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THIRD READING

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Bill No: AB 1947  
Author: Kalra (D) and Gonzalez (D), et al.  
Introduced: 1/17/20  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 7-2, 7/30/20  
AYES: Jackson, Durazo, Lena Gonzalez, Monning, Stern, Umberg, Wieckowski  
NOES: Borgeas, Melendez

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/20/20  
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski  
NOES: Bates, Jones

ASSEMBLY FLOOR: 46-23, 6/10/20 - See last page for vote

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**SUBJECT:** Employment violation complaints: requirements: time

**SOURCE:** California Employment Lawyers Association  
Coalition for Humane Immigrant Rights  
Santa Clara County Wage Theft Coalition  
Service Employees International Union California

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**DIGEST:** This bill extends the time that workers have to file a claim with the California Labor Commissioner if their employer retaliates against them for exercising their workplace rights under the Labor Code. This bill also authorizes an attorneys' fee award to a worker who prevails on a whistleblower claim.

**ANALYSIS:**

Existing law:

- 1) Prohibits an employer, or any person acting on behalf of the employer, from discharging or otherwise discriminating, retaliating against, or taking any adverse action against any employee because the employee engaged in certain protected conduct. Allows employees who believe that they been discharged or

otherwise discriminated against in violation of any law under the jurisdiction of the Labor Commission to file a complaint with the Division of Labor Standards Enforcement (DLSE) within six months of the occurrence of the violation. (Lab. Code § 98.7.)

- 2) Prohibits an employer, or any person acting on behalf of the employer, from discharging, retaliating against, and taking any other adverse action against an employee who discloses information about a violation to law enforcement, a government agency, or any supervisor or any other person, including another employee, with authority to investigate the violation. (Lab. Code § 1102.5.)

This bill:

- 1) Extends the filing period with the DLSE to one year for complaints based on a person's belief that they have been discharged or discriminated against by an employer in violation of any law under the jurisdiction of the Labor Commissioner.
- 2) Authorizes a court to award reasonable attorneys' fees to an employee plaintiff who brings a successful action for a violation of their right to disclose information that the plaintiff has reasonable cause to believe concerns a violation by the employer of, among other things, a state or federal statute.

### **Comments**

*Workplace anti-retaliation laws and this bill.* Workplace anti-retaliation laws are the bedrock upon which all other workplace rights rest. As a practical matter, employees have no real right to minimum wage, overtime, rest breaks, worksite safety, or to be free from harassment if, upon attempting to exercise those rights, they can be fired immediately.

The California Labor Code contains two key workplace anti-retaliation laws. This bill proposes to fortify both of them, each in slightly different ways.

Labor Code Section 98.7 empowers workers to file retaliation claims with the California Labor Commissioner. Such a claim triggers an administrative investigation which, if it bears out the claim, can lead to penalties against the employer and reinstatement of the worker, among other potential remedies. Under existing law, workers must file their claim of retaliation under Labor Code Section 98.7 within six months of whatever adverse action was taken against them. This bill extends that deadline to one year.

Labor Code Section 1102.5 is a whistleblower law, providing protection to workers who, in good faith, come forward to disclose legal violations taking place in the workplace. Under existing law, workers who prevail in lawsuits alleging that their employer violated these protections may obtain damages, but they will still be stuck paying their own attorneys' fees, unless they can find another way to convince the judge to make the employer pay those fees. This bill would alter that dynamic by authorizing courts to award reasonable attorneys' fees to a worker than prevails on a claim of retaliation for blowing the whistle on legal misconduct at their workplace.

*Similar bill last session and Governor's veto.* This bill is a narrower version of AB 403 (Katra, 2019). Whereas this bill would extend the deadline for filing a retaliation claim with the Labor Commissioner from six months to one year, AB 403 proposed to extend the deadline all the way out to two years from the time of the retaliatory act. The bill cleared both houses of the Legislature, but it was then vetoed by Governor Newsom. In rejecting AB 403, however, the Governor strongly suggested he would approve of the narrower approach taken by this bill. In his veto message, the Governor wrote:

The Legislature has recognized that swift enforcement action by the Labor Commissioner is one of the most effective tools to combat retaliation and mitigate against its chilling effect on the rights of workers. I urge the Legislature to consider an approach that is consistent with other anti-retaliation statute of limitations in the Labor Code which are set to one year.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, the Department of Industrial Relations (DIR) indicates that it would incur first-year costs ranging between \$1.1 million and \$1.6 million, and \$1 million to \$1.5 million annually thereafter, to implement the provisions of the bill (Labor Enforcement and Compliance Fund).

**SUPPORT:** (Verified 8/20/20)

California Employment Lawyers Association (co-source)  
Coalition for Humane Immigrant Rights (co-source)  
Santa Clara County Wage Theft Coalition (co-source)  
Service Employees International Union California (co-source)

Alliance of Californians for Community Empowerment  
American Association of University Women  
American Civil Liberties Union of California  
American Federation of State, County and Municipal Employees  
California Asset Building Coalition  
California Childcare Resource and Referral Network  
California Domestic Workers Coalition  
California Federation of Teachers  
California Immigrant Policy Center  
California Labor Federation  
California Latinas for Reproductive Justice  
California Partnership  
California Rural Legal Assistance Foundation, Inc.  
California Women's Law Center  
California Work and Family Coalition  
Career Ladders Project  
Center for Workers' Rights  
Child Care Law Center  
Church State Council  
Communication Workers of America, AFL-CIO District 9  
Community Legal Services of East Palo Alto  
Consumer Attorneys of California  
Disability Rights California  
End Hunger!  
Equal Rights Advocates  
Koreatown Immigrant Workers' Alliance  
Legal Aid at Work  
Mujeres Unidas y Activas  
National Council of Jewish Women  
National Employment Law Project  
Opportunity Institute  
Parent Voices  
Public Counsel  
Raising California Together  
Stronger California Advocates Network  
The Center for Popular Democracy  
The Women's Foundation of California  
Tradeswomen, Inc.  
United Food and Commercial Workers, Western States Council  
Voices for Progress

Western Center on Law and Poverty  
Work Equity  
Worksafe

**OPPOSITION:** (Verified 8/20/20)

Acclamation Insurance Management Services  
Agricultural Council of California  
Allied Managed Care  
Associated General Contractors  
Associated General Contractors of California  
Brea Chamber of Commerce  
California Apartment Association  
California Association for Health Services at Home  
California Association of Boutique and Breakfast Inns  
California Association of Joint Powers Authorities  
California Association of Winegrape Growers  
California Building Industry Association  
California Chamber of Commerce  
California Employment Law Council  
California Farm Bureau Federation  
California Food Producers  
California Grocers Association  
California Hotel & Lodging Association  
California Landscape Contractors Association  
California Manufacturers and Technology Association  
California Professional Association of Specialty Contractors  
California Restaurant Association  
California Retailers Association  
California Special Districts Association  
California State Council of the Society for Human Resource Management  
Civil Justice Association of California  
Coalition of Small and Disabled Veteran Businesses  
Cook Brown, LLP  
CSAC Excess Insurance Authority  
Flasher Barricade Association  
Greater Coachella Valley Chamber of Commerce  
Hospitality Santa Barbara  
Hotel Association of Los Angeles  
Lake Elsinore Valley Chamber of Commerce  
League of California Cities

Long Beach Hospitality Alliance  
Menifee Valley Chamber of Commerce  
Murrieta/Wildomar Chamber of Commerce  
National Federation of Independent Business (NFIB)  
Official Police Garage Association of Los Angeles  
Official Police Garages of Los Angeles  
Santa Maria Valley Chamber of Commerce  
Society for Human Resource Management  
Southwest California Legislative Council  
Temecula Valley Chamber of Commerce  
Torrance Area Chamber of Commerce  
Tulare Chamber of Commerce  
Western Electrical Contractors Association  
Western Growers Association

**ARGUMENTS IN SUPPORT:** According to the author:

Workers who have faced retaliation, especially in the extreme forms of termination or violence, need more time to gather their resources and seek assistance. Without income, they often have to address immediate financial issues, such as finding another job or making arrangements for their family before being able to file a claim. Extending the statute of limitations for filing a worker retaliation claim will give people the opportunity to consider their livelihood and then their next steps for recourse.

Additionally, these workers, often low-wage, have difficulty seeking legal counsel because state law does not allow for attorney's fees for prevailing parties in a claim under Labor Code 1102.5. As a result, few attorneys can offer pro bono services for these whistleblowers who come forward. Three years ago, the Legislature adopted and the Governor signed SB 96 (Chapter 28, Statutes of 2017) into law, which provided the Department of Labor Standards and Enforcement the right to reasonable attorney's fees from the employer if the Labor Commissioner prevails. By providing this same right to private attorneys, AB 1947 will bring parity between public, private, and non-profit attorneys and help low-wage workers obtain legal representation.

As sponsor of the bill, the California Employment Lawyers Association writes:

[...] AB 1947 [...] addresses a fundamental equal access to justice problem. Under current law, workers may pursue two avenues to enforce their rights if they are retaliated against for engaging in protected activity. First, the worker could pursue a civil action and would have two years to file a claim. [...] The second route a worker could pursue is through the state's Labor Commissioner's office. Here, the worker has only six months to file a claim and is often unrepresented by an attorney. [...]

So, which workers are able to access the court system, have a longer period to file their claim, and begin discussions with the employer right away and which workers have only months to file their claim, just to have those claims languish for years before an investigation even begins? Typically, low-wage workers, those who are the most vulnerable to abuse and in need of legal representation, are the ones whose claims get lost or languish in our justice system.

AB 1947 will help address this inequity in our justice system [...].

As another sponsor of the bill, the Coalition for Humane Immigrant Rights writes:

Whistleblower protections have always been regarded as one of the most important laws for exposing waste, fraud, abuse by public and private entities, by ensuring that workers are protected when they blow the whistle or participate in investigations involving violations of law. Workers are often the ones who discover these violations, and thus, robust protections for those workers are imperative. [...] Two of the biggest barriers workers face when threatened with retaliation is the relatively short timeline for filing a retaliation claim and the difficulty in securing an attorney who can help them navigate the legal process [...]. AB 1947 will help address these significant barriers [...].

**ARGUMENTS IN OPPOSITION:** In opposition to the bill, the California Chamber of Commerce and 46 co-signatory organizations write:

California is already widely perceived as having a hostile litigation environment for employers. One factor that contributes to this negative perception is high damage awards and the threat of attorney's fees in civil litigation that often dwarf the financial recovery the plaintiff actually receives. We do not believe attorney's fees should be added; however, if they are added, they should not be one-sided.

Instead, a two-way attorney's fee-shifting provision provides a level playing field for litigation that will help deter any frivolous cases from being filed due to concern that the litigant could ultimately pay for the costs of litigation, including attorney's fees. [...]

Both parties should have some financial risk in pursuing litigation in order to minimize frivolous lawsuits that overburden the courts' dockets and preclude valid claims from being resolved on a timely basis.

ASSEMBLY FLOOR: 46-23, 6/10/20

AYES: Aguiar-Curry, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Eggman, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Santiago, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

NOES: Bigelow, Brough, Chen, Choi, Cooley, Cunningham, Megan Dahle, Diep, Flora, Fong, Frazier, Gallagher, Gray, Kiley, Lackey, Mathis, Obernolte, Patterson, Petrie-Norris, Quirk-Silva, Salas, Voepel, Waldron

NO VOTE RECORDED: Arambula, Cooper, Daly, Grayson, Mayes, O'Donnell, Quirk, Ramos, Blanca Rubio, Smith

Prepared by: Timothy Griffiths / JUD. / (916) 651-4113  
8/21/20 17:38:09

\*\*\*\* END \*\*\*\*