



HOW TO FILE A “LABOR BOARD” COMPLAINT IN CALIFORNIA

No California agency is actually named the "labor board." The term refers to whichever agency handles your type of complaint, most often the Labor Commissioner (for wages) or the Civil Rights Department (for discrimination).

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BY KYLE D. SMITH

Kyle D. Smith is a California employment lawyer and the author of the articles on WorkLawyers.com. He represents employees in disputes with their employers, from unpaid wages and misclassification to wrongful termination.

He writes these guides to put the state’s labor laws into plain English, in neutral terms, with a citation for every claim.



There is no California agency actually named the “labor board.” The phrase is shorthand for whichever government agency handles a particular kind of workplace complaint, and the right one depends on the problem. For most employees it means one of two state agencies: the California Labor Commissioner’s Office, for unpaid wages and related pay disputes, or the Civil Rights Department (CRD), for discrimination, harassment, and retaliation.¹

Depending on the issue, “labor board” can also mean any of these agencies:



The Labor Commissioner’s Office (DLSE) handles unpaid wages, overtime, meal and rest breaks, tips, expense reimbursement, and many retaliation and whistleblower claims.



The Civil Rights Department (CRD), formerly the DFEH, handles discrimination, harassment, and retaliation based on a protected characteristic.



The National Labor Relations Board (NLRB) is the federal agency literally named a “board.” It handles union organizing, collective action, and unfair labor practices for most private-sector employees.²



The Public Employment Relations Board (PERB) handles those same union and collective-bargaining disputes for California’s public employees.³



Cal/OSHA (the Division of Occupational Safety and Health) handles workplace safety and health complaints.



The Employment Development Department (EDD) handles unemployment insurance, State Disability Insurance, and Paid Family Leave.



The Workers’ Compensation Appeals Board (WCAB) handles on-the-job injury benefits, along with discrimination claims for filing a workers’ compensation claim.⁴

Two more agencies come up less often: the federal Equal Employment Opportunity Commission (EEOC) is the national counterpart to the CRD for discrimination claims, and the Agricultural Labor Relations Board (ALRB) handles union matters for California’s farmworkers.

The rest of this guide covers the two agencies most employees need, the Labor Commissioner and the CRD, because most workplace complaints are either a pay dispute or a discrimination dispute. Picking the right agency before filing matters, because each has its own process and an agency will close a case it has no power to decide.⁵

Identify the Correct “Labor Board” with Which to File the Complaint

As explained above, for most California employees a workplace dispute comes down to one of two state agencies that might be considered a *labor board*:



The Labor Commissioner’s Office, which handles disputes involving unpaid wages, meal breaks, rest breaks, overtime, and other demands for earned compensation.⁶



The Civil Rights Department (CRD),⁷ which handles disputes involving discrimination, harassment, and related unfair treatment.

Each type of “labor board” has a unique complaint-filing process. And the types of issues they can help employees with are usually very specific.

It is important that employees correctly identify the type of claim they are making *before* they file a complaint. That way, they can select the best agency to hear their case and follow the correct complaint procedure.

The two main types of “labor board” disputes in California are described below.

1.1 Wage and Hour Complaints



The California Labor Commissioner is the Chief of the Division of Labor Standards Enforcement (the DLSE).⁸ He or she is appointed by the Governor of the State of California,⁹ and is tasked with vigorously enforcing minimum labor standards in workplaces across the state.¹⁰

The Labor Commissioner, and his or her deputies, have a legal right to freely access all places of labor in California.¹¹ This helps the Labor Commissioner investigate and enforce California's labor laws.¹²

Perhaps most importantly, the Labor Commissioner has the power to adjudicate disputes that fall under its jurisdiction.¹³ Those disputes can involve:

-  Unpaid wages,¹⁴
-  Unpaid commissions,¹⁵
-  Unpaid vacation wages,¹⁶
-  Failure to pay minimum wage,¹⁷
-  Failure to pay overtime,¹⁸
-  Failure to make payments for agreed benefits,¹⁹
-  Meal and rest period violations,²⁰
-  Unpaid split-shift premium (required when two distinct work periods are separated by more than a one-hour meal period),²¹

-  Unpaid reporting-time pay (required when an hourly employee is required to report to work but is given less than half of a usual day's work),²²
-  Unlawful deductions from a paycheck,²³
-  Unreimbursed business expenses,²⁴
-  Late payment or nonpayment of final wages,²⁵ and
-  Dishonored payroll checks.²⁶

In short, the Labor Commissioner handles complaints in which an employee wishes to recover wages, penalties, and other demands for compensation from their employer.²⁷

The Labor Commissioner also handles certain types of retaliation and discrimination claims. These types of claims, however, must involve an allegation that the employer took an adverse employment action against their employee (or against a job applicant) because they engaged in certain protected conduct.²⁸ These types of claims are known as *whistleblower* claims.

The Labor Commissioner can adjudicate some, but not all, types of whistleblower claims. The types of claims that the Labor Commissioner can hear include situations where the employee has been punished, fired, or otherwise discriminated against for one of the following reasons:

-  The employee engaged in protected, lawful conduct occurring during nonworking hours away from the employer's premises.²⁹
-  The employee engaged or participated in political activity during nonworking hours away from the employer's premises.³⁰
-  The employee disclosed information to a government or law enforcement agency and the employee had reasonable cause to believe that the information involved a violation of a local, state, or federal law.³¹
-  The employee has complained about, discussed, or reported working conditions, usually because they believe those conditions are unsafe.³²
-  The employee reported a violation of a local, state, or federal law to their supervisor or someone with authority over them in the workplace.³³

For these retaliation claims, timing can matter: since January 1, 2024, if the employer takes an adverse action within 90 days of the protected activity, a rebuttable presumption of retaliation applies, and the employer must offer a legitimate, nonretaliatory reason.³⁴

The Labor Commissioner usually has no power to oversee issues that exceed those listed above, unless a specific statute places that matter within the Labor Commissioner's jurisdiction.³⁵

If the employee's complaint falls under the jurisdiction of the Labor Commissioner, the employee should consider filing their complaint with the DLSE. To learn more about the process of filing a complaint with the DLSE, please review our article: [How to File a Wage & Hour Claim in California](#).

1.2 Discrimination and Harassment Complaints



In the section above, it was mentioned that employers are prohibited from discriminating, harassing, and retaliating against employees for participating in certain protected activities.³⁶ Those types of claims are sometimes heard by the DLSE.

There is another type of law in California that prohibits discrimination, harassment, and retaliation: the California Fair Employment and Housing Act (called “FEHA”). FEHA prohibits discrimination, harassment, and retaliation in the workplace against certain groups of people.³⁷ Its purpose is to provide remedies to employees and job applicants, and to eliminate certain discriminatory employment practices.³⁸

Under FEHA, employers with five or more employees may not discriminate against employees or job applicants on the basis of a protected characteristic.³⁹ FEHA's separate ban on harassment is broader: it applies to employers of any size, including those with a single employee.⁴⁰ The protected characteristics are:

-  Race;
-  Religious creed;
-  Color;
-  National origin;
-  Ancestry;
-  Physical disability;
-  Mental disability;
-  Reproductive health decisionmaking;
-  Medical condition;
-  Genetic information;
-  Marital status;
-  Sex;
-  Gender, gender identity, or gender expression;
-  Age (40 or older);
-  Sexual orientation; or
-  Veteran or military status.⁴¹

Discrimination and harassment can take many forms. *Discrimination* is usually defined as treating individuals differently, due to their protected characteristic or membership in a protected class, with respect to:

-  Their compensation,
-  The terms or privileges of their employment,
-  Work conditions, and
-  Job assignments.⁴²

Discrimination and harassment are commonly followed by retaliation. This normally occurs when an employer takes adverse actions against an employee for complaining of harassment or discrimination, or for assisting others in these complaints.

Retaliation may also exist whenever an employer takes actions against an employee for reporting illegal conduct by their employer. This is also known as *whistleblowing* and is often illegal.⁴³

FEHA also prohibits employers from harassing or retaliating against employees on these grounds.⁴⁴

When FEHA is violated, California employees have a right to file a complaint with California's Civil Rights Department (CRD).⁴⁵

The CRD is similar to the DLSE in that it has the power to investigate employee claims and work with employers to fix unlawful activities. The primary difference is in the types of claims the two agencies handle and the procedures employees have to follow.

Importantly, the CRD will end the complaint process in a case, and not take any further action, if it determines that it does not have jurisdiction over the employee's claim.⁴⁶ So employees should be careful to ensure that they are pursuing relief with the correct agency.

Follow the Labor Board Complaint Process

Once the employee has correctly identified their type of claim and the best agency with which to file, they can proceed with preparing their complaint.

As mentioned above, the complaint process is different for each type of labor board. We have written free guides on the process of filing complaints with each type of labor board, which can be found below:



DLSE COMPLAINT

Wage & Hour Claims

If you've been deprived of your wages, overtime pay, or other form of compensation, [click here](#) to learn about filing a complaint with the Labor Commissioner (the DLSE).



CRD COMPLAINT

Discrimination & Harassment

If you're a member of a protected class and have been the victim of discrimination, harassment, or retaliation on that basis, [click here](#) to learn about filing a complaint with the Civil Rights Department (CRD).

References

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| 1 | The Labor Commissioner’s Office is formally the Division of Labor Standards Enforcement (DLSE). Labor Code, § 21 [“Labor Commissioner’ means Chief of the Division of Labor Standards Enforcement.”]. The Civil Rights Department was known as the Department of Fair Employment and Housing (DFEH) until 2022. Gov. Code, § 12900 et seq. |
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| 2 | The NLRB enforces the National Labor Relations Act. 29 U.S.C. § 151 et seq. |
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| 3 | PERB administers California’s public-sector labor-relations statutes, including the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.) and the Educational Employment Relations Act (Gov. Code, § 3540 et seq.). |
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| 4 | Labor Code, § 132a [petition filed with the appeals board]. |
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| 5 | Cal. Code of Regs., tit. 2, §§ 10004, subd. (a), 10007. |
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| 6 | The formal name of the California Labor Commissioner’s Office is the Division of Labor Standards Enforcement (the DLSE). The Labor Commissioner is the Chief of the DLSE. Labor Code, § 21 [“Labor Commissioner’ means Chief of the Division of Labor Standards Enforcement.”]. |
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| 7 | Known as the Department of Fair Employment and Housing (the DFEH) until 2022. |
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| 8 | Labor Code, § 21. |
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| 9 | Labor Code, § 79. |
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| 10 | Labor Code, § 90.5, subd. (a). |
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| 11 | Labor Code, § 90. |
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| 12 | Labor Code, §§ 90, 558. |
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| 13 | Labor Code, § 98. |
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14	Labor Code, §§ 204–204c, 207.
15	Labor Code, § 200, subd. (a) [defining wages as including commissions].
16	Labor Code, § 227.3.
17	Labor Code, §§ 1182.12, 1197.
18	Labor Code, § 510.
19	Labor Code, § 227.
20	Labor Code, § 226.7, subd. (c).
21	Cal. Code of Regs., tit. 8, §§ 11040, subd. (4)(C), 11070, subd. (4)(C).
22	Cal. Code of Regs., tit. 8, §§ 11040, subd. (5), 11070, subd. (5).
23	Labor Code, § 221.
24	Labor Code, § 2802.
25	Labor Code, §§ 201–203.
26	Labor Code, § 98, subd. (a) [“It is within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out.”].
27	Labor Code, § 98, subd. (a) [“The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage fixed by an order of the Industrial Welfare Commission or by statute, properly before the division or the Labor Commissioner, including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction.”].
28	Labor Code, § 98.6, subd. (a).
29	Labor Code, §§ 96, subd. (k) [“Claims for loss of wages as the result of demotion, suspension, or discharge from employment for lawful conduct occurring during nonworking hours away from the employer’s premises.”], 98.6, subd. (a).
30	Labor Code, §§ 1101, 1102.

- 31 Labor Code, § 1102.5, subd. (b).
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- 32 Labor Code, §§ 232.5, 6310; *Luke v. Collotype Labels USA, Inc.* (2008) 159 Cal.App.4th 1463, 1474.
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- 33 Labor Code, § 1102.5, subd. (b).
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- 34 Labor Code, §§ 98.6, subd. (b)(1), 1102.5, as amended by Stats. 2023, ch. 612 (SB 497).
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- 35 See, e.g., *Noble v. Draper* (2008) 160 Cal.App.4th 1, 16.
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- 36 Labor Code, § 98.6, subd. (a).
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- 37 Gov. Code, § 12900 et seq.
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- 38 Gov. Code, § 12920.
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- 39 Gov. Code, § 12926, subd. (d) [defining “employer,” for the discrimination provisions, as a person regularly employing five or more persons].
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- 40 Gov. Code, § 12940, subd. (j)(4)(A) [for harassment, “employer” means any person regularly employing one or more persons].
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- 41 Gov. Code, § 12940, subd. (a).
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- 42 Gov. Code, § 12940, subd. (a).
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- 43 See Gov. Code, § 12940, subd. (h); Labor Code, § 98.6, subd. (a) [“A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment 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.”].
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- 44 Gov. Code, § 12940, subd. (j)(1) [“It is an unlawful employment practice . . . [f]or an employer . . . to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract.”].
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- 45 Gov. Code, § 12960, subd. (c) [“Any person claiming to be aggrieved by an alleged unlawful practice may file with the department a verified complaint, in writing, that shall state the name and address of the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice complained of, and that shall set forth the particulars thereof and contain other information as may be

required by the department. The director or the director's authorized representative may in like manner, on that person's own motion, make, sign, and file a complaint."].

46 Cal. Code of Regs., tit. 2, §§ 10004, subd. (a), 10007.
