HARASSMENT • LEAVE • WRONGFULTERMINATION

LAW GUIDE

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We all aspire to hold jobs that are meaningful, rewarding, and provide income to meet our needs and raise our children. While the law does not guarantee that our work meet these aspirations, it creates specific rights for employees such as pregnancy and maternity leave, nursing mother accommodations, and pay equity designed to advance societal goals such as supporting families and overcoming long-standing prejudices.

The law also mandates protection against forces that can undermine our sense of self-worth, reduce our wages, block career advancement, and lead to extreme emotional stress. Workplace discrimination, harassment, and wrongful termination are all prohibited.

Through this guide, I wish to raise awareness of rights and protections possessed by all California workers. If your rights have been violated by your employer, the Dolan Law Firm stands ready, willing, and able to assist you in obtaining justice.

CHRISTOPHER B. DOLAN
FOUNDER & CHIEF LEGAL COUNSEL, DOLAN LAW FIRM PC.

Your Rights as an Employee, Summarized

California and federal law provides numerous rights and protections to employees.Here is a list of many of the most important employee rights:

HARASSMENT, DISCRIMINATION, AND WRONGFUL TERMINATION

Harassment, discrimination, and wrongful termination are all prohibited in the workplace if they are based on an employee's actual or perceived:

- Ancestry
- Age (40 and older)
- Color
- Disability
- Gender
- Gender identity or gender expression
- Marital status
- Medical condition (including cancer and genetic characteristics)
- Military or veteran status
- National origin
- Race
- Religion
- Sex (including pregnancy)
- Sexual orientation

LEAVE

Employees in California may be entitled to:

- Pregnancy and maternity leave
- Family and medical leave
- Paid sick leave (24 hours or 3 days in each year of employment)
- Military leave
- Time off to vote

NURSING MOTHER ACCOMMODATIONS

Employers are required to provide reasonable, private space and time for mothers returning from maternity leave to express breast milk while at work.

OVERTIME PAY AND MEAL AND RESTBREAKS

Most nonexempt employees (employees who are not managers and operate under supervision) are entitled to:

- Compensation for overtime hours (1.5 times the hourly rate for any hours over 40 worked in a week).
- Time-and-a-half for hours worked over 8 in a day.
- Double time for hours worked over 12 in a day.
- An unpaid 30-minute meal break for every 5 hours worked in a day.
- A paid 10-minute rest break for every 4 hours worked in a day.

PAY EQUALITY

Employees are entitled to the same rate of pay as other employees regardless of their sex, race or ethnicity for performing "substantially similar" work under similar working conditions.

SAFE WORKPLACE

Every employer must provide a place of employment that is safe and healthful for employees.

WHISTLEBLOWERS ARE PROTECTED

An employer may not retaliate against an employee for disclosing information if the employee has reasonable cause to believe that the information discloses a violation of state or federal law.

WORKERS' COMPENSATION

You have the right to certain benefits (workers' compensation) if you suffer a work-related physical or mental injury or illness. These benefits include:

- Medical care
- Temporary disability benefits
- Permanent disability benefits
- Death benefits (paid to dependents if the worker dies from a work-related injury or illness)

California Leave Laws

There are many types of leave laws in California, and sometimes they can be confusing. At times, company human resource representatives are not fully aware of the employee's rights to take leave and the requirements and obligations of the employer to allow it, so it is important for each employee to understand his/her rights.

The most common type of leave taken to care for a loved one is leave under the California Family Rights Act, or CFRA. (Cal. Government Code section 12945.2). This type of leave allows employees up to 12 weeks of unpaid leave to care for their own serious medical condition, or the serious medical condition of their parents or children, or for baby bonding, when certain conditions are met.

For an employer to be covered under the CFRA, they must have 50 or more employees within a 75 mile radius. It is important to note that the employees do not need to work in a single location, and may be spread out over many stores or worksites.

If the employer is covered, then the employee is qualified to take the leave if he or she has been employed by the company for at least 12 months, and has worked at least 1,260 hours within the past 12 months—approximately 25 hours per week over the past year.

All California employers are also covered by the Healthy Workplaces, Healthy Families Act, which was amended in 2015 to include Paid Leave. The law requires every California employee to accrue paid sick leave at a rate of one hour for every 30 hours worked.

That leave may be used to care for an existing health condition or for preventative care for the employee or the employee's family members.

Employers are required to note employee's accrued sick leave on their pay stub, or other document provided at the same time as the pay stub.

Some employers do not like it when employees take leave. This is understandable since it can create logistical difficulties for the employer. However, the law protects employees from retaliation for requesting or taking leave. An employer cannot take adverse of actions against an employee simply because the employee exercised his or her right to take lawful time off for a medical condition, or to provide care for a family member.

Finally, for employees that work in San Francisco, the City has been a leader in providing rights to workers through its own paid sick leave ordinance on which the state laws were based. Amendments to this ordinance, which parallel the state laws, went into effect in January 2017.

The amendments provide workers in San Francisco the ability to take time off when they are sick, when they are needed to care for their family members, orhave been the victims of domestic violence.

Gender Pay Equity in the Workplace

FROM AMANDA IN SAN FRANCISCO:

"I work for a fast growing company with offices in San Francisco and San Jose. We have been extremely busy. My manager told me I am excellent in my position but recognized my department needed help to handle the workload. I was ecstatic. My manager even asked me to meet with the job finalists and offer my opinion on whom we should hire. I like the employee the company hired and gladly trained him over the past few weeks."

"Everything was fine until I discovered that my employer is paying my new co-worker more than me, by several thousand dollars. We have the same duties and responsibilities. Since I helped with the interviews, I know I have more experience in our industry than him. We both have college degrees. He works out of our San Jose office and I work in our San Francisco office."

"Other than office location, the only difference I can see is that he is a man and I am a woman. Is my employer allowed to do this? I want to complain to my manager
but I'm also worried that I will get in trouble because I inquired about my co-worker's salary."

Thank you for your question Amanda. On January 1, 2016, the California Fair Pay Act went into effect, significantly expanding the California Equal Pay Act, the state's law against gender pay inequality.

Under the new law, employers must pay a man and a woman equally for performing "substantially similar" work under similar working conditions. The law defines "substantially similar" work as that which requires similar skills, effort, and responsibility. Skill refers to the experience, ability, education, and training required to perform the job. Effort refers to the amount of physical
or mental exertion needed to perform the job. Responsibility refers to the degree of accountability or duties required in performing the job.

There are exceptions to this rule. Employers may prove that a difference in wage is based on seniority, merit, a system that measures earnings by quantity or quality of work production, or a factor that has nothing to do with sex, such as a difference in education, training, or experience that is directly related to the job in question. Nevertheless, the Fair Pay Act ensures that any legitimate factors relied upon by the employer for the pay differential are applied reasonably and account for the entire pay difference. This makes it difficult for employers to justify unequal pay between men and women.

The California Fair Pay Act eliminated the requirement that the jobs compared must be in the "same establishment." This means that employees can challenge unfair wage differentials across worksites, not just in their own locations.

Amanda, I recommend that you show this article to your manager or a manager in your Human Resources Department and ask about the reasons behind the pay differential between you and your co-worker. If what you suspect— that you are being paid less than your coworker of the opposite sex despite performing substantially similar work— is true, try to resolve the issue amicably. If that does not work and/ or your employer retaliates against you for bringing the subject up, contact my law firm at 415-421-2800 or visit DolanLawFirm com to protect your rights.

My article prompted a follow up question asking if the law prohibits pay inequality among employees of different races or ethnicities. The answer is yes.

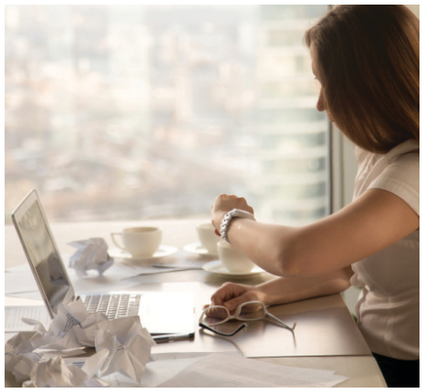
On September 30, 2016, Governor Jerry Brown signed Senate Bill 1063 into law. The legislation amended the Equal Pay Act to prohibit employers from paying employees a wage rate less than the rate paid to employees of a different race or ethnicity for substantially similar work. Exceptions for pay differentials are permitted, but the employer must prove the different wage is due to specific factors not based on or linked to race or ethnicity and consistent with an overriding legitimate business purpose.

Another reader asked if employers may discourage employees from sharing their salary information. This is widespread in the workplace, and illegal. California Labor Code section 232 prohibits an employer from requiring an employee to refrain from disclosing the amount of his or her wages, or discharging, formally disciplining, or otherwise discriminating against an employee who discloses the amount of his or her wages.

Christopher B. Dolan writes a weekly column on the law and your legal rights for the San Francisco Examiner and SF Weekly. Email Chris at help@ dolanlawfirm.com and ask him your legal question.

Workplace Harassment

California Law protects employess from sexual racial, ethnic and other types of harassment. Here is how.



What constitutes harassment in the workplace and when is it unlawful?

Although it is hurtful, harassment by itself is not illegal. Workplace harassment is illegal only if it is based on a protected status (i.e., race, age, national origin, sex, religion, disability, etc. See full list on page 2).

The harassment must also meet a certain level of severity, that is, it must be either
severe or pervasive.

Two primary types of employment harassment are recognized under the law:

(1) Quid Pro Quo Harassment:

Quid pro quo is Latin for "something
for something." This type of harassment
refers to some form of requested or demanded exchange between the employer and the employee. The harassment can be instigated by owners, directors, supervisors, managers, or co-workers. Quid pro quo harassment is often of a sexual nature whereby a proposition is made in exchange for an offer of employment, promotion, or other form of compensation.

(2) Hostile Work Environment:

This type of harassment occurs when an employee experiences offensive conduct that is severe or pervasive enough to interfere with the employee's ability to perform her or his job and is directed at the employee because of his or her status in protected classification (race, age, national origin, sex, religion, disability, etc.).

The offensive conduct can take manyforms including:

- Oral or written derogatory comments, insults, slurs, graphic statements, and offensive jokes;
- Leering, making aggressive or sexual gestures, and displaying offensive or suggestive objects or pictures;
- Uninvited touching, physical assault, and impeding or blocking movement;
- Unwarranted punishment, termination, and emotional or psychological abuse; and
- Unfair tactics to block the employee's progression, growth, or advancement within the organization.

While demonstrating a hostile work environment often requires a showing of a pattern of offensive conduct, a single incident may create a hostile environment. Some factors considered are whether the conduct was verbal or physical, how offensive the conduct was, and whether the harasser was a co-worker or supervisor.

When is the employer legally responsible for the harassment?

If the harassment is by a supervisor, the employer is liable. An employer is automatically responsible for the actions of its supervisors and managers, subject to certain defenses.

If the harassment is by a co-worker, the employer is liable if the employer knew, or should have known, the harassment was occurring and failed to take prompt and appropriate corrective action.

What can you do if you are being harassed?

First, tell the person to stop. Telling the person to stop the harassment is key to making him or her aware that the conduct is unwanted. Second, preserve any evidence of the

harassment such copying and saving email and text messages so that you have a record of what happened.

Third, report the harassment to your company. Send an email or write a note to the person's supervisor and the head of HR. This puts the company on notice that your rights have been violated. Look in your employee

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California Pregnancy & Maternity Leave Law

Provide your supervisor and the HR department 30-days notice before your leave is to begin if the need for leave is foreseeable. If you do not know when leave will be required to begin, or if there is a change in circumstances or a medical emergency, provide notice as soon as practicable.

We recommend that you submit all requests for leave and accommodation for your pregnancy or pregnancy-related disability in writing or email. And, if your employer equires it, submit medical certification from your doctor to support your request.

Three different statutes determine the amount of time an employee can take off work due to pregnancy and child birth: the Family Medical Leave Act (FMLA), California Family Rights Act (CFRA), and the Pregnancy Disability Leave (PDL) law.

The FMLA is a federal law that provides pregnancy leave. In California, pregnancy leave is also covered under CFRA and the PDL, two state laws. Combined, the three leave laws can—under certain circumstances— provide up to seven months of unpaid leave, but each case needs to be analyzed individually.

Under the FMLA and CFRA, you may take a leave of up to 12 weeks in a 12-month period for the birth of your child. You are eligible for leave under the federal FMLA and the state CFRA if:

- You have worked for your employer for at least 12 months (even if temporary or part-time);
- You have worked at least 1,250 hours (an average of 25 hours per week) during the 12 months before the leave.
- Your employer employs at least 50 people within a 75-mile radius of your worksite.

Even if you are not eligible for FMLA and CFRA leave, you are still entitled to take up to four months of unpaid PDL if you are disabled due to pregnancy, childbirth or related medical conditions, and your employer employs at least five employees.

Generally, health care providers will certify a pregnancy disability leave from four weeks before childbirth and six weeks after a vaginal delivery
or eight weeks after delivery by cesarean section.

Nevertheless, you may take up to four months of PDL for complications, severe morning sickness, or other disabilities related to pregnancy, childbirth, or a related medical condition. The specific duration of disability leave within that four-month window must be determined by your health care provider.

The PDL and FMLA leave run concurrently (they overlap). You cannot add the twelve weeks of the FMLA to the four months of the PDL. Under the
CFRA, however, you are entitled to twelve weeks of baby-bonding time after your baby is born.

This leave can be added to leave taken under the FMLA and/or PDL. Therefore, pregnant employees who are eligible for FMLA/CFRA leave may take both a PDL leave for the time they are disabled and a 12-week CFRA leave to care for and bond with their child.

PREGNANCY RIGHTS: QUESTIONS & ANSWERS

Can my Employer Force Me Not to Take Leave?

No. It is unlawful for an employer to interfere with employees exercising their leave rights, including discouraging the leave, encouraging delay of the leave, threatening retaliation or job reassignment, harassment, or requiring the employee to work in some capacity during the leave.

Am I Entitled to My Job Back after My Leave Ends?

Yes. You are entitled to return to the same or similar position at rates of equal pay and benefits. Refusal to reinstate is a form of discrimination and any retaliation is forbidden.

Can I be Forced to Use My PTO during My Leave?

Your employer can require that you use your accrued paid sick leave during a portion of your pregnancy leave.

Your employer cannot require you to use your paid vacation or other personal time off during your pregnancy leave, but you may elect to do so.

Can My Employer Stop My Health Benefits While I'm on Leave?

No. Your employer must continue your health coverage under the same conditions as if you had continued to work.

Am I Entitled to Accommodation ifThere are Some Duties I Cannot Perform?

Yes. You are entitled to reasonable accommodation from your employer if you suffer from a pregnancy-related medical condition and the request for accommodation is made on the advice of a doctor. Your employer must engage in a good faith effort to identify and provide accommodation

Harrasment

(continued on page 5)

handbook to see whom is designated to receive complaints and make sure that they receive a copy too. Keep copies of what you send and notes on whom you communicated with. Companies have an obligation to conduct a good faith investigation into harassment complaints and to take prompt and sufficient remedial measures to stop the misconduct.

Fourth, you may file a complaint with the California Department of Fair Employment and Housing (DFEH) within one year of the harassment, discrimination, or retaliation.

The DFEH serves as a neutral fact-finder and attempts to help parties voluntarily resolve disputes. If the DFEH finds sufficient evidence of discrimination and settlement efforts fail, the DFEH may file a lawsuit against your employer on your behalf

May I file my own lawsuit?

Yes. You may file your own private, civil action against the employee who harassed you and your employer. We highly recommend you do so only if you are represented by an attorney. You are first required to obtain a right-tosue notice from the DFEH.

Again you have to act within one year of the harassment, discrimination or retaliation.

What damages can I obtain to compensate me for the illegal harassment?

You may seek compensation for the damages you suffered including hiring or promotion, lost wages or salary, reinstatement, reasonable attorneys' fees and costs, emotional distress damages, and punitive damages for willful, outrageous misconduct.

Can my employer retaliate against me for complaining about harassment?

Unfortunately, retaliation occurs. It can take many forms, including write-ups, demotion, and termination. The law, however, prohibits employers from retaliating against an employee for making a complaint based on a good faith belief of harassment or discrimination

Awards & Recognition

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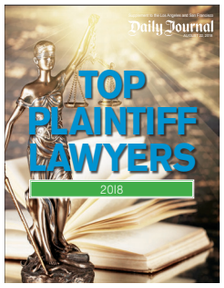

NORTHERN CALIFORNIA TOP 100 LIST RATED BY Super Lawyers

TOP 100 LAWYERS

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What our clients say

"seeking legal aid from Dolan Law Firm was the best decision I ever made. The staff was a very kind and efficiently walked me through my injury."

Jose Sanchez

"Very caring and patient team! Would definitely recommend to hire them if you are in a tough situation."

Taysha Haynes

About Our Firm

One of California's premier plaintiffs' law firms, the Dolan Law Firm PC represents clients throughout the San Francisco Bay Area and across California from its offices in San Francisco, Oakland, and Marin. Possessing a "history of winning multimillion-dollar verdicts," as noted in the San Francisco Business Times, the Dolan Law Firm has recovered hundreds of millions of dollars for its clients in settlements and jury verdicts.

"At the Dolan Law Firm, we say, 'we are the best lawyers we hope you'll never need.'We take great pride in obtaining justice for our clients and holding the powerful accountable," says Christopher B. Dolan, who founded the firm in 1995 and has been recognized by U.S. News, Best Lawyers, Super Lawyers, and the Daily Journal as one of the very best injury and plaintiffs' attorneys in all of California.

The attorneys at the Dolan Law Firm work as a team under Christopher Dolan's super-vision, drawing upon their considerable collective knowledge of the law and trial skills, as well as the firm's substantial financial resources and access to experts, to provide each client with superior legal representation.

The Dolan Law Firm represents individuals in personal injury cases and families of loved ones who have died due to the fault of others, including in bicycle and pedestrian accident cases. In addition, the firm represents employees challenging discrimination, harassment, retaliation, and wrongful termination.

The Dolan Law Firm is a long-time sponsor and supporter of the San Francisco Bicycle Coalition, Bike East Bay, and the Marin County Bicycle Coalition. These groups have recognized the Dolan Law Firm as local, bicycle-friendly attorneys. The firm also supports the California Bicycle Coalition, which advocates in Sacramento for the rights of cyclists and helps shape California bicycle laws.

For a free, confidential, and no-obligation case evaluation, please visit the Dolan Law Firm online at dolanlawfirm.com or call us at 415-421-2800.

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