

# ***RETALIATION and DISCRIMINATION COMPLAINTS***

## ***A Summary of Procedures***

### ***Labor Commissioner's Office***

*Division of Labor Standards Enforcement*



Employees, former employees, and applicants for employment who suffer retaliation or discrimination by their employer because they engage in an activity protected by any law under the jurisdiction of the Labor Commissioner may file a complaint with the Labor Commissioner's Office, also known as the Division of Labor Standards Enforcement or DLSE. This summary describes the procedures followed by the Labor Commissioner under [Labor Code section 98.7](#) for investigating these retaliation complaints.

### **Filing the Complaint**

An employee, former employee, or job applicant alleging retaliation in violation of any law under the jurisdiction of the Labor Commissioner must file a complaint with the Labor Commissioner's office within six months of the adverse action in most cases. Retaliation occurs when an employee engages in an action protected by law, yet suffers an adverse employment action because of this protected activity. Adverse actions may include unlawful discharge, demotion, suspension, reduction in pay or hours, refusal to hire or promote, etc., including immigration related threats.

There are a few exceptions to the 6-month deadline: a complaint alleging retaliation against victims of domestic violence, stalking or sexual assault ([Labor Code section 230\(c\), 230\(e\) or 230\(f\)](#) or [230.1](#)) must be filed within one year of the alleged violation; a complaint about being paid less than an employee of the opposite sex or another race or ethnicity for substantially similar work ([Labor Code section 1197.5](#)) must be filed within two years (or three years if willful) of the alleged violation; and a complaint alleging retaliation for complaining about a violation of licensing or other laws relating to child day care facilities ([Health and Safety Code Section 1596.881](#)) must be filed no later than 90 days after the adverse action. Additionally, [Labor Code section 1311.5](#) extends the time limit for filing such that the time limit does not begin to run until the individual turns 18 years of age. [Labor Code section 1311.5](#) applies to a complaint asserting retaliation for filing a claim or civil action alleging a Labor Code violation that arose while the individual was a minor.

The form used to file a retaliation complaint (RCI 1 Retaliation Complaint) can be obtained by calling or visiting any Labor Commissioner's office or by downloading the four-page form from the website at <http://www.dir.ca.gov/dlse/DLSEFormRCI-1.pdf>.

The Form RCI 1 can be filed in person at any local Labor Commissioner's office or by mailing it to the following locations:

Labor Commissioner  
Retaliation Complaint Investigation Unit  
2031 Howe Ave. Suite 100  
Sacramento, CA 95825

Labor Commissioner  
Retaliation Complaint Investigation Unit  
320 W. Fourth Street, Suite 450  
Los Angeles, CA 90013

Be sure to enter all information that is requested on the form using the space provided. Also, be sure to date and sign the completed form. Copies of any supporting documents may be submitted as attachments, but not instead of a completed complaint form. Do not send originals, as they may be lost.

After the complaint is filed, the complaint will be reviewed to confirm that the Labor Commissioner has jurisdiction over the specific complaint. If it is found that the complaint comes under the jurisdiction of the Labor Commissioner, it will be accepted for investigation.

Any employee, former employee, or job applicant who alleges retaliation for having complained about a workplace health or safety issue has the right to file a concurrent complaint with federal OSHA within 30 days of the occurrence of the adverse action.

## **The Investigation**

After filing the complaint, the employee, former employee, or job applicant will be contacted by a retaliation complaint investigator who will conduct an investigation. The investigator will interview the worker, the employer and relevant witnesses who possess relevant, pertinent information regarding the alleged violation. The investigator may request that the parties meet to explore the possibility of settlement. The cooperation of both parties is essential to ensure all available facts are uncovered in the investigation. The investigator has the authority to issue subpoenas to obtain evidence related to the case.

Information obtained during the investigation becomes public, regardless of designations, except that the identity of witnesses shall remain confidential, unless necessary for the investigation.

Once the investigation is complete, if no settlement is reached, the investigator will prepare a written summary of relevant facts that will be forwarded to the Labor Commissioner or her designee.

### **The Determination**

The Labor Commissioner will review the summary of relevant facts and issue a Determination. If the Labor Commissioner finds the employer violated the law by retaliating against the employee, or job applicant, the employer will be given 30 days to comply with the Determination to remedy the retaliation. If the employer fails to comply, an attorney for the Labor Commissioner will file a court action to enforce the Determination.

### **The Hearing**

In a limited number of cases, the Labor Commissioner may order a hearing to establish the relevant facts before issuing a determination. The hearing is an informal, investigative proceeding. A hearing officer will conduct the hearing, either side may bring an attorney, union representative or other person of their choice to represent them at the hearing. Hearings are required for complaints alleging violations of [Health and Safety Code section 1596.881](#), a part of the California Child Day Care Act. On rare occasions, the Labor Commissioner may decide that a hearing is necessary in retaliation or discrimination cases alleging violation of statutes other than [Health and Safety Code section 1596.881](#).

The Labor Commissioner, employer, employee, and job applicant can each subpoena witnesses and documents for the hearing. The parties should contact the hearing officer who will issue all subpoenas reasonably necessary. The hearing officer may refuse to issue unnecessary subpoenas. Any party who insists on subpoenaing witnesses or documents the hearing officer believes are unnecessary should contact the hearing officer's supervisor. When the Labor Commissioner issues a subpoena requested by a party, that party is required to pay witness fees. If such fees are not paid, the witness does not have to appear.

After the hearing, the hearing officer will file the findings of facts and conclusions with the Labor Commissioner. The Labor Commissioner will then issue a Determination on the complaint.

## **Results of Investigation**

[Labor Code section 98.7](#) was amended in 2017 and as a result, the majority of retaliation cases no longer have appeal rights. In these cases, if the Determination concludes there is insufficient evidence of retaliation, the complainant may file a civil complaint against the employer to pursue the matter further.

In cases where the Labor Commissioner has determined that sufficient evidence exists to support a finding of retaliation, the Labor Commissioner may order a variety of remedies including reinstatement, payment of lost wages, interest on the lost wages, removal of related negative reports in the employee personal file, and the posting of a notice acknowledging the retaliation. In addition, [Labor Code sections 98.6](#) and [1019.1](#) provide for a penalty amount of up to \$10,000 payable to the complainant. [Section 98.6](#) applies if the evidence establishes retaliatory conduct by the employer. Other penalties may be assessed for violations of the [Healthy Workplaces, Healthy Families Act of 2014](#), and [Labor Code sections 1311.5](#) and [2814](#). For Respondents who are corporations and limited liability companies, additional penalties under [Labor Code section 1102.5](#) provide for assessment of up to \$10,000.

The Respondent will have thirty (30) days to comply with the Determination, or attempt to settle the case, prior to the Labor Commissioner's office attorneys filing a civil complaint to collect the assessed damages.

## **Appeal Rights**

Complaints alleging violation of [Labor Code section 6310](#) or [6311](#), related to workplace health and safety, include appeal rights for the worker who filed the complaint, in the event the Labor Commissioner dismisses the complaint for lack of sufficient evidence. This appeal right is required by the federal Occupational Safety and Health Act. The State of California Labor Commissioner's Office is required to provide the same or similar process for violations of [Labor Code section 6310](#) and [6311](#). In the appeal, the complainant shall define the grounds upon which the appealing party considers the Determination to be unjust or unlawful and identify every issue to be considered by the Director. The Director will provide all other parties with a copy of the appeal, allowing an opportunity to respond.

The complainant, or individual who filed the complaint, will have 15 days from the date of the receipt of the Determination to file a complaint with the Director of the Department of Industrial Relations.

Christine Baker, Director  
c/o Office of the Director –  
Legal Unit, RCI Appeals  
1515 Clay Street, Suite 701  
Oakland, CA 94612

There is no appeal right under this provision for the employer. In the event the Labor Commissioner finds that the employer violated the law, the Respondent has 30 days to comply with the order as is discussed above.

In addition to the appeal right discussed above, any party to a complaint alleging retaliation for complaining about a workplace safety and health issue has the right to file a Complaint Against State Program Administration (CASPA) with federal OSHA if they are not satisfied with the procedures followed in the Labor Commissioner's investigation.

### **Contact the Labor Commissioner's Office**

If you have any questions regarding investigation procedures, please contact the nearest Labor Commissioner office. Office locations can be found at <http://www.dir.ca.gov/dlse/DistrictOffices.htm>. Alternatively, you may speak with a Labor Commissioner's Office representative by calling (714) 558-4910 or (916) 263-1811.

November 2017