

Assembly Bill 403

Retaliation Claims Deadline

Assembly Member Ash Kalra

SUMMARY

AB 403 increases the statute of limitations for filing a worker retaliation claim from six months to three years and adds the ability to seek attorney's fees for prevailing employees.

BACKGROUND

Workplace retaliation occurs when employers discharge, threaten with discharge, demote, suspend or subject employees to an adverse action including threats of deportation for exercising their rights under the Labor Code. Retaliation is not only pervasive but also growing problem due to the current political climate surrounding immigration.

In fact, in its 2016 Retaliation Complaint Report to the Legislature, the Labor Commissioner states that 2,440 cases were accepted for investigation in 2016. That is a 22 percent increase from the 1,998 cases accepted in 2015. This number does not include the cases that were not filed for various reasons — lack of awareness of the length of the statute of limitations, difficulty finding legal representation, filing paperwork, or gathering evidence — all within a narrow six month window.

Specifically, claims of immigration-related workplace retaliation saw a significant uptick in 2017 according to the Labor Commissioner's Office. In 2017, workers throughout the state filed 95 immigration-related retaliation claims with the agency — an increase from 20 in 2016 and 7 in 2015 — according to a Public Records Act request.

Due to the current political climate, immigrant workers are often afraid to come forward with workplace retaliation claims for a variety of reasons. However, when they do, especially given, or due to lack awareness of the short statute of limitations, their claim is no longer eligible to be filed. California Labor Code Section 98.7 states that any person who is "discharged or otherwise discriminated against in violation of any law under the jurisdiction of the

Labor Commissioner may file a complaint with the division within six months after the occurrence of the violation." These retaliation claims include discharge or other discrimination for requesting unpaid wages (Labor Code Sections 98.6 and 1102.5), discharge for disclosing a health and safety violation (Labor Code Section 6310), and any immigration-related claim wherein an employee seeking unpaid wages or filing a claim with the Labor Commissioner is threatened with deportation (Labor Code 244, 1019); .

By contrast, the statute of limitations is longer for other types of retaliation claims under the jurisdiction of the Labor Commission:

- Against victims of domestic violence and victims of crime (Labor Code 230 (c)(e)(f), 230.1, and 230.2) – 1 year;

In addition, the statute of limitations for retaliation under the jurisdiction of other government agencies is longer:

- Under the Fair Employment and Housing Act (California Government Code 12960(d)) – 1 year;
- Under the federal Fair Labor Standards Act for unpaid wages (29 U.S.C. Section 255) – 2 years or 3 years if willful.

Furthermore, 1,489 violations of Labor Code 1102.5 were cited in 2016, and this violation does not currently allow for attorney's fees for prevailing employees. The burden of paying attorney's fees can be a deterrent for aggrieved workers—especially those who are low-wage—even if they have a strong claim.

SOLUTION

Vulnerable worker populations with limited access to resources and legal representation would benefit from having more time to gather necessary evidence and materials to remedy disputes with employers.

AB 403 would provide employees with a three-year period of time to file a retaliation claim, aligning with the time to file a wage claim.

Additionally, aligning the statute of limitation will help to eliminate confusion among employees who assume it is the same for wage claims.

The attorney's fee provision for prevailing employees who file claims under Labor Code 1102.5 will also provide additional protections for workers who bring successful actions for violations.

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