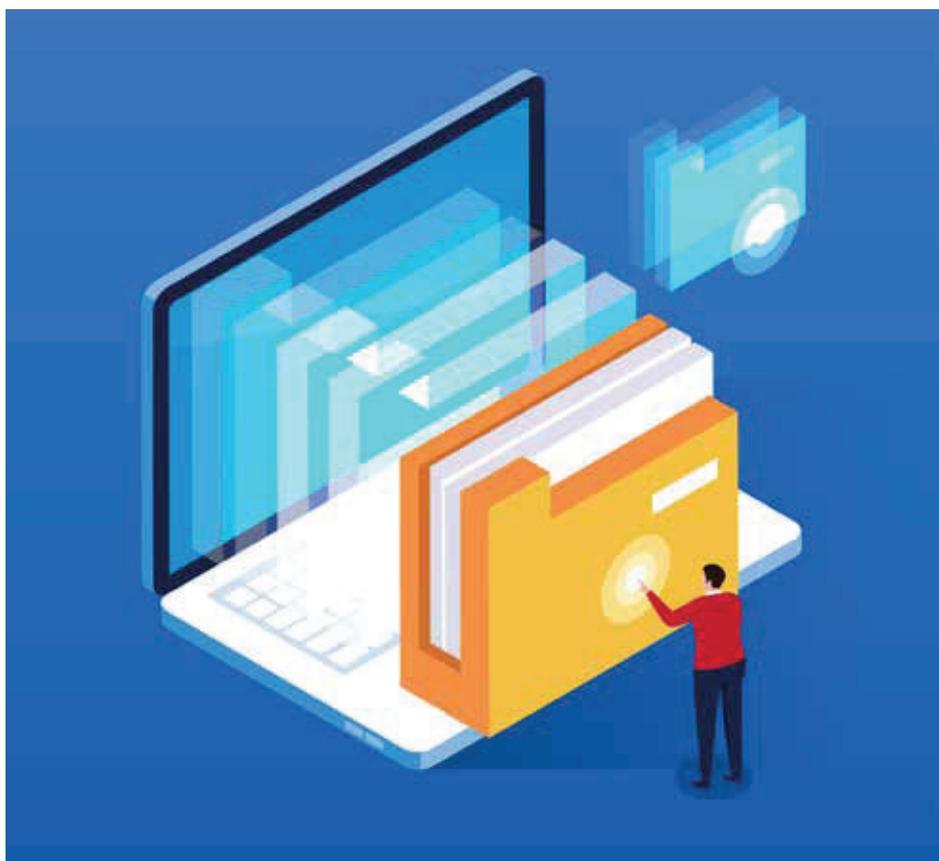


# AB 1947 – New Filing Period for Claims Filed with the Labor Standards Enforcement and Attorney’s Fees

By Debbie Yokota, ARM, SDRMA Chief Risk Officer



Flying under the radar due to all of the other concerns facing businesses, both public and private, in California, Governor Newsom signed AB 1947 on September 30, 2020 which became effective January 1, 2021.

Under employment laws in effect prior to the signing of AB 1947, any

person who filed a claim against their employer under the Labor Code that is under the jurisdiction of the Division of Labor Standards Enforcement (DLSE or Labor Commission) has six months from the occurrence of the violation to file the claim.

The DLSE, headed by the Labor Commissioner, is the state agency charged with enforcing California’s labor laws, including Labor Code provisions and the Industrial Welfare

Commission Wage Orders governing the wages, hours and working conditions of California employees. Labor Code 98.7 enables workers to file retaliation claims with the Labor Commissioner. Such claims trigger an administrative investigation that can take up to 3 years and can lead to penalties against the employer and reinstatement of the worker.

AB 1947 now extends the deadline for filing a complaint from six months to one year from the occurrence of the violation.

AB 1947 also adds a provision to Labor Code Section 1102.5 that authorizes courts to award reasonable attorney’s fees to a plaintiff who brings a successful action for a violation of that law’s “whistleblower” protections that prohibit an employer from retaliating against an employee who discloses suspected violations of law to a government or law enforcement agency. Labor Code 1102.5 prohibits employers from making, adopting, or enforcing any policy that prevents an employee from disclosing information to a government or law enforcement agency where the employee has reasonable cause to believe that the information discloses a violation of a state or federal law. The statute also prohibits retaliation against any employee who discloses such information, refuses to participate in an activity that would result in a legal violation, or has exercised such a right in a former job.



Prior to AB 1947, workers who prevailed in lawsuits alleging that their employer violated these protections could obtain damages, but the statute did not allow prevailing plaintiffs the ability to recover attorneys' fees. AB

1947 alters that dynamic. As amended, Labor Code § 1102.5 now expressly authorizes courts to award reasonable attorneys' fees to a worker who prevails on a "whistleblower" claim under Labor Code § 1102.5.

**EFFECT ON EMPLOYERS AND TAKEAWAYS:**

First, employers may notice an uptick in the number of Labor Commissioner proceedings brought by employees. Employees now have the luxury of additional time to obtain documents and speak with potential witnesses before pursuing administrative relief. Employees thus have the time to consider bringing an administrative action and, depending on the outcome, may still subsequently pursue a civil action. This could result in employers being forced to defend against claims in both an administrative and a court proceeding.

Second, the availability of attorneys' fees for prevailing plaintiffs in Section 1102.5 whistleblower suits may incentivize plaintiffs' attorneys to bring additional whistleblower suits,

regardless of the validity of the claim. Adding in a one-way fee shifting provision only in favor of the employee will likely increase the attractiveness of this type of claim for plaintiffs' lawyers as a tool to extract settlements. The new law

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further undermines administrative resolution of these claims, as there is a financial incentive to proceed to court and engage in litigation as opposed to informal resolution.

Finally, while not expressly considered "coronavirus" legislation, it is clear that the coronavirus pandemic influenced the Legislature's decision to further expand certain rights under California's workplace antiretaliation laws.

As coronavirus legislation continues to increase, so, too, do the opportunities for enterprising plaintiffs to assert whistleblower allegations and pursue remedies under the new framework. As a result, it is vitally important that employers be aware of and promptly respond to new laws and regulations as they are enacted.

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