2000 the number of complaints assigned was 834, in 2001 the number of cases assigned was 1,003, in 2002, the number of cases assigned was 1,099.

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

In Calendar year 2003 the Division received 1,855 discrimination complaints. Of those, 1,225 complaints were accepted and assigned for investigation. In calendar year 2004 the Division received 1,864 discrimination complaints. Of those 1,052 were accepted and assigned for investigation as detailed in Exhibit A.

Exhibit A shows the number of complaints filed or opened under the various Labor Code Sections in 2004. Approximately 61% 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 intending to file a claim with the Labor Commissioner. These claims numbered 646. The second largest group of complaints of discrimination filed arose from alleged retaliation for reporting health and safety issues in the workplace. These complaints, numbering 177, involved employees who claimed retaliation due to reporting safety and health violations on the job, which comprised 17% of total complaints filed.

Exhibit B shows the disposition of the various discrimination cases that were closed in 2004. Of the 882 cases closed in 2004, 25 of them were Decisions in favor of the complainant, 60 resulted in voluntary settlements to the satisfaction of both parties, 190 were dismissed, 159 were withdrawn by the complainants before a determination was reached, 52 were dismissed for lack of jurisdiction, and 396 cases were abandoned by the complainant.

In 2004, 16 referrals were made to the DLSE Legal Section to enforce the Labor Commissioner's finding of retaliation. Of the 16 referrals, 14 complaints were filed, 1 case was settled prior to filing and 1 case, no action had been taken since the referral was made in late 2004. In total, the DLSE Legal Section closed 26 cases in 2004, 22 cases were settled and 3 judgments were entered.

Beginning in 1993 the Division implemented a statewide centralized Discrimination Complaint Investigation (DCI) Unit with five Deputy Labor Commissioners (Deputies) assigned full-time to investigate all discrimination complaints referred to the Division. The Deputies in the DCI Unit, currently nine 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,

Date: \_\_\_\_\_

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Donna Dell  
State Labor Commissioner

Attachments (2)

# EXHIBIT A

## DIVISION OF LABOR STANDARDS ENFORCEMENT

### CALENDAR YEAR 2004 DISCRIMINATION COMPLAINTS FILED

Discrimination Complaints Labor Code Section		<i>Total Cases Filed in 2004</i>
<b>96 K</b>	(Loss of wages due to lawful conduct)	21
<b>96k/1102.5</b>	(Loss of wages due to lawful conduct/ Whistleblower)	1
<b>96k/232</b>	(Loss of wages due to lawful conduct/ Discussing or Disclosing Wages)	1
<b>96(k)/232.5</b>	(Loss of wages due to lawful conduct/ Disclosing information re: employer's working conditions)	1
<b>98.6</b>	(Labor Commissioner Complaints)	618
<b>98.6/96(k)</b>	(Labor Commissioner Complaints/ Loss of wages due to lawful conduct)	3
<b>98.6/230(b)</b>	(Labor Commissioner Complaints/ Subpoenaed Witness)	1
<b>98.6/232(b)</b>	(Labor Commissioner Complaints/ Discussing or Disclosing Wages)	1
<b>98.6/232.5</b>	(Labor Commissioner Complaints/ Disclosing information re:employer's working conditions)	5
<b>98.6/1237</b>	(Labor Commissioner Complaints/ Unemployment Insurance Code)	2
<b>98.6/1102.5</b>	(Labor Commissioner Complaints/ Whistleblower)	6
<b>98.6/1197.5</b>	(Labor Commissioner Complaints/ Sex-Based Wage Discrimination)	4
<b>98.6/6310</b>	(Labor Commissioner Complaints/ Safety Complaint Retaliation)	6
<b>230(a)</b>	(Jury Duty)	30
<b>230(a)(b)</b>	(Jury Duty/ Victim of a crime - Appearance in court or subpoenaed)	1
<b>230(b)</b>	(Victim of a crime - Appearance in court or subpoenaed witness)	3
<b>230(c)</b>	(Victim of Domestic Violence and/or Sexual Assault)	3
<b>230.1</b>	(Victim of Domestic Violence Health and Safety)	5
<b>230.7</b>	(Parent/Guardian required attendance in school)	1

# EXHIBIT A

## DIVISION OF LABOR STANDARDS ENFORCEMENT

### CALENDAR YEAR 2004 DISCRIMINATION COMPLAINTS FILED

Discrimination Complaints Labor Code Section		<i>Total Cases Filed in 2004</i>
<b>230.8</b>	(Parent Participation in School Activities of Child)	3
<b>232(a)</b>	(Discussing or Disclosing Wages)	1
<b>232( c)</b>	(Discharge for Disclosing wages)	2
<b>232.5</b>	(Disclosing information re:employer's working conditions)	18
<b>233</b>	(Sick Leave-Family)	25
<b>432.7</b>	(Disclosure of criminal record information/retaliation)	13
<b>1025/1028</b>	(Alcohol and Drug Rehab)	4
<b>1101/1102</b>	(Political Activity)	6
<b>1102.5</b>	(Whistleblower)	61
<b>1102.5/6310</b>	(Whistleblower/Safety Complaint)	2
<b>1197.5</b>	(Sex-Based Wage Discrimination)	12
<b>2929</b>	(Wage Garnishment)	2
<b>2930</b>	(Shopping Investigator's Report)	3
<b>6310</b>	(Safety Complaint Retaliation)	148
<b>6310/96(k)</b>	(Safety Complaint Retaliation/ Loss of wages due to lawful conduct)	2
<b>6310/98.6</b>	(Safety Complaint Retaliation Labor Commissioner Complaints)	2
<b>6310/233</b>	(Safety Complaint Retaliation/ Sick Leave -Family)	1

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## DIVISION OF LABOR STANDARDS ENFORCEMENT

### CALENDAR YEAR 2004 DISCRIMINATION COMPLAINTS FILED

Discrimination Complaints Labor Code Section	<i>Total Cases Filed in 2004</i>
<b>6310/1102.5</b> (Safety Complaint Retaliation/ Whistleblower)	5
<b>6311</b> (Refusal to Work/Unsafe Conditions)	10
<b>6310/6311</b> (Safety Complaint/Refusal to Work)	3
<b>1596.881</b> (Health and Safety Code)	3
<b>1237</b> (Unemployment Insurance Code)	13
<b>Total Cases Filed</b>	<b>1,052</b>

## EXHIBIT B

### DIVISION OF LABOR STANDARDS ENFORCEMENT

#### CALENDAR YEAR 2004 DISPOSITION OF DISCRIMINATION CASES

<b>CASES CLOSED</b>	<b>TOTAL</b>
<b>Decisions Issued:</b>	<b>215</b>
Findings for Employees	25
Complaints Dismissed	190
<b>Complaints Withdrawn</b>	<b>159</b>
<b>Complaints Abandoned</b>	<b>396</b>
<b>Complaints Closed - No Jurisdiction</b>	<b>52</b>
<b><i>Total Cases Closed, 2004</i></b>	<b>822</b>
<b>Compliance Obtained:</b>	
Complaints Settled	60
<b>Investigative Hearings Held</b>	<b>9</b>
<b>Appeals to the Director:</b>	<b>70</b>
Decisions Upheld	14
Decisions Reversed	1