

WHISTLEBLOWER RETALIATION & SEVERANCE LEVERAGE

How protected complaints, timing, decisionmaker knowledge, and shifting explanations can affect a California exit negotiation.

WHAT THE EMPLOYER WILL TEST	WHAT THE EMPLOYEE SHOULD SHOW
protected activity, employer knowledge, adverse action, and evidence connecting the events. Severance leverage grows when that timeline is documented.	Different statutes protect different kinds of activity. • A decisionmaker cannot retaliate for something truly unknown. • Retaliation is not limited to one form of discipline.

THE 60-SECOND RETALIATION TIMELINE

Step	Question	Evidence	Why it matters
Protected activity	What did you report, refuse, oppose, or request?	Written complaint, meeting notes, witnesses.	Different statutes protect different kinds of activity.
Knowledge	Who knew, and when?	Email routing, HR notes, meeting attendees.	A decisionmaker cannot retaliate for something truly unknown.
Adverse action	What changed after the activity?	PIP, demotion, exclusion, termination, layoff.	Retaliation is not limited to one form of discipline.
Timing / treatment	How soon did treatment change? Were peers treated differently?	Calendar, comparator facts, review history.	Timing can support an inference but should be paired with facts.
Explanation	Has the employer changed or exaggerated its reason?	Different written reasons, inconsistent metrics.	Shifting explanations can increase litigation risk.

FIVE RULES THAT MAKE THE TIMELINE MATTER

1. Labor Code section 1102.5 protects qualifying disclosures. The statute protects disclosures to government, law enforcement, a person with authority, or another employee with authority to investigate or correct a violation when the employee reasonably believes the information concerns a legal violation. Lab. Code §1102.5 2. Internal reports can be protected. The statute expressly covers certain internal disclosures and disclosures made as part of the employee's job duties. Lab. Code §1102.5	3. California uses a statutory burden framework. Once the employee proves protected activity was a contributing factor in the adverse action, the employer must prove by clear and convincing evidence it would have taken the same action for legitimate independent reasons. Lab. Code §1102.6; Lawson v. PPG 4. A report can still be a disclosure when the recipient already knows. The California Supreme Court rejected a rule requiring the employee to provide previously unknown information. Garcia-Brower v. Kolla's, Inc. 5. A severance agreement cannot lawfully silence disclosure of unlawful acts. California separation agreements must preserve disclosure rights described in Government Code section 12964.5. Gov. Code §12964.5
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FROM COMPLAINT TO TERMINATION: BUILD THE EVIDENCE CHAIN

Evidence that raises leverage	Employer response to test	Possible severance terms
• Written protected complaint • Close timing • Good prior reviews • Decisionmaker knowledge • Shifting or false reason	• Preexisting documented concern • Independent decision timing • Consistent comparator treatment • Legitimate RIF criteria • Same-decision evidence	• Additional severance • Reference / announcement • Narrow release • Mutual non-disparagement • No-rehire / eligibility language

RETALIATION / SEVERANCE EVIDENCE CHECKLIST

- ☐ Complaint, report, objection, or refusal communications
- ☐ Names of recipients and meeting attendees
- ☐ Performance history before the complaint
- ☐ PIP/discipline after the complaint
- ☐ Termination or layoff-selection explanation
- ☐ Policies or rules connected to the report
- ☐ Witness names and contemporaneous notes

FROM THE EMPLOYER'S SIDE: A performance problem that appears immediately after a compliance complaint deserves a timeline, not an eye roll. Ask what document, witness, analysis, or contemporaneous explanation should exist if the company's position is genuine.

EMPLOYEE RESPONSE: Test the employer's label against the contemporaneous record and price every term—not only the cash payment.

RELATED RUGGLES LAW FIRM READING

- Protected Activity in California Retaliation Cases
- How to Make a Workplace Complaint in California
- Workplace Investigations: California Employee Rights
- Fired After Filing a Complaint - Wrongful Termination?

CALIFORNIA STATUTES / REGULATIONS

- Labor Code section 1102.5
- Labor Code section 1102.6
- Government Code section 12964.5

PUBLISHED CALIFORNIA CASES

- Lawson v. PPG Architectural Finishes, Inc., 12 Cal.5th 703 (2022)
- People ex rel. Garcia-Brower v. Kolla's, Inc., 14 Cal.5th 719 (2023)



SCAN TO READ
Protected Activity in
California Retaliation Cases
RugglesLawFirm.com

OFFICIAL RESOURCES Lab. Code §1102.5 | Lab. Code §1102.6 | Gov. Code §12964.5

"The plaintiff need not satisfy McDonnell Douglas in order to discharge this burden."

— Lawson v. PPG Architectural Finishes, Inc., 12 Cal.5th 703 (2022)

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