

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1509

Introduced by Assembly Member Roger Hernández

March 4, 2015

An act to amend Sections 98.6, 1102.5, and 6310 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1509, as amended, Roger Hernández. 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~~ *provisions*, *as specified*, to an employee who is a family member of a person who engaged in, or was ~~perceived~~ *perceived* 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.

Vote: majority. Appropriation: no. Fiscal committee: 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.

19 (b) (1) Any employee who is discharged, threatened with
20 discharge, demoted, suspended, retaliated against, subjected to an
21 adverse action, or in any other manner discriminated against in
22 the terms and conditions of his or her employment because the
23 employee engaged in any conduct delineated in this chapter,
24 including the conduct described in subdivision (k) of Section 96,
25 and Chapter 5 (commencing with Section 1101) of Part 3 of
26 Division 2, or because the employee has made a bona fide
27 complaint or claim to the division pursuant to this part, or because
28 the employee has initiated any action or notice pursuant to Section
29 2699 shall be entitled to reinstatement and reimbursement for lost
30 wages and work benefits caused by those acts of the employer.

31 (2) An employer who willfully refuses to hire, promote, or
32 otherwise restore an employee or former employee who has been
33 determined to be eligible for rehiring or promotion by a grievance

1 procedure, arbitration, or hearing authorized by law, is guilty of a
2 misdemeanor.

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

8 (c) (1) Any applicant for employment who is refused
9 employment, who is not selected for a training program leading
10 to employment, or who in any other manner is discriminated
11 against in the terms and conditions of any offer of employment
12 because the applicant engaged in any conduct delineated in this
13 chapter, including the conduct described in subdivision (k) of
14 Section 96, and Chapter 5 (commencing with Section 1101) of
15 Part 3 of Division 2, or because the applicant has made a bona fide
16 complaint or claim to the division pursuant to this part, or because
17 the employee has initiated any action or notice pursuant to Section
18 2699 shall be entitled to employment and reimbursement for lost
19 wages and work benefits caused by the acts of the prospective
20 employer.

21 (2) This subdivision shall not be construed to invalidate any
22 collective bargaining agreement that requires an applicant for a
23 position that is subject to the collective bargaining agreement to
24 sign a contract that protects either or both of the following as
25 specified in subparagraphs (A) and (B), nor shall this subdivision
26 be construed to invalidate any employer requirement of an
27 applicant for a position that is not subject to a collective bargaining
28 agreement to sign an employment contract that protects either or
29 both of the following:

30 (A) An employer against any conduct that is actually in direct
31 conflict with the essential enterprise-related interests of the
32 employer and where breach of that contract would actually
33 constitute a material and substantial disruption of the employer's
34 operation.

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

38 (d) The provisions of this section creating new actions or
39 remedies that are effective on January 1, 2002, to employees or
40 applicants for employment do not apply to any state or local law

1 enforcement agency, any religious association or corporation
2 specified in subdivision (d) of Section 12926 of the Government
3 Code, except as provided in Section 12926.2 of the Government
4 Code, or any person described in Section 1070 of the Evidence
5 Code.

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

10 (f) For purposes of this section, “employer” or “a person acting
11 on behalf of the employer” includes, but is not limited to, a client
12 employer as defined in paragraph (1) of subdivision (a) of Section
13 2810.3 and an employer listed in subdivision (b) of Section 6400.

14 (g) *Subdivisions (e) and (f) shall not apply to claims arising
15 under subdivision (k) of Section 96 unless the lawful conduct
16 occurring during nonwork hours away from the employer’s
17 premises involves the exercise of employee rights otherwise covered
18 under subdivision (a).*

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

20 1102.5. (a) An employer, or any person acting on behalf of
21 the employer, shall not make, adopt, or enforce any rule, regulation,
22 or policy preventing an employee from disclosing information to
23 a government or law enforcement agency, to a person with
24 authority over the employee, or to another employee who has
25 authority to investigate, discover, or correct the violation or
26 noncompliance, or from providing information to, or testifying
27 before, any public body conducting an investigation, hearing, or
28 inquiry, if the employee has reasonable cause to believe that the
29 information discloses a violation of state or federal statute, or a
30 violation of or noncompliance with a local, state, or federal rule
31 or regulation, regardless of whether disclosing the information is
32 part of the employee’s job duties.

33 (b) An employer, or any person acting on behalf of the employer,
34 shall not retaliate against an employee for disclosing information,
35 or because the employer believes that the employee disclosed or
36 may disclose information, to a government or law enforcement
37 agency, to a person with authority over the employee or another
38 employee who has the authority to investigate, discover, or correct
39 the violation or noncompliance, or for providing information to,
40 or testifying before, any public body conducting an investigation,

1 hearing, or inquiry, if the employee has reasonable cause to believe
2 that the information discloses a violation of state or federal statute,
3 or a violation of or noncompliance with a local, state, or federal
4 rule or regulation, regardless of whether disclosing the information
5 is part of the employee’s job duties.

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

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

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

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

22 (g) This section does not apply to rules, regulations, or policies
23 that implement, or to actions by employers against employees who
24 violate, the confidentiality of the lawyer-client privilege of Article
25 3 (commencing with Section 950) of, or the physician-patient
26 privilege of Article 6 (commencing with Section 990) of, Chapter
27 4 of Division 8 of the Evidence Code, or trade secret information.

28 (h) An employer, or a person acting on behalf of the employer,
29 shall not retaliate against an employee because the employee is a
30 family member of a person who has, or is perceived to have,
31 engaged in any acts protected by this section.

32 (i) For purposes of this section, “employer” or “a person acting
33 on behalf of the employer” includes, but is not limited to, a client
34 employer as defined in paragraph (1) of subdivision (a) of Section
35 2810.3 and an employer listed in subdivision (b) of Section 6400.

36 SEC. 3. Section 6310 of the Labor Code is amended to read:
37 6310. (a) No person shall discharge or in any manner
38 discriminate against any employee because the employee has done
39 any of the following:

- 1 (1) Made any oral or written complaint to the division, other
2 governmental agencies having statutory responsibility for or
3 assisting the division with reference to employee safety or health,
4 his or her employer, or his or her representative.
- 5 (2) Instituted or caused to be instituted any proceeding under
6 or relating to his or her rights or has testified or is about to testify
7 in the proceeding or because of the exercise by the employee on
8 behalf of himself, herself, or others of any rights afforded him or
9 her.
- 10 (3) Participated in an occupational health and safety committee
11 established pursuant to Section 6401.7.
- 12 (b) Any employee who is discharged, threatened with discharge,
13 demoted, suspended, or in any other manner discriminated against
14 in the terms and conditions of employment by his or her employer
15 because the employee has made a bona fide oral or written
16 complaint to the division, other governmental agencies having
17 statutory responsibility for or assisting the division with reference
18 to employee safety or health, his or her employer, or his or her
19 representative, of unsafe working conditions, or work practices,
20 in his or her employment or place of employment, or has
21 participated in an employer-employee occupational health and
22 safety committee, shall be entitled to reinstatement and
23 reimbursement for lost wages and work benefits caused by the acts
24 of the employer. Any employer who willfully refuses to rehire,
25 promote, or otherwise restore an employee or former employee
26 who has been determined to be eligible for rehiring or promotion
27 by a grievance procedure, arbitration, or hearing authorized by
28 law, is guilty of a misdemeanor.
- 29 (c) An employer, or a person acting on behalf of the employer,
30 shall not retaliate against an employee because the employee is a
31 family member of a person who has, or is perceived to have,
32 engaged in any acts protected by this section.
- 33 (d) For purposes of this section, “employer” or “a person acting
34 on behalf of the employer” includes, but is not limited to, a client
35 employer as defined in paragraph (1) of subdivision (a) of Section
36 2810.3 and an employer listed in subdivision (b) of Section 6400.

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