

AMENDED IN SENATE AUGUST 31, 2015  
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, 2810.3, 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.~~ *Employer liability.*

**Existing**

(1) *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, as specified, to an employee who is a family member of a person who engaged in,

or was 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.

*(2) Existing law requires a client employer to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for the payment of wages and the failure to obtain valid workers' compensation coverage. Existing law also prohibits a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor. Existing law defines terms for these purposes and authorizes the Labor Commissioner to adopt regulations and rules of practice and procedure necessary to administer and enforce these provisions. Existing law excludes certain types of employers from these provisions, including, but not limited to, a client employer that is not a motor carrier of property based solely on the employer's use of a third-party motor carrier of property with interstate or intrastate operating authority to ship or receive freight, and a client employer that is a motor carrier of property subcontracting with, or otherwise engaging, another motor carrier of property to provide transportation services using its own employees and commercial motor vehicles.*

*The Household Goods Carriers Act subjects household goods carriers to the jurisdiction and control of the Public Utilities Commission. The act prohibits a household goods carrier from engaging, or attempting to engage, in the business of the transportation of used household goods and personal effects by motor vehicle over any public highway in the state without a permit issued by the commission authorizing transportation entirely within the state or a valid operating authority issued by the Federal Motor Carrier Safety Administration, for interstate transportation.*

*This bill would expand the types of employers excluded from those labor contracting provisions to include a client employer that is not a household goods carrier based solely on the employer's use of a third-party household goods carrier permitted by the commission to move household goods, and a client employer that is a permitted household goods carrier subcontracting with, or otherwise engaging, another permitted household goods carrier to provide transportation of household goods using its own employees and motor vehicles.*

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  
34 procedure, arbitration, or hearing authorized by law, is guilty of a  
35 misdemeanor.

36 (3) In addition to other remedies available, an employer who  
37 violates this section is liable for a civil penalty not exceeding ten  
38 thousand dollars (\$10,000) per employee for each violation of this

1 section, to be awarded to the employee or employees who suffered  
2 the violation.

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

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

25 (A) An employer against any conduct that is actually in direct  
26 conflict with the essential enterprise-related interests of the  
27 employer and where breach of that contract would actually  
28 constitute a material and substantial disruption of the employer's  
29 operation.

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

33 (d) The provisions of this section creating new actions or  
34 remedies that are effective on January 1, 2002, to employees or  
35 applicants for employment do not apply to any state or local law  
36 enforcement agency, any religious association or corporation  
37 specified in subdivision (d) of Section 12926 of the Government  
38 Code, except as provided in Section 12926.2 of the Government  
39 Code, or any person described in Section 1070 of the Evidence  
40 Code.

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

5 (f) For purposes of this section, “employer” or “a person acting  
6 on behalf of the employer” includes, but is not limited to, a client  
7 employer as defined in paragraph (1) of subdivision (a) of Section  
8 2810.3 and an employer listed in subdivision (b) of Section 6400.

9 (g) Subdivisions (e) and (f) shall not apply to claims arising  
10 under subdivision (k) of Section 96 unless the lawful conduct  
11 occurring during nonwork hours away from the employer’s  
12 premises involves the exercise of employee rights otherwise  
13 covered under subdivision (a).

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

15 1102.5. (a) An employer, or any person acting on behalf of  
16 the employer, shall not make, adopt, or enforce any rule, regulation,  
17 or policy preventing an employee from disclosing information to  
18 a government or law enforcement agency, to a person with  
19 authority over the employee, or to another employee who has  
20 authority to investigate, discover, or correct the violation or  
21 noncompliance, or from providing information to, or testifying  
22 before, any public body conducting an investigation, hearing, or  
23 inquiry, if the employee has reasonable cause to believe that the  
24 information discloses a violation of state or federal statute, or a  
25 violation of or noncompliance with a local, state, or federal rule  
26 or regulation, regardless of whether disclosing the information is  
27 part of the employee’s job duties.

28 (b) An employer, or any person acting on behalf of the employer,  
29 shall not retaliate against an employee for disclosing information,  
30 or because the employer believes that the employee disclosed or  
31 may disclose information, to a government or law enforcement  
32 agency, to a person with authority over the employee or another  
33 employee who has the authority to investigate, discover, or correct  
34 the violation or noncompliance, or for providing information to,  
35 or testifying before, any public body conducting an investigation,  
36 hearing, or inquiry, if the employee has reasonable cause to believe  
37 that the information discloses a violation of state or federal statute,  
38 or a violation of or noncompliance with a local, state, or federal  
39 rule or regulation, regardless of whether disclosing the information  
40 is part of the employee’s job duties.

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

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

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

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

17 (g) This section does not apply to rules, regulations, or policies  
18 that implement, or to actions by employers against employees who  
19 violate, the confidentiality of the lawyer-client privilege of Article  
20 3 (commencing with Section 950) of, or the physician-patient  
21 privilege of Article 6 (commencing with Section 990) of, Chapter  
22 4 of Division 8 of the Evidence Code, or trade secret information.

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

27 (i) For purposes of this section, “employer” or “a person acting  
28 on behalf of the employer” includes, but is not limited to, a client  
29 employer as defined in paragraph (1) of subdivision (a) of Section  
30 2810.3 and an employer listed in subdivision (b) of Section 6400.

31 *SEC. 3. Section 2810.3 of the Labor Code is amended to read:*

32 2810.3. (a) As used in this section:

33 (1) (A) “Client employer” means a business entity, regardless  
34 of its form, that obtains or is provided workers to perform labor  
35 within its usual course of business from a labor contractor.

36 (B) “Client employer” does not include any of the following:

37 (i) A business entity with a workforce of ~~less~~ fewer than 25  
38 workers, including those hired directly by the client employer and  
39 those obtained from, or provided by, any labor contractor.

1 (ii) A business entity with five or fewer workers supplied by a  
2 labor contractor or labor contractors to the client employer at any  
3 given time.

4 (iii) The state or any political subdivision of the state, including  
5 any city, county, city and county, or special district.

6 (2) “Labor” has the same meaning provided by Section 200.

7 (3) “Labor contractor” means an individual or entity that  
8 supplies, either with or without a contract, a client employer with  
9 workers to perform labor within the client employer’s usual course  
10 of business. “Labor contractor” does not include any of the  
11 following:

12 (A) A bona fide nonprofit, community-based organization that  
13 provides services to workers.

14 (B) A bona fide labor organization or apprenticeship program  
15 or hiring hall operated pursuant to a collective bargaining  
16 agreement.

17 (C) A motion picture payroll services company as defined in  
18 subparagraph (A) of paragraph (4) of subdivision (f) of Section  
19 679 of the Unemployment Insurance Code.

20 (D) A third party who is a party to an employee leasing  
21 arrangement, as defined by Rule 4 of Section V of the California  
22 Workers’ Compensation Experience Rating Plan-1995 (Section  
23 2353.1 of Title 10 of the California Code of Regulations), as it  
24 read on January 1, 2014, except those arrangements described in  
25 subrule d of Rule 4 of Section V, if the employee leasing  
26 arrangement contractually obligates the client employer to assume  
27 all civil legal responsibility and civil liability under this act.

28 (4) “Wages” has the same meaning provided by Section 200  
29 and all sums payable to an employee or the state based upon any  
30 failure to pay wages, as provided by law.

31 (5) “Worker” does not include an employee who is exempt from  
32 the payment of an overtime rate of compensation for executive,  
33 administrative, and professional employees pursuant to wage orders  
34 by the Industrial Welfare Commission described in Section 515.

35 (6) “Usual course of business” means the regular and customary  
36 work of a business, performed within or upon the premises or  
37 worksite of the client employer.

38 (b) A client employer shall share with a labor contractor all civil  
39 legal responsibility and civil liability for all workers supplied by  
40 that labor contractor for both of the following:

1 (1) The payment of wages.

2 (2) Failure to secure valid workers' compensation coverage as  
3 required by Section 3700.

4 (c) A client employer shall not shift to the labor contractor any  
5 legal duties or liabilities under ~~the provisions of~~ Division 5  
6 (commencing with Section 6300) with respect to workers supplied  
7 by the labor contractor.

8 (d) At least 30 days prior to filing a civil action against a client  
9 employer for violations covered by this section, a worker or his  
10 or her representative shall notify the client employer of violations  
11 under subdivision (b).

12 (e) Neither the client employer nor the labor contractor may  
13 take any adverse action against any worker for providing  
14 notification of violations or filing a claim or civil action.

15 (f) The provisions of subdivisions (b) and (c) are in addition to,  
16 and shall be supplemental of, any other theories of liability or  
17 requirement established by statute or common law.

18 (g) This section does not prohibit a client employer from  
19 establishing, exercising, or enforcing by contract any otherwise  
20 lawful remedies against a labor contractor for liability created by  
21 acts of a labor contractor.

22 (h) This section does not prohibit a labor contractor from  
23 establishing, exercising, or enforcing by contract any otherwise  
24 lawful remedies against a client employer for liability created by  
25 acts of a client employer.

26 (i) Upon request by a state enforcement agency or department,  
27 a client employer or a labor contractor shall provide to the agency  
28 or department any information within its possession, custody, or  
29 control required to verify compliance with applicable state laws.  
30 Upon request, these records shall be made available promptly for  
31 inspection, and the state agency or department shall be permitted  
32 to copy them. This subdivision does not require the disclosure of  
33 information that is not otherwise required to be disclosed by  
34 employers upon request by a state enforcement agency or  
35 department.

36 (j) The Labor Commissioner may adopt regulations and rules  
37 of practice and procedure necessary to administer and enforce the  
38 provisions of subdivisions (b) and (i) that are under his or her  
39 jurisdiction.



1 (k) The Division of Occupational Safety and Health may adopt  
2 regulations and rules of practice and procedure necessary to  
3 administer and enforce the provisions of subdivisions (c) and (i)  
4 that are under its jurisdiction.

5 (l) The Employment Development Department may adopt  
6 regulations and rules of practice and procedure necessary to  
7 administer and enforce the provisions of subdivisions (b) and (i)  
8 that are under its jurisdiction.

9 (m) A waiver of this section is contrary to public policy, and is  
10 void and unenforceable.

11 (n) This section shall not be interpreted to impose individual  
12 liability on a homeowner for labor or services received at the home  
13 or the owner of a home-based business for labor or services  
14 received at the home.

15 (o) This section shall not be interpreted to impose liability on  
16 a client employer for the use of an independent contractor other  
17 than a labor contractor or to change the definition of independent  
18 contractor.

19 (p) This section shall not be interpreted to impose liability on  
20 the following:

21 (1) A client employer that is not a motor carrier of property  
22 based solely on the employer's use of a third-party motor carrier  
23 of property with interstate or intrastate operating authority to ship  
24 or receive freight.

25 (2) A client employer that is a motor carrier of property  
26 subcontracting with, or otherwise engaging, another motor carrier  
27 of property to provide transportation services using its own  
28 employees and commercial motor vehicles, as defined in Section  
29 34601 of the Vehicle Code.

30 (3) *A client employer that is not a household goods carrier  
31 based solely on the employer's use of a third-party household  
32 goods carrier permitted by the Public Utilities Commission  
33 pursuant to Chapter 7 (commencing with Section 5101) of Division  
34 2 of the Public Utilities Code to move household goods.*

35 ~~(3)~~

36 (4) *A client employer that is a household goods carrier permitted  
37 by the Public Utilities Commission pursuant to Chapter 7  
38 (commencing with Section 5101) of Division 2 of the Public  
39 Utilities Code subcontracting with, or otherwise engaging, another  
40 permitted household goods carrier to provide transportation of*

1 household goods using its own employees and motor vehicles, as  
2 defined in Section 5108 of the Public Utilities Code.

3 (5) A client employer that is a cable operator as defined by  
4 Section 5830 of the Public Utilities Code, a direct-to-home satellite  
5 service provider, or a telephone corporation as defined by Section  
6 234 of the Public Utilities Code, based upon its contracting with  
7 a company to build, install, maintain, or perform repair work  
8 utilizing the employees and vehicles of the contractor if the name  
9 of the contractor is visible on employee uniforms and vehicles.

10 ~~(4)~~

11 (6) A motor club holding a certificate of authority issued  
12 pursuant to Chapter 2 (commencing with Section 12160) of Part  
13 5 of Division 2 of the Insurance Code when it contracts with third  
14 parties to provide motor club services utilizing the employees and  
15 vehicles of the third-party contractor if the name of the contractor  
16 is visible on the contractor’s vehicles.

17 ~~SEC. 3.~~

18 SEC. 4. Section 6310 of the Labor Code is amended to read:

19 6310. (a) No person shall discharge or in any manner  
20 discriminate against any employee because the employee has done  
21 any of the following:

22 (1) Made any oral or written complaint to the division, other  
23 governmental agencies having statutory responsibility for or  
24 assisting the division with reference to employee safety or health,  
25 his or her employer, or his or her representative.

26 (2) Instituted or caused to be instituted any proceeding under  
27 or relating to his or her rights or has testified or is about to testify  
28 in the proceeding or because of the exercise by the employee on  
29 behalf of himself, herself, or others of any rights afforded him or  
30 her.

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

33 (b) Any employee who is discharged, threatened with discharge,  
34 demoted, suspended, or in any other manner discriminated against  
35 in the terms and conditions of employment by his or her employer  
36 because the employee has made a bona fide oral or written  
37 complaint to the division, other governmental agencies having  
38 statutory responsibility for or assisting the division with reference  
39 to employee safety or health, his or her employer, or his or her  
40 representative, of unsafe working conditions, or work practices,

1 in his or her employment or place of employment, or has  
2 participated in an employer-employee occupational health and  
3 safety committee, shall be entitled to reinstatement and  
4 reimbursement for lost wages and work benefits caused by the acts  
5 of the employer. Any employer who willfully refuses to rehire,  
6 promote, or otherwise restore an employee or former employee  
7 who has been determined to be eligible for rehiring or promotion  
8 by a grievance procedure, arbitration, or hearing authorized by  
9 law, is guilty of a misdemeanor.

10 (c) An employer, or a person acting on behalf of the employer,  
11 shall not retaliate against an employee because the employee is a  
12 family member of a person who has, or is perceived to have,  
13 engaged in any acts protected by this section.

14 (d) For purposes of this section, “employer” or “a person acting  
15 on behalf of the employer” includes, but is not limited to, a client  
16 employer as defined in paragraph (1) of subdivision (a) of Section  
17 2810.3 and an employer listed in subdivision (b) of Section 6400.

O