

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Labor Standards Enforcement**

NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

**Subject Matter of Regulations:
Assessment of Civil Penalties for Violations of Retaliation Laws Within the Jurisdiction of
the Labor Commissioner**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 13900 - 13904**

NOTICE IS HEREBY GIVEN that the Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department of Industrial Relations, pursuant to the authority vested in her by Labor Code section 98.8 and in accordance with Government Code section 11346.8(c), proposes to modify the text of the following proposed regulations within proposed Subchapter 16 of existing Chapter 6, of Division 1, of Title 8, California Code of Regulations relating to the Assessment of Civil Penalties for Violations of Retaliation Laws Within the Jurisdiction of the Labor Commissioner:

Section 13900	Scope of Regulations
Section 13901	Definitions
Section 13902	Penalty assessments
Section 13903	Burden of proof
Section 13904	Joint and several liability

The Labor Commissioner is proposing these regulatory text modifications after consideration of issues identified by the Office of Administrative Law during its review which were determined to require further modifications that were adopted by the Labor Commissioner. The Labor Commissioner wishes to update these regulations and welcomes comments from the public regarding these proposed changes.

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION
OF WRITTEN COMMENTS REGARDING MODIFICATIONS TO TEXT**

Members of the public are invited to present written comments regarding the proposed modifications identified below. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

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Written comments should be addressed to:

Jennifer Stevens, Legislative Analyst and Regulations Coordinator
Department of Industrial Relations
Division of Labor Standards Enforcement, Legal Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations **no later than midnight on Friday, June 24, 2022**. Written comments may also be sent electronically (via email) using the following email address: DLSERegulations@dir.ca.gov

Written comments may be submitted via facsimile transmission, addressed to the above-named contact person at (916) 263-2920. Due to the inherent risks of non-delivery by facsimile transmission, the Division suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

Comments sent to other email addresses or facsimile numbers will not be accepted. Comments sent by email or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for inspection at the Department of Industrial Relations, Division of Labor Standards Enforcement, 2031 Howe Avenue, Suite 100, Sacramento, California 95825, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Please contact the Division's regulations coordinator, Ms. Jennifer Stevens, at (916) 263-3400 to arrange to inspect the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for this 15-Day Comment Period - Identifying Modified Text:

Language that was proposed in the first notice of modifications to regulatory text appears in normal text. Language added in this proposed modification are indicated by bold italic underlined text to identify additions (e.g. **added language**) and bold double strikeout to identify deletions (e.g., ~~deleted language~~).

SUMMARY OF PROPOSED TEXT CHANGES

Section 13900:

- The word "through" is replaced with "by" in the second sentence to more accurately state the enforcement authority that enforces the retaliation laws providing for recovery of the penalties that are the subject of the regulations. The change is necessary to more clearly

and directly state the unit within the Labor Commissioner's Office responsible for enforcement.

- Labor Code sections 95 and 1019.1 are added to the list of statutes regarding "Authority" for the section. The additions of these sections are necessary to capture the broad authority of the Labor Commissioner regarding enforcement of the various statutes to which the regulations apply.

Section 13901:

- The definition of "respondent" is modified to specify that the applicable definition of a respondent, whether an employer or individual person, is derived from the statute authorizing the penalty in question. The modification is necessary since different statutes create the potential for different liability, requiring that the definition be specific to the statute in question. Further, the definition of "respondent" is clarified to include an employer or individual person against whom a penalty could be assessed; this more accurately encompasses a party engaging in the administrative investigative process but who has not yet been assessed a penalty.
- Labor Code sections 95 and 1019.1 are added to the list of statutes specifying "Authority" for the section. The additions of these sections are necessary to capture the broad authority of the Labor Commissioner regarding enforcement of the various statutes to which the regulations apply.

Section 13902:

- Subsection (a): The word "retaliation has been struck to more accurately capture the range of violations that are subject to the regulations. For example, section 98.6, the main anti-retaliation provision in the Labor Code prohibits a person from discharging or "in any manner discriminat[ing], retaliate[ing], or tak[ing] any adverse action" against an applicant or employee. The change is necessary to accurately acknowledge the various violations for engaging in prohibited conduct that is not limited to retaliation strictly, but rather, will be based on the appropriate statute upon which the subject penalty is based.
- Subsection (b): Subsection (b) has been modified to focus on the nature and seriousness of the violation in order to determine whether a reduction in penalty is appropriate. Whether a reduced penalty is appropriate shall be an argument raised by the respondent, and consideration of the nature and seriousness of a violation shall be based on the evidence submitted during the course of the investigation. As a result, subsection (b)(2) was struck in its entirety and subsection (b)(1) was revised to be subsection (b). This change to subsection (b) was necessitated in an effort to provide a streamlined investigative process that prioritizes the most important factors in considering the reduction of a penalty, and simplifies the considerations for penalty reduction when the agency is investigating a violation.
- Subsection (c): New subsection (c) was added to clarify that during an appeal of a citation issued under Labor Code section 98.74, a respondent may argue for the reduction of a penalty; however, in doing so, it may not introduce new evidence that was not submitted to the Labor Commissioner during her investigation. This approach bolsters respondent cooperation and engagement during an investigation, while preventing against surprise and disruption at a citation appeal hearing. The change is necessary to accommodate and

confirm the procedural posture in administrative citation appeals that differs from court actions where a court may determine the facts on its own, i.e., make its own fact determinations independently. Under this subsection which only applies to administrative citation appeal proceedings, the determination for a reduced penalty is to be determined based upon facts obtained during the investigation which, if raised by an appellant, is reviewed at an administrative appeal hearing for sufficiency of the evidence obtained by the investigative unit.

- Labor Code sections 95 and 1019.1 are added to the list of statutes specifying “Authority” for the section. The additions of these sections are necessary to capture the broad authority of the Labor Commissioner regarding enforcement of the various statutes to which the regulations apply.

Section 13903:

- This section was deleted as unnecessary; revised section 13902 provides that reduction of penalty amounts shall be based on evidence obtained during the investigation.

Section 13904:

- Prior section 13904 has now been renumbered as section 13903.
- For clarity, “under these statutes” was struck from the proposed regulatory text. The presence of the language is unnecessary since the scope of the regulations described in Section 13900 sufficiently describe the penalty statutes to which these regulations apply.
- Labor Code sections 95 and 1019.1 are added to the list of statutes specifying “Authority” for the section. The additions of these sections are necessary to capture the broad authority of the Labor Commissioner regarding enforcement of the various statutes to which the regulations apply.

CONTACT PERSON FOR INQUIRIES REGARDING PROPOSED CHANGES

Inquiries regarding the proposed modifications may be directed to:

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