

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

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2007 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. 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 Wage Orders of the Industrial Welfare Commission.

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

In calendar year 2007 the Division received 2,535 retaliation complaints. Of those, 1,184 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 have been accepted and are waiting to be assigned to an investigator. Currently there is a backlog of 380 complaints which represents a reduction of 61.5% in backlogged cases. This backlog is due to staffing shortages during previous years. In calendar year 2005, 12 Retaliation Complaint Investigation Unit (RCI) investigators were assigned to this Unit. An additional 3 investigators were assigned to the RCI Unit in 2006 and 1 in 2007. The RCI Unit currently has 3 vacant positions.

Exhibit A shows the number of complaints filed or opened under the various Labor Code Sections listed, and one section from the Health and Safety and Unemployment Insurance Codes in 2007. Approximately 62% 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

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group of complaints of retaliation filed arose from alleged retaliation for reporting health and safety issues in the workplace. These complaints, numbering 236, comprised 20% of the total complaints filed.

Exhibit B shows the disposition of the various retaliation cases where a Determination was issued in 2007. Of the 129 Determinations issued, 16 of them were in favor of the complainant (employee), and 113 were dismissed. Of the 16 Determinations in favor of the complainant, none of the employers complied with the Determination. As of the end of calendar year 2007, the status of these 16 determinations for employees were as follows: 9 were appealed to the Director of the Department of Industrial Relations and awaiting a final decision; 4 were pending the expiration of the appeal period; 2 were referred to the DLSE Legal Section to enforce the Labor Commissioner's finding of retaliation; and, 1 was abandoned by the employee. Settlements are pending in the two Determinations referred to the DLSE Legal Section.

Beginning in 1993 the Division implemented a statewide-centralized Retaliation Complaint Investigation (RCI) Unit with five Deputy Labor Commissioners (Deputies) assigned full-time to investigate all retaliation complaints referred to the Division. The Deputies in the RCI Unit, currently sixteen full-time investigators, receive ongoing training in investigative techniques and report writing, in an effort to ensure they all have a thorough knowledge of the retaliation statutes. The Division will continue to review its procedures to ensure the continuing success of the program.

Respectfully Submitted,

Angela Bradstreet
State Labor Commissioner

Attachments