

DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner's Office
2031 Howe Avenue, Suite 100
Sacramento, CA 95825
Phone: 916-263-2991
Email: Retaliation@dir.ca.gov

**FILING A RETALIATION COMPLAINT****Who may file?**

Any employee or applicant for employment who believes he or she was discharged or denied employment or otherwise retaliated against in violation of any law under the jurisdiction of the Labor Commissioner may file a complaint with the Labor Commissioner by completing and mailing the complaint form (RCI-1) to the address below. Pay special attention to page 2 of the complaint; this page will be shared with your employer. It is important that you provide a summary of your complaint rather than a detailed document.

What is the time limit for filing?

A complaint alleging retaliation in violation of laws under the jurisdiction of the Labor Commissioner must be filed within **six (6) months** after the occurrence of the alleged retaliatory action, except for complaints filed under Labor Code sections 230(c), (e) and (f), 230.1, 230.2(b), 230.5, 1311.5, and Health and Safety Code section 1596.881 (see below). For a claim of disparate pay based on sex, race, or ethnicity under Labor Code section 1197.5, there is a two (2) or three (3) year statute of limitations; however, a retaliation claim based on this statute must be filed within six (6) months since it will be investigated as a violation of Labor Code section 98.6.

Where do I file?

For work performed in Monterey, Fresno, Kings, Tulare, Inyo counties and other counties that lie further north, mail the completed (signed and dated) complaint form to:

Labor Commissioner's Office
Retaliation Complaint Investigation Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825

For work performed in Kern, San Luis Obispo, Santa Barbara, Ventura, San Bernardino counties and other counties that lie further south, mail the completed (signed and dated) complaint form to:

Labor Commissioner's Office
Retaliation Complaint Investigation Unit
320 W. Fourth Street, Room 450
Los Angeles, CA 90013

Laws enforced by the Labor Commissioner that specifically prohibit retaliation against employees and job applicants are listed on the following pages.

- (1) **Labor Code section 96(k)**
Protects an employee from loss of wages as a result of a failure to hire, demotion, suspension, or discharge from employment because the employee engaged in lawful conduct asserting “recognized constitutional rights” occurring during nonworking hours away from the employer’s premises.
- (2) **Labor Code section 98.6**
Protects an employee filing or threatening to file a claim or complaint with the Labor Commissioner, instituting or causing to be instituted any proceeding relating to rights under the jurisdiction of the Labor Commissioner, or testifying in any such proceeding, complaining orally or in writing about unpaid wages, or for exercising (on behalf of oneself or other employees) any of the rights provided under the Labor Code or Orders of the Industrial Welfare Commission, including, but not limited to, the right to demand payment of wages due, the right to express opinions about, support or oppose an alternative workweek election, or the exercise of any other right protected by the Labor Code. In addition to other remedies that might be available, a civil penalty of up to \$10,000 may be awarded to an employee for each violation of Labor Code section 98.6. Also, protects an employee who is a family member of a person who has or is perceived to have engaged in any protected conduct.
- (3) **Labor Code section 230(a)**
Prohibits an employer from discharging or in any manner retaliating against an employee for taking time off to serve on a jury provided the employee gives reasonable notice that he or she is required to serve.
- (4) **Labor Code section 230(b)**
Protects an employee who is a victim of a crime, who takes time off to appear in court to comply with a subpoena or other court order as a witness to a judicial proceeding.
- (5) **Labor Code section 230(c)**
Prohibits an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, and/or stalking for taking time off from work to obtain or attempt to obtain relief to help ensure his or her health, safety, or welfare, or that of his or her child or children. (The complaint must be filed within one year from the date of occurrence of the violation.)
- (6) **Labor Code section 230(e)**
An employer shall not discharge or in any manner discriminate or retaliate against an employee because of the employee’s status as a victim of domestic violence, sexual assault, and/or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge of the status. (The complaint must be filed within one year from the date of occurrence of the violation.)
- (7) **Labor Code section 230(f)**
An employer of any size shall provide reasonable accommodations for a victim of domestic violence, sexual assault, and/or stalking who requests an accommodation for the safety of the victim while at work. (The complaint must be filed within one year from the date of occurrence of the violation.)
- (8) **Labor Code section 230.1**
Protects an employee who is a victim of domestic violence, sexual assault, and/or stalking and works for an employer with 25 or more employees who takes time off to seek medical attention, to obtain services from a domestic violence program or psychological counseling,

or to participate in safety planning. (The complaint must be filed within one year from the date of occurrence of the violation.)

(9) Labor Code section 230.2(b)

Requires an employer to allow an employee who is a victim of a crime, an immediate family member of a victim, a registered domestic partner of a victim, or the child of a registered domestic partner of a victim to take time off from work to attend judicial proceedings related to that crime. (The complaint must be filed within one year from the date of occurrence of the violation.)

(10) Labor Code section 230.3

Protects an employee who takes time off to perform emergency duty as a volunteer firefighter, a reserve peace officer, or an officer, employee, or member of a disaster medical response entity sponsored or requested by the State. An employee who is a health care provider must notify his or her employer at the time the employee becomes designated as emergency response personnel and when the employee is notified that he or she will be deployed as a member of a disaster medical response team.

(11) Labor Code section 230.4

Protects an employee who is a volunteer firefighter, a reserve peace officer, or emergency rescue personnel, and works for an employer employing 50 or more employees, from being discriminated or retaliated against because he or she has taken time off to engage in fire or law enforcement training. The employee is permitted to take up to an aggregate of 14 days per calendar year for such training.

(12) Labor Code section 230.5

Protects an employee who is a victim of an offense listed under Labor Code section 230.5 for taking time off from work, to appear in court to be heard at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue. A victim is any person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term “victim” also includes the person’s spouse, parent, child, sibling, or guardian. (The complaint must be filed within one year from the date of occurrence of the violation.)

(13) Labor Code section 230.7 and Education Code section 48900.1

Protects an employee who is the parent or guardian of a pupil for taking time off from work to appear in the pupil’s school at the request of the pupil’s teacher, if the employee, prior to taking the time off, gives reasonable notice to the employer that he or she is requested to appear at the school.

(14) Labor Code section 230.8

Protects an employee who is a parent (including stepparent, foster parent, or person who stands in loco parentis to the child), guardian, or grandparent, and who is employed by an employer who employs 25 or more employees, for taking time off from work (up to 40 hours each year, not exceeding eight hours in any calendar month) to participate in activities of the child’s school, for school emergencies, or to locate or enroll the child in school or with a child care provider.

(15) Labor Code sections 232(a) and (b)

Prohibits an employer from requiring an employee, as a condition of employment, to refrain from disclosing or discussing the amount of his or her wages or requiring an employee to

sign a waiver or other document that purports to deny the employee the right to disclose or discuss his or her wages.

(16) Labor Code section 232.5

Prohibits an employer from requiring that an employee refrain from disclosing or discussing information about the employer's working conditions, and from requiring an employee to sign a waiver or other document that restricts or denies the employee the right to disclose or discuss information about the employer's working conditions.

(17) Labor Code section 233 and 234

Prohibits retaliation for using or attempting to use sick leave that accrued during six months for a reason allowed under section 246.5. Section 234 provides that an employer's "absence control" policies that punish sick leave taken pursuant to section 233 are a violation of section 233.

(18) Labor Code section 244

Reporting or threatening to report an employee's, former employee's, or prospective employee's citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee, former employee, or prospective employee, to a federal, state, or local agency because the employee, former employee, or prospective employee exercises a right under the Labor Code, the Government Code, or the Civil Code constitutes an adverse action for purposes of establishing a violation of an employee's, former employee's, or prospective employee's rights. Claims of immigration-related retaliation may be processed by the Labor Commissioner under this section, in conjunction with section 98.6, which prohibits retaliation against employees, former employees, and prospective employees for exercising their rights under the Labor Code.

(19) Labor Code sections 245-249

Protects an employee who uses accrued paid sick leave, files a complaint with the Labor Commissioner claiming paid sick leave, alleges a violation of paid sick leave rights, cooperates in an investigation or prosecution under this statute, or opposes a policy or practice prohibited by this statute. Employers are prohibited from denying an employee the right to use paid sick leave, or discharging, threatening to discharge, demoting, suspending or in any manner discriminating against an employee who exercises these rights. There is a REBUTTABLE presumption of unlawful retaliation if the employer acts in a manner described above within 30 days of the employee's request for leave or other protected activity. In addition to other remedies that might be available, an administrative penalty of up to \$4,000 may be awarded.

(20) Labor Code section 432.7

Protects the right of an applicant for employment not to disclose information concerning an arrest or detention that did not result in conviction, or any information regarding referral to, and participation in, any pretrial or post-trial diversion program. Protects the right of an applicant for employment not to disclose information about his or her criminal history that occurred while the applicant was subject to juvenile court law. Prohibits an employer from seeking or using as a factor in an employment decision, any record of an arrest or detention that did not result in a conviction. Provides exceptions for law enforcement employment, health facilities, concessionaires and other specific employment situations.

(21) Labor Code section 432.8

Protects the rights of an applicant for employment or employee from disclosing information regarding a conviction related to the possession of marijuana where the conviction is more than two years old.

(22) Labor Code section 432.9

A state or local agency shall not ask an applicant for employment to disclose information concerning the conviction history of the applicant until the agency has determined the applicant meets the minimum qualifications for the position as stated in any notice for the position.

(23) Labor Code section 752

Ensures that employees in non-unionized smelters or underground mines have a right to a fair and impartial election to establish a workday greater than eight hours. In addition to other remedies that might be available, a civil penalty of up to \$200 for each violation for each affected employee may be awarded.

(24) Labor Code section 1019

Prohibits certain unfair immigration-related practices in retaliation for engaging in activities protected by the Labor Code and local ordinances. Unfair immigration-related practices include: requesting more or different documents than are required by federal immigration laws; refusing to accept such documents when they reasonably appear on their face to be genuine; using the federal E-Verify system to check the employment authorization of a person at a time or in a manner not required under federal law; filing or threatening to file a false police report or a false report or complaint with any State or federal agency, including the Federal Immigration and Customs Enforcement Agency (“ICE”); or contacting or threatening to contact immigration authorities. Labor Code section 1019 creates a private right of action in court for victims of unfair immigration-related practices that are retaliatory. The Labor Commissioner will process such complaints under Labor Code section 98.6, which prohibits retaliation for engaging in rights protected under the Labor Code.

(25) Labor Code section 1019.1

Makes it an unlawful practice for an employer to request more or different documents than those required by federal immigration law, refuse to honor documents that appear to be genuine, or attempt to reinvestigate or re-verify any incumbent employee’s authorization to work using an unfair immigration-related practice. In addition to other remedies that might be available, a penalty of up to \$10,000 may be awarded for each violation.

(26) Labor Code section 1024.6

An employer may not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee because the employee updates or attempts to update his or her personal information based on a lawful change of name, social security number, or federal employment authorization document.

(27) Labor Code sections 1025-1028

Every private employer regularly employing 25 or more employees shall provide reasonable accommodations for an employee to participate in an alcohol or drug rehabilitation program. If the employee believes that he or she has been denied such reasonable accommodation, he or she may file a retaliation complaint with the Labor Commissioner’s office.

(28) Labor Code sections 1030-1033

Prohibits retaliation against an employee who requests a lactation accommodation or who attempts to express breast milk. Every employee desiring to express breast milk for the employee’s infant child shall be provided a reasonable amount of break time to do so. The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission need not be paid. The employer shall make reasonable efforts to provide the

employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section. An employer is not required to provide an employee break time for purposes of lactating if to do so would seriously disrupt the operations of the employer. Retaliation for requesting or using this accommodation is prohibited and will be investigated under Labor Code section 98.6. In addition to other remedies that might be available, a civil penalty of up to \$100 for each violation may be awarded.

(29) Labor Code section 1041-1044

Every private employer regularly employing 25 or more employees shall reasonably accommodate and assist any employee who reveals a problem of illiteracy and requests the employer's assistance in enrolling in an adult literacy education program. An employee who believes she or he has been denied reasonable accommodation to enroll and participate in an adult literacy education program may file a retaliation complaint with the Labor Commissioner's office.

(30) Labor Code section 1101

Protects employees who engage or participate in politics or who become candidates for public office. An employer may not make, adopt, or enforce any rule, regulation or policy that forbids, controls, directs or tends to direct the political activities or affiliations of employees.

(31) Labor Code section 1102

Prohibits an employer from coercing, influencing or attempting to coerce or influence employees' political action or political activity.

(32) Labor Code section 1102.5

Protects against retaliation for disclosing information, or because an employer believes an employee has disclosed information, to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has the authority to investigate, discover, or correct a violation where employee reasonably believes that the information discloses a violation of a state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. Protects an employee who refuses to participate in an activity that would result in a violation of a state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. Protects an employee who exercised his or her rights under Labor Code section 1102.5 in any former employment. Protects an employee who is a family member of a person who has or is perceived to have engaged in any protected conduct. In addition to other remedies that might be available, a civil penalty of up to \$10,000 may be awarded for each violation.

(33) Labor Code section 1171

Protects individuals participating in a national service program (e.g., AmeriCorps), for refusing to work overtime for any legitimate reason.

(34) Labor Code section 1197.5

Allows an employee who is paid at a wage rate less than the rate paid to an employee of the opposite sex, or another race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and which is performed under similar working conditions, except where the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on a bona fide factor other than sex, race, or ethnicity, to file a claim for unequal pay

with the Labor Commissioner's office. A civil action to recover wages under section 1197.5(a) may be commenced no later than two years after the cause of action occurs, except that a civil action arising out of a willful violation may be commenced no later than three years after the cause of action occurs. The same filing period will be used for a claim filed with the Labor Commissioner for equal pay as the filing period for a civil action. Also protects an employee who invokes or assists with the enforcement of the equal pay law, discloses his or her own wages, discusses the wages of others, inquires about another employee's wages, or aids or encourages any other employee to exercise his or her rights under this section and is retaliated against. A complaint with the Labor Commissioner alleging retaliation must be filed within six (6) months of the adverse action.

(35) Labor Code section 1198.3

Prohibits retaliation against an employee who refuses to work hours in excess of those permitted by the Industrial Welfare Commission (IWC) Orders.

(36) Labor Code section 1311.5

Provides for triple damages for individuals who are retaliated against for having filed a claim or civil action alleging a Labor Code violation occurring while the individual was a minor, even if the claim was filed after the individual reached 18. Extends the time limit for claims under the Labor Code, including claims for unpaid wages and retaliation claims, such that the time limit does not begin to run until the individual turns 18.

(37) Labor Code section 1512

Prohibits retaliation against an employee who exercises the right to take a paid leave of absence for the purpose of donating his or her organ or bone marrow to another person.

(38) Labor Code section 2814

Makes it unlawful to use E-Verify to check the employment authorization status of an existing employee or applicant who has not been offered employment at a time or in a manner not required by federal law, authorized by a federal agency, or as a condition of receiving federal funds. An employer who has offered employment to an applicant can lawfully utilize the federal E-Verify system to check the employment authorization status of a person who has been offered employment. Requires that the employer furnish to the employee any no-match notification issued by the Social Security Administration or the United States Department of Homeland Security containing information specific to the employee's E-Verify case. In addition to other remedies that might be available, each unlawful use of the E-Verify system carries a civil penalty not to exceed \$10,000.

(39) Labor Code section 2929(b) and (c)

Prohibits discrimination because the garnishment of an employee's wages has been threatened, or because his or her wages have been subjected to garnishment for the payment of one judgment. The employee shall give notice to his or her employer of his or her intention to make a wage claim within 30 days after being discharged, and file a wage claim with the Labor Commissioner within 60 days after being discharged.

(40) Labor Code section 2930

Protects an employee who is disciplined or discharged based on a shopping investigator's report of the employee's conduct, performance, or honesty when the employee was **not** provided with a copy of the report before the discipline or discharge. The shopping investigator must be licensed under the Business and Professions Code for this section to apply.

- (41) **Labor Code section 6310**
Protects an employee who: (1) complains about safety or health conditions or practices, (2) institutes or causes to be instituted any proceeding relating to the employee's rights to safe and healthful working conditions, or testifies in any such proceeding, (3) exercises any rights under the California Occupational Safety and Health Act, or (4) participates in an occupational health and safety committee established pursuant to Labor Code section 6401.7. Protects an employee who is a family member of a person who has or is perceived to have engaged in any protected conduct.
- (42) **Labor Code section 6311**
Protects an employee who refuses to perform work in the performance of which the Labor Code, any occupational safety or health standard, or any safety order would be violated where the violation would create a real and apparent hazard to the employee or her or his co-workers.
- (43) **Labor Code section 6399.7**
Protects an employee who complains or testifies regarding non-compliance with the Hazardous Substances Information and Training Act.
- (44) **Labor Code section 6403.5**
Protects an employee who refuses to lift, reposition, or transfer a patient due to the health care worker's concerns about patient or worker safety or because of the lack of trained lift team personnel or equipment.
- (45) **Health and Safety Code section 1596.881 and 1596.882**
Protects an employee who: (1) complains about the violation of any licensing or other laws relating to child day care facilities (e.g., staff-child ratios, transportation of children, or child abuse), (2) institutes or causes to be instituted any proceeding against the employer relating to the violation of any licensing or other laws, (3) appears as a witness or testifies in a proceeding relating to the violation of any licensing or other laws, or (4) refuses to perform work in violation of a licensing or other law or regulation after notifying the employer of the violation. A claim by the employee alleging the violation by the employer of section 1596.881 shall be presented to the employer within 45 days after the action as to which complaint is made, and presented to DLSE not later than 90 days after the action as to which complaint is made.
- (46) **Unemployment Insurance Code section 1237**
Protects an employee who seeks information from the Employment Development Department (EDD) concerning rights under the Unemployment Insurance Code or Labor Code, cooperates with any investigation undertaken by EDD, or testifies in any proceeding brought pursuant to the Unemployment Insurance Code or the Labor Code.
- (47) **IWC Orders 1 through 13, section 3(C)(8); IWC Order 16, section 3(C)(7); and IWC Order 17, section 5 "Election Procedures" (H)**
Protects an employee who expresses an opinion concerning an alternative workweek election or for opposing or supporting its adoption or repeal.

Please note: Except for the Labor Commissioner's enforcement of the California Equal Pay Act (Labor Code section 1197.5 noted above), the Department of Fair Employment and Housing (DFEH) maintains the authority to investigate complaints of discrimination (based on race, religion, sexual orientation, gender, national origin, etc.) in the areas of employment, housing, public accommodations and hate violence. The National Labor Relations Board (NLRB) investigates complaints of unfair labor practices by employers and unions.