



LABOR CODE § 1102.5, CALIFORNIA'S WHISTLEBLOWER RETALIATION LAW

California's broadest whistleblower law protects employees who report suspected illegal conduct and gives them a powerful, plaintiff-friendly claim against employers who retaliate.

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



California Labor Code section 1102.5 is the state's principal whistleblower protection law. It prohibits an employer from retaliating against an employee who reports conduct the employee reasonably believes is illegal, or who refuses to do something illegal.¹ It applies to almost every private and public employer in California, it reaches reports about almost any law, and, after a series of amendments and a 2022 California Supreme Court decision, it has become one of the most powerful tools an employee has against workplace retaliation.²

This guide explains what section 1102.5 protects, how the law developed, who is covered, what counts as retaliation, how a claim is proved, what remedies are available, and how long an employee has to file. It offers general information, not legal advice. An employee who believes they were punished for reporting or refusing illegal conduct can get advice from a California employment lawyer who handles whistleblower claims.

What Section 1102.5 Protects

At its core, section 1102.5 prohibits an employer from punishing an employee for four things:³

-  **Disclosing suspected illegal conduct.** An employer may not retaliate against an employee for disclosing information the employee has reasonable cause to believe shows a violation of a state or federal statute, or noncompliance with a local, state, or federal rule or regulation. The disclosure is protected whether it is made to a government or law enforcement agency, to a person with authority over the employee, to another employee with authority to investigate or correct the violation, or to a public body conducting an investigation.
-  **Being perceived as a whistleblower.** An employer may not retaliate because it believes the employee has disclosed, or may disclose, such information, even if the employee has not yet done so.
-  **Refusing to break the law.** An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a statute, rule, or regulation.
-  **Having blown the whistle before.** An employer may not retaliate against an employee for exercising these rights at a previous job.

The statute also bars an employer from adopting or enforcing any rule or policy that would prevent an employee from disclosing information, and it requires employers to keep a whistleblower's identity confidential to the extent possible. It does not override the attorney-client privilege, the physician-patient privilege, or genuine trade-secret protections.⁴ It separately protects an employee who is a family member of a person who engaged in protected activity.⁵

Section 1102.5 matters because it is unusually broad and unusually favorable to employees. Unlike many federal whistleblower laws, which are limited to particular industries or particular kinds of misconduct, it covers reports about virtually any law, made to almost anyone in a position to do something about the problem, by almost any worker in the state. It also carries a civil penalty, a fee-shifting provision, and a

plaintiff-friendly burden of proof, which together make a retaliation claim both viable to bring and expensive to lose.

How California's Whistleblower Law Developed

Section 1102.5 has been on the books for decades, but a handful of changes turned it from a narrow, little-used provision into a central employee-rights statute.

In 2003, in the wake of a wave of corporate accounting scandals, the Legislature added Labor Code section 1102.6, which sets a specialized burden of proof for whistleblower claims. The stated goal was to encourage employees to report wrongdoing earlier and more often.⁶

Effective January 1, 2014, an amendment made explicit that internal reports are protected, not just reports to outside agencies, and that a disclosure counts even when making it is part of the employee's job duties.⁷ The same era of reform clarified that an employee does not have to file with a government agency before suing.⁸

Effective January 1, 2021, the Legislature added a right to recover attorney's fees for employees who prevail, and it extended the deadline to file a retaliation complaint with the Labor Commissioner from six months to one year.⁹ Fee recovery was the change that made many meritorious claims economically worth pursuing.

In 2022, the California Supreme Court settled a long-running dispute about how these claims are proved, adopting the employee-friendly section 1102.6 framework and rejecting the older, tougher standard borrowed from discrimination cases.¹⁰ And effective January 1, 2024, the Legislature added a rebuttable presumption of retaliation for adverse actions that closely follow protected activity, and made the civil penalty apply to all employers.¹¹

Who Is Protected

Section 1102.5 applies to employees of both private and public employers in California. It protects current employees, and its protections do not depend on a worker's citizenship or immigration status.¹² Because the law reaches internal reports, it protects the ordinary employee who raises a concern with a manager or human resources, not just the employee who contacts a government agency.

3.1 Who is not covered

Independent contractors are generally outside the statute, because it protects employees. Employers sometimes misclassify employees as contractors, so a worker labeled a contractor may still be covered if the worker meets the legal test of an employee. Elected officials are excluded from the statute's definition of employee, even if a government entity pays them through payroll.¹³

What Counts as a Protected Disclosure

The range of protected disclosures is wide. An employee can qualify by reporting a suspected violation of any state or federal statute, or noncompliance with any local, state, or federal regulation, so the subject matter is not limited to employment law.¹⁴ Common examples include:

-  Reporting wage and hour violations, such as unpaid overtime or misclassification, to a supervisor or the Labor Commissioner.
-  Reporting unsafe working conditions to management or to Cal/OSHA.
-  Reporting fraudulent billing, including Medicare or Medi-Cal fraud, to a compliance officer or a government agency.
-  Reporting environmental violations, such as illegal dumping or emissions violations.
-  Reporting financial misconduct, securities violations, or the misuse of public funds.

4.1 Internal and external reports both count

A report does not have to go to an outside agency. A complaint to a direct supervisor, to human resources, to an internal compliance hotline, or to any other person with authority to investigate or correct the problem is protected on the same basis as a report to a government agency.¹⁵ This matters because most workplace reporting happens internally, before or instead of any contact with the government.

4.2 The “reasonable cause to believe” standard

An employee does not have to be right that the law was broken. The protection turns on whether the employee had reasonable cause to believe the conduct was unlawful, so a report is protected even if a court later concludes no violation occurred, as long

as the employee's belief was objectively reasonable.¹⁶ What matters is the content of the communication, not the reporter's motive.

4.3 Refusing to break the law

Whistleblowing is not the only protected activity. An employee who refuses to participate in an activity that would violate a statute or regulation is protected from retaliation for that refusal, standing alone.¹⁷ A retaliatory firing in this situation may also support a separate common-law claim for wrongful termination in violation of public policy.¹⁸

4.4 Perceived and anticipated whistleblowing

The statute also protects an employee whom the employer merely believes has disclosed, or may disclose, information. An employer that takes action to head off an anticipated report, or that punishes an employee it wrongly assumes was the source of a complaint, can be liable even though the employee never actually blew the whistle.¹⁹

What Counts as Retaliation

Retaliation means taking an adverse action against an employee because of protected activity. An adverse action is a change that materially affects the terms, conditions, or privileges of employment. Terminations, demotions, suspensions, pay cuts, and reductions in hours are the clearest examples, but the concept is broader.²⁰ Adverse actions can also include:

-  Negative performance reviews that break from an employee's prior record.
-  Undesirable reassignment, a transfer to a worse position or location, or a significant change in duties.
-  Discipline or a sudden disciplinary investigation.
-  Exclusion from meetings, or the denial of information or support the employee needs to do the job.
-  A pattern of smaller actions that, taken together, would deter a reasonable employee from reporting.
-  Constructive discharge, meaning working conditions made so intolerable that the employee is forced to resign.

Retaliation rarely comes with an admission. Most cases turn on circumstantial evidence, and the timing between the protected activity and the adverse action is often the most telling fact.

Proving a Section 1102.5 Claim

California uses a burden-shifting framework for whistleblower claims that is more favorable to employees than the framework used in discrimination cases. The employee must first show, by a preponderance of the evidence, that the protected activity was a contributing factor in the adverse action. The burden then shifts to the employer to prove, by clear and convincing evidence, that it would have taken the same action anyway for legitimate, independent reasons.²¹

Two features make this standard powerful. A “contributing factor” is a low threshold: the protected activity need only have played some part in the decision, even if other, lawful reasons also contributed. And the employer’s burden of clear and convincing evidence is higher than the ordinary preponderance standard, which makes these claims harder to dispose of before trial.²² Outside the 90-day window, the employee proves the causal link the ordinary way, most often through timing, a deteriorating relationship after the report, inconsistent explanations, or more favorable treatment of comparable employees.

Remedies and Penalties

An employee who proves a section 1102.5 violation can recover substantial relief. Available remedies generally include:

-  Reinstatement to the former position.
-  Back pay and the value of lost work benefits.
-  Front pay, compensating future lost earnings when reinstatement is impractical.
-  Compensatory damages, including damages for emotional distress.
-  Punitive damages, where the employer acted with malice, oppression, or fraud.
-  Reasonable attorney's fees for a prevailing employee.

Compensatory and punitive damages are available because a section 1102.5 claim sounds in tort.²³ The attorney's-fee provision is a one-way shift: a prevailing employee may recover fees, but a prevailing employer generally may not.²⁴ Separately, an employer is liable for a civil penalty of up to \$10,000 per employee for each violation, awarded to the employee who suffered the retaliation. This penalty now applies to all employers, not only corporations and limited liability companies.²⁵

One limit deserves emphasis. If the employer carries its burden of proving, by clear and convincing evidence, that it would have made the same decision for lawful reasons, the employee does not recover. A recent Court of Appeal decision held that an employer who establishes this same-decision defense also defeats the employee's status as the prevailing party, so no attorney's fees are awarded. That is a notable contrast with claims under the Fair Employment and Housing Act, where a same-decision finding still leaves the door open to declaratory or injunctive relief and fees.²⁶

Deadlines to File

The deadline depends on the path the employee chooses, and more than one path can apply to the same facts.

An employee may file a lawsuit directly in superior court. The deadline for a civil section 1102.5 claim is three years from the retaliatory act.²⁷ The employee does not have to file with any agency first, because administrative exhaustion is not required for a whistleblower claim.²⁸

An employee may instead, or in addition, file a retaliation complaint with the Labor Commissioner's Retaliation Complaint Investigation unit, which investigates the claim administratively. That complaint must be filed within one year of the adverse action.²⁹

Two cautions apply. When the employer is a public entity, a claim-presentation requirement under the Government Claims Act may apply, with a much shorter window, so those claims should be evaluated quickly.³⁰ And because whistleblower facts often overlap with wage, discrimination, or wrongful-termination claims that carry their own, sometimes shorter, deadlines, the earliest applicable deadline effectively controls. Prompt legal advice is the safest course.



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What the Law Means in Practice

9.1 For employers

Section 1102.5 raises the stakes on how employers handle complaints and discipline. The clear-and-convincing burden, the fee-shifting provision, the \$10,000 penalty, and the 90-day presumption all reward employers who can show a documented, legitimate reason for any adverse action that follows a complaint. In practice, that means maintaining a written anti-retaliation policy, training supervisors to recognize protected activity, investigating complaints promptly, and documenting performance and disciplinary decisions as they happen rather than after a dispute arises. Because the presumption attaches to any adverse action within 90 days of protected activity, the period right after an employee raises a concern calls for particular care.

Employers also have a posting obligation. Since January 1, 2025, employers must display a notice of employees' whistleblower rights and responsibilities; the Labor Commissioner publishes a model notice that satisfies the requirement.³¹



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9.2 For employees

An employee who is considering reporting misconduct, or who suspects retaliation, can take several steps to protect their position. Put concerns in writing, so the report does not later come down to a credibility contest, and keep copies of the report and of any related emails, texts, reviews, and personnel documents. Identify the specific conduct believed to be unlawful, since generalized complaints about management or workplace unhappiness are not protected; the statute protects reports of suspected

legal violations. Note the timing of any adverse action relative to the report, because timing is often the strongest evidence of retaliation. And act promptly, because the applicable deadline may be shorter than the general three-year window when other claims are involved.

Whether a particular situation qualifies as protected whistleblowing, and which deadline and forum apply, depends on the facts. A California employment lawyer who handles whistleblower retaliation claims can evaluate the report, the timing, and the evidence, and advise on the strongest way to proceed.

References

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| 1 | Lab. Code, § 1102.5. |
| 2 | <i>Lawson v. PPG Architectural Finishes, Inc.</i> (2022) 12 Cal.5th 703, 718; Lab. Code, § 1102.6. |
| 3 | Lab. Code, § 1102.5, subds. (a)-(d). |
| 4 | Lab. Code, § 1102.5, subds. (a), (g). |
| 5 | Lab. Code, § 1102.5. |
| 6 | Lab. Code, § 1102.6; see <i>Lawson</i> , supra, 12 Cal.5th at pp. 709-710. |
| 7 | Lab. Code, § 1102.5, subd. (b) (as amended eff. Jan. 1, 2014, by Sen. Bill No. 496). |
| 8 | Lab. Code, § 244, subd. (a). |
| 9 | Lab. Code, § 1102.5, subd. (j), and § 98.7, subd. (a) (as amended by Assem. Bill No. 1947). |
| 10 | <i>Lawson</i> , supra, 12 Cal.5th at p. 718. |
| 11 | Lab. Code, §§ 98.6, 1102.5, 1197.5 (as amended by Sen. Bill No. 497, eff. Jan. 1, 2024). |
| 12 | Lab. Code, §§ 1102.5, subd. (i), 1171.5. |
| 13 | Lab. Code, § 1106; see <i>Brown v. City of Inglewood</i> (2025) (elected city treasurer not an “employee” under section 1102.5). |
| 14 | Lab. Code, § 1102.5, subd. (b). |
| 15 | Lab. Code, § 1102.5, subd. (b). |
| 16 | The disclosure is also protected even if the recipient already knew the information, and even if disclosing it was part of the employee’s ordinary duties. <i>Garcia-Brower v. Kolla’s, Inc.</i> (2023) 14 Cal.5th 719; Lab. Code, § 1102.5, subd. (b). |
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17	Lab. Code, § 1102.5, subd. (c).
18	<i>Tameny v. Atlantic Richfield Co.</i> (1980) 27 Cal.3d 167.
19	Lab. Code, § 1102.5, subd. (b).
20	See Lab. Code, § 98.6, subd. (b).
21	Lab. Code, § 1102.6; <i>Lawson</i> , supra, 12 Cal.5th at pp. 712, 718.
22	Since January 1, 2024, an added rule makes the employee's initial showing easier. If the employer takes an adverse action within 90 days of the protected activity, the law presumes retaliation, and the employer must rebut that presumption. The same 90-day presumption applies to retaliation claims for reporting wage and hour violations and for asserting rights under the Equal Pay Act. Lab. Code, §§ 98.6, 1102.5, 1197.5 (Sen. Bill No. 497, eff. Jan. 1, 2024).
23	<i>Mathews v. Happy Valley Conference Center, Inc.</i> (2019) 43 Cal.App.5th 236, 267; punitive damages require malice, oppression, or fraud (Civ. Code, § 3294).
24	Lab. Code, § 1102.5, subd. (j).
25	Lab. Code, § 1102.5, subd. (f).
26	Lab. Code, § 1102.6; <i>Lampkin v. County of Los Angeles</i> (2025); cf. <i>Harris v. City of Santa Monica</i> (2013) 56 Cal.4th 203, 232, 240-241.
27	Code Civ. Proc., § 338, subd. (a); <i>Whitehall v. County of San Bernardino</i> (2017) 17 Cal.App.5th 352.
28	Lab. Code, § 244, subd. (a).
29	Lab. Code, § 98.7, subd. (a).
30	See Gov. Code, § 911.2.
31	Lab. Code, § 1102.8 (added by Assem. Bill No. 2299, eff. Jan. 1, 2025).