

A man with a beard and mustache, wearing a white dress shirt and a dark striped tie, is looking off to the side with a thoughtful expression. He is in a warehouse or office setting with cardboard boxes and a brick wall in the background.

REPORT RETALIATION

TO THE CALIFORNIA LABOR
COMMISSIONER'S OFFICE

The Labor Commissioner's Office,

also called the Division of Labor Standards Enforcement (DLSE), is part of the California Department of Industrial Relations. The Labor Commissioner's Office is the state agency that investigates complaints of retaliation against workers who exercise their workplace rights. It enforces labor standards to ensure employees are not permitted to work under substandard, unlawful conditions. It also protects employers who comply with the law from having to compete with those who do not.

YOU DO NOT NEED A SOCIAL SECURITY NUMBER OR PHOTO IDENTIFICATION TO FILE A COMPLAINT.

YOU MAY FILE A COMPLAINT REGARDLESS OF YOUR IMMIGRATION STATUS.

YOU DO NOT NEED A LAWYER AND THE LABOR COMMISSIONER WILL PROVIDE AN INTERPRETER IN YOUR LANGUAGE.

CALIFORNIA LABOR LAWS PROTECT ALL WORKERS, REGARDLESS OF IMMIGRATION STATUS. THE LABOR COMMISSIONER'S OFFICE WILL NOT ASK ABOUT YOUR IMMIGRATION STATUS OR REPORT YOUR IMMIGRATION STATUS TO OTHER GOVERNMENT AGENCIES.

THE LABOR COMMISSIONER'S OFFICE ENFORCES LABOR LAWS THROUGH THE FOLLOWING UNITS:

THE WAGE CLAIM ADJUDICATION UNIT reviews and decides individual claims for unpaid wages and other labor law violations.

THE GARMENT WAGE CLAIM ADJUDICATION UNIT reviews and decides claims filed by garment workers under the Garment Worker Protection Act, a law known as AB 633.

THE BUREAU OF FIELD ENFORCEMENT (BOFE) investigates reports of employers' failure to provide minimum wage, overtime, or meal and rest periods to groups of workers. BOFE also investigates complaints against employers for violations of workers' compensation, child labor, recordkeeping, licensing, and registration laws.

THE PUBLIC WORKS UNIT investigates violations of labor laws on public works construction projects. Prevailing wages are wages that are higher than the state minimum wage and are required for workers on most public construction projects.

THE RETALIATION COMPLAINT INVESTIGATION UNIT investigates complaints of retaliation. Retaliation occurs when an employer takes actions such as firing a worker or reducing hours or pay because the worker took steps to enforce his or her labor rights.

THE JUDGMENT ENFORCEMENT UNIT helps workers collect their wages after the Labor Commissioner determines that an employer owes unpaid wages.

HOW TO FILE A RETALIATION COMPLAINT



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ABOUT THE RETALIATION COMPLAINT INVESTIGATION UNIT

The Retaliation Complaint Investigation Unit (RCI) investigates complaints of employer retaliation. Retaliation occurs when an employer takes action against a worker, such as firing or reducing hours or pay, because the worker took steps to assert his or her labor rights.

Examples of workplace retaliation include:

- Termination, suspension, transfer, or demotion.
- Reduction in pay or hours.
- Disciplinary action or threats.
- Assaults or unfounded civil or criminal charges.



“I worked in a restaurant where we didn’t receive any breaks. When I asked my manager about scheduling breaks for us, he said he’d think about it. Two weeks later, he changed my shifts from dinner to lunch, when the tips are not as good. He started asking coworkers about my performance and whether they had any problems with me. He wrote me up three times in one week for being five minutes late, which he had never done before, and didn’t write up my coworkers who were also late. I knew this was retaliation. First, I could show a protected activity: my complaint about breaks. Second, I could show adverse action: my new schedule resulted in fewer tips, and I was disciplined. Third, I could show that my manager took action against me because I complained about breaks: I was singled out and disciplined two weeks after my complaint.”



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PREPARE TO FILE

CHECK THE DEADLINE

You must file a complaint with the Labor Commissioner's Retaliation Complaint Investigation Unit within **six months** of the retaliatory act. (There are a few exceptions to this rule.)

If your employer retaliated against you because you complained about a workplace **health or safety issue**, you may file a complaint with the Labor Commissioner's Office within six months of the retaliatory act and you may also file with the Federal Occupational Safety and Health Administration (OSHA) within thirty days of the retaliatory act. Contact OSHA at (415) 625-2547 or visit www.osha.gov/as/opa/worker/complain.html.

Filing a complaint with the Labor Commissioner does not prevent you from filing a private lawsuit. If you miss the six-month deadline for filing with the Labor Commissioner, you may be able to file a private lawsuit.

RESEARCH

Gather any documents that show your employer took action against you **because you exercised your labor rights**, and not for another reason. It will be useful to show you were an employee in good standing with little or no history of misconduct in the workplace prior to your employer's discovery that you exercised your rights. Document any change in your employment conditions following the moment you exercised your rights, such as demotion or reductions in pay or hours. Gather documents to compare your employment conditions prior to that moment, such as pay stubs, time sheets, personal notes, or other records.

"I worked in a store where my boss never paid overtime wages. One day, Labor Commissioner investigators came to the store. When they interviewed me, I told the truth. My boss took me aside and told me that I should think very carefully about what would happen to me or my family if I got deported or beaten up. I knew that I was protected from threats after I assisted with an investigation of my employer, so I filed a retaliation complaint."



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FILE A COMPLAINT

Complete and file the “Retaliation Complaint” form with the Labor Commissioner’s district office closest to where you work. This form is available at any of the Labor Commissioner’s office locations and at the agency’s website (www.dir.ca.gov/dlse) in English, Spanish, Chinese, Korean, Vietnamese, and Tagalog. If you go to the Labor Commissioner’s Office to file your complaint in person, there may be interpreters to help you in your language. However, if you need an interpreter, it is a good idea to bring someone who can interpret for you at the first visit. After you file a complaint and indicate your language on the form, an interpreter will be provided as needed.

RCI will review your complaint and decide whether to start an investigation of the employer. The Labor Commissioner’s Office will send you a notice that states whether or not it will investigate your complaint. Be sure to provide any changes of your address or phone number in writing.

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COOPERATE IN THE INVESTIGATION

The investigator assigned to your complaint may take some of the following actions during the investigation:

- Interview you and the employer (including managers and supervisors) about the alleged retaliation.
- Interview any witnesses who have information about the alleged retaliation; the identities of witnesses will remain confidential unless a court orders witness names to be disclosed.
- Inspect the worksite for evidence related to the complaint.
- Issue subpoenas requiring the employer to submit documents related to the complaint.
- Request that you and the employer meet to discuss the possibility of a settlement.

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ATTEND A SETTLEMENT CONFERENCE OR HEARING

If the Labor Commissioner’s Office schedules a conference or hearing, both you and your employer must attend. At the conference, you will meet with the investigator and your employer to discuss the possibility of settlement. The investigator may also ask you questions about your complaint.

If you do not reach a settlement agreement before or during the conference, there may be a hearing scheduled for your complaint. At the hearing, you are allowed but not required to bring an attorney, union representative, or any other person to represent you. Your employer has the same right. A hearing officer will conduct the hearing. You and your employer can have witnesses testify and present documents at the hearing. After the hearing, the hearing officer will make a recommendation based on the evidence presented.



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UNDERSTAND THE POSSIBLE OUTCOMES

The Labor Commissioner's Office will send you a written decision by mail. If the Labor Commissioner's Office finds that your employer retaliated against you, it can require your employer to:

- Pay you for any wages lost when you were wrongfully terminated, demoted, or suspended.
- Reinstatement to your former position.
- Delete any reference to the negative action in your personnel file.
- Agree to refrain from future retaliation.
- Post a notice to other employees regarding the retaliation, penalties, and the agreement to refrain from retaliation in the future.

If the decision is in your favor, your employer can either appeal or comply within ten days. If your employer does neither, an attorney with the Labor Commissioner's Office will file a court action to enforce the decision. If the decision is not in your favor, you have the right to appeal it within ten days. Instructions for appealing will be included in the written decision. You can also consider filing a private lawsuit.

SETTLEMENT:

When you enter a **SETTLEMENT AGREEMENT**, you agree to end your complaint by accepting an employer's offer to pay you an amount that could be less than the amount to which you are entitled under the law. Accepting or rejecting a settlement offer is an important decision. Consider the following points before you make your decision.

- **WHY ACCEPT A SETTLEMENT OFFER?** Your complaint resolves promptly and you may receive a remedy sooner. You eliminate the risk of losing your case. If you do not settle and proceed with your complaint, there is a possibility that your employer will file for bankruptcy or close before the investigation is completed.
- **WHY REJECT A SETTLEMENT OFFER?** You may get far less than you are entitled to according to the law. If you receive a settlement offer that is too low, you can demand a higher amount and try to negotiate for an acceptable settlement amount.

UNDERSTANDING RETALIATION:

PROTECTED ACTIVITY + ADVERSE ACTION + CAUSAL CONNECTION

Retaliation occurs when your employer punishes you at work because you engaged in what is known as a “protected activity.”

+ PROTECTED ACTIVITY

When you exercise your workplace rights, you are protected under anti-retaliation laws—but not every activity is protected.

PROTECTED ACTIVITIES INCLUDE:

- **Refusing to work in unsafe conditions** or complaining about health and safety conditions to your boss, a government agency, or a labor union.
- **Filing a wage claim** with the Labor Commissioner’s Office or complaining about unpaid wages to your employer.
- **Testifying in support** of a coworker’s wage claim.
- **Assisting an investigation** of your employer by a government agency.
- **Refusing to sign an agreement** that you will not file a claim against your employer or disclose information about your employer’s working conditions.
- **Providing your employer with updated personal information** such as a different social security number or other employment-related information due to a change in immigration status.
- **Using sick leave** to attend to a sick child, parent, spouse, or domestic partner.
- **Taking time off to address a domestic violence or sexual assault crime** for your own or your children’s health, safety, or welfare, or to attend court proceedings related to the abuse or assault.
- **Requesting a reasonable amount of time** and a private space to pump breast milk.

+ ADVERSE ACTION

An “adverse action” may include any significant change in your employment that discourages you from exercising your workplace rights such as filing a claim for labor violations.

ADVERSE ACTIONS MAY INCLUDE:

- Termination, suspension, transfer, or demotion.
- Changes in hours or pay.
- Discipline or threats.

+ CAUSAL CONNECTION

When the Labor Commissioner’s Retaliation Complaint Investigation Unit reviews your complaint, they need evidence showing that your employer took actions against you **because you engaged in a protected activity** and not for another reason. This is called “causal connection.”

CAUSAL CONNECTION MAY BE SHOWN BY:

- A disciplinary action that occurs a short period of time after you engage in a protected activity.
- Comments made by your employer stating that the disciplinary action was punishment for your protected activity.
- Your employer treating you differently from other workers who did not engage in protected activities.

IMMIGRANT WORKERS ARE PROTECTED FROM RETALIATION:

It is against the law for your employer or your employer’s attorney to report or threaten to report your immigration status because you have exercised your workplace rights. For example, the law prohibits employers and their attorneys from taking the following actions against workers who exercise their workplace rights:

- Request documents in addition to or different from those required under federal law to show work authorization or refuse to honor documents that appear to be genuine.
- Use the federal E-Verify system to check your employment status in a manner not required by federal law.
- File or threaten to file a false police report against you.
- Contact or threaten to contact immigration authorities about you or your family members.



LABOR COMMISSIONER'S OFFICE LOCATIONS

BAKERSFIELD

(661) 587-3060

EL CENTRO

(760) 353-0607

FRESNO

(559) 244-5340

LONG BEACH

(562) 590-5048

LOS ANGELES

(213) 620-6330

OAKLAND

(510) 622-3273

REDDING

(530) 225-2655

SACRAMENTO

(916) 263-1811

SALINAS

(831) 443-3041

SAN BERNARDINO

(909) 383-4334

SAN DIEGO

(619) 220-5451

SAN FRANCISCO

(415) 703-5300

SAN JOSE

(408) 277-1266

SANTA ANA

(714) 558-4910

SANTA BARBARA

(805) 568-1222

SANTA ROSA

(707) 576-2362

STOCKTON

(209) 948-7771

VAN NUYS

(818) 901-5315