

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT
ADDING SUBCHAPTER 16: ASSESSMENT OF CIVIL PENALTIES FOR VIOLATIONS
OF RETALIATION LAWS WITHIN THE JURISDICTION OF THE LABOR
COMMISSIONER

~~Add new Subchapter 16 and sections 13900 through 13904 inclusive, as follows:~~

Language that was proposed in the first notice of modifications to regulatory text appears in normal text.

Language added in this proposed modification is in ***bold italics underlined***; language deleted in this second proposed modification is in ~~**bold double strikethrough**~~.

Section 13900. Scope of regulations.

These regulations shall apply to the penalty provisions contained in the retaliation laws within the jurisdiction of the Labor Commissioner's Office which authorize penalties not exceeding ten thousand dollars (\$10,000) per violation, per employee affected. These laws are enforced ~~through~~ ***by*** the Division of Labor Standards Enforcement's Retaliation Investigations Unit, pursuant to procedures set forth in Labor Code sections 98.7 and 98.74.

Note: Authority: Sections 95, 98.8, 1019.1, Labor Code. Reference: Sections 98.6, 98.7, 98.74, 1019.1, 1102.5, and 2814, Labor Code.

Section 13901. Definitions.

As used in this subchapter, "respondent" shall mean ~~an~~ ***the*** employer or individual ***person*** against whom a penalty has been assessed ***or could be assessed, under the applicable statute authorizing the penalty.***

Note: Authority: Sections 95, 98.8, 1019.1, Labor Code. Reference: Sections 98.6, 98.7, 98.74, 1019.1, 1102.5, and 2814, Labor Code.

Section 13902. Penalty assessment.

(a) Each ~~retaliation~~ violation will generally be subject to the maximum statutory penalty of ten thousand dollars (\$10,000) per employee affected.

(b) ***If during an investigation, a respondent argues that the appropriate penalty is ~~to~~ determining whether a penalty*** below the statutory maximum of ten thousand dollars (\$10,000) ~~is appropriate~~, the Labor Commissioner ~~in an administrative proceeding or the court in a~~

~~civil action, may shall consider and give appropriate weight to the following factors in addition to any other factors the Labor Commissioner or a court deems relevant:~~

~~(1) The the nature and seriousness of the violation based on the evidence obtained during the course of the investigation. Consideration of the nature and seriousness of the violation will include, but is not limited to, the type of violation, the economic or mental harm suffered, and the chilling effect on the exercise of employment rights in the workplace, and shall be considered to the extent evidence obtained during the investigation concerned any of these or other relevant factors.~~

~~(2) The employer's commitment to future compliance, as demonstrated by the employer's actions subsequent to the violation that relate to the subject of the violation and mitigate the impact of the violation on the affected employee(s) or similarly situated employees. Such employer actions may include, but not be limited to, the following:~~

- ~~i. An unconditional offer to reinstate the affected employee to the same position within 18 months of a termination or demotion;~~
- ~~ii. Restoring lost scheduled hours or pay to the affected employee(s);~~
- ~~iii. Removing related disciplinary or other personnel records; or~~
- ~~iv. Instituting an improved disciplinary or other policy (e.g., sick leave) applicable to the affected employee(s) or similarly situated employees.~~

~~(c) In an appeal proceeding under Labor Code section 98.74, review of an assessed penalty shall be based on the evidence obtained during the investigation.~~

Note: Authority: Sections 95, 98.8, 1019.1, Labor Code. Reference: Sections 98.6, 98.7, 98.74, 1019.1, 1102.5, and 2814, Labor Code.

~~Section 13903. Burden of proof.~~

~~Where the respondent seeks to reduce the penalty, the burden shall be on the respondent to submit evidence supporting assessment of a penalty amount below the maximum per violation, per employee.~~

~~Note: Authority: Sections 95, 98.8, 1019.1, Labor Code. Reference: Sections 98.6, 98.7, 98.74, 1019.1, 1102.5, and 2814, Labor Code.~~

~~Section 13904. 13903. Joint and several liability.~~

If more than one respondent is found liable for a penalty ~~under these statutes~~, each respondent shall be jointly and severally liable.

Note: Authority: Sections 95, 98.8, 1019.1, Labor Code. Reference: Sections 98.6, 98.7, 98.74, 1019.1, 1102.5, and 2814, Labor Code.