

WORKPLACE RETALIATION & PROTECTED ACTIVITY

The first question in a retaliation case is not “what happened next?” It is whether the employee engaged in legally protected activity.

THE ONE-SENTENCE RULE Retaliation requires a protected activity, an adverse action, and a causal connection. Start by naming the protected act before building the timeline.

THE 60-SECOND ISSUE MAP

Issue	What to ask	Risk / signal	Employee focus
Protected activity	Complaint of discrimination/harassment, wage rights, safety, leave, accommodation, whistleblowing, agency participation?	FOUNDATIONAL	Not every complaint is legally protected.
Knowledge	Who knew about the protected activity before the adverse action?	HIGH	Decisionmaker knowledge is critical.
Adverse action	Termination, discipline, demotion, schedule, exclusion, harassment, lost opportunity?	HIGH	Consider total pattern, not one event only.
Timing	How close was the action to the complaint or request?	USEFUL but not enough alone	Combine timing with inconsistencies and comparator evidence.
Pretext	Did reasons change or appear after protected activity?	HIGH	Compare before/after records.

FIVE RULES THAT MATTER

1. Retaliation law protects specific conduct: opposing or reporting unlawful discrimination/harassment, requesting protected accommodations or leave, asserting wage rights, whistleblowing, and other statutorily protected activity. 2. A complaint does not always need legal terminology, but the employer generally must understand that the employee is opposing or reporting conduct protected by law.	3. Adverse action is broader than termination and can be evaluated in the aggregate when a series of actions materially affects employment. 4. Timing can support causation, but timing alone is stronger when paired with knowledge, shifting explanations, new documentation, or departures from usual practice. 5. Protect the record. Save the complaint, acknowledgment, decisionmaker communications, later discipline, and prior performance evidence.
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THE PRACTICAL ACTION PLAN

1 VERIFY	2 PRESERVE	3 RESPOND
Complaint of discrimination/harassment, wage rights, safety, leave, accommodation, whistleblowing, agency participation?	Original complaint or request; Proof employer received it	Not every complaint is legally protected.

BUILD THE RETALIATION TIMELINE LIKE A CROSS-EXAMINATION

Protected act	Knowledge	Adverse action
What exactly did you report/request? / when?	Who received it / who decided?	What changed / when / stated reason / prior record

DOCUMENTS / ACTIONS TO SAVE NOW

- ☐ Original complaint or request
- ☐ Proof employer received it
- ☐ Performance history before complaint
- ☐ Discipline or PIP after complaint
- ☐ Decisionmaker emails
- ☐ Comparator evidence
- ☐ Timeline of events

WHAT THE EMPLOYER WILL TEST	WHAT THE EMPLOYEE SHOULD SHOW
the defense will try to separate the complaint from the decision. Your chronology should make the neutral ask the obvious questions without you having to shout them.	Not every complaint is legally protected. • Decisionmaker knowledge is critical. • Consider total pattern, not one event only.
WHEN PROMPT LEGAL REVIEW MAY MATTER HR schedules an interview or asks for a written statement about disputed events. • Discipline follows a complaint, investigation, opposition, or protected report. • Messages, witnesses, video, or other evidence may disappear or be overwritten.	

RELATED RUGGLES LAW FIRM READING

- Protected Activity in California Retaliation Cases
- How to Make a Workplace Complaint
- Workplace Retaliation Resource Center
- Fired After Filing a Complaint

CALIFORNIA STATUTES / REGULATIONS • Government Code section 12940 • Labor Code section 98.6	PUBLISHED CALIFORNIA CASES • Yanowitz v. L'Oreal USA, Inc., 36 Cal.4th 1028 (2005) • Harris v. City of Santa Monica, 56 Cal.4th 203 (2013) • Yanowitz v. L'Oreal USA, Inc., 36 Cal.4th 1028 (2005)
 SCAN TO READ Protected Activity in California Retaliation Cases RugglesLawFirm.com	OFFICIAL RESOURCES CRD Employment Labor Commissioner Retaliation Laws

"It is appropriate to consider the totality of the circumstances."
— Yanowitz v. L'Oreal USA, Inc., 36 Cal.4th 1028 (2005)

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