

DEERING'S CALIFORNIA CODES ANNOTATED
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THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 7 AND CH. 765 OF THE 2008
REGULAR SESSION APPROVED 11/14/08, AND PROPOSITION 99 APPROVED BY VOTERS
6/3/08

LABOR CODE
Division 1. Department of Industrial Relations
Chapter 4. Division of Labor Standards Enforcement

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Lab Code § 98.6 (2008)

§ 98.6. Discrimination, discharge, or refusal to hire for exercise of employee rights; Reinstatement and reimbursement; Refusal to reinstate as misdemeanor; Applicability

(a) No person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights, which are under the jurisdiction of the Labor Commissioner, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in any such proceeding or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer. Any employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

(c)

(1) Any applicant for employment who is refused employment, who is not selected for a training program leading to employment, or who in any other manner is discriminated against in the terms and conditions of any offer of employment because the applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the applicant has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to employment and reimbursement for lost wages and work benefits caused by the acts of the prospective employer.

(2) This subdivision shall not be construed to invalidate any collective bargaining agreement that requires an applicant for a position that is subject to the collective bargaining agreement to sign a contract that protects either or both of the following as specified in subparagraphs (A) and (B), nor shall this subdivision be construed to invalidate any employer requirement of an applicant for a position that is not subject to a collective bargaining agreement to sign an employment contract that protects either or both of the following:

(A) An employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation.

(B) A firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting his or her consumption of tobacco products on and off the job.

(d) The provisions of this section creating new actions or remedies that are effective on January 1, 2002, to employees or applicants for employment do not apply to any state or local law enforcement agency, any religious association or corporation specified in subdivision (d) of *Section 12926 of the Government Code*, except as provided in *Section 12926.2 of the Government Code*, or any person described in *Section 1070 of the Evidence Code*.

HISTORY:

Added Stats 1978 ch 1250 § 1. Amended Stats 2001 ch 820 § 2 (AB 1015); Stats 2004 ch 221 § 1 (SB 1809), effective August 11, 2004; Stats 2005 ch 22 § 140 (SB 1108), effective January 1, 2006.

NOTES:

Amendments:

2001 Amendment:

(1) Substituted subd (a) for former subd (a) which read: "(a) No person shall discharge or in any manner discriminate against any employee because such employee has filed any bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his rights, which are under the jurisdiction of the Labor Commissioner, or has testified or is about to testify in any such proceeding or because of the exercise by such

employee on behalf of himself or others of any rights afforded him."; (2) substituted "his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 of Part 3 of Division 2, or because the" for "such employment because such" in the first sentence of subd (b); and (3) added subds (c)-(f).

2004 Amendment:

(1) Added "(commencing with Section 1101)" throughout the section; (2) added "or because the employee has initiated any action or notice pursuant to Section 2699," in subd (a); (3) amended subd (b) by (a) substituting "to this part, or because the employee has initiated any action or notice pursuant to Section 2699" for "to this part" in the first sentence; and (b) deleting the comma after "arbitration" in the last sentence; (4) substituted "to this part, or because the employee has initiated any action or notice pursuant to Section 2699" for "to this part" in subd (c)(1); (5) substituted "both of the following:" for "both of the following as specified in paragraphs (A) and (B):" in subd (c)(2); and (6) deleted former subds (e) and (f) which read: "(e) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(f) This section does not affect in any way existing law regarding employment discrimination related to the consumption of tobacco products."

2005 Amendment:

(1) Amended subd (b) by (a) substituting "those" for "such" before "acts of the employer"; and (b) deleting "such" before "rehiring or promotion"; and (2) substituted "subparagraphs" for "paragraphs" in subd (c)(2).

Note

Stats 1978 ch 1250 provides:

SEC. 6. Nothing in this act shall be construed to entitle an employee to reinstatement or reimbursement for lost wages or work benefits if such employee willfully misrepresents any facts to support a complaint or claim filed with the Labor Commissioner.

Stats 2004 ch 221 provides:

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 249 "Employment Law: Termination And Discipline".

3 Witkin Summary (10th ed) Agency and Employment §§ 255, 315.

Arbitration: When is it a good alternative to litigation for wrongful discharge disputes? CEB Bus L Prac Vol. 7 No. 1 p 1.

Law Review Articles:

Justice in the workplace: Trends and tips in "whistleblower" litigation. 22 Cal Trial Law Forum No. 10 p 25.

Keeping the Boss Out of the Bedroom: California's Constitutional Right of Privacy as a Limitation on Private Employers' Regulation of Employees' Off-Duty Intimate Association. 37 McGeorge LR 449.

Attorney General's Opinions:

The statutory provisions relating to the disclosure of false claims actions, communications with the Legislature, and the filing of complaints or claims or the institution of proceedings pertaining to the rights of employment by employees of state and local public entities do not supersede the statutes and rules governing the attorney-client privilege. 84 Ops. Cal. Atty. Gen. 71.

Annotations:

Pre-emption by workers' compensation statute of employee's remedy under state "whistleblower" statute. 20 ALR 5th 677.

Prohibition, by Civil Service Reform Act of 1978, of reprisals against civil-service whistleblowers (5 USCS 2302(b)(5)). 124 ALR Fed 381.

Hierarchy Notes:

Lab Code Note

Div. 1 Note

Div. 1, Ch. 4 Note

1. Generally

1. Generally

Former employee was not terminated for exercising a recognized constitutional right as described in *Lab C § 96(k)* and as therefore proscribed by *Lab C § 98.6*; the employee did not have a recognized constitutional right protecting her against private acts implicating her employment under the First Amendment, and she did not allege that her termination resulted from a government act violating the *First Amendment*. *Grinzi v. San Diego Hospice Corp.* (2004, Cal App 4th Dist) 120 Cal App 4th 72, 14 Cal Rptr 3d 893, 2004 Cal App LEXIS 1039, rehearing denied (2004, Cal App 4th Dist) 2004 Cal App LEXIS 1193.

Terminated employee's claim pursuant to *Lab C § 98.6* was barred by the federal enclave doctrine because the state law on which the claims were based were enacted after the federal government obtained jurisdiction of the Naval Reservation on which the nuclear power plant at which the employee worked was located. *Stiefel v. Bechtel Corp.* (2007, SD Cal) 497 F Supp 2d 1138, 2007 US Dist LEXIS 26848.