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PRACTICE GUIDE · EMPLOYMENT LAW

Discrimination, Harassment & Retaliation

Grand Park Law Group · 2026



A. **Protected Characteristics Under FEHA**

FEHA protects a substantially longer list of characteristics than Title VII. As of 2026, the enumerated categories include race (and traits historically associated with race, including hair texture and protective hairstyles, per the CROWN Act of 2019), color, religion (and religious dress and grooming practices), sex (including pregnancy, childbirth, breastfeeding, and related medical conditions), gender, gender identity, gender expression, sexual orientation, marital status, national origin (including language use restrictions and possession of a driver's license issued under Vehicle Code § 12801.9), ancestry, mental and physical disability, medical condition (including genetic characteristics and cancer-related conditions), genetic information, age (40 and over), military and veteran status, and reproductive health decision-making. Cal. Gov. Code § 12940(a). Recent additions include cannabis use off-the-job (AB 2188, effective 2024) and caste (added to ancestry definition).

The California Supreme Court has read these categories purposively. In the disability context, FEHA covers any condition that "limits" a major life activity — a lower threshold than the ADA's "substantially limits." Cal. Gov. Code § 12926.1(c).

B. **The Mixed-Motive Framework After *Harris v. Santa Monica***

The seminal modern FEHA causation case is *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203. *Harris* resolved a long-running split over what an employee must prove when the employer offers a legitimate reason alongside an alleged discriminatory motive.

The Court held that a plaintiff must prove discrimination was a "substantial motivating factor" — not merely a "motivating factor" — for the adverse action. *Id.* at 232. The standard is more demanding than the federal Title VII "motivating factor" test under 42 U.S.C. § 2000e-2(m), but less demanding than but-for causation. Critically, *Harris* also held that even when an employer proves it would have made the same decision absent the discriminatory motive, the employer is not entirely off the hook: the plaintiff is barred from recovering damages, backpay, or reinstatement, but may still obtain declaratory or injunctive relief and reasonable attorneys' fees and costs. *Id.* at 235–36.

The practical effect of *Harris* is that documentary evidence of pretext — shifting explanations, contemporaneous comments, comparator treatment — remains the lifeblood of FEHA discrimination practice. Even a weak liability case can produce fee-shifting leverage if the plaintiff secures a declaratory judgment.

C. Hostile Work Environment Standards

FEHA harassment liability requires conduct severe or pervasive enough to alter the conditions of employment and create an abusive working environment. *Aguilar v. Avis Rent A Car Sys., Inc.* (1999) 21 Cal.4th 121. The standard is judged objectively (a reasonable person) and subjectively (the plaintiff). California has explicitly rejected the federal "stray remarks" doctrine in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, and has made clear by statute (Cal. Gov. Code § 12923, enacted by SB 1300 in 2018) that:

1. A *single incident* of harassing conduct is sufficient if it unreasonably interferes with the employee's work performance;
2. Harassment cases are rarely appropriate for summary judgment;
3. The legal standard is not whether the harassment caused tangible economic harm, but whether it altered working conditions; and
4. Conduct in a workplace with no men or no people of the relevant group should not be evaluated more leniently because the plaintiff was the only person affected.

Section 12923 was a direct legislative response to perceived employer-friendly drift in the federal harassment caselaw, and it materially raises the bar for any defendant seeking summary judgment in a California harassment case.

D. The *Tameny* Public-Policy Tort

Tameny v. Atlantic Richfield Co. (1980) 27 Cal.3d 167 is the foundation of California's common-law wrongful termination doctrine. *Tameny* held that an at-will employee who is discharged for refusing to violate the law — there, antitrust price-fixing — has a tort claim against the employer for wrongful discharge in violation of public policy. The opinion grounded that duty in the employer's "fundamental public obligation" not to abuse the employment relationship. *Id.* at 178.

Subsequent cases have refined the doctrine. To support a *Tameny* claim, the public policy must be (1) tethered to a constitutional or statutory provision, (2) public in the sense that it inures to the benefit of the public rather than the individual, (3) well-established at the time of the dis-

charge, and (4) substantial and fundamental. *Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 894.

Tameny claims are workhorse plaintiff theories because they sound in tort: damages include emotional distress and punitive damages, and the statute of limitations is two years (Code Civ. Proc. § 335.1) rather than FEHA's procedural complexity. They are particularly valuable where the employer is too small to be covered by FEHA but the discharge implicates a public-policy norm — for example, refusal to commit perjury, reporting safety violations, or exercising statutory rights such as jury service or workers' compensation.

E. **Whistleblower Protection Under Labor Code § 1102.5**

Section 1102.5 has, over the past decade, become California's most powerful employee-side retaliation statute. Three doctrinal features explain why.

First, **the burden-shifting framework is now codified and is markedly more plaintiff-friendly than McDonnell Douglas**. *Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703 confirmed that section 1102.6 governs section 1102.5 claims. Once an employee establishes by a preponderance that retaliation was a "contributing factor" in the adverse action, the employer must prove by *clear and convincing evidence* that it would have taken the same action for legitimate, independent reasons. That is a dramatically heavier burden than the McDonnell Douglas "legitimate, non-retaliatory reason" articulation that governs FEHA retaliation.

Second, **internal complaints qualify**. The 2014 amendment expressly extended protection to disclosures made internally to a person with authority over the employee or to another employee with authority to investigate, *Cal. Lab. Code § 1102.5(b)* — overruling earlier cases that had limited protection to disclosures to government agencies.

Third, **the standard is reasonable belief, not proven illegality**. The employee need not be correct that a violation occurred, only that they reasonably believed one did. *People ex rel. Garcia-Brower v. Kolla's, Inc.* (2023) 14 Cal.5th 719 further clarified that disclosures of information already known to the recipient still trigger statutory protection.

The California Supreme Court reinforced the structural importance of agency-level whistleblowing in *State Department of Health Services v. Superior Court* (2003) 31 Cal.4th 1026 (often cited as *McGinnis*), which addressed the avoidable-consequences doctrine in FEHA harassment cases. *McGinnis* held that an employer may, under limited circumstances, reduce damages by proving the plaintiff unreasonably failed to use the employer's anti-harassment complaint procedures and that doing so would have avoided some harm. *Id.* at 1044. The case is a reminder that internal reporting infrastructure cuts both ways: it strengthens whistleblower claims under § 1102.5, but it can curtail damages in FEHA harassment cases where the plaintiff bypassed it.

A final timing note. *Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479 holds that the limitations period for a wrongful termination claim runs from the date of *actual* termination, not from the earlier date the employee was notified that termination would occur. *Romano*'s rule is essential when an employer announces a future separation date and the employee considers whether to sign severance — the clock typically does not start until the actual last day of work.

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