



WORKPLACE RETALIATION LAWS IN CALIFORNIA

What counts as retaliation, which activities the law protects, and how California employees can prove a claim and recover.

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The concept of *retaliation* is simple: an employer attempts to “get even” with an employee for taking a certain action. Both federal and California laws prohibit employers from retaliating against employees who take actions protected by law.

Several California and federal employment laws define activities that are protected. Most laws that allow an employee to make a complaint against an employer (including, for example, discrimination complaints and reports of wage and hour violations) protect workers who make those complaints.¹ Laws that give employees the right to take certain actions with regard to their employment (such as requesting an accommodation for a disability) often include protections from retaliation against an employee who exercises those rights.

Retaliation often takes the form of firing an employee or taking some other action (such as a demotion or a reduction of hours) that affects the employee’s pay. But some retaliation laws also protect employees from retaliatory acts that would tend to discourage other employees from engaging in protected activity, even when those acts do not affect an employee’s pay.

This guide provides an overview of the protections against retaliation available to California employees. It offers information, not legal advice. If you believe you have been subjected to unlawful retaliation, you can get legal advice from a California employment lawyer who handles retaliation claims.

Overview of Retaliation Laws

The primary laws that protect California employees from workplace retaliation are:



Title VII of the Civil Rights Act of 1964 (Title VII) addresses employment discrimination and discriminatory harassment because of race or color, national origin or ancestry, sex, and religion. It prohibits retaliation against employees who oppose employment discrimination or who participate in investigations or legal proceedings concerning discrimination.²



The Americans with Disabilities Act (ADA) addresses employment discrimination because of a disabling condition. Its protections are similar to Title VII's, and it also prohibits retaliation against employees who request a reasonable accommodation of a disability.³



The Age Discrimination in Employment Act (ADEA) addresses employment discrimination because of age and provides protections against retaliation similar to Title VII's.⁴



California's Fair Employment and Housing Act (FEHA) generally provides the same protection against employment discrimination as Title VII, while more clearly defining sexual orientation, gender identity, and gender expression as protected characteristics. It also protects against age and disability discrimination and discrimination on the basis of marital status and certain other characteristics.⁵



The Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) protect the right to take unpaid leave under some circumstances and prohibit retaliating against employees who take or request a permitted leave.⁶



The Fair Labor Standards Act (FLSA) requires most employers to pay minimum wage and overtime and to obey other wage and hour laws. Its anti-retaliation provision is generally interpreted to prohibit retaliation for complaining about wage and hour violations or for initiating wage and hour proceedings. The California Labor Code contains a similar prohibition on retaliation for making a complaint or otherwise attempting to enforce rights under California's wage and hour laws.⁷



Whistleblower laws protect employees who report suspected legal violations. California's general whistleblower statute is discussed in its own chapter below; many other federal and state statutes contain their own whistleblower protections.⁸



Refusing an employer's order to violate the law is protected. An employee may not be retaliated against for declining to participate in activity that would break a statute or regulation.⁹



Public employees are protected from retaliation for constitutionally protected speech, meaning speech made as a citizen on a matter of public concern. Speech made pursuant to the employee's official job duties is generally not protected.¹⁰



Workers' compensation law provides remedies when employers retaliate against an employee for filing a workers' compensation claim.¹¹



A number of other California laws protect workers from retaliation when they exercise rights or satisfy obligations imposed by law.¹²

For the sake of simplicity, this article primarily refers to retaliation cases arising under Title VII and the FEHA. Other laws generally follow the framework discussed below, but each has its own nuances. An employment lawyer can provide advice for employees who faced retaliation under any of the laws described above.

Employment laws protect certain individuals (discussed under Protected Individuals, below) from retaliation for engaging in protected activities (discussed under Protected Activities, below). The different laws define retaliation in different ways, but it generally means punishing an employee for engaging in a protected activity. In most cases, employers rather than individual supervisors are liable for retaliation. Victims of retaliation may assert their claims in legal proceedings and pursue a remedy.

Protected Individuals

While the various laws that prohibit retaliation differ, they tend to share common themes. For example, employment laws protect employees who are victims of retaliation because they engaged in a protected activity. That protection may extend to:



Current employees.



Former employees, who remain protected from retaliation such as a negative job reference given after the employment has ended.¹³



Job applicants.



Workers who are not authorized to work by citizenship or immigration status, at least under California law.¹⁴



Individuals who meet the legal test of “employee” even if their employer misclassifies them.

Employment laws do not protect workers from retaliation if they are not employees. In addition, laws prohibiting retaliation do not always apply to businesses that have only a few employees.

2.1 Nonemployees

Not all workers are employees. Independent contractors, for example, are not protected by the retaliation prohibitions in employment laws.

Keep in mind, however, that employers sometimes misclassify employees as independent contractors. A worker who primarily works for a single business, who reports to a location the business designates, who performs tasks the business assigns by following procedures the business created, and whose work is closely supervised may be an employee even if the employer classifies and pays the worker as an independent contractor.

2.2 Businesses with few employees

Title VII and the ADA apply to employers that have 15 or more employees.¹⁵ The ADEA applies to employers that have 20 or more employees.¹⁶ The FEHA applies to California employers that have 5 or more employees.¹⁷ If you work for Joe's Barbershop and Joe has only two employees, you probably will not be protected by these laws if you complain about discrimination.

The FLSA applies to most employers, as long as they do business in interstate commerce or have gross revenues of \$500,000 or more each year.¹⁸ The anti-retaliation provisions of California's wage and hour laws apply to all employers.¹⁹

Protected Activities

Another shared theme is that employment laws protect employees from retaliation for engaging in protected activities. Each law defines the activities it protects.

For example, whistleblower laws usually protect the disclosure of specified information to certain government agencies or law enforcement agents.²⁰ It is important to know where information must be reported in order to qualify for protection. Some laws also protect employees who notify an employer of a regulatory violation. To be certain of legal protection, employees should determine exactly which actions are protected before becoming a whistleblower.

When a law requires an employer to accommodate an employee (such as accommodating the employee's disability or religious beliefs), requesting an accommodation is a protected activity.²¹

Title VII and the FEHA generally define protected activities as:²²



Opposing discrimination, or



Participating in legal proceedings that address discrimination.

Lawyers refer to those two protected activities in shorthand form as “opposition” and “participation.”

Retaliation for Opposition to an Unlawful Practice

An employer may not retaliate against an employee because the employee opposed a practice made unlawful by Title VII or the FEHA. The employee is also protected if he or she opposed the practice in the good-faith belief that it was unlawful.²³

An employee might oppose a discriminatory practice by:²⁴

-  Making a formal or informal complaint to a supervisor about the practice.
-  Telling a supervisor to stop his or her sexual harassment.
-  Refusing to carry out an order to discriminate against another employee.
-  Refusing to implement a discriminatory policy.
-  Refusing an instruction to dissuade an employee from filing a discrimination complaint.
-  Giving honest answers to an employer's questions about discrimination in the workplace.²⁵
-  Gathering evidence of discriminatory conduct, such as disparate pay based on race or gender.
-  Helping another employee make a complaint to the employer.
-  Complaining to a union or newspaper about a discriminatory practice.
-  Notifying the police of a supervisor's assaultive behavior after rejecting the supervisor's sexual advance.
-  Writing to a legislator to complain about workplace discrimination.

Opposition can be an explicit or an implicit communication of the employee's belief that the conduct is, or could become, discrimination or harassment. An employee is not required to use legal terms or to mention a specific statute, as long as the communication makes clear that the employee believes discrimination or harassment occurred.²⁶

Even if an employee who opposes a practice does not state that the practice is discriminatory, the employee is protected from retaliation if the employer knew that the employee believed the practice to be discriminatory.²⁷

An employee who opposes discrimination need not be the victim of discrimination. For example, a white employee engages in protected activity by opposing an employer's discrimination against Black employees.²⁸

Only lawful means of opposing discrimination are protected. The opposition must also be reasonable in view of the employer's interest in maintaining a harmonious and efficient operation. The manner of opposing discrimination may be unreasonable if it significantly disrupts the workplace. Following a complaint procedure that the employer established (if one exists) is usually the most reasonable way to oppose a discriminatory practice.²⁹

4.1 “Practice” Defined

Importantly, the opposition must be to an employer's *practice*. Complaining about discriminatory conduct committed by supervisors or other employees who were authorized to affect the employee's continued employment, compensation, and other terms or conditions of employment will generally be opposition to the employer's practice.

Complaining about discriminatory conduct committed by a co-worker may also be protected, depending on the circumstances. A complaint to a co-worker who used a racial slur might not constitute opposition to an employer's practice of discrimination, and might not be protected.

On the other hand, a complaint to the employer about a co-worker's racial slur is more likely to be protected. Retaliating against an employee for complaining to the employer about a co-employee's racial slur or sexist remark, even if isolated, would be inconsistent with the purpose of Title VII and the FEHA of encouraging employees to bring perceived misconduct to their employer's attention so that it can be corrected voluntarily. Opposition is therefore protected when it rests on a reasonable, good-faith belief that the conduct opposed violates the antidiscrimination laws, or would if repeated.³⁰

Opposition is protected only if the practice opposed was unlawful under Title VII or the FEHA. Complaining about a violation of some other law might be protected by a different statute, but it will not be protected by Title VII or the FEHA.³¹

4.2 Good faith beliefs

The requirements discussed above might seem to limit the effectiveness of the prohibition against retaliation for opposing discrimination. Employees might be unwilling to oppose discrimination if they could be certain of protection only when a judge would agree that the practice they opposed was actually unlawful.

Fortunately, opposition is a protected activity if the complaint was made in the reasonable, good-faith belief that the conduct was an unlawful employment practice. Opposition to perceived discrimination is protected even if the perception turns out to be mistaken, provided that the perception was reasonable and the opposition was sincere.³²

Retaliation for Participation in a Legal Proceeding

Participation in legal proceedings that address an employer's alleged violation of employment laws generally includes:³³

-  Filing a complaint in court.
-  Filing a charge with an administrative agency.
-  Testifying in a legal proceeding.
-  Cooperating with a government investigation.
-  Assisting an employee with any of those actions.

Federal courts have concluded that the participation clause offers broader protection than the opposition clause. Unlike the opposition clause, the participation clause protects employees whether or not they have a good-faith belief in the merits of the case in which they are participating. It might not protect someone who files a complaint that fails to allege a violation of the relevant law.³⁴

The participation clause generally protects participation in the statutory enforcement machinery. An employee who speaks to an EEOC representative about discrimination is therefore protected by the participation clause. An employee who speaks to someone the employer designated to investigate discrimination complaints is protected by the opposition clause, but not necessarily by the participation clause.³⁵

Whistleblower Retaliation Under Labor Code Section 1102.5

California's general whistleblower statute, Labor Code section 1102.5, protects employees across nearly every industry, and it is one of the most frequently invoked retaliation laws in the state. Unlike Title VII and the FEHA, it is not limited to complaints about discrimination.³⁶

Section 1102.5 prohibits three things:³⁷

-  Retaliating against an employee for disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee with authority to investigate or correct the violation, when the employee reasonably believes the information shows a violation of a state or federal statute or noncompliance with a local, state, or federal rule or regulation.
-  Retaliating against an employee because the employer believes the employee has disclosed, or may disclose, such information.
-  Retaliating against an employee for refusing to participate in an activity that would result in a violation of law.

The employee does not have to be correct that a violation occurred; the statute requires only reasonable cause to believe it. The disclosure does not have to go to an outside agency. An internal report to a supervisor or manager who has authority to investigate or correct the problem qualifies, and the protection applies even when reporting is part of the employee's job duties.³⁸ The statute also protects an employee who is a family member of a person who engaged in protected activity.³⁹

California uses an employee-friendly method for proving these claims. Once the employee shows, by a preponderance of the evidence, that the protected activity was a contributing factor in the adverse action, the burden shifts to the employer to prove by clear and convincing evidence that it would have taken the same action for legitimate, independent reasons. The familiar burden-shifting test used in discrimination cases does not apply.⁴⁰ A "contributing factor" is a low threshold: the

protected activity need only have played some role in the decision, even alongside legitimate reasons.⁴¹

A 2024 amendment makes these claims easier still. If an employer takes adverse action against an employee within 90 days of protected activity, retaliation is presumed, and the employer bears the burden of rebutting the presumption. The same 90-day presumption applies to retaliation claims for reporting wage and hour violations (section 98.6) and for asserting rights under the Equal Pay Act (section 1197.5).⁴² An employee who wins a section 1102.5 claim may recover attorney's fees, and the employer may owe a civil penalty of up to \$10,000 per employee for each violation.⁴³

Adverse Actions

Retaliation generally consists of taking an adverse action against an employee because the employee engaged in a protected activity. Whether an action is “adverse,” however, depends on the law that applies to the claim.

Under Title VII, an adverse employment action constitutes unlawful retaliation if the action could well dissuade a reasonable worker from making or supporting a charge of discrimination. Adverse actions under Title VII and similar federal laws do not necessarily need to affect an employee’s pay or job status.⁴⁴

The action must be materially adverse. Petty slights and minor annoyances are not enough. Whether an action is material is often a matter of context, since an action that seems trivial in one setting might be more serious in another.⁴⁵

In Title VII cases (and in federal retaliation cases that look to Title VII for guidance), courts have found that a wide array of disadvantageous workplace changes can constitute adverse employment actions. When they are taken because an employee engaged in protected activity, examples include:⁴⁶

-  Terminating employment.
-  Giving an employee a negative performance review.
-  Initiating a disciplinary investigation of the employee.
-  Reducing an employee’s job responsibilities.
-  Transferring an employee to a less favorable job or location.
-  Assigning new or more difficult job duties.
-  Denying an employee the opportunity to attend meetings or to receive information necessary to perform the job.
-  Denying administrative support to an employee.
-  Refusing to consider an employee for promotion.
-  Giving a former employee a negative job reference, even after employment has ended.⁴⁷



Creating a work environment so hostile or abusive that an employee quits.



Firing the employee's fiancé.⁴⁸



Filing false criminal charges against the employee.

The standard under the FEHA is different. A retaliatory action is “adverse” under the FEHA only if it materially affects the terms, conditions, or privileges of employment. Courts look at the totality of the employer’s conduct, so a pattern of individually minor acts can be materially adverse even when no single act would be.⁴⁹

Classic examples of actions that affect the terms and conditions of employment include terminations, demotions, and pay reductions. Other actions, such as disciplinary actions that do not directly affect pay or job status, might be considered adverse if they are likely to affect pay or the ability to earn promotions.⁵⁰

Liability for Retaliation

Title VII protects employees from retaliatory actions taken by employers. An employer typically will not be held responsible for retaliation committed by a co-worker, because co-workers are not employers. If the employer directs or encourages the retaliation, however, or negligently permits it to occur (for example, by doing nothing to stop it after becoming aware of it), the employer may be liable for the co-worker's conduct.⁵¹

Courts have generally held that individual supervisors are not employers. Employers are nonetheless responsible for acts of retaliation committed by certain supervisory employees, whether or not the employer was negligent.⁵²

For that reason, employees generally may bring Title VII retaliation claims against their employers for retaliation committed by their supervisors, but not against the supervisors directly. Employees may also bring retaliation claims for adverse employment decisions that were influenced by a supervisor's retaliatory animus, even if the person who made the decision had no such animus.⁵³

The same reasoning bars claims against supervisors and other individuals under the ADEA and the ADA.⁵⁴ The FEHA likewise limits retaliation liability to employers rather than supervisors or co-employees; individual supervisors cannot be held personally liable for FEHA retaliation.⁵⁵

8.1 Limitations on Liability for Supervisors

An employer is typically liable for retaliation by a supervisor who had authority to cause direct economic harm by taking a tangible employment action against the retaliation victim. A supervisor who can take a tangible employment action is usually one who can change or influence the employee's pay or employment status. For that reason, an employer might not be responsible for retaliation committed by a supervisor who does not directly supervise, and cannot affect the employment status of, the retaliation victim.⁵⁶

Keep in mind that a "tangible employment" action and an "adverse employment action" are two separate things. Under federal law, an employer is liable for a

supervisor who retaliates by taking an adverse employment action against an employee, even if the supervisor does not take a tangible employment action. The employer will be liable, however, only if the supervisor was empowered to take an adverse employment action against the employee.⁵⁷

The difference between tangible employment actions and adverse employment actions can be confusing, and the cases addressing how much authority a supervisor must have before the employer will be liable are not always consistent. When a supervisor takes a retaliatory action that is adverse but not tangible, the retaliation victim may benefit from legal advice to determine whether the employer can be held liable.

8.2 Retaliatory harassment

While an employer is not usually held liable for retaliation committed by nonsupervisory employees, an exception may exist when the retaliation consists of harassment. Some (but not all) federal courts have held employers responsible for “retaliatory harassment” by co-workers if the harassment is severe and the employer encouraged it or permitted it to occur.⁵⁸

The Ninth Circuit, which interprets federal law as it applies in California, has recognized that a supervisor’s retaliatory creation of a hostile work environment violates Title VII. The court’s language and analysis suggest that severe harassment by co-workers would also violate Title VII if the co-workers were retaliating against an employee’s protected activity and the employer knew about the harassment and did nothing to stop it.⁵⁹

Retaliation Claims and Remedies

The time limit for bringing a retaliation claim can be short, and it varies with the law that creates the remedy. A FEHA claim requires filing an intake with the California Civil Rights Department (CRD, formerly the Department of Fair Employment and Housing) within three years of the last act of retaliation, followed by a lawsuit within one year of a right-to-sue notice.⁶⁰ A Title VII claim requires filing a charge with the EEOC (generally within 300 days in California) before suit, and the lawsuit must be filed within 90 days of a right-to-sue notice.⁶¹ A Labor Code section 1102.5 whistleblower claim generally must be brought within three years, and a section 132a workers' compensation retaliation claim within one year.⁶² Because these deadlines differ and some are unforgiving, it is wise to consult an employment lawyer promptly.

Depending on the law that was violated, a retaliation claim might be pursued in an administrative agency, a court, or both. Retaliation laws typically, but not always, require a victim to file the claim with an administrative agency before pursuing it in court. It is wise to obtain legal advice to be sure the claim is presented in the right forum.

9.1 Proof of Retaliation

To bring a successful retaliation claim, an employee must usually prove that:⁶³

-  The employee engaged in a protected activity.
-  The employer took an adverse action against the employee.
-  The protected activity was, depending on the applicable law, either the cause of, or a motivating reason for, the adverse action.
-  The adverse action harmed the employee.

In some cases, it may be possible to establish that an employer retaliated by taking an adverse action before the protected activity could occur. For example, firing an employee after hearing a rumor that the employee intended to file a discrimination complaint would be retaliatory even though no protected activity yet occurred. The

employee in such a case would need to prove that the employer anticipated the protected activity and took the adverse action for that reason.⁶⁴

9.2 Cause

In federal cases, it is usually necessary to prove that the protected activity caused the adverse employment action. An employee making a retaliation claim under Title VII must establish that the protected activity was a but-for cause of the adverse action, meaning the action would not have occurred without it. But-for cause does not mean the only cause.⁶⁵

But-for causation is not required under the FEHA. If retaliation was a substantial motivating reason for an adverse employment action, the employer is liable, even if other reasons also contributed.⁶⁶ California's whistleblower statute is more lenient still, requiring only that the protected activity was a contributing factor.⁶⁷

9.3 Direct or Indirect Proof

Proof of retaliation can consist of direct or indirect evidence. Direct evidence usually consists of admissions of retaliatory intent. When an employer says "I am firing you because you complained about discrimination," the statement is direct evidence of retaliation.

When the evidence shows a retaliatory motive, the employer may respond that it would have taken the same action anyway, for legitimate reasons. Under the FEHA, that showing limits the employee's remedies (barring damages, back pay, and reinstatement) but does not defeat liability entirely; declaratory or injunctive relief and attorney's fees remain available. Under Title VII, where retaliation must be a but-for cause, a genuine "same decision" showing means there is no liability.⁶⁸

Direct evidence of retaliation is uncommon, because most employers are too sophisticated to admit that they are acting unlawfully. Because employers who retaliate usually conceal their intent, employees are permitted to prove retaliation indirectly.⁶⁹

An employee usually proves retaliation indirectly by presenting evidence that:

-  The employee engaged in protected activity.
-  The employee suffered an adverse employment action.
-  There is a causal link between those two events.

That evidence permits an inference that the adverse action was retaliatory.

A “causal link” can be established by many kinds of evidence, including:

-  Evidence that the adverse employment action followed soon after the employee engaged in protected activity (courts refer to this as evidence of “temporal proximity”).
-  A deteriorating relationship between the employee and the employer after the protected activity occurred.
-  An employer’s statements, even if they are not admissions of retaliatory intent. For instance, if an employee says “I’m thinking about filing a discrimination complaint” and the employer responds “You’d better not do that,” the implied threat might support an inference that protected activity would be met with retaliation.
-  Comparative evidence showing that the employer began to treat the employee who engaged in protected activity less favorably than other employees after the protected activity occurred.
-  Inconsistent explanations for the adverse action.

An employer may overcome the inference that the adverse action was related to the protected activity by offering a legitimate, nonretaliatory explanation for the action. For example, “I fired you because you were late to work, not because you complained about discrimination” would be a legitimate explanation for an adverse employment action.

When an employer offers a legitimate reason for its action, the employee can present evidence that the reason is a “pretext” offered to mask a retaliatory intent. Thus, evidence that other employees were also late for work but were not fired might permit the inference that a desire to retaliate was the real reason for the termination.

While evidence that an employer relied on a pretext may be strong evidence that the employer is concealing a retaliatory motive, the employee’s ultimate burden is to prove that the adverse action was retaliatory. A factfinder may treat reliance on a pretext as convincing evidence of a retaliatory intent, but it is not required to reach that conclusion, even if it disbelieves the employer’s stated reason.⁷⁰

9.4 Remedies

The remedies for retaliation depend on the statute that was violated. At a minimum, they generally include lost wages (back pay) and the value of lost benefits when the

adverse action involved a termination, a reduction of pay or hours, the denial of a promotion, or some other action that caused a loss of pay.⁷¹

A court might also order reinstatement in the case of a termination, or instead award “front pay,” compensating the loss of future pay for a period of time in lieu of reinstatement. In many cases, an employer will agree to a certain amount of front pay rather than being forced to reinstate the employee.

Some retaliation laws allow an employee to recover compensatory damages, including damages for emotional distress and mental anguish. Compensatory damages are available under Title VII, but the combined total of compensatory and punitive damages is capped by statute, ranging from \$50,000 to \$300,000 depending on the employer’s size.⁷² The FEHA, by contrast, imposes no cap on compensatory or punitive damages, which is one reason California employees often rely on their FEHA claims for full recovery.⁷³

Compensatory damages are not available, at least in the Ninth Circuit, in ADA retaliation cases, where relief is limited to equitable remedies.⁷⁴ Courts disagree about whether compensatory damages are available in ADEA retaliation cases.⁷⁵

Punitive damages are available in some cases but not others. FLSA retaliation is enforced through a provision that authorizes both legal and equitable relief, including lost wages and liquidated damages, although courts are divided on whether punitive damages are available.⁷⁶ The FMLA does not permit an award of punitive damages, but it allows liquidated damages that double the award of back and front pay.⁷⁷ Punitive damages in Title VII cases are subject to the same caps noted above.⁷⁸

Determining the availability of damages for retaliation, and computing any economic loss that occurred, can be challenging. Legal advice from an employment attorney will help retaliation victims understand the remedies to which they might be entitled.

References

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| 1 | See, e.g., 42 U.S.C. § 2000e-3(a) (Title VII); Gov. Code, § 12940, subd. (h) (FEHA); 29 U.S.C. § 215(a)(3) (FLSA); Lab. Code, §§ 98.6, 1102.5. |
| 2 | 42 U.S.C. § 2000e-3(a). |
| 3 | 42 U.S.C. § 12203(a). |
| 4 | 29 U.S.C. § 623(d). |
| 5 | Gov. Code, § 12940, subd. (h). |
| 6 | 29 U.S.C. § 2615(a); Gov. Code, § 12945.2. |
| 7 | 29 U.S.C. § 215(a)(3); Lab. Code, §§ 98.6, 1102.5. |
| 8 | The principal California whistleblower statute is Lab. Code, § 1102.5. |
| 9 | Lab. Code, § 1102.5, subd. (c); see <i>Tameny v. Atlantic Richfield Co.</i> (1980) 27 Cal.3d 167 (tort of wrongful discharge in violation of public policy). |
| 10 | U.S. Const., 1st Amend.; <i>Garcetti v. Ceballos</i> (2006) 547 U.S. 410; <i>Pickering v. Board of Education</i> (1968) 391 U.S. 563. |
| 11 | Lab. Code, § 132a. |
| 12 | See, e.g., Lab. Code, §§ 230, 230.1 (jury service, witness duty, and leave for victims of crime or abuse). |
| 13 | <i>Robinson v. Shell Oil Co.</i> (1997) 519 U.S. 337. |
| 14 | Lab. Code, § 1171.5 (California's labor protections apply regardless of immigration status). |
| 15 | 42 U.S.C. §§ 2000e(b), 12111(5). |
| 16 | 29 U.S.C. § 630(b). |
| 17 | Gov. Code, § 12926, subd. (d). |
| 18 | 29 U.S.C. § 203(s)(1). |
| 19 | Lab. Code, §§ 98.6, 1102.5 (no minimum-employee threshold). |

20	See, e.g., Lab. Code, § 1102.5, subd. (b).
21	E.g., 42 U.S.C. § 12203(a); Gov. Code, § 12940, subds. (h), (m), (n).
22	42 U.S.C. § 2000e-3(a); Gov. Code, § 12940, subd. (h).
23	<i>Yanowitz v. L'Oreal USA, Inc.</i> (2005) 36 Cal.4th 1028, 1043.
24	See <i>Yanowitz</i> , supra, 36 Cal.4th at pp. 1042-1043.
25	<i>Crawford v. Metropolitan Government of Nashville & Davidson County</i> (2009) 555 U.S. 271.
26	<i>Yanowitz</i> , supra, 36 Cal.4th at pp. 1046-1047.
27	<i>Yanowitz</i> , supra, 36 Cal.4th at p. 1046.
28	See <i>Yanowitz</i> , supra, 36 Cal.4th at p. 1043; 42 U.S.C. § 2000e-3(a).
29	<i>Yanowitz</i> , supra, 36 Cal.4th at pp. 1043, 1052.
30	<i>Yanowitz</i> , supra, 36 Cal.4th at pp. 1042-1043.
31	42 U.S.C. § 2000e-3(a); Gov. Code, § 12940, subd. (h).
32	<i>Yanowitz</i> , supra, 36 Cal.4th at p. 1043.
33	42 U.S.C. § 2000e-3(a); Gov. Code, § 12940, subd. (h).
34	The participation clause is generally construed more broadly than the opposition clause. See <i>Crawford</i> , supra, 555 U.S. at pp. 276-280.
35	See <i>Crawford</i> , supra, 555 U.S. at pp. 276-280.
36	Lab. Code, § 1102.5.
37	Lab. Code, § 1102.5, subds. (a)-(c).
38	Lab. Code, § 1102.5, subds. (a), (b).
39	Lab. Code, § 1102.5, subd. (h).
40	Lab. Code, § 1102.6; <i>Lawson v. PPG Architectural Finishes, Inc.</i> (2022) 12 Cal.5th 703, 712, 718.
41	<i>Lawson</i> , supra, 12 Cal.5th at pp. 712-713.
42	Lab. Code, §§ 98.6, 1102.5, 1197.5, as amended by Stats. 2023, ch. 748 (Sen. Bill No. 497), eff. Jan. 1, 2024.
43	Lab. Code, § 1102.5, subds. (f), (j).

44	<i>Burlington Northern & Santa Fe Railway Co. v. White</i> (2006) 548 U.S. 53, 57, 68.
45	<i>Burlington Northern</i> , supra, 548 U.S. at p. 68.
46	<i>Ray v. Henderson</i> (9th Cir. 2000) 217 F.3d 1234, 1240.
47	<i>Robinson v. Shell Oil Co.</i> (1997) 519 U.S. 337.
48	<i>Thompson v. North American Stainless, LP</i> (2011) 562 U.S. 170.
49	<i>Yanowitz v. L'Oreal USA, Inc.</i> (2005) 36 Cal.4th 1028, 1052-1055.
50	<i>Yanowitz</i> , supra, 36 Cal.4th at pp. 1054-1055.
51	See 42 U.S.C. § 2000e(b) (defining “employer”).
52	<i>Burlington Industries, Inc. v. Ellerth</i> (1998) 524 U.S. 742; <i>Faragher v. City of Boca Raton</i> (1998) 524 U.S. 775; see <i>Miller v. Maxwell's Internat. Inc.</i> (9th Cir. 1993) 991 F.2d 583, 587-588 (no individual liability under Title VII or the ADEA).
53	<i>Staub v. Proctor Hospital</i> (2011) 562 U.S. 411 (so-called “cat’s paw” liability).
54	See <i>Miller</i> , supra, 991 F.2d at pp. 587-588.
55	<i>Jones v. Lodge at Torrey Pines Partnership</i> (2008) 42 Cal.4th 1158, 1173; accord <i>Reno v. Baird</i> (1998) 18 Cal.4th 640, 663 (discrimination). The California Supreme Court has left open whether an individual who is personally liable for harassment may also be liable for retaliation that takes the form of that harassment.
56	<i>Vance v. Ball State University</i> (2013) 570 U.S. 421 (a “supervisor,” for vicarious-liability purposes, is one empowered to take tangible employment actions); <i>Ellerth</i> , supra, 524 U.S. 742.
57	Compare <i>Ellerth</i> , supra, 524 U.S. 742 (tangible employment actions), with <i>Burlington Northern</i> , supra, 548 U.S. 53 (materially adverse actions).
58	See <i>Ray v. Henderson</i> (9th Cir. 2000) 217 F.3d 1234, 1244-1245 (retaliatory hostile work environment under Title VII).
59	<i>Ray</i> , supra, 217 F.3d at p. 1245.
60	Gov. Code, §§ 12960, 12965.
61	42 U.S.C. § 2000e-5(e), (f).

62	Code Civ. Proc., § 338, subd. (a); Lab. Code, § 132a.
63	See <i>Yanowitz</i> , supra, 36 Cal.4th at p. 1042; <i>McDonnell Douglas Corp. v. Green</i> (1973) 411 U.S. 792.
64	Some courts recognize retaliation for anticipated protected activity; the availability and contours of such claims are fact-specific.
65	<i>University of Texas Southwestern Medical Center v. Nassar</i> (2013) 570 U.S. 338, 360.
66	<i>Harris v. City of Santa Monica</i> (2013) 56 Cal.4th 203, 232.
67	<i>Lawson v. PPG Architectural Finishes, Inc.</i> (2022) 12 Cal.5th 703, 712, 718.
68	<i>Harris</i> , supra, 56 Cal.4th at pp. 240-241; <i>Nassar</i> , supra, 570 U.S. at p. 360.
69	See <i>McDonnell Douglas Corp. v. Green</i> (1973) 411 U.S. 792.
70	<i>Reeves v. Sanderson Plumbing Products, Inc.</i> (2000) 530 U.S. 133, 148.
71	See, e.g., 42 U.S.C. § 2000e-5(g); Gov. Code, § 12965, subd. (c).
72	42 U.S.C. § 1981a(b)(3); punitive damages require malice or reckless indifference to the employee's rights (<i>id.</i> , subd. (b)(1); <i>Kolstad v. American Dental Assn.</i> (1999) 527 U.S. 526).
73	<i>Commodore Home Systems, Inc. v. Superior Court</i> (1982) 32 Cal.3d 211, 215; punitive damages under the FEHA require malice, oppression, or fraud (Civ. Code, § 3294).
74	<i>Alvarado v. Cajun Operating Co.</i> (9th Cir. 2009) 588 F.3d 1261, 1270.
75	ADEA remedies are enforced through the Fair Labor Standards Act (29 U.S.C. § 626(b)); courts are divided on the availability of compensatory damages for ADEA retaliation.
76	29 U.S.C. § 216(b).
77	29 U.S.C. § 2617(a).
78	42 U.S.C. § 1981a(b)(3).