



September 19, 2023

The Honorable Gavin Newsom
 Governor, State of California
 State Capitol
 Sacramento, CA 95814

SUBJECT: SB 497 (SMALLWOOD-CUEVAS) PROTECTED EMPLOYEE CONDUCT REQUEST FOR VETO

The California Chamber of Commerce and the organizations listed below respectfully **REQUEST** your **VETO** of **SB 497 (Smallwood-Cuevas)**.

SB 497 creates a presumption in favor of an employee retaliation claim under Labor Code sections 98.6 and 1197.5 where the alleged adverse action took place within 90 days of the alleged protected activity. Courts already take timing into account when evaluating a retaliation claim. See *Garcia-Bower v. Premier Automotive Imports of CA, LLC*, 55 Cal. App. 5th 961 (2020). While sometimes 90 days may be sufficient to show retaliatory motive, that is not always the case. Depending on the facts of the case, courts have found that 90 days is not sufficient to infer causation. See, e.g., *Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001) (citing cases for the proposition that a three-month time lapse is insufficient to infer causation). For example, a period of 90 days or less may not be sufficient where there has been a positive event between the alleged protected activity and the alleged adverse action, such as a pay raise or promotion. See *Manatt v. Bank of America, NA*, 339 F. 3d 792, 802 (9th Cir. 2003); *Larkin v. Home Depot, Inc.*, No. 13-CV-02868-LB, 2014 WL 7221136, at *15 (N.D. Cal. Dec. 18, 2014).

There is no justification for creating a presumption in these two code sections. Courts already take temporal proximity into account when evaluating retaliation claims and the courts should be allowed to consider other factors relevant to the specific case. Creating a presumption simply allows claims to proceed that should not be moving forward, which wastes valuable court and litigant resources.

For these and other reasons, we respectfully **REQUEST** your **VETO** of **SB 497 (Smallwood- Cuevas)**.

Sincerely,

Courtney Jensen, Fernandez Jensen Kimmelshue Government Affairs
 On behalf of California Chamber of Commerce

Acclamation Insurance Management Services (AIMS), Dominic Russo
Allied Managed Care (AMC), Dominic Russo
Associated General Contractors of California, Bret Gladfelty
Associated General Contractors San Diego, Bret Gladfelty
California Apartment Association, Embert P. Madison, Jr.
California Association for Health Services at Home, Dean Chalios
California Association of Joint Powers Authorities (CAJPA), Faith Borges
California Association of Sheet Metal and Air Conditioning Contractors National Association, Chris Walker
California Association of Winegrape Growers, Michael Miiller
California Attractions and Parks Association, Sabrina Demayo Lockhart
California Business Roundtable, Natalie Boust
California Chamber of Commerce, Courtney Jensen
California Farm Bureau, Bryan Little
California Hotel & Lodging Association, A.J. Rossitto
California League of Food Producers, Trudi Hughes
California Lodging Industry Association, Bobbie Singh-Allen
California Manufactures & Technology Association (CMTA), Lawrence Gayden
California Restaurant Association, Katie Davey
California Retailers Association, Sarah Moo Pollo
Coalition of Small and Disabled Veteran Businesses, Jeffrey Langlois
Construction Employers' Association, Michael Walton
Family Business Association of California, Robert Rivinius
Flasher Barricade Association (FBA), Kenneth Johnston
Independent Lodging Industry Association, Bobbie Singh-Allen
National Federation for Independent Business (NFIB), Tim Taylor
Public Risk Innovations, Solutions and Management (PRISM), Jen Hamelin
Western Growers Association, Matthew Allen

CJ:am