

DEPARTMENT OF INDUSTRIAL RELATIONS

Headquarters Office
1515 Clay Street, Suite 401
Oakland, CA 94612
510-285-2118

**Lilia García-Brower**

*Labor Commissioner
Division of Labor Standards Enforcement*

**2021 RETALIATION COMPLAINT REPORT
(LABOR CODE § 98.75)**

The Labor Commissioner respectfully submits this report to the Legislature.

BACKGROUND

The mission of the California Labor Commissioner's Office (LCO), also known as the Division of Labor Standards Enforcement, is to ensure a just day's pay in every workplace in the State and to promote economic justice through robust enforcement of labor laws. By combating wage theft, protecting workers from retaliation, and educating the public, we put earned wages into workers' pockets and help level the playing field for law-abiding employers.

California law contains a strong public policy to protect employees from retaliation for exercising their rights. Labor Code section 98.7, enacted in 1986 and amended in 1999, 2001, 2002, 2013, and 2017 establishes procedures for the Labor Commissioner's Office to investigate retaliation complaints and to enforce determinations of unlawful retaliation issued by the Labor Commissioner.

The Retaliation Complaint Investigation (RCI) team within the LCO may accept complaints alleging violations of almost four dozen statutes prohibiting retaliation. Following an investigation of the alleged violations, the Labor Commissioner may issue a determination under Labor Code section 98.7 or a citation under Labor Code section 98.74. If the evidence does not establish a finding of retaliation, the determination will explain the findings, and the Labor Commissioner will dismiss and close the case. If the Labor Commissioner determines a violation has occurred, the statute authorizes the Labor Commissioner to direct the violator to cease and desist from committing the violation and may order, where appropriate, rehiring or reinstating the aggrieved employees, reimbursing them for lost wages and interest thereon, paying civil penalties, and posting a notice acknowledging the unlawful treatment of the employees. In the event of an investigative hearing, the Labor Commissioner may order the payment of reasonable attorney's fees associated with the hearing. If the employer does not appeal or comply with the determination, the Labor Commissioner is mandated to enforce the determination in a civil action. If a citation that was issued is not appealed or complied with, it becomes a final judgment.

SIGNIFICANT LEGISLATION RELATED TO PROHIBITING RETALIATION

Legislative expansion of enforcement authority and increased public awareness of workplace protections has enabled the LCO to return more wages to California workers and handle more complex claims that affect a wider range of parties.

Assembly Bill (AB) 1947 amends Labor Code section 98.7 to extend filing period to one year starting January 1, 2021.

AB 2658 amends Labor Code sections 6310 and 6311 to define the term "employee" to include a domestic work employee unless that employee performs household domestic service that is publicly funded,

including publicly funded household domestic service provided to a recipient, client, or beneficiary with a share of cost in that service.

AB 2992 amends Labor Code section 230 and 230.1, to expand the category of workers covered by the above provision to include victims of a crime that caused physical injury or mental injury and a threat of physical injury, or crimes involving persons whose immediate family member is deceased because of that crime. The amendments to Labor Code section 230 define “immediate family member” to include a child, parent, spouse, sibling, and any other individual whose close association with the employee is the equivalent of a family relationship of a child, parent, spouse, or sibling. AB 2992’s amendments now defines “crime” as a public offense as defined in section 13951 of the Government Code and whether or not there is an arrest, prosecution, or conviction for committing the crime.

AB 2992 also broadens the purposes for which an employee can take time off to the following:

1. To seek medical attention for injuries caused by crime or abuse.
2. To obtain services from a domestic violence shelter, program, rape crisis center, or victim services organization or agency because of the crime or abuse.
3. To obtain psychological counseling or mental health services related to an experience of crime or abuse.
4. To participate in safety planning and take other actions to increase safety from future crime or abuse, including temporary or permanent relocation.

Under AB 2992’s amendments, the certification is no longer limited to instances of domestic violence, sexual assault, or stalking but also includes certification for a crime or abuse, including a crime that caused physical injury or that caused mental injury and a threat of physical injury. AB 2992 also expands the certification that can be provided to include documentation that reasonably verifies that the crime or abuse occurred, including but not limited to, a written statement signed by the employee, or an individual acting on the employee’s behalf, certifying that the absence is for an authorized purpose under Labor Code sections 230 or 230.1. Significantly, an employee may now self-certify that an absence was for an authorized purpose by providing a signed written statement.

AB 2992 also adds “victim advocates” to the list of individuals who can provide the certification in Labor Code section 230(d)(2)(C). “Victim advocate” is defined as an individual who is paid or serves as a volunteer and provides services to victims under the auspices or supervision of an agency or organization with a documented record of providing services to victims or under the auspices or supervision of a court or law enforcement or prosecution agency.

AB 2992 expands Labor Code section 230(f)(2) by providing that reasonable accommodations may include assistance in documenting domestic violence, sexual assault, stalking, or “other crime” that occurs at work, or another work adjustment in response to domestic violence, sexual assault, stalking, or “other crime.” AB 2992 also makes the anti-retaliation provision in section 230(f)(8) applicable to victims generally, including victims of domestic violence, sexual assault, stalking, victims of a crime that caused physical injury or that caused mental injury and a threat of physical injury, and a person whose immediate family member is deceased because of a crime.

AB 2017 amends Labor Code section 233 to allow employees the sole discretion to designate days taken as paid sick leave under section 233. Thus, under AB 2017 amendments, an employee may designate sick leave as leave taken to care for a family member; for the employee’s own health condition, or for obtaining relief if the employee is a victim of domestic violence, sexual assault, or stalking.

AB 51 added section 12953 to the Government Code (within FEHA) and section 432.6 to the Labor

Code. AB 51 was intended to prohibit employers from requiring employees or job applicants to consent, as a condition of employment, to any waiver of a right, forum or procedure for a violation of the Labor Code or FEHA, and to make the refusal to enter into such an agreement a protected activity. A lawsuit was filed seeking to enjoin its enforcement, and a preliminary injunction issued on February 7, 2020. The Ninth Circuit lifted the injunction in 2021, which temporarily allowed the Labor Commissioner to move forward with investigations of this section in 2021.

COVID-19 Related Protections

Labor Code Section 6409.6 – Disclosure of COVID data

AB 685 enacted Labor Code section 6409.6, which is effective January 1, 2021. This legislation prohibits an employer from retaliation against a worker for disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate.

Labor Code Section 248 and 248.1 – 2020 Supplemental and Paid Sick Leave

On April 16, 2020, the Governor issued Executive Order N-51-20 that entitled some workers in the food sector industry to receive supplemental paid sick leave. Effective September 19, 2020, AB 1867 added new Labor Code sections 248 and 248.1, expanding COVID-19 supplemental paid sick leave (“2020 SPSL”) to all employees of employers with 500 or more employees, nationwide. The 2020 SPSL provided under Executive Order N-51-20 and AB 1867 expired on December 31, 2020. However, workers taking 2020 SPSL as of December 31, 2020, could continue to take the leave they were currently on even if the entitlement extended past December 31, 2020. For example, an employee who exhibited symptoms and was recommended to isolate on December 28, 2020, could continue to utilize the 2020 SPSL into 2021, and be paid for the time according to the requirements of the 2020 SPSL law.

Labor Code Section 248.2 – 2021 Supplemental Paid Sick Leave

The passage of Senate Bill (SB) 95, made effective on March 19, 2021, enacted Labor Code section 248.2 to provide employees who work for a private or public employer with over 25 employees an additional 80 hours of paid sick leave for the period of January 1, 2021 through September 30, 2021. 2021 COVID-19 Supplemental Paid Sick Leave (“2021 SPSL”) entitled these covered employees to paid sick leave that was in addition to leave provided under 2020 SPSL.

Covered employee were entitled to use 2021 SPSL when the covered employee was unable to work or telework due to any one of the following reasons:

1. The covered employee was subject to a quarantine or isolation period related to COVID-19, or had been advised by a healthcare provider to quarantine due to COVID-19, or was experiencing symptoms of COVID-19 and was seeking a medical diagnosis.
2. The covered employee was caring for a family member who was either subject to a quarantine or isolation period related to COVID-19 or had been advised by a healthcare provider to quarantine due to COVID-19, or the employee was caring for a child whose school or place of care was closed or unavailable due to COVID-19 on the premises.
3. The covered employee was attending a vaccine appointment or could not work or telework due to vaccine-related side effects.

The requirement to provide 2021 SPSL was retroactive to January 1, 2021, which meant that covered employees who took qualifying leave between January 1, 2021 and March 28, 2021, could request payment for that leave if it was not paid by the employer in the amount required under 2021 SPSL law.

COVID-19 related protections listed above, provide anti-retaliation protections under Labor Code section 98.7.

HIGHLIGHTS FROM THIS REPORTING PERIOD

COVID-19

In 2021, the RCI Unit received **913** COVID-related complaints and **584** of those were accepted for investigation. To have a cause of action under a retaliation statute, the facts must establish that:

1. The Complainant exercised a protection provided by law,
2. The employer knew of the protected activity, and
3. The employer took an adverse action against the complainant because of the protected activity.
4. There is sufficient causal link between the protected activity and the adverse action.

329 COVID-related complaints were not accepted for investigation. The most common reasons for not accepting a case for investigation are:

1. Claimant abandoned or withdrew the complaint (50 COVID claims),
2. Complaint was outside of the LCO's jurisdiction (64 COVID claims), and
3. The Complaint failed to allege all 4 basic elements (141 COVID Claims).

Of the 584 COVID-related complaints accepted for investigation, health and safety-related complaints accounted for **230** of the COVID claims and paid sick leave violations accounted for **207** of the claims.

In 2021, COVID related case settlement amounts totaled **\$1,010,137.50**. Additionally, the RCI Unit had two determinations issued in 2021, but due to lack of compliance, both cases were referred to the RCI Legal Unit (RCI Legal) for enforcement. Four citations were also issued in four cases. The unit continues to track and prioritize these cases.

Alternative Dispute Resolution

RCI embraced alternative means of dispute resolution to minimize delays and achieve positive case outcomes sooner. Using funds secured under SB 115, all RCI attorneys, seniors, and deputies were trained and certified in mediation skills through a 40-hour professional Mediation Certificate program, and/or in negotiation techniques through a 16-hour Negotiation Certificate program, both offered by UC Hastings' Center for Negotiations and Dispute Resolution (CNDR). CNDR also trained the RCI Unit on being trauma informed – a Labor Commissioner's Office priority.

RCI team members applied these new skills immediately in pre-investigation settlement conferences for COVID claims and increased positive results. Between June and December 2021, deputies held talks in **590** of the **691** COVID related cases flagged for conference. **Sixty-six** settlements were reached for a total of **\$329,635.05**. The RCI Program resolved **61%** of COVID claims referred for conference closing **three hundred sixty** cases, including **20** determinations, during this period.

Also using funds from SB 115, RCI Legal set up a two-year engagement with Judicial Arbitration Mediation Services (JAMS) for alternate dispute resolution services. This arrangement provides RCI Legal and defendants additional options for resolving disputes through less resource-intensive means than litigation.

Early Engagement Program

In December 2020, the LCO launched an internal referral program to provide a proactive outreach to workers and employers to educate them about anti-retaliation laws, workers' rights, and employer responsibilities. The initial focus is on workplace issues related to the COVID-19 pandemic and Supplemental Paid Sick Leave.

Under this program, when a worker calls the LCO and when the worker indicates they have experienced retaliation, are experiencing ongoing retaliation, or fear imminent retaliation for exercising their rights related to COVID protections, such as to use paid sick leave, supplemental paid sick leave, or complaining about an unsafe work condition (e.g., lack of adequate personal protective equipment, adequate spacing between workers, or enforcement of mask mandates), team members can make referrals to a predesignated RCI team.

In one instance, a worker was terminated after calling out sick because he was experiencing symptoms related to a COVID-19 vaccine. The employer's justification was because the worker was a "no-call no-show." The day after termination, the worker called the Labor Commissioner's Public Information Line to inquire about his rights. The worker was promptly referred to the Early Engagement Program (EEP) and a RCI Deputy Labor Commissioner called the employer to provide education on 2021 Supplemental Paid Sick Leave requirements, including potential wage and retaliation violations. After discussing the matter, the employer explained that it might have been a misunderstanding and offered the worker his job back. The quick response by all involved created an opportunity to reverse the retaliation and minimize harm to the worker.

California Equal Pay Act

The California Equal Pay Act (EPA) prohibits an employer from paying any of its employees' wage rates that are less than what it pays employees of the opposite sex, or of another race, or of another ethnicity, for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.

To investigate these claims, the Labor Commissioner requests descriptions of job duties and wage rate history for relevant workers from the employer. In addition, the Labor Commissioner requests evidence to determine if a difference in pay for substantially similar work is due to seniority, merit, a system that measures production, and/or a "bona fide factor other than sex, race, or ethnicity." The investigation requires analysis of comparable jobs to determine if there is substantial similarity and a pay disparity. The investigation may require analysis of the duties for multiple job classifications and compensation for those in comparative positions. A single complaint can require the analysis of a large number and broad range of employee classifications.

The number of claims filed with the Labor Commissioner's Office under the Equal Pay Act remains high. There were **127** EPA claims filed in 2021 and **594** cases filed in the last four years (1/1/2018 – 12/31/2021). In 2021, **82** EPA investigations were completed with **43** cases withdrawn and **11** settlements. The remaining cases were closed for other reasons, including abandonment, lack of jurisdiction, and concurrent filing in court. There were no merit findings.

The LCO continued coordinating with the Department of Fair Employment and Housing (DFEH) to implement shared enforcement of the Equal Pay Act as of January 1, 2021; previously, LCO enforced Labor Code section 1197.5 alone. LCO also made progress in obtaining pay disparity software to better and more quickly evaluate EPA claims.

Immigration Threat

Immigration threat cases remain a top priority for the Labor Commissioner's Office. In 2021, there were **33** immigration complaints filed, and **151** immigration complaints have been filed in the last three years (1/1/2019 – 12/31/2021). These cases typically involve multiple statutory protections under Labor Code sections 244, 1019, 1019.1, 1024.6 and 2814. In 2021, **35** immigration case investigations were completed, with **three** cause findings (one cause finding case settled after the determination was issued), **six** settlements, and **nine** withdrawals. The remaining **17** cases were closed for other reasons, including failure to establish a prima facie case, abandonment, and lack of jurisdiction.

In one case, a worker was terminated after requesting "drive time" pay from his employer. Later, when the worker requested copies of his time records the employer responded with an immigration-related threat. Citations were issued seeking more than \$40,000 in civil penalties, lost wages, and interest. After a hearing, the citations were affirmed and entered as a judgment. RCI Legal is now working to collect.

In another case, a worker was terminated and received immigration-related threats after the worker requested unpaid and overdue wages from the employer. After the worker filed a wage claim with the LCO, the employer made four additional threats. The employer was cited under Labor Code section 98.74. Using this powerful enforcement tool, the LCO successfully collected \$87,885, which was the judgment in full. The worker's former employer was a contractor, so the LCO recovered a little over \$2,000 from the contractor's bond. The remaining balance was satisfied by the sale of the employer's home.

OSHA

The RCI Unit met its goal with the U.S. Department of Labor - Occupational Safety and Health Administration (DOL-OSHA) of increasing employer and worker awareness of activities protected from retaliation. The Bureau of Field Enforcement distributed a massive number of new, COVID-19-related flyers during outreach events and inspections. In addition to embracing alternative forms of dispute resolution, the RCI unit made additional efforts on cases alleging violations of Labor Code sections 6310 and 6311 to include a provision for the employer to post a Notice in the workplace confirming an employee's right to report unsafe work conditions, or a workplace injury without fear of retaliation. As a result of these efforts, 20 employers agreed to post such a notice as a part of their settlement agreements.

In one case, the investigator found that the employer illegally demoted a worker after they complained about a faulty front door that created health and safety issues for workers and customers. A cause finding was issued within a year of the filing date. The employer fully complied with the determination and the Complainant received \$10,000.00 in penalties.

In another OSHA case, a registered nurse researched California safety standards, as it related to COVID-19. The worker was terminated after she spoke with management about California's Division of Occupational Safety and Health's (Cal/OSHA) PPE requirements when working with suspected COVID-19 patients, and for letting management know she had contacted a Cal/OSHA consultant about these issues. The case settled for \$21,000, including the full amount of lost wages, payable to the worker, and a Notice will also be posted for 45 days stating the Labor Commissioner found there was enough evidence to support retaliation.

As reflected in the annual reports to the legislature, the number of OSHA related cases has increased over the last few years. In 2020, the Labor Commissioner received 579 new cases claiming violations of Labor Code sections 6310 and 6311. In 2021, these cases were down only slightly to 578. In the last five years, there have been 2,867 new cases.

Legal Department

In 2021, RCI attorneys filed **25** civil enforcement actions in California courts for unlawful retaliation and prosecuted **25** citations administratively. RCI Legal secured **four** judgments from citations. RCI Legal also closed **15** cases after securing judgments and/or settlements.

Litigation highlights include:

- LCO secured one employer's payment of \$100,000 in a civil enforcement action pre-filing settlement.
- As part of another settlement, an employer provided notice to 400 employees about the nature of LCO's civil enforcement action against it along with details about the Labor Code retaliation protections at issue. The employer also attended a six-hour training provided by LCO and the Employment Development Department (EDD) personnel on wage and hour laws and workers' rights, including Labor Code sections 98.6, 6310, 6311, paid sick leave, and COVID-19 related protections.
- In another settlement, an employer allowed LCO personnel to provide on-site training to employees about their rights under Labor Code sections 98.6, 1102.5, and 6310.
- In 2020, LCO appealed a trial court's order staying a LCO retaliation investigation because the worker signed an arbitration agreement with the employer. The Court of Appeal reversed in 2021, holding that the Labor Commissioner "acts as a prosecutor . . . when she investigates a retaliation complaint . . . or issues a determination . . . under [Labor Code] section 98.7," or when she files an action in court following the issuance of a determination; that the Federal Arbitration Act (FAA) does not apply when the Labor Commissioner acts as a prosecutor; and thus, "the FAA does not prevent the Labor Commissioner from taking any of those actions on [the] retaliation complaint." (*Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 583-585.)
- LCO filed an amicus brief and participated in oral argument in *Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, a case before the California Supreme Court on November 3, 2021 on certification from the Ninth Circuit Court of Appeals. The case concerned the proper method for presenting and evaluating a claim of whistleblower retaliation under Labor Code section 1102.5. The Court agreed with LCO that the evidentiary framework prescribed by statute in Labor Code section 1102.6 applied, and that employees need not satisfy the *McDonnell Douglas* test to make out a case of unlawful retaliation.
- LCO successfully petitioned the California Supreme Court for review of a Fourth District Court of Appeal decision affirming in part and reversing in part the judgment in a civil enforcement action for unlawful retaliation. The issue is whether Labor Code section 1102.5(b) protects an employee from retaliation for disclosing unlawful activity to a person or agency that already knows about the unlawful activity.

REPORT OF PERFORMANCE

Labor Code section 98.75 requires the Labor Commissioner to submit a report annually on the following topics: (a) the complaints filed with the Labor Commissioner in the previous calendar year under Labor

Code sections 98.7 and 1197.5;¹ (b) the number of determinations issued, investigative hearings held, complaints dismissed, and complaints found to be valid, grouped by the year in which the complaints were filed; and (c) the number of cases in which the employer complied or violated an order to remedy the unlawful discrimination, and the number of court actions brought by the Labor Commissioner to remedy unlawful discrimination and the results of those court actions. If any action under Labor Code 98.7 was not brought in court promptly, the report must also specify the reasons.

Exhibit A, submitted under Labor Code section 98.75, shows the number of complaints filed or opened in 2020 under various Labor Code sections and one section each from the Health and Safety Code and Unemployment Insurance Code. In summary:

- Total number of complaints received by the RCI Unit: **6,063**
- Total number of cases accepted for investigation as within LCO jurisdiction: **2,067**
- Total number of violations alleged for all cases accepted for investigation: **4,861**.
- The largest group of complaints filed originated from alleged retaliation for filing or threatening to file a claim relating to a right that is under the jurisdiction of the Labor Commissioner (Labor Code section 98.6). There were **1,897** alleged violations of this nature.
- The second largest group of complaints filed originated from alleged retaliation for disclosing violations or noncompliance with local, state or federal law (Labor Code section 1102.5). There were **1,450** such violations alleged and accepted for investigation.

Exhibit B details the disposition of the various retaliation cases for which a determination was issued in 2021 based on the year the complaint was filed. The RCI Unit issued **237** determinations, of which **228** were dismissals and **nine** were cases with merit (findings for employees). Additionally, **27** citations were issued on a total of twelve complaints.

- Of the **nine** cases with merit, **one** case was settled before referral for enforcement, **two** cases are pending settlement², **six** cases are pending court filing, and **none** of the cases with 2021 determinations have been filed in court.
- The Labor Commissioner filed **24** cases in Superior Court, settled **9** cases, and obtained judgments in **ten** other cases—six through civil enforcement actions and four through the citation process.
- Under Labor Code section 98.7(b)(1), the Labor Commissioner may, at her discretion, hold an evidentiary hearing. The RCI Unit held no investigative hearings in 2021.

¹ Labor Code section 1197.5 prohibits an employer from paying its employees at a wage rate that is less than the wage rate it pays to employees of the opposite sex, or of a different race or ethnicity, for substantially similar work done under similar working conditions, when that work is viewed as a composite of skill, effort, and responsibility, unless the employer demonstrates that the difference in wage rate is based on a seniority system, a merit system, a system that measures quantity or quality of production, or a factor other than sex, race or ethnicity, such as education, training or experience. Amendments to this section went into effect in 2016 and 2017.

² If these cases are unable to settle, the cases will be referred to RCI Legal for enforcement.

- In total, the Labor Commissioner closed **1,579** cases in 2021. Closed cases include complaints dismissed after issuance of determination, settlements, and cases withdrawn or abandoned by the complainants.

Exhibit C reports statistics over a six-year period for comparative purposes and to highlight the growth in the number of statutes enforced, new claims submitted, total cases accepted, and violations alleged among other things. This chart helps establish trends versus a one- or two-year anomaly.

OTHER ACCOMPLISHMENTS IN 2021

Not included in the exhibits are the following details related to merit findings, settlements, and judgments.

- The **nine** merit findings ordered payment of **\$166,814.37** in lost wages, **\$33,826.00** in interest on the lost wages, **\$90,000** in penalties payable to the worker, and **\$70,000** in penalties payable to the state.
- In 2021, the RCI Unit and RCI Legal refined RCI citation procedures, trained the RCI Unit on the additional evidentiary considerations for citations, guidelines for recommending citations and procedures on how to issue citations. As of 12/31/2021, The **25** citations issued ordered payment of **\$140,700.72** in lost wages, **\$16,242.23** in interest on the lost wages, **\$11,700** in front pay, **\$220,000** in penalties payable to the worker, totaling **\$388,642.95** in amounts payable to employees with an additional **\$140,000.00** in penalties due the state. Payments of **\$130,012.47** have so far been received. RCI has an additional **eight** citations that are pending issuance.
- The RCI program unit also reached **414** settlements before issuance of determinations for **\$3,267,879.48**, payable to the individuals who filed the claims. (These figures include cases filed in prior years.)
- RCI Legal obtained **\$346,399.51** in court judgments and **\$222,058.26** in settlements. This amount includes statutory penalties, and attorneys' fees and costs to the Labor Commissioner's Office. Legal also obtained significant injunctive relief in addition to monetary amounts, including posting notices to employees, training, purging negative information from the complainants' files, reference letters, and cease and desist orders.

The RCI unit continues to work to find innovative approaches to ensuring a just and fair workplace for all Californians.

Respectfully submitted,



Lilia García-Brower
Labor Commissioner

EXHIBIT A
Division of Labor Standards Enforcement
Calendar Year 2021 Retaliation Violations Alleged per LC 98.75(a)

Labor Code	Description of Violations Alleged	Total Allegations
98(k)	For loss of wages as a result of engaging in lawful conduct during nonworking hours	3
98.6	For filing or threatening to file a claim with the Labor Commissioner	1,897
230(a)	For taking time off to serve on a jury or appear as a witness in court	6
230(b)	For taking time off to appear in court to comply with a subpoena or court order as a witness in a judicial proceeding as a victim of a crime	4
230(c)	For taking time off to seek medical help as a victim of domestic violence, sexual assault, stalking, an/or a crime that caused physical injury or that caused mental injury and a threat of physical injury	15
230(e)	Protection based on employee's status as a victim of domestic violence, sexual assault, stalking, and/or a crime that caused physical injury or that caused mental injury and a threat of physical injury	27
230(f)	Protects victims of domestic violence, sexual assault, stalking, and/or a crime that caused physical injury or that caused mental injury and a threat of physical injury who request reasonable accommodations	26
230.1	For employers with 25 or more employees, protects employee who is a victim of domestic violence, sexual assault, stalking and/or a crime that caused physical injury or that caused mental injury and a threat of physical injury for taking time off from work to obtain injunctive relief	11
230.2(b)	Protects employees or family members of employees who are victims of a crime to take time off work to attend judicial proceedings	1
230.3	Protects employees who take time off to perform services as a volunteer first responder	0
230.5	Protects an employee who is a victim of certain offenses identified in Labor Code section 230.5(a)(2) for taking time off to appear in court at any proceeding	1
230.7	For taking time off from work to appear at a pupil's school at the request of the pupil's teacher, if the employee gives reasonable notice	0
230.8	For employers with 25 or more employees, protects employee who participates in school activities	4
232(a) & (b)	Protects employees who discuss or disclose wages or refuse to agree not to disclose wages	8
232.5	Protects employee's right to discuss employer's working conditions	8
233	Protects employee's ability to use sick leave to attend to illness of a family member	22
244	Prohibits employer from reporting or threatening to report an employee's citizenship or immigration status to a state, federal, or local agency because the employee exercises a right under the Labor Code, the Government Code, or the Civil Code; this protection also extends to former and prospective employees and their family members	29
245-249	Prohibits paid sick leave retaliation	306
432.3	Prohibits employer from relying on prior salary history as a factor in a job offer; employer must provide pay scale upon request	1
432.6	Prohibits employer from conditioning employment on waiver of rights under the Labor Code or the Fair Employment and Housing Act	4

EXHIBIT A
Division of Labor Standards Enforcement
Calendar Year 2021 Retaliation Violations Alleged per LC 98.75(a)

Labor Code	Description of Violations Alleged	Total Allegations
432.7	Prohibits employer from asking applicant to disclose information on arrest or detention that did not result in conviction or referral to/participation in any diversion program or juvenile court	3
1019	Protects employees engaging in activities protected by the Labor Code from unfair immigration-related practices	22
1019.1	Prohibits an employer from requiring applicants and employees to provide new or different documents to satisfy section 1324a(b) of Title 8 of US Code to prove eligibility for employment	5
1024.6	Protects employees who update or attempt to update their personal information	2
1030–1033	Protects employees who request lactation accommodations	2
1101	Prohibits employer from preventing employees from engaging in politics or running for public office	1
1102	Prohibits employer from coercing, influencing or attempting to coerce/influence employees political action or activity	2
1102.5	Protects employee's right to report violations or noncompliance with a state or federal statute	1,450
1197.5	Protects employees from retaliation based on sex-, race-, or ethnicity-based wage discrimination	127
a	-Claims alleging sex-based wage discrimination: 39	
a & b	-Claims alleging sex-based and race- or ethnicity-based wage discrimination: 38	
a, b, & k	-Claims alleging sex-based and race- or ethnicity-based wage discrimination and retaliation: 4	
a & k	-Claims alleging sex-based discrimination and retaliation: 4	
b	-Claims alleging race- or ethnicity-based discrimination: 38	
b & k	-Claims alleging race- or ethnicity-based wage discrimination and retaliation: 1	
k	-Claims alleging retaliation based on sex-based wage discrimination: 2	
k	-Claims alleging retaliation based on race- or ethnicity-based wage discrimination: 1	
k	-Claims alleging retaliation based on sex-, race-, or ethnicity-based wage discrimination: 0	
1198.3	Prohibits retaliation against an employee who refuses to work hours in excess of those permitted by the Industrial Welfare Commission Orders	1
1311.5	Provides for treble damages when an individual is retaliated against as a minor	1
2810.8	Prohibits an employer from retaliating against a laid off employee who exercises their recall rights related to the COVID-19 pandemic	4
2814	Prohibits an employer from using E-Verify to check the status of an existing employee or applicant who has not been offered employment	1
2929(b)	Protects employees whose wages are garnished for payment of one judgment	0
2930	Protects employees who are disciplined or discharged based on a shopping investigator's report; employer must provide a copy of the report before the discipline or discharge occurs	0

EXHIBIT A
Division of Labor Standards Enforcement
Calendar Year 2021 Retaliation Violations Alleged per LC 98.75(a)

Labor Code	Description of Violations Alleged	Total Allegations
6310	Protects employees who complain about or initiate proceedings related to workplace safety or health conditions	597
(a)(4)	-Claims alleging retaliation after report of workplace injury included above (not retaliation after workplace safety complaints): 46	
6311	Protects employees who refuse to perform work in an environment that is hazardous to the employee or co-workers	52
6403.5	Protects an employee who refuses to lift, reposition or transfer a patient due to concerns about patient or worker safety or because of the lack of trained lift team personnel or equipment	0
6409.6	Prohibits an employer from retaliating against a worker for disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate.	206
Other	Other Code sections under the jurisdiction of the Labor Commissioner's Office	
1596.881	Health and Safety Code, regarding licensing of child-care facilities	2
1237	Unemployment Insurance Code, protects employee's right to seek information on unemployment insurance	10
IWC- Alternative workweek elections	Protects an employee who express an opinion regarding an alternative workweek election	0
	Total Number of Complaints Received by RCI Unit¹	6,063
	Total Cases Accepted for Investigations: Accepted Cases²	2,067
	Total Violations Alleged in Cases Accepted for Investigation	4,861

¹ This is the number of new complaints received in 2021 prior to screening. Of the 6,063 new complaints, 4,655 were received through the online filing system, and 1,408 were filed by mail, email, phone or referral.

² After filing, each case must be screened prior to acceptance. To screen cases, RCI staff conduct an interview of the complainant and provide additional time to submit information to establish a prima facie case of retaliation.

EXHIBIT A
Division of Labor Standards Enforcement
Calendar Year 2021 Retaliation Violations Alleged per LC 98.75(a)

COVID-Related Complaints³

Labor Code	Description of Violations Alleged	Total Allegations
98.6	For filing or threatening to file a claim with the Labor Commissioner	587
230(c)	For taking time off to seek medical help as a victim of domestic violence, sexual assault, stalking, an/or a crime that caused physical injury or that caused mental injury and a threat of physical injury	2
230(e)	Protection based on employee's status as a victim of domestic violence, sexual assault, and/or stalking	2
230(f)	Protects victims of domestic violence, sexual assault, and/or stalking who request reasonable accommodations	2
230.1	For employers with 25 or more employees, protects employee who is a victim of domestic violence, sexual assault, stalking and/or a crime that caused physical injury or that caused mental injury and a threat of physical injury for taking time off from work to obtain injunctive relief	1
230.8	For employers with 25 or more employees, protects employee who participates in school activities	4
232(a) & (b)	Protects employees who discuss or disclose wages or refuse to agree not to disclose wages	1
232.5	Protects employee's right to discuss employer's working conditions	1
233	Protects employee's ability to use sick leave to attend to illness of a family member	4
245–249	Prohibits paid sick leave retaliation	207
432.6	Prohibits employer from conditioning employment on waiver of rights under the Labor Code or the Fair Employment and Housing Act	1
1019	Protects employees engaging in activities protected by the Labor Code from unfair immigration-related practices	1
1019.1	Prohibits an employer from requiring applicants and employees to provide new or different documents to satisfy section 1324a(b) of Title 8 of US Code to prove eligibility for employment	1
1030-1033	Protects employees who request lactation accommodations	1
1102.5	Protects employee's right to report violations or noncompliance with a state or federal statute	357
1311.5	Provides for treble damages when an individual is retaliated against as a minor	1
2810.8	Prohibits an employer from retaliating against a laid off employee who exercises their recall rights related to the COVID-19 pandemic	4
6310	Protects employees who complain about or initiate proceedings related to workplace safety or health conditions	209
(a)(4)	-Claims alleging retaliation after report of workplace injury included above (not retaliation after workplace safety complaints): 6	
6311	Protects employees who refuse to perform work in an environment that is hazardous to the employee or co-workers	22

³ COVID-Related Complaints and Violations Alleged in this table are included in table above.

EXHIBIT A
Division of Labor Standards Enforcement
Calendar Year 2021 Retaliation Violations Alleged per LC 98.75(a)

Labor Code	Description of Violations Alleged	Total Allegations
6409.6	Prohibits an employer from retaliating against a worker for disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate.	206
Other	Other Code sections under the jurisdiction of the Labor Commissioner's Office	
1237	Unemployment Insurance Code, protects employee's right to seek information on unemployment insurance	1
	Total Number of COVID-Related Complaints Received by RCI Unit	913
	Total COVID-Related Cases Accepted for Investigations: Accepted Cases	584
	Total COVID-Related Violations Alleged in Cases Accepted for Investigation	1,615

In Process

EXHIBIT B
Labor Commissioner's Office
2021 Retaliation Unit Legislative Report
Calendar Year 2021 Disposition of Retaliation Cases per Labor Code 98.75 (b)

Disposition	2013	2015	2016	2017	2018	2019	2020	2021	Total
Determinations issued	1	6	11	14	25	57	101	22	237
Cases with merit	0	1	0	3	1	2	2	0	9
Cases dismissed	1	5	11	11	24	55	99	22	228
Citations issued		4			8	9	6		27 ¹
Investigative hearing held									0

Results of cases with merit	
Compliance	0
Settlements prior to referral for enforcement	1
Pending settlement prior to referral for enforcement	2
Noncompliance	
Referred for enforcement (awaiting court filing)	6
Court filings for 2021 determinations	0
Legal Activity	
Court Filings	24
Settlements	9
Judgments	6
Judgments from Citations	4
Cases closed in 2021	1,579

¹ Twenty seven citations on a total of twelve complaints.

EXHIBIT C
Labor Commissioner's Office
2021 Retaliation Unit Legislative Report
Six-Year Statistics

Legislative Report Statistics	2016	2017	2018	2019	2020	2021
Retaliation statutes enforced	46	46	48	48	52	53
Total number of complaints received	4,211	4,178	5,633	6,515	5,334	6,063
Total cases accepted	2,441	2,526	2,590	2,336	1,897	2,067
Total violations alleged in cases Accepted	4,300	5,220	5,664	5,327	4,357	4,861
Cases closed	1,627	2,897	2,588	2,483	2,189 ¹	1,579
Unassigned or backlogged cases:	1,532	4	642	732	2,822	3,378
Positive outcomes for complainants: Cause findings + settlements + citations	459	498	580	548	435	483

¹ 2020 Leg Report reported 6,526 cases closed for 2020; however, this was an error. 6,526 also included cases that were administratively closed.