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California's 2014 Whistleblower Law to Expand Employee Protection

By Amy B. Messigian and David Jacobs

We would like to call your attention to a significant change to the whistleblower statute in California that went into effect on January 1. The statute, Cal. Lab. Code section 1102.5, has been substantially expanded beyond its prior form to now protect employees from retaliation for making *internal complaints* or *even potential complaints* about suspected violations of federal, state or *local law*.

California previously protected employees from retaliation for reporting reasonably suspected violations of state or federal laws *to a government agency*. The new law also extends whistleblower protections to employees who report behavior that they reasonably believe to be illegal to a *supervisor or other employee with authority to "investigate, discover or correct,"* or to a *"public body conducting an investigation, hearing or inquiry."* The new law also expands these protections to cover complaints about local laws. Thus, it is possible that a complaint relating to the purported violation of an obscure ordinance could give rise to protection under the amended statute.

Therefore, under the new law any complaint made to human resources that relates to purportedly unlawful conduct may result in the protection of California's whistleblower statute. Moreover, these protections will apply regardless of whether the employee is required as a function of his or her job to disclose purported illegal activity.

Also of concern, under the revised provisions of Labor Code section 1102.5, it is unlawful for any person acting on behalf of the employer to retaliate against the employee based on a belief "the employee disclosed or may disclose" the information, either internally or to a government agency. In effect, the revamped law protects employees *who have not yet even complained* against "anticipatory retaliation."

Due to the expansive scope of the new provisions, it is possible that the changes in the law may lead to an increase in whistleblower claims and claims under the Private Attorney General Act brought on behalf of the public welfare. As violations of Labor Code section 1102.5 may subject an employer to a variety of damages, including civil penalties of up to \$10,000 per violation, California employers should consider training their supervisors and human resources personnel on the expansion of the new law in order to prevent against unwitting violations or becoming a test case on the scope of these new provisions. Particularly, supervisors should be reminded to document performance issues as they occur to avoid someone turning into a "whistleblower" to forestall disciplinary action.