

RESOLUTION 12-06-2017 (REVISED)

DIGEST

Attorneys’ Fees: Awards in Whistleblower Cases

Amends Labor Code section 1105 to authorize recovery of attorneys’ fees by the prevailing employee in whistleblower retaliation lawsuits.

RESOLUTIONS COMMITTEE COMMENTS

History:

This resolution is similar to Resolution 03-05-2012, which was approved as amended, and to Resolution 09-02-2014, which was disapproved.

Reasons:

This resolution amends Labor Code section 1105 to authorize recovery of attorneys’ fees by the prevailing employee in whistleblower retaliation lawsuits. Attorneys’ fees are not available in Labor Commissioner actions, forcing plaintiffs who want to recover fees to bring a civil action.

This resolution is related to Resolution 12-05-2017.

The Resolutions Committee initially recommended disapproval of this resolution. The full Conference voted to approve.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 1105 to read as follows:

1 § 1105
2 Nothing in this chapter shall prevent the injured employee from recovering damages
3 from his employer for injury suffered through a violation of this chapter. In civil action brought
4 for violations of this chapter, the court shall award reasonable attorneys fees and costs to the
5 prevailing party if any party to the action requests attorneys fee and costs upon initiation of the
6 action. However, if the prevailing party in the court action is not an employee, attorney’s fees
7 and costs shall be awarded pursuant to this section only if the court finds that the employee
8 brought the court action in bad faith.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: This is the whistleblower law, which prohibits employers from retaliating against an employee for disclosing any violation of the law against the employer. This statutory scheme provides for a private right of action, but there is no basis for the employee to recover their

attorneys' fees. The employee then has to expend a significant amount of personal funds to challenge the illegal acts of their employer, or hire a contingency attorney who will take a significant cut of their damages, which is a disincentive to pursuing this type of claim.

The Solution: This resolution authorizes the recovery of attorneys by the prevailing party. That recovery is mandatory, in the case of the employee, and is allowed for prevailing employers if the action is brought in bad faith, mirroring the language in Labor Code section 218.5, subdivision (a), which authorizes recovery of attorneys fees in action for nonpayment of wages.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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