

2003 DISCRIMINATION COMPLAINT REPORT (LABOR CODE §98.75)

Labor Code §98.7 which became effective January 1986, establishes the authority of the Labor Commissioner to investigate, process, and resolve employee complaints of discrimination arising under various sections of the Labor Code. The procedures established pursuant to Labor Code §98.7 entail an investigation and or the convening of an investigative hearing after the filing of a complaint alleging discrimination in employment by an employee. In the event that the Labor Commissioner determines that a violation has occurred, the statute authorizes the Labor Commissioner to direct the violator to cease and desist from the violation and to take such action as is deemed necessary to remedy the violation including, where appropriate, rehiring or reinstatement of the aggrieved employee, reimbursement of lost wages and interest thereon, and or payment of reasonable attorney's fees associated with any investigative hearing by the Labor Commissioner.

In 1986, the Division was charged with enforcing nine statutes prohibiting discrimination in the workplace. In 1990 that number was increased to fifteen.

Currently, the Division is charged with enforcing twenty-nine statutes and regulations prohibiting discrimination in the work place. While the majority of these statutes are contained in the Labor Code, the Division also enforces statutes contained in the Health and Safety Code, the Unemployment Insurance Code, and the Industrial Welfare Commission Orders.

Effective January 1, 2003 the following changes in the Discrimination statutes occurred:

1. AB 2195 amended Labor Code Sections 230 and 230.1 extends the protections already available to victims of domestic violence to include the victims of sexual assault.
2. AB 2895 amended Labor Code § 232 and adding Labor Code § 232.5 which prohibits an employer from requiring that an employee refrain from disclosing information about the employer's working conditions, and from requiring an employee to sign a waiver or other document that restricts or denies the employee the right to disclose information about the employer's working conditions.
3. SB 1471 added Labor Code § 234 which clarifies that an employer's absence control policy violates the law when it counts employee sick leave usage authorized by Labor Code § 233 as an absence that may result in discipline, discharge, or demotion. Labor Code § 234 effectively removes family sick leave from consideration under any attendance program with adverse implications for employees.

In 1999, the number of complaints assigned for investigation numbered 795, in 2000 the number of complaints assigned was 834, in 2001 numbered 1,003 and in 2002, 1,099 complaints were assigned.

The following data is submitted in accordance with Labor Code §98.75:

In Calendar year 2002 the Division received 1,707 discrimination complaints. Of those received, 1,099 complaints were accepted and assigned for investigation. In calendar year 2003 the Division received 1,855 discrimination complaints. Of those received, 1,225 were accepted and assigned for investigation as detailed in Exhibit "A".

Exhibit "A" shows the number of complaints filed or opened under the various Labor Code Sections in 2003. The Division recorded a total of 1,225 cases filed in 2003. Approximately 66% of all cases opened during the year were complaints filed pursuant to Labor Code Section 98.6, which prohibits retaliation or discrimination in the workplace as a result of filing or intent to file a claim with the Labor Commissioner. These claims numbered 808. The second largest group of complaints of discrimination filed arose from health and safety issues in the workplace. These complaints, numbering 148, involved employees who claimed discrimination due to reporting safety and health violations on the job, which comprised 12% of total complaints filed.

Exhibit "B" shows the disposition of the various discrimination cases that were closed in 2003. Of the total 877 cases closed in 2003, 18 Decisions were in favor of the complainant, 87 cases resulted in voluntary settlements to the satisfaction of both parties, 243 cases were dismissed, 155 were withdrawn by the complainants before a determination was reached, and 339 cases were abandoned by the complainant.

In 2003, 10 referrals were made to the DLSE Legal Section to enforce the Labor Commissioner's finding of retaliation. Of the 10 referrals, 6 civil complaints were filed, 2 cases were settled prior to filing and 2 cases were not referred until the end of December and are pending action. In total, 12 cases were closed in 2003, 24 cases were settled and 2 judgments were entered.

Beginning in 1993 the Division implemented a statewide centralized Discrimination Complaint Investigation (DCI) Unit with five Deputy Labor Commissioners assigned full-time to investigate all discrimination complaints referred to the Division. The Deputies in the DCI Unit, currently nine full-time investigators, receive ongoing training in investigative techniques and report writing in a effort to ensure they all have a thorough knowledge of the discrimination statutes. The Division will continue to review its procedures to ensure the continuing success of the program.

Respectfully Submitted,

Date: _____

Gregory Rupp
Acting Deputy Chief

Attachments (2)

EXHIBIT A
DIVISION OF LABOR STANDARDS ENFORCEMENT

CALENDAR YEAR 2003 DISCRIMINATION COMPLAINTS FILED

Discrimination Complaints Labor Code Section		<i>Total Cases Filed in 2003</i>
96 K	(Loss of wages due to lawful conduct)	45
96k/1102	(Loss of wages due to lawful conduct) (Political Activity)	1
96k/6310	(Loss of wages due to lawful conduct) (Safety Complaint Retaliation)	1
98.6	(Labor Commissioner Complaints)	771
98.6/96k	(Labor Commissioner Complaints) (Loss of wages due to lawful conduct)	6
98.6/230(a)	(Labor Commissioner Complaints) (Jury Duty)	1
98.6/232(a)	(Labor Commissioner Complaints) (Disclosure of Wages)	3
98.6/232.5	(Labor Commissioner Complaints) (Disclosing information re: employer's working conditions)	4
98.6/233	(Labor Commissioner Complaints) (Sick Leave-Family)	2
98.6/432.7	(Labor Commissioner Complaints) (Disclosure of criminal record information/retaliation)	1
98.6/1041	(Labor Commissioner Complaints) (Adult Literacy Education Program)	1
98.6/1102.5	(Labor Commissioner Complaints) (Whistleblower)	6
98.6/1197.5	(Labor Commissioner Complaints) (Sex-Based Wage Discrimination)	1
98.6/6310	(Labor Commissioner Complaints) (Safety Complaint Retaliation)	12
230(a)	(Jury Duty)	34
230(a)/233	(Jury Duty) (Sick Leave-Family)	1
230(b)	(Victim of a crime - Appearance in court or subpoenaed witness)	3
230(c)	(Victim of Domestic Violence and/or Sexual Assault)	5
230(c)/230.1	(Victim of Domestic Violence Health and Safety) (Victim of Domestic Violence seeking medical attention)	2
230(c)/233	(Victim of Domestic Violence Health and Safety) (Sick Leave-Family)	1

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CALENDAR YEAR 2003 DISCRIMINATION COMPLAINTS FILED

Discrimination Complaints Labor Code Section		<i>Total Cases Filed in 2003</i>
230(c)/6310	(Victim of Domestic Violence Health and Safety) (Safety Complaint Retaliation)	1
230.1	(Victim of Domestic Violence seeking medical attention)	5
230.8	(Parent Participation in School Activities of Child)	5
232(a)	(Discussing or Disclosing Wages)	2
232(a)/6310	(Discussing or Disclosing Wages) (Safety Complaint Retaliation)	1
232(c)	(Discharge for disclosing wages)	2
232.5	(Disclosing information re: employer's working conditions)	24
232.5/232	(Disclosing information re: employer's working conditions) (Discharge for disclosing wages)	1
232.5/1102.5	(Disclosing information re: employer's working conditions) (Whistleblower)	2
233	(Sick Leave-Family)	32
432.7	(Disclosure of criminal record information/retaliation)	11
1025/1028	(Alcohol and Drug Rehab)	2
1101/1102	(Political Activity)	5
1102.5	(Whistleblower)	34
1102.5/6310	(Whistleblower/Safety Complaint)	2
1197.5	(Sex-Based Wage Discrimination)	19
2929	(Wage Garnishment)	10
2929/98.6	(Wage Garnishment) (Labor Commissioner Complaints)	2
2930	(Shopping Investigator's Report)	2
6310	(Safety Complaint Retaliation)	122

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DIVISION OF LABOR STANDARDS ENFORCEMENT

CALENDAR YEAR 2003 DISCRIMINATION COMPLAINTS FILED

Discrimination Complaints Labor Code Section		<i>Total Cases Filed in 2003</i>
6310/98.6	(Safety Complaint Retaliation) (Labor Commissioner Complaints)	1
6310/232.5	(Safety Complaint Retaliation) (Disclosing information re: employer's working conditions)	1
6310/1102.5	(Safety Complaint Retaliation) (Whistleblower)	5
6311	(Refusal to Work/Unsafe Conditions)	11
6310/6311	(Safety Complaint/Unsafe Conditions)	8
1596.881	(Health and Safety Code)	6
1237	(Unemployment Insurance Code)	8
Total Cases Filed		1,225

EXHIBIT B

DIVISION OF LABOR STANDARDS ENFORCEMENT

CALENDAR YEAR 2003 DISPOSITION OF DISCRIMINATION CASES

<i>CASES CLOSED</i>	<i>TOTAL</i>
Decisions Issued:	261
Findings for Employees	18
Complaints Dismissed	243
Complaints Withdrawn	155
Complaints Abandoned	339
Compliance Obtained:	
Complaints Settled	87
Investigative Hearings Held	16
Appeals to the Director:	53
Decisions Upheld	26
Decisions Reversed	5