



General Assembly

Amendment

January Session, 2015

LCO No. 8465



Offered by:
SEN. KISSEL, 7th Dist.

To: Senate Bill No. 446

File No. 254

Cal. No. 202

(As Amended by Senate Amendment Schedule "A")

**"AN ACT CONCERNING THE DEFINITION OF THE TERM
"DOMESTIC WORKER"."**

1 Strike section 507 in its entirety and substitute the following in lieu
2 thereof:

3 "Sec. 507. Section 46a-83 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2015*):

5 (a) [Within twenty] Not later than fifteen days after the date of filing
6 of any discriminatory practice complaint pursuant to subsection (a) or
7 (b) of section 46a-82, as amended by this act, or an amendment to such
8 complaint adding an additional respondent, the commission shall
9 [provide] serve the respondent [by first class mail, facsimile machine,
10 electronic mail or a file transfer protocol site] as provided in section
11 46a-86a with the complaint and a notice advising of the procedural
12 rights and obligations of a respondent under this chapter. [The
13 respondent shall file a written answer to the complaint under oath

14 with the commission within thirty days of receipt of the complaint,
15 provided a respondent may request, and the commission may grant,
16 for good cause shown, one extension of time of fifteen days within
17 which to file an answer to a complaint. The answer to any complaint
18 alleging a violation of section 46a-64c or 46a-81e shall be filed within
19 ten days of receipt.] The respondent shall either (1) file a written
20 answer to the complaint as provided in subsection (b) of this section,
21 or (2) not later than ten days after the date of receipt of the complaint,
22 provide written notice to the complainant and the commission that the
23 respondent has elected to participate in pre-answer conciliation, except
24 that a discriminatory practice complaint alleging a violation of section
25 46a-64c or 46a-81e shall not be subject to pre-answer conciliation. A
26 complaint sent by first class mail shall be considered to be received not
27 later than two days after the date of mailing, unless the respondent
28 proves otherwise. The commission shall conduct a pre-answer
29 conciliation conference not later than thirty days after the date of
30 receiving the respondent's request for pre-answer conciliation.

31 (b) Except as provided in this subsection, not later than thirty days
32 after the date (1) of receipt of the complaint, or (2) on which the
33 commission determines that the pre-answer conciliation conference
34 was unsuccessful, the respondent shall file a written answer to the
35 complaint, under oath, with the commission. The respondent may
36 request, and the commission may grant, one extension of time of not
37 more than fifteen days within which to file a written answer to the
38 complaint. An answer to any amendment to a complaint shall be filed
39 within twenty days of the date of receipt to such amendment. The
40 answer to any complaint alleging a violation of section 46a-64c or 46a-
41 81e shall be filed not later than ten days after the date of receipt of the
42 complaint.

43 [(b)] (c) [Within ninety] Not later than sixty days after the date of the
44 filing of the respondent's answer, [to the complaint,] the executive
45 director or the executive director's designee shall conduct a [merit]
46 case assessment review to determine whether the complaint should be

47 retained for further processing or dismissed because (1) it fails to state
48 a claim for relief or is frivolous on its face, (2) the respondent is exempt
49 from the provisions of this chapter, or (3) there is no reasonable
50 possibility that investigating the complaint will result in a finding of
51 reasonable cause. No complaint may be dismissed unless a
52 commission legal counsel approves the dismissal. The [merit] case
53 assessment review shall include the complaint, the respondent's
54 answer and the responses to the commission's requests for
55 information, [if any,] and the complainant's comments, if any, to the
56 respondent's answer and information responses. [If the executive
57 director or the executive director's designee determines that the
58 complaint fails to state a claim for relief or is frivolous on its face, that
59 the respondent is exempt from the provisions of this chapter or that
60 there is no reasonable possibility that investigating the complaint will
61 result in a finding of reasonable cause, the executive director or the
62 executive director's designee shall dismiss the complaint and send
63 notice of dismissal pursuant to section 46a-86a. Within fifteen days of
64 the sending of the notice of dismissal, the complainant may request a
65 release of jurisdiction allowing the complainant to bring a civil action
66 under section 46a-100. If the complainant does not request a release of
67 jurisdiction, commission legal counsel shall conduct a legal review of
68 any complaint dismissed pursuant to this subsection and shall
69 reinstate or deny reinstatement of the complaint within sixty days of
70 the sending of the notice of dismissal. The executive director or the
71 executive director's designee shall send notice of any action taken
72 pursuant to the merit assessment review and the legal review
73 conducted pursuant to this subsection in accordance with section 46a-
74 86a.] The executive director or the executive director's designee shall
75 send notice of any action taken pursuant to the case assessment review
76 in accordance with section 46a-86a. For any complaint dismissed
77 pursuant to this subsection, the executive director or the executive
78 director's designee shall issue a release of jurisdiction allowing the
79 complainant to bring a civil action under section 46a-100, as amended
80 by this act. This subsection and subsection (e) of this section shall not
81 apply to any complaint alleging a violation of section 46a-64c or 46a-

82 81e. The executive director shall report the results of the [merit] case
83 assessment reviews made pursuant to this subsection to the
84 commission quarterly during each year.

85 [(c) (1) If a complaint is not dismissed after the merit assessment
86 review pursuant to subsection (b) of this section or if a complaint is
87 reinstated after legal review pursuant to said subsection (b), the]

88 (d) Not later than sixty days after the date of sending notice that a
89 complaint has been retained after a case assessment review, the
90 executive director or the executive director's designee shall assign an
91 investigator or commission legal counsel to hold a mandatory
92 mediation conference, [within sixty days of sending notice of action
93 taken pursuant to the merit assessment review or legal review.] A
94 mediation conference may but need not be held if the commission has
95 held a pre-answer conciliation conference. The investigator or
96 commission legal counsel assigned to conduct the mediation shall not
97 be assigned to investigate the complaint. The mandatory mediation
98 conference may not be scheduled for the same time as a fact-finding
99 conference held pursuant to subsection [(d)] (f) of this section. The
100 mediator may hold additional mediation conferences to accommodate
101 settlement discussions.

102 [(2)] (e) If the complaint is not resolved after the mandatory
103 mediation conference, the complainant, the respondent or the
104 commission may at any time after such conference request early legal
105 intervention. If a request for early legal intervention is made, [the
106 executive director or the executive director's designee] a commission
107 legal counsel shall determine [within] not later than ninety days after
108 the date of the request whether [(A)] the complaint should be (1) heard
109 pursuant to section 46a-84, as amended by this act, [(B) the complaint
110 should be] (2) processed pursuant to subsection [(d)] (f) of this section,
111 or [(C) the complainant should be] (3) released from the jurisdiction of
112 the commission. In making such determination, [the executive director
113 or the executive director's designee] commission legal counsel may
114 hold additional proceedings and may utilize and direct commission

115 staff. If [the executive director or the executive director's designee] a
116 commission legal counsel determines that the complaint should be
117 processed pursuant to subsection [(d)] (f) of this section, [the executive
118 director or the executive director's designee] the commission legal
119 counsel may recommend that the investigator make a finding of no
120 reasonable cause. [If the executive director or the executive director's
121 designee recommends that the investigator make a finding of no
122 reasonable cause, the] The investigator shall make such a finding
123 unless the investigator believes [the executive director or the executive
124 director's designee] the commission legal counsel made a mistake of
125 fact. If the investigator intends to make a finding of reasonable cause
126 after [the executive director or the executive director's designee] the
127 commission legal counsel recommends otherwise, the investigator
128 shall consult with [the executive director or the executive director's
129 designee] the commission legal counsel.

130 [(3) If the complaint is not resolved after the mandatory mediation
131 conference, the complainant or the respondent may request the
132 commission to hold additional mediation conferences.

133 (4) The commission may dismiss the complaint if (A) a complainant,
134 after notice and without good cause, fails to attend a mandatory
135 mediation conference; or (B) the respondent has eliminated the
136 discriminatory practice complained of, taken steps to prevent a like
137 occurrence in the future and offered full relief to the complainant, even
138 though the complainant has refused such relief.

139 (d) If the complaint is not resolved after the mandatory mediation
140 conference held pursuant to subsection (c) of this section or the
141 executive director determines that the complaint should be processed
142 pursuant to this subsection in accordance with subdivision (2) of
143 subsection (c) of this section,]

144 (f) Not later than fifteen days after the date of a (1) a mandatory
145 mediation conference that fails to resolve a complaint, or (2) an early
146 legal intervention decision to investigate a complaint, the executive

147 director or the executive director's designee shall assign an investigator
148 to process the complaint. [within fifteen days after the mandatory
149 mediation conference.] The investigator may [conduct a fact-finding
150 conference, a complete investigation,] process the complaint by any
151 lawful means of finding facts, including, but not limited to, a fact-
152 finding conference, individual witness interviews, requests for
153 voluntary disclosure of information, subpoenas of witnesses or
154 documents, requests for admission of facts, interrogatories, site visits
155 or any [other lawful means of finding facts, or any combination
156 thereof] combination of these means for the purpose of determining
157 [if] whether there is reasonable cause for believing that a
158 discriminatory practice has been or is being committed as alleged in
159 the complaint. As used in this section and section 46a-84, as amended
160 by this act, "reasonable cause" means a bona fide belief that the
161 material issues of fact are such that a person of ordinary caution,
162 prudence and judgment could believe the facts alleged in the
163 complaint. [The executive director or the executive director's designee
164 may dismiss the complaint if the complainant, after notice, and
165 without good cause, fails to attend a fact-finding conference.]

166 [(e)] (g) (1) Before issuing a finding of reasonable cause or no
167 reasonable cause, the investigator shall afford each party and each
168 party's representative an opportunity to provide written or oral
169 comments on all evidence in the commission's file, except as otherwise
170 provided by federal law or the general statutes. The investigator shall
171 consider such comments before making a finding. The investigator
172 shall make a finding of reasonable cause or no reasonable cause in
173 writing and shall list the factual findings on which it is based not later
174 than one hundred ninety days from the date of the [merit] case
175 assessment review, except that for good cause shown, the executive
176 director or the executive director's designee may grant no more than
177 two extensions of the investigation of three months each.

178 (2) If the investigator makes a finding that there is reasonable cause
179 to believe that a violation of section 46a-64c has occurred, the

180 complainant and the respondent shall have twenty days from sending
181 of the reasonable cause finding to elect a civil action in lieu of an
182 administrative hearing pursuant to section 46a-84, as amended by this
183 act. If either the complainant or the respondent requests a civil action,
184 the commission, through the Attorney General or a commission legal
185 counsel, shall commence an action pursuant to subsection (b) of section
186 46a-89, [within] as amended by this act, not later than ninety days after
187 the date of receipt of the notice of election. If the Attorney General or a
188 commission legal counsel believes that injunctive relief, punitive
189 damages or a civil penalty would be appropriate, such relief, damages
190 or penalty may also be sought. The jurisdiction of the Superior Court
191 in an action brought under this subdivision shall be limited to such
192 claims, counterclaims, defenses or the like that could be presented at
193 an administrative hearing before the commission, had the complaint
194 remained with the commission for disposition. A complainant may
195 intervene as a matter of right in a civil action without permission of the
196 court or the parties. If the Attorney General or commission legal
197 counsel, as the case may be, determines that the interests of the state
198 will not be adversely affected, the complainant or attorney for the
199 complainant shall present all or part of the case in support of the
200 complaint. If the Attorney General or a commission legal counsel
201 determines that a material mistake of law or fact has been made in the
202 finding of reasonable cause, the Attorney General or a commission
203 legal counsel may decline to bring a civil action and shall remand the
204 file to the investigator for further action. The investigator shall
205 complete any such action not later than ninety days after receipt of
206 such file.

207 [(f)] (h) If the investigator issues a finding of no reasonable cause or
208 if the complaint is dismissed pursuant to subsection [(d)] (m) of this
209 section, the complainant may file a written request for reconsideration
210 with the executive director or the executive director's designee, not
211 later than fifteen days from the sending of such finding or dismissal. A
212 request for reconsideration shall state specifically the reasons why
213 reconsideration should be granted. [The executive director or the

214 executive director's designee] A commission legal counsel shall grant
215 or reject reconsideration [within] not later than ninety days after the
216 date of the sending of such finding or dismissal. [The executive
217 director or the executive director's designee] A commission legal
218 counsel shall conduct such additional proceedings as may be necessary
219 to render a decision on the request.

220 [(g)] (i) After finding that there is reasonable cause to believe that a
221 discriminatory practice has been or is being committed as alleged in
222 the complaint, an investigator shall attempt to eliminate the practice
223 complained of by conference, conciliation and persuasion [within] not
224 later than fifty days after the date of the finding. The refusal to accept a
225 settlement shall not be grounds for dismissal of any complaint.

226 [(h)] (j) No commissioner or employee of the commission may
227 disclose, except to the parties or their representatives, what has
228 occurred in the course of [such endeavors] the commission's
229 processing of a complaint, provided the commission may publish the
230 facts in the case and any complaint [which] that has been dismissed
231 and the terms of conciliation when a complaint has been adjusted.
232 Each party and his or her representative shall have the right to inspect
233 and copy documents, statements of witnesses and other evidence
234 pertaining to the complaint, except as otherwise provided by federal
235 law or the general statutes.

236 [(i)] (k) In the investigation of any complaint filed pursuant to this
237 chapter, [the] commission legal counsel may issue subpoenas requiring
238 the production of records and other documents or compelling the
239 attendance of witnesses. Commission legal counsel may recommend
240 that the commission reopen, in accordance with section 46a-94a, as
241 amended by this act, any matter previously closed pursuant to this
242 section.

243 [(j)] (l) The executive director or the executive director's designee
244 may enter an order of default against a respondent who (1) after
245 notice, fails to answer a complaint in accordance with subsection (a) of

246 this section or within such extension of time as may have been granted;
247 (2) fails to answer interrogatories issued pursuant to subdivision (11)
248 of section 46a-54 or fails to respond to a subpoena issued pursuant to
249 subsection [(i)] (k) of this section or subdivision (9) of section 46a-54,
250 provided the executive director or the executive director's designee
251 shall consider any timely filed objection; (3) after notice and without
252 good cause, fails to attend a fact-finding conference; or (4) after notice
253 and without good cause, fails to attend a mandatory mediation
254 conference. The respondent may make application to the executive
255 director to vacate the default. Upon entry of an order of default or
256 upon the decision of the executive director not to vacate the default,
257 the executive director or the executive director's designee shall appoint
258 a presiding officer to enter, after notice and hearing, an order
259 eliminating the discriminatory practice complained of and making the
260 complainant whole. The commission or the complainant may petition
261 the Superior Court for enforcement of any order for relief pursuant to
262 section 46a-95.

263 (m) The executive director or the executive director's designee may
264 enter an order of dismissal against a complainant who (1) after notice
265 and without good cause, fails to attend a fact-finding conference; (2)
266 after notice and without good cause, fails to attend a mandatory
267 mediation conference; or (3) refuses to accept an offer of settlement
268 where the respondent has eliminated the discriminatory practice
269 complained of, taken steps to prevent a like occurrence in the future
270 and offered full relief to the complainant."