

New California Law Makes It Easier for Employees to Establish Retaliation Claims

By Christopher W. Olmsted, Charles L. Thompson, IV, and S. Nadine Agharezaei



On October 8, 2023, Governor Gavin Newsom signed into law Senate Bill (SB) No. 497—also referred to as the Equal Pay and Anti-Retaliation Protection Act. SB 497 amends California Labor Code Sections 98.6, 1102.5, and 1197.5 to create a rebuttable presumption of retaliation if an employee is disciplined or discharged within ninety days of certain protected activity. By doing so, SB 497 makes it easier for employees to establish a prima facie case of retaliation.





CALIFORNIA REPUBLIC

On October 8, 2023, Governor Gavin Newsom signed into law [Senate Bill \(SB\) No. 497](#)—also referred to as the Equal Pay and Anti-Retaliation Protection Act. SB 497 amends California Labor Code Sections 98.6, 1102.5, and 1197.5 to create a rebuttable presumption of retaliation if an employee is disciplined or discharged within ninety days of certain protected activity. By doing so, SB 497 makes it easier for employees to establish a prima facie case of retaliation.

Quick Hits

- SB 497 creates a rebuttable presumption of retaliation if an employee is disciplined or discharged within ninety days of engaging in certain activity protected by the California Labor Code and California's Equal Pay Act.
- The presumption of retaliation makes it easier for an employee to establish a prima facie case of retaliation.
- The new law goes into effect on January 1, 2024.

SB 497

Under the current law, a retaliation claim includes three stages of a shifting burden of proof: (1) the employee must establish a prima facie case of retaliation; (2) the employer must identify a legitimate, non-retaliatory reason for their act(s); and (3) the employee must prove that the employer's non-retaliatory reason was a pretext for retaliation.

In order to establish a prima facie case of retaliation, an employee must demonstrate: (1) the employee engaged in protected activity; (2) the employer engaged in an adverse action against the employee; and (3) there was a causal nexus between the protected activity and the alleged adverse action.

SB 497 makes it easier for an employee to establish a prima facie case of retaliation by creating a

rebuttable presumption in favor of the employee's claim. The presumption applies if an employer takes adverse action against an employee within ninety days of the employee's invoking or assisting in the enforcement of specified Labor Code provisions. SB 497 also requires the trier of fact to assume an employer retaliated against the employee if the employer disciplined the employee within ninety days of exercising his or her rights under the Equal Pay Act.

Faced with the rebuttable presumption, the employer must articulate a legitimate, nonretaliatory reason for the alleged retaliation. If the employer does so, the employee must demonstrate that, despite the non-retaliatory justification, the discipline was nonetheless retaliatory in nature. SB 497 further directs civil penalties "to be awarded to the employee . . . who suffered the violation."

Looking Ahead

Because SB 497 makes it easier for employees to establish a prima facie case of retaliation, California employers may wish to adjust how they approach disciplining employees. This may include a renewed emphasis on documenting employee performance issues, retraining human resources departments, and ensuring supervisors are aware of the importance of such documentation.

For more information on this and other new California laws, please join us for our upcoming webinar, "[California Legislative Update: A Busy 2023 Brings Big Changes for Employers](#)," which will take place on Monday, October 30, 2023, from 11 a.m. to 12 noon (PDT). The speakers, [Christopher W. Olmsted](#) and [Charles L. Thompson, IV](#), will discuss the key takeaways from this and other new California laws. [Register here](#).

Ogletree Deakins will continue to monitor California legislative developments and will provide updates on the [California](#) blog as additional information becomes available.

Follow and Subscribe

[LinkedIn](#) | [Instagram](#) | [Webinars](#) | [Podcasts](#)



Christopher W. Olmsted

Office Managing Shareholder, [San Diego](#)



Charles L. Thompson, IV

Office Managing Shareholder, [San Diego](#) Shareholder, [San Francisco](#)



S. Nadine Agharezaei

Office Managing Shareholder, San Diego Shareholder, San Francisco Associate, Los Angeles

RELATED ARTICLES

November 17, 2022

DOL Sued Over FOIA
Request for Contractors'
EEO-1 Reports

January 25, 2023

OFCCP's Scheduling List
Targets Contractors That
Didn't Certify in OFCCP's
Contractor Portal

RELATED WEBINAR

February 9, 2023

I-9 Compliance Series: The
Basics, Part 1—What Does
Good Faith Compliance
Mean? Contractors'...

RELATED SEMINAR

February 16 | Miami, FL

Employment Law Briefing

Browse More Insights

PODCASTS

SEMINARS

WEBINARS

Sign up to receive emails about new developments and upcoming programs.

[SIGN UP NOW](#)