

ASSEMBLY BILL

No. 1069

Introduced by Assembly Member Koretz

February 23, 2001

An act to amend Section 98.7 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1069, as introduced, Koretz. Labor: complaints.

Existing law provides that any person who believes that he or she has been discharged or otherwise discriminated against in violation of a law regulating employment that is under the jurisdiction of the Labor Commissioner, may file a complaint with the Division of Labor Standards Enforcement. Existing law provides that if, after an investigation, the Labor Commissioner determines that no violation occurred, the Labor Commissioner shall dismiss the complaint and notify the complainant of his or her right to bring an action in an appropriate court, and, in the case of an alleged violation of specified discrimination laws, file a complaint against the state program with the United States Department of Labor.

This bill would require that the filing of a timely complaint with the United States Department of Labor stays the Labor Commissioner's dismissal of the division complaint until the United States Secretary of Labor makes a determination regarding the alleged violation. Under the bill, within 15 days of receipt of that determination, the Labor Commissioner is required to notify the parties as to whether he or she will reopen the complaint filed with the division or whether he or she will reaffirm the dismissal.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 98.7 of the Labor Code is amended to
 2 read:

3 98.7. (a) Any person who believes that he or she has been
 4 discharged or otherwise discriminated against in violation of any
 5 provision of this code under the jurisdiction of the Labor
 6 Commissioner may file a complaint with the division within six
 7 months after the occurrence of the violation. The six-month period
 8 may be extended for good cause. The complaint shall be
 9 investigated by a discrimination complaint investigator in
 10 accordance with this section. The Labor Commissioner shall
 11 establish procedures for the investigation of discrimination
 12 complaints. A summary of the procedures shall be provided to
 13 each complainant and respondent at the time of initial contact. The
 14 Labor Commissioner shall inform complainants charging a
 15 violation of Section 6310 or 6311, at the time of initial contact, of
 16 his or her right to file a separate, concurrent complaint with the
 17 United States Department of Labor within 30 days after the
 18 occurrence of the violation.

19 (b) Each complaint of unlawful discharge or discrimination
 20 shall be assigned to a discrimination complaint investigator who
 21 shall prepare and submit a report to the Labor Commissioner based
 22 on an investigation of the complaint. The Labor Commissioner
 23 may designate the chief deputy or assistant Labor Commissioner
 24 or the chief counsel to receive and review the reports. The
 25 investigation shall include, where appropriate, interviews with the
 26 complainant, respondent, and any witnesses who may have
 27 information concerning the alleged violation, and a review of any
 28 documents ~~which~~ *that* may be relevant to the disposition of the
 29 complaint. The identity of witnesses shall remain confidential
 30 unless the identification of the witness becomes necessary to
 31 proceed with the investigation or to prosecute an action to enforce
 32 a determination. The investigation report submitted to the Labor
 33 Commissioner or designee shall include the statements and
 34 documents obtained in the investigation, and the findings of the
 35 investigator concerning whether a violation occurred. The Labor



1 Commissioner may hold an investigative hearing whenever the
2 Labor Commissioner determines, after review of the investigation
3 report, that a hearing is necessary to fully establish the facts. In the
4 hearing the investigation report shall be made a part of the record
5 and the complainant and respondent shall have the opportunity to
6 present further evidence. The Labor Commissioner shall issue,
7 serve, and enforce any necessary subpoenas.

8 (c) If the Labor Commissioner determines a violation has
9 occurred, he or she shall notify the complainant and respondent
10 and direct the respondent to cease and desist from the violation and
11 take ~~such~~ any action as is deemed necessary to remedy the
12 violation, including, where appropriate, rehiring or reinstatement,
13 reimbursement of lost wages and interest thereon, payment of
14 reasonable attorney's fees associated with any hearing held by the
15 Labor Commissioner in investigating the complaint, and the
16 posting of notices to employees. If the respondent does not comply
17 with the order within 10 working days following notification of the
18 Labor Commissioner's determination, the Labor Commissioner
19 shall bring an action promptly in an appropriate court against the
20 respondent. If the Labor Commissioner fails to bring an action in
21 court promptly, the complainant may bring an action against the
22 Labor Commissioner in any appropriate court for a writ of
23 mandate to compel the Labor Commissioner to bring an action in
24 court against the respondent. If the complainant prevails in his or
25 her action for a writ, the court shall award the complainant court
26 costs and reasonable attorney's fees, notwithstanding any other
27 ~~provision of law~~. Regardless of any delay in bringing an action in
28 court, the Labor Commissioner shall not be divested of
29 jurisdiction. In any ~~such~~ action, the court may permit the claimant
30 to intervene as a party plaintiff to the action and shall have
31 jurisdiction, for cause shown, to restrain the violation and to order
32 all appropriate relief. Appropriate relief includes, but is not limited
33 to, rehiring or reinstatement of the complainant, reimbursement of
34 lost wages and interest thereon, and any other compensation or
35 equitable relief as is appropriate under the circumstances of the
36 case. The Labor Commissioner shall petition the court for
37 appropriate temporary relief or restraining order unless he or she
38 determines good cause exists for not doing so.

39 (d) (1) If the Labor Commissioner determines no violation has
40 occurred, he or she shall notify the complainant and respondent



1 and shall dismiss the complaint. The Labor Commissioner may
2 direct the complainant to pay reasonable attorney's fees associated
3 with any hearing held by the Labor Commissioner if the Labor
4 Commissioner finds the complaint was frivolous, unreasonable,
5 groundless, and was brought in bad faith. The complainant may,
6 after notification of the Labor Commissioner's determination to
7 dismiss a complaint, bring an action in an appropriate court, which
8 shall have jurisdiction to determine whether a violation occurred,
9 and if so, to restrain the violation and order all appropriate relief
10 to remedy the violation. Appropriate relief includes, but is not
11 limited to, rehiring or reinstatement of the complainant,
12 reimbursement of lost wages and interest thereon, and ~~such~~ other
13 compensation or equitable relief as is appropriate under the
14 circumstances of the case. When dismissing a complaint, the
15 Labor Commissioner shall advise the complainant of his or her
16 right to bring an action in an appropriate court if he or she disagrees
17 with the determination of the Labor Commissioner, and in the case
18 of an alleged violation of Section 6310 or 6311, to file a complaint
19 against the state program with the United States Department of
20 Labor.

21 *(2) The filing of a timely complaint against the state program*
22 *with the United States Department of Labor shall stay the Labor*
23 *Commissioner's dismissal of the division complaint until the*
24 *United States Secretary of Labor makes a determination regarding*
25 *the alleged violation. Within 15 days of receipt of that*
26 *determination, the Labor Commissioner shall notify the parties*
27 *whether he or she will reopen the complaint filed with the division*
28 *or whether he or she will reaffirm the dismissal.*

29 (e) The Labor Commissioner shall notify the complainant and
30 respondent of his or her determination under subdivision (c) or
31 *paragraph (1) of subdivision (d)*, not later than 60 days after the
32 filing of the complaint. Determinations by the Labor
33 Commissioner under subdivision (c) or (d) may be appealed by the
34 complainant or respondent to the Director of Industrial Relations
35 within 10 days following notification of the *Labor*
36 *Commissioner's* determination. The appeal shall set forth
37 specifically and in full detail the grounds upon which the appealing
38 party considers the Labor Commissioner's determination to be
39 unjust or unlawful, and every issue to be considered by the
40 director. The director may consider any issue relating to the initial



1 determination and may modify, affirm, or reverse the Labor
2 Commissioner's determination. The director's determination shall
3 be the determination of the Labor Commissioner. The director
4 shall notify the complainant and respondent of his or her
5 determination within 10 days of receipt of the appeal.

6 (f) The rights and remedies provided by this section do not
7 preclude an employee from pursuing any other rights and remedies
8 under any other ~~provisions~~ of law.

