

CALIFORNIA

California Law Makes It Easier for Employees to Establish Retaliation Claims

On Oct. 8, 2023, California enacted [Senate Bill 497](#), also known as the Equal Pay and Anti-Retaliation Protection Act (the Act), which creates a rebuttable presumption of retaliation when an employee experiences an adverse employment action within 90 days of engaging in certain protected activity. The Act went into effect on **Jan. 1, 2024**.

Background

California applies a three-part “burden-shifting” analysis to retaliation claims. First, the employee must show that he or she engaged in protected activity and that such activity caused the employer to take an adverse employment action against the employee. The burden then shifts to the employer to provide a legitimate, nonretaliatory reason for the action (e.g., poor performance or misconduct). Finally, the burden shifts back to the employee to show that the employer’s proffered reason is pretext for its true, retaliatory motive.

New Rebuttable Presumption

To establish retaliation claims under the Act, employees who experience an adverse employment action within 90 days of engaging in protected activity are no longer required to show that such activity caused the adverse action. This presumption significantly reduces the burden on employees and places a greater onus on employers to provide nonretaliatory motives for their personnel decisions.

Penalties

In addition to other available remedies, the Act imposes a civil penalty of up to \$10,000 per employee per violation, payable to the employee.

Employer Considerations

California employers may consider reviewing and updating existing practices to ensure that performance issues and disciplinary actions are properly documented. Employers may also wish to provide additional training to supervisors and HR personnel on workplace retaliation and retaliation prevention.

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Important Definitions

“**Adverse employment action**” is an action that negatively affects the terms, conditions or privileges of employment (e.g., termination, demotion, discipline or pay reduction).

“**Protected activity**” means engaging in or exercising a legal right (e.g., filing a claim or complaint, participating in a workplace investigation or discussing wages).

California law creates a rebuttable presumption of retaliation for adverse employment actions taken within 90 days of protected activity.