

Who Can Be Sued Under California Labor Code § 1102.5? California Court of Appeal Draws the Line

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In a published decision addressing a previously unresolved question under California law, the First District Court of Appeal held that individual supervisors and managers cannot be held personally liable for whistleblower retaliation under California Labor Code section 1102.5. In *Chaudhry v. State of California*, the court became the first California appellate court to squarely address whether the statute permits claims against individual supervisors, ultimately concluding that liability rests with the employer, not the individuals acting on the employer's behalf. For employers, the decision provides a clear basis to seek early dismissal of supervisors named in section 1102.5 lawsuits and undercuts a tactic plaintiffs have used to keep these cases in state court. It does not, however, reduce the employer's own exposure.

The plaintiff, a state corrections employee who alleged she was retaliated against for making Cal/OSHA complaints, sued her employer and three of her supervisors. Although section 1102.5 prohibits retaliation by an employer or "any person acting on behalf of the employer," the court held that this phrase, read in the context of the broader statutory scheme, does not authorize suits against individual managers and supervisors.

In this article, we briefly summarize the court's reasoning and focus on what the decision means in practice for California employers.

The Court's Reasoning in Brief

The court found the statutory language ambiguous when read alongside related provisions, and it resolved that ambiguity against individual liability. Several factors led the court to that conclusion:

- Related statutory provisions, such as Labor Code sections 1104 and 1105, focus on imposing liability on employers for actions by supervisors that violate section 1102.5, rather than on the supervisors themselves.
- Labor Code section 1102.6, which establishes the burden-shifting framework governing whistleblower claims, places the burden of proof squarely on the employer

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and makes no reference to supervisors or other individuals.

- Legislative history regarding section 1102.5, including the 2013 amendments that added the phrase “any person acting on behalf of the employer,” reflects an intent to extend the prohibition to “all persons and entities,” but contains no indication that the Legislature intended to allow employees to sue individual managers or supervisors personally.
- California Supreme Court jurisprudence regarding the liability of individual supervisors under other employment statutes, such as FEHA, also points against imposing liability. The court reasoned that exposing supervisors to personal liability for necessary personnel decisions would add little to a plaintiff’s recovery while chilling managerial judgment and creating conflicts of interest between supervisors and their employers.
- The court noted that more than 30 federal district court decisions have reached the same conclusion, and it declined to follow the small number of federal rulings that had treated the question as open.

Practical Implications for Employers

The holding in *Chaudhry* has several important implications for California employers defending whistleblower retaliation claims.

- This decision removes a potentially significant source of personal exposure for individual managers and supervisors in section 1102.5 litigation. It should also reduce the defense costs and potential conflicts of interest that arise when an employer and its supervisors are co-defendants, particularly where the employer would be obligated to fund the supervisors’ defense.
- This opinion should meaningfully strengthen removal and fraudulent-joinder arguments in cases where individual California supervisors are named primarily to defeat diversity jurisdiction. Several federal courts had declined to find fraudulent joinder of supervisors precisely because no California court had resolved whether section 1102.5 permits individual liability; *Chaudhry* fills that gap. The opinion may also discourage plaintiffs from naming supervisors as defendants in future section 1102.5 actions absent another viable cause of action supporting individual liability.
- Employers defending existing lawsuits should evaluate whether individual supervisor defendants can be dismissed from pending section 1102.5 claims through a demurrer, a motion for judgment on the pleadings, or a summary judgment motion, and whether any other claims pleaded against those individuals (such as FEHA harassment) independently support keeping them in the case.
- Claims against the employer remain fully viable. The court allowed the section 1102.5 claim against the State and CDCR to proceed on a constructive-discharge theory, holding that a constructive discharge can itself be the actionable adverse action even when the underlying conduct began years earlier. The court also signaled that reversing course does not necessarily cure the harm; repeated terminations followed by reinstatement, combined with obstacles placed in the employee’s way on return, could make continued employment intolerable.
- Not every workplace slight is actionable. The court held that requests for doctor’s notes, a single accusation of improper mask use, and a counseling record with no alleged consequences were not adverse employment actions, individually or collectively. Even so, employers should document the legitimate, independent reasons for any discipline of an employee who has engaged in protected activity, because under section 1102.6 the employer must prove those reasons by clear and convincing evidence.

Key Takeaway

Chaudhry does not render supervisors wholly insulated from employment-related liability. Rather, it holds that the proper defendant in a section 1102.5 action is the employer. Supervisors may still face personal liability under other statutes, including FEHA's harassment provisions and, for state employees, the California Whistleblower Protection Act, and plaintiffs may try to rely on other anti-retaliation statutes with "person" language that *Chaudhry* did not address. Employers should continue to train supervisors to recognize protected whistleblower activity and avoid retaliatory conduct because their actions may still expose the employer to liability, including under section 1102.5 itself, where the employer bears the burden of proving by clear and convincing evidence that it would have taken the same action for legitimate, independent reasons.