

SAN LUIS OBISPO COUNTY NAACP BRANCH
Civil Rights Complaints

Legal Redress Information

The San Luis Obispo County NAACP Branch CANNOT provide legal advice or services to those who feel their civil rights may have been violated. If you want to take legal action, you must locate and pay for your own attorney. SLOCNAACP Branch will work with residents of the community to assist in the completion of paperwork required by other organizations whose function it is to process civil rights complaints. Some of these organizations are the Equal Employment Opportunity Commission (EEOC), The American Civil Liberties Union (ACLU), the Bureau of Labor and Industry (BOLI) and the Fair Housing Authority (FHA). If you believe that you have experienced discrimination on the basis of race, gender, religion, native origin, sexual orientation or other basis, you are encouraged to request and complete a Complaint of Discrimination Form by calling or emailing the local office at the above mentioned address.

A Complaint of Discrimination Form will be sent to you. After receiving the Complaint of Discrimination Form, please do the following:

1. Complete, sign and date the form.
2. On a separate paper, explain the timeline and details of the alleged discrimination. For each event answer the questions Who? What? When? Where? Why?
3. If there are witnesses include their names, contact information and their signed and dated statements on a separate paper.
4. Attach other documentation that may be of assistance in addressing the case. Send only copies of documents NOT originals.
5. You may hand deliver, email or mail the Complaint of Discrimination Form, timeline, witness statements and additional documentation to the NAACP office listed above.
6. Please allow 2-3 weeks for a response to your concern.
7. The NAACP Legal Redress Committee will forward its recommendations of referral or identify options available to you.
8. It is recommended that your attorney be advised of the request for NAACP assistance.

NOTE: This process does not take the place of filing a complaint with the company or agency involved, according to established policies. You are encouraged to obtain legal counsel as soon as possible. The San Luis Obispo County NAACP Branch will keep copies of any complaints submitted. This may be helpful to establish a pattern if your problem has happened to others.

If you do not live in San Luis Obispo County, and you reside in an area that does not have an NAACP Branch, we will keep a copy of your complaint on file and forward a copy of it to the Regional NAACP Legal Redress for their records.

Thank you,

San Luis Obispo County NAACP Branch NAACP Legal Redress Chair

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California boasts some of the most protective whistleblower and retaliation laws in the nation. In the last few years, the state legislature has acted to bolster these protections in line with California's "broad public policy interest in encouraging workplace whistleblowers to report unlawful acts without fearing retaliation." (*Diego v. Pilgrim United Church of Christ* (2014) 231 Cal.App.4th 913, 922.)

A class-action lawsuit filed against Wells Fargo last month by employees of the embattled banking giant, (*Polonsky v. Wells Fargo Bank & Company, et. al.* (L.A.S.C. Case No. BC634475 Sep 22, 2016), illustrates the importance of these protections.¹

Labor Code section 1102.5 provides broad protection

The most noteworthy of California's whistleblower statutes is Labor Code section 1102.5, which protects employees who report or refuse to participate in unlawful conduct. Specifically, the statute forbids retaliation if the employee disclosed, "or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation . . ." (Lab. Code, § 1102.5, subd. (b).) In addition, the statute forbids an employer from retaliating against an employee "for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation." (Lab. Code, § 1102.5, subd. (c).)

It is important to note that recent amendments to Labor Code section 1102.5 expand its reach to protect a broader group of employees. The statute now expressly prohibits anticipatory retaliation where the employer believes that the employee *may* report unlawful activity regardless of whether the employee has actually done so. (Lab. Code, § 1102.5, subd. (b).) The legislature also added safeguards for employees who only *internally* report illegal conduct to either a supervisory or other employee who has authority to investigate. (*Ibid.*) In addition, employees who complain of violations of the law as part of their job duties (e.g., human resources employees) are now explicitly protected. (*Ibid.*)

Significantly, the statute now explicitly protects reporting violations of *local* laws as well. (*Ibid.*) Thus practitioners should take care to consider all the local laws and regulations that may apply to a client's circumstances. Cities like San Francisco³ and Oakland,⁴ for example, have wage protections and robust paid sick and family leave laws on the books that may bolster employees' whistleblower claims and should not be overlooked.

Notably, section 1102.5 applies even where the employer is *mistaken* in believing that the employee reported or may report unlawful conduct. (*Diego, supra*, 231 Cal.App.4th at p. 923.) And protection extends to an employee's family members. (Lab. Code, § 1102.5, subd. (h).) On the other hand, *post-termination* retaliation is not actionable under section 1102.5, so that defamatory statements made to a prospective employer after the employer-employee relationship ends would not provide a basis for legal action under the statute. (See *Hansen v. California Dept. of Corrections and Rehabilitation* (2008) 171 Cal.App.4th 1537, 1546.)

Tameny claims

Tameny claims provide wide-ranging protection when tethered to public policy. Employees who are retaliated against for reporting unlawful conduct may also bring a common law tort cause of action for Wrongful Termination in Violation of Public Policy, also known as a *Tameny* claim, under *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 176-177. Unlawful conduct underlying a *Tameny* cause of action must be tethered to fundamental public policies that are embodied in constitutional or statutory provisions. (*Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1095.) The California Supreme Court has articulated four requirements that a policy must satisfy to support a *Tameny* claim: (1) the policy must be supported by constitutional or statutory provisions; (2) the policy must inure to the benefit of the public; (3) the policy must have been existed at the time of discharge; and (4) the policy must be fundamental and substantial. (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 889-890.)

A *Tameny* claim may be maintained even where an employee is not ultimately terminated. Thus, an employee who has been subjected to adverse employment action such as a demotion or suspension without pay in retaliation for his or her whistleblowing activities may have a claim. (*Garcia v. Rockwell Int'l Corp.* (1986) 187 Cal.App.3d 1556, 1562.) As with most other California retaliation provisions, the employee need not show the employer