

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
Retaliation Complaint Investigation Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825
(916) 263-1597



October 13, 2017

Hornbrook CSD
Mr. Pete Kampa
P.O. Box 29
Hornbrook, CA 96044

Re: State Case No. 35854 - SACRCI; Harrell v. Hornbrook CSD

Dear Mr. Kampa:

The Labor Commissioner's office has received an additional retaliation complaint in the above-referenced case with new allegations related to a failure to hire. Like Mr. Harrell's initial retaliation complaint, I am assigned to investigate his new allegations. The investigation will be conducted pursuant to the provisions of Labor Code section 98.7. A summary of procedures is attached for reference.

Enclosed is a copy of the retaliation complaint. Please provide a substantive response to Mr. Harrell's retaliation complaint and return it to our office by November 2, 2017.

Employees or applicants for employment who have been retaliated against in violation of the Labor Code may be entitled, among other things, to reinstatement and compensation for any lost wages due to the illegal retaliation. In addition, employers may be subject to a penalty of up to \$10,000.00 for every violation of Labor Code section 98.6 and corporate employers may be subject to a civil penalty of up to \$10,000.00 for every violation of Labor Code section 1102.5.

It is your responsibility to cooperate with my investigation. You must keep me informed of any changes of address or telephone numbers, respond to any requests for documents, and attend any meetings. I look forward to receiving the requested information from you. Thank you.

Sincerely,

Sara DeVault

Sara DeVault
Deputy Labor Commissioner

Enclosure (2)

PRINT YOUR NAME: Peter T. Harrell

FOR OFFICE USE ONLY
Case #:

Part 4: EMPLOYMENT STATUS

27. DATE OF HIRE ____/____/____ Month Day Year Does not apply	28. Check which box applies to you: <input type="checkbox"/> Still working for employer <input type="checkbox"/> QUIT on ____/____/____ Month Day Year <input type="checkbox"/> DISCHARGED on ____/____/____ Month Day Year <input type="checkbox"/> Suspended on ____/____/____ Month Day Year <input checked="" type="checkbox"/> Other (specify): <u>Not hired due to retaliation</u>
29. If you no longer work for the employer, what was your final rate of pay? \$ <u>NA</u> / ____ (for example, \$10/hour)	30. Last job title with Employer Job Title: <u>NA</u>

Part 5: YOUR COMPLAINT

INSTRUCTIONS: Please see the Instructions Sheet to help you answer the following questions. Give a written statement to each question. An incomplete form will result in delays. While it is important to know the names of management involved, **do not include the names of the any of your witnesses on this page.**

31. What changes have occurred at work that caused you to make this complaint?

☐ Termination ☐ Suspension ☐ Demotion ☐ Change in hours ☐ Change in pay ☒ Other: Failure to Hire

☐ Disciplinary action/written warning ☐ Threat ☐ Transfer ☐ Forced to resign/quit

Date of change in employment: 07/25/17

Name(s) of person(s) carrying out change: Board of Directors HCSD Title: Director (elected officials), HCSD
Peter Kampa Title: General Manager, HCSD

Please describe what happened.

An employment position with the HCSD for a State certified water treatment operator became open due to resignation.

When that happened, I and other people expressed interest in applying, and asked the HCSD to properly post the opening, and to create a job description, etc. Rather than do so, the Manager contacted someone randomly and recruited them without permitting me to apply, because of "complaints and lawsuits" I filed, and helped others file.

32a. What reason would the employer give for the changes that you experienced that are described in question 31 above? What right did you exercise or action did you take that happened before the change in your employment described in question 31?

The Board Secretary stated that because I had filed complaints to the Board about mismanagement of the water treatment plant, the illegality of having a "consultant" remotely control the plant in violation of the Health and Safety Code, helped opposing candidates for Board seats, and filed Brown Act litigation and CPRA requests, that the Board and Manager wanted to keep me from filing an application and/or resume for the position. All my complaints occurred at open public meetings of the Board, or were sent to the Secretary and President via email and/or US Postal mail. The assistance I lent opposing candidates was promoting them, taking them to sign up for elections, and court actions.

32b. Describe how your employer knew about the activity or actions (e.g., exercising your rights) in question 32a.?

I have made numerous written and verbal complaints to the Board of the HCSD over the past year about Health and Safety Code violations at the water treatment plant, and I have also filed CPRA, and civil rights litigation against them. I have assisted others in filing litigation against the HCSD for various violations of law, and of civil rights, too. I know they know this, because they have said that they do many, many times, and berate me for doing so.

**Comment Concerning Failure by HCSD to engage in, fair, transparent, an
obs and hiring processes**

From: "Peter Harrell" <peterharrell@yahoo.com>

To: "Patricia Slote" <hornbrookcsd@gmail.com> "FatBob" <rdpuckettSr@hotmail.com>

Cc: "RJ GIFFORD" <gunsnhorses@yahoo.com> "Muffy" <kimberlyrenee@yahoo.com>

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Employment
Protest
Notice P

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President Puckett and Secretary Slote,

Please see the attached comment/notice/request.

Sincerely,

Peter T. Harrell

All that is necessary for the triumph of evil is for good men to do nothing. - Edmund Burke

July 24, 2017

COPY

RECEIVED

JUL 25 2017

HCSO
PO Box 29
Hornbrook, CA 96044

BY: REL

Re: Employment Opening and Hiring Process for "Operator of Record"

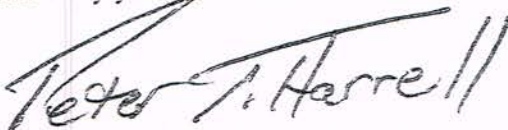
Members of the Board,

Some months ago, when Ernie Goff resigned as operator of record, there was a subsequent meeting of the Board where discussion was had by members of the public, and Board members present, that a proper job description and application process, including an advertisement for the open position, needed to be created for the HCSO, generally, but specifically for the "Operator of Record" position. As part of that discussion, I specifically told you at that time that I, and some other qualified members of the local community (I hold T2 and D2 water treatment/distribution operator certifications, and at least two people in Hornbrook hold T2 certification), were interested in seeing the job descriptions and hiring process put into place so that we might apply for any and all open positions, rather than see a continuation of the nepotism, favoritism, and discrimination that has been the hallmark of hiring by the HCSO in the past. My recollection is that Bryant made the motion to allow the GM to hire someone on a purely emergency, temporary basis while that process was undertaken - and yet here is an open-ended contract for the guy without any screening at all.

I have reviewed the Agenda, and its attachments for the upcoming meeting of July 25, 2017, and am distressed to see that not only was a consensus reached to not create formal job descriptions and/or any application process for employment within the District, but apparently an agreement was reached to take formal Board action with the goal of circumventing any such procedures (and associated State and Federal laws) in order to install a (somehow) pre-selected candidate. Even more egregious is the attempt to backdate the contract to July 1, 2017 as it indicates the Brown Act-violating planning and consensus has been in place for at least a month - not to mention other legal problems with such backdating. It is also of concern that the HCSO is trying to reclassify what is clearly a regular employment position into an "independent contractor" position, when such is not supported by law, nor the terms of the contract (see Labor Code Section 2750.5). Such actions reek of fraud and deliberate indifference to the laws, and rights of potential job applicants.

I hope that the Board will table its current improper proposals, and instead move forward with properly creating job descriptions, and a scope of work, for each position within the District, as well as actively institute a hiring program, and begin advertising for such open positions as may occur so that I, and other members of the public, might submit applications for the open positions.

Sincerely yours,



Peter T. Harrell
PO Box 131
Ashland, OR 97520

peterharrell@yahoo.com

Comment Concerning Failure by HCSD to engage in, fair, transparent, and equitable jobs and hiring processes

Monday, July 24, 2017 1:05 PM

From: "Peter Harrell" <peterharrell@yahoo.com>

To: "Patricia Slote" <hornbrookcsd@gmail.com> "FatBob" <rdpuckettSr@hotmail.com>

Cc: "RJ GIFFORD" <gunsnhorses@yahoo.com> "Muffy" <kimberlyrenee@yahoo.com>

- 1 Files
- 306KB
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PDF

Employment Protest Notice P 2017.pdf

306KB

Save

President Puckett and Secretary Slote,

Please see the attached comment/notice/request.

Sincerely,

Peter T. Harrell

All that is necessary for the triumph of evil is for good men to do nothing. - Edmund Burke

DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner

2031 Howe Avenue

Sacramento, CA 95825

Email: retaliation@dir.ca.gov



RETALIATION and DISCRIMINATION

COMPLAINTS

A Summary of Procedures

Labor Commissioner's Office

Division of Labor Standards Enforcement

Employees, former employees and applicants for employment who suffer retaliation or discrimination by their employer because they engage in an activity protected by any law under the jurisdiction of the Labor Commissioner may file a complaint with the Labor Commissioner's Office, also known as the Division of Labor Standards Enforcement or DLSE. This brochure describes the procedures followed by the Labor Commissioner under Labor Code section 98.7 for investigating these retaliation complaints.

Filing the Complaint

An employee, former employee or job applicant alleging retaliation in violation of any law under the jurisdiction of the Labor Commissioner must file a complaint with the Labor Commissioner's office within six months of the adverse action in most cases. Retaliation occurs when an employee engages in an action protected by law, yet suffers an adverse employment action because of this protected activity. Adverse actions may include unlawful discharge, demotion, suspension, reduction in pay or hours, refusal to hire or promote, etc., including immigration related threats. There are a few exceptions to the 6-month deadline: a complaint alleging retaliation against victims of domestic violence, stalking or sexual assault (Labor Code section 230(c), 230(e) or 230(f) or 230.1) must be filed within one year of the alleged violation; a complaint about being paid less than an employee of the opposite sex or another race or ethnicity for substantially similar work (Labor Code section 1197.5) must be filed within two (or three years if willful) years of the alleged violation; and a complaint alleging retaliation for complaining about a violation of licensing or other laws relating to child day care facilities (Health and Safety Code Section 1596.881) must be filed no later than 90 days after the adverse action. Additionally, Labor Code section 1311.5 extends the time limit for filing such that the time limit does not begin to run until the individual turns 18 years of age. Labor Code section 1311.5 applies to a complaint asserting retaliation for filing a claim or civil action alleging a Labor Code violation that arose while the individual was a minor.

The form used to file a retaliation complaint (RCI 1 Retaliation Complaint) can be obtained by calling or visiting any Labor Commissioner's office or by downloading the four-page form from the website at <http://www.dir.ca.gov/dlse/DLSEFormRCI-1.pdf>.

The Form RCI 1 can be filed in person at any local Labor Commissioner's office or by mailing it to the following locations:

Labor Commissioner
Retaliation Complaint Investigation Unit
2031 Howe Ave. Suite 100
Sacramento, CA 95825

Labor Commissioner
Retaliation Complaint Investigation Unit
320 W. Fourth Street, Suite 450
Los Angeles, CA 90013

Be sure to enter all information that is requested on the form using the space provided. Also, be sure to date and sign the completed form. Copies of any supporting documents may be submitted as attachments, but not instead of, a completed complaint form. Do not send originals, as they may be lost.

After the complaint is filed, the complaint it will be reviewed to confirm that the Labor Commissioner has jurisdiction over the specific complaint. If it is found that the complaint comes under the jurisdiction of the Labor Commissioner, it will be accepted for investigation.

Any employee, former employee or job applicant who alleges retaliation for having complained about a workplace health or safety issue has the right to file a concurrent complaint with federal OSHA within 30 days of the occurrence of the adverse action.

The Investigation

After filing the complaint, the employee, former employee or job applicant will be contacted by a retaliation complaint investigator who will conduct an investigation. The investigator will interview the worker, the employer and relevant witnesses who possess relevant pertinent information regarding the alleged violation. The investigator may request that the parties meet to explore the possibility of settlement. The cooperation of both parties is essential to ensure all available facts are uncovered in the investigation. The investigator has the authority to issue subpoenas to obtain evidence related to the case.

Once the investigation is complete, if no settlement is reached, the investigator will prepare a written summary of relevant facts that will be forwarded to the Labor Commissioner or her designee.

The Determination

The Labor Commissioner will review the summary of relevant facts and issue a Determination. If the Labor Commissioner finds the employer violated the law by retaliating against the employee or job applicant, the employer will be given 30 days to comply with the Determination to remedy the retaliation. If the employer fails to comply, an attorney for the Labor Commissioner will file a court action to enforce the Determination.

The Hearing

In a limited number of cases, the Labor Commissioner may order a hearing to establish the relevant facts before issuing a determination. The hearing is an informal, investigative proceeding. A hearing officer will conduct the hearing, either side may bring an attorney, union representative or other person of their choice to represent them at the hearing. Hearings are required for complaints alleging violations of Health and Safety Code section 1596.881, a part of the California Child Day Care Act. On rare occasions, the Labor Commissioner may decide that a hearing is necessary in retaliation or discrimination cases alleging violation of statutes other than Health and Safety Code section 1596.881.

The Labor Commissioner, employer, employee and job applicant can each subpoena witnesses and documents for the hearing. The parties should contact the hearing officer who will issue all subpoenas reasonably necessary. The hearing officer may refuse to issue unnecessary subpoenas. Any party who insists on subpoenaing witnesses or documents the hearing officer believes are unnecessary should contact the hearing officer's supervisor, the senior deputy of the Labor Commissioner's Retaliation Complaint Investigation Unit. When the Labor Commissioner issues a subpoena requested by a party, that party is required to pay witness fees. If such fees are not paid, the witness does not have to appear.

After the hearing, the hearing officer will file the findings of facts and conclusions with the Labor Commissioner. The Labor Commissioner will then issue a Determination on the complaint.

Results of Investigation

Labor Code section 98.7 was amended in 2017 and as a result the majority of retaliation cases no longer have appeal rights. In these cases, if the Determination concludes there is insufficient evidence of retaliation, the Complainant may file a civil complaint against the employer to pursue the matter further.

In cases where the Labor Commissioner has determined that sufficient evidence exists to support a finding of retaliation, the Labor Commissioner may order a variety of remedies including reinstatement, payment of lost wages, interest on the lost wages, removal of related negative reports in the employee personal file, and the posting of a notice acknowledging the retaliation. In addition, Labor Code sections 98.6 and 1019.1 provide for a penalty amount of up to \$10,000 payable to the Complainant if the evidence establishes retaliatory conduct by the employer. Other penalties may be assessed for violations of the Healthy Family, Healthy Workplace statute, and Labor Code sections 1102.5, 1311.5 and 2814. For Respondents who are corporations and limited liability companies, additional penalties under Labor Code section 1102.5 provided for up to a \$10,000 amount may be assessed.

The Respondent will have thirty (30) days to comply with the Determination, or attempt to settle the case, prior to the Labor Commissioner's office attorneys filing a civil complaint to collect the assessed damages.

Appeal Rights

Complaints alleging violation of Labor Code section 6310 or 6311, related to workplace health and safety, include appeal rights for the worker who filed the complaint, in the event the Labor Commissioner dismisses the complaint for lack of sufficient evidence. This appeal right is required by the Federal Occupational Safety and Health Act, and the State of California's Labor Commissioner's office is required to provide the same or similar process for violations of Labor Code section 6310 and 6311. In the appeal, the Complainant shall define the grounds upon which the appealing party considers the Determination to be unjust or unlawful and identify every issue to be considered by the Director. The Director will provide all other parties with a copy of the appeal, allowing for an opportunity to respond.

The Complainant, or individual who filed the complaint, will have 15 days from the date of the receipt of the Determination to file a complaint with the Director of the Department of Industrial Relations.

Christine Baker, Director
c/o Office of the Director – Legal Unit, RCI Appeals
1515 Clay Street, Suite 701
Oakland, CA 94612

There is no appeal right under this provision for the employer. In the event the Labor Commissioner finds that the employer violated the law, the Respondent has 30 days to comply with the order as is discussed above.

In addition to the appeal right discussed above, any party to a complaint alleging retaliation for complaining about a workplace safety and health issue has the right to file a Complaint Against State Program Administration (CASPA) with federal OSHA if they are not satisfied with the procedures followed in the Labor Commissioner's investigation.

Contact the Labor Commissioner's Office

If you have any questions regarding investigation procedures, please contact the nearest Labor Commissioner office. Office locations can be found at <http://www.dir.ca.gov/dlse/DistrictOffices.htm>. Alternatively, you may speak with a Labor Commissioner's Office representative by calling (714) 558-4910 or (916) 263-1811.