

**Julie A. Su**

California Labor Commissioner
Division of Labor Standards Enforcement

**2015 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, which took effect in 1986 and was 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.¹ Through this Code section, the Labor Commissioner has jurisdiction to investigate and resolve disputes arising from nearly four dozen statutes and regulations.

The majority of the anti-retaliation statutes enforced by the Labor Commissioner are in the Labor Code; however, the Division also enforces statutes 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 its District Offices, the Division maintains a section of its website devoted to information available to both employers and employees on their rights and responsibilities pursuant to these various statutes and regulations at <http://www.dir.ca.gov/dlse/dlseDiscrimination.html>.

The Labor Commissioner's office, also known as the Division of Labor Standards Enforcement (DLSE), investigates complaints of retaliation and then issues a determination. If the Labor Commissioner determines that a violation has occurred, the statute authorizes the Labor Commissioner to direct the violator to cease and desist from committing the violation and to take such action as deemed necessary to remedy the harm from the violation, including, where appropriate, rehiring or reinstatement of the aggrieved employee, reimbursement of lost wages and interest thereon, payment of a civil penalty, and posting a notice acknowledging unlawful treatment. 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 promptly file an action in court to enforce the determination.

HIGHLIGHTS FROM THIS REPORTING PERIOD

Calendar year 2015 was the 30th year that retaliation investigations have been conducted by the Labor Commissioner's office. The year was remarkable for the breadth of enforcement (45

¹ Several Labor Code sections provide a longer statute of limitations, including sections 230 (c), (e), and (f), 230.1, and 230.2 provide a one-year filing period.

codes, up from 39 in 2014), the number of cases accepted (1,998), the number of violations alleged (3,959), and the number of cases closed (1,520).

In 2015, the Labor Commissioner accepted 124 more cases than in 2014. The cases accepted for investigation alleged 914 more violations than in calendar year 2014, resulting in a heavier workload for the Unit. At the same time, the Unit experienced significant staff transitions due to promotions, transfers, and retirements, losing a number of experienced investigators.

Exhibit C in the attachments to this report provides a summary of six-year statistics for the Unit and illustrates the significant growth in claims, workload, case closures, and positive outcomes for complainants.

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 1197.5; (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 in a timely way under Labor Code 98.7.

Exhibit A describes the number of violations alleged in 2015 under various Labor Code sections listed, including one section each from the Health and Safety Code and Unemployment Insurance Code.²

- Total number of complaints (violations alleged) received by the RCI Unit: **3,629**
- Total number of cases accepted for investigation as within DLSE jurisdiction: **1,998**
- Total number of allegations associated with cases accepted for investigation: **3,959**
- The 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 **1,696** complaints of this nature.
- The second-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 **1,649** possible violations of Labor Code section 98.6.

² Exhibit A reflects *only* the violations associated with the complaints filed *and* accepted for investigation in 2015. As mentioned in the previous note, 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.

- The Labor Commissioner closed **1,520** cases in 2015, the largest number of cases resolved in a calendar year. Closed cases include complaints dismissed after issuance of determinations, settlements, and cases withdrawn or abandoned by the complainants.

Exhibit B details the disposition of the various retaliation cases where a Determination was issued in 2015, based on the year the complaint was filed. The RCI Unit issued a total of **158** Determinations, of which **130**³ were dismissals and **28** were findings for employees.

Exhibit B also details the disposition of the cases where a Determination was issued and found to have merit. Of the 28 cause findings, 2 cases were resolved by employer compliance with the determination; 4 recommended cause findings remain on appeal with the Director's office; 3 were settled; in 1 case the complainant requested that the case be closed. Noncompliance with the disposition occurred in 18 cases: 17 cases are pending court filing; and 1 case is in the process of referral for enforcement. If the cases do not result in settlements, they are also filed in court.

In addition to the 2015 determinations discussed above, the Labor Commissioner filed 25 cases with determinations issued in prior years, settled 27 other cases, and obtained judgments in 22 other cases. The legal unit obtained more than \$340,000 in settlements and obtained judgments with a value exceeding \$950,000 in 2015.

- In 2015 the RCI Unit was able to reach **476** settlements in cases prior to the issuance of a determination; these settlements include cases filed in prior years.
- Of the cases for which determinations were issued in this reporting period, 18 were not filed in court due to resource limitations and the limited period for filing. The Labor Commissioner is required to file actions in court when the employer fails to comply.
- Three investigative hearings were held in 2015 for health and safety complaints. The Labor Court project using administrative law judges to conduct investigative hearings scheduled or held 12 such hearings; however, of these, three decisions have been issued, and the other cases resulted in settlement at the time of the scheduled hearing or before a decision was issued.

Despite the record number of cases closed in 2014 and 2015, the RCI Unit continues to receive several hundred more new claims than it closes in a given year. As a result, the Unit has a larger backlog and a higher case load per deputy. At the end of calendar year 2015, **1,024 cases** remained unassigned (51% of the 1,998 complaints accepted). This is primarily due to the continued growth in the number of complaints filed each year, the dramatic increase in the number of violations to be investigated, the number of experienced investigators leaving the Unit,⁴ the length of time required to post, recruit, hire, and train new staff, and the workload associated with the thorough investigation of a complaint.

³ Exhibit B shows 131 dismissals and 27 cases with findings for the 2015 reporting period. However, subsequently, one dismissal was overturned by the Director's office upon appeal, resulting in 28 cause findings and 130 dismissals.

⁴ Each departed deputy investigator carried a case load of between 75 to 110 cases, which had to be absorbed by the remaining staff. In response, the Unit and the Division hired quality new staff, who were trained as quickly as possible. The hiring and training continued in 2016.

The Retaliation Complaint Investigation Unit continues to strive to find new, innovative approaches to handle the increase in the number of cases, investigations, and alleged violations each year.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Julie A. Su". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Julie A. Su
Labor Commissioner

EXHIBIT A
Division of Labor Standards Enforcement
Calendar Year 2015 Retaliation Violations Alleged per LC 98.75 (a)

Labor Code Section	Description of Violations Alleged	Total Allegations
96(K)	For loss of wages as a result of engaging in lawful conduct during nonworking hours	13
98.6	For filing or threatening to file a claim with the Labor Commissioner	1,649
230(a)	For taking time off to serve on a jury or appear as a witness in court	8
230 (b)	For taking time off to appear as a witness in court	7
230(c)	For taking time off to seek medical help as a victim of domestic violence, sexual assault, or stalking	15
230(e)	Protection based on employee's status as a victim of domestic violence, sexual assault, and/or stalking	6
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	4
230.2(b)	Protects employees or family members of employees who are victims of a crime and allows these employees to take time off work to attend judicial proceedings	2
230.4	For employer with 50 or more employees, protects an employee who performs duty as a volunteer firefighter, reserve peace officer, or as emergency rescue personnel for taking time off to attend training	1
230.7	For taking time off to attend a child's school at request of child's teacher	3
230.8	For employers with 25 or more employees, protects employee for participating in school activities	3
232(a) & (b)	For discussing or disclosing wages or for refusing to agree not to disclose wages	17
232.5	Protects employee's right to discuss employer's working conditions	37
233	Protects employee's ability to use sick leave to attend to illness of a family member	12
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.	3
247	Prohibits paid sick leave retaliation	18

EXHIBIT A
Division of Labor Standards Enforcement
Calendar Year 2015 Retaliation Violations Alleged per LC 98.75 (a)

432.7	Prohibits employer from requiring employee or job applicant to disclose any arrest record that did not result in a conviction	3
1019	Protects employees engaging in activities protected by the Labor Code from unfair immigration-related practices	3
1024.6	Allows employees to update personal information without fear of retaliation	2
1025–1028	For employers with 25 or more employees, protects employee’s right to participate in alcohol or drug program	1
1030-1033	Protections for lactation accommodations	1
1101–1102	Protects employees who engage in the political activities of the employee’s choice	1
1102.5	Protects employee’s right to report violations or noncompliance with state or federal statute	1,696
1197.5	Protects employees from gender-based wage discrimination	6
1198.3	Protects employees from refusing to work hours in excess of those allowed in IWC Orders	1
2929(b)	Protects employees whose wages are garnished for payment of <u>one</u> judgment	2
2930	For employer’s failure to show employee a shopping investigator report before discipline or discharge	1
6310	Protects employees who complain about or initiate proceedings relating to workplace safety or health conditions	390
6311	Protects employees who refuse to perform work in an environment hazardous to the employee or co-workers	25
6399.7	Protects employees who complain or testify regarding noncompliance with Hazardous Substances Information Act	1
6403.5	Protects health care workers who refuse to lift, reposition, or transfer a patient because of concerns about patient or worker safety or because of the lack of trained personnel or equipment	1
Other Codes		
1569.881	Health and Safety Code, regarding licensing of childcare facilities.	10
1237	Unemployment Insurance Code, regarding employee’s right to seek information on unemployment insurance.	12
	Total Cases Accepted for Investigation	1,998
	Total Violations Alleged for Total Cases Accepted for Investigation	3,959

EXHIBIT B

Calendar Year 2015 Disposition of Retaliation Case per Labor Code 98.75 (b)

Disposition	Total	2010	2011	2012	2013	2014	2015
Determinations issued	158						
Cases dismissed	131	1	16	25	35	43	11
Cases with merit ¹	27	1	2	5	5	12	2
Investigative hearings held	15	0	1	1	7	3	3

Results of cases with merit	28
Awaiting determination on appeal	4
Compliance ²	2
Settlement prior to referral for enforcement	3
Closure requested by complainant	1
Noncompliance	18
Noncompliance	18
Awaiting referral for enforcement	1
Referred for enforcement (awaiting court filing)	17
Legal Activity	
Court Filings	25
Settlements	30
Judgments	22
Cases Closed in 2015	1520

¹ A case with merit is one that has cause findings.

² The data for compliance and noncompliance both refer to results for cases with a determination issued in calendar year 2016.

EXHIBIT C
Division of Labor Standards Enforcement – RCI Unit
Six Year Statistics

RCI Unit Statistics	2010	2011	2012	2013	2014	2015
Retaliation Statues Enforced	31	31	33	33	39	45
New Claims Submitted	2678	2742	2945	3514	3853	3629
Total Cases Accepted	996	1266	1440	1605	1874	1998
Total Violations Alleged	1254	1624	1794	1899	3047	3928
Cases Closed	1175	1018	1206	1270	1504	1520
Unassigned Cases	N/A	454	414	408	471	1024
Positive Outcomes for Complainants (Cause findings + Settlements)	224	205	296	404	447	504