



General Assembly

Amendment

January Session, 2015

LCO No. 8473



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 Section 46a-83 of the general statutes is repealed and the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. A complaint sent by facsimile machine, electronic
29 mail or file transfer protocol site shall be considered to be received on
30 the date on which it was sent. The commission shall conduct a pre-
31 answer conciliation conference not later than thirty days after the date
32 of receiving the respondent's request for pre-answer conciliation.

33 (b) Except as provided in this subsection, not later than thirty days
34 after the date (1) of receipt of the complaint, or (2) on which the
35 commission determines that the pre-answer conciliation conference
36 was unsuccessful, the respondent shall file a written answer to the
37 complaint, under oath, with the commission. The respondent may
38 request, and the commission may grant, one extension of time of not
39 more than fifteen days within which to file a written answer to the
40 complaint. An answer to any amendment to a complaint shall be filed
41 within twenty days of the date of receipt to such amendment. The
42 answer to any complaint alleging a violation of section 46a-64c or 46a-
43 81e shall be filed not later than ten days after the date of receipt of the
44 complaint.

45 [(b)] (c) [Within ninety] Not later than sixty days after the date of the
46 filing of the respondent's answer, [to the complaint,] the executive

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

82 a violation of section 46a-64c or 46a-81e. The executive director shall
83 report the results of the [merit] case assessment reviews made
84 pursuant to this subsection to the commission quarterly during each
85 year.

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

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

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

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

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

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

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

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

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

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

179 (2) If the investigator makes a finding that there is reasonable cause

180 to believe that a violation of section 46a-64c has occurred, the
181 complainant and the respondent shall have twenty days from sending
182 of the reasonable cause finding to elect a civil action in lieu of an
183 administrative hearing pursuant to section 46a-84, as amended by this
184 act. If either the complainant or the respondent requests a civil action,
185 the commission, through the Attorney General or a commission legal
186 counsel, shall commence an action pursuant to subsection (b) of section
187 46a-89, [within] as amended by this act, not later than ninety days after
188 the date of receipt of the notice of election. If the Attorney General or a
189 commission legal counsel believes that injunctive relief, punitive
190 damages or a civil penalty would be appropriate, such relief, damages
191 or penalty may also be sought. The jurisdiction of the Superior Court
192 in an action brought under this subdivision shall be limited to such
193 claims, counterclaims, defenses or the like that could be presented at
194 an administrative hearing before the commission, had the complaint
195 remained with the commission for disposition. A complainant may
196 intervene as a matter of right in a civil action without permission of the
197 court or the parties. If the Attorney General or commission legal
198 counsel, as the case may be, determines that the interests of the state
199 will not be adversely affected, the complainant or attorney for the
200 complainant shall present all or part of the case in support of the
201 complaint. If the Attorney General or a commission legal counsel
202 determines that a material mistake of law or fact has been made in the
203 finding of reasonable cause, the Attorney General or a commission
204 legal counsel may decline to bring a civil action and shall remand the
205 file to the investigator for further action. The investigator shall
206 complete any such action not later than ninety days after receipt of
207 such file.

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

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

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

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

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

244 [(j)] (l) The executive director or the executive director's designee
245 may enter an order of default against a respondent who (1) after

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

264 (m) The executive director or the executive director's designee may
 265 enter an order of dismissal against a complainant who (1) after notice
 266 and without good cause, fails to attend a fact-finding conference; (2)
 267 after notice and without good cause, fails to attend a mandatory
 268 mediation conference; or (3) refuses to accept an offer of settlement
 269 where the respondent has eliminated the discriminatory practice
 270 complained of, taken steps to prevent a like occurrence in the future
 271 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