

Employment Litigation

Employment issues can take a variety of forms - wage and hour claims such as overtime, minimum wage, wrongful termination, harassment, discrimination and/or retaliation.

The California Labor Code and Wage Orders (<http://www.dir.ca.gov/DLSE/dlse.html>) generally cover the issue of overtime, meals and breaks, various leaves and absences, minimum wage and the like.

Two bodies of law cover California employees/employers for issues of racial, sexual, religious, age and/or disability harassment, discrimination and/or retaliation.

The California Department of Fair Employment and Housing (DFEH) “is the state agency charged with enforcing California’s civil rights laws. The mission of the DFEH is to protect the people of California from unlawful discrimination in employment, housing and public accommodations and from hate violence and human trafficking.” <http://www.dfeh.ca.gov/>

While the U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.

The laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits. <https://www.eeoc.gov/>

California Civil Jury Instructions (CACI)

2521. Hostile Work Environment Harassment - Essential Factual Elements—Employer or Entity Defendant (Gov. Code, § 12940(j))

[*Name of plaintiff*] claims that that [*he/she*] was subjected to harassment based on [*his/her*] [*describe protected status—for example, race, gender, or age*], in [*his/her*] workplace at [*name of defendant*], causing a hostile or abusive work environment. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. That [*name of plaintiff*] [*was an employee of [name of defendant]/applied to [name of defendant] for a job/was a person providing services pursuant to a contract with [name of defendant]*];
2. That [*name of plaintiff*] was subjected to unwanted harassing conduct because [*he/she*]

[was/was believed to be/was associated with a person who was/was associated with a person who was believed to be] [protected status];

3. That the harassing conduct was so severe, widespread, or persistent that a reasonable [*describe member of protected group*] in [*name of plaintiff*]'s circumstances would have considered the work environment to be hostile or abusive;

4. That [*name of plaintiff*] considered the work environment to be hostile or abusive;

5. [*Select applicable basis of defendant's liability:*]

[That a supervisor with actual [or reasonably perceived] authority over [*name of plaintiff*] engaged in the conduct;]

[That [*name of defendant*] [or [*his/her/its*] supervisors or agents] knew or should have known of the conduct and failed to take immediate and appropriate corrective action;]

6. That [*name of plaintiff*] was harmed; and

7. That the conduct was a substantial factor in causing [*name of plaintiff*]'s harm.