

Filing Private Lawsuits Under Labor Code 6310 and 6311

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Labor Code section 6312 allows for a private right of action for employees who have suffered retaliation under California Labor Code sections 6310 and 6311. Generally, these Labor Code Sections provide that an employee cannot be discharged or otherwise discriminated against because of the employee's complaint(s) (whether oral or written) about something that the employee reasonably believed to be illegal or unsafe, or for refusing to perform work that would create a real and apparent hazard to the employee or his or her fellow employees.

Language of the Law

Labor Code section 6310 is a part of the California Occupational Safety and Health Act of 1973 (the Act). It provides that:

"(a) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to his rights

"(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in terms and conditions of such employment by his employer because such employee has made a bona fide complaint to the division of unsafe working conditions, or work practices, in his employment or place of employment shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer."

Labor Code section 6311 provides:

"No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because he or she refused to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or his or her fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge."

Labor Code section 6312 provides:

“Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of Section 6310 or 6311 may file a complaint with the Labor Commissioner pursuant to Section 98.7.”

Exhaustion of Administrative Remedies?

Neither 6310 nor 6311 requires that the employee has to file a complaint with the DLSE before initiating a law suit in court. If the employee chooses to file with the DLSE, they must do so within the statute of limitations of 6 months from the incident. If the worker wishes to file a lawsuit, the standard statute of limitations under California Code of Civil Procedures section 338 is three years from the incident.

Requirements

In a cause of action under 6310, the employee doesn't have to show that the workplace is actually unsafe. The employee only has to show that they had a reasonable and good faith belief that the workplace is unsafe.

In a cause of action under 6311, the employee does not have to show that a specific safety regulation or order was violated. Rather, the cause of action can be based on the general obligation of an employer to provide a safe and healthful workplace under Labor Code sections 6400, *et seq.*

Remedies

Both 6310 and 6311 allow for reimbursement for lost wages and benefits. For 6311 specifically, reimbursement is for wages “for the time the employee is without work as a result of the layoff or discharge.” Reinstatement is specifically stated in 6310, but not in 6311. However, it can be argued that to “make whole” the employee, reinstatement should be considered.

Other remedies employees can ask for are pay raise, transfer, promotion, or purge of the adverse statements in their personnel file.

Sample Complaint and Summary Sheets

A sample complaint is included of a case that was filed in 2010 containing both causes of action: *Brett Boukather v. California Dept. of Forestry and Fire Protection.*

In addition, summary sheets created by Michael Marsh of California Rural Legal Assistance (CRLA) are also attached for your reference.