

Senate Bill 1038

Protect Victims from Retaliation Act

Senator Connie M. Leyva (D-Chino)

SUMMARY

Senate Bill 1038 would clarify that individuals may be held personally liable for retaliating against a person for exercising her or his rights under the Fair Employment and Housing Act.

BACKGROUND

Under current law, individuals may be held personally liable for harassment claims under the Fair Employment and Housing Act (FEHA). However, individuals may not be held personally liable for retaliation due to an interpretation by the California Supreme Court in *Jones v. The Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158 that rendered the issue unclear.

Despite the fact that the FEHA explicitly makes it an unlawful employment practice for any “person” to retaliate against another for exercising her or his rights under FEHA, the Court in *Jones* held that “person” under this subdivision specifically meant a person acting as an agent of the employer, and therefore only the employer could be held liable.

One important reason to hold individuals personally liable for both harassment and retaliation is that an individual who retaliates against another to silence or intimidate should not escape liability. Without holding an individual liable for retaliation, those who harass (and thus face the risk of personal liability) have an incentive to retaliate and try to prevent the victim from reporting the underlying harassment. Holding an individual personally liable also allows the employer, in some instances, to recover losses as a result of a civil action against one of their employees who retaliated against someone else.

One can also look to the federal laws enacted in the past 15 years which protect whistleblowers from retaliation. Specifically, both the *Sarbanes-Oxley Act* and the *Dodd-Frank Act*—both of which prohibit employers from retaliating against individuals for reporting illegal conduct related to securities laws and shareholder fraud—also provide for individual liability for retaliatory acts. The U.S. Supreme Court has been consistent thus far in interpreting these statutes and other anti-retaliation

laws as broadly as possible to ensure the greatest protection for whistleblower plaintiffs.

SOLUTION

This bill would clarify that, like claims for harassment, individuals may be held personally liable for retaliating against an individual, as prohibited under FEHA. This bill would also discourage individuals, by holding them personally accountable, from taking retaliatory action against workers who are trying to exercise their legal rights under FEHA.

As we have seen in the #MeToo and #WeSaidEnough movement, threats of retaliation are one of the biggest barriers for women and men who wish to speak out or file sexual harassment complaints. Individuals need to understand that they will be held accountable if they try to interfere with or threaten someone who has made a sexual harassment claim or opposes such practices.

STATUS

Introduced – February 8, 2018

SUPPORT

California Employment Lawyers Association (Co - Sponsor)
Equal Rights Advocates (Co-Sponsor)

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