

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

Headquarters Office

P. O. Box 420603

San Francisco, CA 94142

(415) 703-4810

(415) 703-4807 *fax*



2008 RETALIATION COMPLAINT REPORT (LABOR CODE §98.75)

Labor Code section 98.7, which became effective January 1986, establishes the authority of the Labor Commissioner to investigate, process, and resolve employee complaints of retaliation arising under various sections of the Labor Code. The procedures established pursuant to Labor Code section 98.7 entail an investigation and/or the convening of an investigative hearing after the filing of a complaint alleging retaliation in employment by an employee or applicant. In the event 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 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 retaliation in the workplace. Currently, the Division is charged with enforcing thirty-one 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.

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

In calendar year 2008, DLSE received 2,641 retaliation complaints. Of those, 1,122 were accepted for investigation as appearing to be within DLSE jurisdiction. Complaints filed alleging retaliation may contain one or more alleged violations, and for the purpose of reflecting all of the violations associated with the complaints filed, they are listed as a single issue as reflected in Exhibit A. At the end of calendar year 2006, there was a backlog of 1,018 complaints which had been accepted and were waiting to be assigned to an investigator. By the end of calendar year 2007, the backlog was reduced to 380 complaints. At the end of calendar year 2008, with continuous staff training and review of DLSE processes, the backlog was completely eliminated.

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Exhibit A shows the number of complaints filed or opened under various Labor Code sections listed, and one section from the Health and Safety and Unemployment Insurance Codes in 2008. Approximately 64% 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. The second largest group of complaints filed arose from alleged retaliation for reporting violations or non-compliance with state or federal law (Labor Code section 1102.5). These 226 complaints comprised 20% of total complaints filed.

Exhibit B shows the disposition of the various retaliation cases where a Determination was issued in 2008. Of the 224 Determinations issued, 24 were in favor of the complainant (employee), and 200 were dismissed. Of the 24 Determinations in favor of the complainant, 2 of the employers complied with the Determinations. As of the end of calendar year 2008, the status of the remaining 22 Determinations in favor of employees were as follows: 12 were appealed to the Director of the Department of Industrial Relations; 7 were referred to the DLSE Legal Section to enforce the Labor Commissioner's finding of retaliation; and 3 are pending referral to the DLSE Legal Section.

Respectfully Submitted,

Angela Bradstreet
State Labor Commissioner

Attachments