

Amendments to California Anti-Retaliation Laws Facilitate Employee Lawsuits

Article By:

Eric W. Witt

Carmen J. Cole

Soon it will be easier for California employees to establish a prima facie claim of retaliation in violation of California law. On October 8, 2023, Governor Gavin Newsom signed Senate Bill No. 497 into law. Also referred to as the Equal Pay and Anti-Retaliation Protection Act, the legislation amends California Labor Code Sections 98.6, 1102.5 and 1197.5 and will create a presumption of retaliation when an employer takes an adverse employment action against an employee within 90 days of the employee engaging in conduct protected under any of the specified Labor Code sections.

Under California law, a prima facie claim of retaliation requires a showing that:

1. the employee engaged in protected conduct,
2. the employer took an adverse employment action against the employee and
3. the circumstances indicate a causal connection between the protected conduct and the adverse employment action.

Courts apply the following three-step burden shifting analysis to retaliation claims:

1. the plaintiff employee first has the burden of establishing a prima facie claim,
2. if the employee does so, the employer may rebut the presumption by establishing a lawful, non-retaliatory reason for the adverse employment action, and
3. to prevail on his or her claim, the employee must then establish that the non-retaliatory reason presented was pretextual (or not genuine).

SB 497 makes it easier for an employee to establish a claim of retaliation and satisfy the first step of the burden shifting analysis. Under the new law, the plaintiff employee will need only to show that the adverse employment action occurred within 90 days of protected conduct. It is not clear to what degree SB 497 will change California law in practice, given that some courts already find close proximity in timing between protected conduct and an adverse employment action alone sufficient to make out a prima facie claim. By creating a bright-line 90-day rule, however, SB 497 gives clarity as to the temporal connection between protected conduct and an adverse employment action that is alone sufficient for a prima facie claim.

SB 497 also provides that an employer is liable for a civil penalty not exceeding \$10,000 per employee for each violation of the specified Labor Code sections that prohibit retaliation. The civil penalty will be awarded to the employee who suffered the violation. The civil penalty is in addition to other remedies an employee may recover.

The enactment of SB 497 makes it even more important that employers, whenever appropriate, discipline employees progressively and document the reasons for employee discipline. Clear documentation of both the fact of employee discipline and the reasons for employee discipline enhance an employer's ability to defend against claims of retaliation and to demonstrate that challenged adverse employment actions were taken for legitimate reasons. Employers also must maintain and implement policies that provide for the objective investigation of employee internal complaints and prohibit retaliatory action.

© Copyright 2025 Squire Patton Boggs (US) LLP

National Law Review, Volume XIII, Number 362

Source URL: <https://natlawreview.com/article/amendments-california-anti-retaliation-laws-facilitate-employee-lawsuits>