

DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Labor Standards Enforcement
P.O. Box 420603
San Francisco, CA 94142
Tel: (415) 703-4810
Fax: (415) 703-4807



RETALIATION and DISCRIMINATION
COMPLAINTS

A Summary of Procedures

State Labor Commissioner

Division of Labor Standards Enforcement

Employees and applicants for employment who suffer retaliation or discrimination because they engage in an activity protected by any law under the jurisdiction of the Labor Commissioner may file a complaint with the Division of Labor Standards Enforcement (DLSE). This brochure describes the procedures followed by the Labor Commissioner under Labor Code section 98.7 for investigating these retaliation and discrimination complaints.

Filing the Complaint

An employee or job applicant alleging retaliation in violation of any law under the jurisdiction of the Labor Commissioner must file a complaint with the DLSE within six months of the adverse action. Adverse actions include unlawful discharge, demotion, suspension, reduction in pay or hours, refusal to hire or promote, etc. There are a few exceptions to the 6-month deadline: a complaint alleging retaliation against victims of domestic violence or sexual assault (Labor Code section 230(c) or 230.1) must be filed within one year of the alleged violation; a complaint of discrimination for being paid less than an employee of the opposite sex doing the same work (Labor Code section 1197.5) must be filed within two years of the alleged violation; and a complaint alleging retaliation for complaining about a violation of licensing or other laws relating to child day care facilities (Health and Safety Code Section 1596.881) must be filed no later than 90 days after the adverse action.

The form used to file a retaliation complaint (RCI 1 Retaliation Complaint) can be obtained by calling or visiting any DLSE office or by downloading the two-page form from the DLSE website at <http://www.dir.ca.gov/dlse/DLSEFormRCI-1.pdf>.

The DLSE Form RCI 1 can be filed in person at any local DLSE office, or filed by mailing to any local DLSE office or to:

Division of Labor Standards Enforcement
Retaliation Complaint Investigation Unit
2031 Howe Ave. Suite 100
Sacramento, CA 95825

Division of Labor Standards Enforcement
Retaliation Complaint Investigation Unit
605 W. Santa Ana Blvd. Bldg. 28, Room 625
Santa Ana, CA 92701

Be sure to enter all information that is requested on the form using the space provided. Also be sure to date and sign the completed form. Copies of any supporting documents may be submitted as attachments, but not instead of, a completed complaint form. Do not send originals, as they may be lost.

After the complaint is filed, the complaint will be reviewed to confirm that the DLSE does have jurisdiction over the specific complaint. If it is found that the complaint comes under the jurisdiction of the Labor Commissioner, it will be assigned to an investigator.

Filing a complaint with the Labor Commissioner does not prevent you from filing a private lawsuit.

Any employee or job applicant who alleges retaliation for having complained about a workplace health or safety issue has the right to file a concurrent complaint with federal OSHA within 30 days of the occurrence of the adverse action.

The Investigation

After filing the complaint, the employee or job applicant will be contacted by a retaliation complaint investigator who will conduct an investigation. The investigator will contact the employer and any witnesses who possess relevant information regarding the alleged retaliation. The investigator may request the parties meet to explore the possibility of settlement. The cooperation of both parties is essential to ensure all available facts are uncovered in the investigation. The investigator has the authority to issue subpoenas to obtain evidence related to the case.

Once the investigation is complete, if no settlement is reached, the investigator will prepare a written summary of relevant facts that will be forwarded to the Labor Commissioner.

The Determination

The Labor Commissioner will review the summary of relevant facts and make a determination. If the Labor Commissioner finds the employer violated the law by retaliating against the employee or job applicant, the employer will be given 10 days to either file an appeal or to comply with the determination to remedy the retaliation. If the employer fails to comply, an attorney for the Labor Commissioner will file a court action to enforce the determination.

On rare occasions, the Labor Commissioner may decide that a hearing is necessary to fully establish the facts of the complaint before a determination is made.

The Hearing

The hearing is an informal, investigative proceeding conducted for the purpose of obtaining additional relevant facts. At least five days before the scheduled hearing, the employer and employee or job applicant will each receive a copy of the summary of relevant facts prepared by the investigator containing the facts he or she found during the investigation. Either side may bring an attorney, union representative or other person of their choice to represent them at the hearing.

A hearing officer will conduct the hearing. The investigator may appear at the hearing, introduce the summary of relevant facts and any other evidence uncovered through the investigation, and answer questions regarding the investigation.

The Labor Commissioner, employer, employee and job applicant can each subpoena witnesses and documents for the hearing. The parties should contact the hearing officer who will issue all subpoenas reasonably necessary. The hearing officer may refuse to issue unnecessary subpoenas. Any party who insists on subpoenaing witnesses or documents the hearing officer believes are unnecessary should contact the hearing officer's supervisor, the senior deputy of the DLSE Retaliation Complaint Investigation Unit. When the Labor Commissioner issues a subpoena

requested by a party, that party is required to pay witness fees. If such fees are not paid, the witness does not have to appear.

After the hearing, the hearing officer will file the findings of facts and conclusions with the Labor Commissioner. The Labor Commissioner will then make a determination on the complaint.

Appeal Rights

Either party may seek review of the Labor Commissioner's determination by filing an appeal with the Director of the Department of Industrial Relations within ten (10) days of the date of service. The appeal shall define the grounds upon which the appealing party considers the determination to be unjust or unlawful, and every issue to be considered by the Director.

The Director will provide all other parties with a copy of the appeal, allowing for an opportunity to respond.

Any party to a complaint alleging retaliation for complaining about a workplace safety and health issue has the right to file a Complaint Against State Program Administration (CASPA) with federal OSHA if they are not satisfied with the procedures followed in the Labor Commissioner's investigation.

Contact the DLSE

If you have any questions regarding investigation procedures, please contact the nearest DLSE office.

Consult the white pages of your telephone Directory under: CALIFORNIA, State of, Industrial Relations, Labor Standards Enforcement, or visit the DLSE Web site at:

<http://www.dir.ca.gov/dlse/DistrictOffices.htm>