



General Assembly

Amendment

January Session, 2015

LCO No. 8466



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 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 Section 46a-83 of the general statutes is repealed and the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. The [merit] case assessment review shall include the
52 complaint, the respondent's answer and the responses to the
53 commission's requests for information, [if any,] and the complainant's
54 comments, if any, to the respondent's answer and information
55 responses. [If the executive director or the executive director's designee
56 determines that the complaint fails to state a claim for relief or is
57 frivolous on its face, that the respondent is exempt from the provisions
58 of this chapter or that there is no reasonable possibility that
59 investigating the complaint will result in a finding of reasonable cause,
60 the executive director or the executive director's designee shall dismiss
61 the complaint and send notice of dismissal pursuant to section 46a-86a.
62 Within fifteen days of the sending of the notice of dismissal, the
63 complainant may request a release of jurisdiction allowing the
64 complainant to bring a civil action under section 46a-100. If the
65 complainant does not request a release of jurisdiction, commission
66 legal counsel shall conduct a legal review of any complaint dismissed
67 pursuant to this subsection and shall reinstate or deny reinstatement of
68 the complaint within sixty days of the sending of the notice of
69 dismissal. The executive director or the executive director's designee
70 shall send notice of any action taken pursuant to the merit assessment
71 review and the legal review conducted pursuant to this subsection in
72 accordance with section 46a-86a.] The executive director or the
73 executive director's designee shall send notice of any action taken
74 pursuant to the case assessment review in accordance with section 46a-
75 86a. For any complaint dismissed pursuant to this subsection, the
76 executive director or the executive director's designee shall issue a
77 release of jurisdiction allowing the complainant to bring a civil action
78 under section 46a-100, as amended by this act. This subsection and
79 subsection (e) of this section shall not apply to any complaint alleging
80 a violation of section 46a-64c or 46a-81e. The executive director shall
81 report the results of the [merit] case assessment reviews made

82 pursuant to this subsection to the commission quarterly during each
83 year.

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

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

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

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

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

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

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

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

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

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

177 (2) If the investigator makes a finding that there is reasonable cause
178 to believe that a violation of section 46a-64c has occurred, the
179 complainant and the respondent shall have twenty days from sending

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

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

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

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

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

235 [(i)] (k) In the investigation of any complaint filed pursuant to this
236 chapter, [the] commission legal counsel may issue subpoenas requiring
237 the production of records and other documents or compelling the
238 attendance of witnesses.

239 [(j)] (l) The executive director or the executive director's designee
240 may enter an order of default against a respondent who (1) after
241 notice, fails to answer a complaint in accordance with subsection (a) of
242 this section or within such extension of time as may have been granted;
243 (2) fails to answer interrogatories issued pursuant to subdivision (11)
244 of section 46a-54 or fails to respond to a subpoena issued pursuant to
245 subsection [(i)] (k) of this section or subdivision (9) of section 46a-54,

246 provided the executive director or the executive director's designee
 247 shall consider any timely filed objection; (3) after notice and without
 248 good cause, fails to attend a fact-finding conference; or (4) after notice
 249 and without good cause, fails to attend a mandatory mediation
 250 conference. The respondent may make application to the executive
 251 director to vacate the default. Upon entry of an order of default or
 252 upon the decision of the executive director not to vacate the default,
 253 the executive director or the executive director's designee shall appoint
 254 a presiding officer to enter, after notice and hearing, an order
 255 eliminating the discriminatory practice complained of and making the
 256 complainant whole. The commission or the complainant may petition
 257 the Superior Court for enforcement of any order for relief pursuant to
 258 section 46a-95.

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

This act shall take effect as follows and shall amend the following sections:		
Sec. 507	October 1, 2015	46a-83