

Recommended Amendment to Remedy
Chilling Effect of Ruling in Hoffman Plastics vs. NLRB
By Jan Tucker

Amend Section 1105 of the California Labor Code to read as follows in response to Hoffman Plastics vs. National Labor Relations Board:

1105 (a) If a person or persons, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Sections 923, 1101, 1102, or 1102.5 of the California Labor Code, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured. An action brought by the Attorney General, any district attorney, or any city attorney may also seek a civil penalty of twenty-five thousand dollars (\$25,000). If this civil penalty is requested, it shall be assessed individually against each person who is determined to have violated this section and the penalty shall be awarded to each individual whose rights under this section are determined to have been violated.

(b) Any individual whose exercise or enjoyment of rights secured by Sections 923, 1101, 1102, or 1102.5, has been interfered with, or attempted to be interfered with, as described in subdivision (a), may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages, including, but not limited to, actual damages, exemplary damages under, a civil penalty of twenty-five thousand dollars (\$25,000.00) to be assessed individually against each person who is determined to have violated this section and the penalty shall be awarded to each individual whose rights under this section are determined to have been violated, injunctive relief, reasonable attorney fees, court costs, and costs of investigation if performed by a person licensed under Section 7521 et seq of the Business & Professions Code, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured.

(c) For purposes of this section, the term "person" shall mean an individual, a corporation, or any other form of business entity.

(d) An action brought pursuant to subdivision (a) or (b) may be filed either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which a person whose conduct complained of resides or has his or her place of business. An action brought by the Attorney General pursuant to subdivision (a) also may be filed in the superior court for any county wherein the Attorney General has an office, and in that case, the jurisdiction of the court shall extend throughout the state.

(e) If the court grants injunctive relief against any act prohibited by this section, the court shall order the plaintiff or the attorney for the plaintiff to deliver, or the county clerk to mail, two copies of any order, extension, modification, or termination thereof granted pursuant to this section, by the close of the business day on which the order, extension, modification, or termination was granted, to each local office of the State Labor Commissioner having jurisdiction over the workplace of the Plaintiff, the

headquarters of the Plaintiff's employer, and to the Agent for Service of Process for the employer if any is registered with the Corporate Division of the California Secretary of State, and any other locations where the court determines that acts in violation of this section against the plaintiff are likely to occur. Those local Labor Commissioner offices shall be designated by the plaintiff or the attorney for the plaintiff. Each appropriate Labor Commissioner office receiving any order, extension, or modification of any order issued pursuant to this section shall serve forthwith one copy thereof upon the defendant.

(f) An action brought pursuant to this section is independent of any other action, remedy, or procedure that may be available to an aggrieved individual under any other provision of law.

(g) A violation of an injunctive order issued under this section may be punished by a proceeding for contempt brought pursuant to Title 5 (commencing with Section 1209) of Part 3 of the Code of Civil Procedure. However, in any proceeding pursuant to the Code of Civil Procedure, if it is determined that the person proceeded against is guilty of the contempt charged, in addition to any other relief, a fine may be imposed not exceeding one thousand dollars (\$1,000), or the person may be ordered imprisoned in a county jail not exceeding six months, or the court may order both the imprisonment and fine.

(h) Speech alone is sufficient to support an action brought pursuant to subdivision (a) or (b), upon a showing that the speech itself threatens violence, intimidation, coercion, economic harm, or which in any other way is likely to have a chilling effect on the exercise of those rights by an employees, acting individually or in concert, as enumerated in Sections 923, 1101, 1102, and 1102.5 of the Labor Code.

(i) An order restricting the content, time, place, or manner of any person's speech shall do so only to the extent reasonably necessary to protect the peaceable exercise or enjoyment of the rights granted to employees by Sections 923, 1101, 1102, or 1102.5 of the Labor Code, consistent with the constitutional rights of the person sought to be enjoined.