

CALIFORNIA WHISTLEBLOWER LAWS THAT PROTECT AN EMPLOYEE FROM RETALIATION

California whistleblower protection laws¹, prohibit an employer from retaliating against an employee who comes forward and reports suspected violations of either the law, a regulation or public policy. California whistleblower protection laws are set forth in a variety of different statutes that cover slightly different situations.

The most important of these laws against whistleblower retaliation are:

Labor Code section 1102.5: prevents employers from retaliating against an employee for:

- Disclosing information that the employee reasonably believes discloses a violation of or noncompliance with a law or regulation to a government or law enforcement agency, a person with authority over the employee or another employee with the authority to investigate or correct the violation, OR
- Providing information or testifying before any public body conducting an investigation, hearing or inquiry about what the employee reasonably believes is a violation of or noncompliance with a law or regulation.

Note: you are protected by the whistleblower protections of Labor Code 1102.5 even if it turns out that your employer did not violate the law. In order to be protected, you must reasonably believe that a violation of law occurred. Also, your employer can still be liable for whistleblower retaliation even if you never actually reported a violation of the law. Employers can be held liable for retaliating against an employee because the employer wrongly believed the employee reported a violation, or because the employer believed the employee was about to report a violation.

If a Labor Code 1102.5 case proceeds to trial, the employee has the initial burden to show by a preponderance of the evidence that their whistleblowing was a contributing factor in the employer's adverse actions. But then the employer has to show by clear and convincing evidence that their adverse actions would have occurred even if the employee had not engaged in whistleblowing. If the employer fails to meet this "employee-friendly burden of proof", then the employer should be held liable for whistleblower retaliation.

Labor Code section 98.6: provides protection specifically for employees who report Labor Code violations to the California Labor Commissioner. Complaints to the Labor Commissioner by employees are most likely to involve wage and hour law violations, such as an employer: paying less

¹ In addition, under federal law, the Whistleblower Protection Act of 1989 (WPA) provides protections for federal employees who report misconduct or illegal activity within their agency. The WPA applies to employees of educational institutions that receive federal funding, including public schools, colleges, and universities.

than minimum wage, failing to give an employee overtime pay or failing to provide required meal and rest breaks.

Labor Code section 6310: prohibits whistleblower retaliation against employees who report violations of occupational health and safety rules to the California Division of Occupational Safety and Health (Cal/OSHA).

Government Code section 8547: California's public employee whistleblower law, known as the "California Whistleblower Protection Act" and set forth in Government Code 8547 and later sections, differs from other whistleblower protection laws that cover private-sector employees in several important ways. Whistleblower laws that apply to private-sector employees only protect employees who report suspected violations of law. But the California Whistleblower Protection Act protects state employees who report any of the following: (1) Violations of law, regulations, executive orders or court orders (including corruption, bribery or fraud); (2) Any condition that may significantly threaten the health or safety of employees or the public; or (3) Governmental activity that is economically wasteful or involves gross misconduct, incompetency or inefficiency.

Disclosures protected by California's public-sector whistleblower law are often made (but don't necessarily have to be made) to the State Auditor's Office or the Commission on Judicial Performance.

Government Code section 12940 et. seq.: The Fair Employment and Housing Act is California's main law prohibiting workplace harassment and employment discrimination. The FEHA also has a provision prohibiting employers from retaliating against employees who oppose or report violations of that law. Wrongful termination or retaliation under the FEHA can be the basis of an employee lawsuit similar to those under other whistleblower protection laws.

Education Code section 44110-44115 and 87160 et seq.: impose both criminal and civil penalties against public school employees/administrators for retaliating against employees and other people who disclose improper government activities, at the primary/secondary and community college levels, respectively.

Public policy wrongful termination is an exception to at-will employment in California. This means that even at-will employees may not be terminated for reasons that violate a fundamental public policy. Under California public policy wrongful discharge law, an employer may not terminate you for: (1) Refusing to violate a law; (2) Performing a legal obligation; (3) Exercising a legal right or privilege; or (4) Reporting an alleged violation of a law of public importance. These may overlap with California whistleblower protection laws.

Public policy wrongful termination only applies where employees lose their jobs. It does not apply when they merely face discrimination or retaliation at work. But in cases where an employee is fired for reporting a violation of law at their employer, the difference between whistleblower retaliation and public policy wrongful termination is hazy. It basically depends on which legal theory you and your

employment attorney determine will be more helpful to your case. In many cases, employees who are fired for reporting a violation of law may find that it is in their best interest to sue their former employer both: under a specific California whistleblower protection law that applies to their case and under the theory of public policy wrongful termination.

This list is not exhaustive, as additional laws prohibit other forms of retaliation. You should consult with an attorney to determine which laws may apply in your case.

What is retaliation?

Retaliation occurs when an employer (through a manager, supervisor, or administrator) takes an adverse action against an employee for engaging in protected activity.

Examples of protected activity includes:

- Seeking information or legal advice on your workplace rights;
- Notifying anyone about a possible violation of legal rights in your workplace
- Complaining that you or someone else is owed unpaid wages;
- Complaining about harassment or discriminatory treatment on the job;
- Complaining about unsafe working conditions;
- Reporting the mis-use of public funds;
- Reporting violations of Individual Educational Plans, aka IEPs;
- Talking with your co-workers about your wages or workplace concerns — for instance, the possibility of unionizing;
- Filing a workers' compensation claim;
- Filing or participating in a complaint with a governmental agency, such as the U.S. Equal Employment Opportunity Commission, the California Labor Commissioner or Department of Fair Employment and Housing, or other workplace rights agency;
- Alerting governmental agencies about your employer's unlawful practices.

What is an adverse action?

An adverse action is defined as an action which would dissuade a reasonable employee from raising a concern about a possible violation or engaging in other related protected activity. Retaliation harms the employee has a negative impact on his or her employment. Because an adverse action can be subtle, such as excluding an employee from important meetings, it may not always be easy to recognize.

Adverse actions may include actions such as:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation or harassment
- Making threats
- Reassignment to a less desirable position or actions affecting prospects for promotion (such as excluding an employee from training meetings)
- Reducing or changing pay or hours
- More subtle actions, such as isolating, ostracizing, mocking, or falsely accusing the employee of poor performance
- Blacklisting (intentionally interfering with an employee's ability to obtain future employment)
- Constructive discharge (quitting when an employer makes working conditions intolerable due to the employee's protected activity)
- Reporting or threatening to report an employee to the police or immigration authorities

Whistleblower retaliation can be as extreme as wrongful termination, but retaliation can also be more subtle and can include, as an example, an unfair write up.

If you are retaliated against for reporting suspected violations of either the law, a regulation or public policy, you have the right to sue your employer for damages. Generally, if you prevail in a **whistleblower retaliation** lawsuit against your employer, you may be entitled to damages that could include: (1) Lost wages and benefits; (2) Compensation for physical pain, mental suffering and/or loss of career opportunities due to the whistleblower retaliation; and/or (3) In some cases, punitive damages to punish your employer for egregious misbehavior. In some instances, if you were terminated, you may be able to seek reinstatement to your position. You may also be able to seek reimbursement for your attorney's fees.

Please note: California's whistleblower laws have various requirements that YOU MUST strictly adhere to. This includes filing timely administrative claims, governmental tort claims if your employer is a public entity and filing the civil lawsuit within the statute of limitations. As these deadlines vary, **YOU SHOULD CONSULT WITH AN ATTORNEY ABOUT THE SPECIFIC REQUIREMENTS FOR YOUR POTENTIAL CLAIMS.** If you fail to timely comply with the requirements to file a civil lawsuit for whistleblower retaliation, you will be barred from doing so.

The foregoing is for informational purposes only and is not legal advice. If you would like a consultation, please click on [Contact Us](#) and we will schedule an appointment with an appropriate attorney in our firm.