

LABOR COMMISSIONER CAN BRING CLAIMS FOR DISCIPLINE RELATING TO LAWFUL OFF-DUTY CONDUCT

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Effective January 1, 2000, Labor Code §96 was amended to permit the Labor Commissioner to take assignments of claims for loss of wages resulting from the "demotion, suspension or discharge from employment for lawful conduct during non-working hours away from the employer's premises." The law further erodes California's "at-will" employment policy (embodied in Labor Code §2922), which provides that, absent an agreement to the contrary, an employer is free to terminate an employee at any time, with or without notice, and with or without cause. The at-will policy was, of course, already limited by other statutes which prohibit employment terminations for unlawful purposes, such as for discriminatory reasons or in retaliation for exercising certain legal rights.

California is not alone in enacting a law which protects an employer from interfering with an employee's after-hours activities. Indeed, existing laws protect political activities, among other things. Moreover, other states have statutes similar to Labor Code §96. However, these states, such as New York and Colorado, provide exceptions when the disciplinary action is based upon occupational requirements or where the reasons for the discipline are reasonably and rationally related to employment activity. As California's statute lacks such language, employers are advised to consult with legal counsel before disciplining any employee for conduct which occurred outside the workplace, even if the conduct is obviously job-related.

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