

# The San Diego Union-Tribune

## Mistaken whistleblower protected

Whistleblowers have a right, within limits, to be wrong

By [Dan Eaton](#) PUBLISHED: December 29, 2025 at 6:00 AM PST

The California Equal Pay Act, Labor Code section 1197.5, does not prohibit all variations in employee pay. The EPA prohibits only discriminatory variations in employee pay based on sex, race or ethnicity.

What if an employee is fired for complaining that other employees doing substantially similar work are paid more than he is and that he believed such a pay gap violated the EPA? And what if the employee also concedes he did not believe he was being paid less because of his sex, race or ethnicity? May a jury properly award the employee damages for his employer's violation of California's whistleblower law? Yes, the San Diego-based division of the California Court of Appeal recently ruled.

In *Contreras v. Green Thumb Produce, Inc.*, the court of appeal held plaintiff had introduced enough evidence at trial that his belief his employer had violated the EPA was reasonable – even though mistaken – to justify a jury verdict in his favor on his whistleblower claim.

### Background

After Manuel Contreras learned he was earning less than other Green Thumb Produce employees doing similar work, he sought to confirm his assumption that California law prohibited any difference in pay for employees doing similar work. Contreras contacted the local office of the labor commissioner.

A deputy labor commissioner told Contreras that Green Thumb might be violating the EPA. The labor official directed Contreras to the labor commissioner's website for more information about the EPA. Contreras concluded from answers to Frequently Asked Questions posted on the agency's website that Green Thumb was violating the EPA.

Contreras showed the FAQ document to Green Thumb management and requested a raise, which was denied. Contreras was fired the next day. He claimed, among other things, Green Thumb violated California's whistleblower law, Labor Code section 1102.5(b),

because he complained Green Thumb was violating the EPA. Green Thumb asserted Contreras was terminated for insubordination and other reasons.

The jury awarded Contreras damages on his whistleblower claim and two other causes of action. The trial judge overturned the verdict on Contreras's whistleblower claim, concluding Contreras's mistaken belief that the EPA prohibited all pay variations and not just discriminatory pay variations meant his complaint to management about his wages was based on a nonexistent law and therefore was not protected under the whistleblower statute. The court of appeal reversed, reinstating the verdict on Contreras's whistleblower claim.

### **Whistleblower law**

Under section 1102.5(b), an employer may not retaliate against an employee for "disclosing information" to another employee with authority over that employee or to an employee authorized to investigate, discover, or correct the alleged legal violation if the employee has objectively "reasonable cause" to believe he is disclosing a violation of a state or federal statute, or a violation of a local, state, or federal rule or regulation.

Requiring a whistleblower to prove his employer actually violated the law, said the appellate court, would make employees with no legal training "reluctant to report suspected violations for fear they misunderstood the law."

### **Why misunderstanding held reasonable**

The court acknowledged that the whistleblower law does not protect employee complaints based on nonexistent laws or based on an unreasonable interpretation of a particular law. But the court determined Contreras's complaint was based on his objectively reasonable, though mistaken, complaint about Green Thumb's violation of an actual law, the EPA.

"(A) lay person with no formal legal training could easily misinterpret the FAQ similarly to Contreras, especially when told by a deputy labor commissioner that there was a potential violation. And that is why the decision in this case properly belonged to a jury of Contreras's peers. The jurors had the FAQ to read for themselves, and they determined that Contreras's mistaken legal analysis was reasonable from the perspective of a layperson." A judge could not second-guess the jury's verdict, even though a different jury could have reached a different conclusion.

Employers should not punish an employee for complaining, based on an objectively reasonable misunderstanding, that the employer is violating a specific law, whether the EPA or another law. Employers should consider asking the employee why the employee

believes the employer is violating the law before summarily rejecting the employee's accusation. Whistleblowers have a right, within limits, to be wrong.

Happy New Year!

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