

To the (whistleblowing) victor go the spoils...

Article By:

Timothy Long

Matthew J. Weber

Effective January 1, 2021, plaintiffs who bring whistleblower retaliation claims under California Labor Code section 1102.5 will be eligible to recover attorneys' fees if they prevail. Labor Code section 1102.5 prohibits employers from retaliating against an employee who (1) discloses information the employee reasonably believes constitutes unlawful conduct to: a government agency/law enforcement, a person with authority over the employee, or another employee with authority to investigate/correct the alleged violation; or (2) testifies/provides information to an investigating governmental body. Until now, claims made under Section 1102.5 did not provide for an award of attorneys' fees to a prevailing plaintiff, however AB 1947, signed into law by Governor Newsom amends Section 1102.5 to include subsection (j), which authorizes a court "to award reasonable attorney's fees to a plaintiff who brings a successful action for a violation of these provisions."

Section 1102.5 already provides a strong weapon for plaintiffs claiming retaliation. The ability to recover attorney's fees will make claims brought under Section 1102.5 even more dangerous for employers.

This amendment underscores the need for employers to ensure they have compliant and fulsome internal complaint policies and processes in place. This is particularly true in the COVID era when employees may believe their employers have not complied in full with the various state and county health and workplace safety orders issued in California. Employee complaints should be tracked, investigated by trained investigators and documented appropriately. Complaint-related policies should make clear that employees who make good faith complaints about potentially unlawful conduct, or alleged violations of company policy, will not be subject to retaliation. The amendment to Section 1102.5 amplifies the importance for employers to remain ever vigilant in their compliance efforts.

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