

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

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2006 RETALIATION COMPLAINT REPORT (LABOR CODE §98.75)

Labor Code §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 §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 Orders of the Industrial Welfare Commission.

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

In calendar year 2005 the Division received 1,969 retaliation complaints. Of those, 959 complaints were accepted for investigation. In calendar year 2006 the Division received 2,248 retaliation complaints. Of those, 1,049 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. Currently there is a backlog of 1,018 complaints, which have been accepted and are waiting to be assigned to an investigator. This backlog is due to a staffing shortage during the previous years. In calendar year 2005, 12 RCI investigators were assigned to this Unit. An additional three (3) investigators were assigned to the RCI Unit in 2006.

Exhibit A shows the number of complaints filed or opened under the various Labor Code Sections in 2006. Approximately 60% of all cases opened during the year were complaints filed pursuant to Labor Code §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 group of complaints of retaliation filed arose from alleged retaliation for reporting health and safety issues in the workplace. These complaints numbering 216, involved employees who

claimed retaliation due to reporting safety and health violations on the job, which comprised 21% of the total complaints filed.

Exhibit B shows the disposition of the various retaliation cases that were closed in 2006. Of the 889 cases closed in 2006, 21 of them were Decisions in favor of the complainant, 101 resulted in voluntary settlements to the satisfaction of both parties, 151 were dismissed, 205 were withdrawn by the complainants before a determination was reached, 40 were dismissed for lack of jurisdiction, 13 were duplicate filings, and 358 cases were abandoned by the complainant.

In 2006, 12 referrals were made to the DLSE Legal Section to enforce the Labor Commissioner's finding of retaliation. Of the 12 referrals, 9 civil complaints were filed, and 3 cases have settlements pending.

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 fifteen 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,

Date: May 31, 2007

Robert A. Jones
Acting State Labor Commissioner

Attachments (2)