

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:

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 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 98.8, 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 employer or individual against whom a penalty has been assessed.

Note: Authority: Sections 98.8, 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) In 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 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 nature and seriousness of the violation.
- (2) ~~The size of the employer. Size may be determined by the number of employees employed around the time of the violation.~~

~~(3)~~ The employer's commitment to future compliance, as demonstrated by ~~actions such as the employer's unconditional offer to reinstate the affected employee within 18 months of the termination or revision of employment policies to comply with applicable laws. 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.

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

Section 13904. 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 98.8, Labor Code. Reference: Sections 98.6, 98.7, 98.74, 1019.1, 1102.5, and 2814, Labor Code.