

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1509

Introduced by ~~Committee on Labor and Employment~~
(~~Assembly Members Roger Hernández (Chair), Chu, Low,~~
~~McCarty, and Thurmond~~) *Assembly Member Roger Hernández*

March 4, 2015

An act to amend ~~Section 6310~~ *Sections 98.6, 1102.5, and 6310* of the Labor Code, relating to ~~occupational safety and health~~ *employment*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1509, as amended, ~~Committee on Labor and Employment~~ *Roger Hernández*. ~~Occupational safety and health: Employees: protected disclosures and complaints: retaliation.~~

Existing law prohibits an employer from discharging an employee or in any manner discriminating, retaliating, or taking any adverse action against any employee or applicant for employment because the employee or applicant has engaged in protected conduct, as specified. Existing law provides that an employee who made a bona fide complaint, and was consequently discharged or otherwise suffered an adverse action, is entitled to reinstatement and reimbursement for lost wages. Existing law makes it a misdemeanor for an employer to willfully refuse to reinstate or otherwise restore an employee who is determined by a specified procedure to be eligible for reinstatement. Existing law subjects a person who violates these provisions to a civil penalty of up to \$10,000 per violation.

This bill would extend the protections of these provisions to an employee who is a family member of a person who engaged in, or was preceived to engage in, the protected conduct or make a complaint

protected by these provisions. This bill would define terms for the purpose of these provisions.

~~Under existing law, it is unlawful to discharge or discriminate against an employee for making a complaint regarding employee safety or health, instituting or testifying in a proceeding under his or her rights, participating in an occupational health and safety committee, or refusing to perform work in violation of any occupational safety or health standard or safety order. Existing law further requires the reinstatement and reimbursement, as specified, of an employee who was discharged or discriminated against in the terms or conditions of his or her employment, in violation of these provisions. Existing law makes it a misdemeanor for an employer to willfully refuse to rehire, promote, or otherwise restore an employee who has been determined to be eligible for rehiring or promotion, as specified.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 98.6 of the Labor Code is amended to
2 read:
3 98.6. (a) A person shall not discharge an employee or in any
4 manner discriminate, retaliate, or take any adverse action against
5 any employee or applicant for employment because the employee
6 or applicant engaged in any conduct delineated in this chapter,
7 including the conduct described in subdivision (k) of Section 96,
8 and Chapter 5 (commencing with Section 1101) of Part 3 of
9 Division 2, or because the employee or applicant for employment
10 has filed a bona fide complaint or claim or instituted or caused to
11 be instituted any proceeding under or relating to his or her rights
12 that are under the jurisdiction of the Labor Commissioner, made
13 a written or oral complaint that he or she is owed unpaid wages,
14 or because the employee has initiated any action or notice pursuant
15 to Section 2699, or has testified or is about to testify in a
16 proceeding pursuant to that section, or because of the exercise by
17 the employee or applicant for employment on behalf of himself,
18 herself, or others of any rights afforded him or her.

1 (b) (1) Any employee who is discharged, threatened with
2 discharge, demoted, suspended, retaliated against, subjected to an
3 adverse action, or in any other manner discriminated against in
4 the terms and conditions of his or her employment because the
5 employee engaged in any conduct delineated in this chapter,
6 including the conduct described in subdivision (k) of Section 96,
7 and Chapter 5 (commencing with Section 1101) of Part 3 of
8 Division 2, or because the employee has made a bona fide
9 complaint or claim to the division pursuant to this part, or because
10 the employee has initiated any action or notice pursuant to Section
11 2699 shall be entitled to reinstatement and reimbursement for lost
12 wages and work benefits caused by those acts of the employer.

13 (2) An employer who willfully refuses to hire, promote, or
14 otherwise restore an employee or former employee who has been
15 determined to be eligible for rehiring or promotion by a grievance
16 procedure, arbitration, or hearing authorized by law, is guilty of a
17 misdemeanor.

18 (3) In addition to other remedies available, an employer who
19 violates this section is liable for a civil penalty not exceeding ten
20 thousand dollars (\$10,000) per employee for each violation of this
21 section, to be awarded to the employee or employees who suffered
22 the violation.

23 (c) (1) Any applicant for employment who is refused
24 employment, who is not selected for a training program leading
25 to employment, or who in any other manner is discriminated
26 against in the terms and conditions of any offer of employment
27 because the applicant engaged in any conduct delineated in this
28 chapter, including the conduct described in subdivision (k) of
29 Section 96, and Chapter 5 (commencing with Section 1101) of
30 Part 3 of Division 2, or because the applicant has made a bona fide
31 complaint or claim to the division pursuant to this part, or because
32 the employee has initiated any action or notice pursuant to Section
33 2699 shall be entitled to employment and reimbursement for lost
34 wages and work benefits caused by the acts of the prospective
35 employer.

36 (2) This subdivision shall not be construed to invalidate any
37 collective bargaining agreement that requires an applicant for a
38 position that is subject to the collective bargaining agreement to
39 sign a contract that protects either or both of the following as
40 specified in subparagraphs (A) and (B), nor shall this subdivision

1 be construed to invalidate any employer requirement of an
2 applicant for a position that is not subject to a collective bargaining
3 agreement to sign an employment contract that protects either or
4 both of the following:

5 (A) An employer against any conduct that is actually in direct
6 conflict with the essential enterprise-related interests of the
7 employer and where breach of that contract would actually
8 constitute a material and substantial disruption of the employer's
9 operation.

10 (B) A firefighter against any disease that is presumed to arise
11 in the course and scope of employment, by limiting his or her
12 consumption of tobacco products on and off the job.

13 (d) The provisions of this section creating new actions or
14 remedies that are effective on January 1, 2002, to employees or
15 applicants for employment do not apply to any state or local law
16 enforcement agency, any religious association or corporation
17 specified in subdivision (d) of Section 12926 of the Government
18 Code, except as provided in Section 12926.2 of the Government
19 Code, or any person described in Section 1070 of the Evidence
20 Code.

21 (e) *An employer, or a person acting on behalf of the employer,*
22 *shall not retaliate against an employee because the employee is a*
23 *family member of a person who has, or is perceived to have,*
24 *engaged in any conduct delineated in this chapter.*

25 (f) *For purposes of this section, "employer" or "a person acting*
26 *on behalf of the employer" includes, but is not limited to, a client*
27 *employer as defined in paragraph (1) of subdivision (a) of Section*
28 *2810.3 and an employer listed in subdivision (b) of Section 6400.*

29 *SEC. 2. Section 1102.5 of the Labor Code is amended to read:*

30 1102.5. (a) An employer, or any person acting on behalf of
31 the employer, shall not make, adopt, or enforce any rule, regulation,
32 or policy preventing an employee from disclosing information to
33 a government or law enforcement agency, to a person with
34 authority over the employee, or to another employee who has
35 authority to investigate, discover, or correct the violation or
36 noncompliance, or from providing information to, or testifying
37 before, any public body conducting an investigation, hearing, or
38 inquiry, if the employee has reasonable cause to believe that the
39 information discloses a violation of state or federal statute, or a
40 violation of or noncompliance with a local, state, or federal rule

1 or regulation, regardless of whether disclosing the information is
2 part of the employee's job duties.

3 (b) An employer, or any person acting on behalf of the employer,
4 shall not retaliate against an employee for disclosing information,
5 or because the employer believes that the employee disclosed or
6 may disclose information, to a government or law enforcement
7 agency, to a person with authority over the employee or another
8 employee who has the authority to investigate, discover, or correct
9 the violation or noncompliance, or for providing information to,
10 or testifying before, any public body conducting an investigation,
11 hearing, or inquiry, if the employee has reasonable cause to believe
12 that the information discloses a violation of state or federal statute,
13 or a violation of or noncompliance with a local, state, or federal
14 rule or regulation, regardless of whether disclosing the information
15 is part of the employee's job duties.

16 (c) An employer, or any person acting on behalf of the employer,
17 shall not retaliate against an employee for refusing to participate
18 in an activity that would result in a violation of state or federal
19 statute, or a violation of or noncompliance with a local, state, or
20 federal rule or regulation.

21 (d) An employer, or any person acting on behalf of the employer,
22 shall not retaliate against an employee for having exercised his or
23 her rights under subdivision (a), (b), or (c) in any former
24 employment.

25 (e) A report made by an employee of a government agency to
26 his or her employer is a disclosure of information to a government
27 or law enforcement agency pursuant to subdivisions (a) and (b).

28 (f) In addition to other penalties, an employer that is a
29 corporation or limited liability company is liable for a civil penalty
30 not exceeding ten thousand dollars (\$10,000) for each violation
31 of this section.

32 (g) This section does not apply to rules, regulations, or policies
33 that implement, or to actions by employers against employees who
34 violate, the confidentiality of the lawyer-client privilege of Article
35 3 (commencing with Section 950) of, or the physician-patient
36 privilege of Article 6 (commencing with Section 990) of, Chapter
37 4 of Division 8 of the Evidence Code, or trade secret information.

38 (h) *An employer, or a person acting on behalf of the employer,*
39 *shall not retaliate against an employee because the employee is a*

1 family member of a person who has, or is perceived to have,
2 engaged in any acts protected by this section.

3 (i) For purposes of this section, “employer” or “a person acting
4 on behalf of the employer” includes, but is not limited to, a client
5 employer as defined in paragraph (1) of subdivision (a) of Section
6 2810.3 and an employer listed in subdivision (b) of Section 6400.

7 SEC. 3. Section 6310 of the Labor Code is amended to read:

8 6310. (a) No person shall discharge or in any manner
9 discriminate against any employee because the employee has done
10 any of the following:

11 (1) Made any oral or written complaint to the division, other
12 governmental agencies having statutory responsibility for or
13 assisting the division with reference to employee safety or health,
14 his or her employer, or his or her representative.

15 (2) Instituted or caused to be instituted any proceeding under
16 or relating to his or her rights or has testified or is about to testify
17 in the proceeding or because of the exercise by the employee on
18 behalf of himself, herself, or others of any rights afforded him or
19 her.

20 (3) Participated in an occupational health and safety committee
21 established pursuant to Section 6401.7.

22 (b) Any employee who is discharged, threatened with discharge,
23 demoted, suspended, or in any other manner discriminated against
24 in the terms and conditions of employment by his or her employer
25 because the employee has made a bona fide oral or written
26 complaint to the division, other governmental agencies having
27 statutory responsibility for or assisting the division with reference
28 to employee safety or health, his or her employer, or his or her
29 representative, of unsafe working conditions, or work practices,
30 in his or her employment or place of employment, or has
31 participated in an employer-employee occupational health and
32 safety committee, shall be entitled to reinstatement and
33 reimbursement for lost wages and work benefits caused by the acts
34 of the employer. Any employer who willfully refuses to rehire,
35 promote, or otherwise restore an employee or former employee
36 who has been determined to be eligible for rehiring or promotion
37 by a grievance procedure, arbitration, or hearing authorized by
38 law, is guilty of a misdemeanor.

39 (c) An employer, or a person acting on behalf of the employer,
40 shall not retaliate against an employee because the employee is a

1 *family member of a person who has, or is perceived to have,*
2 *engaged in any acts protected by this section.*

3 *(d) For purposes of this section, “employer” or “a person acting*
4 *on behalf of the employer” includes, but is not limited to, a client*
5 *employer as defined in paragraph (1) of subdivision (a) of Section*
6 *2810.3 and an employer listed in subdivision (b) of Section 6400.*

7 SECTION 1. ~~Section 6310 of the Labor Code is amended to~~
8 ~~read:~~

9 ~~6310. (a) A person shall not discharge or in any manner~~
10 ~~discriminate against any employee because the employee has done~~
11 ~~any of the following:~~

12 ~~(1) Made an oral or written complaint to the division, other~~
13 ~~governmental agencies having statutory responsibility for or~~
14 ~~assisting the division with reference to employee safety or health,~~
15 ~~his or her employer, or his or her representative.~~

16 ~~(2) Instituted or caused to be instituted a proceeding under or~~
17 ~~relating to his or her rights or has testified or is about to testify in~~
18 ~~the proceeding or because of the exercise by the employee on~~
19 ~~behalf of himself, herself, or others of any rights afforded him or~~
20 ~~her.~~

21 ~~(3) Participated in an occupational health and safety committee~~
22 ~~established pursuant to Section 6401.7.~~

23 ~~(b) An employee who is discharged, threatened with discharge,~~
24 ~~demoted, suspended, or in any other manner discriminated against~~
25 ~~in the terms and conditions of employment by his or her employer~~
26 ~~because the employee has made a bona fide oral or written~~
27 ~~complaint to the division, other governmental agencies having~~
28 ~~statutory responsibility for or assisting the division with reference~~
29 ~~to employee safety or health, his or her employer, or his or her~~
30 ~~representative, of unsafe working conditions, or work practices,~~
31 ~~in his or her employment or place of employment, or has~~
32 ~~participated in an employer-employee occupational health and~~
33 ~~safety committee, shall be entitled to reinstatement and~~
34 ~~reimbursement for lost wages and work benefits caused by the acts~~
35 ~~of the employer. An employer who willfully refuses to rehire,~~
36 ~~promote, or otherwise restore an employee or former employee~~
37 ~~who has been determined to be eligible for rehiring or promotion~~
38 ~~by a grievance procedure, arbitration, or hearing authorized by~~
39 ~~law, is guilty of a misdemeanor.~~

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