2009 RETALIATION COMPLAINT REPORT
(LABOR CODE §98.75)

Background

Labor Code section 98.7, effective in 1986 and amended in 1999, 2001, and 2002, provides that any person who believes that 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 of Labor Standards Enforcement (DLSE or Division) within six months after the occurrence of the violation. Through this Labor Code section the Labor Commissioner has jurisdiction to resolve disputes arising from 31 statutes and regulations. A non-exhaustive list of the provisions of Labor Code section 98.7 includes:

- extension of the filing period for good cause;
- investigative procedures;
- providing a summary of the procedures to each complainant and respondent;
- requirements that the Labor Commissioner inform the complainant of his/her right to file a separate, concurrent complaint with the U.S. Department of Labor for retaliation for filing a complaint regarding alleged safety violations pursuant to Labor Code sections 6310 or 6311; and
- process for resolution of complaint through determination by the Labor Commissioner after investigation and/or through court process.

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.

As noted above, DLSE is charged with enforcing 31 statutes and regulations prohibiting retaliation in the workplace. While the majority of these statutes are contained in the Labor Code, DLSE also enforces statutes contained in the Health and Safety Code, the Unemployment Insurance Code, and the Orders of the Industrial Welfare Commission. In addition to dissemination of information to the public through the District Offices, DLSE maintains a section of its website (http://www.dir.ca.gov/dlse/dlseRetailiation.html) devoted to information available to both employers and employees on their rights and responsibilities pursuant to these various statutes and regulations. This section contains:

- Instructions on how and where to file a complaint;
- The *Summary of Procedures* required by Labor Code section 98.7, provided in English, Spanish, Chinese, and Korean;
- An information sheet, available in English, Spanish, and Korean, titled *Assurances of Participation Without Retaliation* providing information specific to the right of an employee to speak to a representative of DLSE without fear of retaliation (Labor Code section 1102.5); and
- An information sheet, available in English and Spanish, titled *Filing a Retaliation/Discrimination Complaint* providing information on timelines within which to file a complaint and a listing with explanation of all Code sections under the jurisdiction of the Labor Commissioner

Labor Code section 98.75 requires the Labor Commissioner to annually report on the complaints filed with the Labor Commissioner in the previous calendar year pursuant to Labor Code sections 98.7 and 1197.5. [1]. The following data is submitted in accordance with Labor Code section 98.75 for 2009:

In calendar year 2009, DLSE received 2,742 retaliation complaints. Of those, 1,091 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.

Exhibit A shows the number of complaints filed or opened under various Labor Code sections listed, and one section from both the Health and Safety and Unemployment Insurance Codes in 2009. 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 complaints comprised 28% of total complaints filed.

Exhibit B shows the disposition of the various retaliation cases where a Determination was issued in 2009. Of the 317 Determinations issued, 32 were in favor of the complainant (employee), and 285 were dismissed. Of the 32 Determinations in favor of the complainant, none of the employers had yet complied with the Determination. Determinations in favor of employees were as follows: 19 were appealed to the Director of the Department of Industrial Relations; 2 were referred to the DLSE Legal Section to enforce the Labor Commissioner's finding; 2 were settled; 2 were abandoned by the employee; and 1 was closed by DLSE because the employer was no longer in business and could not be located.

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[1] Labor Code section 1197.5 provides that no employer shall pay any individual in the employer's employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of work production, or a differential based on any bona fide factor other than sex.

Respectfully Submitted,

Angela Bradstreet
State Labor Commissioner

Attachments